

MEMORANDUM

State of Alaska Department of Law

TO: Tuckerman Babcock, Director DATE: March 31, 1993
Division of Boards
and Commissions
Office of the Governor

FILE NO.: 663-93-0354

TEL. NO.: 465-3600

SUBJECT: Effect of "Sunset"
Provisions on
Board Functions

FROM: Joseph W. Geldhof
Assistant Attorney General
Governmental Affairs Section - Juneau

You have requested our advice on the effect of the termination of certain boards in the event the legislature elects not to extend the life of those boards.

Four occupational licensing boards -- Chiropractic Examiners (AS 08.20.010-.090), Dispensing Opticians (AS 08.71.010-.055), Optometry Examiners (AS 08.72.010-.060), and Mechanical Examiners (AS 08.40.220), -- were terminated on June 30, 1992, and are scheduled to "sunset" on June 20, 1993. AS 08.03.010(7), (10), (13), and (17), respectively. You have specifically inquired as to the legal effect the "sunset" of these boards would have on board functions, including licensing. Unless the legislature takes action* to extend their life, these boards are already terminated and are required to "cease all activities" as of June 30, 1993. AS 08.03.020(a).

Although a particular licensing board may be terminated, the substantive legal requirements for the particular trade or profession typically remain unaltered and in effect. For example, in the past, the legislature terminated the Board of Electrical Examiners (AS 08.04.011) without altering the statutory provision requiring that "a person may not act as an electrical administrator without a license." AS 08.40.090(a). Occupational licenses are

* The legislature is required to evaluate a board and either terminate, dissolve, or continue to establish the board according to the procedure in AS 44.66.050. See AS 08.03.020(b).

"renewed biannually" in Alaska. AS 08.01.100(a). In the absence of a board with power to renew or grant licenses, a situation will develop within three years of board termination in which no one can comply with the licensing requirements. See generally 1992 Inf. Op. Att'y Gen. (June 10; 663-92-0591).

Like the situation with the Board of Electrical Examiners, the substantive statutory requirements governing the chiropractic, optician, optometric, and mechanical occupations will remain in force even if the boards that regulate these activities are terminated. Thus, termination and eventual sunset will inevitably serve to bar new entrants to the occupation and eventually guarantee that no individual holds the license required by statute.

Under these circumstances, it is clear that the legislature should carefully consider whether or not a particular occupational licensing board should be terminated. Mere termination of board activities, without further consideration of the substantive legal requirements governing the particular occupation, will produce uncertainty and some degree of chaos. We recommend that if the legislature wishes to deregulate a particular trade or occupation, it first undertake a comprehensive review of the statutory provisions governing that trade or profession.

You have also inquired about the Board of Parole (AS 33.16.020-33.16.080), a board that will, absent legislative action, begin its "sunset" year on June 30, 1993. AS 44.55.101(a)(3). If terminated on June 30, 1993, the Board of Parole "shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs." AS 44.66.010(b). Absent a major rewrite of the statutory provisions pertaining to parole procedures contained in AS 33.16, termination of the Board of Parole would almost certainly generate problems for the Department of Corrections and the Department of Law, as well as uncertainty for the judiciary and possibly litigation. Attorneys for the Criminal Division within the Department of Law have expressed concern that termination and "sunset" of the Board of Parole may arguably violate prisoners' rights. That is, prisoners sentenced by a court with an expectation of a parole hearing may have a constitutionally protected right to a parole hearing. Any decision to "sunset" the Board of Parole should take place in light of a considered and comprehensive review of the parole statutes.

Finally, you have asked about the effect of termination of the Alaska Public Utilities Commission (AS 42.05), a commission slated to expire on June 30, 1993. AS 44.66.010(a)(4). You specifically asked how the activities of the Alaska Public

Utilities Commission would be affected after June 30, 1993, should the Commission's existence not be extended during this legislative session. If terminated on June 30, 1993, the Alaska Public Utilities Commission would have one year to conclude its affairs. AS 44.66.010(b). This one-year period would primarily be for the

purpose of concluding matters pending before the Alaska Public Utilities Commission rather than the commencement of new regulatory activity.

Please let me know if you have additional questions.

cc: Dean Guaneli, Chief, Criminal Division
Sarah J. Felix, Assistant Attorney General
Elizabeth Hickerson, Assistant Attorney General