

January 3, 2022

State of Alaska
Department of Administration
Attn: State Officers Compensation Commission
550 W. 7th Ave., Ste 1970
Anchorage, AK 99501

Re: Alaska State Legislature– My opposition to current legislative per diem policy

Dear Members of the Commission:

This letter conveys to you my strong opposition to the current *per diem* policy and allowances that the Alaska State Legislature generously, but inappropriately, arranged for its members. It includes my reasoning, information derived from conversations with some Alaska legislators, and an example of one extreme, tax-free, financial benefit one Alaska legislator arranged for himself (although there are other legislators who have behaved and benefited similarly). The solution to the problems identified here can be resolved by hiring a small staff to perform oversight of Alaska legislative *per diem* policy and procedures. At present there is no oversight; this is a big problem.

As you know, Alaska legislators request and automatically receive \$293.00 in *per diem* each day of session in Juneau. These funds are intended to pay for temporary living expenses there. With no oversight to determine whether these funds are used appropriately for expenses related to their business travel, legislators do not always use all funds as intended: lodging, vehicle rental, other transportation, laundry/dry cleaning costs, or meals. Some legislators use their tax-free *per diem* allowance to supplement their monthly salaries and/or to pay living expenses “at home”. This is unethical and unacceptable and contrary to federal law. The state of Alaska, the Alaska legislature, and this Commission must work together to correct this problem immediately.

All Alaska state employees, other than legislators, who travel to Juneau for state business receive reimbursement for actual expenses, plus a modest, daily stipend to cover meals and incidental charges. These “regular” state employees, unlike legislators, do not receive a daily lump sum of \$293.00 or any *per diem* when they live at home. Alaska legislators are state employees. They should receive the same travel-related allowances provided to all other state employees. There is no good reason to allow legislators *per diem* far in excess of what all other state employees receive. Alaska state legislators are not “special”. If they believe they are, they must be disabused of this notion post haste.

The new recommendation that legislators receive a maximum of \$12,000.00 in *per diem* for the Juneau session each year does not remedy the problems that are in full evidence now. This new recommendation does not correct the significant breach of federal income tax law or Internal Revenue Service (IRS) rules and regulations. Unfortunately, some Alaska legislators have chosen over the years to ignore federal. And they freely discuss this serious lapse of judgement.

As a result, the Alaska state legislature must hire a small staff to conduct oversight into how legislative *per diem* allowances are issued and used by legislators. When I served on active duty, I performed similar oversight functions as part of my specific duty assignment. I know what is required to eliminate questionable practices and resulting problems with legislative *per diem* allowances now. The office staff procedures I recommend, will reduce legislative *per diem* totals paid during Juneau sessions and bring “everything” into compliance with federal income tax law and IRS procedures. This is urgently needed.

The IRS defines *per diem* reimbursement for employees on temporary business travel in this way:

A *per diem* rate reimburses employees for combined lodging and meal costs, or meal costs alone. *Per diem* payments are not part of the employee’s wages for tax purposes so long as the payments are equal to, or less than the federal *per diem* rate, and the employee provides an expense report. If the employee doesn't provide a complete expense report, the payments will be taxable to the employee. Similarly, any payments which are more than the *per diem* rate will also be taxable.

The following examples amplify the problems I bring to the Commission at this time:

1. Alaska state Representative Adam Wool told me that he and other legislators consider their salaries “way too low” and believe, therefore, that they are entitled to apply tax-free *per diem* over-payments as supplements to their taxed legislative salary. This interpretation is contrary to federal income tax law and IRS rules and regulations. Untaxed *per diem* is not supplemental taxed income unless the legislator offers a full disclosure as part of an annual federal income tax return. The state of Alaska, the Alaska legislature, and this commission must work together to correct this misinterpretation and unethical practice immediately.
2. Alaska state Representative Chris Tuck told me that he lived with Alaska state Representative Scott Kawasaki and two other men in a Douglas, AK condo and paid \$2,400.00 total for lodging each month. At \$600.00 per person as the legislators’ actual monthly housing/lodging expenses, both legislators requested and received *per diem* allowances far in excess of their actual lodging expenses. Using Alaska untaxed, “leftover” *per diem* funds for other non-*per diem* expenses, over the years, adds up and is unlawful when considering the income tax implications. The state of Alaska, the state legislature, and this Commission must work together to correct these federal income tax-related violations immediately.
3. Alaska state representative Andrew Josephson arranged a very lucrative temporary housing situation that he evaluated in conversation with me as “smart”. On March 19, 2013, he purchased a small Juneau apartment at 350 Irwin Street for \$104,050.00. He lives in his property during session. Since 2013, he requested and received at least \$256,874.00 in Juneau session *per diem* (mostly allocated for lodging). It is fair to assume at this point that he no longer pays any Juneau lodging expenses, except minimal CBJ property tax payments and utilities. All future Juneau session *per diem*

for lodging for him should be disallowed except as he has supporting documentation. Also, the equity and eventual sale of this property add significantly to the problem. [Other Alaska state legislators own or have owned and then lived in their properties while collecting lodging *per diem* during sessions in Juneau.] The state of Alaska, the state legislature, and this Commission must correct this unjust, but highly predictable, “income tax related problem” immediately.

The Alaska state legislature must not continue to use Alaska’s limited financial resources in ways that benefit legislators unreasonably, and that are not allowed under IRS rules and regulations, while simultaneously disadvantaging the average Alaska individual/family. Using limited resources for unneeded *per diem* (i.e. overpayments) results in unfunded PFDs and other necessary state services that are not provided.

The millions of dollars allocated for state legislative *per diem*, that is not aligned with and spent on actual temporary business-related expenses but used as part of their salaries, is contrary to federal income tax law and reduces funds available for necessary state purposes and programs. Unused or unnecessary legislative *per diem* reduces funds available for: 1) full (promised) Permanent Fund Dividends for eligible Alaskans, 2) adequate funding for the Alaska Marine Highway System, 3) improvements and infrastructure improvements in rural Alaska, 4) financial relief and assistance to small businesses and families impacted negatively by the continuing COVID-19 pandemic, 5) improved COVID-19 testing, 6) weatherization programs for those of us who live in houses heated only to 55 degrees Fahrenheit because home heating costs are prohibitive in Alaska in the winter, and 7) other crucial statewide needs.

An office of state employees, hired to manage and monitor an improved, honest legislative *per diem* program, is absolutely necessary at this time. Alaska state legislators should be reimbursed for actual expenses paid for temporary living in Juneau during sessions and there should be a state office to manage this. There should be no overpayments of untaxed *per diem* funds that legislators now use to augment their taxed salaries. The office I recommend would “pay for itself” in less than one year. And it is the right thing to do!

I am available to answer any questions the Commission may have.

Sincerely,

/*Signature on File*/

Elisabeth Bachmeier