October 2, 2018

Kris Curtis, Director
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

Re: Your letter of September 19, 2018 concerning deposits to the Constitutional Budget Reserve Fund (CBRF)

Dear Ms. Curtis:

I received a copy of your letter dated September 19, 2018 to Commissioner Sheldon Fisher regarding whether certain state revenues should be deposited into the general fund or the Constitutional Budget Reserve Fund (“CBRF”). In your letter, you asserted that “FERC receipts must be deposited into the CBRF” and that “FERC-related deposits received in FY 18 must be deposited into the CBRF and reflected as such in the State’s financial statements.” Additionally, you noted that “[w]e will be communicating this position to the Department of Administration, Division of Finance so it can be taken into consideration as staff compile the State’s financial statements.”

Your letter appears to direct certain actions by the Department of Revenue or Department of Administration based on your legal interpretation. However, as the legal counsel for the executive branch, I have advised the departments not to take your recommended actions at this time. In my role as Attorney General, I advise executive branch agencies on matters of law, including the proper interpretation of the Alaska Constitution.\(^1\) My office spent a significant amount of time reviewing this issue prior to the Department of Revenue’s actions, and we do not share your interpretation. We have advised, and continue to advise, that the legally appropriate placement of the funds at issue is in the general fund.

As you are aware, my office sent a letter to the State Senate on February 14, 2018 summarizing our legal analysis on this issue, which was shared with your office on

\(^1\) AS 44.21.020(a)-(b).
February 27, 2018. In that correspondence, we stated that additional production tax or royalties received by the State due to adjustments in the value of oil that may occur following oil pipeline tariff litigation should be deposited into the general fund and not the CBRF. I did not reach this conclusion lightly; the conclusion was based on my careful consideration after a thorough review by several attorneys in my office knowledgeable about these issues. Upon reaching a conclusion, my office then informed the Department of Revenue as to the proper legal course of action.

You assert in your letter that “the Department of Law provided limited legal analysis.” As you can appreciate, issues relating to the State’s finances, especially constitutional issues, are sensitive in nature, and we prefer not to discuss them extensively in public because of the potential legal and financial ramifications. Although we have thorough attorney-client privileged memoranda containing our full legal analysis, we only provided a brief summary to the State Senate to ensure they were aware of the basis for the Department of Revenue’s actions. In fact, there is an Informal Attorney General Opinion from 1994\(^2\) that supports my legal conclusion as well as comments from former Attorney General Bruce Bothelo from 1997.\(^3\) As part of our review, my office also looked at the information provided to voters when the amendment adding the CBRF was on the ballot.

I understand the important role you play in state government, and I hope you can also appreciate my role in advising on legal matters. I believe that with more of the background information on our analysis and a better understanding of FERC proceedings, you would share my opinion on this matter. In that regard, I would be happy to sit down with you and your legal counsel to have a privileged conversation and answer any questions you might have. I would also request that you withdraw your September 19 letter in recognition that the Department of Revenue acted on my legal advice.

In the future, I am hoping we can resolve questions and issues directly by sitting down together and having a conversation. In the end, we all have the same goal of protecting the State and its assets. I believe working more collaboratively would be beneficial for all involved.

Sincerely,

[Signature]

Janna Lindemuth
Attorney General

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\(^3\) Juneau Empire, July 28, 1997 at 3.
cc: Sheldon Fisher, Commissioner, Department of Revenue
    Megan Wallace, Director, Legislative Legal Services