

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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August 15, 2008

The Honorable Berta Gardner  
Alaska State Legislature  
716 W. 4<sup>th</sup> Ave., Ste. 340  
Anchorage, AK 99501-2133

The Honorable Scott Kawaski  
Alaska State Legislature  
1292 Sadler Way, Ste. 328  
Fairbanks, AK 99701

The Honorable Bob Buch  
Alaska State Legislature  
716 W. 4<sup>th</sup> Ave., Ste. 360  
Anchorage, AK 99501-2133

The Honorable Andrea Doll  
Alaska State Legislature  
State Capitol, Room 426  
Juneau, AK 99801-1182

Re: Request for Amendment HCS CSSB 4002 (FIN) am H

Dear Representatives Gardner, Kawasaki, Buch, and Doll:

I am in receipt of your letter dated August 11, 2008, requesting that the Attorney General's Office amend HCS CSSB 4002 (FIN) am H and provide for a supplemental application process for individuals who did not timely file an application for the 2008 Permanent Fund Dividend ("PFD"). Upon review of your request, I have concluded that this office lacks the legal authority to require the supplemental application process you propose.

According to the Alaska Supreme Court decision in *O'Callaghan v. Coghill*, 888 P.2d 1302 (Alaska 1995), the executive branch is without authority to disregard the legal requirements of a statute unless the provision is "clearly unconstitutional." Because the legislature's decision to supplement the amount of the 2008 PFD after the close of the application period does not, in my opinion, give rise to a clear constitutional violation, HCS CSSB 4002 (FIN) am H is not "clearly unconstitutional."

Under Alaska Statute 43.23.011(a), the application period for the 2008 PFD ended on March 31, 2008. The amount of the 2008 PFD was unknown throughout the duration of the application period. Under Alaska Statute 43.23.025(a), the amount of the 2008 PFD is not required to be disclosed until October 1, 2008, and is not even capable of

being calculated until after the end of the accounting year on August 31, 2008. Thus, every Alaskan eligible to apply for the 2008 PFD was unaware of the amount of the PFD when deciding whether to apply by the close of the application period. Against this framework, the legislature's decision to supplement the PFD does not give rise to a clear constitutional violation, and any legal concerns raised in your letter will have to be resolved through judicial avenues.

I have forwarded a copy of your letter to the Department of Revenue so that they may respond to some of the policy concerns raised. Please do not hesitate to contact me if I can be of further assistance on this issue.

Sincerely,



Talis J. Colberg  
Attorney General