

## James B. Gottstein

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**From:** James B. Gottstein <james.b.gottstein@gottsteinlaw.com>  
**Sent:** Monday, March 28, 2016 8:36 AM  
**To:** Senator.Click.Bishop@akleg.gov; Senator.John.Coghill@akleg.gov;  
Senator.Mia.Costello@akleg.gov; Senator.Mike.Dunleavy@akleg.gov;  
Senator.Dennis.Egan@akleg.gov; Senator.Johnny.Ellis@akleg.gov;  
Senator.Berta.Gardner@akleg.gov; Senator.Cathy.Giessel@akleg.gov;  
Senator.Lyman.Hoffman@akleg.gov; Senator.Charlie.Huggins@akleg.gov;  
Senator.Pete.Kelly@akleg.gov; Senator.Anna.MacKinnon@akleg.gov;  
Senator.Lesil.McGuire@akleg.gov; Senator.Kevin.Meyer@akleg.gov;  
Senator.Peter.Micciche@akleg.gov; Senator.Donny.Olson@akleg.gov;  
Senator.Bert.Stedman@akleg.gov; Senator.Gary.Stevens@akleg.gov;  
Senator.Bill.Stoltze@akleg.gov; Senator.Bill.Wielechowski@akleg.gov;  
Representative.Mike.Chenault@akleg.gov; Representative.Matt.Clamann@akleg.gov;  
Representative.Jim.Colver@akleg.gov; Representative.Harriet.Drummond@akleg.gov;  
Representative.Bryce.Edgmon@akleg.gov; Representative.Neal.Foster@akleg.gov;  
Representative.Les.Gara@akleg.gov; Representative.Lynn.Gattis@akleg.gov;  
Representative.David.Guttenberg@akleg.gov; Representative.Mike.Hawker@akleg.gov;  
Representative.Bob.Herron@akleg.gov; Rep.Shelley.Hughes@akleg.gov;  
Representative.Craig.Johnson@akleg.gov; Representative.Andy.Josephson@akleg.gov;  
Representative.Scott.Kawasaki@akleg.gov; Representative.Wes.Keller@akleg.gov;  
Representative.Sam.Kito.III@akleg.gov; Representative.Jonathan.Kreiss-  
Tomkins@akleg.gov; Representative.Gabrielle.LeDoux@akleg.gov;  
Representative.Bob.Lynn@akleg.gov; Representative.Charisse.Millett@akleg.gov;  
Representative.Cathy.Munoz@akleg.gov; Representative.Benjamin.Nageak@akleg.gov;  
Representative.Mark.Neuman@akleg.gov; Representative.Lance.Pruitt@akleg.gov;  
Representative.Lora.Reinbold@akleg.gov; Representative.Dan.Saddler@akleg.gov;  
Representative.Paul.Seaton@akleg.gov; Representative.Ivy.Spohnholz@akleg.gov;  
Representative.Louise.Stutes@akleg.gov; Representative.Dave.Talerico@akleg.gov;  
Representative.Geran.Tarr@akleg.gov; Representative.Steve.Thompson@akleg.gov;  
Representative.Cathy.Tilton@akleg.gov; Representative.Chris.Tuck@akleg.gov;  
Representative.Liz.Vazquez@akleg.gov; Representative.Tammie.Wilson@akleg.gov;  
Representative.Adam.Wool@akleg.gov  
**Cc:** james.b.gottstein@gottsteinlaw.com; NHerz@alaskadispatch.com; abaird@ktuu.com;  
Liz Raines; Dermot Cole; charles.westmoreland@juneauempire.com  
**Subject:** Anchorage LIO--Next Steps

Dear Members of the Alaska Legislature:

I am the president of, and lawyer for, Alaska Building, Inc., the party who obtained the [declaratory judgment](#) last Thursday that the lease for the Anchorage Legislative Information Office is illegal and void (Illegal LIO Lease) because it violated the requirement to put leases out to bid. I had anticipated that after declaring the Lease for the Anchorage Legislative Information Office illegal and invalid, the court would set a schedule to decide follow-up issues under AS 22.10.020(g), such as the landlord, 716 West Fourth Avenue LLC, having to pay back money it has received under the Illegal LIO Lease. However, the court's decision ended the case, allowing an immediate appeal, but leaving such issues up in the air. I have a background in real estate and collection law and I thought I would provide my thoughts on next steps. The Legislative Affairs Agency has able counsel advising it and they should be consulted, but for various reasons, I am writing you publicly with my thoughts.

First, it is apparent that there is no authority for paying 716 West Fourth Avenue LLC any more rent under the Illegal LIO Lease, including the April rent payment. However, since the past payments to the Landlord were illegal, some or all of these illegal payments can be used as a credit against future rent. According to the [affidavit](#) of retired appraiser, Larry Norene, the maximum obtainable rent in the market for a completely net lease as provided in the Illegal LIO Lease is \$120,659. Thus, even if 716 West Fourth Avenue LLC were to successfully argue it is entitled to rent for the time the building was occupied by the Legislative Affairs Agency, the maximum would be \$120,659 per month, leaving the Legislative Affairs Agency with a credit of almost \$2.5 million to use for future rent.

The reason I am bringing this up is I would be surprised to find out that 716 West Fourth Avenue LLC has any significant funds because the considerable funds above what were needed to cover expenses have probably been paid to 716 West Fourth Avenue LLC's owners. A debtor without any assets is called "judgment proof" meaning that no money can be recovered from a defendant that doesn't have any. In this case, there is the possibility of trying to "pierce the limited liability shield" and recover the money from the owners, but that is a relatively difficult thing to do. It was something I was potentially faced with trying to accomplish, but the way the court structured its decision I am no longer faced with it.

I am not suggesting the Legislature remain in the building for that length of time, but it shouldn't feel under pressure to move out before the space in the Atwood Building is ready, or even to allow time for a competitive bidding process as I saw Rep. Kito suggest.

Second, I understand the Legislature is considering purchasing the building. The Legislative Affairs Agency has an appraisal from Peter Shorett of Kidder Mathews in Seattle that the building is worth no more than \$20 million. For the life of me I can't see any reason to pay more than that. In addition to the mathematical machinations contained in the Navigant Report being quite questionable, they are irrelevant. The Legislature should not pay more than market value for the building. It is as simple as that.

I requested a copy of Mr. Shorett's appraisal in discovery and the Legislative Affairs Agency refused to produce it without my agreeing to keep it confidential. Because I felt this information should not be withheld from the public I refused. This was likely headed to the court to decide, but last Thursday's decision pre-empted that. I believe the Legislative Affairs Agency should release the Shorett appraisal to the public immediately.

There are nuances to this analysis, including the potential role of the lender, but I didn't want to make this too long.

Yours truly,

James B. Gottstein  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
Tel: (907) 274-7686 Fax: (907) 274-9493  
e-mail: James.B. Gottstein@GottsteinLaw.Com