

# OFFICE OF LEGISLATIVE LEGAL SERVICES

## COLORADO GENERAL ASSEMBLY



COLORADO STATE CAPITOL  
200 EAST COLFAX AVENUE SUITE 091  
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157  
EMAIL: OLLS.GA@STATE.CO.US

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## MEMORANDUM

TO: Members of the Colorado General Assembly

FROM: Office of Legislative Legal Services

DATE: March 27, 2020

SUBJECT: Claims for per diem and compensation for meeting attendance and for attending to matters pertaining to the general assembly during a temporary adjournment of the general assembly<sup>1</sup>

### Legal Questions

Are members of the general assembly allowed to claim the per diem allowance while the General Assembly is adjourned temporarily pursuant to H.J.R. 20-1007? Are certain members allowed to claim additional compensation for attendance at certain meetings and for attending to matters pertaining to the general assembly during the temporary adjournment?

### Short Answer

Yes. Because the per diem allowance is authorized each legislative day for expenses incurred during a session of the general assembly, members of the general assembly are entitled to claim a per diem allowance for expenses incurred each day the general

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<sup>1</sup> This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the general assembly. OLLS legal memoranda do not represent an official legal position of the general assembly or the State of Colorado and do not bind the members of the general assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

assembly is temporarily adjourned pursuant to H.J.R 20-1007. Certain members are also entitled to receive \$99 for attendance at certain meetings and attending to matters pertaining to the general assembly while the general assembly is adjourned because the statute allows the amount to be claimed when the general assembly is adjourned for more than three days.

## Discussion

### 1. Per diem expense allowance authorized in Section 2-2-317, C.R.S.

The general assembly is temporarily adjourned pursuant to H.J.R. 20-1007. Members of the general assembly are allowed to claim an allowance of up to \$45 per "legislative day" for expenses incurred "during the sessions of the general assembly."<sup>2</sup> Members who live outside the metro area may claim up to 85% of the federal per diem rate for these expenses.<sup>3</sup> Members are entitled to claim this allowance for each legislative day the general assembly is temporarily adjourned pursuant to H.J.R. 20-1007, therefore, as the expenses are incurred during a session of the general assembly.

Section 2-2-317 (3), C.R.S., defines "legislative day" for purposes of claiming the allowance to mean any day during the legislative session, including legal holidays, primary election days, and Saturdays and Sundays. This is a broad definition that does not require actual attendance for floor or committee work.<sup>4</sup> Accordingly, a day that occurs during the temporary adjournment meets the definition of "legislative day" for purposes of this statute.

Furthermore, expenses incurred during the temporary adjournment are incurred during a "session" of the general assembly. Until the current general assembly adjourns *sine die*, it is still in the Second Regular Session of the Seventy-second General Assembly. It is simply adjourned temporarily during the session. *Mason's Manual of Legislative Procedure* states, "A legislative session is the period of time between the initial

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<sup>2</sup> § 2-2-317 (1)(a), C.R.S.

<sup>3</sup> § 2-2-317 (1)(b)(II), C.R.S.

<sup>4</sup> As with other statutorily defined terms, the general assembly can modify the definition of "legislative day" to meet the intended policy purpose of a particular statute. While the constitutional definition of "legislative day" is at issue for purposes of determining the length of the legislative session in the pending interrogatories submitted pursuant to H.J.R. 20-1006, the general assembly has the authority to create distinct statutory definitions of the term for purposes of claiming per diem, mileage, additional salary allowances, or other purposes not dictated by the constitution.

convening and adjournment *sine die*. During that time, a legislature sits "in session" from day to day."<sup>5</sup>

The length of the current legislative session and, hence, a determination of whether expenses are incurred during the legislative session may depend on the Supreme Court's answer to the interrogatory submitted pursuant to H.J.R. 20-1006. If the session is limited to 120 consecutive calendar days and the general assembly adjourns *sine die* on May 6, 2020, then the most a member could claim would be 120 days of the expense allowance between January 8, 2020, and that day. If the Supreme Court answers that the session consists of separate working calendar days in accordance with Joint Rule 44(g), then a member would potentially be entitled to claim the allowance for more than 120 days. In either case, members may claim the allowance each day from January 8, 2020, through the day the General Assembly adjourns *sine die*.

Section 2-2-317 (1)(e), C.R.S., allows a member to decline to accept all or part of the per diem lodging and expense allowance. Although some members may go home and not actually incur expenses during a temporary adjournment, others may incur lodging and other expenses while waiting for the general assembly to reconvene. Section 2-2-317 (1), C.R.S., provides members of the general assembly the authority to claim an allowance for these expenses during a temporary adjournment.<sup>6</sup>

## **2. Compensation allowed for additional meetings during a temporary adjournment.**

Section 2-2-307 (3), C.R.S., authorizes the payment of an additional \$99 per day of compensation, above base legislative compensation, to certain members of the general assembly for necessary attendance at certain meetings or functions. This includes, but is not limited to, members of legislative leadership attending to matters pertaining to the general assembly,<sup>7</sup> members of the joint budget committee or the legislative audit

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<sup>5</sup> *Mason's* sec. 781, par. 5.

<sup>6</sup> The general assembly may also provide by joint resolution for the temporary suspension of the allowance when it is in recess for more than three days pursuant to § 2-2-317 (1)(d), C.R.S. H.J.R. 20-1007 did not include any provision suspending the per diem.

<sup>7</sup> § 2-2-307 (3)(a)(III), C.R.S.

committee attending meetings of their respective committees,<sup>8</sup> and members attending a meeting of the legislative council or the committee on legal services.<sup>9</sup>

The amount is for necessary attendance at meetings or functions "when the general assembly is in recess for more than three days or is not in session".<sup>10</sup> Given that the general assembly has temporarily adjourned for more than three days pursuant to H.J.R. 20-1007, members are authorized to claim additional compensation during the temporary adjournment for attending the specific meetings described in section 2-2-307 (3), C.R.S.

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<sup>8</sup> § 2-2-307 (3)(a)(II), C.R.S.

<sup>9</sup> § 2-2-307 (3)(a)(I), C.R.S. This is not an exclusive list but, rather, appears to be the types of meetings that might occur during the temporary adjournment.

<sup>10</sup> § 2-2-307 (a), C.R.S.