



City and Borough of Juneau
City & Borough Manager's Office
155 South Seward Street
Juneau, Alaska 99801
Telephone: 586-5240 | Facsimile: 586-5385

TO: John Binkley, CLIA Alaska
FROM: Rorie Watt, City Manager
RE: Archipelago Project

DATE: January 25, 2019

Thank you for your letter of 1/23 regarding the Archipelago project. Despite the ongoing litigation regarding the imposition and use of passenger fees, I appreciate the collegiality of our discussions and the effort to find mutually beneficial solution to the provision of fees.

I respectfully request that CLIAA reconsider its position regarding the Archipelago project and respectfully request that you caucus with your attorneys and CLIAA boardmembers and review your legal and political positions. We all know that lawyers can argue endlessly and in the end only the courts can decide which opinion is correct. We also know that sometimes the actual facts of a particular project may not be well understood. I invite you to confirm the facts of the Archipelago project and to review the most relevant case law.

It is my opinion that CLIAA's position on the Archipelago project may be out of the legal mainstream and, equally important, is not helpful to CLIAA's member lines. I believe that CLIAA can interpret Holland in a manner that is both productive for its members and consistent with established case law.

As an example of case law that you may wish to review, I would direct your attention to the *Barber* case out of Hawaii. In *Barber*, the United States 9th Circuit Court of Appeals upheld the imposition of fees by the State of Hawaii for the provision of specific services. The Court upheld the finding that charging fees for the provision of rest rooms, parking, trash and security did not violate the Tonnage Clause of the U.S. Constitution.

I invite your re-evaluation of the Archipelago project. CLIA Alaska's stance on this project has major implications for the functional development of every cruise ship port in Alaska.

Barber vs. State of Hawaii, United States Court of Appeals, Ninth Circuit.

Synopsis: Citizens group acting on behalf of boaters affected by state regulations on mooring fees challenged constitutionality of all Hawaii regulations and legislation affecting rights of mariners to anchor and navigate in ocean waters surrounding Hawaiian islands. The United States District Court for the District of Hawaii, [David Alan Ezra, J., 823 F.Supp. 766](#), entered judgment for state, and appeals were taken. The Court of Appeals, [Farris](#), Circuit Judge, held that: (1) regulations and legislation affecting rights to anchor and navigate around Hawaiian islands were not preempted by Submerged Lands Act or by other federal statutes; (2) there was no actual conflict between Hawaii regulations and federal law; (3) charging mooring fees did not violate commerce clause, equal protection clause, or privileges and immunities clause; and (4) procedural rulings were correct.

.....

IV. DUTY ON TONNAGE

The Preservation Society argues that the mooring and anchoring fees collected by the state pursuant to the Hawaiian regulations are a duty on tonnage in violation of Article I, Section 10 of the U.S. Constitution. The Preservation Society acknowledges 1) that a state is not prohibited from charging reasonable fees in return for services rendered, [Clyde Mallory Lines v. Alabama, 296 U.S. 261, 263, 56 S.Ct. 194, 195, 80 L.Ed. 215 \(1935\)](#), and 2) that the nominal basis for the fees charged by Hawaii (use of rest room facilities, parking, trash disposal, and security) would be sufficient to satisfy *Clyde Mallory Lines*.