

Embargoed for Tuesday, August 11, 2020 11 am
Contact Bob Hall, 919-489-1931

New Rules Stop Senator Phil Berger's Scheme to Buy Raleigh Homes; Complaint Says He Gained \$200,000 from Taxpayers & His Campaign

Two state agencies and the Legislative Ethics Committee have now ruled that State Senate leader Phil Berger's lucrative practice of using funds from his political donors and taxpayers to purchase homes in Raleigh will be considered illegal as well as unethical if it continues.

Also today, Bob Hall, a long-time elections watchdog who prompted the rulings, filed an ethics complaint calling on Sen. Berger to refund at least \$50,000 in government subsidies for housing expenses that were paid by his campaign.

The complaint cites a memo from the Legislative Ethics Committee dated May 20, 2020, that states, "It is unethical for a legislator to accept per diem from the General Assembly for lodging and receive reimbursement for the same lodging from some other source."

"Any legislator who has inappropriately accepted the subsistence allowance or travel allowance may repay such amounts to the Legislative Services Office via Financial Services," the memo from the ethics committee states.

Hall says records indicate that Berger's campaign stopped reimbursing the senator for lodging after the May memo appeared, but he wants Berger held accountable for prior payments. A new campaign finance rule that took effect this month also bars a legislator from using campaign money to purchase a residence.

Hall's new complaint says, "I applaud public officials for finally taking action to stop Senator Berger's gross misuse of payments he's received from taxpayers and political donors since mid-2016, but it's important for him to at least repay taxpayers for his private use of public money. That's what the state constitution requires."

Hall said Berger has pocketed more than \$200,000 from payments by his campaign and the General Assembly in the past four years, including \$72,000 from this campaign, over \$50,000 from per diems, and an \$80,000 profit on the sale of a townhouse he purchased with the campaign and government funds.

New Campaign Finance Rule

The new campaign finance rule that took effect on August 1 bans politicians from using campaign money to "purchase, lease, rent, or make mortgage payments on residential real property," even if it's a second home they occupy while in Raleigh on legislative business.

Hall said he petitioned the State Board of Elections in January to adopt the rule because of evidence that Sen. Berger was using campaign donations to "personally enrich himself" with the purchase of a townhouse in Raleigh.

“If state regulators let Berger continue to funnel money from his political donors into his pocket, then other legislators would do it, too, and we’d wind up in a cesspool of corruption scandals,” said Hall.

The new rule (see below) was unanimously adopted by the bipartisan State Board of Elections in June and unanimously approved by the NC Rules Review Commission in July.

The rule supersedes a July 2016 email message from the State Board’s then-director Kim Strach to Sen. Berger’s attorney which said no state law specifically prohibited a candidate’s campaign from paying rent to a company owned by the candidate for a Raleigh residence owned by the candidate.

In August 2016, Berger’s campaign began sending monthly “rent” payments to a company he owned (called YPD Properties LLC) for a townhouse on Yarborough Park Drive that Berger and his wife were buying. (Mrs. Berger is on the General Assembly payroll as a legislative assistance for Sen. Berger.)

In December 2019, Berger and his wife sold the YPD townhouse for \$330,000 to a lobbyist; the \$80,000 gain above their purchase price of \$250,000 reflected the property’s increased market value.

The Bergers also took out a mortgage loan in September 2019 to buy a \$370,000 condominium a few blocks from the General Assembly, and YPD Properties continued transferring \$1,500 monthly payments from the Berger’s campaign to Berger for “rent” after the Senator and his wife moved their Raleigh residence from the townhouse to the condo.

From August 2016 through May 2020, the campaign paid a total of \$72,000 for Berger’s Raleigh lodging. No payment was made in June, which is the last month for which campaign disclosure reports are available.

New Ethics Rule: No Double Dipping

At the same time Berger’s campaign paid for his housing, Sen. Berger requested and received \$490 a week for lodging in Raleigh as part of a tax-free government subsidy while the General Assembly is in session, plus \$70 a day when he is in the city for other legislative-related business.

Hall called this simultaneous use of campaign and tax money “unethical double dipping” and said it violated the Legislative Ethics Committee’s directive for legislators not to accept government payments for lodging paid by another source.

Hall filed a complaint with the ethics committee in February 2020 against Berger’s use of his elected position to “enrich himself” through his campaign’s payments to YPD Properties. The Committee dismissed that complaint on May 20, 2020, but on the same day issued the memo declaring it “unethical” for a legislator to collect per diem payments from the General Assembly for lodging reimbursed or paid by another source.

“I focused my February complaint on the unethical use of campaign funds, but the Committee essentially said I should have focused on the unethical per diem payments,” said Hall. “I’m filing a new complaint with that focus today, and I hope the Committee has the courage to order Sen. Berger to repay at least some of the money he unethically took from taxpayers for his personal enrichment.”

According to Hall’s complaint, Berger requested and received at least \$50,000 in per-diem lodging payments from June 2016 through May 2020. That includes \$44,940 that Hall confirmed with the General Assembly’s Legislative Services Office for payments for 642 days in 2017, 2018 and 2019 or an average of over 200 days per year. Hall estimated Berger accepted at least another \$6,000 in lodging per diems in the 12-month period from June to December 2016 and January to May 2020, while he was receiving money from his campaign for the housing.

“I hope Berger doesn’t try to justify his use of tax money by saying he needed the per diems to subsidize his housing costs over the last 48 months,” Hall said. “He’s taken in over \$3,000 a month for housing because of his campaign payments when you include the \$80,000 gain on the townhouse purchase and sale that the campaign money made possible. Plus, he’s been personally gaining equity in a luxury condominium with that campaign and tax money.”

“I wish Berger would just admit that he made a mistake by seeking and receiving government welfare payments he didn’t deserve,” said Hall.

NEW STATE BOARD OF ELECTIONS CAMPAIGN FINANCE RULE

SECTION .0300 – USE OF CONTRIBUTIONS

08 NCAC 21 .0301 EXPENDITURES FOR RESIDENTIAL REAL PROPERTY

(a) Pursuant to G.S. 163-278.16B, a candidate or candidate campaign committee may not use contributions if the purpose of the expenditure is to purchase, lease, rent, or make mortgage payments on residential real property that is owned, either directly or indirectly, by the candidate or officeholder, or a member of the candidate’s or officeholder’s family, even if a portion of the residence is used for the campaign or holding office.

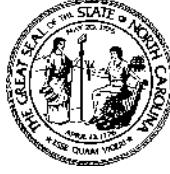
(b) For the purpose of this Rule:

(1) “family” includes a candidate’s or officeholder’s spouse, children, parents, brothers, or sisters.

(2) “indirectly” includes ownership by any corporation or business entity in which the candidate or officeholder or the candidate’s or officeholder’s family member has an ownership interest.

History Note: Authority G.S. 163-278.16B; 163-278.21.

Eff. August 1, 2020.



COMPLAINT FORM

The Legislative Ethics Committee has the authority to investigate complaints against legislators for alleged violations of matters covered by Chapter 138A of the North Carolina General Statutes ("The State Government Ethics Act) or Article 14 of Chapter 120 (Legislative Ethics Act).

CONTACT INFORMATION

(Please Type or Print clearly)

The State Government Ethics Act requires that a complaint contain the name, address, and telephone number of the person filing the complaint. The Legislative Ethics Committee cannot accept anonymous complaints.

Printed Name: Bob Hall, aka Robert H. Hall, a registered voter in Orange County
Address: 5706 Old Stony Way, Durham, NC 27705
Telephone No: (919) 489-1931

NATURE OF THE COMPLAINT

The Legislative Ethics Committee only has jurisdiction over legislators. It does not have jurisdiction over legislative employees, public servants, or judicial officers.

1. Identify the person who you believe may have violated specific provisions of the State Government Ethics Act or the Legislative Ethics Act: Name: NC Senator Philip E. Berger
Office of the person against whom this complaint is filed: State Senator & Senate President Pro Tem
2. Provide the date(s) the alleged violation occurred: June 2016 through May 2020
3. Please provide a concise statement of the nature of your complaint **and** specific facts indicating that a violation of Chapter 138A (the State Government Ethics Act) or Chapter 120 (the Legislative Ethics Act) of the North Carolina General Statutes has occurred. Please provide as much detail as possible and attach any documentation you have that supports your claim.

According to Ethical Principle and Guidance 11 issued by the Legislative Ethics Committee on May 20, 2010, "It is unethical for a legislator to accept per diem from the General Assembly for lodging and receive reimbursement for the same lodging from some other source."

The Ethics Committee statement further says, “Any legislator who has inappropriately accepted the subsistence allowance or travel allowance may repay such amounts to the Legislative Services Office via Financial Services.”

I am filing this complaint because Sen. Phil Berger has received at least \$50,000 in per-diem payments from the General Assembly for his lodging from June 2016 through May 2020 and has simultaneously received \$72,000 for the same lodging in Raleigh from this campaign donors through an intermediary company he owns – plus he has received \$80,000 from the sale of the lodging he bought with those payment from the government and his campaign. In other words, he received \$72,000 + \$80,000 + at least \$50,000 in per-diem payments, for a total of at least \$200,000 or more than \$4,000 per month over 48 months.

Based on the Legislative Ethics Committee clear statement and the state constitution’s prohibition against a legislator using public money for personal gain, I am asking the Committee to declare that (1) Sen. Berger’s acceptance of per diem for lodging while receiving payments for the same lodging from another source is unethical; and (2) Sen. Berger should repay the per-diem payments to North Carolina taxpayers in an amount determined by the Committee, which I believe is at least \$50,000.

Upon information and belief, here is a statement of the facts as I know them:

- On May 19, 2016, Philip E. Berger and his wife Patricia H. Berger purchased a townhouse at 1535 Yarborough Park Drive, Raleigh, for \$250,000. On the same day, Sen. and Mrs. Berger signed a Deed of Trust with NewBridge Bank for a mortgage loan of \$224,910 for the YPD townhouse.
- On June 25, 2016, Sen. Berger’s attorney Steven B. Long filed Articles of Organization with the NC Secretary of State for YPD Properties, LLC. Its principal office is located at Sen. Berger’s law firm office address in Eden. In subsequent annual filings with the Secretary of State, Philip E. Berger is identified as YPD’s manager and YPD’s business is described as “property management.”
- On August 8, 2016, the Philip E. Berger Committee (Sen. Berger’s campaign committee) began sending payments to YPD Properties, LLC. The initial payment in August for \$4,500 apparently covered the period from June through August, and all subsequent payments, made each and every month, were for \$1,500. Campaign finance reports that Sen. Berger authorized for submission to the State Board of Elections show that monthly payments to YPD continued to May 5, 2020; they are most often labeled as payments for “Rent.”
- From August 8, 2016 through May 5, 2020, Sen. Berger’s campaign sent a total of \$72,000 to YPD Properties, LLC, which Sen. Berger owns. Even though payments are labeled for “Rent,” the payments are for Raleigh lodging that the Bergers own and do not rent.
- The self-dealing arrangement is made plain on the Statements of Economic Interests that Sen. Berger has filed since 2017. Sen. Berger lists himself as “Member/Manager” of YPD Properties, LLC and also says he pays taxes for his income from YPD Properties.
- On December 5, 2019, Sen. and Mrs. Berger sold the Yarborough Park Drive townhouse for \$330,000 to T. Tate Apodaca, a lobbyist and son of lobbyist and former state Senator Tom Apodaca. That’s \$80,000 more than the \$250,000 the Bergers’ paid for the townhouse in 2016; the \$330,000 price is comparable to other sales in the YPD townhouse development at the time.

- On September 26, 2019, Sen. and Mrs. Berger purchased a condominium in Raleigh – Unit 726 at 400 W. North Street – for \$370,000. On December 31, 2019, they paid off the mortgage loan for the Yarborough Park Drive townhouse and have now moved into the North Street condo.
- During the 48-month period from June 2016 through May 2020, when Sen. Berger received \$72,000 from his campaign for lodging in Raleigh and received a profit of \$80,000 on the sale of that lodging, Sen. Berger was simultaneously accepting per-diem payments from the General Assembly for the same lodging in Raleigh.
- After much delay, I eventually received a statement from the Legislative Services Office that indicates Sen. Berger accepted a total of \$44,940 for lodging in Raleigh for the 36-month period from January 2016 through December 2019. That amount is based on \$70 per diem for lodging for 642 days (236 days in 2017, 133 days in 2018 and 273 days in 2019). That amount is considered tax-exempt income, which increases its actual value.
- Based on past patterns and the legislative activity in the 12-month period from June through December 2016 and from January through May 2020, I estimate that Sen. Berger accepted at least \$6,000 in per diem for lodging in Raleigh in that period. Adding that amount to the \$44,940 yields a total of over \$50,000.
- Perhaps Sen. Berger would argue that this \$50,000 was needed to supplement the payments he received from his campaign for the lodging that he and Mrs. Berger were buying in Raleigh. His campaign and his profits from selling the townhouse generated over \$3,000 a month for his lodging (\$152,000 divided by 48 months). Surely, the Committee does not believe that taxpayers should subsidize Sen. Berger with an additional \$1,000 a month in order for him to accumulate more equity in Raleigh property that he and his wife are buying.

Based on the facts above, the NC Constitution and the Legislative Ethics Committee's May 2020 memo, I believe it is reasonable and prudent for the Committee to direct Sen. Berger to repay at least \$50,000 to North Carolina taxpayers via the Legislative Services Office. As the Legislative Ethics Committee stated in its memo, "The North Carolina Constitution (Article V, § 2(1)) requires that State taxes and State expenditures be for a public purpose." The prohibition against the personal use of per diem predates the May memo and applies to per-diem payments prior to the memo; the memo simply clarified the existing prohibition as Ethical Principle & Guidance #11.

The statement of facts above are supported by public documents that I can furnish if the Committee has difficulty downloading them. Here are the relevant links:

- Campaign finance reports for Sen. Berger:
<https://cf.ncsbe.gov/CFOrgLkup/DocumentGeneralResult/?SID=STA-C0854N-C-001&OGID=1159>
- Wake County property records: <http://services.wakegov.com/booksweb/genextsearch.aspx>
 Purchase of Yarborough Park Drive townhouse:
<http://services.wakegov.com/booksweb/DocView.aspx?DocID=110188364&RecordDate=05/19/2016>
 Sale of Yarborough Park Drive townhouse:
<http://services.wakegov.com/booksweb/DocView.aspx?DocID=110866979&RecordDate=12/05/2019>
 Purchase of condo at 400 W. North Street, Unit 726:
<http://services.wakegov.com/booksweb/DocView.aspx?DocID=110831103&RecordDate=09/30/2019>

- Terms of the Mortgage Agreement for the Yarborough Park Drive townhouse (see p. 13): <http://services.wakegov.com/booksweb/DocView.aspx?DocID=110188365&RecordDate=05/19/2016>
- Articles of incorporation and annual reports for YPD Properties, filed with NC Secretary of State: https://www.sosnc.gov/online_services/search/Business_Registration_Results
- Statements of Economic Interests for Philip E. Berger Sr.: <https://et.ncsbe.gov/Search?id=SEI>

4. If possible, check the statutory provision you believe has been violated (**check all that apply**):

Chapter 138A: the State Government Ethics Act

✓ Use of public position for private gain (§138A-31)

Receipt of a prohibited gift (§138A-32)

Conflict of interest while taking legislative action (§138A-37)

5. Provide the names of other persons who may have information that would support your allegations.

You may confer with attorney Lindsey Wakely at the State Board of Elections about a new rule (08 NCAC 21 .0301) that became effective August 1, 2020, which states: "Pursuant to G.S. 163-278.16B, a candidate or candidate campaign committee may not use contributions if the purpose of the expenditure is to purchase, lease, rent, or make mortgage payments on residential real property that is owned, either directly or indirectly, by the candidate or officeholder, or a member of the candidate's or officeholder's family, even if a portion of the residence is used for the campaign or holding office." The Board's approval of that rule in June may be a reason the Berger campaign stopped paying his company \$1,500 a month for lodging in Raleigh.

6. State whether the individuals and conduct complained of have been the subject of a prior complaint or proceeding of any kind. If so, state the place where the prior complaint was filed and its current status.

I filed a previous complaint with this Ethics Committee focused on Sen. Phil Berger's apparent manipulation of campaign finances for rent payments in order to personally profit from his donors' contributions to the campaign. The Committee dismissed that complaint on May 20, 2020, but on the same day issued its statement of Ethical Principle and Guidance 11 about accepting per-diem payments for rent, travel or subsistence paid by another source.

I also filed a complaint with the State Board of Elections and petitioned the Board in January 2020 to issue a ruling that would prohibit a candidate from using campaign funds to purchase or rent residential property that the candidate or candidate's family owned. Such a rule was adopted unanimously by the State Board in June and approved unanimously by the Rules Review Commission in July. It became effective August 1. It is referenced in Answer #5 above.

I applaud public officials for finally taking action to stop Senator Berger's gross misuse of payments he's received from taxpayers and political donors since mid-2016, but it's important for him to at least repay taxpayers for his private use of public money. That's what the state constitution requires.

SWORN COMPLAINT

I hereby swear or affirm, under penalty of perjury and other penalties established by NC law, that the information provided in this complaint is true, correct, complete, and of my own personal knowledge, or if not, I believe the information to be true based upon: research described above.

Signature

Date:

STATE OF NORTH CAROLINA
COUNTY OF _____

SWORN TO (or affirmed) and subscribed before me this day by: _____

Date: _____

Official Signature of Notary Public: _____
Seal)

(Official

Typed or Printed Notary Name: _____

My Commission Expires: _____

FROM LEGISLATIVE SERVICES OFFICE

Number Days of Per Diems Accepted

Name	2017	2018	2019	Total
Sen. Phil Berger	236	133	273	642

FROM EXPENSE REPORT OF THE PHILIP E. BERGER COMMITTEE

8/8/2016	YPD Properties, LLC	\$4,500	Holding Public Office Expenses
9/1/2016	YPD Properties, LLC	\$1,500	Holding Public Office Expenses
10/1/2016	YPD Properties, LLC	\$1,500	Holding Public Office Expenses
11/1/2016	YPD Properties, LLC	\$1,500	Holding Public Office Expenses
12/1/2016	YPD Properties, LLC	\$1,500	Holding Public Office Expenses
1/1/2017	YPD Properties, LLC	\$1,500	
2/1/2017	YPD Properties, LLC	\$1,500	
3/1/2017	YPD Properties, LLC	\$1,500	
4/3/2017	YPD Properties, LLC	\$1,500	
5/1/2017	YPD Properties, LLC	\$1,500	
6/1/2017	YPD Properties, LLC	\$1,500	
7/1/2017	YPD Properties, LLC	\$1,500	
8/1/2017	YPD Properties, LLC	\$1,500	
9/1/2017	YPD Properties, LLC	\$1,500	
10/2/2017	YPD Properties, LLC	\$1,500	
11/1/2017	YPD Properties, LLC	\$1,500	
12/1/2017	YPD Properties, LLC	\$1,500	
1/1/2018	YPD Properties, LLC	\$1,500	
2/1/2018	YPD Properties, LLC	\$1,500	
3/1/2018	YPD Properties, LLC	\$1,500	
4/2/2018	YPD Properties, LLC	\$1,500	
5/1/2018	YPD Properties, LLC	\$1,500	
6/1/2018	YPD Properties, LLC	\$1,500	
7/1/2018	YPD Properties, LLC	\$1,500	
8/1/2018	YPD Properties, LLC	\$1,500	
9/3/2018	YPD Properties, LLC	\$1,500	
10/1/2018	YPD Properties, LLC	\$1,500	
11/1/2018	YPD Properties, LLC	\$1,500	
12/3/2018	YPD Properties, LLC	\$1,500	
1/3/2019	YPD Properties, LLC	\$1,500	Rent
2/6/2019	YPD Properties, LLC	\$1,500	Rent
3/4/2019	YPD Properties, LLC	\$1,500	Rent
4/1/2019	YPD Properties, LLC	\$1,500	Rent
5/1/2019	YPD Properties, LLC	\$1,500	Rent
6/3/2019	YPD Properties, LLC	\$1,500	Rent
7/1/2019	YPD Properties, LLC	\$1,500	Rent
8/1/2019	YPD Properties, LLC	\$1,500	Rent
9/5/2019	YPD Properties, LLC	\$1,500	Rent
10/3/2019	YPD Properties, LLC	\$1,500	Oct Rent
11/5/2019	YPD Properties, LLC	\$1,500	Oct Rent
12/5/2019	YPD Properties, LLC	\$1,500	Oct Rent
1/7/2020	YPD Properties, LLC	\$1,500	Rent
2/4/2020	YPD Properties, LLC	\$1,500	Rent
3/5/2020	YPD Properties, LLC	\$1,500	Rent
4/2/2020	YPD Properties, LLC	\$1,500	Rent
5/5/2020	YPD Properties, LLC	\$1,500	Rent