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RE: Request for Investigations into Misuse of State Funds for Emergency Leave

To Whom It May Concern,

I am writing to request a formal investigation into the fraudulent use of the emergency leave provision in state law and other potential statutory violations that have resulted in high-level agency workers being paid full salaries and benefits after the employees have stopped working due to resignation, firing, job elimination or wrongdoing.

An in-depth series of investigative reports by the *Dallas Morning News*, the *Houston Chronicle* and other media outlets reveal the apparently widespread and endemic misuse of the state's emergency leave law, which is intended for use in extraordinary circumstances, such as a death in the family or illness. Sec. 661.902, Texas Gov't Code:

EMERGENCY LEAVE. (a) A state employee is entitled to emergency leave without a deduction in salary because of a death in the employee's family. The death of the employee's spouse or of a parent, brother, sister, grandparent, grandchild, or child of the employee or of the employee's spouse is considered to be a death in the employee's family for purposes of this subsection. (b) The administrative head of an agency may determine that a reason other than that described by Subsection (a) is sufficient for granting emergency leave and shall grant an emergency leave to an employee who the administrative head determines has shown good cause for taking emergency leave

These reports confirm that, contrary to the intent of law, multiple statewide officeholders have provided certain employees with emergency leave packages as a form of severance pay or even settlement agreements. "Leave" implies, and is widely understood to mean, that a particular employee will be returning to their job at the agency. Therefore, it is fraudulent and a misuse of taxpayer dollars to use the "leave" provision as cover for severance pay. Severance pay is not permitted for state employees under Texas law.

The *Houston Chronicle* explains, "According to the former state officials, employment lawyers, union leaders and ethics experts that we interviewed, state law makes clear that agencies may only spend taxpayer money on items that are specifically authorized by law. There is no specific provision authorizing payments for separation agreements, which led those experts to question the agreements." (**The *Houston Chronicle* responds to the Texas General Land Office**, *Houston Chronicle*, May 25, 2016)

More recently, the *Dallas Morning News* found that, “Directors at several Texas agencies are skirting state law to keep employees on the payroll months after they’ve left their jobs, and records obtained by the *Dallas Morning News* show those deals are often attached to settlements designed to keep ex-employees quiet.” (**‘Emergency leave’ widely misused by Texas agencies to pay confidential settlements, keep former workers on payrolls**, *Dallas Morning News*, May 27, 2016)

The intentional misuse of state funds violates both the spirit and the letter of the emergency leave provision of state law and could be viewed by Texas taxpayers as the equivalent of tax-payer funded hush money. Specifically, the facts outlined by state news media and Texas state law merit a full investigation of the Attorney General, Agriculture Commissioner, Land Commissioner, Teacher Retirement System, Water Development Board and potentially other agencies for violations of Texas Penal Code 39.02 (Abuse of Official Capacity), Section 36.02 (Bribery), and Section 37.10 (Tampering with a Government Record).

Office of the Attorney General

According to a story first reported on April 15, 2016 (**Paxton still paying aides who left a month ago**, *Dallas Morning News*, April 15, 2016): “Charles ‘Chip’ Roy resigned as first assistant attorney general March 9 but remains on the state’s payroll. He received his full month’s salary of \$16,220.62 on April 1, according to the state comptroller, and remains on the payroll as an employee of the state even while working a new job for a national political committee.”

Additional reporting (**Land Office spends \$1 million to pay ex-workers for not suing over their terminations**, *Houston Chronicle*, May 21, 2016) found, “And more recently, Attorney General Ken Paxton drew scrutiny for continuing to pay three top aides after their resignations by putting them on ‘emergency leave,’ which agency heads can use when they believe there is ‘good cause.’ Paxton’s office has not explained the leave other than to tell a conservative website the attorney general ‘acted in a compassionate, legal and ethical manner’ in granting pay to staffers ‘who had worked tirelessly for the state.’”

The Texas Office of Attorney General’s policy regarding emergency leave -- revised May 1, 2013 while current-Governor Greg Abbott served as Attorney General -- requires that such leave be contingent on “good cause.” Further, the OAG policy states that “*verification of the need for the leave may be required.*” [emphasis added]

However, the *Dallas Morning News* reports that Roy never expressed a need for emergency leave in his request and started working the day after his resignation, March 9, for a committee formed to support Sen. Ted Cruz’s presidential campaign. Roy continued to receive his state pay until April.

The more recent *Dallas Morning News* story found that Attorney General Paxton’s office has also misused the emergency leave provision to pay some departing employees as part of a settlement agreement. “Records show Madeleine Connor, a former AG litigation attorney, stopped working May 18, 2015, but stayed on the payroll until August 7.

At least a month of that was leave given for “good cause,” but her resignation letter, dated June 8, references a settlement agreement that stipulated she would be paid until August 8 or until she found another job as a private attorney or state employee.” (**‘Emergency leave’ widely misused by Texas agencies to pay confidential settlements, keep former workers on payrolls**, *Dallas Morning News*, May 27, 2016)

Texas General Land Office

On May 21, 2016, the *Houston Chronicle* reported (**Land Office spends \$1 million to pay ex-workers for not suing over their terminations**, *Houston Chronicle*, May 21, 2016): “Texas Land Commissioner George P. Bush has spent nearly \$1 million in taxpayer money to entice dozens of people fired by his administration to agree not to sue him or the agency, a practice that may run afoul of a ban on severance pay for state workers. Bush, a first-term Republican, has directed the General Land Office to keep at least 40 people on the payroll for as long as five months after ending their employment, according to an analysis of records obtained by the *Houston Chronicle*. The ex-staffers did not have to use

vacation time and, in fact, continued to accrue more time for as long as they were on the payroll. In return, they agreed in writing not to sue the agency or discuss the deal.”

Their research disturbingly found that: “The agency's [General Land Office] practices appear to be part of a pattern of Texas state officials paying certain departing employees for different reasons and through different avenues.”

In addition to the potentially illegal practice of paying salary and benefits to a departed employee, news reports indicate that some agency heads may have tampered with a government record by falsifying time sheets. According to the *Dallas Morning News*, “Land Commissioner George P. Bush and his predecessor, Jerry Patterson, together arranged to keep 40 employees on the General Land Office payroll for months after they were let go.”

“Those employees were driven out of their jobs last year as Bush took control of the office and, in return, they collected about \$655,000 in salary while they weren’t working, reports said.”

“Yet Bush and Patterson didn’t use emergency leave as compensation in those settlements. Instead, as the *Statesman* reported, Bush and Patterson simply kept those employees on the payroll — they were collecting salary and accruing vacation — and turned in false time sheets to the comptroller.” (**‘Emergency leave’ widely misused by Texas agencies to pay confidential settlements, keep former workers on payrolls**, *Dallas Morning News*, May 27, 2016)

Texas Department of Agriculture

The Dallas Morning News also reported that other agency heads had granted emergency leave to departing employees, including Agriculture Commissioner Sid Miller. Since 2013, the Ag Department has granted the most emergency leave per employee, according to the paper's review. (**Exclusive: Dozens of state workers at several agencies paid ‘leave’ after departing jobs**, *Dallas Morning News*, May 13, 2016) “In his first few months in office, Commissioner Sid Miller continued to pay four staffers long after they were let go. That decision cost taxpayers about \$89,000, not including benefits.”

Teacher Retirement System

Earlier this month, *Dallas Morning News* wrote (**Exclusive: Dozens of state workers at several agencies paid ‘leave’ after departing jobs**, *Dallas Morning News*, May 13, 2016): “On Jan. 1, for instance, Cheryl Hines left her job as an investment manager at the Teacher Retirement System. But she received the same pay and benefits for another four months, until April 30. Hines, who received \$58,000 worth of emergency leave, is just one of dozens of workers who received substantial paid leave within their final three weeks of work, a *Dallas Morning News* data analysis shows. At least eight retirement system employees — including high-paid investment portfolio managers, directors or lawyers — received between two and six months of paid leave before they were officially terminated. That’s a cost to taxpayers of about \$235,000, not including benefits, for work that never happened.”

In 2013, the Legislature voted to reduce some benefits and increase monthly contributions by current teachers to shore up the financially faltering TRS (**Texas Senate votes to overhaul teacher pension system**, *Dallas Morning News*, May 8, 2013)

Water Development Board

According to another story by the *Dallas Morning News*, the Texas Water Development Board has gone as far as admitting the use of emergency leave as severance package for departing employees: “The Texas Water Development Board, acknowledged that emergency leave was being used as a workaround to provide severance, a benefit that state law does not allow for.” (**House, Senate leaders vow to crack down on misuse of leave as severance pay in Texas agencies, citing DMN reports**, *Dallas Morning News*, May 17, 2016)

Revelations of broad and systematic misuse of taxpayer funds and potential violations of law should not be ignored. Texas taxpayers deserve to know that state funds are being used legally and competently. In light of this, I

respectfully ask that a thorough investigation of the abuse of emergency leave, and other employment compensation practices be conducted. The investigation should determine whether criminal violations of state and federal law have occurred.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Matt Angle