



April 29, 2016

State Auditor's Office  
Attn: IAS  
P.O. Box 12067  
Austin, TX 78711-2067

Re: Report: Request for Investigation Regarding Texas Attorney General Ken Paxton

Progress Texas respectfully requests that the Texas State Auditor's Office investigate whether Texas Attorney General Ken Paxton committed abuse and violated state law by misusing government funds to continue to pay two employees full salaries and benefits after their resignation from the Attorney General's Office.

The facts surrounding these payments are outlined in a series of press reports and accompanying records published in the Dallas Morning News on April 14, April 15, April 25, and April 26, 2016.<sup>1</sup> The two employees involved are former First Attorney General Chip Roy and former Communications Director Allison Castle. According to the Attorney General's Office most recent public statement, Attorney General Paxton was directly responsible for authorizing these payments. Over the course of her investigation, reporter Lauren McGaughy uncovered at least three different, inconsistent explanations for these payments.

### **Chip Roy**

On March 9, 2016, Chip Roy submitted a letter of resignation effective June 10, 2016, stating: "Today will be my last day in the office. I will be on administrative leave from March 10, 2016-June 10, 2016."<sup>2</sup> On March 10, Roy began a new job as the Executive Director of Trusted Leadership PAC, a super PAC supporting the presidential campaign of Ted Cruz. On April 1, Roy was paid \$16,220.62, his full salary for the month of March. On April 13, the Texas

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<sup>1</sup> Lauren McGaughy, Attorney General Ken Paxton Still Paying Top Aides Who Left Agency a Month Ago, *Dallas Morning News*, April 14, 2016 (enclosed); Lauren McGaughy, Former Ken Paxton Staffer Chip Roy Off State Payroll, Comptroller Confirms, *Dallas Morning News*, April 15, 2016 (enclosed); Lauren McGaughy, Second Ex-Staffer for Paxton Still Getting Paid, and AG's Office Won't Talk About It, *Dallas Morning News*, April 25, 2016 (enclosed); Lauren McGaughy, Ken Paxton Staffer Gave Ex-Staffers 'Paid Leave' After They Resigned from Agency, Letter Says, *Dallas Morning News*, April 26, 2016 (enclosed).

<sup>2</sup> Chip Roy March 9 Resignation Letter, obtained by Dallas Morning News, available at: <https://www.documentcloud.org/documents/2804249-Roy-Resignation-S.html#document/p1>

Comptroller's Office confirmed to reporter McGaughy that Roy remained on the state payroll. In a series of emails exchanged on April 14, the Office of the Attorney General told McGaughy that Roy was on emergency leave, not administrative leave as stated in his resignation letter, confirmed that Roy "resigned on March 9," but was "not sure the answer" to the stated reason for Roy's emergency leave.<sup>3</sup>

On April 14, the Dallas Morning News published its first story on these post-resignation payments. The next day, on April 15, Roy submitted a second letter of resignation, effective one week earlier, stating: "...I am voluntarily resigning as of COB April 7, 2016, which is to the best of my understanding, the end of my accumulated, earned annual leave and holiday time."<sup>4</sup> Also on April 15, Roy released a press statement saying while he did not exercise this unclassified leave option: "The terms of my resignation included from the OAG an option for leave beyond my earned vacation and holiday time."<sup>5</sup>

According to records obtained by McGaughy, after Roy's resignation but while he was still collecting a salary from the state, he was not receiving compensation for his employment as the Executive Director of Trusted Leadership PAC.

### **Allison Castle**

On March 10, Allison Castle resigned and was replaced as Communications Director for the Attorney General's Office. On April 1, Castle was paid \$12,825, her full salary for the month of March. The Texas Comptroller's Office confirmed to reporter McGaughy that Castle remained on the state payroll on April 13 and again on April 25.

### **Inconsistent Justifications for De Facto, Unlawful Severance Pay: Administrative Leave, Accrued Leave, Emergency Leave**

Government Code § 661.911 allows agency heads to give an employee up to 32 hours of administrative leave per fiscal year "as a reward for outstanding performance as documented by employee performance appraisals."

Government Code § 661.902(b) allows agency heads to give an employee paid leave for an unspecified amount of time with discretion as to what is defined as "good cause for taking emergency leave." However, the examples of emergency leave specifically mentioned in the code, death in the employee's family, national guard emergency, and military leave, all involve

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<sup>3</sup> Emails Between OAG and McGaughy, obtained by Dallas Morning News, available at: <https://www.documentcloud.org/documents/2804214-Leave-Classification-Emails.html#document/p1>

<sup>4</sup> Chip Roy April 15 Resignation Email, obtained by Dallas Morning News, available at: <https://www.documentcloud.org/documents/2804252-2Roy-Resignation-S.html#document/p1>

<sup>5</sup> Chip Roy Statement 4-15-16, obtained by Dallas Morning News, available at: <https://www.documentcloud.org/documents/2804308-Chip-Roy-Statement-4-15-16.html#document/p1>



circumstances in which an employee has not resigned his or her position and is expected to return to his or her position.

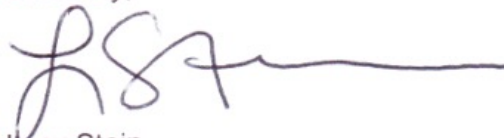
Moreover, the Texas Constitution prohibits severance pay for state employees, and the Attorney General Office does not have specific statutory authority to award severance pay.<sup>6</sup>

On April 26, in a letter submitted to the conservative website Breitbart, the Office of the Attorney General stated: "General Paxton ... made the decision to grant Mr. Roy and Ms. Castle 64 days of paid leave. He did so under Texas Government Code 661.902(b), which authorizes the granting of paid leave to an employee for 'good cause.'"<sup>7</sup>

According to McGaughy's most recent April 26 article, however, the Attorney General's Office "has refused to release details about what "good cause" Roy showed to receive salary and health benefits past his departure. It also didn't respond when asked whether Roy was on emergency leave, administrative leave – as stated in his resignation letter — or using his accrued leave, as he told The News." The Attorney General's Office has also not answered these critical questions in regards to salary payments still being made to Castle.

We believe the facts and conduct outlined above warrant a State Auditor's Office investigation into whether Attorney General Ken Paxton's use of state funds to continue to pay the full salaries of employees that had resigned from his office violates Texas law. More specifically, we believe an investigation into this matter is necessary to determine whether Attorney General Paxton's actions are in violation of Texas Penal Code § 39.02 abuse of official capacity.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Stein', followed by a long horizontal line extending to the right.

Lucy Stein  
Advocacy Director  
Progress Texas

Encls.

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<sup>6</sup> Texas Constitution Article III, Sections 44.

<sup>7</sup> John M. Poole, [Texas Attorney General Fires Back on Employee Resignation Issues](#), *Breitbart*, April 26, 2016.