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FOR RELEASE September 25, 2014

Chief Deputy Auditor of State Warren Jenkins today released a letter regarding a review of payments made by the Secretary of State's Office (Office) to Jim Gibbons, former Deputy Director, from May 24, 2012 through December 31, 2012. The letter also includes a review of procedures used by the Office to record paid time off taken by Deputies within the Office.

Jenkins reported the Office incurred an additional $90,738.67 of salary, vacation, and benefits expense as a result of retaining Mr. Gibbons on the payroll for the period June 8, 2012 through December 31, 2012. During this period, Mr. Gibbons was only required to be available by phone and/or report to the Office at least four days per week where he was required to check-in with Deputy Director Mosiman and be available for questions. Jenkins also reported the Office incurred an additional $21,317.89 of payroll expense for two employees who resigned and were retained on the payroll longer than the normal practice of 2 weeks for at-will employees. The Office also incurred an additional $1,706.78 of salary and benefits for three union employees who were retained on the payroll longer than the 20 working days required under the union contract.

Jenkins reported the public benefit of the Secretary of State's Office paying Mr. Gibbons and other employees the additional salary, vacation, and benefits cannot be determined due to the lack of documentation supporting work performed by Mr. Gibbons and the other employees.

Jenkins also reported the Deputy Directors within the Office were not required to complete and did not submit timesheets or leave slips for all vacation time taken. In addition, a staff person within the Office did not record vacation for individuals she did not have a leave slip for. Jenkins reported it was determined vacation time was not properly recorded for former Deputy Director Mary Mosiman. As a result, she was paid for one week of accumulated vacation she should not have received when she left the Office. Jenkins recommended Ms. Mosiman refund $2,500 to the State for the excess vacation pay she received.

A copy of the letter is available for review in the Office of Auditor of State and on the Auditor of State's web site at http://auditor.iowa.gov/specials/1560-6350-00P0.pdf.

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September 25, 2014

To the Governor and Members of the
General Assembly:

In accordance with Chapter 11 of the *Code of Iowa* and at the request of Senator Liz Mathis, we have reviewed payments made by the Secretary of State's Office (Office) to Jim Gibbons, former Deputy Director, from May 24, 2012 through December 31, 2012. We also reviewed procedures used by the Office to record paid time off taken by Deputies within the Office. This letter summarizes the results of the procedures performed.

Payments to Jim Gibbons

The elimination of Mr. Gibbons' position as Deputy Director was the result of an Office reorganization by Secretary of State Matt Schultz (Secretary Schultz) during calendar year 2012 to reduce the Secretary of State's Office budget. The reorganization resulted in the following:

- The elimination of Mr. Gibbons' position as Deputy Director, effective December 31, 2012.
- The appointment of Mary Mosiman as Deputy Director and the elimination of the Deputy Director of Elections/Voter Registration position. Ms. Mosiman served as Deputy Director until her resignation in May 2013.
- The elimination of six union covered positions through two retirements, one promotion to a non-union covered position, and three layoffs. These positions remain unfilled.

In accordance with the American Federation of State, County and Municipal Employees (AFSCME) contract, covered employees are required to be provided a 20 working day notice of a layoff or termination. The three positions eliminated as the result of layoffs were given a 22 working day notice. According to staff we spoke with, staff laid off were not required to report to the Office or perform other duties during these 22 days, but they were to be available by phone for questions. As a result, the Office incurred an additional $1,706.78 of salary and benefits by paying these employees for 2 days beyond the required 20 working day notice.

Prior to the reorganization, an at-will employee resigned in 2011 and gave a 30 day written notice of resignation. Another at-will employee resigned in early 2012 and gave a 60 day written notice. According to staff we spoke with, both staff were told by Secretary Schultz they did not have to report to the Office but were to be available by phone for questions. As a result, the Office incurred an additional $21,317.89 of salary and benefits by retaining these employees beyond the normal practice described later in this letter.

According to staff we spoke with, Secretary Schultz informed Mr. Gibbons at a meeting in late May 2012 his position would be eliminated by the end of the calendar year. According to Mr. Gibbons, Secretary Schultz told him on May 24, 2012 his position was to be eliminated as of December 31, 2012.

According to Mr. Gibbons, Secretary Schultz and Deputy Director Mosiman met with him the following day to inform him he was to be available for questions during the transition and his last day would be at the end of the calendar year. Mr. Gibbons stated he was told he was to be available to staff during this time. In addition, Mr. Gibbons stated, as an at-will employee, he followed the directives of Secretary Schultz. According to staff we spoke with, Mr. Gibbons spent very little time in the Office during June 2012, but he was available by phone and e-mail.

In late June or early July 2012, Secretary Schultz directed a staff member to contact Steven Ainger, the Office's Personnel Officer within the Iowa Department of Administrative Services (DAS) for advice on providing severance pay. DAS Personnel Officers are assigned to departments to provide advice and counsel on personnel matters. According to a staff person we spoke with, the e-mail sent to Mr. Ainger on July 9, 2012, more than a month after Mr. Gibbons was informed his position was being eliminated, asked him to confirm, "…we do not have the ability to pay someone a severance; the only way it can be done is to keep them on payroll longer than they are required to come in. For example in order to give an employee a severance equivalent to 3 months pay…if their last day in office was 6/29 then their last day on payroll would be 9/28." A copy of the e-mail is included as **Attachment A**.

Mr. Ainger's response to the e-mail stated, "That would be correct. The State does not offer severance; however, if management wishes to send someone home for a set period of time as a work assignment until the separation date, that is an option. Typically, the employee would be expected to be available for phone calls and questions during that time, since they would remain on payroll."

According to Mr. Ainger, the e-mail response he provided was from a hypothetical standpoint and he responded to the question related to severance pay and paid little attention to the example of 3 months provided in the original e-mail. Mr. Ainger stated had he been provided specific details regarding the elimination of Mr. Gibbons position, he would not have recommended a three month period and particularly not six months.

Mr. Ainger also stated departments typically keep at-will employees on the payroll through the end of the pay period in which their position will be eliminated, up to a maximum of two weeks. As stated previously, employees covered by the AFSCME contract are required to be provided a 20 working day notice of a layoff or termination. There are no notification requirements for at-will employees, such as Mr. Gibbons. Mr. Ainger also stated because employees' health insurance ends at the end of the month they leave employment, departments may retain an employee for a few days into the next month if the employee is to be terminated near the end of a month in order to provide health insurance for the month.

Secretary Schultz stated he decided to keep Mr. Gibbons until December 31, 2012 based on several items, including the information provided in Mr. Ainger's e-mail, Mr. Gibbons' position in the Office, to help with the transition under the reorganization plan, and the potential uncertainty surrounding a major upcoming general election. Secretary Schultz also indicated he was concerned about Mr. Gibbons' wife's recent illness. Current and former staff we spoke with stated the decision to keep Mr. Gibbons on the payroll until the end of the calendar year was made by Secretary Schultz.

According to Secretary Schultz, he required Mr. Gibbons to "badge in" to the Office at least four days per week and report to Deputy Director Mosiman beginning in July 2012. According to Mr. Gibbons, he was originally directed to report to Secretary Schultz. At a meeting with Secretary Schultz and Deputy Director Mosiman in early July, Secretary Schultz directed him to "badge in" and "check-in" with Deputy Director Mosiman. According to Mr. Gibbons, "check-in" meant he was to inform Deputy Director Mosiman he was in the office and was available to answer questions or work on any projects.

According to Deputy Director Mosiman and a former Office staff person we spoke with, they recall the meetings in early July 2012 when Secretary Schultz directed Mr. Gibbons to "badge in" to the Office and "check-in" with Deputy Director Mosiman. Despite this, the Office's Table of Organization effective July 20, 2012 indicates Mr. Gibbons reported directly to Secretary Schultz and Deputy Director Mosiman reported to Mr. Gibbons. A copy of the Table of Organization effective July 20, 2012 is included as **Attachment B**.

According to Mr. Gibbons, he frequently arrived at the Office before other staff and would remain long enough to check messages, answer questions, and complete any other work assigned. He stated he left the Office when there was no other work to be completed and he would be available by phone for the rest of the day. Mr. Gibbons also stated he followed the directives of Secretary Schultz.

Staff we spoke with could not recall specifics as to the amount of time Mr. Gibbons was in the Office or what work, if any, was assigned to Mr. Gibbons. Mr. Gibbons was not required to and did not submit timesheets during his employment with the Office. Therefore, there is no record of the hours Mr. Gibbons worked. We attempted to obtain the electronic door access records, but records were not retained for a sufficient time to determine the dates and times Mr. Gibbons arrived at the Office.

According to the Office's IT staff, the Secretary of State's computer system records when a person logs in to the system, in the Office or remotely, and when they log off. However, the system does not force a log off when the individual is away from their computer for an extended period of time, so it is possible to log in and remain logged in for an extended period of time while away from the computer. As a result, we cannot rely on the logs to determine when Mr. Gibbons was in the Office.

We asked Secretary Schultz and other staff what specific work was performed by Mr. Gibbons from May 2012 through December 2012. They remembered Mr. Gibbons attended at least one State of Iowa Insurance Committee meeting as the Secretary's representative. Former staff we spoke with recalled suggesting to Secretary Schultz Mr. Gibbons work at the Secretary of State's booth at the Iowa State Fair, but Secretary Schultz did not accept the suggestion. Former staff also recalled a suggestion Mr. Gibbons travel the State with Deputy Director Mosiman to meet with County Auditors to answer election questions. The staff we spoke with indicated Mr. Gibbons expressed concerns and it was decided he would not travel with Deputy Director Mosiman. Staff we spoke with also stated Mr. Gibbons did not approve staff timesheets or travel claims and they were not aware of anyone reporting directly to Mr. Gibbons. According to Mr. Gibbons, he followed the directives of Secretary Schultz.

As previously stated by Mr. Ainger, a DAS representative, the normal practice is to allow at-will employees to be paid until the end of the pay period, up to a maximum of 2 weeks after being notified their position is to be eliminated. Based on this practice, Mr. Gibbons would have remained on the payroll until June 7, 2012. The following table summarizes the amount paid to Mr. Gibbons for the period June 8, 2012 through December 31, 2012.

Description	**Salary**	**Additional Vacation**	**Total**
Paid to Mr. Gibbons	$ 70,581.52	1,902.05	72,483.57
State share of benefits	18,109.60	145.50	18,255.10
Total	$ 88,691.12	2,047.55	90,738.67

The table shows the Office incurred an additional $90,738.67 of salary, vacation, and benefits as a result of retaining Mr. Gibbons on the payroll for the period June 8, 2012 through December 31, 2012. The additional vacation is the vacation accrued by and paid to Mr. Gibbons for the period June 8, 2102 through December 31, 2012.

Based on the lack of documentation supporting work performed by Mr. Gibbons, we cannot determine the public benefit of the Secretary of State's Office paying Mr. Gibbons $90,738.67 in salary, vacation, and benefits for the period June 8, 2012 through December 31, 2012. We also question the public benefit of the $21,317.89 paid to two employees who gave 30 and 60 day written notices of their resignation. The Office did not document the public benefit of paying at-will employees past the end of the pay period in which their position was eliminated. In addition, we also question the public benefit of the $1,706.78 paid for three AFSCME employees who were paid for 2 days beyond the 20 working days required under the AFSCME contract.

Paid Time Off

As previously discussed, Mr. Gibbons was not required to and did not submit timesheets during his employment with the Office. During our review of the Office's payroll practices, we determined Deputy Director Mosiman also was not required to and did not submit timesheets. In addition, according to Ms. Mosiman, she was not required to submit "leave slips" which documented approval of her authorized leave and Mr. Gibbons was not normally required to submit "leave slips" which documented approval of his authorized leave.

According to Ms. Mosiman, it was her understanding the Deputies' absences from work which were chargeable against accrued vacation or sick leave were recorded in the payroll system by the Office's accountant based on the Office staff's knowledge of the time and reasons for the Deputies' absences. According to the staff member responsible for overseeing payroll for the Office, she does not record vacation for individuals she does not have a leave slip for. She also stated she did not pursue obtaining a leave slip from Deputies if they were out of the Office and had not submitted a leave slip.

In an interview, Ms. Mosiman stated she had taken approximately two weeks of vacation during her employment with the Office. One week was in March 2011 and the other week was in August 2012. When we reviewed her payroll history, we determined those two weeks had not been charged against her accumulated vacation. However, we also determined she accrued no vacation beginning in January 2013 because her vacation balance had reached its allowable maximum. She was paid for her recorded accumulated vacation upon her resignation from the Office in May 2013.

Because the two weeks of vacation taken by Ms. Mosiman should have reduced her accumulated vacation, she should have accrued approximately one week of vacation between January 2013 and the date of her resignation. As a result, she was paid for one week of accumulated vacation she should not have received. Therefore, Ms. Mosiman should refund $2,500 to the State for the excess vacation pay she received.

Because timesheets and leave slips were not required to be completed and were not submitted by the Deputies, we are unable to identify any additional vacation hours used but not properly recorded for the Deputies.

Conclusions

As previously stated by Secretary Schultz, it was his decision to retain Mr. Gibbons from May 24, 2012 through December 31, 2012. It is Secretary Schultz's responsibility to ensure all expenditures made by the Office are in the best interest of the public.

The Office should ensure the public benefit of retaining employees for a longer period of time than required under the AFSCME contract, merit employment rules, and normal practice for at-will employees is documented and the work performed is necessary and reasonable for the operations of the Office.

The Office should also require timesheets be prepared by all employees and be approved by their supervisor prior to preparation of the payroll. This would provide additional safeguards to help ensure payroll is processed and paid correctly. In addition, the Office should ensure adequate reviews are performed and documented to provide additional control over payroll. Also, Office staff involved in the payroll process should be instructed to inquire about instances they believe paid time off should have been reported but was not in order to resolve any issues in a timely manner.

Should you have any questions concerning the above matters, we shall be pleased to discuss them with you at your convenience.

Warren Jenkins

WARREN G. JENKINS, CPA
Chief Deputy Auditor of State

Attachments

Review of Payments made by the Secretary of State's Office
to Jim Gibbons, former Deputy Director

Copy of Email from Steven Ainger

Ainger, Steven [DAS]

From: Ainger, Steven [DAS]
Sent: Monday, July 09, 2012 12:35 PM
To: Clary, Ann [SOS]
Subject: RE: Severance

That would be correct. The State does not offer severance; however, if management wishes to send someone home for a set period of time as a work assignment until the separation date, that is an option. Typically, the employee would be expected to be available for phone calls and questions during that time, since they would remain on payroll.

Thanks,

Steven Ainger
Personnel Officer
DAS-HRE

From: Clary, Ann [SOS] [mailto:Ann.Clary@sos.iowa.gov]
Sent: Monday, July 09, 2012 12:30 PM
To: Ainger, Steven [DAS]
Subject: Severance

Steve –

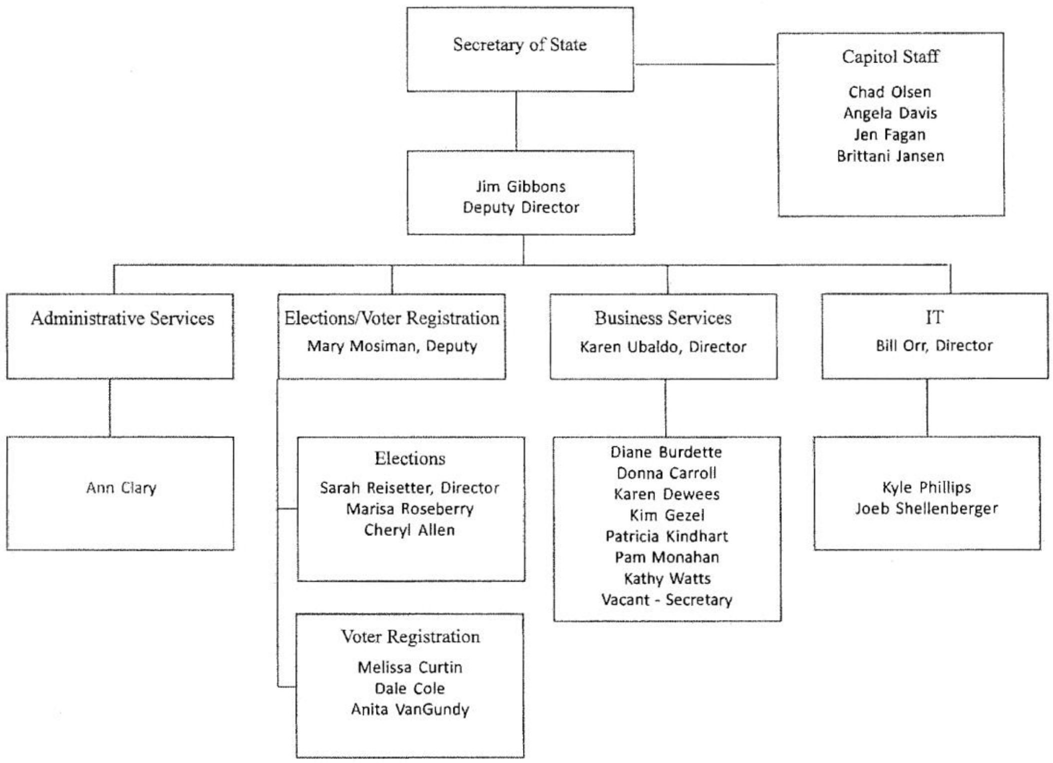
Just want to confirm our conversation from this morning. . . we do not have the ability to pay someone a severance; the only way it can be done is to keep them on the payroll longer than they are required to come in.

For example in order to give an employee a severance equivalent to 3 months pay . . . if their last day in office was 6/29 then their last day on payroll would be 9/28.

Thanks.
Ann

Review of Payments made by the Secretary of State's Office
to Jim Gibbons, former Deputy Director

Secretary of State Organizational Chart



Effective 7/20/2012