

HOUSE OF REPRESENTATIVES



Carol Alvarado
Co-Chair

SELECT COMMITTEE ON TRANSPARENCY IN STATE AGENCY OPERATIONS

Dan Flynn
Co-Chair

October 7, 2013

The Honorable David Simpson
Room E1.416, Capitol Extension
P.O. Box 2910
Austin, TX 78768

Dear Representative Simpson:

We appreciate your interest in the Committee's investigation and your attendance at the Committee's September 16th meeting. We welcome and encourage the attendance of members of the House. If — and we emphasize "if" — the investigation finds misconduct warranting removal and the Committee recommends impeachment, the full House will have a role in determining whether to send the case to the Senate for trial.

An investigation under Chapter 665 of the Government Code is rare, so it is important that Committee members have access to the resources necessary to ensure a fair and thorough investigation. Mr. Hardin is employed under a contractual arrangement with the Legislative Council to provide services to the Committee. As you note in your letter, his contract does not have a "cap." Specifying a realistic cap in Mr. Hardin's contract requires making an assumption about the duration of his services. We do not know whether his services will be required only through the Committee's investigation or will continue through the adoption of articles of impeachment by the House and trial by the Senate. We believe we should not presume a particular outcome of the investigation. However, as a safeguard, his contract does provide for cancellation on seven days' notice, and his invoices will be carefully reviewed.

At the September 16th meeting, the Committee met in executive session to discuss with counsel the tentative work plan for the investigation. Regarding your exclusion from the executive session, we as co-chairs were relying on the advice of the House Parliamentarian. The Parliamentarian advises that the House Rules are clear on this question and allow only members of a committee and necessary staff to attend an executive session. In all other meetings and hearings, the Parliamentarian advises that the co-chairs have discretion to allow non-members of the Committee to participate. If you have questions or concerns about the Parliamentarian's position, you may wish to discuss them with the Parliamentarian. We also are considering your request to participate in the Committee's hearings. We have not decided the extent to which we will allow non-members of the Committee to participate, but anticipate that some level of participation will be allowed.

You also expressed concern that Mr. Hardin has not provided a "legal standard" for impeachment. Providing such a standard was not the purpose of the September 16th committee meeting. The purpose of that meeting was to discuss and formulate a work plan for the investigation into the facts. We anticipate that Mr. Hardin will provide the Committee with his research and advice on this question at the appropriate time.

On the issue of cross examination, the Committee ultimately agreed with Mr. Hardin's opinion that allowing cross examination of witnesses during the Committee's investigation has the potential to slow the Committee's work to a crawl by requiring the Committee to rule on every objection. The Committee is conducting an investigation, not a trial. The purpose of the investigation is to determine the facts. When witnesses appear before the Committee, any member of the Committee may ask questions. Also, as Mr. Hardin explained, Regent Hall's lawyers will be able to present the Committee with "any and all evidence" they wish to present. Moreover, should the Committee recommend articles of impeachment, and should the House send the case to the Senate for trial, we anticipate that the Senate rules of procedure adopted under Section 665.024, Government Code, will allow Regent Hall to cross examine witnesses.

Again, we appreciate your interest in the Committee's investigation, and look forward to discussing these issues with you in the future.

Sincerely,



Carol Alvarado
Co-Chair, House Select Committee on Transparency in State Agency Operations



Dan Flynn
Co-Chair, House Select Committee on Transparency in State Agency Operations

Cc: The Honorable Joe Straus
The Honorable Naomi Gonzalez
The Honorable Eric Johnson
The Honorable Lyle Larson
The Honorable Trey Martinez Fischer
The Honorable Charles Perry
The Honorable Walter "Four" Price