



REPLY TO
ATTENTION OF

TEXAS MILITARY FORCES
Joint Force Headquarters
Adjutant General's Department
Post Office Box 5218
Austin, Texas 78763-5218
512-782-5057

April 8, 2009

RECEIVED
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OPINION COMMITTEE

Office of the General Counsel

David Morales
Deputy Attorney General for Litigation
P.O. Box 12548
Austin, TX 78711
(512) 463 - 2016

FILE # ML-46058-09
I.D. # 46058

RQ-0796-GA

Dear Mr. Morales:

Please consider this letter the Texas Adjutant General's Department's formal request under Section 402.042 of the Government Code for any opinion on whether the Adjutant General and the Assistant Adjutant General's, as head of the agency and appointed officials, can accrue compensatory leave.

We look forward to your assistance and are available should you have any questions on the matter.

Sincerely,

Jose Mayorga
Major General, TX Army National Guard
Texas Adjutant General

Enclosures

March 30, 2009

Members of the Legislative Audit Committee:

At the request of the Senate Finance Committee, the State Auditor's Office initiated an investigation into the leave issues recently identified at the Adjutant General's Department (Department). This letter details the results of the work the State Auditor's Office performed between March 10, 2009, and March 20, 2009. Auditors have requested access to additional records and computer files, which have not been made available by the Department. The State Auditor's Office will continue to investigate the possible misuse of state funds.¹

The investigation confirmed the use of state emergency leave by senior members of the Department while serving on federal military orders. This occurred reportedly because of advice given by the Department's former Deputy Executive Director of State Affairs, weakness in internal control processes at the Department, deficient reporting from the Department's internal audit unit, and an apparent lack of involvement in discussing internal audit results on the part of senior members of Department management. In addition, the State Auditor's Office was not notified of the misuse of state resources, specifically the use of emergency leave while serving on federal military orders, as required by statute.

Department employees routinely use emergency leave for a variety of reasons. In fiscal year 2007, 590 Department employees used a total of 25,503 hours of emergency leave. However, this investigation did not make a determination regarding the use of emergency leave while serving on federal military orders for employees of the Department who were not general officers within the command group.

The most senior members of the Department used state emergency leave while serving on federal military orders.

Between 2003 and 2008, a total of five general officers within the Department's command group used state emergency leave while simultaneously serving on federal military orders. As a result, they received full state compensation while serving on active duty on federal military orders. By statute, a state employee who is called to federal active duty may not receive the employee's state salary except as provided by Texas Government Code, Sections 661.904(d) and (f) and 661.9041 (see text box for additional details). Other leave options were

**Statutory Requirements for
Emergency Leave and Military Leave**

Emergency Leave: Texas Government Code, Section 661.902, permits state employees to use emergency leave without a deduction in salary for:

- A death in the employee's family.
- Any other reason that the head of the agency determines is "sufficient for granting emergency leave" and for an employee who the head of an agency determines "has shown good cause for taking emergency leave."

Texas Government Code, Section 661.903, defines a National Guard emergency and states that "A state employee who is called to federal active duty may not receive the employee's state salary except as provided by Sections 661.904(d) and (f) and 661.9041."

Texas Government Code, Sections 661.904(d) and 661.9041, allow the employee to use accrued state leave to continue receiving benefits and to use emergency leave to provide "differential pay." Differential pay is supplemental pay to ensure that the employee continues to receive an amount equal to his or her state pay. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay.

Military Leave: Texas Government Code, Section 431.005 (a), authorizes state employees to use military leave. An officer or employee of the State who also is a member of the state military forces is entitled to use paid military leave of not more than 15 workdays in a federal fiscal year.

¹ See Section 6, page 8, of the attachment to this letter for a summary of this investigation's objectives, scope, and methodology.

SAO Report No. 09-026

available to the general officers, such as using annual leave or leave without pay.

State statute allows members of the Texas military forces who are serving on federal military orders to use a maximum of 15 days of military leave annually (see text box for additional information on the Texas military forces). After military leave has been exhausted, state employees may use their state accrued annual leave or compensatory leave. **After those leave balances have been exhausted, however, they must use state leave without pay.**

The practice of general officers within the Department's command group using state emergency leave reportedly started in 2003 to enable the incoming Assistant Adjutant General at that time to continue to receive state pay while serving on federal military orders because he had not yet accumulated any state annual leave. Between fiscal years 2003 and 2008, five different general officers served in various capacities within the command group. The use of this practice increased significantly during this time period. In fiscal year 2003, the command group collectively used 89 hours of state emergency leave. In fiscal year 2008, the three general officers in the command group collectively used 2,054 hours of state emergency leave. Table 1 shows the annual usage of emergency leave by general officers in the command group from September 2002 to January 2009. Portions of this leave may have been used for valid purposes that had no relationship to time periods during which these individuals were serving on federal military orders.

The Texas Military Forces

The Texas Military Forces consist of three branches: the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard. All three branches report to the Adjutant General under the command of the Governor of Texas.

The Assistant Adjutants General, under the direction of the Adjutant General, command the Texas Army National Guard and the Texas Air National Guard, which provide mission-ready joint forces to respond to state and national needs.

The Texas State Guard, also under the leadership of the Adjutant General, is the state's authorized militia and assumes the state mission in the event that guard forces are mobilized or deployed. The Texas State Guard is federally recognized, but it provides services exclusively to the state.

The command group includes the Adjutant General, the Assistant Adjutants General, and the State Senior Enlisted Advisor for the Texas Military Forces.

Table 1

Hours of Emergency Leave Used by General Officers in the Department's Command Group								
General Officer	Fiscal Years							Totals
	2003	2004	2005	2006	2007	2008	2009 ^a	
1	N/A	N/A	160	632	752	832	0	2,376
2	0	20	124	238	352	185	0	959
3	N/A	N/A	N/A	510	847	1,037	30	2,424
4	0	232	541	N/A	N/A	N/A	N/A	783
5	46	192	534	N/A	N/A	N/A	N/A	772
Totals	89	444	1,359	1,380	1,951	2,054	30	7,307

^a Data for fiscal year 2009 is through January 2009 and was not complete because the Department had not entered all leave data into the Uniform Statewide Payroll/Personnel System for this time period.

Source: Data obtained from the Uniform Statewide Payroll/Personnel System.

State emergency leave has been used routinely throughout the Department.

The State Auditor's Office's investigation determined that state emergency leave has been used routinely throughout the Department. However, auditors verified the practice of taking state emergency leave while serving on federal military orders only for the general officers within the Department's command group. The methodology the Department used to code emergency leave prevented auditors from making a determination regarding whether employees other than general officers in the command group have used emergency leave while serving on federal military orders.

There are valid reasons for a Department employee to use extended emergency leave, including when the employee is in the National Guard and is called to state active duty by the Governor. Significant events that may result in the Governor activating National Guard members, and thereby increasing the use of emergency leave among Department employees, include hurricanes that impact the state of Texas.

The methodology the Department used to code state emergency leave resulted in the commingling of all emergency leave used into a single category (emergency death leave). This prevented auditors from making a final determination regarding the extent to which employees have used emergency leave while serving on federal military orders without conducting a more intensive review of timesheets and military orders (the Department does not routinely maintain military orders centrally with leave documentation). However, auditors reviewed leave data to determine the extent to which emergency leave has been used throughout the Department. Table 2 shows that, while emergency leave has been used widely throughout the Department, the percentage that emergency leave represents of total leave used in all categories has remained relatively stable, fluctuating between a low of 5 percent and a high of 12 percent during the last six fiscal years. That percentage was 9 percent in both fiscal year 2003 and fiscal year 2008.

Table 2.

Emergency Leave Used by Department Employees Fiscal Year 2003 through Fiscal Year 2008 ^a			
Fiscal Year	Number of Department Employees Who Used Emergency Leave	Total Hours of Emergency Leave Department Employees Used	Percent That Emergency Leave Represented of Total Leave Used
2003	395	12,265	9%
2004	510	12,964	8%
2005	542	9,528	5%
2006	597	21,088	10%
2007	590	25,503	12%
2008	597	17,451	9%

^a During fiscal year 2008, the Department employed 669 individuals.

Source: Data obtained from the Uniform Statewide Payroll/Personnel System.

Auditors selected the top three users of emergency leave (not including members of the command group) each year from fiscal year 2006 through fiscal year 2009, for a total of 12 employees. Of the 5,499 hours of emergency leave these 12 employees used, 3,627 hours (66 percent) was attributed to severance pay. The Department granted these 3,627 hours to 9 employees in the form of emergency leave. The departing Adjutant General delegated to the current Human Resource Officer the "authority to administer policy and procedures for human resource operations." This authority was understood to include the authority to grant emergency leave. However, no guidance or restriction on that authority was given, and there was no requirement to report to the Adjutant General the amount of emergency leave granted. The Department's Human Resource Office continues to have the authority to grant emergency leave.

There are weaknesses in the Department's internal control processes.

Weaknesses in internal control processes at the Department facilitated the use of state emergency leave by the general officers in the command group while they served on federal military orders.

The former Deputy Executive Director of State Affairs reportedly recommended the practice of allowing the Adjutant General to approve emergency leave for the Assistant Adjutants General while they served on federal military orders. When the Department staff responsible for processing leave requests questioned the practice, the Deputy Executive Director of State Affairs reportedly directed staff to process the leave and assured them that he had received approval for the practice. In addition, the Deputy Executive Director of State Affairs reportedly informed members of the Department's senior leadership, including the officers within the command group, that he had a documented agreement with the Office of the Governor that allowed the practice. However, the practice continued without verification of the substance and validity of this reported agreement.

During the State Auditor's Office's investigation, issues related to the payment of travel expenditures also were identified. The Department's former Deputy Executive Director of State Affairs submitted 33 travel vouchers for reimbursement in August 2008. These travel vouchers presented expenses incurred for travel from September 2005 to May 2007. The total reimbursement amount requested for all 33 vouchers was \$15,271.78. The travel vouchers were processed and paid without the supervisor's review and based on an understanding that the required supervisor signature would be obtained before returning them for filing. The travel vouchers were not returned to the accounts payable unit, but they were later found, unsigned by a supervisor, in the office of the Deputy Executive Director of State Affairs in October 2008. At the request of the Department's Chief of the Joint Staff, the Department's internal audit unit reviewed the travel vouchers and supporting documentation. The internal audit unit concluded that "the vouchers are acceptable for supervisory approval and for return to the State Property and Fiscal Office for final actions and filing." Although the Department's internal audit unit determined that the travel vouchers were for allowable expenses, processing the reimbursements prior to a supervisor's review, and in some cases in excess of two years after the travel occurred, increases the risk of misappropriating state funds.

The internal audit unit's reporting was deficient, and there was an apparent lack of involvement in discussing internal audit results on the part of members of Department management.

An August 2007 report by the Department's internal audit unit briefly mentioned "confusion" regarding the use of emergency leave by the command group. However, deficient reporting by the internal audit unit and an apparent lack of involvement in discussing audit results exhibited by a virtually inactive Internal Audit Steering Committee allowed the emergency leave issue to continue.

The internal audit unit's reports have typically been only one page in length. Most of that space has been dedicated to discussing the background and scope of the internal audit. On August 22, 2007, the internal audit unit released a report entitled *Time and Attendance Audit for the Period 1 September 2005 – 31 August 2006* (report number IA 02-07). That one-page report consisted of only two vague sentences discussing the results of the internal audit. One of these read as follows: "However, there is some confusion in granting and using of administrative leave for those department personnel on military orders that have exhausted their 120 hours of military leave." The internal audit report provided no further explanation regarding the details of this issue, related criteria, or the cause and effect of the "confusion." Additionally, the internal audit unit did not require written management responses to be obtained and included in its internal audit reports. The internal audit unit reportedly discussed its audit results with the Department's former Deputy Executive Director of State Affairs. The management response included in the time and attendance internal audit report referred to above was as follows: "We agree and will ensure this issue is addressed." However, it is unclear how management intended to address the issue or recommendation noted in that internal audit report.

The charter for the Department's Internal Audit Steering Committee was last updated by the departing Adjutant General on November 18, 2005. The charter specifies that the committee has 11 members, including the Adjutant General, the two Assistant Adjutants General (for the Texas Army National Guard and the Texas Air National Guard), and the United States Property and Fiscal Officer (a federal position). The co-chairs for the committee are the Assistant Adjutant General for the Texas Army National Guard and the United States Property and Fiscal Officer. The committee's charter focuses on the use of audit resources, but it does not address how internal audit findings and their status are communicated and tracked. Additionally, the charter estimates that the committee will hold two meetings annually and special meetings as deemed necessary. The State Auditor's Office's investigation determined that the committee met only seven times from October 17, 2002, through March 18, 2009, with the most recent meeting occurring on October 18, 2007. Although the Adjutant General is a member of the committee, minutes from committee meetings indicate that the Adjutant General has not been present at a committee meeting since October 9, 2003.

Because the Department has no governing board to which the internal audit unit can report, the Director of Internal Audit reports to the Adjutant General. This reporting structure makes it inherently more difficult for the Director of Internal Audit to maintain independence and to report on sensitive issues or potential violation of laws that may involve command group members.

After receiving an opinion from the Department's general counsel, the departing Adjutant General began repaying the state salary he received for the periods during which he used state emergency leave while serving on federal military orders.

At the beginning of September 2008, the Department's general counsel reviewed statutes applicable to the practice of using state emergency leave while serving on federal military orders. The general counsel issued an opinion concluding that the practice was not compatible with state law.

In a letter to the Governor dated September 19, 2008, the Adjutant General communicated the general counsel's conclusion regarding the use of emergency leave. The letter also specified that the Adjutant General directed that, in the future when the Adjutant General or Assistant Adjutants General serve on federal military orders beyond the 15-day maximum per year, their time will be accounted for with accrued state annual leave, compensatory leave, or with leave without pay. Additionally, the letter stated that the Adjutant General had created a General Officer Management Office that was outside of the direct chain of

command of the Department's command group. According to the letter, the purpose of the General Officer Management Office was to ensure that time and leave issues, and government travel orders, would be administered within regulations and by an independent office (see Section 2, page 3, of the attachment to this letter for a copy of that letter).

In October 2008, the Department's internal audit unit, at the direction of the Adjutant General, reviewed time and leave for the Adjutant General and the two Assistant Adjutants General. The objective of the review was to determine the estimated gross salary amounts that could be owed by these individuals. On October 24, 2008, the Adjutant General voluntarily began repaying the salary he received from the State when he used emergency leave while serving on federal military orders. He began making repayment prior to a more detailed and final accounting made by the Department's payroll staff. On March 5, 2009, the Adjutant General made his final repayment. His repayments totaled \$53,320.40, which was the final amount calculated by Department payroll staff.

At the time of the State Auditor's Office's investigation, the Department was still calculating potential repayment amounts due from the two Assistant Adjutants General for the salary amounts they received when they used emergency leave while serving on federal military orders.

The amount of the salary repayment the Department calculated may have been understated.

To calculate the amount of salary that the departing Adjutant General should repay for the period from June 2005 through February 2009, the Department first determined the number of hours of emergency leave this individual used while serving on federal military orders. The Department then, to the extent possible, replaced the emergency leave hours used with the individual's accrued annual leave and compensatory leave balances. Once the annual and compensatory leave balances had been exhausted, the Department replaced the remaining hours of emergency leave with leave without pay. Next, the Department subtracted the hours of leave without pay from the original number of hours reported and recalculated the paycheck amounts. Department personnel are currently coordinating with the Internal Revenue Service and the Employees Retirement System to amend payroll deductions.

However, the Department's calculation of the amount of salary repayment calculations may be understated because these positions may not be entitled to earn compensatory leave (see text box for additional details). In calculating the repayment amount for the Adjutant General, the Department allowed the use of 425 hours of compensatory leave.

**Texas Government Code,
Section 659.024(c)**

"A member of the governing body of a state agency or a single state officer who governs a state agency may not accrue compensatory time under this subchapter or another state statute."

**Texas Government Code,
Section 658.001**

The statute defines a state agency as "a board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state..."

The Department did not notify the State Auditor's Office about certain matters as required by statute.

The Department did not notify the State Auditor's Office about:

- Senior Department members' use of state emergency leave while serving on federal military orders, which may have directly resulted in the misappropriation of state funds in the form of dual state and federal compensation and other benefits.
- The Department's concern about an employee who was suspected of misusing state resources.

Texas Government Code, Section 321.022, requires notification of the above information to the State Auditor's Office (see text box for additional details).

**Texas Government Code,
Section 321.022**

If the head of a state department or entity that is subject to audit by the State Auditor has reasonable cause to believe that money received from the State by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the head of the state department or entity shall report the reason and basis for the belief to the State Auditor.

Recommendations

The Department should:

- Obtain a legal determination from the Office of the Attorney General regarding the accruing of compensatory leave by the Adjutant General and the Assistant Adjutants General as the head of an agency and as appointed officials.
- For all general officers who have served as members of the command group since 2003 and who have not yet reimbursed the State, calculate the amount that these individuals owe the State as a result of using emergency leave while serving on federal military orders, and refer this information to the Office of the Attorney General.
- Obtain training from the Office of the Comptroller of Public Accounts on Uniform Statewide Payroll/Personnel System (USPS) coding. When applicable, use available codes in USPS that distinguish between state and federal active duty.
- Consider requiring Department staff to include a copy of orders for employees serving on federal military orders with the timesheets these employees submit, and maintain this supporting documentation with the timesheets in a central location and in accordance with its documentation retention policy.
- Amend its Internal Audit Steering Committee charter so that, in addition to planning for audit resources, (1) the committee gives appropriate consideration to internal audit findings and (2) the charter specifies how internal audit findings will be tracked until the Department has implemented internal audit recommendations or the Department accepts the risk of not implementing those recommendations.
- Take an active role in reviewing internal audit findings and management's plans to correct deficiencies. At a minimum, the Adjutant General and his designees should attend Internal Audit Steering Committee meetings when possible, and they should ensure that the internal audit unit distributes its internal audit

reports, including distribution to the State Auditor's Office, as soon as they are published (instead of at the next scheduled meeting of the Internal Audit Steering Committee).

- Ensure that the internal audit unit provides Department management with detailed internal audit reports that clearly identify the condition, criteria, cause, effect, and recommendations for all findings.
- Ensure that the internal audit unit (1) obtains management's responses to all findings identified in internal audit reports and (2) includes those responses within internal audit reports.

The Legislature should consider:

- Requiring the Department's Director of Internal Audit to meet on a quarterly basis with the State Auditor's Office to discuss internal audit plans, internal audit results, and risk analysis related to areas that involve state resources (see Section 3, page 5, of the attachment to this letter for a proposed rider²).
- Requiring the Department to obtain prior approval for certain use of emergency leave from the Office of the Governor and the Legislative Budget Board (see Section 4, page 6, of the attachment to this letter for a proposed rider³).
- Requiring the Department to post the State Auditor's Office's fraud telephone hotline number and Web site in prominent locations throughout the Department (see Section 5, page 7, of the attachment to this letter for a proposed rider⁴).

The attachment to this letter contains additional details regarding the Department and the use of state emergency leave. If you have any questions, please contact Anita D'Souza, General Counsel, or me at (512) 936-9500.

Sincerely,

John Keel, CPA
State Auditor

Attachment

cc: The Honorable Rick Perry, Governor
Major General Jose S. Mayorga, Adjutant General of Texas
Members of the Senate Finance Committee
The Honorable Steve Ogden, Chair
The Honorable Juan Hinojosa, Vice Chair

² The Senate Finance Committee and the House Appropriations Committee have adopted this rider for their respective General Appropriations bills.

³ The Senate Finance Committee and the House Appropriations Committee have adopted this rider for their respective General Appropriations bills.

⁴ The Senate Finance Committee and the House Appropriations Committee have adopted this rider for their respective General Appropriations bills.

cc: Members of the Senate Finance Committee (continued)

The Honorable Kip Averitt
The Honorable Bob Deuell
The Honorable Robert Duncan
The Honorable Kevin Eltife
The Honorable Chris Harris
The Honorable Eddie Lucio, Jr.
The Honorable Jane Nelson
The Honorable Kel Seliger
The Honorable Florence Shapiro
The Honorable Royce West
The Honorable John Whitmire
The Honorable Tommy Williams
The Honorable Judith Zaffirini

Members of the House Appropriations Committee

The Honorable Jim Pitts, Chair
The Honorable Richard Pena Raymond, Vice Chair
The Honorable Jimmie Don Aycok
The Honorable Fred Brown
The Honorable Angie Chen Button
The Honorable Norma Chavez
The Honorable Ellen Cohen
The Honorable Brandon Creighton
The Honorable Myra Crownover
The Honorable Drew Darby
The Honorable Joe Driver
The Honorable Dawnna Dukes
The Honorable Al Edwards
The Honorable Craig Eiland
The Honorable Kino Flores
The Honorable Helen Giddings
The Honorable Abel Herrero
The Honorable Scott Hochberg
The Honorable Carl Isett
The Honorable Susan King
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The Honorable Doug Miller
The Honorable Geanie Morrison
The Honorable John Otto
The Honorable Debbie Riddle
The Honorable Mike Villarreal
The Honorable John Zerwas



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Attachment

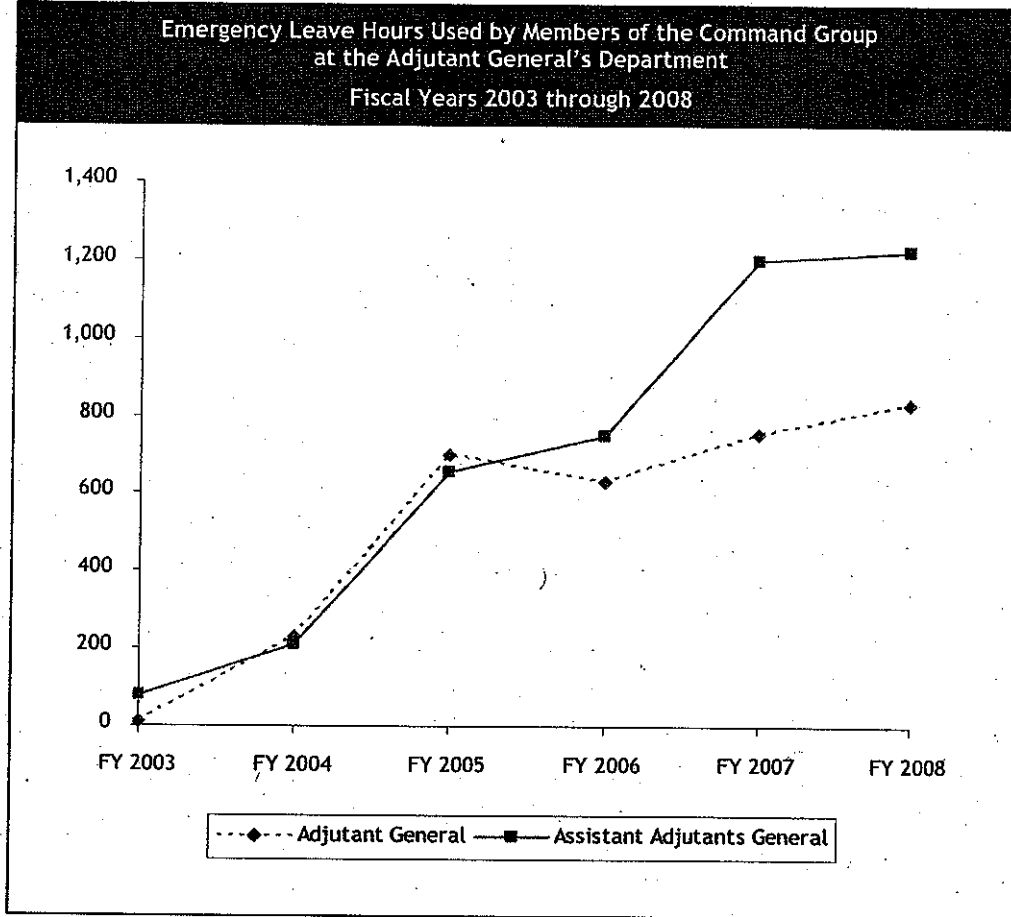
This attachment contains the following sections:

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Detailed Information Regarding the Adjutant General's Department

Figure 1 shows the trend in the number of emergency leave hours used by members of the command group at the Adjutant General's Department.

Figure 1



Source: Data obtained from the Uniform Statewide Payroll/Personnel System.

Adjutant General's Letter to the Governor Regarding the Use of Emergency Leave

Below is a letter from the Adjutant General to the Governor regarding the use of emergency leave.



REPLY TO
ATTENTION OF

TEXAS MILITARY FORCES
Joint Force Headquarters
Adjutant General's Department
Post Office Box 5218
Austin, Texas 78763-5218
512-782-5001

JFTX-A

September 19, 2008

The Honorable Rick Perry
Governor of Texas
P.O. Box 12428
Austin, Texas 78711

ATTN: Brian Newby

VIA HAND DELIVERY

Dear Governor Perry:

It has recently come to my attention that leave procedures instituted under Lieutenant General Marty and continued under my tenure may not be in compliance with state law. Specifically, the Assistant Adjutants General and I have been carried under emergency leave status while serving in Title 32 status (federal pay and benefits).

As you're aware, as state employees, the Adjutant General and Assistant Adjutants General are authorized fifteen days of military leave per year. Beginning sometime during Lieutenant General Marty's tenure, the agency began using emergency leave for the command group after exhausting military leave. This change likely coincided with the drastic increase in the operational tempo of this agency at the outset of the Global War on Terror, and the corresponding enhanced allocation of Title 32 General Officer man days. I am told that this agency's former state human resources officer received verbal approval for this practice from Mr. Logan Spence.

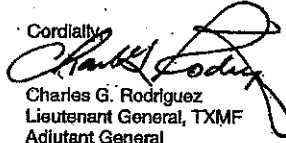
My General Counsel has examined this issue and has concluded that this practice does not comply with state law. I have taken the necessary steps to ensure military duty performed by the Adjutant General and Assistant Adjutants General, beyond the 15 days of military leave will be covered with accrued comp time or leave without pay status.

I have directed that this change go into effect immediately. In addition, I have ordered the establishment of a General Officer Management Office as a remedial action to ensure corrective action. This office will be removed from the direct supervision of the command group and will instead fall under the personnel directorate. Instead of utilizing secretaries to manage time sheets and juggle the state and federal status issues, the General Officer Management Office will compile and manage all time keeping tasks for the command group. In addition, this office will administer the military orders and status of the command group, and will ensure all state and federally funded travel complies with applicable regulations. Ultimately, I am confident this corrective action will ensure that we

are using the correct leave status while at the same time guaranteeing the fulfillment of military tasks which must legally be undertaken in state status.

I sincerely regret this management lapse and will continue to ensure that the Texas Military Forces remain ready to serve our great state and nation.

Cordially,



Charles G. Rodriguez
Lieutenant General, TXMF
Adjutant General

Proposed Rider Regarding the Adjutant General's Department's Internal Auditor

The State Auditor's Office recommends that the Legislature consider the following rider.¹

Internal Audit. The Adjutant General's Department shall use funds appropriated above for the following purposes:

(a) To report to the Governor's Office, Legislative Budget Board and State Auditor's Office every 30 days on all internal audit work performed. Each month the director of Internal audit of the Adjutant General's Department shall report to the State Auditor's Office to brief an individual designated by the State Auditor; and

(b) To hold meetings by the internal audit committee at the Adjutant General's Department at least once each fiscal quarter and to provide minutes of these meetings to the Governor's office and the State Auditor's office.

¹ The Senate Finance Committee and the House Appropriations Committee have adopted this rider for their respective General Appropriations bills.

**Proposed Rider Regarding Governor and Legislative Budget Board
Approval of Adjutant General's Department Employees' Use of
Emergency Leave**

The State Auditor's Office recommends that the Legislature consider the following rider.²

Leave Requirement. (a) The Adjutant General's Department shall use funds appropriated above for the following purpose:

1) Provide a report to the Governor's Office and the State Auditor's Office every 30 days of the overtime payment and emergency leave approved for all employees for the previous 30 days;

2) Have any emergency leave for more than three (3) days or for reasons other than death in the immediate family be pre-approved by the Governor's Office and the Legislative Budget Board; or

3) Have any emergency leave taken by an officer with a rank above major pre-approved by the Governor's Office and the Legislative Budget Board.

(b) This section does not apply to emergency leave used for purposes of differential pay

² The Senate Finance Committee and the House Appropriations Committee have adopted this rider for their respective General Appropriations bills.

Proposed Rider Regarding Posting the State Auditor's Office's Fraud Contact Information

The State Auditor's Office recommends that the Legislature consider the following rider.³

Fraud Reporting. An agency or institution of higher education appropriated funds by this Act, shall use appropriated funds to assist with the detection and reporting of fraud involving state funds, including funds received pursuant to the American Recovery and Reinvestment Act, as follows:

(a) By providing information on the home page of the entity's Web site on how to report suspected fraud waste and abuse involving state resources directly to the State Auditor's Office. This shall include, at a minimum; the State Auditor's Office's fraud telephone hotline information and a link to the State Auditor's Office's Web site for fraud reporting; and

(b) By including in the agency or institution's policies information on how to report suspected fraud involving state funds to the State Auditor.

³ The Senate Finance Committee and the House Appropriations Committee have adopted this rider for their respective General Appropriations bills.

Summary of Objectives, Scope, and Methodology

The objectives of this investigation were to determine:

- Whether members of the Adjutant General's Department (Department) used state emergency leave while serving on federal military orders.
- If state emergency leave was used while serving on federal military orders, quantify the extent of the use.

The scope of this investigation covered leave data and practices for the time period from September 2002 through February 2009. Given the limited timeframe, this investigation focused only on the use of emergency leave.

The investigation methodology included collecting and reviewing information and documentation, and performing data analysis. This investigation included conducting interviews with current Department employees at Camp Mabry but did not include conducting interviews with any general officers in the previous command groups or the previous Deputy Executive Director of State Affairs. The State Auditor's Office has pending requests for additional electronic information from the Department and will continue to investigate.

This project was an investigation performed at the request of the Senate Finance Committee. The information in this report was not subjected to all the tests and confirmations that would be performed in an audit. However, the information in this report was subject to certain quality control procedures to help ensure accuracy.

The following members of the State Auditor's staff performed this investigation:

- James Timberlake, CIA (Project Manager)
- Mary Goldwater
- Jules Hunter, CPA, CIA
- Michele Pheeny, MBA
- Robert Smith, CEECS, CFE, CFI (Special Investigations Unit)
- Leslie P. Ashton, CPA (Quality Control Reviewer)
- Anita D'Souza, CFE (General Counsel)