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January 13, 2014

VIA HAND DELIVERY

Mr. Larry Jegley  
Prosecuting Attorney, 6<sup>th</sup> Judicial District  
224 S. Spring St.  
Little Rock, AR 72201

RE: Secretary of State Mark Martin

Dear Mr. Jegley:

As you know, I wrote to you on October 8, 2013, regarding Circuit Judge Timothy Fox's ruling that Secretary of State Mark Martin had violated Arkansas Code Annotated § 25-16-702. Though I submitted a proposed order to Judge Fox in an attempt to get that ruling reduced to writing, he has thus far declined to enter such an order.

At the time of Judge Fox's August 12, 2013 ruling from the bench, the Secretary of State's Office had spent just over \$1,100.00 on outside counsel during Fiscal Year 2014. For months, the Secretary abided by Judge Fox's ruling and did not spend additional money on outside counsel.

On December 18, 2013, however, Judge Fox granted Secretary Martin's motion for directed verdict, dismissing Case No. 60CV-13-2660. Apparently, following this ruling, Secretary Martin erroneously believed that Judge Fox's interpretation of Arkansas Code Annotated § 25-16-702 was no longer valid. Since the December 18 decision, it appears that the Secretary has spent over \$26,000 in fees to outside attorneys, to wit:

- \$16,314.01 to Rainwater, Holt & Sexton
- \$9,800.00 to Quattlebaum, Grooms, Tull & Burrow
- \$98.40 to Jane Ellen Kuciejski

Why Secretary Martin believes it is now acceptable to pay outside counsel is unclear. After all, granting a motion for directed verdict is a determination that the evidence presented was insufficient as a matter of law to support the underlying claim (here, a Freedom of Information Act violation).<sup>1</sup>

On the other hand, Judge Fox's disqualification of counsel had nothing to do with the merits of the underlying case, and it was a determination that state law expressly prohibits the hiring of outside counsel except in the limited scenarios detailed in Arkansas Code Annotated § 25-16-702. Regardless of the outcome of the underlying AFOIA action, Secretary Martin was and is not allowed to hire outside counsel because the law that prevented his hiring of Quattlebaum was not altered by the AFOIA-suit decision.

In my opinion, the most troubling of these payments to outside counsel is the money to Quattlebaum, assuming that any portion of that money was for their work on the AFOIA suit. In that instance, Mr. Martin was explicitly told that hiring those attorneys was illegal. In addition to being a blatant violation of Arkansas Code Annotated § 25-16-702, for the Secretary to pay state money for legal fees now would be both a violation of the court's ruling and an illegal exaction of public funds under Article 16, § 13, of the Arkansas Constitution. *See Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992).

Similarly, from what I can tell through preliminary research, the Rainwater firm has been representing Mr. Martin's office for quite a while in wrongful termination suit that is now before the Eighth Circuit Court of Appeals. That being the case, it certainly appears that Mr. Martin simply decided to start paying previously hired counsel, regardless of the legality of the original hire, following the December 18, 2013 ruling. As with the payments to Quattlebaum, payments to previously hired counsel post-August 12, 2013, would certainly be a clear-cut violation of Arkansas Code Annotated § 25-16-702, as well as an illegal exaction of public funds under Article 16, § 13, of the Arkansas Constitution.

Furthermore, with respect to the payments to both Quattlebaum and Rainwater, because Secretary Martin was put on notice of his inability to hire counsel outside the strictures of Arkansas Code Annotated § 25-16-702 on August 12, 2013, payment of state funds for

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<sup>1</sup> A Rule 59 motion for new trial is, as of this writing, still pending before Judge Fox, and a notice of appeal will be filed in the event the Rule 59 motion is denied or deemed denied on January 17, 2014.

unapproved outside counsel subsequent to that ruling would appear to be a violation of Article 16, § 3, which provides:

The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any officer of the State, or member or officer of the General Assembly, shall be punishable as may be provided by law, but part of such punishment shall be disqualification to hold office in this State for a period of five years.

I know that the lack of a written order from Judge Fox regarding the August 12, 2013 ruling was something of a problem in your office's initial investigation of Mr. Martin's violation of Arkansas Code Annotated § 25-16-702. While the lack of a written order might have made the previous illegal hiring of outside counsel difficult to pin down as a matter of law, it can hardly be argued that, subsequent to August 12, Mr. Martin could reasonably assume that he had the legal authority to hire outside counsel without permission from the Attorney General and Governor and approval of outside counsel's fees by the Legislative Council. Yet that is precisely what Mr. Martin purports to have the power to do.

As I noted in the previous letter to your office, a violation of Arkansas Code Annotated § 25-16-702 carries a clearly defined consequence for the violator; under Arkansas Code Annotated § 25-16-702(d), "Any person violating the provisions of this section shall be subject to indictment and upon conviction fined in any sum not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) and, upon proper proceedings, removed from office."

Even assuming *arguendo* that Mr. Martin had some sort of valid defense to removal from office under the statute based on his hiring of counsel prior to August 12, 2013, no such defense exists at this point. If Mr. Martin chose, for whatever reason, to resume illegal payments to previously hired counsel without permission from the Attorney General and Governor, he is flagrantly violating Arkansas Code Annotated § 25-16-702 as well as engaging in intentional misuse of state funds. Conversely, on the off chance that Mr. Martin did seek and receive permission from the Attorney General, et al., such actions are an admission by the Secretary that his previous hiring of counsel without permission was illegal under the statute. In either instance, he is engaging in a clear, unapologetic violation of the law.

Unfortunately for Arkansans, Mr. Martin's recent actions with respect to outside counsel have eroded any benefit of the doubt to which he might have been entitled in August.

Accordingly, whether you choose to convene a grand jury in this matter, as was previously suggested before Lt. Gov. Mark Darr resigned, or you opt to make a charging decision yourself, I do hope that you will press forward and, if the facts and evidence warrant, hold Mr. Martin accountable for any violation of Arkansas Code Annotated § 25-16-702; Article 16, § 13, of the Arkansas Constitution; and/or Article 16, § 3, of the Arkansas Constitution.

If you have any questions in this matter, or if I may provide any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. D. Campbell', with a stylized, cursive script.

Matthew D. Campbell

CC: Melanie Martin