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May 18, 2017

TO: New York State Comptroller Thomas DiNapoli
ATT: Records Access Officer Jane Hall
New York State Senate
ATT: Records Access Officer/Secretary of the Senate Francis Patience

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: FOIL/RECORDS REQUEST: Senate “certifications” for three years of “lulu” payments (Legislative Law §5-a), as reported by New York Times reporter Jesse McKinley, &/or existing

Pursuant to Public Officers Law, Article VI, “Freedom of Information” (FOIL), and Senate Rule XV “Freedom of Information”, request is made for the documents identified as Senate “certifications” or being interpreted as such by New York Times reporter Jesse McKinley in his below three articles:

- I. Mr. McKinley’s May 11, 2017 New York Times article “*False Payroll Information Allows 3 State Senators to Collect Thousands*”, which includes the following:

“...information – certifying Senators Diane J. Savino, Jose R. Peralta and David J. Valesky as committee leaders...was included in emails sent over three years to the comptroller’s office from the Senate payroll office. The emails were obtained through a freedom of information law request on Thursday.

...

In at least three cases – in 2015, 2016 and March of this year – Senate payroll officials have sent certified lists identifying the three senators as leaders of their respective committees...

[In March], a member of the Senate payroll staff sent an email to the comptroller’s office with a ‘Senate certification’ of members’ owed stipends, and a request that checks be sent out in early April...” (underlying added).

II. Mr. McKinley's May 12, 2017 New York Times article "*4 G.O.P. Senators in New York Also Got False Titles That Carry Extra Pay*", which includes the following:

"Documents obtained through a Freedom of Information request show that Senator Thomas F. O'Mara of the Finger Lakes region and Senator Patrick M. Gallivan of the Buffalo area were listed as chairmen of the transportation and education committees in two emails sent to the comptroller in March. The men do not hold those positions, though they are vice chairmen of the committees.

The emails, labeled 'Senate Certifications,'...

...In addition, Senator Pamela Helming, a first-term lawmaker from Central New York, is identified in the Senate payroll documents as the chairwoman of the crime victims, crime and correction committee, which Mr. Gallivan actually leads...

And Senator Patty Ritchie was identified as the chairwoman of the health committee. That position belongs to Senator Kemp Hannon of Long Island.

The documents obtained from the comptroller's office this week also show that Senate payroll officials had falsely identified three Democratic senators who belong to the breakaway Independent Democratic Conference, which has helped Republicans maintain control over the chamber. The false titles, and accompanying requests for payments, were included in a series of emails from 2015 to March 2017.

In each case, the Democratic senators – Diane Savino of Staten Island, Jose R. Peralta of Queens and David J. Valesky of Syracuse – were identified and paid as chairmen of the Senate committees when they were actually second in command.

...

Candice Giove, a spokeswoman for the Independent Democratic Conference, said that Senator Jeffrey D. Klein, who represents parts of the Bronx and Westchester County and is the group's leader, was not aware nor had he authorized the certifications for Mr. Peralta, Ms. Savino and Mr. Valesky that had been sent by Senate staff.

...

Jennifer Freeman, a spokeswoman for the comptroller, Thomas P. DiNapoli, said...

‘When our office receives a payroll request that has been certified by the Senate, or any state entity, we make the payment...’ (underlining added).

III. Mr. McKinley’s May 14, 2017 New York Times article “*How Albany Justifies Paying Senators for Others’ Work*”, which includes the following:

“All told, Senate payroll certifications to the comptroller, as reported last week by the New York Times...” (underlining added).

For your convenience, copies of these three articles are enclosed.

In the event other Senate “certifications” of the three years of requested “lulu” payments exist, beyond what was furnished to Mr. McKinley, please furnish those “certifications”, as well.

Pursuant to Public Officers Law §89.3, your response/acknowledgment is required “within five business days” of your receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

A handwritten signature in blue ink, appearing to be 'Jesse McKinley', with a long horizontal flourish extending to the right.

Enclosures

cc: Jesse McKinley/New York Times

The New York Times <https://nyti.ms/2q7rp7W>

N.Y. / REGION

False Payroll Information Allows 3 State Senators to Collect Thousands

By JESSE MCKINLEY MAY 11, 2017

ALBANY — Staff members of the Republican-led Senate have repeatedly sent false information to the state comptroller's office that allowed tens of thousands of dollars in payments to three renegade Democratic senators who are allies of the Senate Republicans.

The information — certifying Senators Diane J. Savino, Jose R. Peralta and David J. Valesky as committee leaders, despite Republicans holding those roles — was included in emails sent over three years to the comptroller's office from the Senate payroll office. The emails were obtained through a freedom of information law request on Thursday.

Mr. Peralta of Queens, Ms. Savino of Staten Island, and Mr. Valesky of Syracuse are all second in command of Senate committees, and are all members of the Independent Democratic Conference, a breakaway group of eight Democrats who have partnered with Republicans to control that chamber for the last six years.

As a result of their arrangement with the Republicans, the conference has garnered perks like larger staffs and stipends for committee chairmanships, which are authorized by state Legislative Law 5-a. But that law makes no mention of stipends for Senate committee vice chairmen and vice chairwomen, like the three independent Democrats.

The Independent Democratic Conference has maintained such payments are allowed by a clause that allows payment for service in any "special capacity therein or directly connected therewith," though the law lays out exact dollar amounts payable to leaders in other positions.

In at least three cases — in 2015, 2016 and March of this year — Senate payroll officials have sent certified lists identifying the three senators as leaders of their respective committees. In 2015 and 2016, two documents identified Mr. Valesky as chairman of the Health Committee, requesting two payments totaling \$7,500. He received the stipends, though he was and remains the committee's vice chairman.

Earlier this year, Ms. Savino was made vice chairwoman of the Codes Committee by the independent Democrats' leader, Senator Jeffrey D. Klein, who represents parts of the Bronx and Westchester County. Mr. Peralta, who defected to the conference from the minority Democrats in January, was made vice chairman of the Energy and Telecommunications Committee on March 7.

Two weeks after that, a member of the Senate payroll staff sent an email to the comptroller's office with a "Senate certification" of members' owed stipends, and a request that checks be sent out in early April. A list that was attached identified Mr. Peralta as the chairman of the energy committee, and Ms. Savino as the Codes Committee chairwoman, asking for payments of \$9,375 to Mr. Peralta and \$13,500 to Ms. Savino.

Both amounts were paid in early April, as were smaller stipends in March. In total, Mr. Savino and Ms. Peralta received \$30,500 this year, before taxes, for positions they did not hold. The same holds true for Mr. Valesky, who received \$30,000 in gross pay for the stipends in 2015 and 2016.

The state comptroller's office declined to comment.

Committee chairmanships are mostly handed out by John J. Flanagan, the Long Island Republican who leads the Senate with Mr. Klein, the head of the independent Democrats. Mr. Klein has also named several of his members as committee leaders.

State law prohibits knowingly presenting false documents to any public official or agency, a charge technically known as "offering a false instrument." If there is intent to defraud, such an action may be considered a felony; otherwise it is a misdemeanor.

It is unclear who drafted the documents incorrectly stating the chairmanships, which are held by Republicans. Senator Joseph Griffo of Rome, N.Y., leads the energy committee; Kemp Hannon, of Long Island, leads the Health Committee; and Senator Andrew J. Lanza of Staten Island is in charge of the Codes Committee. Lawmakers can receive only one stipend and all three men receive higher stipends for Republican leadership positions.

Emails to the payroll official, David Natoli, who sent the information to the comptroller's office, were not returned.

Scott Reif, a spokesman for the Republican majority, said that records were submitted by Senate payroll. "We maintain that everything was done is what is allowed under the law," he said.

Candice Giove, a spokeswoman for the independent Democrats, said that "all allowances are paid out and certified by the state comptroller, in accordance with the law.

"Neither Independent Democratic Conference Leader Klein," Ms. Giove continued, "nor any other senator in his conference is involved in the filing of allowances, which is clearly spelled out in statute."

The payments to the three Democrats have offered a window into the Senate's de facto bonus system of stipends, known as "lulus." Almost every one of the 63 members of the Senate receives a stipend for their roles on committees, ranging from the leader of the Finance Committee (who earns \$34,000 extra annually) to lower-ranking members of groups concerned with issues like aging, elections and agriculture. Many of those stipends pay \$9,000 a year.

The rise of the Independent Democratic Conference and its partnership with the Republicans has been a continuing source of frustration for mainline Democrats — led by Senator Andrea Stewart-Cousins of Westchester County — who have been sidelined in a minority role despite having roughly three times as many members as Mr. Klein's group.

On Thursday, those traditional Democrats seemed eager to know more. "The more we learn about this," said Mike Murphy, a spokesman for the Senate Democratic Conference. "The more disturbing it gets."

Correction: May 11, 2017

An earlier version of this article misstated the area in which Senator Joseph Griffo resides. He lives in Rome, N.Y., not Long Island. Alain Delaqu erie contributed research.

A version of this article appears in print on May 12, 2017, on Page A26 of the New York edition with the headline: False Payroll Information Allows 3 Senators to Collect Stipends.

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N.Y. / REGION

4 G.O.P. Senators in New York Also Got False Titles That Carry Extra Pay

By JESSE MCKINLEY MAY 12, 2017

Four Republican state senators were falsely identified as leaders of Senate committees in documents sent to the state comptroller by Senate payroll staff in March, authorizing tens of thousands of dollars in stipends earmarked for other lawmakers.

The arrangement was identical to one that benefited three of their Democratic allies in the chamber, and was heavily criticized after The New York Times disclosed it this week.

Documents obtained through a Freedom of Information request show that Senator Thomas F. O'Mara of the Finger Lakes region and Senator Patrick M. Gallivan of the Buffalo area were listed as chairmen of the transportation and education committees in two emails sent to the comptroller in March. The men do not hold those positions, though they are vice chairmen of the committees.

The emails, labeled "Senate Certifications," requested total pretax payments of \$15,000 for Mr. O'Mara and \$18,000 for Mr. Gallivan. Stipends for such positions were paid in March and early April, according to the comptroller's office.

In addition, Senator Pamela Helming, a first-term lawmaker from Central New York, is identified in the Senate payroll documents as the chairwoman of the crime victims, crime and correction committee, which Mr. Gallivan actually leads. A representative for Ms. Helming denied that she had accepted any payment connected to the crime committee, of which she is the vice chairwoman.

And Senator Patty Ritchie was identified as the chairwoman of the health committee. That position belongs to Senator Kemp Hannon of Long Island.

Requests were made for Ms. Ritchie, who represents a district that borders Lake Ontario, to be paid \$15,000. Her actual title is deputy vice chairwoman of the committee in question; as with other vice-chair positions, it does not come with any explicit statutory basis for a stipend.

The addition of four Republicans to the list of three Democratic committee vice chairmen receiving questionable stipends has widened the latest controversy to engulf Albany, which has an outside reputation for corruption and has been buffeted in recent years by the convictions of two of its most powerful figures: Sheldon Silver, the former Assembly speaker, and Dean G. Skelos, the former Senate majority leader. Both were convicted on federal corruption charges in 2015.

Chairman of Senate committees are specifically entitled by law to extra pay, but vice chairmen are not. Mr. O'Mara, Mr. Gallivan and Ms. Ritchie all lead committees, but their positions pay less than those who lead the transportation, education and health chairmen receive.

The documents obtained from the comptroller's office this week also show that Senate payroll officials had falsely identified three Democratic senators who belong to the breakaway Independent Democratic Conference, which has helped Republicans maintain control over the chamber. The false titles, and accompanying requests for payments, were included in a series of emails from 2015 to March 2017.

In each case, the Democratic senators — Diane Savino of Staten Island, Jose R. Peralta of Queens and David J. Valesky of Syracuse — were identified and paid as chairmen of Senate committees when they were actually second in command.

The leaders and ranking members of most of the Senate's nearly three dozen committees receive extra payments, commonly known as lulus, from \$9,000 to \$34,000 a year.

By state law, legislators can receive only one such stipend; they typically take the largest one if they hold multiple leadership positions. The law says nothing that would explicitly allow committee chairmen to funnel their stipends to other lawmakers.

Representatives of the breakaway Democrats have argued that there is legal language that can be interpreted to allow extra payments to committee vice chairmen. How exactly the documents with the false information came to be repeatedly included in communications from the Senate staff to the comptroller's office remained a mystery on Friday. The Senate's Republican leader, John J. Flanagan of Long Island, steadfastly declined to answer how the titles and stipends were assigned.

Mr. Flanagan's response to a barrage of questions was restricted to eight words, delivered by Scott Reif, his spokesman.

"Everything was done in accordance with the law," he said.

On Friday, two government watchdog groups called for investigations into the payroll requests and stipend payments, which seemed to potentially violate state law related to knowingly offering false documents to government officials or agencies. If done with an intent to defraud, such actions can be felonies.

Susan Lerner, the executive director of one of the groups, Common Cause New York, said that the filing of fraudulent documents "represents an egregious misuse of public monies, and potentially a more serious legal violation, which must be investigated by law enforcement."

"This is not a clerical error to be blamed on staff, or punted to the comptroller," she said.

Mr. Reif declined to answer whether Mr. Flanagan knew of or had authorized the payroll requests, or if the Senate leader knew that they were incorrect. Mr. Reif also would not suggest who else might have been in charge of drafting or overseeing those requests.

Candice Giove, a spokeswoman for the Independent Democratic Conference, said that Senator Jeffrey D. Klein, who represents parts of the Bronx and Westchester County and is the group's leader, was not aware nor had he authorized the certifications for Mr. Peralta, Ms. Savino and Mr. Valesky that had been sent by the Senate staff. Ms. Giove added that Mr. Klein did not know that the requests had included incorrect information.

Calls seeking comment from Mr. Gallivan, Mr. O'Mara and Ms. Ritchie were not immediately returned.

Jennifer Freeman, a spokeswoman for the comptroller, Thomas P. DiNapoli, said that "the Senate determines who gets paid what stipend consistent with state law and the practices of the house."

"When our office receives a payroll request that has been certified by the Senate, or any state entity, we make the payment," she said, adding that "at this time, we have no basis to take back this money."

A version of this article appears in print on May 13, 2017, on Page A21 of the New York edition with the headline: 4 G.O.P. Senators Also Got False Titles That Carry Extra Pay.

The New York Times <https://nyti.ms/2rfW3cq>

N.Y. / REGION

How Albany Justifies Paying Senators for Others' Work

By JESSE McKINLEY MAY 14, 2017

ALBANY — In late February 2016, the Republican leader of the New York State Senate, John J. Flanagan, sent a letter to the chamber's secretary outlining a series of stipends to various members — de facto bonuses totaling hundreds of thousands of taxpayer dollars.

In that letter, Mr. Flanagan said the stipend for the chairman of the Health Committee should be paid to Senator David J. Valesky, an upstate member of the Independent Democratic Conference, an eight-member breakaway group whose alliance with the Republicans has kept that party in power in the Senate.

There was just one catch: Mr. Valesky was not the chairman of the Health Committee.

Instead, he was the vice chairman; the actual chairman of that committee, Senator Kemp Hannon, a Republican from Long Island, was awarded a richer bonus for a different Senate leadership position, and by law, lawmakers can receive only one such stipend, commonly known as a lulu.

Two weeks after Mr. Flanagan's letter, Mr. Valesky was identified as "chairman of senate health committee" in documents sent to the state comptroller by the Senate payroll staff, a designation that was false, and Mr. Valesky was later paid the \$15,000 stipend. On Saturday, a Senate lawyer said those documents were simply "accounting papers."

State law does not explicitly allow for a Senate committee vice chairman to be paid a stipend or for a chairman to pass along the stipend to another member. Moreover, presenting false documents to a public official with the intent to defraud the government can be a felony, a crime known as filing a false instrument.

Over the weekend, however, Senate lawyers argued that the Senate's actions were legal, constitutionally defensible and proper as "a classic example of internal administrative prerogatives."

As part of its case, the Senate presented documentation that Mr. Flanagan was not the first Senate leader to direct chairman payments to vice chairmen; in March 2015, his predecessor, Dean G. Skelos, another Long Island Republican, directed that Mr. Valesky receive a stipend.

In a four-page memo released late Saturday night, the Senate's top lawyer, David L. Lewis, argued that the documents sent to the comptroller with the false information were "accounting papers" and that the titles were used as a way to ensure payment, not to lie about the position they held.

"The practice has been to assign to the member the statutory title to identify the amount to be paid," Mr. Lewis wrote, "and not to assert that the member holds the specific office."

That process — in which a vice chairman was presented as the chairman so as to be eligible for the stipend — was repeated many times to pay tens of thousands of dollars to other political allies of Mr. Flanagan, including two other members of the breakaway Democratic group and at least three upstate Republican senators.

All told, Senate payroll certifications to the comptroller, as reported last week by The New York Times, resulted in authorization for payments to at least six senators: Mr. Valesky, of Syracuse; Diane Savino, Democrat of Staten Island; Jose Peralta, Democrat of Queens; Thomas F. O'Mara, Republican of the Finger Lakes; Patrick M. Gallivan, a Republican who represents an area east of Buffalo; and Patty Ritchie, a Republican who represents an area north of Syracuse.

In emails to the comptroller, all were identified as chairmen or chairwomen of committees they did not lead. A seventh senator, Senator Pamela Helming, a first-term lawmaker from Central New York, was also misidentified in the Senate payroll documents as a chairwoman, but her office said she did not accept the payment connected to that designation.

The practice has outraged some good-government groups, which have called for investigations by law enforcement, and emboldened political opponents of Senate Republicans and the Independent Democratic Conference, sensing a weakness in the ruling coalition.

“The Republican ‘memo’ is an obvious after-the-fact effort to cover up for an outrageous misuse of taxpayer funds,” said Mike Murphy, a spokesman for the Senate Democratic Conference. “The diversion of legislative stipends to those not entitled to them is illegal, as are the false filings provided to the comptroller.”

As the Independent Democratic Conference has argued, Mr. Lewis, the lawyer, said he believed that stipends paid to vice chairmen or vice chairwomen were allowed by a clause in legislative law that refers to senators serving in special roles or “directly in connection therewith.” But that clause continues to say that those special roles “shall be paid an allowance in accordance with the following schedule,” and it then specifically details payments for chairmen and ranking members of committees. It makes no mention of vice chairmen of Senate committees.

Still, Mr. Lewis wrote, the law does not limit “what offices may be created

by the Senate” and “does not specifically require that the Senator hold that office but only that he or she acts directly in connection therewith.”

Mr. Lewis also noted “years of documentation that have followed the same practice” of passing along stipends, including Mr. Skelos’s letter ordering Mr. Valesky’s stipend.

It was dated March 2015, nine months before Mr. Skelos was convicted on separate federal corruption charges.

A version of this article appears in print on May 15, 2017, on Page A17 of the New York edition with the headline: Passing Along Stipends Was Legal, Senate Lawyers Say.

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