

## Investigations of Improper Activities by State Employees:

Misuse of State Time and Resources, Improper Gifts, Inadequate Administrative Controls, and Other Violations of State Law

January 2009 Through December 2009

June 2010 Report I2010-1



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June 29, 2010

Investigative Report I2010-1

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the State Auditor's Office presents its investigative report summarizing investigations of improper governmental activity completed from January 2009 through December 2009.

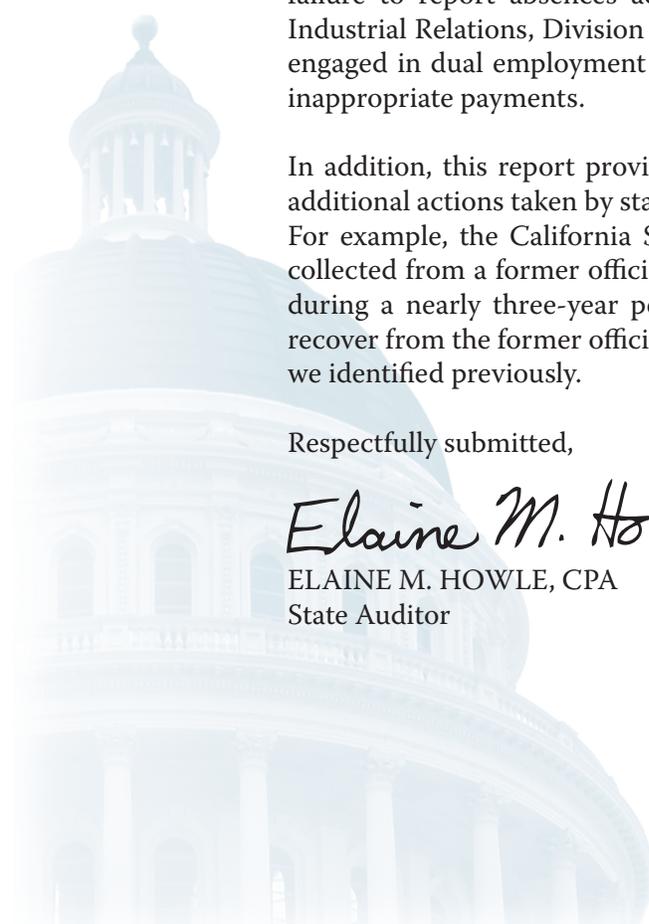
This report details 11 substantiated allegations in several state departments. Through our investigative methods, we found misuse of state time and resources, improper gifts, and failure to report absences accurately. For example, an inspector with the Department of Industrial Relations, Division of Occupational Safety and Health, misused state resources and engaged in dual employment during her state work hours, for which she received \$70,105 in inappropriate payments.

In addition, this report provides an update on previously reported issues and describes any additional actions taken by state departments to correct the problems we previously identified. For example, the California State University, Office of the Chancellor (Chancellor's Office), collected from a former official \$1,903 in duplicate payments and overpayments made to him during a nearly three-year period. However, the Chancellor's Office has made no effort to recover from the former official the other improper expense reimbursements totaling \$150,607 we identified previously.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor



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## Summary

### Results in Brief

The California Whistleblower Protection Act (Whistleblower Act) empowers the Bureau of State Audits (bureau) to investigate and report on improper governmental activities by agencies and employees of the State. Under the Whistleblower Act, an *improper governmental activity* is any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency.

Between January 1, 2009, and December 31, 2009, the bureau received 4,990 allegations of improper governmental activities, which required it to determine whether the allegations involved improprieties by state agencies or employees. In response to the allegations, the bureau opened 882 cases, and it reviewed or continued to work on 122 cases it opened previously. For these cases, the bureau completed a preliminary review process and determined the cases that lacked sufficient information for an investigation. The bureau also referred cases to other state agencies for action and—either independently or with assistance from other state agencies—conducted investigations of cases.

This report details the results of 11 particularly significant investigations completed by the bureau or undertaken jointly by the bureau and other state agencies between January 1, 2009, and December 31, 2009. This report also outlines the actions taken by state agencies in response to the investigations into improper governmental activities described here and in previous reports. The following paragraphs briefly summarize these investigations and the state agencies' actions, which individual chapters discuss more fully. For more information about the bureau's investigations program, please refer to the Appendix.

### Department of Industrial Relations

An inspector with the Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA), misused state resources and improperly engaged in dual employment during her state work hours, during which she received a total of \$70,105 in inappropriate payments. In addition, Cal/OSHA management failed to implement controls that would have prevented the improper acts.

### Investigative Highlights . . .

*State employees and agencies engaged in improper activities, including the following:*

- » *Participating in other employment during state work hours and misusing state resources at a total cost to the State of \$70,105.*
- » *Misusing the time of two psychiatric technicians, resulting in a loss to the State of \$110,797.*
- » *Improperly allowing a business owner to use state university facilities, equipment, and supplies costing \$20,790.*
- » *Claiming \$392 in travel expenses not incurred and violating state law by accepting gifts in the form of substantial hotel discounts.*
- » *Failing to report 82 hours of leave taken, for which the State paid \$2,605.*
- » *Receiving at least \$1,840 in gifts from a vendor, thus creating the appearance that the gifts were rewards for doing business.*
- » *Failing to account accurately for absences that cost \$1,206.*
- » *Improperly exempting an estimated 3,000 after-school education programs from child care licensing requirements.*

**Department of Corrections and Rehabilitation**

A supervisor at Heman G. Stark Correctional Facility misused the time of two psychiatric technicians by assigning them to perform the tasks of a lower-paid classification. This misuse of the employees' time resulted in a loss to the State of \$110,797.

**California State University, Northridge**

For almost five years, an employee of California State University, Northridge (Northridge), improperly allowed a business owner and his three associates to use a university laboratory facility, equipment, and supplies without compensating Northridge. This inappropriate activity represented a loss of compensation to Northridge that totaled \$20,790.

**Department of Consumer Affairs, California Architects Board**

In 2008 an employee with the California Architects Board fabricated receipts and claimed lodging and meal expenses she did not incur; thus, she received improper reimbursements totaling \$392. In addition, she violated state law when she accepted gifts in the form of substantially discounted room rates from a hotel she frequently used for state business.

**Department of Justice**

A Department of Justice (Justice) employee failed to report 82 hours of leave taken from February 2007 through March 2008. Justice did not charge the employee's leave balances for her absences, and it paid her \$2,605 for time she did not work. In addition, the employee's manager did not ensure that the employee reported her time accurately.

**Department of Water Resources**

A supervisor in a Department of Water Resources field division office (division office) received at least \$1,840 in gifts from a vendor with which he contracted during the course of his duties as a state employee. The circumstances indicated that the gifts were a reward for his doing business with the vendor; thus, the supervisor engaged in an activity incompatible with his duties or responsibilities as a state employee. Moreover, the division office lacked sufficient administrative controls to ensure that an appropriate separation

of duties existed to ensure the integrity of its purchasing process. Consequently, the supervisor was able to enter into contracts with the vendor without complying with state contracting rules.

#### **Department of Food and Agriculture, 32<sup>nd</sup> District Agricultural Association**

An employee of the Department of Food and Agriculture's 32<sup>nd</sup> District Agricultural Association, also known as the OC Fair & Event Center, failed to account accurately for 53 hours of absences, for which he was paid \$1,206. In addition, his supervisor and other staff failed to adequately review the employee's time sheets.

#### **Department of Social Services**

The Department of Social Services improperly exempted after-school education programs called *heritage schools* from child care licensing requirements. Consequently, an estimated 3,000 of these schools in the State may be putting children at risk by not following the same safety procedures as licensed child care facilities.

#### **California State University, Channel Islands**

An employee with the California State University, Channel Islands, engaged in incompatible activities and failed to disclose gifts he received from contractors. These gifts have an estimated value of \$220 in 2007 and \$300 in 2008.

#### **California Highway Patrol**

An office supervisor with the California Highway Patrol operated a personal business during state time and misused state equipment.

#### **Department of Motor Vehicles**

The Department of Motor Vehicles failed to follow personnel rules when it allowed an employee to perform duties outside his job classification. As a result, the employee did not perform responsibilities assigned to his position.

### Update on Previously Reported Issues

In addition to conveying our findings about investigations completed during 2009, this report summarizes the status of issues described in our previous reports. Chapter 12 details the actions taken by the respective agencies for 16 previously reported issues. The following paragraphs briefly summarize a few of these prior issues and the status of corrective action taken by the agencies.

In September 2005 we reported that the Department of Corrections and Rehabilitation (Corrections) did not track the total number of hours available in a release time bank (time bank) composed of leave hours donated by members of the California Correctional Peace Officers Association (union) so that union representatives could cover union business. Our investigation revealed 10,980 hours that three union representatives used from May 2003 through April 2005 but that Corrections failed to charge against the time bank, costing the State \$395,256. Following our report, Corrections still did not attempt to obtain reimbursements for the time that the three employees spent on union activities in May and June 2005, resulting in an additional cost to the State of \$39,151. In fact, Corrections informed us later that it was unable to reconstruct an accurate leave history for any period before July 2005 for the three union representatives. Consequently, Corrections will not seek reimbursements that total \$434,407. Instead, Corrections submitted to the union monthly invoices that total \$1,037,698 for union work performed by the employees from July 2005 through December 2009.<sup>1</sup> As of June 2010, Corrections had only received a payment of \$16,530 on any of these invoices. Thus, the unrecovered reimbursements for the three employees' time for May 2003 through December 2009 cost the State a total of \$1,455,575.<sup>2</sup>

In October 2008 we reported that Corrections improperly granted nine office technicians increased pay to supervise inmates at its R. J. Donovan Correctional Facility. The office technicians were not entitled to receive the increase because they did not supervise the required number of inmates or because they did not supervise inmates who worked the minimum number of hours required for the employees to receive the increased pay. Therefore, Corrections paid these technicians \$16,530 more than they should have received. Unfortunately, Corrections informed us later that it was unable to recoup \$1,900 of the overpayments we identified because the overpayments occurred more than three years before it initiated recovery. In addition, Corrections failed to collect \$3,230 for some improper payments for which the State was entitled to receive

<sup>1</sup> One of the three employees returned to full-time work at a correctional facility in January 2008.

<sup>2</sup> In January 2010 the State formally demanded that the union reimburse it for the compensation paid to these and other employees who performed full-time union work. In June 2010 Corrections stated that it had initiated litigation against the union.

repayment. Further, one of the nine technicians later provided information to show that she met the criteria for one month. Thus, the amount of recoverable overpayments has been reduced to \$11,210. However, in May 2009 Corrections suspended its overpayment recovery efforts after employees filed grievances and while it awaited a ruling from the Department of Personnel Administration (Personnel Administration) about increased pay. Finally, Corrections reported in May 2010 that because it had not established a department-wide procedure when it made the improper payments, it would not seek to recover any further overpayments to the office technicians. Consequently, it collected only \$2,090 of the \$11,210 in improper payments made to the office technicians.

Concerned that a pattern of overpayments for inmate supervision existed at Corrections, we selected six correctional facilities for further investigation. In November 2009 we reported that, as in the case of R. J. Donovan Correctional Facility, Corrections had overpaid employees for inmate supervision. At five of the six other correctional facilities we investigated, Corrections overpaid 23 employees for their inmate supervision from March 2008 through February 2009. These improper payments totaled \$34,512. Using the sample of inmate supervision payments with which we identified these improper payments, we estimated that Corrections may have improperly paid as much as \$588,376 to its employees statewide during the 12-month period we reviewed. Following the release of our report, Corrections suspended its overpayment recovery efforts, and Personnel Administration issued its memorandum. In addition, the task force created by Corrections began to review these issues. As of May 2010, Corrections reported that it had decided not to pursue any collection efforts against the employees, asserting that it had not established a formal operating procedure and that it lacked documentation when it made the improper payments.

Further, we reported in April 2009 that a Justice employee failed to properly account for her overtime worked and leave taken from June through August 2007, and we also noted that she claimed travel expenses she did not incur during the same period. In addition, the employee's manager did not ensure that the employee accurately reported her time and travel expenses. Justice had paid the employee \$648 in unearned compensation and \$497 for travel costs she did not incur. After we publicly reported our findings, Justice informed us that it issued memoranda to the employee and her manager about their failure to follow time-reporting and travel claim policies and procedures. It also indicated that the employee revised her time sheets to properly account for all of her overtime worked and absences taken. Finally, as of November 2009, the employee reimbursed Justice \$497 for the overpayment of travel expenses.

In a December 2009 report, we disclosed that a former official at California State University (university), Office of the Chancellor (Chancellor's Office), received \$152,441 in improper expense reimbursements—including \$1,834 in duplicate payments and overpayments—over the 37 months from July 2005 through July 2008. Since we issued the report, the university collected \$1,903 in duplicate payments and overpayments from the former official, which represented \$1,834 that we had identified and \$69 that the university had identified later. In response to our recommendation that it establish limits on lodging expenses, the Chancellor's Office notified us that it took one action. It informed its vice chancellors that the chancellor must approve all international travel. However, the Chancellor's Office has disputed our other recommendations—and indicated to us that no further action is necessary—concerning the termination of any of its informal agreements that allow employees to work at locations other than their headquarters, clarifying the applicability and defining the expense limits for business meals, and actually establishing limits on lodging costs. Thus, other than the \$1,903 the Chancellor's Office recovered, it has made no effort to recoup from the former official the remaining improper expense reimbursements.

Table 1 displays the issues and financial impact of the cases in this report, the month in which we initially reported on the cases, and the status of any corrective actions taken.

**Table 1**  
The Issues, Financial Impact, and Status of Corrective Actions for Cases Described in This Report

CHAPTER	DEPARTMENT	DATE OF OUR INITIAL REPORT	ISSUE	COST TO THE STATE AS OF DECEMBER 31, 2009	STATUS OF CORRECTIVE ACTIONS			
					FULLY CORRECTED	PARTIALLY CORRECTED	PENDING	NO ACTION TAKEN
<b>New Cases</b>								
1	Department of Industrial Relations	June 2010	Misuse of state time and resources, incompatible activities, inadequate administrative controls	\$70,105		●		
2	Department of Corrections and Rehabilitation	June 2010	Misuse of state employees' time, waste of state funds	110,797			●	
3	California State University, Northridge	June 2010	Misuse of state property, incompatible activities	20,790	●			
4	Department of Consumer Affairs, California Architects Board	June 2010	Fictitious claim, improper gifts, incompatible activities	392		●		
5	Department of Justice	June 2010	Failure to report absences accurately, inadequate administrative controls	2,605		●		

CHAPTER	DEPARTMENT	DATE OF OUR INITIAL REPORT	ISSUE	COST TO THE STATE AS OF DECEMBER 31, 2009	STATUS OF CORRECTIVE ACTIONS			
					FULLY CORRECTED	PARTIALLY CORRECTED	PENDING	NO ACTION TAKEN
6	Department of Water Resources	June 2010	Improper gifts	1,840	●	●		
7	Department of Food and Agriculture, 32 <sup>nd</sup> District Agricultural Association	June 2010	Failure to account accurately for absences, inadequate administrative controls	1,206	●			
8	Department of Social Services	June 2010	Improper child care licensing exemptions	NA	●			
9	California State University, Channel Islands	June 2010	Failure to disclose gifts, incompatible activities	520	●			
10	California Highway Patrol	June 2010	Misuse of state resources, incompatible activities	NA	●			
11	Department of Motor Vehicles	June 2010	Failure to follow personnel rules	NA		●		
<b>Previously Reported Cases</b>								
12	Department of Corrections and Rehabilitation	September 2005	Failure to account for employees' use of union leave	\$1,455,575		●		
12	Multiple state departments*	March 2006	Inappropriate gifts of state resources, mismanagement	8,313,600	●			
12	Department of Parks and Recreation	March 2007	Misuse of state resources, failure to perform duties adequately	NA		●		
12	California State Polytechnic University, Pomona	September 2007	Viewing of inappropriate Internet sites, misuse of state equipment	NA	●			
12	Department of Consumer Affairs, Contractors State License Board	October 2008	Misuse of state resources, dishonesty	1,804	●			
12	Department of Corrections and Rehabilitation	October 2008	Improper payments for inmate supervision	16,530		●		
12	California Prison Health Care Services	January 2009	Improper contracting decisions, poor internal controls	26,700,000	●			
12	Department of Corrections and Rehabilitation and Department of General Services	April 2009	Waste of state funds	580,000	●			
12	Department of Fish and Game, Office of Spill Prevention and Response	April 2009	Improper travel expenses	71,747		●		
12	State Compensation Insurance Fund	April 2009	Time and attendance abuse, lax supervision	8,314	●			
12	Department of Social Services	April 2009	Improper hiring	6,444	●			
12	Department of Parks and Recreation	April 2009	Failure to solicit competitive price quotes	1,253	●			
12	Department of Justice	April 2009	Failure to report time worked, absences, and travel expenses accurately; management's failure to ensure proper time and travel expense reporting	1,145	●			

continued on next page...

CHAPTER	DEPARTMENT	DATE OF OUR INITIAL REPORT	ISSUE	COST TO THE STATE AS OF DECEMBER 31, 2009	STATUS OF CORRECTIVE ACTIONS			
					FULLY CORRECTED	PARTIALLY CORRECTED	PENDING	NO ACTION TAKEN
12	Department of Finance	April 2009	Improper saving of a vacant position	NA	●			
12	Department of Corrections and Rehabilitation	November 2009	Improper payments for inmate supervision	34,512		●		
12	California State University, Office of the Chancellor	December 2009	Improper and wasteful expenditures	152,441		●		

Source: Bureau of State Audits.

NA = Not applicable because the situation did not involve a dollar amount or because the findings did not allow us to quantify the financial impact.

\* This case focused on the Department of Fish and Game but also involved the California Highway Patrol, the California Conservation Corps, the Department of Corrections and Rehabilitation, the Department of Developmental Services, the Department of Food and Agriculture, the Department of Forestry and Fire Protection, the Department of Mental Health, the Department of Parks and Recreation, the Department of Personnel Administration, the Department of Transportation, the Department of Veterans Affairs, and the Santa Monica Mountains Conservancy.

## Chapter 1

### DEPARTMENT OF INDUSTRIAL RELATIONS: MISUSE OF STATE TIME AND RESOURCES, INCOMPATIBLE ACTIVITIES, INADEQUATE ADMINISTRATIVE CONTROLS

Case I2008-1066

#### Results in Brief

For more than six years, an inspector for the Department of Industrial Relations (Industrial Relations), Division of Occupational Safety and Health (Cal/OSHA), performed duties related to her secondary employment during her Cal/OSHA work hours. In doing so, the inspector misused state time and resources and received improper payments totaling \$70,105. In addition, our review of the inspector's misconduct revealed that Cal/OSHA management did not properly implement controls that could have prevented the improper acts.

#### Background

Industrial Relations was established to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California. Through various programs, Cal/OSHA protects workers and the public from safety hazards, and it provides consultative assistance to employers. To accomplish its mission, Cal/OSHA often relies on inspectors to monitor employers' and workers' compliance with safety laws and regulations.

Like all other state employees, Industrial Relations employees must comply with various laws and regulations related to the proper use of state resources. Specifically, Government Code section 8314 prohibits state employees from using state resources, including state-compensated time and state vehicles, for purposes unrelated to state employment. In addition, section 19990 of the Government Code prohibits state employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state employees. This prohibition includes using state time, facilities, equipment, or supplies for private gain or advantage. To ensure proper use of state vehicles, California Code of Regulations, title 2, sections 599.802 and 599.803, specify that using a state-owned vehicle for matters unrelated to state business constitutes misuse of the vehicle and that employees will be liable to the State for the actual costs attributable to the misuse.

Further, Industrial Relations management must comply with other statutes and regulations that pertain to proper management practices. Specifically, section 13401 of the Government Code declares that all levels of management at a state agency must be involved in assessing and strengthening the agency's administrative controls to minimize fraud, errors, abuse, and waste of government funds. Further supporting proper management practices, California Code of Regulations, title 2, section 599.665, requires state agencies to keep complete, accurate time and attendance records for their employees.

In addition to these laws and regulations, a labor agreement between the State and the collective bargaining unit (Unit 9) of the Professional Engineers in California Government governs the terms of employment for Industrial Relations inspectors. Under the labor agreement, inspectors are reimbursed for actual, necessary, and appropriate business expenses and travel expenses incurred 50 miles or more from home and headquarters, in accordance with existing rules set forth by the Department of Personnel Administration. The maximum reimbursement amounts for breakfast, lunch, and dinner are \$6, \$10, and \$18, respectively.

When we received information that a Cal/OSHA inspector misused state time and resources while performing duties related to her secondary employment, we initiated an investigation.

### **Facts and Analysis**

Our investigation revealed that an inspector for Cal/OSHA used state time and equipment to teach safety training courses for a state university and to give presentations for a professional association during her Cal/OSHA work hours. The inspector began working for Cal/OSHA in 2002. At the time, she had been working for several years as an instructor for a state university. With the knowledge of Cal/OSHA management, she continued to teach the training courses for the state university during her regular Cal/OSHA work hours. Apparently without the knowledge of Cal/OSHA management, the inspector also gave safety presentations at conferences for a professional association during her Cal/OSHA work hours. From August 2002 through October 2008, the inspector received nearly \$264,000 from the state university and the professional association for teaching the courses and giving presentations.

When teaching at the state university and working for the professional association, the inspector did not always charge her leave balances, and she sometimes used a state vehicle assigned to her by Industrial Relations. Specifically, from September 2002

through September 2008, she failed to charge 1,810 hours of leave valued at \$67,716. Furthermore, we estimated the cost of the inspector's misuse of the state vehicle at \$861, and we determined that she also improperly received \$268 from the state university for private vehicle mileage even though she had driven her state-assigned vehicle to travel to the course locations.

In addition to paying the inspector while she was misusing state time and equipment, Industrial Relations reimbursed the inspector for various meals that were not eligible for reimbursement and for which she did not incur any legitimate business expenses. During her employment with Cal/OSHA, the inspector lived in San Diego; however, she informed us that her Cal/OSHA headquarters was in the Los Angeles area. In 2006 and 2007 the inspector received \$1,260 in reimbursements for 108 meals when she traveled to and from the Los Angeles area for meetings and other work-related tasks. However, these expenses were not eligible for reimbursement because the inspector's travel to and from her headquarters was a commute rather than a travel assignment. Table 2 lists the ways in which the inspector misused state resources and the improper payments she received from the State.

**Table 2**  
**The California Division of Occupational Safety and Health Inspector's Misuse of State Resources and the Improper Payments She Received**

TYPE OF MISUSE OR IMPROPER PAYMENT	COST TO THE STATE
Failure to charge leave balances	\$67,716
Improper meal reimbursement	1,260
Misuse of state vehicle	861
Improper mileage reimbursement	268
<b>Total</b>	<b>\$70,105</b>

Sources: The Bureau of State Audits' analysis of the Department of Industrial Relations' time sheets, travel expense claims, and vehicle mileage logs; state university teaching schedules, teaching agreements, and travel expense vouchers; State Controller's Office payment records; and the inspector's statement.

Cal/OSHA management allowed the improper acts to occur because it did not implement or follow internal controls that would have helped prevent the inspector's improper acts. Further, the inspector's manager gave incorrect instructions regarding meal reimbursements when he instructed the inspectors he supervised to claim the maximum meal allowances regardless of how much they spent.

### The Inspector's Use of State Time and Equipment to Teach the Training Courses and to Give Presentations Was Improper

The inspector improperly used 1,810 state-compensated work hours at a cost of \$67,716 to teach the training courses for the state university and to give presentations for the professional association. In addition, she misused a state vehicle on numerous occasions to travel to the course locations. Thus, the inspector violated sections 8314 and 19990 of the Government Code. These statutes specify that state employee use of public resources, including state time and vehicles, for private gain or for an outside endeavor not related to state business is unlawful and an incompatible activity. Table 3 shows a year-by-year breakdown of the inspector's leave hours not charged—and the associated costs—when she taught safety training for the state university.

**Table 3**  
 Leave Hours That the Inspector Failed to Charge and the Related Costs to the State

YEAR	LEAVE HOURS NOT CHARGED	COST
2002	116	\$3,769
2003	384	12,580
2004	376	13,372
2005	159	5,508
2006	190	7,075
2007	265	10,779
2008	320	14,633
<b>Totals</b>	<b>1,810</b>	<b>\$67,716</b>

Sources: The Bureau of State Audits' analysis of the Department of Industrial Relations' time sheets, university teaching schedules and agreements, State Controller's Office payment records, and the inspector's statement.

In addition, the employee misused the state vehicle assigned to her by Industrial Relations by driving it to and from the training courses. When we interviewed the inspector, she claimed that she used a state vehicle to travel to the training courses she taught for the university on about five occasions over a six-year period. The inspector also stated that she used it only when she attended to her Cal/OSHA duties before, during, or after the training courses.

However, when we compared the inspector's vehicle logs to the dates when she taught training courses for the university, we found that over just a three-year period the inspector drove the state vehicle assigned to her on 21 days when she taught training courses. Using the miles driven on these 21 occasions, we estimated the cost of the inspector's misuse of the state vehicle at \$861. Moreover, on

three of the 21 occasions, the state university also reimbursed the inspector \$268 for private vehicle mileage even though she drove her state-assigned vehicle. Thus, by using the state vehicle to travel to and from the state university, the inspector misused a public resource at an estimated cost of \$861 and she received \$268 for expenses she did not incur and was not entitled to receive.

### **The Inspector Claimed Reimbursements for Various Meals That Were Not Eligible for Reimbursement and for Which She Did Not Incur Any Legitimate Business Expenses**

Our investigation determined that Industrial Relations reimbursed the inspector \$1,260 for 108 meals that violated the Unit 9 bargaining agreement. The inspector's travel between San Diego and the Los Angeles area, which she indicated was her Cal/OSHA headquarters, represented a commute and not a formal travel assignment under the terms of the collective bargaining unit agreement. Thus, Industrial Relations' reimbursement for meals during the travel time was improper, and the inspector was not entitled to receive the funds.

The inspector claimed the 108 meals on 57 days from February 2006 through August 2007. Even though her travel from her San Diego residence to her Los Angeles area headquarters was a commute—making travel expenses not allowable under the Unit 9 bargaining agreement—the inspector's manager approved her claims. During our investigation, the inspector's manager acknowledged that no other inspectors under his supervision ever submitted such claims for meal reimbursement.

Further, the inspector acknowledged that she frequently did not eat *any* meals during her commutes from San Diego to the Los Angeles area, yet she still claimed the maximum meal reimbursements. When we interviewed the inspector, she told us that she had not wanted to claim the meals. In fact, she contended that her manager instructed her to claim the meals. In addition, the inspector told us that when she was on travel assignments, she claimed the maximum meal allowance—regardless of how much she actually spent on meals—to comply with her manager's instructions. The inspector's manager confirmed that he instructed his subordinates to claim meal allowances as established by the bargaining agreement when on travel assignments regardless of the amount they actually spent on meals. However, the manager stated that he did not instruct the inspector to claim the meals when she commuted to her Cal/OSHA headquarters. Nevertheless, the inspector violated the Unit 9 bargaining agreement by claiming reimbursement for expenses she did not incur for legitimate business purposes and to which she was not entitled.

*Even though she frequently did not eat any meals during her commutes from San Diego to Los Angeles, an inspector from Industrial Relations claimed the maximum meal reimbursements for 108 meals on 57 days from February 2006 through August 2007.*

### **Cal/OSHA Management Failed to Implement Adequate Controls That May Have Prevented the Inspector's Improper Acts**

Management at Cal/OSHA allowed the inspector significant latitude and discretion in accounting for her work hours and did not have sufficient controls in place to help prevent the inspector's improper acts. Thus, management violated section 13401 of the Government Code, which declares that all levels of management in state agencies must be involved in assessing and strengthening the systems of administrative controls to minimize fraud, errors, abuse, and waste of government funds.

The inspector's manager informed us that through an informal and undocumented agreement, two former high-level Cal/OSHA officials allowed the inspector to work a flexible schedule from August 2002 through February 2005; this schedule allowed the inspector to work whenever she wanted and to keep track of her own hours. According to the manager, when Cal/OSHA first hired the inspector, one of the former officials who agreed to the inspector's flexible work schedule told the manager that he did not have to sign her time sheets if he did not feel comfortable doing so because of the inspector's unusual work schedule. Our review of the inspector's time sheets found that the former official signed them for the first two months of her employment at Cal/OSHA, and the manager assumed the responsibility for signing her time sheets thereafter. However, because Cal/OSHA management did not require the inspector to provide a day-by-day accounting of her work hours, neither the former official nor the manager had any assurance that the time sheets they approved were accurate.

*The inspector was allowed to work a flexible schedule, yet neither a former official nor the manager had any assurance that the time sheets they approved were accurate.*

By allowing the inspector to work whenever she wanted and to keep track of her own hours, Cal/OSHA management failed to meet the requirements imposed by the California Code of Regulations, title 2, section 599.665, which mandates that all state agencies maintain complete, accurate time and attendance records for state employees. Starting in February 2005 the manager required the inspector to account for all absences during her regular work hours because the inspector had productivity problems. However, the inspector continued to teach the training courses during her regular work hours without consistently charging her leave balances.

In our interview with the manager, he stated that due to the nature of the Cal/OSHA inspectors' job duties, he is unable to supervise them directly at all times. Nevertheless, he claimed to use

two controls—the monitoring of productivity<sup>3</sup> and the review of daily reports—to ensure that an inspector was working the appropriate number of hours.

The manager indicated that the inspector exhibited productivity problems as early as March 2004; however, he addressed the productivity issues only minimally with the inspector during her regular performance reviews. He did not formally counsel the inspector or take any other corrective action related to her productivity problems during the six years he supervised her. Further, the manager allowed her to work an alternate work schedule—four 10-hour days each week for nearly four years—despite being advised by a Cal/OSHA official that his responsibility was to monitor the inspector’s performance and to cancel the alternate schedule if she did not meet production goals. Because the manager did not adequately address the inspector’s performance issues or discontinue her alternate work schedule, the inspector’s improper behavior extended for several years.<sup>4</sup>

In addition, the manager’s use of daily reports was intended to track all the inspectors’ activities and to help identify days on which the inspectors should charge their leave balances. Even though the manager was aware of the inspector’s productivity problems, he told us that he did not reconcile the daily reports with the inspector’s time sheets to ensure that she charged her leave balances on days when she taught for the state university. Our review of these Cal/OSHA daily reports from April 2005 through December 2008 identified 45 instances when the reports indicated that the inspector should have charged her leave balances because she was teaching for the state university. However, when the inspector completed her time sheets she did not charge her leave balances accurately.

After our interview, the manager claimed that a staff member always reconciled the daily reports to the time sheets before he approved the time sheets. However, we found a large number of exceptions on the inspector’s time sheets indicating that the reconciliation process was either inadequate or had not occurred. Because the manager did not verify that staff adequately reconciled the daily reports to the inspector’s time sheets, he failed to ensure that the inspector correctly charged her leave balances when she taught for the state university.

***When the inspector completed her time sheets she did not charge her leave balances accurately and the manager did not ensure that the inspector correctly charged her leave balances when she taught for the state university.***

<sup>3</sup> The manager used an activity report to monitor productivity. This report identifies inspectors’ activities, including the numbers of inspections performed and citations issued.

<sup>4</sup> When we interviewed the manager in 2009, he stated that he planned to discontinue the inspector’s alternate work schedule.

### Recommendations

To address the improper acts identified and to prevent similar improper acts from occurring, Industrial Relations should do the following:

- Take appropriate corrective action against the Cal/OSHA inspector for her improper acts and against her manager for his failure to adequately supervise the inspector.
- Evaluate current controls designed to ensure that inspectors work the required number of hours and implement changes as necessary to ensure that time and attendance abuse does not recur.
- Establish controls to ensure that it does not allow employees to work schedules in which they determine their own hours and in which they track absences and make up hours informally.

### Agency Response

In May 2010 Industrial Relations reported that it had initiated and nearly completed its own investigation after learning of the complaint. It also informed us that, shortly after we interviewed the inspector and while still under investigation, she resigned from state service. In addition, Industrial Relations stated that it was reviewing its options for obtaining reimbursement from the inspector. It further indicated that it was still deciding the appropriate action to take against any individuals involved in the supervision or management of the inspector.

To ensure that similar conduct does not recur, Industrial Relations informed us that it was planning to retrain Cal/OSHA supervisors to ensure they understand and comply with the policies and rules regarding accurate reporting of time and attendance. In addition, Industrial Relations stated that it had initiated a comprehensive survey to determine if the improper conduct was an aberration or more prevalent among its employees. Upon completion of the survey, Industrial Relations indicated that it will review its policies to determine whether a clarification is necessary regarding outside training and presentations and stated that it will conduct training, if necessary.

## Chapter 2

### DEPARTMENT OF CORRECTIONS AND REHABILITATION: MISUSE OF STATE EMPLOYEES' TIME, WASTE OF STATE FUNDS

Case I2008-0920

#### Results in Brief

A supervisor at Heman G. Stark Correctional Facility (facility), a part of the Department of Corrections and Rehabilitation (Corrections), misused the time of two psychiatric technicians by assigning them to perform clerical and administrative duties rather than to provide direct care to the facility's patients. The supervisor's misuse of the employees' time resulted in a loss to the State of \$110,797 for direct psychiatric technician services not rendered.

#### Background

The facility operated under Corrections' Division of Juvenile Justice (division). The division's mission is to protect the public from criminal activity, and its duties, which are mandated by law, include providing a range of training and treatment services for youthful offenders incarcerated in its facilities. The facility opened in 1960 to serve offenders aged 18 through 24. In February 2010 the facility closed to cut costs and to improve efficiency in the division. It housed an intensive treatment program, a specialized counseling program, a sex offender treatment program, and a residential treatment program for substance abuse.

Employees working at the facility, like other state employees, were required to follow state laws regarding administrative controls and the use of state resources. Specifically, Government Code section 19818.8 prohibits assigning to a state employee any duties outside the duties for the classification to which he or she is allocated. In addition, section 13401 of the Government Code declares that all levels of management at a state agency must be involved in assessing and strengthening the agency's administrative controls to minimize fraud, errors, abuse, and waste of government funds.

Upon receiving an allegation that a supervisor at the facility was improperly allocating his employees' time, we asked Corrections to assist us in conducting an investigation.

*A supervisor directed two employees—psychiatric technicians—to perform duties associated with the lower-paid classification of an office technician instead of providing direct patient care.*

## Facts and Analysis

The investigation determined that a supervisor at the facility improperly directed two psychiatric technicians to perform tasks outside the normal duties of their job classification. Specifically, from at least January 2007 through mid-June 2009, the supervisor directed employees A and B to perform only clerical and administrative support duties rather than to provide direct medical care, as required by the job classification of both employees.

According to witnesses, the supervisor directed employees A and B to perform duties associated with the lower-paid classification of an office technician. Unlike all other psychiatric technicians under the supervisor's authority, these employees spent their time ordering supplies and equipment and performing administrative duties to assist the supervisor instead of providing direct patient care. Most of the duties identified by the classification for psychiatric technicians require them to provide extensive direct patient care, although such technicians may perform a minimal amount of administrative duties. Assignment guidelines for psychiatric technicians working at the facility also indicate that the majority of duties that psychiatric technicians perform daily involve direct patient care.

By assigning employees A and B to administrative and clerical tasks, the supervisor violated state law prohibiting the assignment of duties that are outside the duties for the class to which a state employee is allocated. Further, because employees A and B did not provide patient care, the quality of care provided to patients may have been compromised. Specifically, a manager at the facility—who did not have authority over the supervisor—stated that having employees A and B work in administrative capacities limited the mental health services received by patients because these employees did not provide direct patient care but were still counted as part of the facility's staff of psychiatric technicians. The manager also stated that situations occurred in which the facility did not have a psychiatric technician on duty to provide patient care even though the facility counted either employee A or B in patient care staffing levels for that day. Instead, the employee was working elsewhere on duties not related directly to patients.

As a result of this investigation, Corrections directed the supervisor to return employees A and B to patient care duties in June 2009. The duties formerly performed by these employees were reallocated to other staff without requiring the facility to hire any additional staff. In other words, the facility had no need to increase clerical or administrative staff once the employees returned to direct patient care. Therefore, the supervisor's improper allocation of

the two employees' time for the 30-month period was wasteful, resulting in a loss to the State of direct psychiatric technician services amounting to at least \$110,797.<sup>5</sup>

### Recommendations

To ensure that its employees are performing duties within their classifications, Corrections should take the following steps:

- Formally remind the supervisor about the duties delineated by job classifications for employees that the supervisor oversees.
- Seek corrective action against the supervisor for his misuse of the two employees' time.

### Agency Response

In May 2010 the division reported that it would review the allegations and, if warranted, take the appropriate administrative steps that may or may not lead to disciplinary action. The division acknowledged also that it had disciplined the supervisor previously; however, it did not specify the cause for discipline.

<sup>5</sup> We calculated this amount by using the difference between the wages earned by the employees working as psychiatric technicians and the wages normally earned by office technicians. However, because the facility required no additional staff to perform the administrative tasks formerly completed by employees A and B, the wasteful expenditures could be as high as \$303,337, or the entire salaries earned by both employees during the 30 months from January 2007 through June 2009.

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## Chapter 3

### CALIFORNIA STATE UNIVERSITY, NORTHRIDGE: MISUSE OF STATE PROPERTY, INCOMPATIBLE ACTIVITIES Case I2008-1037

#### Results in Brief

For almost five years, an employee of California State University (university), Northridge (Northridge), improperly allowed the owner of a small pharmaceutical company (business owner) and his three associates to use a Northridge laboratory facility along with university-owned equipment and supplies without their compensating Northridge, thus costing it \$20,790 in usage fees.

#### Background

Northridge, located in the Los Angeles area, is a public postsecondary institution offering undergraduate and graduate education as well as credential programs. Its College of Science and Mathematics maintains research laboratories and specialized scientific equipment for instruction and research.

Northridge has instituted policies governing the general use of its facilities by individuals and entities that are not affiliated with it, although the policies do not specifically describe the use of laboratory facilities. In particular, Northridge policy 900-05—entitled *Licensing of Campus Facilities*—requires that before such individuals and entities may use university facilities, they must obtain permission from specified university officials, enter into a contract governing use of the facilities, and pay certain fees. In addition, university employees, like all other state employees, are prohibited from using state property for personal purposes. Specifically, Government Code section 8314 prohibits state employees from using or permitting others to use public resources for private gain or advantage. Similarly, Government Code section 19990, subdivision (b), prohibits state employees from engaging in activities that are clearly incompatible with their job duties, including using state facilities, equipment, or supplies for private gain or advantage.

Upon receiving an allegation that a Northridge employee was allowing a private business owner to use a Northridge facility without his compensating the university, we asked the university's Office of the Chancellor to assist us in conducting an investigation.

*A Northridge employee allowed an acquaintance to use the campus laboratory facilities to conduct research for his small pharmaceutical business.*

## Facts and Analysis

The investigation found that a Northridge employee allowed the misuse of state property and engaged in incompatible activities. Specifically, the employee was contacted by an acquaintance who wanted to use the Northridge laboratory facilities to conduct research for his small pharmaceutical business. Beginning in December 2003 the employee permitted this use by giving the individual and his three associates access keys to a campus research laboratory. The employee did so without obtaining permission from any Northridge officials, specifying that the business owner must enter into a contract with Northridge, or arranging for the payment of fees for use of the laboratory, as required by Northridge policy.

In the laboratory the business owner and his associates conducted private research with university-owned specialized equipment, including a nuclear magnetic resonance spectrometer (NMR), a liquid chromatography mass spectrometer (LCMS), and a hydrogenator. Usage logs for the NMR and LCMS indicate that from 2006 through 2008, the business owner and his associates used the devices for 258 hours.<sup>6</sup> In addition, the business owner took university supplies for use from 2004 to 2008. The employee asserted during an interview that the business owner did not use some of these supplies; instead, the employee used the supplies to conduct university research. However, no documentation exists to support this assertion.

The business owner continued to use the Northridge laboratory until October 2008, after this investigation was initiated. The university determined that the business owner received a benefit totaling \$20,790 from his use of Northridge facilities, equipment, and supplies.

When asked about his use of the Northridge laboratory, the business owner admitted that the research he conducted at Northridge from 2003 to 2008 related to developments for which he was able to obtain patents. For his part, the employee explained that he initially attempted to follow university policy concerning the use of university research facilities by external individuals and organizations. The employee claimed that when the business owner initially approached him about using the research laboratory, the employee requested guidance from College of Science and Mathematics management about how to allow the business owner and his three associates to access university facilities. The employee also claimed that the business owner drafted an agreement that required the business owner to pay \$400 to Northridge

<sup>6</sup> Usage logs for 2003 through 2005 for these devices were not available for review.

for use of the facilities. However, the employee asserted that he received no guidance from management regarding the issue and that the agreement never was finalized. Instead, the employee told the business owner and his associates to register as “research volunteers,” a designation that allowed them access to the facility. The employee explained that he thought the four individuals’ registering as volunteers—a process normally used by university students—was adequate to give them access to the research facility and equipment.

By failing to follow established university policies, the employee permitted a private business owner to use a university facility for personal gain without requiring the business owner to compensate Northridge. As a result, the employee violated sections 8314 and 19990 of the Government Code at a loss of potential revenue to Northridge totaling at least \$20,790.

### **Recommendations**

To ensure that it safeguards the appropriate use of its facilities, equipment, and supplies, Northridge should do the following:

- Formally remind its staff about the specific actions that must be taken before outside individuals and entities may use university facilities.
- Develop policies and procedures to specifically address the use of laboratory facilities and university equipment and supplies by individuals and entities not affiliated with the university.

Northridge should also recover the amount owed for the misuse of its facilities, equipment, and supplies.

### **Agency Response**

When presented with the results of the investigation, Northridge indicated that it would recover the costs for the unauthorized use of its facility and equipment. In addition, Northridge stated that it would form a committee to develop policies and procedures to address “industry” use of university resources. Further, Northridge management met with the employee. At this meeting, the employee acknowledged his error and assured Northridge that no similar situations would occur.

In May 2010 Northridge provided information indicating that as of August 2009 it had received \$20,790 from the business owner’s company as compensation for the unauthorized use of Northridge’s

facility, equipment, and supplies. Northridge also implemented a new policy that bans the use of the College of Science and Mathematics' facilities, equipment, and supplies for industry use, and it notified faculty and staff of this new policy. Finally, Northridge placed a letter of reprimand in the personnel file of the university employee.

## Chapter 4

### DEPARTMENT OF CONSUMER AFFAIRS, CALIFORNIA ARCHITECTS BOARD: FICTITIOUS CLAIM, IMPROPER GIFTS, INCOMPATIBLE ACTIVITIES

Case I2008-1100

#### Results in Brief

By using fabricated receipts, an employee with the California Architects Board (Architects Board) claimed \$392 for lodging and meal expenses she did not incur. In addition, she violated state law by accepting gifts in the form of substantial discounts from a hotel she frequently used for state business.

#### Background

The Architects Board operates as part of the Department of Consumer Affairs (Consumer Affairs). Its mission is to protect the health, safety, and welfare of the public by establishing regulations for examining and licensing architects in California. Like all other state employees, Architects Board employees are required to submit accurate travel claims and supporting documentation. Further, state employees are prohibited from engaging in incompatible activities by accepting gifts from anyone doing business or seeking to do business with the State.

Specifically, California Code of Regulations, title 2, section 599.625, requires state employees to submit receipts for travel expenses, and section 599.638 of the same title requires each employee submitting a claim to certify that the claim is a true statement of the expenses incurred. In addition, Government Code section 19572 identifies dishonesty as grounds for disciplining a state employee. Further, section 19990 of the Government Code states that incompatible activities for state employees include receiving or accepting directly or indirectly any gift from anyone doing business with the State when one could reasonably substantiate that the gift was intended to influence or reward the employee in his or her official duties.

Upon receiving an allegation that an Architects Board employee received substantial personal discounts for herself and her family as gifts for the state business she brought to a hotel, we initiated an investigation.

## Facts and Analysis

Our investigation revealed that an Architects Board employee fabricated receipts for a hotel at which she regularly stayed for state business and that she submitted a fabricated receipt to support a travel expense claim she prepared for expenses she did not incur. As part of her duties, she scheduled and attended regular meetings in another city about six times a year, and each meeting typically lasted for three to four days. Since approximately 1998 the Architects Board employee scheduled these meetings at the same hotel. The employee also stayed at the hotel for personal reasons, and she received substantial discounts for herself and her family during one such stay.

### The Architects Board Employee Submitted a Fictitious Claim for Reimbursement

This employee submitted a fictitious claim for three nights' lodging and meals at the hotel, and the Architects Board reimbursed her for these expenses. In February 2008 she claimed a total of four nights' lodging when the hotel invoiced her for one night only. When we interviewed the employee, she admitted to fabricating the hotel receipt she submitted with her travel expense claim.<sup>7</sup> Despite her admission, she asserted that she stayed in the hotel for all four nights. However, she was unable to provide sufficient evidence that she paid for three of the four nights. More importantly, the Architects Board employee could not provide a copy of the original receipt from the hotel. In contrast, the hotel gave us a copy of the receipt clearly showing that it had charged her for one night only.<sup>8</sup> By using a fabricated receipt, the employee submitted a fictitious claim, thus violating state regulations. As a result, she improperly received \$392 for expenses she did not incur.<sup>9</sup>

<sup>7</sup> In fact, the Architects Board employee acknowledged that for several years she re-created receipts from the hotel to separate the meal expenses from the room charges because the hotel combined the meal and room charges into one nightly rate. We reviewed all of the Architects Board employee's travel expense claims submitted for February 2006 through October 2008 and determined that she did not include additional nights or expenses on any other occasions.

<sup>8</sup> Following our interview, the employee paid the hotel for two of the nights in question because she believes she stayed there on those nights. Her payment occurred more than a year after the charges were originally incurred.

<sup>9</sup> The \$392 the employee improperly claimed includes \$102 for meal costs that the employee did not incur.

### **The Architects Board Employee Violated State Law by Accepting Improper Gifts**

This employee violated state law when she accepted substantial discounts for personal stays at the hotel. She stayed at the hotel not only for state business, but also for a three-night family reunion in late June 2008. Our review of the rates charged indicated that the hotel provided the employee and her family with discounts that exceeded those generally available to other customers. In fact, a witness told us that before the reunion, the employee stated that she would receive a great price from the hotel because she brought it so much business. The Architects Board employee told us that the hotel offered her and her family a discounted rate of \$150 per night. When we reviewed the receipts for the employee and her family, we found that the hotel had charged the Architects Board employee \$118 per night—the rate that the hotel charged her as a state employee—and charged her family \$150 per night for most of the rooms they occupied. The market value of the suite that the Architects Board employee occupied for three nights was \$295 per night, so she received a discount totaling \$531 for the duration of her stay. Similarly, although the discounts for the employee's family were not as substantial as those received by the employee, our research shows that the rate her family received is not generally available to the hotel's customers. The employee's acceptance of special discounts offered to her by a hotel that she regularly selected for state business was improper under Government Code section 19990 because our investigation reasonably substantiated that the hotel's discounts—or gifts—were intended to influence or reward the employee for her official duties.

### **Recommendations**

To address the Architects Board employee's fabrication of receipts and related fictitious claim, to deal with the employee's participation in incompatible activities in her acceptance of improper gifts, and to prevent potential abuse by other employees, Consumer Affairs should do the following:

- Take appropriate disciplinary steps to deal with the employee's improper actions.
- Require the employee to repay the State for the expenses that she claimed but did not incur.
- Reinforce with the appropriate staff through training, redistribution of policies, or other appropriate methods the existing rules regarding fictitious claims and incompatible activities.

### Agency Response

In May 2010 Consumer Affairs reported that the Architects Board had conducted a preliminary investigation. According to Consumer Affairs, the Architects Board's preliminary findings indicated that the employee initially paid for two nights at the hotel and that the hotel's failure to charge the employee for the other two nights resulted from a billing error. Consumer Affairs also stated that the Architects Board was investigating the receipts to determine if the employee created a document to support a fictitious claim for reimbursement and whether it can reasonably substantiate that the discounted hotel rate received by the employee and her family was a gift intended to reward or influence the employee. Lastly, Consumer Affairs reported that the Architects Board had reinforced existing rules on fictitious claims and incompatible activities by redistributing Consumer Affairs' policies.

## Chapter 5

### DEPARTMENT OF JUSTICE: FAILURE TO REPORT ABSENCES ACCURATELY, INADEQUATE ADMINISTRATIVE CONTROLS

Case I2008-0637

#### Results in Brief

A Department of Justice (Justice) employee failed to report 82 hours of leave she took from February 2007 through March 2008. Consequently, Justice did not charge the employee's leave balances for these absences, and it paid her \$2,605 for hours she did not work. Further, the employee's manager did not ensure that the employee reported her time accurately.

#### Background

Among its responsibilities, Justice provides legal services to state agencies and officials, and it ensures that state laws are enforced uniformly and adequately. Justice operates several regional offices throughout the State. Like all other state agencies, Justice must comply with state laws and regulations governing administrative controls and the accurate reporting of time and attendance by its employees.

Specifically, Government Code section 13401 declares that all levels of management at state agencies must be involved in assessing and strengthening administrative controls to minimize fraud, errors, abuse, and waste of government funds. Section 13403 further states that the elements of a satisfactory system of administrative controls include a system of authorization and record-keeping procedures adequate to provide effective accounting controls over assets, liabilities, revenues, and expenditures.

Title 2, section 599.665 of the California Code of Regulations reinforces state agency accountability by requiring all agencies to keep complete and accurate time and attendance records for each employee. To comply with this mandate, Justice has established policies, including one that requires its employees to submit monthly time sheets to document their attendance and any leave taken or overtime worked. In addition, employees and their supervisors are required to sign the monthly time sheets to certify their accuracy to the best of their knowledge. After a supervisor approves the time sheets, an attendance coordinator verifies the information provided to ensure that time is posted according to the employee's work schedule and that sufficient leave credits are

available for any leave time used. Justice then uses the time sheets to post each employee's absences and earned benefits, such as compensating time off, into the State's leave accounting system, which charges the employee's leave balances accordingly.

Separate from Justice's employee timekeeping system, a database known as Pro Law tracks time spent by certain Justice employees, including Justice's legal support staff, on specific projects. Legal support staff are required by Justice to enter into Pro Law any time spent on specific tasks associated with legal and nonlegal activities, as well as any leave taken.

The employee whose actions we reviewed provides legal support in one of Justice's Southern California regional offices. The employee's manager oversees the legal professional staff and the legal support staff, and he directly supervises the employee. As required by Justice's policies, he also approves monthly time sheets for the employee and other members of his staff.

When we received an allegation that the employee failed to charge her leave balances for hours she did not work, we conducted an investigation with Justice's assistance.

### Facts and Analysis

Our investigation determined that the employee failed to properly account for 82 hours of leave she took on 23 days from February 2007 through March 2008. Moreover, we found that her manager failed to ensure the accuracy of the employee's time sheets.

Specifically, we found discrepancies between the employee's time sheets and her Pro Law timekeeping records. The employee acknowledged during an interview that the time shown on her Pro Law records was generally more reliable than the time she reported on her time sheets, and she agreed that she should have reported on her time sheets the 82 hours of leave she entered in Pro Law. When we asked the employee about her timekeeping practices, she stated that she relied on her Pro Law records, her e-mails, and her memory to fill out time sheets for her time worked and any leave taken. Furthermore, she asserted that in 2008 she began discussing her completed time sheets with her manager before he approved them. Nevertheless, as a result of her inaccurate time reporting, the employee failed to enter 82 hours of leave on her time sheets, resulting in the employee's receiving \$2,605 for time she did not work. In addition, by failing to ensure the accuracy of the time reported on her time sheets, the employee violated Justice's policies and title 2, section 599.665 of the California Code of Regulations.

*As a result of an employee's inaccurate time reporting, 82 hours of leave was not reported on her time sheets, resulting in the employee's receiving \$2,605 for time she did not work.*

When we interviewed the manager about his time-reporting review and approval process, he told us that when he reviewed his staff's time sheets before May 2007, he questioned them only when he knew that employees were not tracking their time accurately. He also stated that he did not compare his employees' time sheets against Pro Law records or any other documents. However, in May 2007 the manager began documenting the time of the employee who was the subject of this investigation because he suspected she had attendance issues. In addition, he informed his staff members in October 2007 that he needed to ensure that each employee was working his or her designated work schedule. The manager then decided to maintain an attendance log for his employees. He stated, though, that his log was not always accurate and that he did not review the log before he approved the employee's time sheets in 2007.

Our examination of the manager's log from May 2007 through April 2008 confirmed that it was inaccurate. Specifically, we found that for nine of the 12 months we reviewed, the manager's log did not always capture accurately the leave taken by the employee. In some cases, the log failed to note that the employee took any leave at all. For example, the manager's May 2007 attendance log did not include four days that the employee was absent from work, and the employee herself failed to report any leave on her time sheet for the four days she missed. The manager had thus implemented an ineffective monitoring process, and he did not ensure that the employee's time sheets were accurate.

### **Recommendations**

To ensure that the employee's leave balances properly reflect all leave that the employee has taken, Justice should charge the employee's leave balances for the 82 hours that she did not work from February 2007 through March 2008, or it should dock the employee for these hours if the employee has no leave credits remaining.

To make certain that its employees follow time-reporting requirements in accordance with appropriate state laws, regulations, and policies, Justice should provide training to the manager and his staff regarding policies and procedures for time reporting.

### **Agency Response**

Justice reported in May 2010 that the employee amended her time sheets to account for the 82 hours of leave identified in this report. Because the employee had exhausted her leave balances, Justice

stated that it had established an account receivable so that the employee can reimburse the State for the hours she did not work. In addition, Justice stated that in June 2009 it issued a memorandum to the employee that detailed her failure to follow its policies and procedures on time reporting and leave use.

Justice disagreed with our conclusion that the manager implemented an ineffective monitoring process. However, the facts of the case clearly support our conclusion. In particular, we determined that 72 of the 82 hours the employee failed to account for had occurred from May 2007 through March 2008, even though the manager told us he started to maintain a log of the employee's time in May 2007. Further, as mentioned previously, the manager admitted that his log was inaccurate and that he did not review the log when approving the employee's time sheet in 2007. Thus, his monitoring process failed to detect that the employee improperly reported her time. Moreover, when we asked the employee about the discrepancies between her Pro Law timekeeping records and her time sheets, the employee acknowledged she should have charged 82 hours of leave. If the manager had included in his monitoring process a simple comparison of the two timekeeping records available to him, he could have corrected the employee's practice of not properly accounting for her time prior to our investigation.

Despite its disagreement with our conclusion, Justice reported that it will provide training to the manager and his staff regarding time reporting and leave usage.

## Chapter 6

### DEPARTMENT OF WATER RESOURCES: IMPROPER GIFTS Case I2008-0644

#### Results in Brief

A supervisor with the Department of Water Resources (Water Resources) received at least \$1,840 in gifts from a vendor with which the supervisor contracted during the course of his duties as a state employee. Circumstances indicated that the supervisor received the gifts as a reward for doing business with the vendor. In addition, the Water Resources field division office (division office) lacked sufficient administrative controls to ensure that an appropriate separation of duties existed to secure the integrity of its purchasing process. As a result, the supervisor was able to enter into contracts with the vendor without complying with state contracting rules.

#### Background

Water Resources protects, conserves, develops, and manages California's water. It evaluates existing water resources, forecasts future water needs, explores potential solutions to meet those needs, and educates the public about the importance of water and its proper use. The Water Resources supervisor who was the subject of our investigation has multiple duties, including submitting requests for purchases as needed. In addition, he supervises the work and purchases of three subordinate employees. Like all other state employees, the supervisor must follow state laws governing incompatible activities, contracting, and administrative controls.

Specifically, Government Code section 19990 prohibits state employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state employees. In particular, section 19990, subdivision (f), prohibits state employees from receiving or accepting directly or indirectly any gift or anything of value from anyone doing or seeking to do business with the employee's appointing authority when one could reasonably substantiate that the gift was intended to influence or reward the employee for actions taken in his or her duties.

In addition, section 14838.5, subdivision (c) of the Government Code requires that if the estimated cost of goods is less than \$5,000, a state agency must obtain at least two price quotes from responsible suppliers whenever it has reason to believe a response

from a single source is not fair and reasonable. To comply with this requirement, Volume 2, Chapter 4 of the *State Contracting Manual* (contracting manual) identifies and describes five techniques to use when determining whether a supplier's price is fair and reasonable. The five techniques are price comparison, catalog or market pricing, controlled pricing, historical pricing, and cost-benefit analysis. Each of these techniques requires documentation of other recent price quotes or actual costs.

Finally, section 13401 of the Government Code declares that all levels of management at a state agency must be involved in assessing and strengthening the agency's administrative controls to minimize fraud, errors, abuse, and waste of government funds. Section 13403 further states that the elements of a satisfactory system of administrative controls include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures.

One administrative control is the separation of duties, which the purchasing procedures at the division office require employees to follow. Specifically, the purchasing procedures indicate that when an employee requests an item, a supervisor reviews and approves the request. A purchasing agent then obtains price quotes and purchases the item. When the item is received, a warehouse staff member creates a goods receipt and notifies the requester that the division office has received the item.

When we received an allegation that a supervisor at one of Water Resources' division offices received gifts from a vendor doing business with the State, we initiated an investigation.

We investigated a similar allegation in 2005 at another Water Resources division office. In October 2005 we informed Water Resources that it lacked the proper controls to ensure that an adequate separation of duties existed when employees made purchases. In July 2006 Water Resources implemented changes to its electronic purchasing system that addressed some of our concerns. However, the division office that was the focus of this investigation apparently failed to adhere to an adequate system of administrative controls—which are unrelated to its electronic purchasing system—to ensure that proper separation of duties existed for purchases made by the supervisor.

## Facts and Analysis

Our investigation determined that on two separate occasions the supervisor engaged in incompatible activities when he received gifts from a vendor from which he regularly made purchases and for which he approved purchases made by his subordinates. The vendor indicated that he provided the gifts to thank the supervisor for doing business with the vendor. We estimate that the gifts cost at least \$1,840. In addition, we found that because the division office lacked the administrative controls necessary to ensure that an adequate separation of duties existed, the supervisor initiated requests for purchases, obtained price quotes for the requested items, and confirmed that the division office received the items. As a result, the supervisor was able to direct to the vendor 97 percent of certain types of purchases over a two-year period.

*A supervisor engaged in incompatible activities when he received gifts from the same vendor he directed 97 percent of certain types of purchases to over a two-year period.*

## The Supervisor Received Gifts From a Vendor in Violation of State Law

While working in a capacity in which he regularly purchased supplies from the vendor, the supervisor accepted gifts from this vendor on two occasions, thus violating state law. Specifically, in 2004 the vendor gave the supervisor two tickets to a National Association for Stock Car Auto Racing (NASCAR) event held in Fontana, California. The vendor told us that the corporation he represents gave him the tickets and that the tickets had no dollar value printed on them. Using current ticket prices for NASCAR events held in Fontana, we estimated that the cost of the two tickets was between \$80 and \$310.

In February 2007 the same vendor took the supervisor on a three-day trip to Daytona, Florida, for the 50<sup>th</sup> anniversary of the Daytona 500 NASCAR race. The vendor told us that he again received the race tickets from the corporation he represents. He said that on very short notice, his travel companion decided not to attend the race. He then invited the supervisor to attend. The vendor told us that he spent about \$700 for airline transportation and lodging in Daytona and that the supervisor paid for meals, drinks, and a rental car. Although we were unable to verify the accuracy of the vendor's statement, we used flight and room rates for the next Daytona 500 to estimate that the cost of flights and lodging was between \$1,460 and \$1,900. The vendor further stated that the tickets to the events that he and the supervisor attended—a prerace event and the main race—had no dollar value printed on them. However, using ticket prices for the 2010 Daytona 500, our estimate for the cost of the tickets was between \$300 and \$480. When we asked the vendor why he invited the supervisor on the

Daytona trip, he replied that he wanted to thank the supervisor for his business and he thought that the supervisor could take time off from work to attend the event on short notice.

The supervisor admitted to us that he was aware that it was improper for him to accept a gift from a vendor to whom he directs business in his capacity as a state employee. However, he commented that at the time the vendor offered him the trip to Daytona, the supervisor did not realize that accepting this gift was improper because attending the Daytona 500 was a “once-in-a-lifetime opportunity” for him. Nevertheless, the supervisor engaged in incompatible activities when he accepted this gift, which we estimated to cost at least \$1,840, and may have cost as much as \$2,690.

#### **Poor Administrative Controls Allowed the Supervisor to Directly Participate in Many Steps of the Purchasing Process**

While interviewing witnesses regarding the gifts accepted by the supervisor, we discovered that Water Resources was not aware of the improper gifts, although we were told by several witnesses that the Water Resources’ division office where the supervisor works had poor administrative controls over its process for purchases made by the supervisor during the time the improper gifts were accepted. Consequently, the supervisor acting alone was able to request purchases, obtain price quotes for the purchases, and pick up the items purchased. Specifically, the supervisor had the authority within the electronic purchasing system to request a purchase. However, the electronic purchasing system neither tracked who obtained price quotes nor prevented the requester from obtaining price quotes even though division office protocols require someone other than the requesting employee to obtain price quotes. Ignoring division office protocols, the supervisor obtained the price quote directly from the vendor and entered it into the electronic purchasing system. Through the electronic purchasing system, the supervisor signified that the price was “fair and reasonable,” a designation that exempted purchasing staff from obtaining additional price quotes if the purchase was under \$5,000. At no point in the process was the supervisor required to show that he used an allowable technique for determining fair and reasonable pricing, and no oversight existed to ensure that his determinations were properly documented. Thus, the supervisor steered work to the vendor without any oversight as to whether the price quoted was fair and reasonable or whether additional quotes should have been obtained under Government Code section 14838.5, subdivision (c). Further, although division office procedures require warehouse staff to confirm when ordered items have been received, the supervisor regularly picked up or received items and then

*The electronic purchasing system allowed the supervisor, acting alone, to request purchases, obtain price quotes for the purchases, and pick up items purchased.*

certified that the division office had received them. Warehouse staff issued goods receipts and entered into the electronic purchasing system that they had received the items.

For at least four years the supervisor was inappropriately involved in multiple steps of the purchasing process. However, his manager, who was responsible for overseeing and monitoring all purchases made by the division office, was unaware of the supervisor's improper activity until an interim manager, temporarily assigned to the division office in 2008, questioned why the supervisor was allowed to obtain price quotes for the items he requested and then directly receive items he ordered. According to the division office manager, the supervisor's unit did not fall under the administrative authority of the division office until 2003. The division office manager commented that when the supervisor's unit was moved under his administrative authority, he assumed Water Resources' electronic purchasing system had controls sufficient to ensure that one employee could not be involved in more than one step of the purchasing process. Thus, it appears the division office manager may have simply relied on controls he thought existed within the electronic purchasing system and therefore did not ensure that the supervisor adhered to administrative controls.

Concerned about the supervisor's purchasing practices and whether his purchases were improper, the interim manager reviewed the supervisor's purchases and noticed that he sent virtually all of his business to one vendor for the items that the vendor sells. The interim manager discovered that one item the supervisor purchased from the vendor appeared to be overpriced, so she required the supervisor to return the item. However, the interim manager was unable to substantiate that any of the supervisor's purchases from the vendor were improper.

We also reviewed the expenditures as part of our investigation of the improper gifts. Our analysis of the supervisor's purchases over a two-year period confirmed that he directed certain types of purchases almost exclusively to the vendor from whom he accepted gifts. Specifically, from July 1, 2006, through June 30, 2008, when the supervisor was buying the types of items that the vendor sold, he made 97 percent of his purchases—at a cost of \$103,000—from this vendor. Under the circumstances, Water Resources has no assurance that it received a fair and reasonable price for these purchases.

When the interim manager alerted the division office manager about her concerns, he initially suspended all transactions to the vendor and removed the supervisor from the purchasing process. After he conducted an additional review of the supervisor's purchases from the vendor, the division office manager found

***We confirmed that the supervisor directed certain types of purchases almost exclusively to one vendor—97 percent of his purchases at a cost of \$103,000—from whom he accepted gifts.***

that some of the purchases appeared to be overpriced, but other purchases were not. The division office manager therefore focused on ensuring that employees in the supervisor's unit, including the supervisor, followed the policies and procedures used by all division office employees when making purchases. As a consequence, the supervisor can now request items he needs and approve the requests made by his employees. However, he is prohibited from obtaining quotes and from picking up or acknowledging the receipt of goods purchased.

Water Resources management appropriately limited the supervisor's role in procurement decisions. However, considering the improper gifts that Water Resources management failed to detect, additional steps are needed to ensure that the department is in full compliance with state contracting rules, including those related to fair and reasonable pricing.

### **Recommendations**

To ensure that Water Resources receives a fair and reasonable price for items that it purchases, the division office should do the following:

- Require its purchasing staff to comply with state contracting rules for all purchases and to document the steps involved in their compliance, including, when applicable, the techniques used to determine whether a price quote is fair and reasonable.
- Provide additional training to its warehouse staff, reaffirming that they should confirm the receipt of ordered items by visually inspecting the items once received and comparing them to corresponding purchase orders or invoices. This training should also emphasize the importance of the role that warehouse staff play in ensuring that division office staff follow the purchasing process.

### **Agency Response**

In June 2010 Water Resources reported that it implemented practices in 2008 to ensure it receives a fair and reasonable price for its purchases after concerns about the integrity of its purchasing process were raised by staff in 2008. These practices included the division office instituting changes to its purchasing process to allow for physical inspections, inventory of goods received, and comparison to purchase orders or invoices. In addition, Water Resources stated that it is making changes to its purchasing software to prohibit a single user from conducting multiple steps

on the same order. Further, Water Resources stated it will reinforce with division office staff their responsibilities in the purchasing process. Finally, Water Resources reported that it would counsel the supervisor about his incompatible activities.

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## Chapter 7

### **DEPARTMENT OF FOOD AND AGRICULTURE, 32<sup>ND</sup> DISTRICT AGRICULTURAL ASSOCIATION: FAILURE TO ACCOUNT ACCURATELY FOR ABSENCES, INADEQUATE ADMINISTRATIVE CONTROLS Case I2009-0629**

#### **Results in Brief**

An employee of the Department of Food and Agriculture's 32<sup>nd</sup> District Agricultural Association, doing business as the OC Fair & Event Center (fair), failed to account accurately for his absences. In addition, his supervisor and other staff failed to review his time sheets adequately. As a result, the employee received \$1,206 for 53 hours he did not work.

#### **Background**

The fair is a state entity within the Division of Fairs and Expositions of the Department of Food and Agriculture. Like all other state entities, the fair must keep complete and accurate time and attendance records for each employee as required by California Code of Regulations, title 2, section 599.665. In addition, California Government Code section 13401 declares that all levels of management at state agencies must be involved in assessing and strengthening administrative controls to minimize fraud, errors, abuse, and waste of government funds.

Upon receiving an allegation that an employee of the fair failed to charge his leave balances when he was absent and that his supervisor had not addressed this failure, we initiated an investigation.

#### **Facts and Analysis**

Our investigation revealed that from November 2007 through June 2008, a fair employee did not account accurately for his absences on four of his monthly time sheets. In consultation with the fair, we identified 53 incorrectly reported hours of leave, for which the fair paid the employee \$1,206. Table 4 on the following page provides, by month, the number of leave hours that the employee failed to charge against his leave balances and the costs associated with those hours.

**Table 4**  
**The Employee's Hours of Leave Incorrectly Reported and the Associated Costs to the State**  
**November 2007 Through June 2008**

RELEVANT MONTH	NUMBER OF LEAVE HOURS INCORRECTLY REPORTED	COST OF HOURS INCORRECTLY REPORTED
November 2007	18	\$417
December 2007	4	92
April 2008	23	514
June 2008	8	183
<b>Totals</b>	<b>53</b>	<b>\$1,206</b>

Source: Bureau of State Audits' analysis of the employee's time sheets, leave balance reports, and salary dock reports.

We determined that the employee, his supervisor, and various fair staff members were at fault in allowing this failure to occur. Of the 53 hours we identified that were incorrectly reported, 31 hours represented leave time the employee failed to include on his time sheets. The fair stated that the employee's supervisor and the personnel staff who reviewed the time sheets failed to notice the deficiencies because these hours occurred in weeks that overlapped two months. In addition, the employee failed to include another 10 hours of leave in the *total* column on one of his monthly time sheets. His supervisor and personnel staff failed to detect this error as well. Further, the fair failed to dock the employee's pay for an additional eight hours he did not work because the fair never processed the paperwork. Finally, the fair did not charge the remaining four hours against the employee's leave balances because an attendance clerk made an error when posting leave usage data to the fair's computer tracking system.

Because of the numerous timekeeping errors that occurred for one employee over several months, the fair appears to have inadequate policies for maintaining complete and accurate time and attendance records or an adequate system of administrative controls associated with its timekeeping procedures designed to minimize fraud, errors, abuse, and waste of state funds.

## Recommendations

To address the timekeeping problems identified during our investigation and to prevent similar acts from occurring, the fair should do the following:

- Take appropriate corrective action against the employee and others who failed to ensure that the timekeeping records were accurate.
- Verify that the employee and staff who review time sheets are trained properly regarding timekeeping procedures.
- Implement additional controls over its time sheet review process, including a verification that all work and leave is accounted for in weeks that overlap monthly pay periods.
- Correct the errors identified by collecting the \$1,206 paid to the employee for the 53 hours he did not work or by charging his leave balances accordingly.

## Agency Response

In May 2010 fair management reported that it was taking several steps to address the findings of our investigation. It stated that when a workweek overlaps two months, it will require employees to provide timekeeping data for the entire workweek so that the appropriate staff can verify the completion of the 40-hour requirement as they review and process attendance reports. In addition, the fair commented that it had improved its review process by requiring its staff to submit both time sheets and attendance reports to human resources for auditing purposes. It also stated that its employees and supervisors received detailed training on timekeeping procedures.

To address the overpayments to the employee, fair management informed us that it had accounted for the 53 hours and deducted them from the employee's leave balances. Furthermore, fair management stated that it had identified an additional 38 hours it failed to charge against the employee's leave balances in 2009, and indicated that it had also deducted those hours from his leave balances.

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## Chapter 8

### DEPARTMENT OF SOCIAL SERVICES: IMPROPER CHILD CARE LICENSING EXEMPTIONS

Case I2009-0701

#### Results in Brief

The Department of Social Services (Social Services) improperly exempts after-school education programs called *heritage schools* from child care licensing requirements. As a result, an estimated 3,000 heritage schools throughout the State are not required to follow the same child-safety procedures as other child care facilities, potentially putting children at risk.

#### Background

Social Services manages various statewide programs aimed at providing aid, services, and protection to vulnerable children and adults. Its duties include providing oversight and enforcement for child care facilities throughout California. State law requires that any entity seeking to operate, establish, manage, conduct, or maintain a child care facility in the State must obtain a valid license from Social Services. Licensed child care facilities are subject to numerous requirements, including those outlined in the text box. These requirements are designed to protect children by requiring, for example, that child care facility staff pass criminal record clearances.

Sections 1596.792 and 1596.793 of the Health and Safety Code provide certain exemptions from child care licensing requirements. Among them, section 1596.792, subdivision (g) provides that public recreation programs are exempt from child care licensing requirements if they meet certain age, time, and duration requirements. A *public recreation program*, as defined by this section, is a program operated by the State, city, county, special district, school district, community college district, chartered city, or chartered city and county. Additionally, section 1596.793 exempts some private recreation programs—such as the Girl Scouts, Boy Scouts, Boys and Girls Clubs, and other similar organizations—from the licensing requirements.

#### Examples of Requirements Imposed on Licensed Child Care Facilities

- All staff members must pass criminal record clearances and Child Abuse Central Index checks.
- Staff members must meet minimum qualifications or receive training in areas such as health precautions, child care, and supervision.
- Facilities must meet appropriate teacher-child ratios.
- Facilities must comply with health and safety standards for cleanliness, toxic substances, smoke alarms and fire extinguishers, adequate bathroom facilities, and drinking water.
- Appropriate staff members must have current cardiopulmonary resuscitation and first-aid cards and certificates.
- Facilities must have an emergency disaster plan and conduct regular fire drills.

Source: State laws and regulations.

Heritage schools constitute one type of program that typically falls under Social Services' oversight. Although not defined by statute, heritage schools generally serve school-aged children after school and during holiday or vacation time. The schools typically offer education or tutoring in a language other than English as well as culturally enriching activities based on the customs of a foreign country. Social Services estimates that as many as 3,000 heritage schools operate in the State.

When we received information that Social Services had improperly granted child care licensing exemptions to heritage schools, we initiated an investigation.

### Facts and Analysis

Our investigation revealed that Social Services used a state law specifically intended to exempt public recreation programs when it improperly exempted from child care licensing requirements the after-school education programs called *heritage schools*. For example, in October 2008 Social Services exempted from licensure a heritage school located in the city of Pleasanton. The heritage school, operated by a nonprofit company, offers an after-school program for children that emphasizes cultural heritage. In its letter to the heritage school, Social Services stated that it was exempting the school from licensing requirements under section 1596.792 of the Health and Safety Code. Social Services later told us that its determination to exempt the heritage school was based on departmental policy derived from the licensing exception for public recreation programs that appears in section 1596.792, subdivision (g). During our investigation, Social Services acknowledged that heritage schools are not public recreation programs. However, Social Services also stated that it believes heritage schools provide services that fall outside the rubric of child care and differ from regular child care facilities in that they focus on furnishing religious, cultural, or language instruction programs. Nevertheless, Social Services could not show us any statutory authority that adequately supports its decision to exempt this—or any other—heritage school from the licensing requirement.

Although heritage schools may offer some additional services that other child care facilities do not, this type of after-school program meets the definition of *child day care facility* delineated in state law. Specifically, section 1596.750 of the Health and Safety Code defines *child day care facility* as providing nonmedical care to children under age 18 who need personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individuals on less than

***Absent any applicable exemption in state law, heritage schools are subject to the child care licensing requirements.***

a 24-hour basis. According to this definition, and absent any applicable exemption in state law, heritage schools are subject to the child care licensing requirements.

To further support its exemption decisions, Social Services contends that its policy for private recreation programs—which is based on the exemption of the Girl Scouts, Boy Scouts, and other similar organizations under Health and Safety Code section 1596.793—allowed it to exempt heritage schools by applying the public recreation program exemption authorized by section 1596.792 of the same code. Specifically, Social Services stated that because specific statutory guidance for heritage schools does not exist, Social Services' policy for private recreation programs allows it to apply to heritage schools the age, time, and duration aspects of the public recreation program exemption even though these schools are not government-operated programs.

However, during the course of our investigation, Social Services contradicted itself somewhat when it acknowledged that heritage schools are not similar to the types of organizations that section 1596.793 of the Health and Safety Code exempts; therefore, heritage schools are not exempt under the private recreation program exemption. As stated previously, Social Services also affirmed that heritage schools are not public recreation programs. Thus, state law does not support Social Services' decision to exempt heritage schools by combining the private and public recreation program exemptions, and Social Services' policy for heritage schools is therefore improper.

In recent years, the Legislature has considered several bills that would specifically exempt heritage schools from child care licensing requirements. During the last two legislative sessions, lawmakers introduced several bills to define heritage schools and to exempt them from child care licensing requirements. However, the Legislature did not approve these bills. According to a legislative committee analysis for one of the bills, in the past the Legislature has applied a basic test when considering whether certain programs or facilities should be exempt from child care licensing requirements. The test asks whether children are in care and under supervision for extended periods over the course of many days. If facilities or programs meet this test, children should have the protections of basic health and safety regulations enforced by licensing staff that are empowered to make inspections, note violations of regulations, and require steps to remedy violations that can lead to fines or closure if the facilities or programs do not execute the changes satisfactorily.

***In recent legislative sessions, lawmakers introduced several bills to define heritage schools and to provide exemptions; these bills were not approved.***

Social Services officials stated that they were unsure exactly how long it has used the public recreation program statute to exempt heritage schools, but they believe that Social Services has followed the practice since at least 1992. The officials were also unsure who decided to apply the statute in this way. In October 2009 a Social Services official stated that Social Services was reassessing its policy. When we attempted to learn how many heritage schools Social Services had exempted using the public recreation program statute, the officials responded that Social Services did not track centrally the number of exemptions that it had granted to heritage schools and that such information may or may not be available at regional offices.

By exempting heritage schools from the child care licensing requirements without its having statutory authority, Social Services puts children at risk. Exempted entities are not subject to requirements that are intended to protect and safeguard children and to reduce the potential for abuse and injury. Thus, Social Services' decision to exempt heritage schools from licensing requirements increases the potential for abuse and injury to children at the schools.

### **Recommendations**

To ensure that Social Services appropriately enforces the child care licensing requirements as they apply to heritage schools, it should take the following actions:

- Discontinue its practice of using the public recreation program exemption to exempt heritage schools from child care licensing requirements.
- Require heritage schools to apply for child care licenses, unless state law is enacted to provide an exemption.
- Notify heritage schools that were previously exempted from licensing that Social Services now requires these schools to obtain child care licenses.

### **Agency Response**

In May 2010 Social Services reported that it concurred with our recommendations and had taken action to correct the problems identified. Specifically, it stated that it no longer exempts heritage schools from child care licensing requirements under the public recreation program exemption. Social Services indicated also that it had revised its relevant policies and procedures and removed

any policies that were not supported by law. Further, in April 2010 Social Services issued a memorandum to its child care management emphasizing the need to apply existing statutes and regulations when evaluating allegations of unlicensed child care facilities. Social Services notified us that it held a training session with its regional child care managers regarding the memorandum and that the regional managers would train their respective staff members by June 30, 2010. Social Services also stated that it had investigated numerous complaints of unlicensed facilities, which resulted in several facilities applying for a child care license. It commented that facilities not applying for a license or ceasing operation would be subject to civil penalties. Lastly, by June 30, 2010, Social Services planned to send a letter to all known heritage schools that it had previously exempted, notifying them of their responsibility to obtain a child care license.

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## Chapter 9

### **CALIFORNIA STATE UNIVERSITY, CHANNEL ISLANDS: FAILURE TO DISCLOSE GIFTS, INCOMPATIBLE ACTIVITIES Case I2008-0885**

#### **Results in Brief**

An employee with the California State University, Channel Islands (Channel Islands), engaged in incompatible activities and failed to disclose on his annual Statement of Economic Interests some gifts he had received from contractors. These gifts have an estimated value of \$220 in 2007 and \$300 in 2008.

#### **Background**

Located in Camarillo, Channel Islands is a public institution providing undergraduate and graduate degree programs. Like other state agencies, the California State University (university) requires that employees in certain positions disclose their financial interests each year. In addition, like all other state employees, university employees are subject to prohibitions against engaging in such incompatible activities as accepting gifts from anyone seeking to do business with the State.

Specifically, section 87302 of the Government Code requires each designated state employee who is in a position to make or influence governmental decisions to disclose financial interests, including gifts received from outside sources that may be affected by the state employee's decisions. Each designated employee must make this disclosure annually by filing a Statement of Economic Interests. Section 87207, subdivision (a), of the Government Code specifies that an employee must disclose gifts totaling \$50 or more in value that he or she receives from a single source. Further, Government Code section 19990 prohibits a state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, or in conflict with his or her duties as a state employee. Incompatible activities include receiving or accepting directly or indirectly any gift or item of value from a contractor or vendor doing business or seeking to do business with the State when one could reasonably substantiate that the gift was intended to influence or reward the employee for actions taken in his or her duties.

After receiving an allegation that a Channel Islands employee accepted gifts from vendors that had contracts and that were pursuing future contracts with the university, we asked the university to assist us in conducting an investigation.

### Facts and Analysis

The investigation showed that in 2007 a Channel Islands employee, whose position was designated by the university to annually disclose certain financial interests he might have, accepted from a contractor (Contractor A) gifts estimated to have a value of \$220.<sup>10</sup> Contractor A's records for 2007 specifically identified the employee as a guest attendee at six lunches as well as a participant in one golf outing for which Contractor A paid. In addition, the employee received a holiday gift basket from Contractor A. Because these gifts from Contractor A totaled more than \$50 in value, the employee should have disclosed them on his Statement of Economic Interests for 2007. However, he failed to do so.

The investigation also found that in 2007 and 2008 the employee received gifts from a manager for another contractor (Contractor B). Specifically, a manager for Contractor B paid for at least four meals for the employee during those two years. However, the manager paid for the meals personally and did not request reimbursement from his company. Consequently, he did not keep records indicating the frequency of the meals or dollar amount of the items that he bought for the Channel Islands employee. For this reason, the university could not determine whether the employee received gifts in the amounts that he disclosed for 2007 or 2008. In addition to supplying meals, the manager for Contractor B reported that in 2008 he gave the Channel Islands employee two tickets valued at \$300 for a professional sporting event. In April 2009 after the university interviewed the employee, he disclosed the gift on his Statement of Economic Interests for 2008.

After completing this investigation, the university informed us that the employee retired in March 2009. Nevertheless, by failing to report on his annual Statement of Economic Interests the gifts provided by contractors A and B, and by engaging in incompatible activities, the employee violated sections 87207 and 19990 of the Government Code.

<sup>10</sup> The university was unable to determine the exact amount of the gifts for two reasons. First, Contractor A's records indicated that in many instances multiple people attended the meals; therefore, the university had to calculate an average cost per person. Second, Contractor A's records often indicated only that the meals included "university employees," and the records failed to identify specific employees.

## Recommendations

Channel Islands should take the following actions:

- Place a memorandum in the employee's personnel file indicating that the employee retired during the course of an investigation that substantiated his improper governmental activity.
- Distribute a memorandum to all Channel Islands employees reiterating the university's conflict-of-interest policies and the reporting required by state law for gifts received from contractors or vendors.

## Agency Response

Channel Islands reported that it had placed a memorandum in the employee's personnel file and sent out a campus-wide e-mail reiterating the university's conflict-of-interest policies as recommended.

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## Chapter 10

### CALIFORNIA HIGHWAY PATROL: MISUSE OF STATE RESOURCES, INCOMPATIBLE ACTIVITIES

Case I2008-1020

#### Results in Brief

An office supervisor with the California Highway Patrol (CHP) operated a personal business during state time and misused state equipment.

#### Background

To fulfill its many responsibilities, the CHP protects the public, the public's property, state employees, and the State's infrastructure, and it collaborates with local, state, and federal public safety agencies to protect California. Through enforcement, education, and engineering, the CHP also manages traffic and emergency incidents to minimize the loss of life, personal injury, and property damage resulting from traffic collisions. Its office employees perform much of the CHP's behind-the-scenes work.

Like all other state personnel, CHP employees must follow statutes governing the use of state resources. In particular, Government Code section 8314 prohibits state employees from using state resources, including state-compensated time and equipment, for personal enjoyment, private gain, or in connection with an outside endeavor not related to state business. Section 19990 of the Government Code prohibits a state employee from engaging "in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties" as a state employee, including using state time and equipment for private gain or advantage. A state employee's misuse of state property is grounds for disciplinary action under section 19572 of the Government Code.

When we received an allegation that a CHP office supervisor was misusing state time and equipment to conduct personal business, we asked the CHP to assist us in investigating the matter.

#### Facts and Analysis

The investigation determined that a CHP office supervisor misused state time and a state computer to conduct work related to his personal business. The CHP promoted the office supervisor to his

position in May 2008 and placed him on one-year probation. In July 2008—just two months later—the office supervisor received verbal counseling from his superior regarding the misuse of state time and resources after another employee observed him using state time to review paperwork pertaining to his personal business. In March 2009 the CHP formally counseled the office supervisor through a written communication after he was again observed reviewing paperwork related to his personal business. The supervisor later admitted to investigators that he had misused state time and resources, including accessing Web pages and generating documents related to his personal business.

The CHP notified us in May 2009 that it intended to remove the office supervisor from his position during his probationary period because the office supervisor had misused state time and equipment and because other issues had arisen involving the employee's performance as a supervisor. Specifically, the CHP stated that despite providing specific instruction, training, and verbal counseling to the office supervisor, he failed to demonstrate satisfactorily his ability to successfully perform the critical tasks required of his job. In addition, the CHP indicated that the supervisor's substandard work performance, inability to perform at a satisfactory level, and continued misuse of state time and resources contributed to inefficient operations. Thus, the CHP concluded that it was in the State's best interest for the CHP to remove the office supervisor, who was still on probation, from his current position and return him to his former position.

### **Recommendations**

To ensure that the office supervisor devotes his full time, attention, and efforts to his CHP duties during his regular work hours, the CHP should monitor this employee's use of state time and equipment after he returns to his former position.

To make certain that other CHP employees adhere to state laws and to any CHP policies regarding proper use of state time and equipment, the CHP should redistribute to its employees the relevant laws and policies and provide training as necessary.

### **Agency Response**

In May 2010 the CHP reported to us that it demoted the employee in May 2009 and that it had directed the employee's division chief to monitor the employee's performance to ensure that he does not engage in other employment activities during state time or with state resources. In addition, the CHP stated that it was considering

requiring all of its employees to annually review its policy on the proper use of state-owned resources. Finally, the CHP emphasized that it requires its employees to sign and acknowledge that they received forms about incompatible activities, appropriate use of information systems, and, if appropriate, secondary employment, which its commanders are required to review annually.

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## Chapter 11

### DEPARTMENT OF MOTOR VEHICLES: FAILURE TO FOLLOW PERSONNEL RULES

Case I2008-0908

#### Results in Brief

The Department of Motor Vehicles (Motor Vehicles) allowed one of its employees to perform duties outside his job classification, and this decision resulted in the employee's failure to perform responsibilities assigned to his position.

#### Background

Motor Vehicles is responsible for registering more than 30 million vehicles in the State and for issuing licenses to California drivers. In addition, Motor Vehicles maintains driving records, issues identification cards, and records ownership of vehicles.

Like all other state agencies, Motor Vehicles must follow all state personnel rules, including the requirement to appoint employees to positions in good faith. Specifically, California Code of Regulations, title 2, section 8 requires that to be valid, civil service appointments must be made and accepted in good faith. For a job assignment to qualify as a *good faith appointment*, the agency must intend to employ the appointee in the class, tenure, and location specified in the appointment document.

After receiving a complaint that an employee was performing duties outside his classification, we asked Motor Vehicles to assist us in conducting the investigation.

#### Facts and Analysis

The investigation confirmed that the employee, whom Motor Vehicles promoted to a mailing machines operator in March 2008, performed duties outside his classification for about one year. In fact, the employee performed duties that were both below and above his classification's requirements.

The mailing machines operator classification is different from other clerical classes, such as that of office assistant, because it requires the employee to regularly operate machines that process large volumes of outgoing mail. In contrast, employees in office assistant or office technician positions perform general office duties, such as

typing, mail handling and delivery, record keeping, and maintaining office supplies and equipment. Employees in office services supervisor positions oversee clerical staff and may also have duties related to report preparation.

Motor Vehicles reported that in addition to performing duties reserved for a mailing machines operator, the employee under investigation also prepared Motor Vehicles' incoming mail for delivery, a task that an office assistant should have performed. In addition, the employee prepared daily and monthly reports, and he monitored staff activity, thus performing duties that an office services supervisor should have completed. Further, the employee assisted with timekeeping, a task that an office technician should have performed. Finally, Motor Vehicles reported that the employee took on some duties outside his classification because the supervisor assigned to those duties had frequent absences and thus management could not rely upon the supervisor to complete critical reports in a timely manner. The employee did not require additional training for these duties because he had assisted with producing the reports in the past, so a manager assigned the employee this responsibility on an interim basis. Nevertheless, the employee continued to perform many of the same duties he had performed before his promotion to mailing machines operator, and he remained in the same location but was physically separated from the mailing operations.

At the end of the investigation, Motor Vehicles informed us that beginning in April 2009, it transitioned the employee to duties and responsibilities related solely to those of a mailing machines operator. Nonetheless, by allowing the employee to perform duties outside his classification for about a year, Motor Vehicles did not ensure that the employee performed duties required for his classification, thus violating the regulatory requirement to make good faith appointments.

### **Recommendations**

To ensure that its employees and managers comply with personnel rules pertaining to employees' performing duties assigned to their classifications, Motor Vehicles should do the following:

- Monitor the employee's work to ensure that he is completing only those duties assigned to his classification.
- Distribute to its managerial staff a memorandum reminding them that employees are to perform work within their classifications.

### **Agency Response**

In May 2010 Motor Vehicles reported that the employee's manager and supervisor routinely monitor the employee to ensure that he is performing only the duties assigned to his classification. Motor Vehicles also informed us that by June 1, 2010, it would issue a memorandum to its managerial staff in the employee's division, reminding them of their responsibilities to ensure that employees perform duties only within their classifications. Finally, Motor Vehicles stated that it planned to issue a similar department-wide memorandum.

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## Chapter 12

### UPDATE OF PREVIOUSLY REPORTED ISSUES

#### Chapter Summary

The California Whistleblower Protection Act requires an employing agency or appropriate appointing authority for the State to report to the Bureau of State Audits (bureau) any corrective action—including disciplinary action—that it takes in response to an investigative report. The agency or authority must submit information regarding its corrective actions to the bureau no later than 60 days after the bureau issues the report. If the agency or authority has not completed its corrective action within this time frame, it must submit monthly reports to the bureau until it completes that action. This chapter summarizes corrective actions agencies and authorities took on 16 cases from previous investigative reports.

#### **Department of Corrections and Rehabilitation Cases I2004-0649, I2004-0681, and I2004-0789**

We reported the results of this investigation on September 21, 2005.

The Department of Corrections and Rehabilitation (Corrections) did not adequately manage a release time bank (time bank) composed of leave hours donated by members of the California Correctional Peace Officers Association (union) for use by union representatives performing union business. Specifically, Corrections did not track the total number of hours available in the time bank and consequently it released employees to work on union-related activities without knowing whether the time bank had sufficient balances to cover these releases. In addition, the reports that Corrections used to track time-bank charges did not capture 10,980 hours that three union representatives used from May 2003 through April 2005. Corrections appears to have paid these hours through regular payroll at a cost to the State of \$395,256. Following our report, we found that Corrections did not attempt to obtain reimbursement for hours the three representatives spent conducting union activities in May 2005 and June 2005, resulting in an additional cost to the State of \$39,151. In total, Corrections inappropriately paid these representatives \$434,407 from May 2003 through June 2005.

Corrections reported later that due to inadequacies in its retention of records, it had been unable to reconstruct an accurate leave history for the three union representatives prior to July 2005. Thus, it

had decided it would not seek recovery for the \$434,407 described previously. Instead, it had directed its efforts toward the period beginning in July 2005, billing the union for \$899,855 for union work performed by the three employees from July 2005 through December 2008.<sup>11</sup> However, as of December 2008, Corrections had not received any payments to reimburse the State for the costs of the three representatives performing union-related activities.

### **Updated Information**

In March 2010 Corrections informed us that it had improved its processes for reconciling, tracking, and billing union-paid leave for the period from July 2005 through December 2009. Corrections also indicated that it had billed the union an additional \$121,313 for union work performed from January through December 2009. In addition, Corrections subsequently notified us that it received reimbursements totaling \$16,530 for one of the three employees for November and December 2009. Further, in June 2010 Corrections notified us that it had initiated litigation against the union regarding the unpaid leave. Nevertheless, as shown in Table 5, Corrections failed to collect in total \$1,455,575 for union activities conducted by the three representatives from May 2003 through December 2009.

**Table 5**  
**Unreimbursed Union Leave Costs From May 2003 Through December 2009**

TIME PERIOD	COST
May 2003 through June 2005: Union work hours for which the California Department of Corrections and Rehabilitation (Corrections) failed to seek reimbursement	\$434,407
July 2005 through December 2008: California Correctional Peace Officers Association union work hours billed but not reimbursed to the State	899,855
January through December 2009: Union work hours billed but not reimbursed to the State	121,313
<b>Total</b>	<b>\$1,455,575</b>

Sources: Bureau of State Audits' analysis, State Controller's Office records, and invoices provided by Corrections.

Note: The cost of union work hours for which Corrections failed to seek reimbursement represents the three union members' salaries. The cost of union work hours billed but not reimbursed includes the union members' salaries plus benefits as prescribed in the collective bargaining agreement with the union. The total unpaid cost of union-related activities for all Corrections' employees on full-time union leave—including the three union representatives in our report—for the period from July 2005 through December 2009 was \$4,060,696. In January 2010 the State formally demanded that the union reimburse it for the compensation paid to employees who conducted full-time union work.

<sup>11</sup> In January 2008 one of the three union representatives returned to his full-time assignment at a correctional institution, ending his full-time union leave.

**Department of Fish and Game**  
**Case I2004-1057**

We reported the results of this investigation on March 22, 2006.

Between January 1984 and December 2005, the Department of Fish and Game (Fish and Game) allowed several state employees and volunteers to reside in state-owned homes without charging them rent. This violated the state law prohibiting state officials from providing gifts of public funds. Moreover, because Fish and Game did not report to the State Controller's Office (Controller) the taxable fringe benefits that its employees received when they lived rent-free in state-owned housing, Fish and Game deprived tax authorities of as much as \$1.3 million in revenue for tax years 2002 through 2005.

Although Fish and Game was the focus of our investigation, we found that other state agencies that own employee housing might be underreporting or failing to report to the Controller housing fringe benefits totaling as much as \$7.7 million annually. In addition, because these agencies charged employees rents at rates far below market value, the State may have failed to capture as much as \$8.3 million in potential rental revenue in 2003 alone.

In previous updates for this investigation, we noted that the California Conservation Corps, Department of Transportation, California Highway Patrol, Department of Developmental Services, Department of Food and Agriculture, Department of Forestry and Fire Protection, Department of Mental Health, Department of Parks and Recreation (Parks and Recreation), Department of Veterans Affairs, and the Santa Monica Mountains Conservancy had completed their corrective actions.

When we last updated this issue on April 28, 2009, other state agencies reported the following:

- The Department of Personnel Administration (Personnel Administration), which is responsible for determining the fair and reasonable value of state-owned housing, stated that it was reviewing survey reports submitted to it by agencies as of November 2008.
- Fish and Game stated that as of January 2009, it had received appraisals for all of its state-owned units and that it had notified employees living in the units that it intended to inform the Controller of these taxable fringe benefits. Fish and Game had previously stated that it would negotiate increased rental rates once it had obtained appraisals. However, it did not indicate in its update whether it had done so.

- Corrections stated that as of April 2009 it had initiated rent increases for its state-owned housing at Folsom State Prison. It also reported that it was finalizing rental-adjustment notices for its state-owned housing at San Quentin State Prison, the California Training Facility, Deuel Vocational Institution, and Preston Youth Correctional Facility. Corrections indicated that it had contracted for appraisal reviews at additional institutions to be completed by May 2009.

### ***Updated Information***

Personnel Administration reported in June 2009 that a tentative labor agreement between the State and the Service Employees International Union (service union) included the stipulation that the State would not raise rental rates before June 30, 2010, for state-owned homes occupied by employees represented by the service union. However, because the Legislature failed to act on the tentative agreement, this freeze was lifted on October 1, 2009, allowing departments to raise rental rates to market value.

In June 2009 Fish and Game stated that it had regularly reported its employees' taxable fringe benefits to the Controller but that it had placed rental rate increases on hold as directed by Personnel Administration. In March 2010 Fish and Game stated that although the freeze on rental rates had been lifted, the contract in effect with the service union required it to confer with the union before implementing rental increases. Fish and Game stated that it believed that if it attempted to increase rental rates, the service union would request new appraisals. Fish and Game estimated that increasing its rental rates by 25 percent, as allowed by the bargaining unit contract, would result in \$194,000 in additional funding every two years. However, it estimated that appraisals would cost \$210,000 for the same period. Thus, it believed that the income earned from increased rents would be insufficient to cover the appraisal costs. Nevertheless, Fish and Game stated that it intended to meet with the service union to attempt to reach an agreement about increasing rental rates.

Corrections reported in June 2009 that it had continued to prepare monthly rental rate adjustments for employees not represented by the service union at the California Training Facility, Deuel Vocational Institution, and Preston Youth Correctional Facility. Personnel Administration had instructed Corrections also to move forward with rental rate increases for represented employees, effective in October 2009. Corrections notified us in March 2010 that rental rate adjustments had gone into effect for all represented employees on January 1, 2010.

Since these three departments intend to take no further actions on this issue, we will not require future updates unless significant developments occur.

**Department of Parks and Recreation  
Case I2005-1035**

We reported the results of this investigation on March 22, 2007.

An employee with Parks and Recreation repeatedly misused state resources and failed to adequately perform his duties. Over a 13-month period, the employee made more than 3,300 personal telephone calls on his state-issued cellular telephone. In addition, the employee made hundreds of telephone calls to phone numbers that appeared to be assigned to other state employees' cellular telephones. However, Parks and Recreation determined that the State had not issued these phone numbers to state employees, raising questions about the assignment of the wireless phones as well as the appropriateness of the employee's calls.

At the time of our report, Parks and Recreation stated that it had conducted a corrective interview with the employee and submitted a draft departmental notice updating its policy for staff use of personal communication devices. Parks and Recreation subsequently stated that it planned to incorporate the procedures and instructions about personal communication devices in an employee handbook and that it intended to finalize its policy for personal communication devices after it published the handbook. In February 2009 Parks and Recreation reported that it had drafted its handbook and updated its policy but had not yet finalized either.

***Updated Information***

Parks and Recreation stated in May 2010 that its personal communication device policy and handbook have been submitted to its management for approval. In addition, it stated in March 2010 that in order to ensure that it properly segregated the procurement, billing, and inventory of personal communication devices, it had three staff separately performing the duties that the employee had performed previously. Although establishing a separation of duties as a control over personal communication devices was an appropriate step, after three years Parks and Recreation had not yet finalized its actions to resolve the misuse of state-issued cellular telephones.

***Although Parks and Recreation took an appropriate step in separating the duties associated with purchasing personal communication devices, after three years it had not yet finalized its actions to resolve the misuse of state-issued cellular telephones.***

**California State Polytechnic University, Pomona  
Case I2007-0671**

We reported the results of this investigation on September 20, 2007.

An official at California State Polytechnic University, Pomona (Pomona), repeatedly used university computers to view Web sites containing pornographic material. Pomona found that the official had viewed approximately 1,400 pornographic images on two university computers during several weeks in 2006 and from February to May 2007. When we issued our report, Pomona indicated that it had negotiated a resignation with the official, which we later confirmed. Pomona also indicated that it had drafted an Appropriate Use Policy for Information Technology but did not state whether it had implemented any new controls or software filters to prevent employee access to pornographic Web sites in the future.

In subsequent updates Pomona notified us that its academic senate had approved an Interim Appropriate Use Policy (interim policy), which specifically prohibited administrators, faculty, and staff from using computers or computer facilities for personal and inappropriate purposes. Pomona also reported that it had met with the unions for staff and faculty to initiate a required meet-and-confer process. Pomona stated that the unions had requested changes that must be agreed upon before the policy could become official. In March 2009 Pomona reported that it believed the interim policy would be finalized in April 2009.

***Updated Information***

In August 2009 Pomona reported that it had finalized its policy on the appropriate use of information technology resources.

**Department of Consumer Affairs, Contractors State License Board  
Case I2007-1046**

We reported the results of this investigation on October 2, 2008.

An employee with the Contractors State License Board (Contractors Board) used a state vehicle for personal reasons and falsified records to hide her actual activities when she was supposed to be performing field inspections. As a result, the State incurred an estimated \$1,896 loss between April 2007 and August 2007.<sup>12</sup>

<sup>12</sup> We were not able to obtain Contractors Board records for June 2007 to document possible losses during that month.

At the time of our report, the Contractors Board informed us that it had given the employee a counseling memorandum and a copy of the current departmental policy pertaining to incompatible work activities. The Contractors Board also stated that it intended to seek reimbursement from the employee for the unauthorized miles she drove her state vehicle. It subsequently informed her that she owed the State \$1,896 and that she could either pay the amount in full or arrange for an account receivable with the Department of Consumer Affairs (Consumer Affairs). The employee filed an appeal with Consumer Affairs and submitted a letter to it disputing the Contractors Board's position. In March 2009 Consumer Affairs concluded that the employee did not owe the State \$92 of the \$1,896. Therefore, Consumer Affairs determined that the employee must reimburse the State \$1,804.

#### **Updated Information**

Consumer Affairs garnished a total of \$300 from the employee's wages in December 2009 and January 2010 before it learned that she had previously filed for Chapter 7 bankruptcy. According to a Contractors Board official, the employee filed an additional schedule in February 2010 that listed the amount she owed to the State as unsecured debt, thus preventing Consumer Affairs from recovering the remaining \$1,504. In April 2010, based on advice from its legal counsel, Consumer Affairs reimbursed the \$300 to the employee. In June 2010 Consumer Affairs stated that it would have been reimbursed the entire amount if the employee had not received protection under the federal bankruptcy laws.

Consumer Affairs reported in June 2010 that it sought no other disciplinary action against the employee, based on State Personnel Board precedential decisions and other restrictions placed on state agencies when disciplining state employees. Thus, it limited its disciplinary action against the employee to a counseling memorandum, which warned the employee to avoid future similar misconduct.

#### **Department of Corrections and Rehabilitation Case I2006-0826**

We reported the results of this investigation on October 2, 2008.

Between January 1, 2005, and February 29, 2008, Corrections improperly paid nine office technicians a total of \$16,530 for supervising inmates when the technicians had not met the

*Consumer Affairs determined that the employee who we reported used a state vehicle for personal reasons and falsified records, must reimburse the State \$1,804.*

necessary criteria for this additional pay. Corrections did not maintain adequate accounting and administrative controls that would have prevented improper payments.

In an April 2009 update, Corrections reported that it had drafted procedures detailing the proper methods for requesting and monitoring inmate supervision pay. It also stated that it planned to inform its employees who supervised inmates of the requirements and responsibilities associated with receiving this pay. Corrections further stated that it intended to establish accounts receivable for \$11,400 of the \$16,530 we had identified in our investigation as inappropriate payments. It stated that it was unable to recoup \$1,900 of the \$16,530 because the overpayments had occurred more than three years before it initiated recovery. It also reported that because it used the incorrect period for overpayment recovery when it initiated its recovery efforts in September 2008, it had failed to collect \$3,230 for improper payments made from September through December 2005.

#### ***Updated Information***

Corrections notified us in May 2009 that one of the nine office technicians had provided it with copies of inmate time sheets showing that she had met necessary inmate supervision criteria for one of the months we identified in our report. Our review of these time sheets showed that the office technician was entitled to \$190 for inmate supervision pay for that month, reducing the amount of recoverable overpayments to \$11,210. Corrections reported that it had collected just \$2,090 of the \$11,210 in improper payments made to the office technicians since we first reported on the issue in October 2008.

In May 2009 Corrections suspended its overpayment recovery efforts because employees had filed grievances and Personnel Administration had indicated that it intended to issue a ruling describing its interpretation of the contract provisions regarding inmate supervision. Personnel Administration issued this ruling in October 2009. Shortly thereafter Corrections notified us that it was establishing a task force to develop a department-wide operational procedure for inmate supervision pay using Personnel Administration's ruling to assist the task force in the procedure's development.

Corrections reported that in May 2010 it issued the department-wide operational procedure for inmate supervision pay. Corrections stated that the procedure clarifies and defines the criteria for receiving the pay, identifies documentation and training needs, and establishes an internal audit process. In

***In May 2009 Corrections suspended its overpayment recovery efforts from nine office technicians who had been paid improperly because employees had filed grievances and Personnel Administration intended to issue a ruling describing its interpretation of the contract provisions regarding inmate supervision.***

addition, Corrections indicated that because it had not established the department-wide procedure when it made the improper payments, it would not seek to recover the overpayments to the office technicians. Corrections asserted also that no documentation existed to demonstrate that inmate supervision was not performed; thus, it stated that it believed it would be unsuccessful in recovering the improper payments. However, Corrections' assertion is incorrect. As we pointed out in our report, in some instances documentation showed that employees did not meet the criteria to receive the pay when they supervised only one inmate or when two or more inmates they supervised had not worked the required number of hours. Moreover, we provided this documentation to Corrections in September 2008, which it apparently used to seek recovery of the \$16,530 in improper payments from the office technicians we originally reported.

*Corrections indicated that because it had not established a department-wide procedure when it made the improper payments, it would not seek recovery of the overpayments.*

#### **California Prison Health Care Services Case I2008-0805**

We reported the results of this investigation on January 22, 2009.

The California Prison Health Care Services (Prison Health Services) ignored state contracting laws and alternative contracting processes established by a federal court when it acquired \$26.7 million in information technology (IT) goods and services in a noncompetitive manner from November 2007 through April 2008. Specifically, Prison Health Services, which manages the State's prison medical health care delivery system, used 49 purchase orders to acquire \$23.8 million worth of IT goods from a single vendor when it should have sought competitive bids. It also contracted with the same vendor to provide \$2.9 million in IT services without using a competitive process. Staff at Corrections helped to execute the purchase orders for Prison Health Services after initially questioning the propriety of the process used. Our report made several recommendations to Prison Health Services to ensure the consistent application of proper contracting procedures for acquiring IT goods and services. We also recommended that Corrections establish a protocol for communicating with Prison Health Services when it becomes aware of potential violations of state contracting laws.

At the time of our report, Prison Health Services stated that it had obtained approval from the Department of General Services (General Services) to use a noncompetitively bid contract to continue to purchase services from the vendor that was the subject of the report. It also stated that it had adopted a formal policy governing the use of a waiver from state contracting laws that had been established by the federal court. Corrections responded to

our report by stating that its managers would continue to review contract documentation and would abort any transactions that violated applicable contracting requirements.

In March 2009 Prison Health Services reported that employees in its IT acquisitions unit had attended training and that it had distributed its policy on the use of the federal waiver. It also stated that it had begun to route all IT procurements to its procurement office to ensure the use of appropriate purchasing methods and that it had given that office the authority to halt any procurements that did not meet state laws and regulations.

#### ***Updated Information***

Prison Health Services notified us in May 2009 that it had developed a training policy for staff with purchasing responsibilities. In addition, it had developed procedures for acquiring IT goods and services to ensure staff compliance with state processes and the contracting process approved by the federal court. Further, it had established a policy to ensure that the authority to sign purchasing documents was limited to authorized individuals.

#### **Department of Corrections and Rehabilitation and Department of General Services Case I2007-0891**

We reported the results of this investigation on April 28, 2009.

Corrections and General Services wasted \$580,000 in state funds from January 2005 through June 2008 by leasing 5,900 square feet of office space that Corrections left unoccupied for more than four years. Delays and inefficient conduct by both state agencies contributed to the waste of state funds. In our report, we made a number of recommendations, including the following:

- Corrections should require its employees to confirm leasing needs before submitting a request to General Services.
- Corrections should promptly review and approve required lease information.
- Corrections should obtain training from General Services about the leasing process and General Services' expectations of Corrections staff.

- General Services should establish reasonable processing and completion timelines for lease activities.
- General Services should strengthen its oversight role to prevent state agencies from leasing space when state-owned space is available. It should also create guidelines for leasing representatives.
- General Services should develop a procedure to evaluate all costs incurred in the processing of a space request, including any rent paid on unoccupied space.

At the time of our report, Corrections acknowledged its failure to adequately track this lease project and to respond to General Services' information requests in a timely manner. Corrections stated that it had initiated a formal notification process when requesting leasing services to ensure that it obtained program information and lease space requirements. Corrections also stated that the majority of its leasing and property management staff had attended a General Services' training on leasing activities. Corrections reported that it had begun to informally track its lease projects to ensure it resolved outstanding leasing issues promptly, and it indicated its intent to develop a formal project-tracking system to provide management with up-to-date information concerning its properties.

Also at the time of our report, General Services stated that it had executed a new lease on the property in question to take effect in May 2009. General Services also reported that it had added 15 additional staff members for space planning activities and that it had established detailed timelines for completing its lease projects. General Services stated that these timelines required that it process and approve space requests within 18 days and that it complete leasing projects within six months to 24 months. Further, General Services stated that it had established policies and practices for negotiating with lessors and for addressing conflicts with state agencies regarding the use of available state-owned space. General Services also indicated that it would provide ongoing training on negotiating strategies to its real estate staff. Finally, General Services stated that it had already established a procedure to evaluate costs in processing lease requests, and it asserted that its alternatives for this particular project would not have proved more cost-effective for the State.

*General Services issued two new policies that established procedures for its staff to resolve lease project disputes and to monitor lease project progress.*

### ***Updated Information***

In May 2009 Corrections informed us that it had moved into the office space in question. Corrections subsequently indicated that it had initiated several improvements to its leasing procedures and lease project management. In particular, Corrections stated that it had refined its lease project processes to include conducting field reviews of its leased space and that it had completed a business plan to standardize leasing processes, ensure quality assurance, and strengthen lease inventory records management. In September 2009 Corrections completed a lease process flow diagram. In March 2010 it noted that its remaining leasing staff attended a General Services' training course on its leasing process. It also stated that its project-tracking system allowed it to track and monitor the status, schedule, and budget of leasing projects and that it still had plans to develop a formal leasing database but it was considering other software options.

In May 2009 General Services stated that it had updated its timelines for its lease activities, extending the maximum time to complete leasing projects from 24 months to 36 months. According to General Services, the addition of its 15 new staff had allowed it to improve the efficiency of planning activities and to resolve critical issues associated with lease projects in a timely manner. General Services also provided us with its two new policies that, effective May 1, 2009, established procedures for its staff to resolve lease project disputes and to monitor lease project progress.

### **Department of Fish and Game, Office of Spill Prevention and Response Case I2006-1125**

We reported the results of this investigation on April 28, 2009.

Official A, formerly a high-level official with the Office of Spill Prevention and Response (spill office) of Fish and Game, received reimbursements to which she was not entitled for commute expenses between her Sacramento headquarters and her Southern California residence. In addition, Fish and Game violated state travel regulations by reimbursing Official A for lodging and meal expenses incurred near her headquarters and her residence. In total, Fish and Game improperly reimbursed Official A \$71,747 from October 2003 through March 2008.

Despite lacking the necessary authority, current and former officials for the spill office allowed Official A to informally claim that her residence was her headquarters. These officials permitted Official A to work from her home, identify it as her headquarters, and claim

expenses when traveling to Sacramento. She was allowed to use state vehicles or state-funded flights for commutes between her Southern California home and her Sacramento headquarters, and to claim lodging and per diem expenses in Sacramento, her official headquarters location. A subsequent high-ranking official at Fish and Game stated that he could think of no legitimate business reason for Official A to claim her residence as her headquarters.

Fish and Game should have been aware that Official A's travel expenses did not adhere to state regulations and were therefore improper. Fish and Game's accounting staff never questioned Official A about the actual location of her headquarters even though her travel claims stated that she had offices in Southern California and Sacramento. Because state regulations define headquarters as a single location, Fish and Game should have questioned or denied reimbursement for her travel claims.

At the time of our report, we recommended that Fish and Game should either seek to recover the amount it had reimbursed Official A for her improper travel expenses or explain and document its reasons for not seeking recovery. In addition, we made several recommendations for Fish and Game to improve its accounting office's review process for travel claims.

### ***Updated Information***

In April 2009 Fish and Game reported that it had instructed its accounting staff and supervisors to identify and resolve concerns related to travel expense claim discrepancies. In addition, Fish and Game stated that it had begun a process to ensure that employees properly designate and document their headquarters on travel expense claims.

In January 2010 Fish and Game notified us that it had completed a review of Official A's expenses. However, as of April 2010, it had yet to determine if it would seek to recover reimbursement from Official A for the improper commute and travel expenses. Fish and Game also informed us in January 2010 that it had updated its employee training to ensure that employees identify the addresses of their headquarters and the purposes of their trips on travel expense claims. According to Fish and Game, it required employees to complete a form designating either a state office address or home address as their headquarters so that supervisors could confirm that correct addresses were listed on employees' travel expense claims. However, we believe this truncated process of certification and approval of an employee's home address as headquarters severely limits the internal controls necessary for Fish and Game to monitor telecommuting assignments and to ensure travel expenses are in the

***Fish and Game completed a review of the official's expenses but had yet to determine if it would seek to recover reimbursement from the official for improper commute and travel expenses.***

*Fish and Game has failed to take appropriate action to address the lack of oversight that led to an official claiming \$71,747 in improper travel expenses, making it susceptible to further instances of employees incurring improper expenses.*

State's best interest. The headquarters designation should be based on an employee's position and not the preference of an employee or supervisor, and Fish and Game should have procedures in place to ensure that the designation of an employee's residence as his or her headquarters is appropriate, necessary, and position-specific. Such designations should be limited strictly to instances in which Fish and Game can clearly show that they are in the State's best interest.

In our initial report on this investigation, we recommended that Fish and Game require that an official at the deputy director level or above provide a written explanation justifying the business need to alter a headquarters location and that this justification should include a cost-benefit analysis comparing the two locations. In its January 2010 update, Fish and Game stated it would require certification and justification for a headquarters designation that differed from the location assigned for the employee's position. However, it did not specify that the justification should require the approval of a deputy director or that it should include a cost-benefit analysis. Thus, Fish and Game has failed to take appropriate action to address the lack of oversight that led to Official A claiming \$71,747 in improper travel expenses. As a result, Fish and Game is susceptible to further instances of its employees incurring improper commute and travel expenses.

### **State Compensation Insurance Fund Case I2007-0909**

We reported the results of this investigation on April 28, 2009.

An employee of the State Compensation Insurance Fund (State Fund) failed to report 427 hours of absences during the period from January through December 2007. Consequently, State Fund paid her \$8,314 for hours that she did not work. Specifically, the employee submitted only eight monthly attendance reports instead of 12 for this period, and none of the reports she submitted were accurate. By comparing what the employee stated on the reports with other information about her actual attendance, we determined that she was absent for a significant number of full or partial days on which she reported that she was present. Moreover, the employee received credit for perfect attendance in two other months because she did not submit attendance reports, even though other records show absences during these months. She also failed to submit attendance reports for two more months, and as a result, the hours charged against the employee's leave balances were not sufficient to cover her absences.

The supervisor's lax or nonexistent oversight over the employee's attendance reporting raised concerns about the attendance reporting of other employees in the unit. In one instance, the supervisor actually added to the inaccurate reporting. Specifically, the supervisor discovered in March 2008 that the employee had not submitted an attendance report for November 2007. The supervisor then attempted to resolve the matter by submitting the report herself. However, the supervisor reported that the employee was at work on two days that other records indicated she was absent. Further, the supervisor failed to capture eight hours of absences resulting from the employee's arriving late or leaving early during the month.

We recommended that State Fund fully account for the 427 hours the employee failed to report, that it provide training to the employee about proper time recording and to her supervisor about supervisory requirements, and that it take appropriate disciplinary action for the employee and her supervisor's improper acts. In addition, we recommended that State Fund examine the accuracy of the time and attendance reporting of all employees in the same unit and that it establish a process for increased scrutiny in the future.

### ***Updated Information***

State Fund reported that it had dismissed the employee in June 2009 and demoted the supervisor in July 2009. The employee accepted her termination, and State Fund calculated that it overpaid the employee by \$4,888. In March 2010 State Fund agreed to accept \$1,000 as payment in full from the employee, however, it had not received this payment as of June 2010. State Fund stated that it planned to take further action to enforce repayment. In addition, State Fund reported that the supervisor appealed her demotion, and her appeal hearing is scheduled for November 2010. It further stated that the supervisor has not worked since June 2009 and has accepted a disability retirement effective April 1, 2010.

State Fund also reviewed records establishing the attendance for eight other employees who worked for the supervisor and found no discrepancies in the employees' time reporting. It stated that it had begun requiring its supervisors to complete weekly attendance reports to ensure that the employees' approved absences were properly recorded, tracked, and monitored.

***We previously found that an employee failed to report 427 hours of absences. State Fund stated that it had dismissed the employee and demoted a supervisor.***

**Department of Social Services**  
**Case I2007-0962**

We reported the results of this investigation on April 28, 2009.

The Department of Social Services (Social Services) failed to follow the requirements imposed by state civil service laws when a high-ranking official arranged for the selection of a subordinate employee to fill a field analyst position. Social Services further violated state civil service laws by appointing the employee to the field analyst position even though she continued to perform the duties of a lower-level analyst. As a result, from November 2005 through September 2008, Social Services paid the employee \$6,444 more than what was permitted by the State for the duties she performed.

Specifically, our investigation determined that in 2005 the official, who was headquartered in Sacramento, decided that she wanted to promote her assistant to a higher paying position. The official identified an unoccupied field analyst position in the San Jose field office and arranged to have her assistant appointed to it. However, the official did not change the assistant's assigned duties after the appointment but instead directed her to continue performing the same duties that she had performed previously. Moreover, the assistant continued working in Sacramento even though her assigned position number and Social Services' organizational charts indicated that she was headquartered in San Jose.

After we inquired about the employee's duties, Social Services reported to us in February 2008 that it had determined the employee was performing the duties of an office analyst rather than those of a field analyst as described in that position's duty statement. Social Services then offered the assistant the option of either remaining a field analyst and performing the duties of that position or transferring into an office analyst position and continuing to perform primarily the same duties she had been assigned as the official's assistant. In June 2008 the employee chose to transfer into the office analyst position. The transfer became effective retroactive to May 2008.

We recommended that Social Services retroactively cancel the assistant's appointment to the field analyst position and seek repayment of the \$6,444 that it improperly paid her. In addition, we recommended that Social Services take corrective action against the official for her improper actions and that it provide training to management and other key staff regarding the laws, regulations, and policies governing the hiring process. Lastly, we recommended that Social Services take steps to ensure that its employees

perform the duties described in their duty statements and that position numbers and organizational charts accurately reflect its employees' headquarters.

At the time of our report, Social Services stated that the State Personnel Board (Personnel Board) determined that Social Services should not rescind the appointment or collect the overpayment because the employee had accepted the appointment in good faith more than one year prior to discovery. However, we concluded that neither the employee nor Social Services had acted in good faith in the appointment because the employee never intended to relocate to San Jose or to perform the primary duties associated with the field analyst position. Social Services stated also that it had erred in its salary determination when it transferred the employee to the office analyst position in May 2008 and that it would attempt to collect \$1,516 it overpaid her for its error.

At the time of the report, Social Services stated that the official had retired but was still working at its headquarters as a retired annuitant until it found a replacement for her. Social Services indicated that it would inform us by June 2009 of any disciplinary action it took against the official. It also stated that it would review and update its hiring and selection policies and procedures, and it would provide the updated versions to its supervisors and managers.

### ***Updated Information***

In May 2009 Social Services informed us that it had hired a replacement for the official and no longer employed her. Nevertheless, Social Services stated that it had discussed our findings with the official and reviewed with her the personnel policies and procedures that she should have followed. Social Services stated that it might hire the official as a retired annuitant in the future, but that she would not be put in a position with the authority to hire or promote. In addition, Social Services stated that it would emphasize in its supervisor and manager training classes the laws, regulations, and policies governing the hiring process and the need to ensure that employees perform the duties described in their duty statements. In June 2009 it released a memorandum to all supervisors reiterating these rules and the need to ensure that its position numbers and organization charts accurately reflect the employees' headquarters.

Regarding the employee's improper appointment, we learned after the release of our report that Social Services misled us when it told us that the Personnel Board had determined that it should not rescind the appointment or collect the overpayment. Social Services

***We concluded that neither the employee nor Social Services had acted in good faith in the appointment because the employee never intended to relocate to San Jose or to perform the primary duties associated with the field analyst position.***

*Social Services had collected \$1,516 in overpayments it made to an employee as of March 2010.*

had not shared any of the findings detailed in our report with the Personnel Board. Instead, it merely told the Personnel Board that when it had appointed the employee to the field analyst position, it had mistakenly appointed her to an incorrect salary range. As a result of Social Services' failure to share vital information about the appointment, the Personnel Board was unable to make a sound determination regarding whether the employee's appointment to the field analyst position had been made and accepted in good faith.

As of March 2010 Social Services had collected \$1,516 in overpayments it made to the employee from May 2008 through December 2008.

#### **Department of Parks and Recreation Case I2008-0606**

We reported the results of this investigation on April 28, 2009.

A Parks and Recreation supervisor did not solicit competitive price quotes when purchasing a storage container, and consequently, Parks and Recreation overpaid for this item by at least \$1,253. The supervisor purchased a storage container in December 2007 to store supplies for several parks that he oversaw at the time. However, he did not obtain two price quotes, as required by state law, to ensure that the \$4,987 cost of the storage container was fair and reasonable. The supervisor later recalled that he had contacted other suppliers but he could not provide evidence to document the price quotes he obtained. The supervisor stated that he did not document these price quotes because he had not received sufficient training at the time of the purchase. He also admitted that he had not obtained the "best possible price" for the storage container. Three weeks after the supervisor's purchase, a Parks and Recreation employee who worked for him obtained a price quote of \$3,734 for a similar storage container. Thus, if the supervisor had followed state law, Parks and Recreation could have saved at least \$1,253.

We recommended that Parks and Recreation require its employees to adequately document their efforts to obtain price quotes to ensure that they obtain fair and reasonable prices for the purchase of goods. We also recommended that Parks and Recreation provide timely training for new supervisors to ensure that employees use a purchasing process that conforms to state law.

#### ***Updated Information***

In June 2009 Parks and Recreation reported that it had formally reprimanded the supervisor for failing to follow state purchasing law despite the fact that it had provided purchasing training to the

supervisor in April 2004. In July 2009 Parks and Recreation notified us that its existing procurement policy, dated July 2004, requires all its employees who make purchases to document the fair and reasonable pricing of goods purchased. Parks and Recreation also stated the annual meeting in the supervisor's district would include a refresher course in purchasing and procurement policies. The supervisor attended this refresher training in 2009.

**Department of Justice  
Case I2007-1024**

We reported the results of this investigation on April 28, 2009.

From June through August 2007, a Department of Justice (Justice) regional office employee failed to properly report her overtime worked and leave taken. As a result, Justice improperly paid the employee \$648. In this same time period, the employee also claimed and was reimbursed \$497 for travel expenses she had not incurred. The employee's manager did not ensure that the employee accurately reported her time and travel expenses.

We recommended that Justice properly account for the employee's overtime worked and the hours that she was absent, and that it seek reimbursement from the employee for the \$497 in travel expenses. We recommended that it prohibit regional office employees and managers from engaging in informal timekeeping arrangements and that it instead require them to use time sheets and overtime request forms. We also recommended that it provide training to these employees regarding proper time-reporting and travel claim requirements.

At the time of our report, Justice stated that it would direct the employee to revise her time sheets to reflect her compensated time off and to account for her absences. Justice also stated that it would seek reimbursement from the employee for the \$497 overpayment in travel expenses. Further, Justice reported that it would remind regional office staff to follow policies and procedures regarding leave use and time reporting, and that it would reinforce its policies by providing training to its employees.

***Updated Information***

In May 2009 Justice stated that it had issued a memorandum of instruction to the employee and her manager about their failures to follow time-reporting and travel expense claim policies and procedures. Justice also stated that it had issued a separate memorandum to its regional office employees and to legal staff at

*We reported that an employee failed to properly report her overtime worked and leave taken; as of November 2009 the employee had revised her time sheets and had reimbursed Justice for the overpayment of travel expenses.*

other Justice regional offices in the division to remind them of the proper time-reporting policies and procedures. Justice reported in June 2009 that the employee had revised her time sheets to account for the hours of overtime she worked and the hours she was absent. In September 2009 Justice reported that it had provided formal training in travel expense claim policy to the employee and other regional office employees, to be followed by training in proper time reporting in December 2009. As of November 2009, the employee had reimbursed Justice for the overpayment of travel expenses.

#### **Department of Finance Case I2008-0633**

We reported the results of this investigation on April 28, 2009.

Our investigation found that the Department of Finance (Finance) failed to properly eliminate a vacant position, thus circumventing a state law intended to abolish long-vacant positions. Specifically, during the seven-month period from June 2006 through January 2007, three Finance employees occupied one position at various times. From July through November 2006, the position was vacant. In December 2006 Finance manually keyed an employee's transfer into the position; however, the employee was not aware he had been transferred. Had the position remained unfilled through December 31, 2006, the State would have deemed it vacant and therefore abolished it.

#### ***Updated Information***

Finance issued memoranda to its executive management and its chief of human resources to stress the importance of strict compliance with the law governing vacant positions and to require that they report any circumvention of this law. Finance also issued a counseling memorandum to the manager who had directed staff to transfer an employee in order to save the position.

#### **Department of Corrections and Rehabilitation Case I2009-0702**

We reported the results of this investigation on November 17, 2009.

After an October 2008 investigation revealed that Corrections had made improper payments to a particular class of employees for supervising inmates at one correctional facility, we initiated a second investigation to determine whether it had also made such payments to additional classes of employees at other facilities. We

visited six correctional facilities and found that from March 2008 through February 2009, Corrections overpaid employees for inmate supervision at five of them. These improper payments, which 23 of the 153 employees we examined received, totaled \$34,512. We identified these employees by sampling inmate supervision payments during our visits. Based on our sample, we estimated that Corrections may have improperly paid as much as \$588,376 to its employees statewide during the 12-month period we reviewed. These improper payments occurred because Corrections lacked the controls necessary to ensure that its employees satisfied all of the requirements for receiving extra pay for inmate supervision. We also found that, except in a few instances, Corrections had not initiated collection efforts to recover the improper payments it identified during its follow-up to our previous investigation on this same issue.

We recommended that Corrections initiate accounts receivable for the employees identified as receiving improper payments and begin collection efforts for these accounts. In addition, we recommended that Corrections require employees at all of its facilities to submit copies of supervised inmates' time sheets each month along with their own so that personnel staff could verify the employees' eligibility to receive the extra pay. We also recommended that Corrections take steps to specifically define what constitutes "regular" supervision of inmates. Finally, we recommended that Corrections provide adequate training and instruction to its personnel staff and to its employees who supervise inmates regarding the requirements for receiving the payments and for ensuring proper documentation.

At the time of our report, Corrections responded by stating that we had applied the requirements for receiving these payments too strictly, basing its opinion on information that it had received from Personnel Administration. However, we concluded that much of the information from Personnel Administration did not contradict or impact our findings. We disagreed with a Personnel Administration opinion that inmates did not need to work the required number of hours for the supervising employees to qualify for the extra pay.

In addition, Corrections told us that it planned to set up a task force of key staff to fully review the information received from Personnel Administration and to establish necessary guidelines and internal controls. Corrections stated that it would recover the funds it had improperly paid to its employees once the task force had completed its assigned responsibilities.

*Corrections decided not to pursue any collection efforts against the employees, asserting that it had not established a formal operating procedure and that it lacked documentation.*

### **Updated Information**

Corrections reported that it issued a department-wide operational procedure regarding the inmate supervision pay in May 2010. It also stated that the procedure clarifies and defines the criteria for receiving the pay, identifies documentation and training needs, and establishes an internal audit process. Corrections further informed us that it decided not to pursue any collection efforts against the employees whom we identified as receiving improper payments. It justified its decision by asserting that it had not established a formal operating procedure at the time of our investigation and that it lacked documentation to demonstrate that the payments were improper. Despite Corrections' assertion, we located sufficient documentation during our investigation to demonstrate that some employees had been overpaid. Corrections further explained that it did not believe it would prevail in an arbitration hearing and it wanted to treat all employees equitably and avoid singling out those employees whose payments we reviewed in the investigation.

### **California State University, Office of the Chancellor Case I2007-1158**

We reported the results of this investigation on December 2, 2009.

Over the 37 months from July 2005 through July 2008, a former official<sup>13</sup> in the Chancellor's Office of the California State University (university) system received \$152,441 in improper expense reimbursements, which consisted of payments for the following claims:

- \$39,135 in unnecessary travel costs that appeared to offer the university few tangible benefits or advantages and that were not in the State's best interest.
- \$26,455 in reimbursements that exceeded the amounts allowed for the former official to organize, host, and attend business meals involving various university staff and other individuals who were serving with the former official on working groups or boards.
- \$43,288 in commute expenses—despite university policies clearly prohibiting an employee from claiming reimbursements for expenses incurred at his or her residence or within 25 miles of the employee's designated headquarters. These reimbursements covered the former official's costs for dozens of commercial

<sup>13</sup> The official left the university in July 2008.

flights from airports near his home in Northern California to his headquarters in Long Beach, hotel lodging, airport parking, rental car charges, and the former official's personal use of his vehicle between his home and the airport.

- \$17,053 for personal expenses—including the costs for equipment, supplies, and multiple telecommunications services to his residence—that the former official incurred while purportedly conducting university business from his home in Northern California. However, the former official and the university had no formal agreement that allowed him to work from his residence.
- \$24,676 related to a \$748 monthly payment for long-term living expenses received during 33 of the 37 months we examined. According to a university policy, the former official did not qualify for these reimbursements.
- \$1,834 in reimbursements that occurred when the university made duplicate payments and overpayments to the former official.

In addition, the former official's supervisor and the university failed to review the official's expense reimbursement claims sufficiently or to follow long-established policies and procedures designed to ensure the accuracy and adequate control of expenses. Consequently, the university allowed the former official to incur expenses that were unnecessary and that did not suit the best interests of the university or the State.

Further, our investigation identified other issues related to some of the university's policies for its employees. In particular, three university policies that apply to employees—travel, hospitality, and food and beverage—discuss the use of business meals.<sup>14</sup> However, our review of these policies indicated that the university failed to explain clearly to employees which policy for business meals that they should apply in a given circumstance. Only the university's travel policy sets defined limits for meal reimbursements, while the former hospitality policy and the current food and beverage policy lack specifics on the costs of business meals. The lack of clarity in the university's policies therefore contributed to the \$26,455 waste of public funds for business meals.

Similarly, we found that the university's travel policy for lodging expenses lacks any limits on costs. We identified numerous occasions on which the former official's travel was appropriate but

<sup>14</sup> The hospitality policy expired in December 2007. The university replaced it with the food and beverage policy, effective in January 2008.

for which his lodging costs appeared too high. For example, our analysis revealed that for university-related travel within California, the former official incurred hotel costs that averaged \$294 per night. University travel policy allows for the payment of actual lodging costs but does not establish any defined upper limits on costs. Without such limits, the university may have reimbursed the official for unnecessary and wasteful lodging expenditures.

We recommended that the university take the following actions:

- Recover from the former official the \$1,834 in duplicate payments and overpayments.
- Reexamine its review process for preapproving and reimbursing all high-level university employees, and require all staff to submit correct, complete claims with detailed documentation supporting those claims, subject to thorough and appropriate review.
- Terminate any informal agreements with university employees that allow the employees to work at locations other than their headquarters and expressly prohibit the making of such agreements.
- Specify upper monetary limits for its food and beverage policy and specify when this policy applies.
- Revise its travel policy to establish defined maximum limits for the costs of lodging that are reimbursable and to create controls that allow for exceptions to such limits under specific circumstances only.

At the time of our report, the university agreed that it should seek repayment from the former official for any duplicate reimbursements or overpayments. In addition, the university agreed that it should reexamine its reimbursement procedures for high-level employees and that it should require complete, thorough documentation of expenses when an employee seeks reimbursement. However, it disagreed with our finding that the former official's travel appeared to offer few tangible benefits or advantages to the university. Instead, it asserted that many of the official's trips were necessary to maintain a relationship with a particular supplier of software in which the university had made a substantial investment. Nonetheless, the university still failed to identify clearly how the former official's extensive travel provided the university with concrete and measureable benefits.

The university disagreed with our recommendation that it should terminate agreements with employees that allow them to work at locations other than their headquarters and that it should expressly prohibit the making of such agreements. Instead, the university countered that it needed flexibility to recruit and retain highly skilled employees; thus, it would be counterproductive to terminate such flexibility. However, the university did not address our finding that it allowed the former official to work from home, at considerable expense, without his having any obvious business need for the arrangement. Moreover, the university permitted the arrangement through an informal agreement that did not include safeguards like those imposed by its telecommuting policy, which requires that important issues including work schedule, equipment needs, costs, and accountability for work be addressed. Finally, as this former official's particular case demonstrates, such costly informal agreements are not necessarily successful in retaining employees.

In response to our recommendation that the university specify in its food and beverage policy the monetary limits for reimbursable expenses—and that it should specify when the food and beverage policy applies and when expenses fall under the university's stricter travel reimbursement policy—the university indicated that before our investigation, it had used different funding sources to separate the business meal reimbursements under the different policies. Regardless, the university's response failed to indicate whether it would specify in its food and beverage policy monetary limits for business meals and clarify when the policy applies. Although the university stated that it "will continue to be vigilant" about employees' compliance with its existing food and beverage policy, we saw no indication that it intended to address the waste of public funds for the unnecessary expenditures we identified in our report.

Finally, the university stated that because it does business at various locations around the world, establishing defined limits for reimbursing the costs of lodging would be "impractical." According to the university, it asks instead that its employees who travel frequently "pay careful attention to lodging choices," and asks that its managers "scrutinize travel claims for wasteful expenditures." However, this response by the university highlights its failure to grasp the enormity of the problem created by its lack of defined limits on lodging costs. Without these limits—and a control that allows for exceptions to the limits—the university has abdicated its oversight responsibility. Moreover, the university was disingenuous in noting the impracticality of instituting defined limits on lodging costs because Personnel Administration, which oversees the travel rules and regulations for most other state employees, has clearly established limits on lodging costs incurred in California, and Personnel Administration allows state agencies to authorize exceptions to these limits in certain circumstances.

### *Updated Information*

*The university collected from a former official \$1,903 in duplicate payments and overpayments, which is an amount that represents the \$1,834 we identified and the \$69 that the university identified later.*

The university collected from the former official \$1,903 in duplicate payments and overpayments, which is an amount that represents the \$1,834 we identified and the \$69 that the university identified later. In addition, the university reported that it sent a memorandum to its vice-chancellors informing them that all international travel by any Chancellor's Office staff member must receive preapproval by the chancellor. However, the university has failed to take any specific action regarding our recommendations that it terminate any informal agreements with employees that allow them to work at locations other than their headquarters, clarify the applicability of its various reimbursement policies and define within those policies the cost ceilings for business meals, and establish limits on lodging costs. In fact, university administrators informed us that it needs to take no further actions on these recommendations.

We conducted this review under the authority vested in the California State Auditor by Section 8547 et seq. of the California Government Code and pursuant to applicable investigative standards.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: June 29, 2010

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

## Appendix

### THE INVESTIGATIONS PROGRAM

The California Whistleblower Protection Act (Whistleblower Act) authorizes the Bureau of State Audits (bureau), headed by the state auditor, to investigate allegations of improper governmental activities by agencies and employees of the State. Contained in the California Government Code, beginning with section 8547, the Whistleblower Act defines an *improper governmental activity* as any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency.

To enable state employees and the public to report suspected improper governmental activities, the bureau maintains a toll-free Whistleblower Hotline (hotline): (800) 952-5665 or (866) 293-8729 (TTY). The bureau also accepts reports of improper governmental activities by mail and over the Internet at [www.bsa.ca.gov](http://www.bsa.ca.gov).

The bureau has identified improper governmental activities totaling \$29.7 million since July 1993, when it reactivated the hotline. These improper activities include theft of state property, conflicts of interest, and personal use of state resources. The investigations have also substantiated improper activities that cannot be quantified in dollars but have had negative social impacts. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Although the bureau conducts investigations, it does not have enforcement powers. When it substantiates an improper governmental activity, the bureau reports confidentially the details to the head of the state agency or to the appointing authority responsible for taking corrective action. The Whistleblower Act requires the agency or appointing authority to notify the bureau of any corrective action taken, including disciplinary action, no later than 30 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

The Whistleblower Act authorizes the state auditor to report publicly on substantiated allegations of improper governmental activities as necessary to serve the State's interests. The state auditor may also report improper governmental activities to other authorities, such as law enforcement agencies, when appropriate.

### Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that departments implemented on individual cases from September 2005 through December 2009. Table A summarizes all of the corrective actions that departments took between the time that the bureau reactivated the hotline in 1993 until December 2009. The table separately identifies the corrective actions that departments have taken since July 2002, when the law changed to require all state departments to notify their employees annually about the bureau's hotline. In addition to the corrective actions listed below, our investigations have resulted in many departments modifying or reiterating their policies and procedures to prevent future improper activities.

**Table A**  
**Corrective Actions**  
**July 1993 Through December 2009**

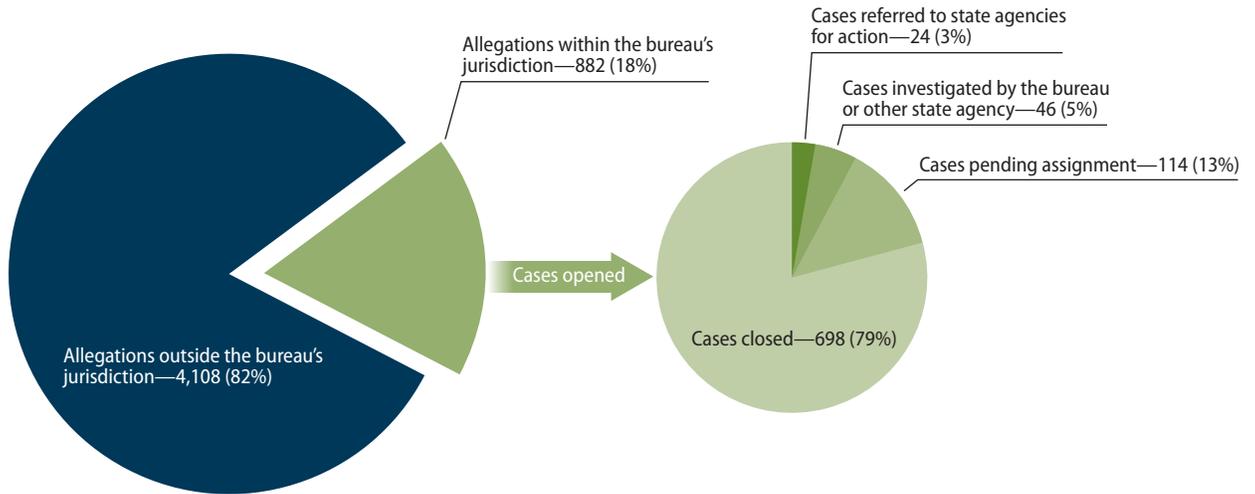
TYPE OF CORRECTIVE ACTION	NUMBER OF INCIDENTS JULY 1993 THROUGH JUNE 2002	NUMBER OF INCIDENTS JULY 2002 THROUGH DECEMBER 2009	TOTALS
Convictions	7	2	9
Demotions	8	10	18
Job terminations	46	31	77
Pay reductions	10	44	54
Referrals for criminal prosecution	73	5	78
Reprimands	135	147	282
Suspensions without pay	12	12	24
<b>Totals</b>	<b>291</b>	<b>251</b>	<b>542</b>

Source: Bureau of State Audits.

### New Cases Opened From January 2009 Through December 2009

The bureau receives allegations of improper governmental activities in several ways. From January 1, 2009, through December 31, 2009, the bureau received 4,990 calls or inquiries. Of these, 3,840 were reported through the hotline, 765 through the mail, 377 through the bureau's Web site, and eight through individuals who visited the office. In response to the 4,990 calls or inquiries, the bureau opened 882 cases, as shown in Figure A.1. The bureau determined that the remaining 4,108 allegations were outside its jurisdiction and when possible referred these remaining complaints to the appropriate federal, state, or local agencies.

**Figure A.1**  
**Disposition of 4,990 Allegations Received**  
**January 2009 Through December 2009**

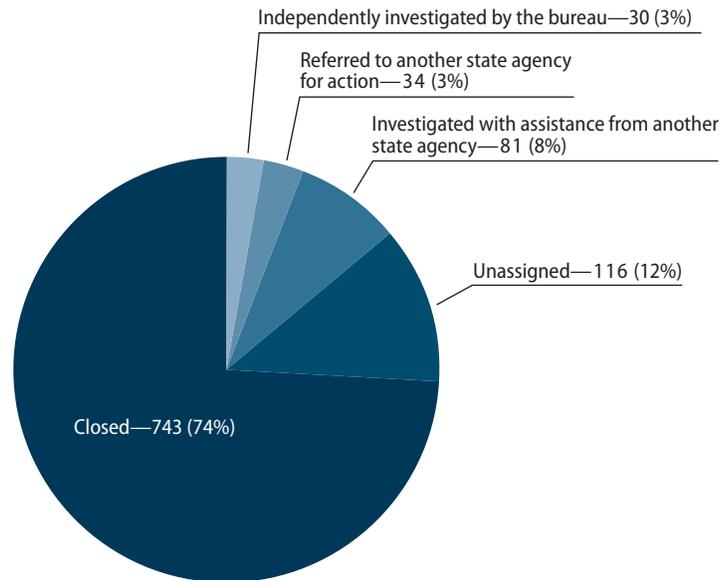


Source: Bureau of State Audits.

**Work on Investigative Cases From January 2009 Through December 2009**

In addition to the 882 new cases opened during this 12-month period, the bureau reviewed or assigned 57 cases from previous periods. The bureau also continued work on another 65 cases that were still under investigation by this office or other state agencies or that required the completion of corrective action. Consequently, the bureau provided some level of review to 1,004 cases during this time. After completing a preliminary review process that includes analyzing evidence and calling witnesses, the bureau determined that 743 of the 1,004 cases lacked sufficient information for an investigation. Figure A.2 on the following page shows the disposition of the 1,004 cases that the bureau worked on from January 2009 through December 2009.

**Figure A.2**  
Disposition of 1,004 Cases Worked on  
January 2009 Through December 2009



Source: Bureau of State Audits.

From January 1, 2009, through December 31, 2009, the bureau independently investigated 30 cases, substantiating allegations for nine of the 11 investigations it completed during the period. The results of five of the investigations appear in this report.<sup>15</sup> In addition, the Whistleblower Act specifies that the state auditor can request the assistance of any state entity in conducting an investigation. After a state agency completes its investigation and reports its results to the bureau, the bureau analyzes the agency's investigative report and supporting evidence and determines whether it agrees with the agency's conclusions or whether additional work must take place. In the 12-month period of this report, the bureau conducted analyses of 81 cases that state agencies investigated under its direction; it substantiated allegations in seven of the 28 cases completed. The results of six of these investigations appear in this report.<sup>16</sup>

<sup>15</sup> The bureau separately reported during the one-year period three of nine investigations having substantiated allegations. In addition, the bureau determined that the improper activities in another investigation did not rise to the level of publicly reporting them.

<sup>16</sup> The bureau concluded that the improper activities in one of the investigations did not rise to the level of publicly reporting them.

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cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
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