

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## **Investigations of Improper Governmental Activities by State Employees**

July 1, 1997, Through January 31, 1998



March 1998  
Report I98-1

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# CALIFORNIA STATE AUDITOR

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KURT R. SJOBERG  
STATE AUDITOR

MARIANNE P. EVASHENK  
CHIEF DEPUTY STATE AUDITOR

March 25, 1998

Investigative Report I98-1

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 Reporting of Improper Governmental Activities Act, the Bureau of State Audits presents its investigative report concerning investigations of improper governmental activity completed from July 1, 1997, through January 31, 1998.

Respectfully submitted,

KURT R. SJOBERG  
State Auditor

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# Summary

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## *Investigative Highlights . . .*

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

- Falsely reported their income and owe the State \$2,471,000 in assessments and interest.*
- Used state time and equipment to conduct personal business.*
- Bypassed laws and charged the State \$2,900 for repairs to cover up their actions.*

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## ***Results in Brief***

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The Bureau of State Audits (bureau) administers the Reporting of Improper Governmental Activities Act (act), which is contained in Section 8547 of the California Government Code. The act defines “improper governmental activity” as any activity by a state agency or state employee undertaken during the performance of the employee’s official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency. The bureau receives and investigates complaints of improper governmental activities. To enable state employees and the public to report improper governmental activities, the state auditor maintains the toll-free Whistleblower Hotline (hotline). **The hotline number is (800) 952-5665.**

This report details the results of the six investigations completed by the bureau and other agencies between July 1, 1997, and January 31, 1998, that substantiated complaints. Examples include the following:

### ***University of California, Irvine***

- Three medical doctors at the University of California, Irvine (UCI), falsely reported their income to UCI. As a result, the doctors underpaid the university \$1,689,000 for assessments.
- In addition, UCI is entitled to charge interest of \$782,000 on the unpaid assessments.

### ***California State University, Long Beach***

- California State University, Long Beach (CSULB), allowed its employees to use state resources for personal purposes.
- A CSULB mechanic used CSULB resources to repair other employees’ vehicles for compensation.

- The mechanic misappropriated \$570 in parts and services paid for by CSULB.

***Department of Consumer Affairs***

- Contrary to state law regarding smog certification, Bureau of Automotive Repair (BAR) officials at the Department of Consumer Affairs directed a smog check referee to certify a privately owned Porsche that had illegal carburetors.
- The BAR then paid more than \$2,900 in state funds to bring the vehicle into compliance.

***Department of Transportation***

- A Department of Transportation right-of-way agent used state time and telephones in operating his grocery stores.

***Department of Health Services***

- Two Department of Health Services employees placed personal long-distance telephone calls at the State's expense.



Whistleblower Hotline:  
(800) 952-5665

If, after investigating allegations, the state auditor determines reasonable evidence exists that an employee or state agency has engaged in any improper governmental activity, the bureau confidentially reports the nature and details of the activity to the head of the employing agency or the appropriate appointing authority. The employer or appointing authority is required to report back to the state auditor any corrective action taken, including disciplinary action, no later than 30 days after the date the state auditor transmits the confidential investigative report. If corrective action is not completed within 30 days, the employer or appointing authority must report to the state auditor monthly until the action is complete.

This report summarizes corrective actions taken by state entities as a result of investigations presented here and investigations reported previously by the state auditor.

In addition, Appendix A provides statistics on the complaints received by the bureau between July 1, 1997, and January 31, 1998, and summarizes our actions on those complaints and any others under investigation or awaiting review or assignment as of July 1, 1997.

Appendix B provides detailed descriptions of the laws, regulations, and policies that govern the types of improper governmental activities discussed in this report.



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# ***Chapter 1***

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## ***University of California, Irvine: False Claims and Grand Theft***

An updated summary of this chapter appears in our Report I2000-1, Chapter 6.

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An updated summary of this chapter appears in our Report I2000-1, Chapter 6.

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# Chapter 2

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## ***California State University, Long Beach: Misuse of State Facilities, Equipment, and Purchasing Authority***


### ***Allegation I960218***

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A mechanic at the automotive maintenance facility at California State University, Long Beach (CSULB), uses CSULB facilities and equipment to repair privately owned vehicles for his personal profit. Furthermore, he uses CSULB's open purchase order at a local auto parts store to buy parts for his own and his customers' automobiles.

### ***Results and Method of Investigation***

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*The automotive mechanic used state facilities to conduct his private business for personal profit.*

We investigated and substantiated that the automotive mechanic used CSULB facilities and equipment to repair privately owned automobiles for personal profit. In addition, we believe the mechanic used some automobile parts charged to CSULB's purchase orders for work on his customers' vehicles because they do not fit any vehicle in CSULB's fleet. Further, although certain other parts and services could be appropriate for some vehicles owned by CSULB, they were not appropriate for the vehicles for which they were purportedly purchased. In addition, we found that the mechanic did not pay required sales and income taxes, nor did he obtain a license to run an auto repair business. Finally, we found that, in violation of state law, CSULB allows some employees to use CSULB resources for personal benefit.

To conduct our investigation, we reviewed applicable state laws and the report of a prior investigation.<sup>3</sup> We also reviewed some invoices for automobile parts and the detail cost records for CSULB's automotive work orders. Furthermore, we reviewed the licensing records of the Bureau of Automotive Repair in the Department of Consumer Affairs, and the automobile ownership records of the Department of Motor Vehicles. Additionally, we interviewed CSULB employees, automobile parts retailers, automobile parts departments at automobile dealerships, an


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<sup>3</sup> For a detailed description of the laws governing activities reported in this chapter, see Appendix B.

automotive specialist at the Department of Consumer Affairs, campus police, and the automotive mechanic under investigation.

### ***Background***

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*Allowing employees to use state resources after-hours leaves the department open to accusations of misconduct.*

Before we received the allegations, a CSULB employee reported similar allegations to the director of facilities management at CSULB. The director conducted an internal review and found that some purchase order transactions seemed suspicious. He therefore asked the campus police to conduct a criminal investigation. The campus police found that some transactions were suspicious but found no proof of criminal activity. In a letter to the director, the campus police chief reported that the record-keeping system in the automotive repair shop was haphazard and inefficient. The police chief suggested that the practice of allowing employees to use state resources after hours left the facilities management department open to accusations of misconduct.

### ***CSULB Allows Employees To Use State Resources for Personal Projects***

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State law prohibits state employees from using state equipment, travel, or time for personal advantage or for an endeavor not related to state business. Despite this prohibition, employees at CSULB have been using state property for their personal projects for a long time. At the time of our interview, according to the director of facilities management, no written policies or procedures addressed employees' use of CSULB's facilities or equipment for personal projects, and such use has been standard practice for many years. The director acknowledged that the automotive repair facility staff use CSULB property to repair their personal vehicles and other privately owned vehicles and that staff of some of the other shops, such as the carpenter shop, also use CSULB's facilities for personal projects. He said that even though there were no written policies or procedures, staff understand that CSULB will not continue to allow them to use state equipment if they abuse the privilege.

About one month after our interview with the director, he issued a policy statement on borrowing state-owned tools and equipment. The policy, which allows employees to use state-owned equipment, includes seven provisions that, according to the statement, are intended to protect CSULB staff and CSULB's liability. The provisions include requirements such as



prohibiting the use of equipment for generating personal income, prohibiting use that will reduce the useful life of the equipment, requiring that users be trained to use the equipment safely, and requiring that a supervisor record the checkout of equipment and inspect it upon return.

As a result of CSULB's long-standing tolerance of employees using state facilities and equipment for personal projects and the recent policy guidance that grants permission for employees to use state equipment for personal projects, CSULB is condoning violations of state law.

  
*Eight of nine interviewed employees acknowledged that the mechanic used state facilities after-hours to repair privately owned vehicles.*

For example, we interviewed nine CSULB employees regarding the mechanic's use of CSULB facilities. Eight of these employees, including the director of facilities management and the manager of the automotive repair facility, acknowledged that the mechanic uses CSULB's automotive repair facilities after hours to repair privately owned automobiles. Six of the eight employees, including the manager of the automotive repair facility, acknowledged that the mechanic has repaired their personal vehicles in CSULB's facilities. Three of these six employees admitted that they paid the mechanic in cash for the services they received. Two other employees said they paid the mechanic in cash for work he did on their automobiles. One of these two employees is not sure if the mechanic did the work in campus facilities or at his home, while the other employee was certain that the work was done at the mechanic's home. One other employee said he paid the mechanic by taking him to lunch on a number of occasions.

***Automotive Parts and Services  
Purchased on CSULB's Open Purchase  
Orders Were Misappropriated***

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According to the mechanic, he personally places most of the orders for spare parts required by the shop, signs the receipts for most of the parts received, and supervises the operation of the automotive repair facility. CSULB has had a series of open purchase orders with a local NAPA auto parts retailer. These open purchase orders specify that the mechanic is authorized to place orders.

The allegation contends that the mechanic purchased parts for repairs to his personal vehicles or his customers' vehicles. We reviewed a sample of 16 invoices for CSULB purchases of automotive parts. All but one were for purchases at the local NAPA auto parts retailer and charged to CSULB's purchase

orders. We asked a northern California NAPA division manager and the parts department at a Sacramento Dodge dealership to identify the types of vehicles that could use the parts on the invoices based on the part numbers and item descriptions. We then reviewed CSULB work order detail cost listings to determine the type of vehicle on which the parts we identified were installed. We found no impropriety for any of the parts on six invoices. Table 2 lists each of the other ten invoices and provides information related to the acquisition and use of the parts.

**Table 2**


***Inappropriate Parts and Services Paid for by California State University, Long Beach***

<b>Date of Invoice</b>	<b>Description of Part [or Service]</b>	<b>Fits Vehicle Type</b>	<b>In University Fleet?</b>	<b>Vehicle Type Supposedly Used On</b>	<b>Fits Vehicle Supposedly Used On?</b>	<b>Cost With Tax</b>	<b>Fits Mechanic's Car?</b>
3/10/95	Wire Set	Caprice Chev, GMC, Olds Truck	Yes	Ford Ranger	No	\$ 44.98	No
3/23/95	Surface Flywheel	Any Vehicle with Manual Transmission	Yes	Dodge Dakota with Automatic Transmission	No	32.48	Unknown
4/4/95	Master Cylinder	Various Opels	No	Case Tractor	No	175.57	Yes
5/11/95	PCV Valve	Toyota	No	Chevrolet S-10	No	3.04	No
6/15/95	Ignition Coil	Dodge '58 -'87	Yes	Ford Ranger	No	30.31	Yes
6/19/95	Control Unit	Dodge and Chrysler Cars, Dodge and Plymouth Trucks, Chrysler Marine	Yes	Ford Ranger	No	36.59	Yes
6/29/95	Pedal Pad	Dodge, Chrysler, or Plymouth	Yes	Chevrolet S-10	No	10.77	Yes
	Cable (Heater)	Dodge, Chrysler, or Plymouth	Yes	Chevrolet S-10	No	26.52	Yes
8/14/96	Disc Set	Mazda or Ford	No	GMC S-15	No	34.60	No
4/24/96	Rotor	Vehicle Type Indeterminate	N/A	Ford F 750	N/A	86.81 <sup>a</sup>	N/A
4/24/96	Cap	Vehicle Type Indeterminate	N/A	Ford F 750	N/A	89.85 <sup>a</sup>	N/A

<sup>a</sup>Price too high for part purchased

The compilation of evidence leads us to believe the mechanic misappropriated some of the parts and services billed on these invoices and paid for by CSULB. Nine of the parts or services identified on eight of the invoices did not fit the types of vehicles for which they were supposedly used. Additionally, five parts on four of the same eight invoices fit vehicles owned by the mechanic or his spouse. These parts were a master cylinder, an ignition coil, a control unit, a pedal pad, and a heater cable.


***Master Cylinder Was Purchased  
for Other Than CSULB Use***

  
*The State paid for a  
master cylinder that only  
fits older Opels—the type  
of car owned by the  
mechanic’s spouse.*


Of these five parts, the purchase of the master cylinder is particularly suspicious. First, although the mechanic had to place a special order for the part, the master cylinder does not fit any CSULB vehicle. In fact, the part only fits various 1968 through 1972 Opels, and the mechanic’s spouse owns a 1969 Opel. We viewed the master cylinder installed in the Opel belonging to the mechanic’s spouse. Although it looked like the master cylinder pictured in a parts catalog that has the same part number appearing on the purchase invoice, we could not determine that this master cylinder was the one purchased on CSULB’s purchase order.

We are also suspicious about this purchase because either the mechanic returned the master cylinder to the NAPA retailer, or he at least obtained credit for a return from the NAPA retailer 17 months after the purchase. For several reasons, we believe the mechanic did not actually return the master cylinder. According to the NAPA retailer’s records, the part was returned at 3:40 p.m., September 4, 1996—less than an hour after another CSULB employee requested and obtained a duplicate copy of the original purchase invoice from the retailer. According to the campus police investigator, the second employee told the investigator that he obtained the duplicate invoice from the NAPA retailer at about 3 p.m. on September 4, 1996. When we asked the mechanic why he returned the master cylinder at the specific time and date that he did, he said that he was just cleaning up on that day, found it lying on a shelf, and returned it to obtain a credit to CSULB’s account.

Moreover, it seems strange that the NAPA retailer accepted the return of this specially ordered master cylinder 17 months after CSULB purchased it despite the notice printed on all the retailer’s invoices that no parts may be returned after 5 days. The notice also specifies that no special orders may be returned. The retailer explained to us that he sometimes

  
*To keep state business, the retailer may have given the mechanic a credit invoice without requiring him to return the part.*



accepts returns as a gesture of goodwill for valued customers if the returned parts are in good condition. The retailer told us that CSULB is a good business account, and he tries to accommodate its requests when possible to keep its business. From the retailer's viewpoint, the mechanic is CSULB. To keep CSULB's business, it is possible that the retailer gave the mechanic a credit invoice without requiring him to return the master cylinder. In fact, although the retailer told us he returned the master cylinder to the NAPA wholesaler, we could find no record in the wholesaler's files for the return.

  
We doubt the veracity of the mechanic's explanation regarding the master cylinder transaction for other reasons. When we asked him why he ordered the master cylinder, he said he did not remember and suggested the part may have been shipped to him incorrectly. According to the campus police report, the mechanic told the investigator he ordered the part by mistake and returned it when he discovered he did not need it. However, according to the investigation report, the NAPA retailer remembered this purchase and told the investigator the mechanic selected the master cylinder by looking at pictures of master cylinders in a catalog. It seems to us that if the mechanic selected the master cylinder by looking at pictures in a catalog, he apparently knew what he was looking for and for which vehicle it was intended. Furthermore, the picture in the catalog contains an illustration number that cross-indexes to the master cylinder part number containing the description we used to determine the part fits Opel cars. Clearly, any mechanic with this employee's experience would have traced these numbers as we did and known the type of vehicle the part would fit.

Other conflicting and equally incredible information exists about the master cylinder. Despite the fact that the mechanic said the master cylinder lay in the shop unnoticed for 17 months, one document shows that it was installed on a tractor. Labor was last charged to this work on the tractor almost a month before the master cylinder was purchased. Clearly, it could not have been installed in the tractor if it lay in the shop unnoticed for 17 months. Furthermore, it could not have been installed in the tractor if, as the mechanic and the NAPA retailer contend, it was returned to the retailer in good enough condition to be resold. The mechanic could not explain why the work order shows that the master cylinder was installed on the tractor. Furthermore, the mechanic could not tell us why, if the tractor needed a replacement master cylinder, the maintenance records for the tractor do not show that CSULB purchased the correct master cylinder.

***Service Paid For by  
CSULB Was Inappropriate***

One invoice charged a service to a vehicle when it clearly was not appropriate for that type of vehicle. Specifically, the invoice was for labor charges to resurface a flywheel, a procedure applicable to vehicles with standard transmissions. However, the invoice for resurfacing the flywheel was charged to a Dodge Dakota truck that has an automatic transmission. According to a service manager at a Dodge dealership in northern California, these trucks do not have a flywheel.

  
*CSULB paid for the repair  
of a flywheel for a vehicle  
that did not have one.*  



When we asked the mechanic about this apparent discrepancy, he said that the actual work done was the repair of a crack in one of the welds holding the torque converter to the flywheel. When we asked the NAPA retailer about this repair, he said that the actual work done was the replacement of a ring gear. The retailer also said that his invoice system requires that he enter a repair code to print the invoice. However, he does not have a code for replacing a ring gear, so he used the one for resurfacing a flywheel because it closely approximates the nature of the work done. Although the NAPA retailer's explanation appears plausible, we doubt its credibility. First, as stated earlier, we did not find his statement regarding the master cylinder credible. Second, the NAPA retailer has a vested interest in protecting the mechanic—he wants to keep CSULB's business and his prime contact with CSULB has been the mechanic. Moreover, the campus police investigator stated in his report that he believed the NAPA retailer may have been covering for the mechanic because he did not want to lose the CSULB account.

***Three Other Purchases Were Inappropriate***

Two other invoices, one for a PCV valve and one for a disc set, list part numbers that do not fit any vehicle in CSULB's fleet. The third invoice is not of particular note other than the part purchased was charged to a vehicle it does not fit.

***Purchases of Two Parts***

We could not trace the part numbers on two invoices to a parts description or the type of vehicle they might fit. One of these invoices identifies the part as a "cap" and the other identifies the part as a "rotor." According to the NAPA retailer who sold the parts to CSULB, both of these invoices contain a code that indicates either he obtained the part from a non-NAPA supplier as a convenience to the customer or the items were actually

  
*CSULB paid 30 times the standard price for one part.*

tools, not parts. The retailer said that in this type of transaction, he cannot tell at some later date if the items were parts or tools. However, we traced the parts to a CSULB work order detail cost listing that shows they were charged as a cap and rotor to a 1965 Ford F-750 dump truck. According to a northern California NAPA local division manager, in the absence of any further parts description, cap and rotor would be understood by parts retailers as two components of a distributor in a nontransistorized ignition system. The division manager stated that a cap and rotor for this type of vehicle are normally readily available in stock at NAPA parts retailers. Furthermore, according to the division manager, the costs for a cap and rotor for this type of vehicle are \$12.45 and \$2.82, respectively, for a noncontract, high-volume customer in the Sacramento area, while the invoices charged \$89.85 for the cap and \$86.81 for the rotor. We conclude that the parts ordered and delivered on these two invoices were not a cap and a rotor for a 1965 Ford F-750 dump truck. The parts could be tools or they could be a cap and rotor, or even some other parts, for an unidentified vehicle.

During the campus police investigation, the investigator asked the mechanic about these two purchases. The mechanic told the investigator the items were not parts but tools he needs for repairing transmissions. He told the investigator he sometimes buys tools under the category of auto parts because it is easier than going through CSULB's bidding process. Although the NAPA retailer's statement seems to support the mechanic's explanation that he buys tools identified as auto parts on the invoice, we find the explanation not credible because, on other occasions, he bought tools clearly identified as tools on the invoices.

We showed the mechanic copies of the eight invoices that appear to involve misappropriation and the work order detail cost listing for each of them that shows the vehicle charged for the parts. We asked him if he could explain why parts on these invoices were charged to vehicles they do not fit. Although he had an explanation for the master cylinder and the flywheel resurfacing, he could not specifically explain any of the others. However, he provided the following possible explanations: that he does not check the part numbers on the invoices, so if the part fits when it is installed on the vehicle, the part number on the invoice is wrong; or that he wrote the wrong work order number on the invoice, thus charging it to the wrong vehicle.

However, we believe that the mechanic falsified work orders to give the impression that parts he ordered for his own or his customers' vehicles were installed on CSULB vehicles.

Additionally, we believe the mechanic fraudulently appropriated state property under his control by virtue of his employment.

***The Mechanic Does Not Pay State Taxes on the Compensation He Earns Repairing Automobiles***

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State law requires individuals to report income from all sources to the Franchise Tax Board.

—◆—  
*Five of the nine customers we interviewed paid the mechanic in cash for his services.*  
—◆—

Five of the mechanic's nine customers we interviewed said they paid him in cash for his services. One other customer paid for his services by taking him to lunch on a number of occasions and paying for his lunch. Additionally, three of the mechanic's customers paid him for parts the mechanic installed on their vehicles. Although, when we met with him, the mechanic told us he did not pay sales, state personal income, or federal personal income taxes on any of the work he did for his customers for compensation; he refused to sign a statement admitting this under penalty of perjury.

As an example of work he did not pay taxes on, he told us that he charges about \$100 for replacing brake pads if he provides the pads and about \$50 if the owner buys the pads. Again, although he told us about this kind of repair, he also refused to sign a statement admitting this under penalty of perjury. The Board of Equalization searched their registration records and found no record that the mechanic has a seller's permit.

***The Mechanic Does Not Have a License To Repair Automobiles for Compensation***

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State law requires individuals who engage in the business of repairing motor vehicles for compensation to register with the Department of Consumer Affairs. We reviewed registration records of the Department of Consumer Affairs and determined that the mechanic is not registered. Although the mechanic admitted to us that he does not have a valid license to repair automobiles, he refused to sign a statement admitting this under penalty of perjury. Although registration is not required to repair CSULB's motor vehicles, the mechanic must be registered to repair other vehicles for compensation.

### ***Conclusion***

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CSULB allows its employees to use its resources for personal purposes. The mechanic uses CSULB resources to repair vehicles that belong to other CSULB employees for compensation. In addition, the mechanic misappropriated approximately \$570 in parts and services paid for by CSULB. Furthermore, the mechanic has not paid required taxes due from his business activities. Finally, the mechanic has not registered with the Board of Equalization to conduct a business or with the Department of Consumer Affairs to perform automotive repair.

### ***Agency Response***

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CSULB reported that senior management had neither been aware of nor sanctioned the policy permitting employees to use CSULB resources for personal purposes. CSULB revoked the policy and developed a new one that prohibits the personal use of state resources. In addition, CSULB's internal auditor is conducting a review of the internal controls over purchasing automotive parts and will make recommendations to strengthen the controls, including better separation of duties.

CSULB reprimanded both the mechanic and his manager. In addition, CSULB reduced the mechanic's responsibilities and authority to prevent any future opportunity for misuse of state assets. CSULB has, however, concluded that the mechanic's failure to report and pay taxes and maintain a license fall outside its scope of responsibility.



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# Chapter 3

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## ***Department of Consumer Affairs: Incompatible Activities and Circumvention of Controls***

### ***Allegation I960285***

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**T**he Bureau of Automotive Repair (BAR) under the Department of Consumer Affairs (department) authorized a referee smog technician to certify a vehicle that had illegal equipment. The BAR then used state funds to pay for the repairs necessary to make the vehicle legal and attempted to cover up the improper certification and misuse of state funds.

### ***Results and Method of Investigation***

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—◆—  
*State employees directed  
a smog referee to certify a  
vehicle with illegal  
equipment.*  
—◆—

The department conducted investigations and substantiated that BAR officials improperly directed a referee smog technician to certify a vehicle with illegal equipment. Our investigation substantiated that the BAR later paid state funds to replace the illegal carburetors with legal carburetors. In addition, BAR employees circumvented the department's controls to conceal that the BAR had improperly caused the vehicle to be certified and that the State paid to repair it. To investigate the allegation, we reviewed the department's investigative report, interviewed department and contractor personnel, and examined contract files.

### ***Background***

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In 1994, in response to the Federal Clean Air Act amendments of 1990, the California Legislature established a program to enhance and improve the existing smog check program. As part of the quality assurance portion of the State's smog check program, the department had to contract out the statewide referee services. Services provided by the State's referee contractor include performing smog checks on vehicles that cannot be tested by a smog check station or vehicles that have failed the smog check at a licensed facility.

According to the department's investigation report, the BAR received numerous complaints during 1996 from early-model

—◆—  
A BAR administrator ordered staff to get the Porsches through the system no matter what.  
—◆—

Porsche owners, Porsche clubs, and legislators representing their constituents regarding the new emissions standards. On October 10 or 11, 1996, a BAR administrator met with his staff and ordered them to get the Porsches through the system. In fact, one of the staff members at the meeting said the administrator pounded his fist on the desk and said he wanted these vehicles through the system no matter what. In an effort to get the Porsches through the system, the BAR issued a directive to the referee contractor on October 17, 1996, to eliminate the 2,500 high RPM tests for 1966 to 1974 Porsche models 911 and 912. However, the Porsches would still have to pass the idle emissions tests and visual inspections for unapproved equipment. The directive only applied to five vehicles that were identified as gross polluters.

***BAR Officials Improperly Directed a Referee Contractor To Certify an Illegal Vehicle***

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On October 18, 1996, two of the BAR administrator's subordinates directed an employee of the referee contractor to certify that a 1968 Porsche 912 was in compliance even though the vehicle was equipped with illegal carburetors. Specifically, although the BAR-approved Emission Control Applications Guide requires the 1968 Porsche 912 to be equipped with factory Solex carburetors, the vehicle was equipped with unapproved Weber carburetors. Section 44015(a)(1) of the California Health and Safety Code prohibits a licensed smog technician from issuing a smog certificate to a vehicle with a modified emissions-related component. An emissions-related component is deemed to have been modified if it has been replaced by a component not marketed by its manufacturer for street use on that vehicle. When the BAR officials directed the referee contractor's employee—a licensed smog technician—to certify the vehicle, they were directing him to violate the law.

The BAR officials also violated a state law that prohibits a state officer from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict, or inimical to his or her duties as a state officer.<sup>4</sup> Such activities include using the prestige or influence of the State for the officer's private gain or advantage or the private gain of another. By directing the referee contractor to certify the Porsche, the BAR officials used the State's influence to benefit the owner of the vehicle. The BAR officials told the referee contractor to tell the

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<sup>4</sup> See Appendix B for a more detailed description of state laws discussed in this chapter.



owner of the vehicle that he would have to fix it before its next inspection. However, they essentially gave the owner permission to sell the vehicle because he had what amounts to the State's seal of approval.

Both of the BAR officials told us they felt they were under extreme pressure from their superior to get a group of Porsche owners through the system, no matter what. One of the officials left state service at least in part because his management at the BAR put him in positions where he had to face ethical dilemmas such as the one described here.

The BAR administrator told us and the department's investigators that he believed the Porsche owners were being harassed by the BAR system. He believed the situation was the BAR's, not the consumers' problem. However, he told us and the department's investigators he had never intended anyone to certify a modified vehicle. He said that after he learned what happened, he talked to his subordinates and told them to follow the letter of the law in the future.

### ***BAR Officials Improperly Used State Funds To Repair the Illegal Vehicle***

---

  
*The referee contractor paid \$2,905.18 to replace the illegal carburetors and then billed the State.*  


On October 19, 1996, the owner of the Porsche did in fact sell the car to an unsuspecting consumer. On October 24, 1996, the department's Enforcement Division notified the new owner that his vehicle had illegal equipment.<sup>5</sup> The new owner immediately filed a complaint against the referee contractor. As a result of that complaint, department officials authorized the State's referee contractor to have the vehicle repaired. A vehicle repair business brought the vehicle into compliance and, on December 13, 1996, the referee contractor paid \$2,905.18 to the business for the repairs and then billed the State for that amount.

We interviewed several individuals from both the Enforcement Division and the BAR, and none of them was willing to take responsibility for directing the referee contractor to have the vehicle repaired. Nor were they willing to point out who was responsible. A manager of the referee contractor told us, under penalty of perjury, that a BAR employee ordered the referee


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<sup>5</sup> The Enforcement Division is primarily responsible for regulatory enforcement against licensees. It had received a complaint that the referee smog technician—a licensee—had improperly certified the illegal vehicle.

contractor to replace the illegal carburetors. The employee told us she cannot recall who told her to do so.

The law requires each state agency to establish and maintain effective systems of internal accounting and administrative control to safeguard the State's assets. Such controls are designed to prevent errors, irregularities, or illegal acts. In addition, they establish a system of public accountability. One section included in the contract with the referee contractor allows for reimbursement of contingency items such as unforeseen repairs. However, the contract clearly specifies that the State will not be liable for such items unless the contractor has obtained prior written approval. Requiring prior written approval not only ensures that such costs are necessary and legitimate but also establishes accountability.

Even though the contract specified that prior written approval is necessary for contingency costs, in late November or early December 1996, the BAR employee verbally authorized the referee contractor to include the cost of replacing the illegal carburetors in the company's next invoice to the State. The referee contractor included the \$2,905.18 cost of the carburetors in its March 12, 1997, billing as a contingency expense.

  
*We could not determine who at the BAR was responsible for allowing state payment for the repair.*

We were unable to determine who was responsible for circumventing the contract by authorizing payment for the carburetors without written approval. However, it is clear that people at higher levels than the employee who verbally authorized the billing at both the BAR and the Enforcement Division had discussed the issue and were aware that the State would pay for the repairs. None of them could explain why they believed the State should pay for the repairs instead of the original owner of the vehicle.

The circumvention of the requirement for written authorization leads us to believe the department employees knew that what they were doing was not proper. In addition, we believe the BAR made an effort to cover up the fact that it improperly authorized its contractor to illegally certify a vehicle that had modified equipment, and both the BAR and the Enforcement Division attempted to cover up the fact that state funds were used to later bring the vehicle into compliance with state law. In fact, the referee contractor's manager believes he was told to submit an invoice without prior written approval, a clear violation of the contract terms, to avoid any written record of the events. Certainly, if the BAR officials had not directed the referee contractor to certify the illegal vehicle, the State would

not have paid more than \$2,900 to put new carburetors on the Porsche.

### ***Conclusion***

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In violation of state law regarding smog certification, the BAR directed a smog check referee to certify a vehicle with illegal equipment. In addition, the BAR used state funds to pay more than \$2,900 to bring the vehicle into compliance. The BAR circumvented the terms of its contract with the referee contractor in an attempt to cover up the incident by informally authorizing payment for the repairs.

### ***Agency Response***

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We reported these improper activities to the Department of Consumer Affairs (department) on January 29, 1998. The department acknowledges that the Bureau of Automotive Repair (BAR) erroneously directed the referee contractor to certify the illegal vehicle and used an improper procedure to provide replacement parts for the vehicle. The department does not, however, believe that the decision to replace the illegal carburetors was intended to cover up the BAR's previous error. Instead, the intention was to undo the damage suffered by the purchaser of the vehicle as a result of the BAR's error. The department stated the use of an oral authorization instead of a written authorization was a mere procedural oversight. Nevertheless, the department has reminded appropriate staff of the requirements related to issuance of certificates of compliance and administration of the referee services contract. In addition, the BAR has implemented new procedures concerning contingency funds that require full documentation of purpose, justification, amount, and approval of such expenditures.

The department stated that the BAR attempted to avoid the appearance that the smog check program is unduly costly and bureaucratic by being responsive to legitimate complaints by vehicle owners. The department further stated that the BAR's efforts were insufficient to mollify owners of all pre-1974 vehicles. As a result, the law was amended to exempt all pre-1974 vehicles from smog check inspection and certification requirements.

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# Chapter 4

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## *Department of Transportation: Incompatible Activities*

### *Allegation I970084*

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A Department of Transportation (Caltrans) right-of-way agent uses state time and equipment for his private businesses. Further, this employee contracts with another state department in violation of state law.

### *Results and Method of Investigation*

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—◆—  
*The employee used state  
time and telephones to  
run his private business.*  
—◆—

Both Caltrans and the Bureau of State Audits investigated and substantiated the allegations. To investigate the allegations, we reviewed applicable state laws, records of other state departments, and records of telephone calls placed during January through April 1997 from the state telephone assigned to the employee. We also called three of the four stores owned by the employee. Caltrans reviewed the documents we provided and interviewed the employee's supervisor, co-workers, and other witnesses.

### *Background*

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State law prohibits a state employee from receiving compensation for any outside activity funded by any state department through a state contract unless the activity is required as a condition of the employee's regular state employment.<sup>6</sup> In addition, state law requires state employees to devote their full time, attention, and efforts to their state job during their work hours. State law also prohibits state employees from using state telephones or time for personal advantage or for an endeavor not related to state business.



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<sup>6</sup> For a more detailed description of the criteria governing activities described in this chapter, see Appendix B.

***A State Employee Contracts With Another State Agency Through His Outside Business***

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We confirmed that the employee owns four grocery stores. The employee contracts through these four stores with the Department of Health Services to sell merchandise in exchange for vouchers issued by the Special Supplemental Food Program for Women, Infants, and Children.

  
*When we called one of his stores during regular state hours, we were told the employee was there.*  


Because we were told that the employee spends state time moving merchandise between his stores and working at the stores, we called three of the four stores to see if he was there during his regular state work hours. For example, we called one of the stores in Pomona at 11:35 a.m. on July 29, 1997. When we asked for the employee, we were told, "They're [the employee and his spouse] on the way. Try in one hour more." When we called the same store at 3:17 p.m. on the same day, we were told that he was there but was busy and to call back in five minutes.

We provided Caltrans with the records of calls placed from the state telephone assigned to the employee and a copy of the contract between the employee's stores and the Department of Health Services. Caltrans confirmed that the employee placed numerous personal calls to his private businesses and the county health department. Caltrans also obtained a signed statement from a witness confirming that the employee was at his stores during his state work hours.

***Agency Response***

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The employee's supervisor was in the process of taking disciplinary action against him because of unauthorized absences and poor work performance. However, before Caltrans took disciplinary action, the employee requested and was granted a leave of absence to care for a family member. The employee did not return to work at the end of his approved leave of absence. Consequently, Caltrans took adverse action under the absent-without-leave provisions of state law. The individual did not appeal the action and Caltrans considers him to be voluntarily terminated. Caltrans recommended that the individual's personnel file be flagged so that any request for unemployment benefits be denied. Further, if the individual makes any attempt to be reemployed by the State, Caltrans will proceed with an adverse action based on these substantiated allegations.



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# Chapter 5

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## ***Department of Health Services: Personal Use of State Telephones***

### ***Chapter Summary***

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—◆—  
*Although the cost of one individual misusing a state telephone can be minimal, statewide misuse of state telephones is likely to be extremely high.*  
—◆—

State law prohibits state employees from using state equipment, including telephones, for personal advantage or for an endeavor not related to state business.<sup>7</sup> The State employs more than 400,000 individuals. Such costs include not only the actual charges paid for personal calls but also the cost of time spent on personal business while employees should be working.

During the period from July 1, 1997, through January 31, 1998, the Bureau of State Audits and the Department of Health Services (DHS) completed three cases that substantiated allegations that state employees misused state telephones. One of these three cases is reported in Chapter 4 on page 24. The other two are presented below.

### ***Department of Health Services Allegation 1960244***

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An employee of the Division of Communicable Disease Control in the DHS makes personal long-distance telephone calls at the State's expense.

### ***Results and Method of Investigation***

At our request, the DHS investigated and substantiated the allegation. We provided the DHS with records of telephone calls placed over six months during 1996 from the telephone assigned to the employee. For some of the called numbers, we also provided the names of the individuals or entities to which the numbers were listed. The DHS reviewed the calls with the employee and interviewed her supervisor.

The employee's supervisor asked her to identify personal calls but to exclude those that were related to child care. The employee identified calls costing \$52.50 as being personal but

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<sup>7</sup> For a more detailed description of this law, see Appendix B.

not related to child care. She then wrote her personal check to the DHS in the amount of \$52.50.

However, the DHS concluded that the supervisor had misinterpreted its administrative manual and that she did not have authority to grant her employees permission to place personal long-distance calls.

***Agency Response***

Because the supervisor had approved the employee's calls related to child care, the DHS did not require her to pay for those calls. However, the DHS clarified the policy with the supervisor and with all other division staff.

***Department of Health Services  
Allegation I960292***

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An employee of the Medi-Cal Managed Care Division in the DHS makes personal long-distance telephone calls at the State's expense.

***Results and Method of Investigation***

At our request, the DHS investigated and substantiated the allegation. We provided the DHS with records of telephone calls placed over the seven-month period from July 1996 through January 1997 from the telephone assigned to the employee. For some of the called numbers, we also provided the names of the individuals or entities to which the numbers were listed. Although the DHS did not specify how many of the calls were personal, it concluded that the employee often made personal calls from the state telephone during the period.

***Agency Response***

The DHS reported that the employee had been confronted with difficult work and personal situations during the period and had never before been counseled about personal use of state telephones. As a result, the DHS verbally warned the employee about the frequency and length of her personal calls. The DHS also reported that the employee understands that repeated instances of excessive use will result in a written counseling memorandum to be placed in her personnel file.

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# Chapter 6

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## *Update on Previously Reported Issues*

### *Chapter Summary*


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Under provisions of the Reporting of Improper Governmental Activities Act, an employing agency or appropriate appointing authority is required to report to the state auditor any corrective action, including disciplinary action, it takes as a result of a state auditor's investigative report no later than 30 days after the report is issued. If it has not completed its corrective action within 30 days, the agency or authority must report to the state auditor monthly until the action is complete.

This chapter summarizes corrective actions taken by state departments and agencies related to investigative findings since we last reported them.

### *Stephen P. Teale Data Center Allegation I960159*

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*An official accepted \$3,176 in gifts from vendors to whom he awarded \$5.2 million in contracts and purchase orders.*

We publicly reported the results of this investigation on August 21, 1997. From 1993 through 1996, an official at the Stephen P. Teale Data Center (Teale Data Center) awarded \$5.2 million in contracts and purchase orders to four vendors after accepting \$3,176 in prohibited gifts from them, causing conflicts of interest. The Teale Data Center subsequently reimbursed two vendors \$1,825. The official also accepted a prohibited gift of \$1,585 from a fifth vendor. However, he did not disclose any of these gifts. Another official also accepted and failed to disclose prohibited gifts totaling \$1,084 from two vendors.

Further, the first official improperly claimed reimbursement for more than \$2,000 in educational expenses he incurred to obtain an external doctoral degree in business management from an unaccredited private school in Louisiana.



Furthermore, the Teale Data Center paid approximately \$1,550 in improper expenses incurred during conferences attended by the two officials, including luxury lodging and golf.

***Agency Response***

We submitted our report to the Business, Transportation and Housing Agency (agency) and the Fair Political Practices Commission (FPPC). The agency has not completed its corrective action and the FPPC is still reviewing the officials' actions. However, the first official reimbursed the Teale Data Center \$2,930 for both travel and tuition expenses and resigned. The second official reimbursed the Teale Data Center \$195 for travel expenses. The agency has provided training to Teale Data Center employees concerning expenses and the reporting of gifts but is awaiting the outcome of the FPPC's review before determining whether it will take disciplinary action against the second official.

***Department of Parks and Recreation  
Allegation I960107***

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*A supervisor in the  
Department of Parks and  
Recreation misappropriated  
\$1,358 for personal use.*  


We publicly reported the results of this investigation on August 12, 1997. A supervisor in the San Diego Coast District (district) of the Department of Parks and Recreation (department) misappropriated state recycling funds totaling at least \$1,358 for his personal use. Additionally, the district misappropriated state funds by allowing park staff to deposit recycling funds collected by state employees, totaling \$2,692, in an account held by a private nonprofit organization.

***Agency Response***

The supervisor resigned. In addition, the department reported that district management has taken action to ensure that all funds from recycling are deposited in state accounts.

***Department of Transportation  
Allegation I950149***

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On March 18, 1997, we publicly reported that a supervisor at the Engineering Services Branch within the Department of Transportation (Caltrans) in Los Angeles used state time, computers, telephones, and employees to conduct his own businesses from 1989 through 1995. Another employee who used state resources when performing work for one of the supervisor's businesses also used state computers and time in 1995 for personal business, including using an on-line service to engage in discussion groups and to download adult materials.

***Agency Response***

Caltrans terminated the supervisor and suspended the other employee for 30 working days without pay.

We conducted this investigation under the authority vested in the California State Auditor by Section 8547 of the California Government Code and in compliance with applicable investigative and auditing standards. We limited our review to those areas specified in the scope of the report.

Respectfully submitted,



KURT R. SJOBERG  
State Auditor

Date: March 25, 1998

Investigative Staff: Ann K. Campbell, Director, CFE  
William Anderson, CGFM  
Stephen Cho, CFE, CGFM  
Cynthia A. Sanford, CPA, CFE, CGFM  
Dore C. Tanner, CPA, CFE  
Ken L. Willis

Audit Staff: Gayatri Patel

***Update on Previously Reported Issues***

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# Appendix A

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## Activity Report

### Action Taken as a Result of Investigative Reports

—◆—  
*Investigations completed over the past four years have identified improper governmental activities that cost the taxpayers \$10.3 million.*  
—◆—

The Bureau of State Audits (bureau) has identified improper governmental activities totaling approximately \$10.3 million since July 1993 when it reactivated the Whistleblower Hotline (formerly administered by its predecessor, the Office of the Auditor General). These improper activities included theft of state property, false claims, conflicts of interest, and personal use of state resources. The bureau's investigations also substantiated other improper activities that cannot be quantified in dollars but have had a negative societal impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Although the bureau investigates improper governmental activities, it does not have enforcement powers. When bureau investigations substantiate allegations of improper governmental activity, the state auditor reports the nature and details of the activity to the head of the state entity or the appointing authority, who is responsible for taking whatever corrective action it deems appropriate. The Reporting of Improper Governmental Activities Act (act) also empowers the state auditor to report improper governmental activities to other appropriate authorities, such as law enforcement or other entities having jurisdiction over the activities.

Corrective actions taken on cases contained in this report are described in the individual chapters. Table 3 summarizes all of the corrective actions taken by agencies since the bureau reactivated its Whistleblower Hotline in July 1993.

**Table 3**

***Corrective Actions Taken  
July 1993 Through February 1998***

Type of Corrective Actions	Instances
Referrals for criminal prosecution	65
Convictions	3
Job terminations	24
Demotions	6
Pay reductions	7
Suspensions without pay	8
Reprimands	63

In addition, dozens of agencies have modified or reiterated their policies and procedures to prevent future improper activities.

***New Cases Opened  
July 1997 Through January 1998***



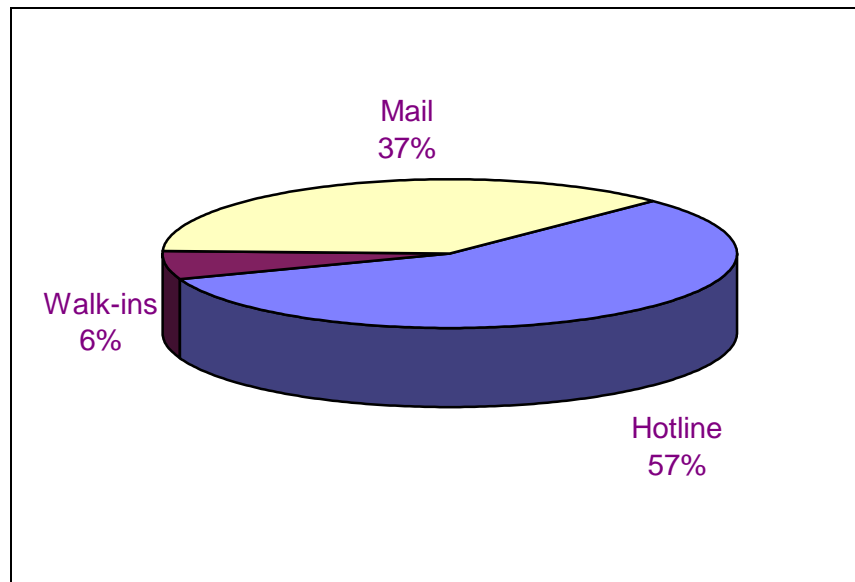
Whistleblower Hotline:  
(800) 952-5665

We receive allegations of improper governmental activities in several ways. The largest number of allegations come from individuals who call our Whistleblower Hotline at (800) 952-5665.<sup>8</sup> From July 1997 through January 1998, we opened 121 new cases. Of these, 69 (57 percent) came as a result of individuals calling the hotline. We also opened 45 new cases based on complaints received in the mail and 7 new cases based on complaints from individuals who visited our office. Figure 1 shows the sources of all cases opened from July 1, 1997, through January 31, 1998.

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<sup>8</sup> In total, we received 2,713 calls on the Whistleblower Hotline from July 1, 1997, through January 31, 1998. However, 2,257 (83 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to give the caller the telephone number of the appropriate entity to handle their complaints. Another 387 (14 percent) were related to previously established case files.



**Figure 1****Sources of 121 New Cases Opened  
July 1, 1997, Through January 31, 1998****Work on Investigative Cases  
July 1997 Through January 1998**

In addition to the 121 new cases opened during the seven-month period, 89 cases were awaiting review or assignment and 15 were still under investigation by either this office or other state agencies on July 1, 1997. As a result, 225 cases required some level of review during the period. For 3 other cases, investigations had been concluded and publicly reported, but the employing departments had not completed corrective actions. Chapter 6 summarizes corrective actions taken on these 3 investigations since we last reported them.

The act specifies that the state auditor may conduct an investigation upon receiving specific information that any employee or state entity has engaged in an improper governmental activity. After reviewing the information provided by complainants and the preliminary work by investigative staff, we assess whether sufficient evidence of wrongdoing exists to mount an investigation. In 142 of the 225 cases, we concluded that not enough evidence of improper governmental activity existed for us to mount an investigation.

The act also specifies that the state auditor may request the assistance of any state entity or employee in conducting any

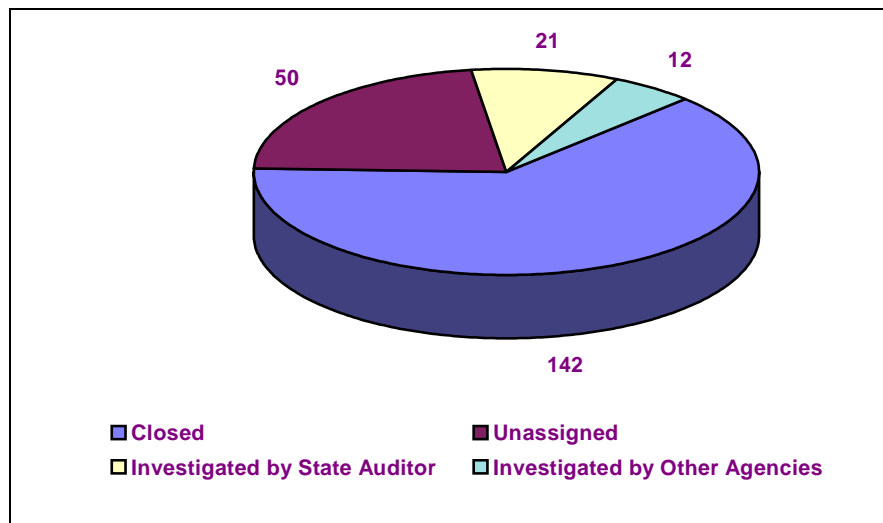
investigation. From July 1997 through January 1998, state agencies investigated 12 cases on our behalf and substantiated allegations on 3 (37.5 percent) of the 8 cases they completed during the period.

In addition, we independently investigated 21 cases and substantiated allegations on 4 (40 percent) of the 10 cases we completed during the period. We will issue a separate public report on 1 of the 4 substantiated cases. Figure 2 shows action taken on case files from July 1997 through January 1998. As of January 31, 1998, 50 cases were awaiting review or assignment.

**Figure 2**

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**Disposition of 225 Cases  
July 1, 1997, Through January 31, 1998**



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# *Appendix B*

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## *State Laws, Regulations, and Policies*

**T**his appendix provides more detailed descriptions of state laws, regulations, and policies that govern employee conduct and prohibit the types of improper governmental activities detailed in this report.

### *Laws Governing Theft*

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#### *Chapters 1 and 2 Report Theft*

The California Penal Code, Section 532, provides that every person who knowingly, by any false or fraudulent representation, defrauds any other person of money, labor, or property; or who causes or procures another to report falsely on his or her wealth or mercantile character and thereby fraudulently obtains property, is punishable in the same manner and to the same extent as for theft of the money or property involved.

Section 532(a) prohibits any person from intentionally making, either directly or indirectly or through an agent, any false statement in writing regarding his or her financial condition for the purpose of procuring a discount on an account receivable.

Section 484 states that an individual is guilty of theft if he or she knowingly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or property. Further, if the amount involved in aggregate is in excess of \$400 in a consecutive 12-month period, the violation is grand theft under Section 487 of the California Penal Code.

Section 134 states that it is a felony to prepare any false record with the intent to produce it as genuine or true for any fraudulent or deceitful purpose. Section 508 states that any employee who fraudulently appropriates property belonging to the State but under his or her control by virtue of employment, is guilty of embezzlement.

***State Managers' Responsibilities***

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***Chapters 2 and 3 Report Weaknesses and Mishandling of State Funds***

The Financial Integrity and State Manager's Accountability Act contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain an adequate system of internal controls. Internal controls are designed to prevent errors, irregularities, or illegal acts. Generally accepted principles of internal controls prescribe that duties be separated so that one employee's work routinely serves as a check on another's. This separation of duties ensures that no one person has complete control of more than one function, for example, both ordering parts and certifying that the parts have been received.

***Criteria Governing Taxes***

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***Chapters 2 and 3 Report Failure to Report Income and Pay Taxes***

California Revenue and Taxation Code (Tax Code), Section 18501, requires every taxable individual to file a return that states the individual's gross income from all sources with the Franchise Tax Board. The Tax Code, Section 17071, defines gross income in accordance with Section 61 of the Internal Revenue Code, which includes income from compensation for services. California Revenue and Taxation Code, Section 6051 requires retailers to pay sales tax on sold merchandise. In addition, Section 6451 of the Tax Code requires a seller to remit sales tax to the Board of Equalization before the last day of the month following the end of each quarter.

***Criteria Requiring Automotive Repair Dealers To Register With the Department of Consumer Affairs***

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***Chapter 2 Reports Failure To Register***

The California Business and Professions Code, Section 9884.6(a), makes it unlawful for any person to be an automotive repair dealer without a currently valid registration with the Director of the Department of Consumer Affairs. Section 9880.1(a) defines "automotive repair dealer" as a person who engages in the business of repairing or diagnosing malfunctions of motor vehicles for compensation. Section 9880.2 exempts persons who are engaged in repairing

motor vehicles solely for a governmental establishment from the requirement to register.

### ***Incompatible Activities Defined***

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#### ***Chapters 3, 4, and 5 Report Incompatible Activities***

Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official action.

California Government Code, Section 19990, prohibits a state officer or employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict, or inimical to his or her duties as a state officer or employee. Such activities include using the prestige or influence of the State for private gain or advantage. They also include using state time, facilities, equipment, or supplies for private gain or advantage. In addition, a state employee is prohibited from receiving or accepting, directly or indirectly, any gift, money, service, gratuity, favor, entertainment, hospitality, loan, or any other thing of benefit or value from anyone who does or seeks to do business of any kind with the employee's department, under circumstances from which an intent to influence the employee in the performance of official duties or an intent to reward an official action could be reasonably substantiated. These prohibited activities also include not devoting full time, attention, and efforts to his or her state job during hours of duty as a state employee.

### ***Prohibition Against Personal Use of State Resources***

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#### ***Chapters 2, 4, and 5 Report Personal Use of State Resources***

California Government Code, Section 8314, prohibits state employees from using state equipment, travel, or time for personal advantage or for an endeavor not related to state business. If such use results in a gain or advantage to the employee or a loss to the State for which a monetary value can be estimated, the employee may be liable for a civil penalty not to exceed \$1,000 for each day on which a violation occurs, plus three times the value of the unlawful use.

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State Controller  
Legislative Analyst  
Assembly Office of Research  
Senate Office of Research  
Assembly Majority/Minority Consultants  
Senate Majority/Minority Consultants  
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