

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 Activities by State Employees

July 1, 1998, Through January 31, 1999

March 1999
199-1

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CALIFORNIA STATE AUDITOR

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March 16, 1999

Investigative Report I99-1

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, 1998, through January 31, 1999.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kurt R. Sjoberg".

KURT R. SJOBERG
State Auditor

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SUMMARY

Investigative Highlights . . .

State employees engaged in improper activities, including the following:

- Creating the appearance of conflicts of interest.*
 - Using the prestige of the State for personal benefit.*
 - Approving payments to a family member and attempting to conceal relationships with clients.*
 - Failing to report personal use of a state vehicle as taxable income.*
-

RESULTS IN BRIEF

The Bureau of State Audits (bureau) administers the Reporting of Improper Governmental Activities Act (act) contained in the California Government Code, beginning in Section 8547. The act defines “improper governmental activity” as any action by a state agency or state 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. The bureau receives and investigates complaints of improper governmental activities. To enable state employees and the public to report these 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 five investigations completed by the bureau and other agencies between July 1, 1998, and January 31, 1999, that substantiated complaints. Following are examples of the substantiated improper activities:

Department of General Services

- An employee of the Office of Public School Construction (OPSC) improperly accepted rounds of golf from the owner of a company that has worked on projects the State funded based on recommendations of OPSC staff. This created the appearance of a conflict of interest.

State Allocation Board

- An employee created an appearance of a conflict of interest by being involved in decisions to fund projects that would involve the employer of his long-term companion.

Department of Industrial Relations

- A mediator and other employees of the State Mediation and Conciliation Service Division (division) used the prestige of the State to obtain outside employment for the mediator and created the appearance of conflicts of interest.

- The division referred the mediator as a possible arbitrator much more frequently than it did other individuals seeking work as arbitrators.

Department of Rehabilitation

A vocational rehabilitation counselor engaged in the following improper activities:

- Improperly opened case files for his sister and her common-law partner who were living in his home and attempted to conceal from other department staff his relationship with the clients.
- Improperly determined that his sister's partner was eligible for services and improperly approved payments to him, expecting to benefit from the payments.
- Concealed the fact that another department client was renting property from him.

Office of the State Public Defender

- An official inappropriately claimed, and the office improperly paid, reimbursement of more than \$2,000 for the official's commuting expenses.
- The official failed to report the value of his personal use of a state vehicle as taxable compensation.

Board of Court Reporters

- The Board of Court Reporters does not discipline court reporters who charge rates higher than those permitted by law.

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

If, after investigating any allegations, the state auditor determines reasonable evidence exists of improper governmental activity, the bureau confidentially reports the details of the activity to the head of the employing agency or the appropriate

appointing authority. The employer or appointing authority is required to notify the state auditor of any corrective action taken, including disciplinary action, no later than 30 days after the date the state auditor transmits the confidential investigative report. If employers or appointing authorities do not complete the corrective actions within 30 days, they must report to the state auditor monthly until they do so.

Appendix A contains statistics on the complaints received by the bureau between July 1, 1998, and January 31, 1999, and summarizes our actions on those or other complaints pending as of July 1, 1998. It also provides information on the cost of improper activities substantiated since 1993 and the corrective actions taken as a result of our investigations.

Appendix B details the laws, regulations, and policies that govern the improper activities discussed in this report. ■

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CHAPTER 1

Department of General Services and State Allocation Board: Improper Acceptance of Gifts and Appearance of Conflicts of Interest

ALLEGATION I980032

We received allegations that an employee of the Office of Public School Construction (OPSC) in the Department of General Services (DGS) and an employee of the State Allocation Board (board) engaged in improper activities related to school construction projects. We asked the DGS to investigate the allegations on our behalf.

RESULTS AND METHOD OF INVESTIGATION

The DGS's audit section investigated and substantiated the complaints. Specifically, the OPSC employee improperly accepted rounds of golf from an owner of an architectural firm that has worked on maintenance projects the board funded based on recommendations of OPSC staff. Although the DGS found no evidence that the employee's work was affected by the gifts, the employee created the appearance of a conflict of interest.

The board employee also created the appearance of a conflict of interest related to the same firm because his long-term companion has a financial interest in the firm. Although the employee should have removed himself from any projects involving this firm, the DGS found no evidence of a statutory conflict of interest.

To investigate the allegations, DGS investigators reviewed OPSC maintenance project files for 10 school districts that used the architectural firm. They interviewed staff from 7 of these school districts, staff from two county boards of education, and senior OPSC management. They also interviewed both employees and obtained written statements from them. In addition, the

investigators reviewed a recent audit of one school district's critical hardship projects. Critical hardship projects are maintenance projects that, if not completed in one year, could result in serious damage to the remainder of a school facility or would result in a serious hazard to the health or safety of pupils. These projects include maintenance to roofs, plumbing, and heating and air conditioning systems. Finally, the investigators reviewed pertinent laws and departmental policies and conferred with DGS counsel on legal issues.

BACKGROUND

The OPSC functions as the administrative staff for the board. The board authorizes financial assistance to school districts to acquire and develop school sites, construct or reconstruct school buildings, or purchase school furniture and equipment. The OPSC processes applications for financial assistance for a number of programs, including the State School Deferred Maintenance Program.

The DGS reported that during the past number of years, several school districts have hired the architectural firm involved in the allegations to justify and complete district funding packages that the OPSC processes as staff to the board. According to the OPSC employee, he determines the eligibility of proposed deferred maintenance projects, including those submitted by the subject architectural firm, after inspecting facilities and reviewing substantiating documents. However, the employee's manager makes the final decision on whether to recommend that the board approve funding requests.

AN OPSC EMPLOYEE IMPROPERLY ACCEPTED GIFTS AND CREATED THE APPEARANCE OF A CONFLICT OF INTEREST

The law prohibits state employees from engaging in any act that is clearly in conflict with their duties as state employees, including using the prestige or influence of the State for private gain or advantage.¹ In addition, state employees are prohibited

¹ For a more detailed description of the state laws discussed here, see Appendix B.

from accepting anything of benefit for them from anyone doing business with their department. The same law requires state departments to define incompatible activities. The DGS incompatible activity statement specifies that an employee shall avoid direct, indirect, implied, or assumed obligations to show favoritism or more friendliness to one person than to others.

In spite of these prohibitions, the OPSC employee played golf as a guest of an owner of the architectural firm on no fewer than four occasions. The employee cited a provision in the DGS's incompatible activity statement that occasional payment by others for a meal or incidental entertainment is acceptable if it cannot be refused without undue rudeness. He told DGS investigators that he allowed the individual to pay his golf fees because both would have been embarrassed if he refused the offer. Nevertheless, the DGS concluded that because the employee accepted four or five rounds of golf at a country club with green fees of \$45, and another round at a tournament costing \$75, the payments were not incidental in nature.

An employee accepted four rounds of golf from an individual whose business performed services funded by the employee's department.

Although the DGS concluded that the employee improperly accepted gifts and created the appearance of a conflict of interest, it found no evidence that the employee showed favoritism to the architectural firm in his official duties. However, conflict-of-interest laws are concerned not merely with what actually happened but also with what might have happened. Therefore, application of the law has not been limited to actual instances of fraud, dishonesty, or unfairness but to their appearance as well.

A STATE ALLOCATION BOARD EMPLOYEE APPEARED TO HAVE A CONFLICT OF INTEREST

In 1997, the board employee's long-term companion accepted a position with the architectural firm. Although the board employee has a personal relationship and lives with her, he has no legal claim to her income and, according to DGS counsel, therefore has no financial interest in her employment with the architectural firm. As a result, the DGS concluded the employee did not have a statutory conflict of interest. Nevertheless, the DGS concluded that the board employee was not sufficiently proactive in avoiding the appearance of a conflict of interest.

Another employee did not actively avoid the appearance of a conflict of interest evolving from business between his state employer and his long-term companion's employer.

According to his written statement, the employee's responsibilities involved working directly for and advising board members on various requests, including project funding. He also functioned as part of a team, including members of OPSC senior management, that reviewed all special requests from school districts, including those submitted by the subject architectural firm.

In at least four instances, the employee accompanied OPSC management personnel on visits to school districts to discuss critical hardship project funding requests involving work by the architectural firm. Therefore, the employee had some input into funding decisions for those projects. The employee told investigators that he did not know the firm was the architect on the projects until his arrival at the school district sites. However, the DGS concluded that, while the employee may have been ignorant of the architectural firm's involvement on the first site visit, he should have verified that the firm was not involved before any subsequent visits. Because of the high visibility of the employee's role at the board and because he did not exercise due diligence, the employee exposed the board and himself to the perception that favoritism may have been shown to his companion's employer, even though the DGS found no evidence of favoritism.

According to the DGS, before it completed its investigation and for unrelated reasons, the board employee resigned his position.

AGENCY RESPONSE

The OPSC issued a counseling memorandum to its employee that addressed his responsibility for strictly complying with the acceptance-of-gifts provisions contained in the DGS's incompatibility statement. The OPSC also issued a memorandum to its management employees reminding them of the department's incompatible activity provisions.

Because the board employee has resigned, the board will take no action. ■

CHAPTER 2

Department of Industrial Relations: Incompatible Activities and the Appearance of a Conflict of Interest

ALLEGATION I970063

We received an allegation that a mediator in the State Mediation and Conciliation Service Division (division) of the Department of Industrial Relations (department) was improperly involved in outside employment that was incompatible with his state position.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. In addition, in their capacity as department employees, other mediators in the division and the subject's superior were aware of and perpetuated the incompatible activities of the mediator. These other department employees also engaged in incompatible activities by helping the mediator to obtain outside employment. Moreover, the mediator and his colleagues created at least the appearance of conflicts of interest on the mediator's part.

To investigate the allegation, we reviewed arbitration case files at three of the division's four offices, and the mediator's time sheets and personnel file. In addition, we interviewed the mediator and other division employees.

BACKGROUND

The division's objective is to help prevent work stoppages, business interruptions, or interruptions of public services resulting from labor disputes, and to assist employers and unions in the prompt and peaceful settlement of their disagreements. These controversies can range from grievances of individual workers to full-scale strikes. To accomplish its objective, the division employs mediators. Mediators are impartial individuals who assist disagreeing parties, at their request, in settling issues

such as contract or grievance disputes. Although the mediator may make observations or recommendations that influence the final decision, the parties retain their own decision-making authority; the mediator does not decide what the outcome will be.

In some cases, disputing parties need the services of an arbitrator. In contrast to a mediator, an arbitrator is an impartial judge asked by disputing parties to decide an issue or issues. Assuming the parties have agreed beforehand, the arbitrator's decision is final and binding on both parties. The division does not undertake arbitrations because it has no authority to impose a point of view or course of action on the parties. However, the division maintains a roster of private arbitrators from which it provides a select panel (usually containing five to seven names) to the parties involved. The division also provides statements from each of the panelists that describe their employment and arbitration experience. The parties jointly select an arbitrator from the panel and are responsible for the arbitrator's performance, costs, and fees.

EMPLOYEES ENGAGED IN INCOMPATIBLE ACTIVITIES

Both the State and the department have incompatible activity prohibitions that are intended 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.² For example, state law and department policy prohibit a state employee from engaging in any act that is clearly in conflict with his or her duties as a state employee. Such activities include using the prestige or influence of the State for one's own private gain or advantage or the private gain of another. In our opinion, the mediator, his superior, and his colleagues have used the prestige of the State for the mediator's private gain.

The employee worked as a mediator for the division between 1977 and 1995. Although the employee officially retired in December 1995, he has continued mediation work for the division as a retired annuitant since January 1996. A few months

² For a more detailed discussion of state laws discussed in this chapter, see Appendix B.

before he retired, the employee notified the presiding mediator in the division's Los Angeles office and the division chief that he planned to retire and become a private arbitrator. He further requested that he be listed on the roster of arbitrators. Because the mediator was soon to become a private arbitrator, the three individuals agreed that he would no longer provide lists of possible arbitrators to disputing parties. Further, since that time, all requests from arbitrating parties in the San Diego area, where the mediator is employed, have been routed through the division's Los Angeles office.

An employee likely derives personal financial benefit from outside sources because of his status as a state employee.

Despite these attempts to prevent the mediator from engaging in incompatible activities, it appears that he still benefits personally from the prestige of the State. Although his experience statement does not specifically state that he is still employed as a division mediator, it does indicate that he has worked as a mediator and conciliator for the State. Moreover, in some instances, disputing parties know the individual is a division employee because he has acted as a division-employed mediator in their earlier disputes. Specifically, on at least five occasions from January 1996 through June 1998, the Los Angeles office included the mediator's name on arbitration panels sent to disputing parties, even though he had previously mediated 8 disputes involving 5 of the 10 disputing parties. As a result, it at least appears that the mediator may be selected as an arbitrator because of his position as a state employee.

Further, despite its attempts to remove the possibility of incompatible activities, the division includes the mediator's name on panels far more often than the names of some of the other mediators. Consequently, the mediator's colleagues also appear to use the State's prestige for the mediator's private benefit.

State law requires each agency to establish and maintain an adequate system of internal controls. Internal controls are necessary to provide public accountability and are designed to prevent errors, irregularities, or illegal acts. To succeed, a system of controls must include established practices to be followed by a state agency in performance of its duties and functions. For the division to fulfill its responsibility to the public, it must be truly fair and impartial in all of its activities, including providing lists of names of potential arbitrators to disputing parties. However, as of September 1998, the division had no written policies or procedures for determining which arbitrators it would include

on or remove from the roster of arbitrators. Moreover, it had no written policies or procedures regarding how it would determine which arbitrators' names to include on the panels it sends to arbitrating parties. When arbitrating parties contact one of the division's field offices to request a panel of arbitrators, the employees providing the panel simply use their individual judgment. The division has no system for ensuring that all arbitrators receive equal consideration and that decisions concerning which arbitrators are selected are impartially made. As a result, the division could be open to allegations of bias.

A department division referred the name of one of its own employees for outside employment significantly more often than any other arbitrator's name.

In fact, in fiscal year 1997-98, the Los Angeles office included the mediator's name on 64 arbitration panels—more frequently than any other arbitrator's name. According to tally sheets prepared by the Los Angeles office, the other 58 arbitrators were included on panels an average of only 19 times. The frequency of their inclusion on lists ranged from 1 to 57 times. In addition, while the San Francisco office rarely included the mediator's name on panels, the Fresno office included his name 28 times during fiscal year 1997-98. Only one other arbitrator's name was provided by the Fresno office more often (30 times) during that time period.

Table 1 shows the number of arbitration cases handled by each of three division offices between January 1996 and June 1998. Due to incomplete records, we were unable to determine the total number of times the mediator was actually selected from the panel by the arbitrating parties (the mediator informed us that he also was unable to provide us with information about how many times he was selected); however, we have included the number of times we were able to identify that arbitrating parties selected the mediator.

While it is the arbitrating parties, not the division, who make the final decision about which arbitrator to hire, the division clearly has a significant influence on the ultimate decision because it is providing the list from which the parties make their selection. By including the mediator's name on a panel, the division is presenting an opportunity that may lead to private gain for the mediator, who is one of its own employees. For his services as an arbitrator, the mediator charges \$600 for each full or partial day of hearing and for each day of study and decision preparation.

TABLE 1

| Arbitration Panels Provided January 1996 Through June 1998 | | | |
|---|-----------------------------|--|---|
| Office | Number of Arbitration Cases | Number and Percentage of Panels Listing Mediator | Number of Times Arbitrating Parties Selected Mediator |
| Los Angeles | 548 | 190 (35%) | 14 |
| San Francisco | 911 | 17 (2%) | 1 |
| Fresno | 170 | 64 (38%) | 1 |

EMPLOYEES CREATED THE APPEARANCE OF CONFLICTS OF INTEREST

Although we found no evidence that the mediator violated statutory prohibitions against conflicts of interest, the actions of the mediator and his colleagues actions have contributed to the appearance of conflicts of interest.

On five occasions the mediator was included on panels even though he had previously mediated eight cases involving five of the disputants.

As stated earlier, on five occasions the division included the mediator on panels of arbitrators even though he had previously mediated 8 disputes involving 5 of the 10 disputants. This occurred despite the Los Angeles office supervisor’s efforts to exclude the mediator’s name from any panels sent to parties for whom the mediator has performed work in his capacity as a state employee. On two of the five occasions, the mediator was selected from the arbitration panel provided.

In one of these two instances, only one of the disputing parties had the power to select the arbitrator, and the division allowed this party to specifically request that the mediator’s name be included on the panel. In this case, a high school district wrote to the division requesting a panel of arbitrators from which it could select a hearing officer to hear a case involving allegations

of poor job performance by a district employee.³ The division's Los Angeles office responded with a list of five names, but the school district's attorney wrote back to ask for a second list and requested that the mediator's name be included on the new list. The district then selected the mediator as its hearing officer. The school district's attorney told us that he asked for the mediator to be included in the panel because the district was familiar with the mediator and his good reputation as an impartial arbitrator and because he had previously arbitrated a grievance filed against the district.

A supervisor relied on an interested party's legal advice rather than advice from the department's attorneys.

The supervisor in the Los Angeles office told us that he had been concerned about the appearance of this situation since the mediator works in the same geographic area where the district is located and therefore may also perform mediation work for the district.⁴ The supervisor stated that the attorney who requested the second list on behalf of the district assured him that the situation was not a conflict of interest for either the mediator or the department. Based on this assurance, the supervisor included the mediator's name on the second list he sent to the school district.

We asked the supervisor why he consulted with the individual who was requesting the division to put the mediator's name on the panel instead of consulting with an independent party, such as the department's legal counsel. He told us that he consulted with the school district's attorney because he was familiar with the attorney and believed him to be an honorable man, because the attorney had offered to answer any questions about his request, and because the supervisor did not believe the situation warranted consulting with the department's legal counsel. However, we believe that, since the supervisor had some concerns about the appearance of the situation, it would have been more prudent for him to seek advice from counsel who was not involved in the request.

³ While both hearings and arbitrations involve contested matters, in an arbitration, the arbitrator renders a binding opinion to the parties; in a hearing, the hearing officer recommends a decision to the appropriate authority who can then affirm the recommended decision or not.

⁴ In fact, the mediator had specified to the division that his name should not be submitted for public-sector arbitration assignments in the area in which he conducted his state work. Nevertheless, the Los Angeles office included the mediator's name on arbitration panels submitted to disputing entities in the geographic area where he did state work on six other occasions.

Although placing the mediator's name on the panel of arbitrators did not necessarily create a conflict of interest, the supervisor should have realized that including the mediator's name on the list would likely result in his selection by the district to perform paid arbitration work. Further, within 10 months of this instance, the mediator, in his capacity as a state employee, mediated four other disputes involving the school district. By subsequently allowing him to mediate disputes involving any party who had paid for his services, the supervisor in the Los Angeles office contributed at least to an appearance of a conflict of interest. A disputing party may question a mediator's independence on a particular dispute because the mediator had been paid previously by the other party for arbitrating a dispute.

THE DEPARTMENT FAILED TO ESTABLISH ADEQUATE CONTROL OVER CONFLICTS OF INTEREST

In addition to the failure by division staff to take appropriate action to ensure that the mediator had neither an actual nor an apparent conflict of interest, the department clearly has not established an adequate system of controls in this regard. State law requires agencies to adopt and promulgate a conflict-of-interest code that identifies the positions within the agency that involve making or participating in making decisions that could foreseeably have a material effect on the position holder's financial interests.⁵ For those individuals, the conflict-of-interest code must identify what material interests must be disclosed in statements of financial interest. This law was intended to ensure that public officials disclose any financial interest that could be materially affected by their official actions and are disqualified from taking official actions when those actions might constitute a conflict of interest.

The department's conflict-of-interest code designates the mediator's position as one that must report financial interests. However, the conflict-of-interest code requires individuals in these positions to report income only from sources that are related financially to transit districts under the division's

⁵ As stated earlier, although mediators do not make decisions in disputes, they may make observations or recommendations that influence the final decision.

jurisdiction. Because mediators are involved in disputes between many other kinds of organizations, we believe the requirement is too narrow to ensure that they do not mediate disputes that involve organizations from which they derive outside income.

CONCLUSION

The mediator and other division employees engaged in incompatible activities. While the department attempted to mitigate the problem, a lack of formal department procedures contributed to the appearance of bias by the department and the appearance that the mediator used the prestige of his state position for personal gain. In addition, the mediator and other division employees created an appearance of a conflict of interest. Finally, the department's conflict-of-interest code may be too narrow in its definition of what financial interests mediators must report for the department to ensure that mediators have neither an actual nor an apparent conflict of interest.

AGENCY RESPONSE

The department is conducting an extensive investigation of the events described in our report and expects to complete its investigation shortly. The director, who was appointed in January 1999, will consider whether corrective action is appropriate following the department's investigation. ■

CHAPTER 3

Department of Rehabilitation: Incompatible Activities and False Statements

ALLEGATION I980112

We received an allegation that a vocational rehabilitation counselor improperly opened rehabilitation cases for relatives, falsified eligibility documents, improperly authorized payment for rehabilitation services, and attempted to conceal his improper activities. The Department of Rehabilitation (department) investigated the complaint on our behalf.

RESULTS AND METHOD OF INVESTIGATION

The department's audit services division investigated and substantiated the allegations. The evidence substantiated that the vocational rehabilitation counselor improperly opened rehabilitation cases for two family members who were living in his home and attempted to conceal his relationship with these clients from other department staff. He then made statements and drew conclusions on one applicant's eligibility documents that were inconsistent with other case documentation and statements made to him. Further, he improperly authorized payments to, and services for, this applicant. In addition, the vocational rehabilitation counselor concealed the fact that another department client was renting property from him.

To investigate the allegations, department auditors reviewed the rehabilitation case records for the counselor's family members and his tenant. Auditors also reviewed the counselor's personnel file, department policies and procedures, and applicable laws and regulations. Auditors interviewed the clients, the counselor, and other department staff. They also conducted a limited review of the counselor's current client case records to determine whether he had any other inappropriate relationships with clients. We also obtained and reviewed other evidence that

might have revealed additional relationships between the counselor and his clients. The department's auditors did not find any record of other such relationships, nor did we.

BACKGROUND

The department provides basic vocational rehabilitation and habilitation services to persons with disabilities. Vocational rehabilitation services seek to place disabled individuals in suitable employment, while habilitation services help individuals who are unable to participate in vocational rehabilitation programs achieve a higher level of functioning.

In addition to state laws and department policies that prohibit incompatible activities, the department's district within which the subject employee works prohibits its employees from serving family members, relatives, or close personal friends.⁶ Employees who discover that individuals within those designations apply for rehabilitation services are supposed to notify their supervisor to ensure that another counselor is assigned to provide services to those clients.

THE COUNSELOR IMPROPERLY ESTABLISHED CASE FILES AND ELIGIBILITY FOR BENEFITS

Despite state law and department policy prohibiting such activity, the vocational rehabilitation counselor established case files in June 1998 for his sister and her common-law partner of nine years. The established and accepted practice is that when applicants for services call or come into the office, they are scheduled for an orientation session and given an application and other paperwork to complete. This paperwork is to be mailed to the branch office where it is logged and assigned to counselors for further processing by the senior rehabilitation counselor.

In this case, the vocational rehabilitation counselor prepared the paperwork for his relatives in his home, did not schedule them for an orientation session, and took their paperwork to the

A rehabilitation counselor circumvented department procedures to establish case files for his sister and her common-law partner.

⁶ For a more detailed discussion of the state laws discussed in this chapter, please see Appendix B.

branch office himself. The counselor said he deliberately did not log in their cases and assigned them to himself because he felt another counselor would not adhere to time frames and would not “perceive the criticalness of the situation,” as he knew it to be. According to the counselor, he wanted to help his sister because she was disabled and his only full-blood sibling, and because she and her common-law partner had hit “rock bottom.”

In addition, the counselor prepared eligibility documents for his sister’s partner that were inconsistent with case facts. For example, the counselor recorded on the certificate of eligibility that the client was insulin dependent despite the fact that neither of the two medical reports available to him indicated this. In addition, although the client’s health questionnaire states that he has diabetes, it indicates that he is taking oral medicine and does not make any reference to insulin dependency. The department’s auditors concluded that “an individual with a claimed disability of diabetes, or other non-obvious impairment, cannot be presumed eligible” for rehabilitation services. The department’s auditors also concluded that the counselor’s assessment of the severity of disability was not consistent with the medical information in the case file nor with statements made by the client and the counselor’s sister.

THE COUNSELOR IMPROPERLY AUTHORIZED SERVICES AND PAYMENTS

The counselor’s sister and her partner lived in the counselor’s home from approximately mid-June until mid-July 1998, when they moved into a duplex owned by the counselor. In a July 10, 1998, rehabilitation plan document, the counselor stated that the department would provide the male client with a one-time-only maintenance payment of \$500 to cover the costs of utility and security deposits. According to the document, it was necessary to give the payment to the client because some utility companies would not accept department authorizations and because the client would need the money in hand to make a deposit “for an apartment or renting a room from someone.” The client told department auditors that the counselor expected to receive the \$500 for rent. The counselor denied to the auditors that the \$500 was to be paid to him. However, the auditors had two documents written by the counselor that clearly

The counselor improperly approved payments to, and on behalf of, a family member.

indicated he expected the \$500 to be turned over to him. Although the check was issued to the client, he returned the check to the department uncashed.

In addition, based on the evidence, the department concluded that the counselor planned to have it provide some services for the male client even though they either were not consistent with a planned vocational goal or were unsupported by adequate documentation. These services included the purchase of a computer. The counselor admitted that he intended that the client would use the computer to manage the counselor's duplex property. However, the authorization to purchase the computer was not completed because the client moved to another state and asked that his case be closed.

It also appears that the counselor planned to have the department provide a membership in a health club, even though such a service was not consistent with the client's vocational rehabilitation plan and despite the fact that the client stated he had no interest in working out at a health club. Although the counselor himself owned a membership in the health club, he denied that he would have received any benefit from the client's membership. Again, the authorization for this service was not completed because the client requested that his case be closed.

In addition, the case file indicated that the counselor agreed to have the department reimburse the client \$100 for vehicle repairs. The counselor stated that he personally paid \$275 for repairs to the client's vehicle. He said that the client paid him \$175 and was to have repaid the additional \$100 after receipt of the department's check. However, the department did not issue this check, apparently because the client did not submit his receipt for reimbursement.

THE COUNSELOR ATTEMPTED TO HIDE HIS RELATIONSHIP WITH HIS SISTER, HER PARTNER, AND ANOTHER CLIENT

The counselor knew that his actions regarding his family were improper and attempted to conceal them from his supervisor and others at the department. Although the counselor knew it was improper to have family members on his caseload, he deliberately did not inform his supervisor of the situation. He

The counselor altered the word "sister" to read "client" in an official document.

also told his sister and her partner not to tell anyone at the department about their relationship to him and to obtain a post office box to hide the fact that they were living in his home. He also told them to have all mail they sent to the department's office sent directly to him and marked "personal and confidential." In addition, when his sister wrote to him on August 4, 1998, stating, "I am writing to inform you that I wish to have my case closed, due to your hostility toward me as your sister," he altered the word "sister" to read "client," did not put the letter in the case file, did not make a note in the case file, and did not inform his supervisor of the accurate reason for the case closure on August 12, 1998. In fact, the counselor did not disclose his relationship with the two individuals until August 25, 1998, after the two clients had written to him with tenancy complaints and sent copies of the letter to other public agencies.

Moreover, the counselor told one of his tenants, who was also a department client, not to let anyone at the department's branch office know that she was renting property from him. Although this individual was not a client assigned to the counselor, he instructed her to deliver her rent checks to the branch office in envelopes marked "personal and confidential."

AGENCY RESPONSE

The department is taking, but has not yet completed, corrective action. The department is preparing a formal adverse action and plans to serve it on the employee in March 1999. In response to several control weaknesses noted by the auditors, the field operations division is strengthening its policies and procedures to ensure that only individuals authorized to approve services can do so and that clients' eligibility for, and receipt of, benefits is fully supported by documentation. ■

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CHAPTER 4

Office of the State Public Defender: Inappropriate Reimbursement of Expenses and Failure to Record and Report Personal Use of State Vehicles

ALLEGATION I970164

We received an allegation that an official of the Office of the State Public Defender (public defender's office) commutes to work in a state car.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation and other improper governmental activities. We found that the official inappropriately claimed reimbursement of over \$2,000 for mileage and tolls while driving his private car, as well as tolls while driving a state car, between his residence in the Sacramento area and his headquarters in San Francisco. We also found that the official failed to report the value of his personal use of a state car as taxable compensation.

To conduct our investigation, we reviewed applicable state laws, federal and state regulations, and the Office of Fleet Administration (fleet administration) handbook. In addition, we interviewed the chief of the fleet administration and the manager of the Sacramento state garage. We also interviewed the state public defender, the official in question, and other staff of the public defender's office. Further, we reviewed the official's travel expense claims from July 1996 through March 1998. Additionally, we compared the travel locations shown on the official's travel expense claim to locations shown on his state car travel log for the month of May 1997. This was the first month the official used the state car and the only month of those we reviewed for which he entered all travel locations.

BACKGROUND

The public defender's office was established in 1976 to represent indigent criminal defendants who appeal their convictions. Since 1990, the public defender's office has focused exclusively on death penalty cases. It has offices in Sacramento and San Francisco. The executive, administrative, and information systems staff are located in Sacramento. The San Francisco office is close to both the California Supreme Court and the public defender's office's clients in the state prison at San Quentin.

THE OFFICIAL MADE IMPROPER CLAIMS FOR REIMBURSEMENT

The official improperly claimed reimbursement for commuting expenses over a 21-month period.

The official improperly claimed reimbursement of \$2,253 for commuting expenses while driving his private car and a state car to work from July 1, 1996, to March 27, 1998. According to state regulations, travel expenses between home and headquarters are not allowed.⁷

The public defender's office hired the official in June 1996 for the San Francisco office. Personnel records show the official's headquarters to be San Francisco from his date of hire until April 1997. Although the official often works in the Sacramento office, he stated that he usually works in his San Francisco headquarters four days per week and in the Sacramento office on Wednesdays. Under this schedule, he stays at the home of a relative in the Bay Area on Monday and Thursday nights and at his home in the Sacramento area on the remaining nights. Nevertheless, the official frequently deviates from this schedule when business requires it. When he does not work for two or more consecutive days in San Francisco, he drives from the Sacramento area to San Francisco and back on the same day.

The official's self-described travel pattern and the state car travel log that the official completed for May 1997 confirm overnight stays in Sacramento, but many of his travel expense claims indicate that he traveled from San Francisco to Sacramento and back to San Francisco on the same day. The official acknowledged that the travel expense claims are not accurate, but he

⁷ For a more detailed description of the regulations and laws discussed in this chapter, see Appendix B.

contended that he actually incurred those expenses. We do not question the veracity of the expenses claimed but note the inaccuracies because they imply that he traveled from his headquarters to the Sacramento office and returned on the same day. Since the official actually traveled between his residence and his headquarters, he is commuting rather than traveling on official state business. The official stated that he relied on the advice of administrative staff concerning his claims for travel reimbursement.

THE OFFICIAL ALSO FAILED TO RECORD AND REPORT PERSONAL USE OF A STATE VEHICLE AS TAXABLE INCOME

In April 1997, the official's superior asked the Department of General Services' fleet administration to assign a state vehicle on a long-term basis so the official could travel between the San Francisco and Sacramento offices. The superior also approved a home storage permit, allowing the official to store the state vehicle at his home in the Sacramento area and at the relative's home in the Bay Area. Fleet administration approved the assignment on April 30, 1997.

State law specifies that state-owned motor vehicles shall be used only in the conduct of state business, which is defined as ". . . use when driven in the performance of or necessary to or in the course of the duties of state employment . . ." However, state law also specifies that the Department of Personnel Administration (DPA) shall define what constitutes appropriate use of state-owned vehicles. The DPA permits using a state vehicle to commute to work under certain approved circumstances, although both the DPA and the Office of the State Controller require employees who do so to report the value of this use as taxable income. In fact, Internal Revenue Service regulations state that gross income includes fringe benefits, such as the personal use of an employer-provided automobile. State employees are required to report their personal use of state vehicles to their departments and the departments are required to report it to the Office of the State Controller.

The official was required to complete, on a daily basis, a detailed monthly log for the state vehicle assigned to him; however, he completed the monthly log correctly only for May 1997, the first

full month of use. For June 1997 through March 1998, he entered only the mileage at the beginning and end of each month. Although fleet administration permits department directors and above to record only the mileage at the beginning and end of each month, the official is not a department director.

Moreover, the official did not report how much of his use of the state vehicle was personal, therefore taxable. Based on the trips he made between Sacramento and the Bay Area as he reported in his travel expense claims, we calculate that the official should have reported a fringe benefit of \$141 for May 1997 to March 1998.⁸ According to the official, he never considered his use of the state car to be personal. He said that, in good faith, he relied on staff of the public defender's office who told him that fleet administration approved the use of the car as described in the application and that his use was appropriate.

According to regulations, the taxable value of the official's personal use of a state car was only \$141. However, we estimate the actual cost to the State to be more than \$5,000.

Although the taxable benefit provided to the official for the 10-month period is relatively small, the actual cost to the State for this benefit was substantially higher. The public defender's office paid the state garage a monthly lease fee of \$200 for the first 2 months and \$220 for 8 more months that we reviewed, plus a mileage fee of 14 cents per mile for the first 2 months and 16 cents per mile for the other 8 months. In addition, the public defender's office paid parking fees in San Francisco of \$265 per month from June 1997 to December 1997 and \$280 per month from January 1998 to March 1998. The public defender's office also paid the state garage approximately \$616 for mileage and daily-use fees for replacement vehicles while the leased vehicle was in the garage for maintenance. Furthermore, fleet administration charges users \$50 for each month they do not submit mileage logs on time. According to fleet administration invoices, the public defender's office failed to submit the travel log by the deadline on three occasions. Consequently, fleet administration charged the public defender's office an additional \$150.

The public defender's office paid approximately \$5,905 to fleet administration from May 1997 to March 1998 for use of state vehicles assigned to the official in addition to \$2,985 for parking in San Francisco. The total cost to operate and park the state cars

⁸ We arrived at this estimate using the commute valuation rule in the State Controller's Payroll Procedures Manual.

for 10 months, therefore, was \$8,890. Using the official's travel log for the month of May, we projected the total cost of his personal use to be \$5,560, or about 63 percent of the total operating costs.

The official's supervisor believes the use of the state car as described above is not improper; she described this pattern of use in the letter she submitted to the state garage with the application for the state car. She believes that if such use was not appropriate, the state garage would not have approved the request.

Although state law specifies that the Department of General Services shall administer the regulations adopted by the DPA for the use of state vehicles, it also specifies that it is the duty of the head of a state agency to carry out and enforce the DPA rules and regulations within the agency. In fact, the individual in fleet administration who approved assignment of the vehicle to the official stated that even if he has some concerns that a state official may use a state vehicle for personal transportation, he would still defer to the judgment of an agency director who approved the request. The chief of fleet administration stated that unless a request for long-term assignment of a state vehicle clearly points to misuse, the office would approve a request signed by a director. He stated that fleet administration must rely on the requesting authority to determine if the state vehicle will be used in accordance with DPA rules, as required by the State Administrative Manual.

AGENCY RESPONSE

The public defender's office believes we inappropriately concluded that the official acted improperly. Nevertheless, at the official's request, the public defender's office returned the state vehicle, pending the completion of an internal review of the issues we reported. The public defender's office reiterated its belief that it clearly described the anticipated use of the vehicle to the state garage in its request for assignment of a vehicle. It believes that the state garage should not have approved the assignment of the vehicle if the anticipated use of the vehicle was not appropriate. The public defender's office further stated that neither its administrative staff nor the state garage informed the official that his use of the vehicle might be

improper or that he was required to report his personal use of the vehicle as taxable income. The public defender's office has instructed its administrative staff to become more familiar with the relevant rules and regulations addressed in our report and to exercise greater care in the advice they give other staff. ■

CHAPTER 5

Board of Court Reporters: Failure to Discipline Licensees

ALLEGATION I980099

We received an allegation that the Board of Court Reporters (board) does not discipline court reporters who are charging rates higher than those permitted by law.

RESULTS AND METHOD OF INVESTIGATION

Although the law permits the board to revoke the licenses of court reporters who violate laws substantially related to their official duties, the board does not take such action against those who overcharge for court transcripts. To evaluate the allegation, we asked the board to provide us with its current policy and practice with regard to ensuring that its licensees comply with the law regarding rates for transcription. The board's response was sufficient for us to substantiate the allegation.

On at least four occasions, court reporters billed more than twice the amount permitted by law for court transcripts.

The California Government Code, Section 69950, specifies that the permitted fee for transcription of original ribbon copy is 85 cents for each 100 words (also known as a folio) and 15 cents for each copy. However, individuals licensed by the board have charged more than the permitted amount in numerous instances. Some of these instances have been brought to the board's attention. Table 2 shows information provided to the board by one attorney who complained about being overbilled.

The board had earlier told this attorney that if he was paying more than \$3 per page for an original, plus one copy, he was paying too much. According to this logic, a transcribed page would contain no more than 300 words. The board had also told the attorney that it does not require court reporters to actually count the words on a page. The board told us that, for decades, county courts have told official court reporters that they can charge the county a flat rate per page for transcripts. The rates allowed differ from county to county. The board said it is not aware of any county that requires court reporters to count the

words on a page in order to compute the cost of a transcript. As a result, court reporters charge other clients the same rates as they charge the counties.

TABLE 2

Billings in Excess of Amounts Allowed

| Court Reporter | Number of Pages | Actual Words per Page | Total Number of Words | Billed Amount | Amount Permitted by Law* | Charge per Page |
|----------------|-----------------|-----------------------|-----------------------|---------------|--------------------------|-----------------|
| A | 400 | 200 | 80,000 | \$1,403.50 | \$680.00 | \$3.51 |
| B | 8 | 178 | 1,430 | 50.00 | 12.16 | 6.25 |
| C | 12 | 181 | 2,167 | 42.00 | 18.42 | 3.50 |
| D | 19 | 172 | 3,276 | 61.00 | 27.85 | 3.21 |

* We calculated this amount; it was not provided to the board by the attorney.

Because county courts permit court reporters to charge more than the law allows, the Board of Court Reporters does not believe it can discipline these reporters.

The board has the power and duty to investigate actions of any licensee, upon receipt of a verified complaint in writing. The board may revoke a license of a court reporter for unprofessional conduct in the practice of shorthand reporting. Unprofessional conduct includes acts contrary to any provision of law substantially related to the duties of a certified shorthand reporter. When we asked the board about its current policy and practice with regard to ensuring that its licensees comply with Section 69950 of the California Government Code, the board stated that it has no such policy. The board further stated that it has no clear authority to force a court reporter to make a refund, although it answers questions and attempts to educate both consumers and licensees about the law, assists consumers in obtaining refunds for overcharges, and reprimands court reporters for such practices. This is exacerbated by the fact that counties do not ensure that the costs court reporters charge them comply with the law.

The board also stated that, although it took disciplinary action against one licensee when a history of overcharging was proven, the Office of the Attorney General advised the board that it would be unable to present a case strong enough to obtain any serious discipline against a licensee unless the county where the court reporter worked investigated and took legal action. The

board further stated that difficulty in enforcing the code section is compounded by the fact that some counties allow court reporters to charge a specific amount per page, regardless of the number of words on the page. This has created an “industry standard” that is in direct conflict with the law.

AGENCY RESPONSE

The board has met with court administrators regarding this issue and is seeking some remedies. One county is conducting a survey of all the counties to seek additional information regarding their practices and concerns. After the survey data have been collected, the board will schedule another meeting and hopefully come to agreement on what course of disciplinary action should be taken against reporters that charge more than the amount allowed by law, even though they are following the court administration’s guidelines. This will provide guidance to the board in developing appropriate policy or legislative changes. ■

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CHAPTER 6

Update on Previously Reported Issues

CHAPTER SUMMARY

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 not 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, including this office, related to investigative findings since we last reported them.

DEPARTMENT OF EDUCATION ALLEGATION I940262

On September 9, 1996, we publicly reported that a manager of the California Department of Education (CDE) improperly managed the funds of a statewide student vocational club under the CDE's jurisdiction and the funds of a charitable corporation that received payments from CDE contracts. Specifically, the manager illegally paid a total of more than \$44,100 of personal expenses out of funds from the California Association of Vocational Industrial Clubs of America Leadership Foundation (foundation) and the California Association of Vocational Industrial Clubs of American (CAVICA). He also submitted false claims that resulted in improper payments totaling over \$17,745 for travel and illegally exchanged at least \$4,100 in airline tickets purchased with federal funds for other tickets used for personal trips, among other improper activities.

The manager retired from state service, effective August 8, 1996. As reported earlier, the CDE strengthened controls over program operations and took action to recover more than \$75,000 from some of its fiscal agents.

The subject of one of our earlier investigations has been convicted of a felony and ordered to pay \$11,496 to some of his victims.

Action by the Court and the Fair Political Practices Commission

We reported the illegal activities to the Sacramento County District Attorney's Office. On December 28, 1998, the former manager pleaded guilty to one felony violation of Penal Code Section 72. That code states that every person who, with intent to defraud, presents for payment to any state officer any false or fraudulent claim is punishable either by imprisonment or fine or by both. The judgment and sentence were suspended and the former manager was placed on formal probation for five years; he must work 540 hours in a county work project and is required to pay \$11,496 in restitution. In addition to the restitution, he is required to pay a restitution fine of \$400 and a booking fee of \$156. If he is deemed to have the financial ability, he will also have to pay \$358 for the presentence report and \$42 per month for probation supervision.

We also reported the illegal activities to the Fair Political Practices Commission (FPPC). That agency has conducted its own investigation but has not yet come to a final decision regarding what action it will take.

DEPARTMENT OF GENERAL SERVICES ALLEGATION I950098

We reported on September 16, 1996, that a supervisor of the Office Machine Repair Service (OMRS) in the Department of General Services (DGS) stole at least \$2,200 in new computer parts from the OMRS and used these stolen parts to build computers that he sold to individuals and businesses. Because of insufficient documentation, we were unable to determine whether the supervisor stole more than \$2,200. However, since 1992, the supervisor sold at least \$22,000 worth of computers and computer parts. The supervisor also appeared to have violated the State's conflict-of-interest and incompatible activities laws by both favoring a vendor who supplied computer parts to the OMRS and accepting payments from him. The supervisor also gave used computer parts belonging to the State to this vendor.

As reported earlier, the supervisor told the DGS that he did not steal computer parts, but that he had borrowed some new parts from the OMRS's stock for personal use. Although he claimed he had subsequently replaced the parts, he could not provide any

documentation or witnesses to support his claims. As a result, the DGS reduced the supervisor's salary by 10 percent for 6 months, issued a letter of reprimand to him, and removed some of the supervisor's responsibilities. The DGS reported that its decision regarding the supervisor was influenced by the fact that the supervisor had worked for the State for over 20 years and that he "has been an excellent employee."

Action by the Fair Political Practices Commission

The Fair Political Practices Commission has fined the subject of one of our earlier investigations \$5,000 for his improper activities.

We reported the supervisor's activities to the FPPC. In September 1998, the FPPC entered into a stipulated agreement with the supervisor. The supervisor stipulated that on five separate occasions he signed purchase orders to obtain computer parts from the vendor, even though during that time he had received checks from the individuals who owned the company. In doing so, he violated the Political Reform Act. As a result, the FPPC fined the supervisor \$5,000.

CALIFORNIA STATE UNIVERSITY, DOMINGUEZ HILLS ALLEGATION I960143

We publicly reported the results of this investigation conducted at California State University, Dominguez Hills (CSUDH), on April 21, 1998. We reported that two officials, official A and official B, husband and wife, had apparent conflicts of interest when they signed contracts that benefited official B. In addition, official B improperly accepted gifts totaling \$3,979 and did not disclose them. Official A also imprudently signed a contract on behalf of CSUDH without obtaining the proper approvals and despite provisions in the contract that were in violation of state law. Moreover, official A improperly deposited \$186,000 into a nonstate bank account, even though state law required that the funds be deposited in a state account. Finally, official A improperly allowed more than \$18,000 to be used for food, entertainment, and other questionable expenses.

As previously reported, California State University (CSU) did not believe that official B benefited financially from the contracts. Moreover, CSU believed the \$3,979 paid on behalf of officials A and B was for expense reimbursements, not gifts. Nevertheless, CSU and CSUDH took numerous steps to strengthen controls over the use of state and foundation funds. In addition, we

reported that official A resigned his administrative position effective March 31, 1998, and official B resigned her administrative position effective April 1, 1998.

ADDITIONAL AGENCY ACTION

Official A resigned from his tenured faculty position effective February 1, 1999. Official B returned to a tenured faculty position in the school of health effective August 1998.

In January 1999, CSUDH reported that the same firm that audits the campus now also audits its auxiliary organizations to better integrate the auxiliaries into the financial framework of the campus. As a result of an extensive review of the issues outlined in our investigation, CSUDH concluded that some policies and procedures needed strengthening and others simply needed to be enforced. CSUDH reported that it will complete all necessary revisions to foundation policies during 1999. Although its review of the policies and procedures for the campus foundation are still underway, CSUDH has increased the quality and expertise of its administrative oversight. Finally, CSUDH reported that it is working with the CSU's auditor in developing an audit program that will lead to an internal control review of all CSU foundations on a regular basis.

We conducted this investigation under the authority vested in the California State Auditor by Section 8547, and following, 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 this report.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

Date: March 16, 1999

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APPENDIX A

Activity Report

ACTION TAKEN AS A RESULT OF INVESTIGATIVE REPORTS

Investigations completed over the past five and one-half years have identified improper governmental activities that cost the taxpayers \$10.9 million.

The Bureau of State Audits (bureau) has identified improper governmental activities totaling approximately \$10.9 million since July 1993 when it reactivated the Whistleblower Hotline (formerly administered by 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 it substantiates allegations, the bureau reports the details of the activity to the head of the state entity or the appointing authority responsible for taking appropriate corrective action. The Reporting of Improper Governmental Activities Act (act) also empowers the state auditor to report these activities to other appropriate authorities, such as law enforcement or other entities with jurisdiction over the activities.

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

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

TABLE 3

**Corrective Actions Taken
July 1993 Through January 1999**

| Type of Corrective Actions | Instances |
|------------------------------------|-----------|
| Referrals for criminal prosecution | 65 |
| Convictions | 4 |
| Job terminations | 29 |
| Demotions | 6 |
| Pay reductions | 7 |
| Suspensions without pay | 8 |
| Reprimands | 81 |

**NEW CASES OPENED
JULY 1998 THROUGH JANUARY 1999**

From July 1998 through January 1999, we opened 95 new cases. We receive allegations of improper governmental activities in several ways. Forty-seven (49 percent) of our new cases came from callers to our Whistleblower Hotline at (800) 952-5665.⁹ We also opened 44 new cases based on complaints received in the mail and 4 new cases based on complaints from individuals who visited our office. Figure 1 on the following page shows the sources of all cases opened from July 1, 1998, through January 31, 1999.

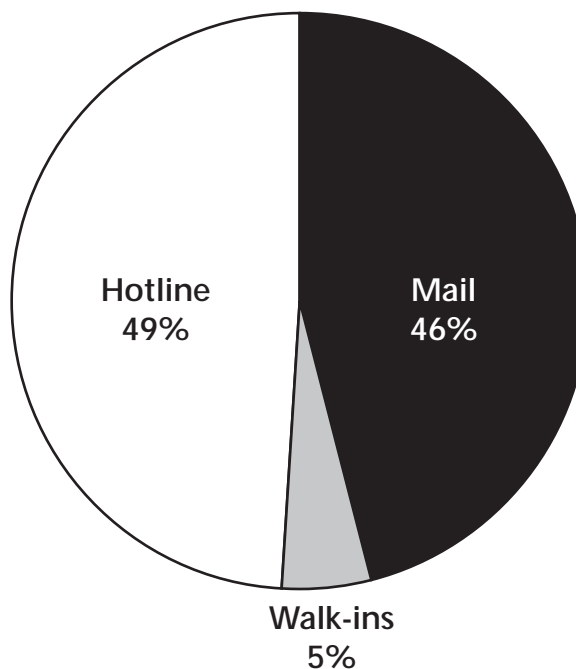
In addition to the 95 new cases opened during this seven-month period, 30 cases were awaiting review or assignment and 15 were still under investigation, either by this office or other state agencies, on July 1, 1998. As a result, 140 cases required some review during the seven-month period.¹⁰

⁹ In total, we received 2,527 calls on the Whistleblower Hotline from July 1, 1998, through January 31, 1999. However, 1,993 (79 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to refer the caller to the appropriate entity. Another 487 (19 percent) of the calls were related to previously established case files.

¹⁰ Also, seven cases had been completed, but agencies had not yet reported that they had completed their corrective action.

FIGURE 1

Sources of 95 New Cases Opened
July 1998 Through January 1999



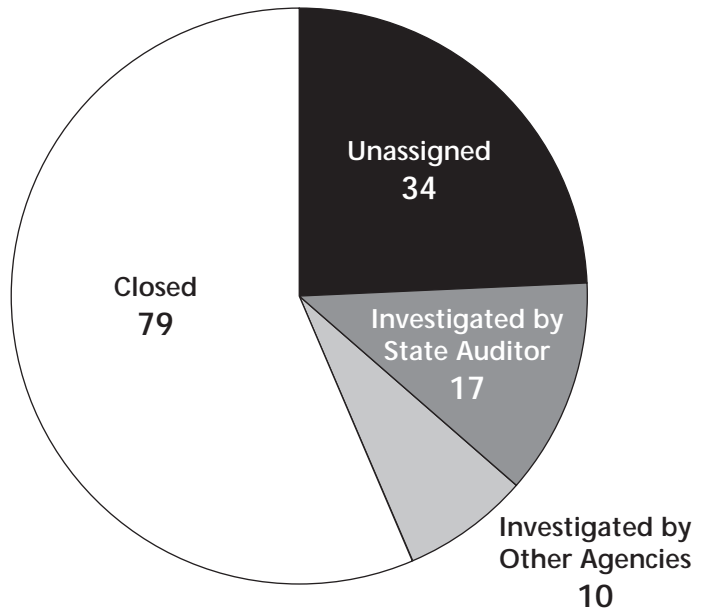
After reviewing the information provided by complainants and the preliminary work by investigative staff, on 79 of the 140 cases, we concluded that not enough evidence existed for us to mount an investigation.

The act specifies that the state auditor may request the assistance of any state entity or employee in conducting an investigation. From July 1998 through January 1999, state agencies investigated 10 cases on our behalf and substantiated allegations on 2 (40 percent) of the 5 cases they completed during the period.

In addition, we independently investigated 17 cases and substantiated allegations on 3 (43 percent) of the 7 cases we completed during the period. Figure 2 shows action taken on case files from July 1998 through January 1999. As of January 31, 1999, 34 cases were awaiting review or assignment.

FIGURE 2

Disposition of 140 Cases
July 1998 Through January 1999



APPENDIX B

State Laws, Regulations, and Policies

This 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.

Incompatible Activities Defined

Chapters 1, 2, and 3 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 with, 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.

The same section requires state departments to define incompatible activities. Policies of the Department of General Services, the Department of Rehabilitation, and the Department of Industrial Relations are consistent with state law. In addition the Department of General Services' incompatible activity statement specifies that an employee shall avoid direct, indirect, implied, or assumed obligations to show favoritism or more friendliness to one person than to others.

Laws Governing Conflicts of Interest

Chapters 1, 2, and 3 report issues related to the appearance of conflicts of interest

The Political Reform Act of 1974, codified in the California Government Code beginning with Section 87100, states in pertinent part that no public employee shall make, participate in making, or in any way attempt to use an official position to influence a government decision in which the public employee knows or has reason to know he or she has a financial interest. Section 87103 of the same code defines a financial interest to include any business entity in which the public employee has a direct or indirect investment worth \$1,000 or more, or any source of income, other than gifts and specified loans, aggregating \$250 or more, provided or promised to the employee within 12 months prior to when the decision is made.

Further, the courts have determined that conflict-of-interest laws are concerned with any interest, other than perhaps remote or minimal interest, that would prevent state officials involved from exercising absolute loyalty and undivided allegiance to the best interest of the State. The fact that a state official's interest might be small or indirect is immaterial so long as it deprives the State of the official's overriding fidelity to it and places the official in a compromising situation where, in exercise of official judgment or discretion, the official may be influenced by personal considerations rather than public good.

In addition to specific statutory prohibitions, common-law doctrines against conflicts of interest exist. Common law is a body of law made by decisions of the California Supreme Court and the California Appellate Courts. The courts and the attorney general have found conflicts of interest by public officials to violate both common law and statutory prohibitions. For example, common-law doctrines state that a public officer is bound to exercise the powers conferred on him or her with disinterested skill, zeal, and diligence and primarily for the benefit of the public. Further, another judicial interpretation of common-law doctrine is that public officers are obligated to discharge their responsibilities with integrity and fidelity. According to the attorney general, where no conflict is found in statutory prohibitions, special situations could still constitute a conflict under the long-standing common-law doctrine.

*Criteria Governing State Managers' Responsibilities***Chapters 2, 3, and 4 report failures in systems of controls**

The Financial Integrity and State Manager's Accountability Act of 1983 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 necessary to provide public accountability and are designed to prevent errors, irregularities, or illegal acts.

*Laws Requiring Conflict-of-Interest Codes***Chapter 2 discusses a department's conflict-of-interest code**

Sections 87300 and 87302 of the California Government Code, a portion of the Political Reform Act of 1974, require state agencies to adopt and promulgate a conflict-of-interest code that identifies the positions within the agency that involve making or participating in making decisions which could foreseeably have a material effect on the position holder's financial interests. For those individuals, the conflict-of-interest code must identify what material interests must be disclosed in statements of financial interest. The Political Reform Act of 1974 was intended to ensure that public officials disclose any financial interest that could be materially affected by their official actions and that they are disqualified from taking official actions when those actions might constitute a conflict of interest.

*Criteria Governing Commuting Expenses and Personal Use of State Vehicles***Chapter 4 reports improper claims for commuting expenses and personal use of a state vehicle**

State employees are not permitted reimbursement for mileage from their residence to their headquarters. According to the California Code of Regulations, Title 2, Section 599.626.1(c), travel expenses between home and headquarters are not allowed.

According to Section 599.616.1(a) of Title 2, an employee's headquarters shall be established by his or her appointing authority. Section 599.616.1(a) of the regulations specifies that an employee's headquarters is the place where the employee

spends the largest portion of his or her regular work days or working time, or the place to which he or she returns upon completion of special assignments. The same section permits the Department of Personnel Administration (DPA) to make exceptions to this definition in special situations.

The California Government Code, Section 19993.1, provides that state-owned motor vehicles shall be used only in the conduct of state business, which Section 599.800(e) of Title 2 defines as “. . . use when driven in the performance of or necessary to or in the course of the duties of state employment . . .” However, Section 19993.2(a) of the California Government Code specifies that the DPA shall define what constitutes appropriate use of state-owned vehicles. The DPA permits using a state vehicle to commute to work under certain, approved circumstances, although both the DPA and the Office of the State Controller require employees who do so to report the value of this use as taxable income. In fact, Internal Revenue Service Regulation 1.61-21(a) states that gross income includes fringe benefits, such as the personal use of an employer-provided automobile.

Sections 599.626(b) and 599.626.1(b) of Title 2 state that reimbursement for transportation expenses will be made only for the method of transportation that is in the best interest of the State.

Section 19993.4 of the California Government Code states that the Department of General Services shall administer the regulations adopted by the DPA for the use of state vehicles.

Criteria Governing the Board of Court Reporters

Chapter 5 reports inaction by the Board of Court Reporters

Section 8008 of the Business and Professions Code states, in part, the Board of Court Reporters (board) has the power and duty to investigate actions of any licensee, upon receipt of a verified complaint in writing, for alleged acts or omissions constituting grounds for disciplinary action. Section 8025 of the Business and Professions Code allows the board to revoke a license of a court reporter for unprofessional conduct in the practice of shorthand reporting. The same section defines unprofessional conduct to include acts contrary to any provision of law substantially related to the duties of a certified shorthand reporter.

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