

**INVESTIGATIVE
REPORT BY THE
STATE AUDITOR
OF CALIFORNIA**

**Investigations of Improper Governmental Activities
August 1 Through December 31, 1994**

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CALIFORNIA STATE AUDITOR
BUREAU OF STATE AUDITS

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February 8, 1995

Investigative Report I95-1

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 report concerning investigations of improper governmental activities completed from August 1 through December 31, 1994.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kurt R. Sjoberg".

KURT R. SJOBERG
State Auditor

Investigations of Improper Governmental Activities

August 1 Through December 31, 1994

February 1995
Report No. I95-1

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Results In Brief

The Reporting of Improper Governmental Activities Act

The Bureau of State Audits administers the Reporting of Improper Governmental Activities Act (act), which is contained in Section 8547 et seq., of the California Government Code. The act defines an improper governmental activity as any activity by a state agency or by a 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 of State Audits receives and investigates complaints of improper governmental activities. To enable state employees and the public to report improper governmental activities, the state auditor maintains a whistleblower hotline. The hotline number is (800) 952-5665.



*Investigations
Completed*



This report details the results of investigations that were completed from August 1 through December 31, 1994, and that substantiated complaints.¹ Some of the improper governmental activities we substantiated include the following:

- Two employees of the Department of Transportation used state time and computer equipment for their personal gain. A third employee used state computer equipment for his personal gain.
- A manager at one of the Department of Corrections' prisons misused state personnel resources by directing several employees to work at his house on state time. In addition, he improperly authorized employees to work overtime and compensated them with unofficial time off on a generous double-time basis. Finally, the manager mistreated and harassed employees at the prison.

¹ A separate investigation entitled "Employees of the University of California, San Francisco, Improperly and Illegally Managed the Center for Prehospital Research and Training (I930279)" was issued in November 1994.

- An employee of the Department of Transportation repeatedly drove a state vehicle to a card room and gambled on state time.
- A manager of the Department of Forestry and Fire Protection spent state time at his bar and provided misleading information during the investigation into his activities.
- An employee of the Department of Developmental Services submitted false information when applying for a position as a peace officer at one of the developmental centers. Because the department conducted an inadequate background investigation on the applicant, it failed to determine that the applicant had submitted false information and hired the individual.
- An employee of the Division of Occupational Safety and Health within the Department of Industrial Relations solicited and received a gift of fill dirt from a construction company that is subject to her inspection.


***Investigative
Process
Followed***

If after investigating the allegations, the state auditor determines there is reasonable evidence to believe an employee or state agency has engaged in any improper governmental activity, the Bureau of State Audits reports the nature and details of the activity to the head of the employing agency or the appropriate appointing authority. The employing agency or the appointing authority is required to report any corrective action, including disciplinary action it takes as a result of the report, to the state auditor no later than 30 days after the date of the investigative report. If the entity has not completed its corrective action within 30 days, it must report to the state auditor monthly until final action has been taken. This report summarizes corrective actions taken by agencies as a result of investigations presented in this report and on investigations previously reported by the state auditor.

Finally, Appendix A provides statistics on the complaints received by this office from August 1 through December 31, 1994. In addition, this report summarizes actions taken on those complaints and 71 other complaints that were awaiting review or assignment as of August 1, 1994.

Chapter 1

Investigations Completed by the Bureau of State Audits From August 1 Through December 31, 1994

Department of Transportation, Allegation I940067

Several employees at the Division of Structures within the Department of Transportation (department) used state time and equipment for personal gain.

Results of Investigation

We investigated and substantiated the complaint. To investigate the complaint, we reviewed backup copies of files from the employees' state computers from September 1993 and May 1994. In addition, we interviewed the employees and other employees at the Division of Structures.

◆
*Three state employees
used state time and/or
computer equipment for
their personal gain.*

Section 19990 of the California Government Code and the department's incompatible activities policy prohibit a state employee from engaging in activities that are clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state employee. Such activities include using state time, facilities, equipment, or supplies for private gain or advantage. In addition, the department's policy requires employees to use state resources, information, and position only for the work of the department and not for the employee's or another individual's private gain.

However, two employees at the Division of Structures used state time and equipment for personal gain. In addition, a third division employee used state equipment for personal gain. Further, one of the employees may have falsified his time sheets.

Employee Number One

The first employee used state time and equipment to conduct seismic inspections of homes in 1992 as a part of his private business. Also, as a part of his private business, he used state time and equipment in 1993 and 1994 to conduct engineering analyses and drafting services in the remodeling of a ski lodge.

Seismic Inspection Projects. Following the Big Bear and Landers earthquakes in June 1992, the employee's private business was hired by several homeowners in the city of Forest Falls in San Bernardino County to assist them in assessing seismic damage to their homes and to act as a liaison between the homeowners and governmental agencies.

The employee's business records and his state time sheets confirmed that, in many instances, he either took time off from his state job to perform the seismic inspections or performed them on weekends. However, we found three instances in which the employee claimed to have worked for the State although his business records indicate that he was working on his private business' seismic inspection projects. Specifically, the employee's state time sheets and travel expense claims indicated that he worked in his state office nine hours on both July 23 and 27, 1992, and eight hours on September 25, 1992. In contrast, the employee's records for his private business showed that he was in Forest Falls inspecting his clients' homes on those days.

In addition, our review of backup copies of files from the employee's state computer showed that the employee stored a significant number of files pertaining to his business' seismic inspection projects on a state computer. The employee admitted that he used the state computer to type letters and inspection reports and to record diary entries for his private business' seismic inspection projects. He also stated that these projects spanned a period of two years. However, the employee claimed that he did all the work on his own time.

We confirmed that the employee used his state computer to access his business' seismic inspection files numerous times during nonstate hours between August 1992 and April 1993. However, on at least 14 different occasions during this nine-month period, the employee used his state computer and state time to access files pertaining to his business' seismic inspection projects. Although we were able to establish that the employee did, in fact, use state time and equipment to perform work for personal profit, we were unable to establish the total amount of time he spent.

Ski Lodge Project. In April 1993, the employee began working on a project to remodel an existing ski lodge as a part of his private business. According to the employee's business records, he spent approximately 480 hours on the ski lodge project from July 1993 through August 1994. The employee stated that he charged the ski lodge \$45 per hour for his services, bringing the total billing for his services on the project to approximately \$21,500. However, according to the employee, instead of being compensated with cash for his services on the project, he was to be compensated with food and lodging at the ski lodge.

Our review of backup copies of files from the employee's state computer showed that the employee stored a large number of files pertaining to the ski lodge project on his state computer. In addition, the employee admitted that he used a state computer and plotter during off hours to conduct engineering analyses and drafting services for the project. He further stated that he had produced between 40 and 50 plots ranging in size from 11x17 inches to 22x34 inches for the project using the state plotter. However, he stated that most of the work on the project was done at home and at the project location. In addition, the employee claimed that he did all the work on the ski lodge project on his own time.

We confirmed that the employee used his state computer to access files pertaining to the ski lodge project numerous times during nonstate hours between June 1993 and February 1994. However, on at least 22 different occasions during this period, the employee used his state computer and state time to access files pertaining to the project.

Also, the employee claimed that he discontinued using his state computer for the project in October 1993 because the scope of the project changed and he was uncomfortable with the increased workload resulting from the changed scope. Further, he stated that he and his supervisor mutually agreed that his activities could be interpreted as wrong and that he should cease using the State computer for his private business. However, we confirmed that he used his state computer for the project both on state time and during off hours at least 13 times through February 1994. Although we were able to establish that the employee did, in fact, work on the ski lodge project while using state time and equipment, we were unable to establish the total amount of time he spent.

Possible Falsification of Time Sheets. Our review of the hours the employee spent on the ski lodge project and the hours he spent at work raised questions as to whether he falsified his state time

sheets. For example, on three separate occasions—September 9, November 2, and December 6, 1993—the employee claimed nine hours of sick leave on his state time sheets. However, his business records for the ski lodge project showed that he worked five and one-half, five, and nine hours on the ski lodge project on those days, respectively.

State personnel rules define sick leave as the absence of an employee from work because of illness or injury; for medical appointments with, or treatments by, a licensed physician; or to attend to an ill or injured member of the employee's immediate household. If an employee's absences do not meet the State's definition of sick leave, the employee should charge absences to vacation leave, not to sick leave. The distinction between using sick leave and using vacation leave is important because the State does not pay employees for their unused sick leave. Instead, under the provisions of the California Public Employees' Retirement System (PERS), any unused sick leave of an employee who is a member of the PERS at the time of retirement may be considered as additional service credit for the purpose of calculating retirement benefits. In contrast, the State must pay employees for each hour of their unused vacation when employees separate from state employment. As a result, unused vacation hours cost the State more money than unused sick leave.

Finally, on a number of occasions, the combined number of hours the employee claimed to have worked on his state job and on the project seem to be unusually large. For example, on six separate occasions from August through November 1993, the employee claimed that he worked 9 hours per day on his state job while also claiming that he worked from 6.5 to 10.5 hours per day on the ski lodge project. On another occasion, he claimed that he worked 5 hours on his state job and 12 hours on the ski lodge project. The combined number of hours the employee claimed to have worked on each of these seven days ranged from 15 to 19.5 hours per day. We question whether the employee actually worked all those hours. However, we could not determine how many hours he actually worked for the State and how many hours he actually worked on the ski lodge.

Employee Number Two

A second employee also used state time and equipment to provide drafting and engineering services in the remodeling of the ski lodge. In addition, the employee used state equipment to draft plans to remodel his brother-in-law's house.

According to the employee's record of his work on the ski lodge project, he spent more than 300 hours in providing drafting and engineering services from April 1993 through April 1994. The employee's proposed fees for the project were \$45 per hour for engineering services and \$30 per hour for drafting services. According to the employee, instead of being compensated with cash for his services on the project, he would be compensated with food and lodging at the ski lodge.

Our review of backup copies of files from the employee's state computer showed that he stored a large number of files pertaining to the project on state equipment. Although the employee claimed that he did most of the work on the project on his own time, he admitted that he did a small amount of the work on state time. He also admitted that because he did not have a plotter at home, he used the State's plotter to produce between 30 and 50 plots, most of which were 11x17 inches, for the project.

We confirmed that the employee used his state computer for the project on state time and during off hours. Specifically, on at least ten different occasions from September through December 1993, the employee used his state computer on state time to access computer files pertaining to the project. The employee also accessed the project files on the state computer numerous times during off hours for this period. For example, the employee used his state computer to access ski lodge files during lunch hours, after work, and on days off more than 20 times in November 1993. Although we were able to establish that the employee did, in fact, work on the ski lodge project using state time and equipment, we were unable to establish the total amount of time he spent.

In addition, we found a few files on the employee's state computer pertaining to a remodeling project on a house that belonged to the employee's brother-in-law. The employee confirmed that he helped his brother-in-law draft plans to remodel his house. However, he stated that he did most of the drafting at home. Although we confirmed that the employee used a state computer on this project, we found no evidence that he used state time.

Employee Number Three

A third employee also used state equipment to conduct drafting and engineering services in the remodeling of the ski lodge. According to the employee's log of hours worked on the project, the employee spent approximately 230 hours on the project from July 1993 through March 1994. This employee stated that he had not yet determined the appropriate hourly rate for the project.

However, he stated he would be compensated with food and lodging at the ski lodge instead of being compensated with cash for his services on the project.

Our review of backup copies of computer files from the employee's state computer did not show any files pertaining to the project being stored on his state computer. However, the employee admitted that he spent more than 50 hours using his state computer during off hours to draft plans for the project and used a state plotter to produce approximately ten plots for the project. We found no evidence that the employee performed this work on state time.

Conclusion

Two employees at the department's Division of Structures used state time and equipment for personal gain. A third division employee used state equipment for personal gain. Finally, one of the employees may have falsified his time sheets.

Agency Response


The department has not yet completed its corrective action.

***Department of Corrections,
Allegation I940037***

A manager at one of the Department of Corrections' (department) prisons misused state personnel resources by directing several employees to work at his house on state time. In addition, he improperly authorized employees to work overtime and compensated them with unofficial time off on a generous double-time basis. Finally, the manager mistreated and harassed employees at the prison.

Results of Investigation

We investigated and substantiated the complaint. To investigate the complaint, we interviewed the warden, the manager, and other employees at the prison. Further, we reviewed the department's internal investigation report on allegations of improprieties, abusive behavior, and harassment by the manager.


A state employee misused state personnel resources, improperly authorized employees to work overtime, and mistreated and harassed other employees.

Misuse of State Employees

We found that the manager directed several of his employees at the prison to work at his house on state time. Specifically, in August 1990, the manager told a plumber at the Plant Operations division to remove a sink at a house he had purchased. The employee spent two hours removing the sink and, at the manager's direction, charged that time to the State.

In addition, in August 1993, the manager directed two other employees at the prison to split wood at the manager's home on state time. According to the employees, they spent several hours at the manager's house splitting wood. However, because the employees felt that it was not proper for them to charge the work to the State, they decided to charge the time to their leave balances.

On another occasion in 1993, the manager directed the same two employees to purchase a heat pump for him. One of the employees stated that he and the other employee went on state time to purchase a heat pump each for the manager, a friend, and themselves. They then delivered one heat pump to the manager's house. However, these employees again charged their time to their leave balances rather than to the State, as suggested by the manager.

***Improper Authorization
and Compensation of Overtime***

We found that the same manager improperly authorized his employees to work overtime even though the department had not approved the overtime. Further, the manager compensated these employees with unofficial time off. In some instances, the employees were granted one and one-half hours off for every hour of unofficial overtime worked. In other instances, individuals received two hours off for every hour of unofficial overtime worked.

According to state personnel rules, overtime ordered by a state agency and worked by an employee should be compensated with either cash or compensatory time off. In addition, compensatory time off should be compensated on a time and one-half basis. By allowing employees to work overtime, which the department did not authorize, the manager went beyond his authority and created a liability for the State for the compensation of the overtime. Further, by granting compensatory time off at double time, the manager granted more time off than the employees were entitled to receive.

Because of the absence of official records on unofficial time off, we could not determine the total amount of unofficial time off awarded to the employees. According to one of the supervisors, who stated that he compensated his employees on a time and one-half basis for overtime worked, his employees might have been compensated with between 200 to 300 hours of unofficial time off for the past two years. Another supervisor stated that one of the carpenters had told him that he took a month off from work using unofficial time off. Witnesses indicated that the manager directed supervisors to grant unofficial time off, at time and one-half, as early as the summer of 1991. Approximately one and one-half to two years later, the manager directed supervisors to grant unofficial time off at double time.

The manager stated that he compensated those employees who worked overtime with unofficial time off on a time and one-half basis. He also stated that his division was short of staff members and that work had backed up. However, he did not explain how he would manage the workload when staff members were taking their unofficial time off.

Improper Conduct

Both the department and this office received several complaints that the manager mistreated and harassed several employees at the prison. We reviewed the department's report of investigation into these complaints and found that the department had substantiated a number of instances of improper conduct by the manager. Specifically, the department reported, among other things, that the manager violated state laws and departmental rules regarding professional conduct.

For example, the investigation found that the manager used threatening, derogatory, and vulgar language toward employees at the prison and concluded that the manager's actions constituted discourteous treatment of other employees. Discourteous treatment is a cause for discipline according to Section 19572(m) of the California Government Code. In addition, the investigation report stated that the manager's behavior also violated the department's rules regarding sexual harassment and inappropriate behavior.

Finally, the investigation report concluded that the manager was dishonest in his responses to questions posed by departmental investigators. According to Section 19572(f) of the California Government Code, dishonesty is also a cause for discipline.

Conclusion

A manager at one of the State's prisons misused state personnel resources by directing several employees to work at his house on state time. Further, he improperly authorized his employees to work overtime and compensated them with unofficial time off on a generous double-time basis. Finally, according to the department's investigation, the manager mistreated and harassed several employees at the prison.

Agency Response


The department has initiated adverse action to demote the employee. However, the action is currently under appeal.

***Department of Transportation,
Allegation I940017***

An employee of the Department of Transportation (department) drove a state vehicle to a card room and gambled on state time.

Results of Investigation

We investigated and substantiated the complaint. To investigate the complaint, we interviewed the department employee and employees of the card room. We also reviewed a videotape of gambling activities at the card room.


***An employee gambled on
state time.***

Section 19990 of the California Government Code prohibits state employees from engaging in activities that are clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state employees. One such activity is using state time, facilities, equipment, or supplies for private gain or advantage. In addition, the department's policy on incompatible activities requires department employees to use state resources, information, and position only for the work of the department.

However, we found that the employee, a highway engineer, drove a state car assigned to him to a card room and gambled during state time. Specifically, according to employees of the card room, they observed a state vehicle parked regularly at the card room for several hours. We verified the information and found that the state vehicle was assigned to the employee. In addition, we observed videotapes showing the employee gambling at the card room on three different work days in May 1994. For example, we found that on Friday, May 6, 1994, the employee gambled at the card room as early as 12:00 noon to as late as 1:30 p.m. According to the employee, his lunch break is normally 45 minutes long. Further, on Monday, May 9, 1994, the employee gambled at the card room at least from 11:00 a.m. to 11:35 a.m. Finally, on Monday, May 23, 1994, the employee gambled at the card room as early as 10:30 a.m. and stayed there until at least 11:20 a.m.

When confronted with the evidence we obtained, the employee admitted that he gambled at the card room during state office hours from approximately March 1994 to sometime in July 1994, a period when he was working on a departmental project in the area. He stated that he gambled at the card room for a couple of hours on state time almost daily for a couple of weeks.

The employee also stated that he gambled on state time at the card room for a couple of hours per day on only two to three days a week during some other weeks in the period. However, he stated that on some weeks during the period, he did not go to the card room at all because he was working on projects in other areas.

Because the employee admitted that he gambled at the card room on state time, we reviewed his time sheets for the months of March through July 1994, a period that covers approximately the time that the employee stated he was involved with the project near the card room. We found that the employee reported between 24 and 32 hours of overtime per month during this period for a total of 141 hours of overtime. The State paid the employee approximately \$5,571 for the overtime he reported he worked during this period. However, because the employee spent a considerable amount of state time gambling at the card room during this period, we question whether it was necessary for the employee to work all or any of the overtime he reported on the time sheets.

Conclusion

A highway engineer of the department drove a state vehicle to a card room and gambled on state time two hours a day for at least two weeks. In addition, on some other weeks from March through July 1994, he gambled on state time for two hours on two to three days a week.

Agency Response

The department has not yet completed its corrective action.

***Department of Forestry and Fire Protection,
Allegation I940055***

A manager of the Department of Forestry and Fire Protection (department) spent state time at a bar.

Results of Investigation

The department investigated and substantiated the complaint. When we first referred this complaint to the department, the department concluded that there was no merit to the complaint but confirmed that the manager owned the bar in question. Subsequently, we received an allegation from another complainant that the manager was driving his state vehicle to a fire station, leaving the vehicle there, and then driving his personal vehicle to his bar in the afternoons.

◆
***A manager abused state
time.***

We twice telephoned the bar and confirmed that the manager was at his bar. The first occasion was at 2:45 p.m. on Friday, February 4, 1994, and the second occasion was at 3:20 p.m. on Wednesday, February 9, 1994. We then asked the department to again investigate the complaint.

To investigate the complaint, the department hired a private investigator to monitor the manager's activities for approximately six weeks. According to the department, this investigation provided "ample evidence to substantiate the allegations." In addition, the department concluded that the manager had provided misleading information to the department during its original investigation.

Conclusion

A manager of the Department of Forestry and Fire Protection spent state time at his bar and provided misleading information during an investigation into his activities.

Agency Response

The department demoted the manager.

Department of Developmental Services, Allegation I940110

An employee of the Department of Developmental Services (department) submitted false information when applying for a position as a peace officer at one of the department's developmental centers. Because the department conducted an inadequate background investigation on the applicant, it hired the individual.

Results of Investigation

The department investigated and substantiated the allegations.

False Statements

***A state employee
submitted false
information when
applying for a position.***

Applicants for peace officer positions in the California civil service must complete a Personal History Statement and must sign and date the statements certifying "that all statements made . . . are true and complete" The department found that the employee failed to enter all the arrest charges that had been brought against him. Specifically, although the employee reported a reduced charge of disturbing the peace, he did not report arrest charges of brandishing a firearm and public intoxication, as required. The applicant had been arrested on all three of these charges on August 12, 1993. Further, the department found that the employee had falsely stated that he had never applied for a permit to carry a concealed weapon. In fact, Department of Justice records disclosed that the employee had been issued a concealed weapon permit in 1980 that was last renewed in 1983 and was valid until 1984, when it was allowed to expire without renewal.

Inadequate Background Investigation

To determine whether candidates for peace officer positions have moral and ethical standards that are becoming to that of a peace officer, state departments conduct preemployment investigations on such candidates. An investigator from another developmental center conducted the preemployment investigation on this applicant. The investigator did not identify the unreported arrests in part because the police department that made the arrests did not report them to the Department of Justice's information system and because the Department of Corrections had already cleared the applicant for a peace officer classification. However, because the applicant had admitted to the charge of disturbing the peace, the

investigator should not have cleared the applicant for hiring without seeking clarification on that charge. Had the investigator sought clarification, he probably would have discovered the other charges.

Improper Conduct After Employment

In addition to the complaints we received, the department received another allegation concerning the employee's conduct that it investigated and substantiated. Specifically, the department substantiated that the employee, who had been a witness in a State Personnel Board hearing, had made statements in a threatening manner to another witness.

Conclusion

An employee of the Department of Developmental Services (department) submitted false information when applying for a position as a peace officer at one of the department's developmental centers. Because the department conducted an inadequate background investigation on the applicant, it failed to discover the false information and hired the individual. After being hired, the employee improperly made statements in a threatening manner to another witness in a State Personnel Board hearing.

Agency Response


The department has initiated termination proceedings against the employee. The department also has instituted a more stringent and comprehensive review of applicants for peace officer positions. Finally, as of December 22, 1994, the department was recruiting for a chief investigative officer for its Sacramento headquarters. This position will be separately accountable for recommendations regarding choices for positions similar to that for which the above employee was hired.

***Department of Industrial Relations,
Allegation I940059***

An employee of the Division of Occupational Safety and Health within the Department of Industrial Relations (department) solicited and received a gift of fill dirt from a construction company that is subject to her inspection.

Results of Investigation

We investigated and substantiated the complaint. To investigate the complaint, we interviewed the employee, her district manager, employees of the construction company, and a building contractor.


***A state employee
improperly solicited and
received a gift of fill dirt.***

Section 19990 of the California Government Code and the department's policy on incompatible activities prohibit state employees from engaging in activities that are clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state employees. One such activity is using the prestige or influence of the State or the department for an employee's private gain. Another such activity is receiving—directly or indirectly—any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone whose activities are regulated or controlled by an employee's department. Prohibitions of these types of activities 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 actions. Further, prohibitions of such activities prevent an appearance of a lack of integrity or independence on the part of state employees.

However, we found that the employee, an associate safety engineer, solicited and received something of value from a construction company that operates in the district where she performs inspections of work sites. Specifically, in the fall of 1993, the employee solicited fill dirt from the construction company. The construction company delivered a number of truckloads of fill dirt to the employee's residence. Both the state employee and a representative of the construction company told us that it was common for dirt removal companies to give fill dirt to anyone who requested it and to deliver the dirt to the requester's home free of charge. In addition, the employee told us that she solicited the fill dirt from the construction company as a private citizen, not as a state employee. She further stated that she did not use her official position to influence the construction company to give her the fill

dirt, nor did she return any favors to the construction company for the fill dirt.

However, this transaction created an appearance of a conflict of interest. Specifically, a second company filed an appeal of a safety citation issued by the employee because the second company believed that the employee had a conflict of interest.² The second company, which had a business dispute with the first company, believed that the employee had improperly issued the citation as harassment. The second company knew that the employee had solicited fill dirt from the first company and believed that the employee had a special relationship with the first company. Although we could find no evidence that the inspector had maliciously issued the citation, by soliciting and accepting the fill dirt from a company that was regulated by the department, she created an appearance of impropriety.

Conclusion

Contrary to state law and departmental policy, an associate safety engineer of the department's Division of Occupational Safety and Health solicited and received something of value from a company regulated by the department. As a result, she created an appearance of impropriety.

Agency Response

The department informally reprimanded the employee and advised her that any similar action in the future may subject her to formal disciplinary action.

² The Division of Occupational Safety and Health is responsible for enforcing health and safety standards at work sites.

***Department of Motor Vehicles,
Allegation I940100***

An employee of the Department of Motor Vehicles used state time and equipment to sell vitamin products. In addition, the employee made personal long-distance telephone calls at the State's expense.

Results of Investigation

We investigated and substantiated the allegation. To investigate the complaint, we reviewed records of telephone calls originating from the state telephone assigned to the employee during February, March, April, July, August, and September 1994. Finally, we interviewed the employee and some of her co-workers.

Use of State Time and Equipment for Personal Gain

***A state employee used
state time and equipment
for personal gain.***

The California Government Code, Section 19990, prohibits employees from using state time, facilities, or equipment for personal profit or benefit. The employee admitted to selling vitamin products at her state office and to using a state photocopier a few times to reproduce a vitamin promotional brochure. However, the employee claimed that, with one exception, she sold the products only during her lunch and break periods.

Nevertheless, two other state employees stated that they had observed the employee selling the products on state time. Specifically, one witness stated that the employee spent approximately 20 minutes of state time to make her "sales pitch" to each of four clients on April 26, 1994. The witness stated that these clients met with the employee in her work space at the department. This witness also stated that she observed the employee selling the products during state time on April 28, April 29, May 2, May 3, and May 6, 1994. According to the witness, the employee spent a total of over 1 hour and 45 minutes of state time with her business clients on these five days. The witness stated that in some of these cases, the employee met clients in her office. In other cases, the employee spoke with clients about the products using her state telephone. Further, a second witness confirmed that she had discussed and purchased vitamin products from the employee during state work hours on at least two occasions.

***Personal Long-Distance Telephone
Calls at the State's Expense***

The State Administrative Manual prohibits employees from making personal long-distance calls on state telephones unless the call is billed to another telephone number or credit card. However, the employee used her state telephone to make at least 46 personal long-distance telephone calls totaling over seven hours during six of the eight months from February through September 1994.

Conclusion

An employee of the Department of Motor Vehicles used state time and equipment to sell vitamin products. The employee also used her state telephone to make at least 46 personal long-distance telephone calls at the State's expense.

Agency Response

The department formally reprimanded the employee and is requiring the employee to reimburse the State for the long-distance telephone calls and 10.5 hours of state time spent on personal business.

***Department of Health Services,
Allegation I940062***

An employee of the Department of Health Services (department) used his state telephone for personal use.

Results of Investigation

We substantiated that the employee placed personal long-distance calls at the State's expense. To investigate the complaint, we obtained a sample of records of telephone calls placed from the employee's state telephone from January through March 1994, and determined which calls were business related and which appeared to be personal. In addition, we interviewed the employee and allowed him to review the telephone records to confirm which of the long-distance calls that appeared to be personal were, in fact, personal.

◆
***A state employee placed
long-distance calls at the
State's expense.***

The State's and the department's policies covering telephone calls prohibit employees from making personal long-distance calls on state telephones unless the call will be billed to the caller. Further, the policies state that personal calls should not interfere with the conduct of state business and that the frequency and duration of personal calls should be kept to a minimum to reduce telephone charges and lost personnel time.

The employee confirmed that he placed 85 personal long-distance calls totaling 3 hours and 53 minutes during the three months reviewed. Although the employee pointed out that many of these calls occurred after work, he did spend approximately 65 minutes of state time on 25 calls placed during his normal work hours. Further, the employee provided information that revealed that several long-distance calls were placed from the employee's state telephone when the employee was away from his office in meetings. Consequently, it appears that other employees in the unit made long-distance calls from his telephone. However, because of the large number of people with access to the employee's telephone, we were unable to identify the employees who made these other long-distance calls.

Conclusion

An employee of the Department of Health Services placed personal long-distance calls at the State's expense.

Agency Response

The department recovered the cost of the personal calls from the employee and formally counseled him. In addition, the department has directed the employee to prepare a policy notice on the personal use of state telephones. This notice will be distributed to all employees in his division.

Chapter 2

Corrective Action Taken on Previously Reported Investigations

As stated on page 2, 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 date of the investigative report. If the entity has not completed its corrective action within 30 days, it must report to the state auditor monthly until final action has been taken. This chapter summarizes corrective action taken by state departments and agencies since we reported the investigative findings publicly.

The University of California, San Francisco, Allegation I930279

We reported the investigative findings on this allegation on November 22, 1994, in report I930279. We reported that the University of California, San Francisco (UCSF), grossly mismanaged the Center for Prehospital Research and Training (CPRT), a program through which the UCSF provided training in cardiopulmonary resuscitation skills and education to emergency medical services personnel. Specifically, a CPRT administrator did not manage the CPRT in accordance with established laws and university policies and procedures. For example, the administrator had conflicts of interest related to contracts between the UCSF and the Fire Department of the City and County of San Francisco. These conflicts of interest resulted in the unauthorized use of university resources for the benefit of the fire department. In addition, the administrator and other CPRT and UCSF employees conspired to submit falsified payroll documents for the purpose of paying at least 47 employees at a rate higher than that approved by the university. We also reported many other improper governmental activities at the UCSF. Even though several UCSF officials became aware of many of the problems before we reported them to the UCSF, these officials failed to correct them. As a result, the UCSF cannot assure the State's taxpayers that the university's funds were accounted for and spent properly. Also, the

UCSF did not safeguard its resources and failed to promote an effective and efficient use of resources at the CPRT.

Corrective Action

The UCSF has not yet completed its corrective action. However, the UCSF reported that it closed the CPRT in late November 1994. The UCSF also stated that it had corrected the improper time reporting practices at the CPRT and that it will correct similar practices within the Department and School of Medicine no later than March 1, 1995. Finally, the UCSF reported that possible personnel actions are being reviewed.

***Employment Development Department,
Allegation I930159***

We reported the investigative findings on this allegation on September 14, 1994, in report I94-2. We reported that a program manager at one branch office of the Employment Development Department violated federal, state, and departmental conflict-of-interest laws, regulations, and standards during the awarding of state contracts to a company in which she had a financial interest. Specifically, we found that a job retraining program, which the employee managed, awarded more than \$770,000 in state contracts to a company in which she had a financial interest through her husband's position and income. As a manager of this program, which received federal funds to aid unemployed workers adversely affected by increasing imports, the employee was in a position to both directly and indirectly influence the awarding of 82 contracts to the company. These 82 contracts were awarded within a period of approximately two months. Although departmental policies required the program manager to disclose her financial interest in this company, we found that she failed to disclose her interest on a timely basis.

Corrective Action

The department reassigned the employee to a position that has no responsibility over contracts and issued a letter admonishing her for not promptly disclosing her conflict of interest. The department also issued a memorandum to all of its employees reminding them of the required conflict of interest reporting procedures.

***Department of Corrections,
Allegation I940098***

We reported the investigative findings on this allegation on September 14, 1994, in report I94-2. We reported that two employees at a correctional training facility (CTF) of the Department of Corrections improperly influenced a candidate's ranking for employment on a CTF hiring list. Specifically, both employees, a records specialist and a lieutenant, inappropriately used their influence to elevate a candidate's ranking on a CTF hiring list. Further, the two employees violated various California Government Code sections pertaining to dishonesty, inexcusable neglect of duty, willful disobedience, and other failures of good behavior.

Corrective Action

The Department of Corrections has terminated the records specialist and reduced the lieutenant's pay by 10 percent for nine months.

***Office of Criminal Justice Planning,
Allegation I930128***

We reported the investigative findings on this allegation on September 14, 1994, in report I94-2. An employee and his supervisor at the Office of Criminal Justice Planning (OCJP) failed to follow the office's conflict-of-interest policies, allowing the employee to remain in his position to potentially influence the awarding of a grant to a favored adoption agency. Specifically, we found that the employee was assigned to rate a grant proposal submitted by the adoption agency where he was a certified foster parent. As a rater of the proposal, the employee was in a position to potentially influence the awarding of the grant, which is in violation of the office's conflict-of-interest policies. Although the employee disclosed some details of this relationship to his supervisor, the supervisor allowed the employee to remain in his position as a rater. In addition, neither the employee nor his supervisor followed OCJP procedures for disclosure of potential conflict-of-interest situations. The OCJP subsequently awarded the adoption agency in question approximately \$100,000 in grant monies. Four months after the OCJP awarded the grant to the adoption agency, the adoption agency placed two children with the employee.

Corrective Action

The department provided copies of the Incompatibility Statement and Standard of Conduct to both the employee and his supervisor, and obtained written acknowledgments that they had read the policy and that they agreed to comply. The employee also acknowledged that he may be subject to adverse action if he again violates the policy. In addition, the department has taken action to provide training on the department's conflict-of-interest policy and is developing a procedure that will help the department to identify potential conflicts of interest.

***Employment Development Department,
Allegation I940039***

We reported the investigative findings on this allegation on September 14, 1994, in report I94-2. A manager of an Employment Development Department (department) branch office used a state vehicle for personal use on several occasions and falsified the monthly travel log for the vehicle for December 1993 and January 1994. In addition, the manager abused her authority by requiring subordinate employees to perform personal services for her. These personal services included providing the manager with transportation.

Corrective Action

The department has dismissed the manager.

***Employment Development Department,
Allegation I940072***

We reported the investigative findings on this allegation on September 14, 1994, in report I94-2. An employee of the Employment Development Department used state equipment to conduct personal work related to her tax preparation business. Also, the employee listed her state telephone number on her business letterhead. In addition, she made personal long-distance calls at the State's expense.

Corrective Action

The department issued a corrective action memorandum to the employee. The actions to be taken included the following:

- Reimbursement for the actual cost of the personal long-distance calls.
- Removal of the state telephone number from business letterhead.
- Active discouragement of tax clients from calling the employee at her state office.

We conducted these investigations under the authority vested in the 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 sections of this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: February 8, 1995

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Appendix A

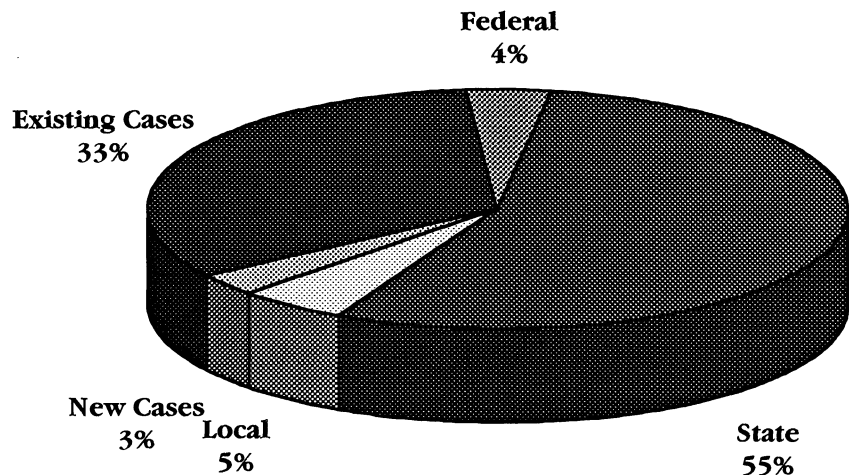
Activity Report

Complaints Received on the Whistleblower Hotline

From August 1 through December 31, 1994, the Investigations Unit received 2,061 calls on the whistleblower hotline. Of these calls, 1,312 (64 percent) were about issues outside the jurisdiction of the Reporting of Improper Governmental Activities Act (act) or were not complaints at all, but requests for information. In these cases, we attempted to give the caller the telephone number of the appropriate entity. Specifically, we referred 1,128 (55 percent) of all calls received to other state agencies, 111 (5 percent) of the calls to local agencies, and 73 (4 percent) of the calls to federal agencies. For 71 (3 percent) of the calls received, we established case files. The remaining 678 (33 percent) of the calls were related to previously established case files. These calls came from either the original complainants or additional complainants. Chart 1 shows the disposition of calls received over the whistleblower hotline during the last five months of 1994.

Chart 1

***Disposition of Calls to the Whistleblower Hotline
August 1 through December 31, 1994***



Work Performed on Investigative Cases

In addition to the 71 cases opened based on calls received over the hotline, we opened 13 cases based on complaints received through the mail and 5 cases based on information provided by individuals who visited us at our office, for a total of 89 case files opened from August 1, 1994, through December 31, 1994. Moreover, as of July 1, 1994, there were 71 cases awaiting review or assignment and 15 cases were still under investigation by either this office or other state departments or agencies on our behalf. Furthermore, for 6 other cases, investigations had been completed and publicly reported, but the employing departments had not completed their corrective action. Chapter 2 summarizes corrective actions taken since July 31, 1994, on these 6 investigations.

The act states that the state auditor may conduct an investigation upon receiving specific information that any employee or state agency has engaged in an improper governmental activity. However, upon review of the information provided by complainants and preliminary work by investigative staff, we assess whether sufficient evidence of wrongdoing exists to mount an investigation. In 102 cases, we concluded that there was not enough evidence of improper governmental activity for us to mount an investigation. However, in 26 cases there was sufficient evidence of activities that may be of concern to the departments for us to refer the details of the complaints to the departments for their information, keeping the identity of the complainants confidential.

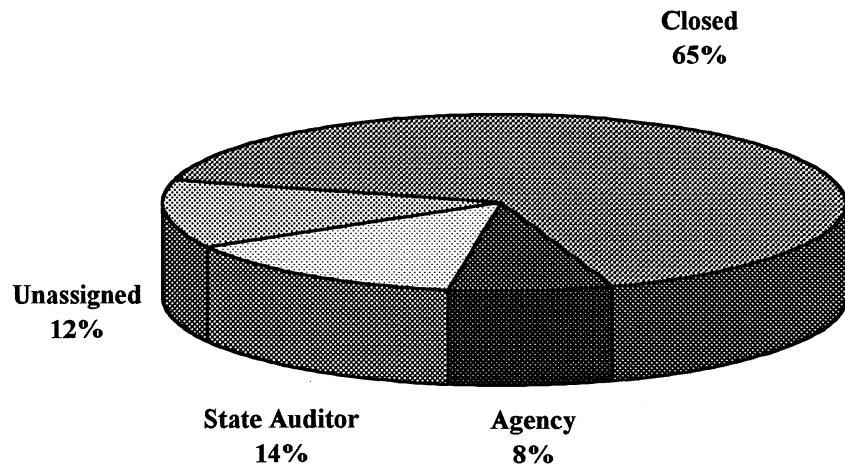
The act also specifies that the state auditor may request the assistance of any state department, agency, or employee in conducting any investigation. During the period from August 1 through December 31, 1994, state departments investigated 15 cases on our behalf. Departments substantiated allegations on 2 (33.3 percent) of the 6 cases they completed during the period.

In addition, we investigated 27 cases during the period from August 1 through December 31, 1994. We substantiated allegations on 7 (70 percent) of the 10 cases we completed during the period. Chart 2 shows action taken on case files during the period from August 1 through December 31, 1994.

Chart 2

Action Taken on Cases

August 1 Through December 31, 1994



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Department	Allegation Number	Allegation	Page Number
Corrections	I940037	Misuse of state resources. Improper authorization and compensation of overtime. Harassment of employees.	9
Corrections	I940098	Follow-up on improper influence of ranking of a candidate for employment.	29
Developmental Services	I940110	False statements on application for employment and inadequate background investigation.	17
Employment Development	I930159	Follow-up on conflict of interest.	27
Employment Development	I940039	Follow-up on misuse of state vehicle and abuse of authority.	33
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Department	Allegation Number	Allegation	Page Number
Motor Vehicles	I940100	Misuse of state time and equipment for personal benefit. Misuse of state telephones.	21
Office of Criminal Justice Planning	I930128	Follow-up on conflict of interest.	31
Transportation	I940017	Time and attendance abuse.	13
Transportation	I940067	Misuse of state time and equipment for personal gain.	3
University of California, San Francisco	I930279	Follow-up on gross mismanagement, conflicts of interest, and falsification of payroll documents.	25

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