

Investigations of Improper Governmental Activities:

January 1 Through June 30, 1995

August 1995
Report I95-2

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CALIFORNIA STATE AUDITOR

August 8, 1995

Investigative Report I95-2

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 completed from January 1 through June 30, 1995.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

Table of Contents

Results In Brief *S-1*

Chapter 1

Failure To Perform Mandated Duties 1

*Department of Fair Employment
and Housing, Allegation I940122* 2

*Integrated Waste Management Board,
Allegation I930248* 9

Chapter 2

Improper Compensation of Overtime 15

*Department of Transportation,
Allegation I950008.1* 17

*Department of Fish and Game,
Allegation I940214* 20

Chapter 3

Other Improper Personnel and Payroll Practices 25

*Department of Forestry and Fire
Protection, Allegation I940002.1* 26

*Department of Developmental Services,
Allegation I940192* 31

Chapter 4

Improper Procurement and Contracting Practices 35

*Department of Forestry and Fire
Protection, Allegation I940002.2* 36

*Department of Rehabilitation,
Allegation I940273* 44

Chapter 5

Incompatible Activities 49

*Department of Boating and Waterways,
Allegation I940221* 51

*California State University, Long Beach,
Allegation I940158* 54

*Department of Parks and Recreation,
Allegation I940217* 56

*Department of Social Services,
Allegation I940186* 59

*Department of Social Services,
Allegation I940263* 61

*University of California, San Francisco,
Allegation I940164* 64

*Department of Consumer Affairs,
Allegation I940252* 65

Chapter 6

Misuse of State Telephones 67

*Department of General Services,
Allegation I940269* 68

*California Energy Commission,
Allegation I950017* 70

*State Teachers' Retirement System,
Allegation I940235* 72

Chapter 7

Corrective Action Taken on
Previously Reported Investigations 73

*The University of California,
San Francisco, Allegation I930279* 74

*Department of Transportation,
Allegation I940067* 75

*Department of Transportation,
Allegation I940017* 76


Appendix

Activity Report 79

Index to Reports of Investigation 83

Results in Brief

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 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 toll-free whistleblower hotline. The hotline number is (800) 952-5665.


Whistleblower hotline:
(800) 952-5665

This report details the results of investigations that were completed from January 1 through June 30, 1995, and that substantiated complaints. Complaints we substantiated include the following:

- Contrary to state law, the Department of Fair Employment and Housing did not investigate a discrimination complaint. In addition, the employee assigned to investigate the complaint fabricated investigative records.
- The Integrated Waste Management Board failed to ensure that 26 used oil collection centers were accepting used oil from the public as required by law before paying them more than \$19,300 in recycling incentives.
- The Department of Transportation improperly accrued compensatory time off (CTO) credits for 44 attorneys even though the attorneys were not entitled to receive them. At the attorneys' rate of pay, the 4,186 hours (523 days) of used CTO has cost the State more than \$164,929 that should have been charged to the employees' legitimate leave balances. The 5,353 hours (669 days) of unused but accrued CTO hours as of April 30, 1995, could cost the State an additional

\$231,025 if the Department of Transportation allows the attorneys to use them.

- The Department of Fish and Game permitted two attorneys to charge more than 450 hours (56 days) of absences to CTO even though the employees were not entitled to receive CTO. As a result, the State paid the employees a total of more than \$14,000 that should have been charged to their legitimate leave balances.
- A manager at one of the Department of Forestry and Fire Protection's ranger units directed a volunteer and an employee to falsify documents. The employee did not follow the manager's instructions. However, the State improperly paid the volunteer approximately \$1,950 based on falsified travel expense claims. In addition, the manager instructed a personnel officer to improperly adjust payroll documents for eight employees, resulting in improper payments to the employees totaling more than \$9,700.
- The same manager at the Department of Forestry and Fire Protection mentioned above purchased approximately \$97,000 in Smokey Bear memorabilia and related merchandise. The memorabilia included items such as watches, dolls, baby paraphernalia, and ashtrays. According to the manager, much of the memorabilia was given to state employees, vendors, and other individuals. However, because the department did not maintain records of how the memorabilia was distributed, we could not determine how much, if any, of the merchandise purchased by this and other managers was distributed appropriately. Further, the manager made at least 286 personal long-distance telephone calls lasting a total of more than 27 hours, costing the State more than \$710.
- The Department of Rehabilitation circumvented the State's competitive bidding requirements by using interagency agreements to purchase training services. As a result, the department denied other vendors the opportunity to compete for the State's business and paid at least \$72,290 more for the services than was necessary.

- Employees from the Department of Boating and Waterways; California State University, Long Beach; the Department of Parks and Recreation; the Department of Social Services; the University of California, San Francisco; and the Department of Consumer Affairs engaged in activities incompatible with their duties as state employees. These activities included working at other jobs on state time, representing nonstate organizations on state time, and improperly using the State's prestige for the private gain of another.
- Employees from the Department of General Services and the California Energy Commission made personal toll calls lasting a total of more than 30 hours at the State's expense. In addition, an employee of the State Teachers' Retirement System used state equipment to create and transmit personal correspondence via facsimile.

If after investigating allegations, the state auditor determines that 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 also summarizes corrective actions taken by agencies as a result of investigations presented in this report and investigations reported previously by the state auditor.

Finally, the appendix provides statistics on the complaints received by this office from January 1 through June 30, 1995. In addition, this report summarizes our action on those complaints and 26 other complaints that were awaiting review or assignment as of December 31, 1994.

Chapter 1

Failure To Perform Mandated Duties

Chapter Summary

The Department of Fair Employment and Housing (FEH) and the Integrated Waste Management Board failed to perform duties mandated by state laws. An employee of the FEH falsified investigative records to indicate that there was no merit to a discrimination complaint. Even after management became aware of the falsifications, it did nothing to ensure that the complaint was investigated in accordance with state law.

In addition, contrary to state law, the Integrated Waste Management Board failed to ensure that 26 recycling centers complied with other state laws before certifying them as being eligible to participate in the Used Oil Recycling Program and before paying them more than \$19,300 in recycling incentives.

***Department of Fair Employment and Housing,
Allegation I940122***

The FEH did not properly investigate a discrimination complaint. In addition, the employee assigned to investigate the complaint fabricated records documenting her investigation.

Results of Investigation

*Failure to investigate a
discrimination complaint*

We investigated and substantiated the complaint. To investigate the complaint, we reviewed the investigative file for the discrimination complaint and the FEH's personnel records concerning the employee assigned to investigate the complaint. We also interviewed the employee's supervisors (the district administrator and the regional administrator) and another employee assigned to handle the complaint after the first employee went on a medical leave of absence. In addition, we interviewed the complainant who filed the discrimination complaint and contacted witnesses who the employee indicated were interviewed by her during her investigation. Finally, we attempted to interview the employee, but she did not return our telephone calls.

Background

The California Government Code, Section 12930, states that one of the functions of the FEH is to receive, investigate, and conciliate complaints alleging unlawful employment practices. Section 12963 of the same code further states that after the filing of any complaint alleging facts sufficient to constitute a violation of fair employment and housing practices, the FEH shall conduct a prompt investigation.

According to the Government Code, if the FEH determines that the law has been violated but is unable to resolve the issues through conciliation, the FEH's director may issue an accusation to be addressed by either the FEH's commission or a court of law. However, by law, any accusation issued on behalf of a single complainant must be issued within one year of the time the case is filed. In addition, if the FEH does not issue an accusation within 150 days after the complaint is filed, or if it determines that it will not issue an accusation, it must promptly notify the complainant in writing. This notice must inform the complainant that he or she is entitled to file a civil action in a court of law. Finally, the law requires the FEH to notify a complainant without undue delay when

an investigation of a discrimination complaint is terminated or closed.

The Department of Fair Employment and Housing Did Not Properly Investigate the Complaint

The department lost the discrimination complaint and did not take prompt action when notified of improper handling of the case

A complainant filed a preliminary discrimination complaint with the FEH on January 23, 1993, alleging that she was harassed and terminated by a private employer because of her religion, age, and health status.

After receiving the preliminary discrimination complaint, the FEH scheduled a telephone interview with the complainant for February 25, 1993. However, no one from the FEH telephoned the complainant on the appointed date. According to the complainant, when she called the FEH to follow up, she was told that the FEH could not locate her complaint and that she would have to resubmit it.

The complainant submitted a copy of her original complaint and, on April 13, 1993, the employee assigned to investigate the complaint interviewed the complainant. On April 16, 1993, the complainant wrote to the FEH employee and provided a list of names, addresses, and telephone numbers of individuals who the complainant stated could corroborate her complaint. On May 6, 1993, the complainant again wrote to the employee, this time stating that she had left messages for the employee but that the employee had not returned her calls. The complainant asked for confirmation that the employee had received the information she had mailed on April 16.

According to the case file, nothing more was done on the complaint until July 14, 1993—three months after the complainant was interviewed and almost six months after she first filed her complaint. On July 14, 1993, the FEH sent a formal discrimination complaint to the complainant for her signature. On July 16, 1993, the complainant filed her formal complaint, which was received by the FEH on July 21, 1993. Also on July 16, 1993, the complainant wrote to the employee's supervisor, the district administrator of the FEH's district office, to complain that the employee was not returning her telephone calls and to express her concern about whether her complaint would be handled properly. The district administrator responded on July 21, 1993, assuring the complainant that her complaint would be processed properly. By that time, the district administrator had counseled the employee about her poor work performance. However, we could find no evidence that the district

administrator discussed this complainant's concerns or her case with the employee.

In August 1993, the FEH's employee contacted the complainant's employer concerning the discrimination complaint and obtained the employer's response. On September 8, 1993, the FEH initiated disciplinary action against the employee for actions unrelated to the complainant's case. According to the FEH, it took the action for the following reasons:

- The employee failed to demonstrate that she was able to function in her position.
- She had not demonstrated that she possessed the knowledge, skills, and abilities to perform at her level despite receiving significant training.
- She did not complete investigations efficiently and exhibited unprofessional behavior.
- She failed to notify another complainant that an investigation into her complaint would not be completed within 150 days and that she was entitled to a formal notice of the complainant's right to file a civil lawsuit.
- Finally, numerous complaints had been filed by members of the public related to the employee's lack of responsiveness and insensitivity as an employee of the FEH.

Effective on September 16, 1993, the employee was suspended for 30 days without pay. She was instructed to report back to work on October 18, 1993, and was given 60 calendar days to demonstrate an approved level of performance. Although the FEH reassigned the case to another employee on September 10, we could find no evidence that the second employee did any work on the case while the first employee was on suspension.

An Employee of the Department of Fair Employment and Housing Fabricated Evidence

We confirmed with five witnesses that the employee falsified all the information attributed to them

In October and November 1993, after returning to work, the FEH employee falsely recorded in the discrimination complaint file that she had contacted five witnesses and left messages for two others. She indicated in the case file that the witnesses contradicted the complainant. Specifically, the employee wrote that witnesses told her the following:

- The first witness did not work with the complainant and had not observed any harassment.
- The second witness had not observed any incidents of harassment.
- The third witness had never heard any age- or religion-related remarks.
- The fourth witness did not know of any harassment regarding age or religion and believed that the complainant was a troublemaker.
- The fifth witness did not know why the complainant listed her as a witness and did not know about any harassment based on age or religion. This witness also stated that if anyone was harassed, it was the respondent who was harassed by the complainant.

We confirmed with the five witnesses that the employee falsified all the information attributed to them. In addition, although the employee claimed that she had left messages for two other witnesses, we confirmed with one of the two that the employee had not left a message. We were unable to reach the last witness.

Although the FEH did not know then that the employee was fabricating records, based on the employee's poor performance and the complainant's expressed concerns, we believe that her supervisors should have been monitoring her work closely. In December 1993, the employee went on an indefinite medical leave of absence.

The district administrator did not reassign the complaint to another employee until February 3, 1994. At that time, the district administrator reassigned the case to the employee who had been responsible for the case while the first employee had been on

suspension. Based on the falsified documents in the case file, the second employee concluded that there was no merit to the complaint and did not investigate the complaint further. However, the FEH did not notify the complainant of its conclusions, as required by law.

Although Aware of Some of the Falsifications, the FEH Failed to Investigate Further



In late February or early March 1994—more than a year after filing her original complaint—the complainant called the FEH to inquire about the status of her case. The employee to whom the case had been reassigned told her that she was not working on the case because the original employee had contacted witnesses and none of them could substantiate the complainant's case. On March 1, 1994, the complainant notified the district administrator that the first employee had falsified information in her file and stated that two of the witnesses with whom the employee claimed she had spoken would mail statements to the FEH.

The complainant further informed the district administrator that her employer was offering a settlement on a workers' compensation claim if the complainant would drop the discrimination complaint. According to the FEH, the complainant was represented by her own attorney in resolving her workers' compensation claim. On March 2, 1994, based on the complainant's statement that she had been terminated because of a workers' compensation claim, the district administrator noted in the case file that it appeared that there was insufficient evidence to support her discrimination case. However, he also noted that the FEH would keep the case open for a month while he followed up on the alleged falsification of records.

On March 15, 1994, after receiving the letters from the two witnesses, the district administrator contacted the two witnesses and confirmed that the FEH's employee had never contacted them. The district administrator informed his supervisor, the regional administrator, about the problem of fabricating evidence. Both the district administrator and the regional administrator decided that they would follow up on the problem when the employee returned from her medical leave of absence.¹

¹ The employee did not return from her medical leave, but resigned from her position in October 1994.

We found no evidence that either the district administrator or the employee to whom the case had been reassigned attempted to determine whether other information in the case file was true. In addition, neither the district administrator nor the regional administrator contacted the complainant to inform her that they had confirmed the falsification of records or to tell her that the FEH would undertake a thorough investigation of her complaint.


We found no evidence of an attempt to verify other case information


On May 27, 1994, the employee assigned to continue the investigation contacted the complainant to inform her that her complaint was being investigated. (As stated earlier, however, this employee did not pursue the investigation.) The complainant told the employee that she had signed a settlement with her employer on her workers' compensation claim with the stipulation that she would close her discrimination complaint with the FEH. The complainant also stated that she was upset about the investigation of her complaint.

In June 1994, the complainant confirmed with the FEH that she had settled with her employer and requested that the FEH not proceed any further with her complaint. However, she also indicated that she was forced to close her discrimination complaint against her employer as part of the settlement because she found out too late that the employee who initially investigated her complaint had fabricated evidence on her complaint. In July 1994, the FEH closed the case. Although it had received the formal complaint approximately one year before, the FEH had never investigated it.

Conclusion

Contrary to state law, the FEH did not investigate the discrimination complaint. In addition, the employee assigned to investigate the complaint fabricated records concerning work on the complaint.

Agency Response

The FEH states that, because it does not have jurisdiction over complaints based on workers' compensation claims, it responded correctly when the individual who filed the complaint told the district administrator that her dismissal was a result of her workers' compensation claim. Specifically, the FEH states that although there was still time to complete the investigation, because the complainant agreed to withdraw her discrimination complaint, the FEH could no longer proceed with its investigation. However, as we report, the

complainant told the district administrator that her former employer was offering a settlement on her workers' compensation claim *only if she would drop her discrimination complaint*. As we report on page 6, the complainant stated that she was forced to drop her discrimination complaint to obtain a settlement on her workers' compensation claim. We believe that the discrimination complaint and the workers' compensation claim represent discrete issues. Further, as we state on page 7, as late as May 27, 1994, the FEH was still claiming that it was investigating the complaint.

The FEH also claims that it took action after it became aware of its employee's falsifications. It states that it investigated not only witness statements for this case, but also other cases assigned to its employee. However, the case file contained no evidence that the FEH did any investigation on this particular discrimination complaint case beyond confirming that the employee had falsified records concerning information received from two witnesses.


The agency does, however, concede that it did not handle the discrimination complaint case in accordance with standard procedures. As a result, it counseled the management personnel responsible for actions taken and not taken.

In addition, the FEH reported that it recognized that it must further improve its case processing assessment program by establishing an additional procedure to audit the witnesses who have been interviewed and the complainant to determine whether any improprieties have occurred during the course of an investigation.

***Integrated Waste Management Board,
Allegation I930248***

Employees at the California Integrated Waste Management Board (board) improperly certified a group of 26 used oil collection centers (centers) that belonged to a limited partnership and allowed them to participate in the board's Used Oil Recycling Incentive Program (program). In addition, the board paid the limited partnership at least \$19,300 and as much as \$25,162 for claims although the centers were not complying with state laws and regulations.

Results of Investigation


Recycling incentives were paid to used oil collection centers even though they were not accepting used oil from the public

We investigated and substantiated the allegations. Employees at the board certified a group of 26 centers that were not in compliance with state laws and regulations. Specifically, at least some of the centers were not accepting used oil from the public as required by law, and none of the centers submitted all the information required when they applied for certification. In addition, the centers submitted a claim for payment of a recycling incentive 78 days after the deadline established by law. Although the centers were not complying with requirements, the board's executive directed board staff to pay the centers' claim of \$19,300. Furthermore, the board paid a second claim of \$21,900 from the centers even though it was aware that some of the centers still were not accepting used oil from the public during at least part of the claim period.

To conduct our investigation, we examined claims submitted by the centers, reviewed the law and regulations for the program, interviewed board employees, and examined the board's certification files.

Background

In 1991, the California Legislature passed the California Oil Recycling Enhancement Act (act). The Legislature's intent was to reduce the illegal disposal of used oil and to promote recycling and reclamation of used oil to the greatest extent possible. Beginning on October 1, 1992, the act required every oil manufacturer to pay the board 16 cents for every gallon of lubricating oil the manufacturer sold or transferred in the State. To provide an incentive for oil recycling, the act also required the board to pay at least 16 cents per gallon to certified used oil collection centers that complied with the provisions of the act.


Public Resources Code, Section 48660, states that no used oil collection center shall be eligible to receive payment of recycling incentives until the board has certified that the center is in compliance with the requirements specified. One of the requirements of the act is that certified used oil collection centers accept used oil from the public.

Improper Certifications of Used Oil Collection Centers


The California Code of Regulations (regulations), Section 18650.4, states that the board shall review all applications for certification for compliance with the act and regulations. However, the board does not have written procedures for assessing whether applicants are complying with the act and regulations before it certifies used oil collection centers. Without such procedures, the board cannot ensure that it is consistently and appropriately certifying applicants for the program.

For example, although they were not in compliance with requirements of the act and the regulations, the subject centers were certified by the board on May 21, 1993. Specifically, at least some of the centers were not accepting used oil from the public. In addition, the centers failed to submit several items required by the regulations when they submitted their applications for certification.

We were unable to determine conclusively whether the board knew that the centers were not accepting used oil from the public when it certified the centers. However, the board was aware that the centers had not submitted all required documentation with their applications for certification. In fact, the board's staff originally denied the applications from 24 of the 26 centers in April 1993. Required information missing from the 24 centers' applications included federal identification numbers and the addresses and telephone numbers of the centers' owners or leaseholders. Such information assists the board in determining whether applicants are legitimate businesses. In addition, the applications did not include a description of the centers' physical location in relation to the nearest cross street or legible maps showing the centers' locations. The board uses this information to provide information to the public on where used oil can be recycled. According to one employee, the board's executive instructed board staff to certify the 24 centers even though they did not meet the requirements.



Board staff were instructed to certify 26 centers although they did not meet requirements




In addition, the same staff member stated that the executive directed staff to certify the remaining two centers although the board had not

received applications or supporting documentation for those centers. The executive denied that he had any involvement in the decision to certify any of the 26 centers.

Improper Payments Made to the Used Oil Collection Centers

The Public Resources Code, Section 48670, states that to be eligible to receive payment of a recycling incentive, program participants must submit their claims for recycling incentives to the board on or before the last day of the month following each quarter. The subject centers submitted a claim of \$19,300, covering the quarter ending June 30, 1993, on October 18, 1993—78 days past the deadline established by law. Although the claim was submitted after the mandated deadline, on February 8, 1994, the board paid the centers' claim.


*Contrary to staff's
recommendation, the board
paid the claim*

According to one deputy director, a representative of the limited partnership contacted the board "a couple of days" before July 31 and explained that the partnership would be unable to file by July 31 for the quarter ending June 30, 1993. In addition, the executive of the board stated that board employees had provided the centers with conflicting information regarding what information the centers had to submit with their claim. Because the executive believed that the centers were making a good faith effort to comply with the requirements and because board staff had provided conflicting information, the executive instructed board employees to pay the centers' claim.

However, in addition to the fact that the centers' claim was 78 days late, at least some of the centers still were not accepting used oil from the public. Moreover, the board was aware that the centers were not complying with this key provision of the law before the centers submitted their claim. On July 22, 1993, the manager of the board's used oil branch sent a memorandum to the board's executive, stating that the limited partnership's centers "did not accept used oil from the public during the time for which they plan to submit a claim for the recycling incentive" (April 1 through June 30). Further, as of July 22, 1993, the centers still were not accepting used oil from the public. The memorandum to the executive listed two alternatives for the board concerning the claim: the board could either deny the centers' claim or accept the claim for payment. The manager stated that by denying the claim, the board "would be complying with statutory language which is very clear regarding payment and nonpayment of incentive claims." The manager

pointed out that if the board accepted the claim, "it would be doing so with full knowledge that the business did not comply with both statutory and regulatory language and intent." The staff's recommendation was that the board not pay the recycling incentive to the centers until they began accepting used oil from the public as required by the act.

Nevertheless, according to two employees, the executive instructed board staff to pay the participant's claim. The executive stated to us that staff members told him that the centers provided documentation demonstrating that the centers were accepting used oil from the public.² However, the executive did not see what evidence the centers provided. Further, the executive said he did not recall seeing the memorandum addressed to him, which stated that the centers were not accepting used oil from the public.

The centers submitted their second claim on November 1, 1993. This claim was for the period between July 1 and September 30, 1993. For the period July 1 through July 22, 1993, the 26 centers claimed a recycling incentive of \$5,862 for 36,640 gallons of oil. Again, the board was aware that some or all of the centers still were not accepting used oil from the public. As a result, we believe that the board should have determined which, if any, of the centers were accepting used oil from the public and denied payment to the centers that were not in compliance. However, because the board does not have official procedures in place for recording instances of noncompliance, we were unable to determine how many of the centers were out of compliance on July 22, 1993, and whether any or all of the centers continued to be out of compliance.



The California Integrated Waste Management Board Lacks Adequate Controls

The regulations specify that the board will conduct periodic field investigations to verify that program participants are complying with state laws and regulations. However, as of January 1995, the board did not have written compliance programs or guidelines that could be used to determine whether the centers continue to comply with the laws and regulations. As a result, the board has no assurance that

² In addition, one of the board's deputy directors stated that the centers told her they were accepting used oil from the public for at least part of the quarter.

it is meeting its mission and that it pays only those participants who are entitled to be paid.

Further, as of January 1995, the board had not established policies and procedures to ensure that board employees notify the claims unit when the employees learn that a program participant is out of compliance with the act or regulations. Such a procedure would be an inexpensive way to reduce the potential of a payment to participants who are not in compliance with the requirements. Moreover, without such a procedure, the claims unit may not know when it should not pay a program participant's claim.


The board had not established policies and procedures to administer the oil recycling program


In addition, although the board has a toll-free public information line to assist callers in finding their nearest used oil collection center, the board does not ensure that the information it provides is accurate. As a result, the board inconveniences callers and potentially damages the program's reputation. When the board certifies program participants, it enters information about the participants into its data base. This data base is then used by employees staffing the public information number. However, if the board certifies centers before they are accepting used oil from the public or if the board does not verify that centers remain in compliance with the laws, the data base contains erroneous information. The manager who wrote the July 22, 1993, memorandum discovered that the centers were not accepting used oil because several individuals who had called the board's information number for direction later called again to report that the centers refused to accept their used oil. At that point, board employees called the centers and confirmed that they were not accepting used oil from the public.

In another case, the board certified a used oil collection center on April 12, 1994. When the board attempted to mail information to the center on April 14, 1994, the postal service returned the mail with the notation "vacant building under construction." Because the center was not yet operating, the center was clearly unable to comply with the provisions of the act as of the certification date. Moreover, the board may have referred callers to the public information number to a center that was not in operation.

According to one employee, board staff members are working to formalize procedures for reviewing applications, ensuring compliance with the act, denying incentive claims, and decertifying centers.

Conclusion

Employees at the board improperly certified a group of 26 used oil collection centers. In addition, the board improperly paid a participant in the used oil recycling program at least \$19,300 and as much as \$25,162. Finally, the board has inadequate controls to ensure that it is meeting its mission and that it pays only those program participants who are entitled to be paid.

Agency Response

At the board's urging, the law was amended to extend the claims filing deadline to 45 days after the end of a quarter. In addition, the law now permits the board to exercise discretion in approving claims that are submitted late. Finally, the board has developed an implementation plan and schedule for developing standards and procedures for program oversight.

Chapter 2

Improper Compensation of Overtime

Chapter Summary

The Department of Transportation (Caltrans) and the Department of Fish and Game (DFG) compensated employees for time that they worked in excess of 40 hours per week even though those employees were not entitled to such compensation under the State's policies. Forty-four attorneys at Caltrans accrued compensatory time off (CTO) credits even though they were ineligible for CTO. As a result, from March 1994 through April 1995, the State paid 36 attorneys \$164,929 for 4,186 hours (523 days) of CTO that should have been charged to the employees' legitimate leave balances. In addition, as of April 30, 1995, 42 attorneys had a total of 5,353 hours (669 days) of unused but accrued CTO hours. If Caltrans allows the attorneys to use these improperly accrued CTO hours, the State will improperly pay the employees at least \$231,025.

◆
Employees accrued and used compensatory time off even though they were ineligible to receive it

Further, the DFG permitted its managers, supervisors, and confidential employees to accrue and use CTO even though they were ineligible to receive it. For example, it permitted two attorneys to charge more than 450 hours (56 days) of absences to CTO even though the employees were not entitled to receive it. As a result, the State paid the employees a total of more than \$14,000 that should have been charged to their legitimate leave balances.

Background

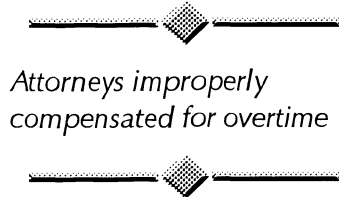
The California Code of Regulations, Title 2, Section 599.703(4C), states that 4C employees are expected to work a minimum average workweek of 40 hours. Such employees include managers; supervisors; and professional employees, such as attorneys. Further, the regulation states that the regular salary for 4C employees is "full compensation for all time" that is required for the employee to perform the duties of his or her position. Work in excess of the minimum average workweek is not compensable and shall not be deemed overtime for which CTO is provided. This regulation has been effective since at least 1992.

The Department of Personnel Administration (DPA) is responsible for the administration of salaries, hours, and other personnel matters for state employees. The DPA is also responsible for establishing policies and regulations concerning such matters. According to DPA policy statement No. 94-08, issued on February 11, 1994, 4C employees are not hourly workers. This policy also stated that the compensation that 4C employees receive from the State is based on the premise that they are expected to work as many hours as are necessary to provide the public services for which they were hired. As a result, these employees are not entitled to earn or receive any form of overtime compensation, whether formal or informal. Another DPA policy statement, No. 94-32, dated June 2, 1994, states that although the 4C employees' workweek may be longer than 40 hours, they will receive no additional compensation in any form. Finally, this policy states that if a department maintained records of accrued CTO, the practice must cease immediately and the employees must be informed that compensation in any form will not be provided in the future.

Nevertheless, the DPA policy does allow supervisors to grant 4C employees, including attorneys, a reasonable amount of informal time off. This time off generally should be one to two days, however, and should be granted immediately following a long and arduous work period of several weeks.

***Department of Transportation,
Allegation I950008.1***

Contrary to state regulations and policies, Caltrans permitted attorneys in its Legal Division to accrue and take CTO.



Results of Investigation



We investigated and substantiated the complaint. To investigate the complaint, we reviewed Caltrans' legal manual and the attorneys' available attendance records for the period March 1994 through April 1995. In addition, we interviewed Caltrans staff members and officials from the DPA.

Overtime at the Legal Division

According to Caltrans' legal manual, attorneys in the Legal Division are classified as 4C employees, so their regular salary represents their full compensation for all time that they require to perform the duties of their position. According to Caltrans' labor relations officer, attorneys are not entitled to earn or receive overtime compensation.

However, contrary to the DPA regulation and its policies, Caltrans' Legal Division maintains a formalized system to record the 4C employees' overtime hours worked and CTO taken. The 4C system consists of a monthly time sheet for each attorney that is maintained in addition to the official state time sheets. Each month, the 4C employees use these sheets, called 4C sheets, to record the dates and the number of hours worked as overtime, why they worked overtime, and the dates and the number of CTO hours used. For each attorney, the 4C sheet maintains a running balance consisting of the beginning balance of CTO at the start of the month, the overtime hours worked during the month, the CTO hours used during the month, and the CTO balance at the end of the month. Each attorney is required to certify that his 4C sheet is correct, and the attorney's supervisor is required to approve it. The 4C sheets are maintained in the Legal Division and are not forwarded to either the personnel or accounting units within Caltrans. According to the chief counsel, the Legal Division maintains these time records as a necessary management tool to control administrative time off requests.

We reviewed the available 4C sheets from March 1994 through April 1995.³ For this 14-month period, we reviewed the 4C sheets to assess compliance with DPA policies and the regulations. For example, as stated earlier in the report, DPA policy allows supervisors to grant 4C employees a reasonable amount of informal time off. However, the time off should be one to two days and should be granted immediately following a long and arduous period of several weeks. When the attorneys took time off in accordance with this policy, we did not count those hours as time that should have been charged to other leave balances. As a result of our review, we determined that 4,186 hours (523 days) of CTO used by 36 attorneys should have been charged to the attorneys' legitimate leave balances—either vacation or annual leave—and not used as CTO. These hours of CTO cost the State a total of \$164,929.


*523 days of compensatory
time off should not have
been awarded to attorneys*


In addition, as of April 30, 1995, 42 attorneys had a total of 5,353 hours (669 days) of improperly accrued CTO. If Caltrans allows all the ending balances to be used as time off, the State will pay at least \$231,025 in improper compensation for the hours. Table 1 shows the results of our review for each of the 44 attorneys who either used CTO from March 1994 through April 1995 or had CTO balances as of April 30, 1995.

As Table 1 shows, three of the attorneys (Nos. 2, 33, and 34) have very large accrued CTO dollar amounts compared to the other attorneys. As of April 30, 1995, the value of these three attorneys' ending CTO balances totaled \$97,317—42 percent of the total accrued CTO dollars.

Conclusion

Contrary to state regulations and policies, Caltrans permitted its attorneys in the Legal Division to accrue and use CTO. As a result, the State paid these employees \$164,929 for time off that should have been charged to their legitimate leave balances. In addition, if Caltrans allows its attorneys to take time off based on their accrued CTO balances, the State will pay them another \$231,025 that should be charged to legitimate leave balances.

Agency Response

Caltrans is determining the action necessary to resolve the issues identified.

³ Time records for every month were not available for all attorneys during our review period.

Table 1**Number of Hours Inappropriately Used
as CTO and Accrued CTO Balances**


| Attorney | March 1994 Through April 1995 | | As of April 30, 1995 ^a | |
|--------------|-------------------------------|--------------------------------|-----------------------------------|-----------------------------|
| | CTO Hours Used | Dollar Value of CTO Hours Used | Balance of CTO Hours | Dollar Value of CTO Balance |
| No. 1 | 177 | \$6,393 | 180 | \$6,925 |
| No. 2 | 48 | 2,071 | 715 | 31,780 |
| No. 3 | 0 | 0 | 82 | 3,645 |
| No. 4 | 269 | 11,696 | 88 | 3,911 |
| No. 5 | 69 | 2,696 | 0 | 0 |
| No. 6 | 35 | 1,556 | 122 | 5,422 |
| No. 7 | 99 | 2,706 | 18 | 496 |
| No. 8 | 150 | 4,511 | 98 | 3,036 |
| No. 9 | 126 | 5,253 | 9 | 377 |
| No. 10 | 40 | 1,747 | 238 | 10,578 |
| No. 11 | 265 | 11,507 | 102 | 4,522 |
| No. 12 | 136 | 3,940 | 109 | 3,395 |
| No. 13 | 0 | 0 | 26 | 655 |
| No. 14 | 11 | 290 | 1 | 15 |
| No. 15 | 181 | 5,474 | 1 | 34 |
| No. 16 | 31 | 1,405 | 159 | 7,479 |
| No. 17 | 35 | 1,489 | 45 | 1,942 |
| No. 18 | 62 | 2,700 | 77 | 3,422 |
| No. 19 | 110 | 4,725 | 230 | 10,201 |
| No. 20 | 66 | 2,857 | 2 | 89 |
| No. 21 | 31 | 1,239 | 101 | 4,489 |
| No. 22 | 487 | 21,100 | 415 | 18,395 |
| No. 23 | 0 | 0 | 1 | 44 |
| No. 24 | 0 | 0 | 44 | 1,933 |
| No. 25 | 37 | 1,645 | 185 | 8,223 |
| No. 26 | 90 | 3,964 | 11 | 489 |
| No. 27 | 95 | 2,748 | 15 | 430 |
| No. 28 | 0 | 0 | 29 | 1,407 |
| No. 29 | 80 | 3,452 | 0 | 0 |
| No. 30 | 127 | 3,399 | 13 | 358 |
| No. 31 | 165 | 3,818 | 21 | 538 |
| No. 32 | 0 | 0 | 16 | 711 |
| No. 33 | 324 | 14,256 | 988 | 43,891 |
| No. 34 | 284 | 12,452 | 487 | 21,646 |
| No. 35 | 56 | 2,453 | 40 | 1,756 |
| No. 36 | 26 | 826 | 121 | 4,138 |
| No. 37 | 0 | 0 | 12 | 511 |
| No. 38 | 123 | 5,333 | 49 | 2,178 |
| No. 39 | 36 | 1,574 | 27 | 1,189 |
| No. 40 | 0 | 0 | 25 | 1,111 |
| No. 41 | 40 | 1,778 | 25 | 1,111 |
| No. 42 | 126 | 5,437 | 278 | 11,975 |
| No. 43 | 77 | 3,301 | 51 | 2,267 |
| No. 44 | 72 | 3,138 | 97 | 4,311 |
| Total | 4,186 | \$164,929 | 5,353 | \$231,025 |

^a We used April 30, 1995, if available. If April 30, 1995, was not available, we used the most current month.


***Department of Fish and Game,
Allegation I940214***

Contrary to the state policy, the DFG permitted two attorneys to take CTO.

Results of Investigation


*Attorneys and other
management employees
improperly compensated for
overtime*

We investigated and substantiated the complaint. To investigate the complaint, we reviewed the two attorneys' attendance records for 1994, and one of the attorney's attendance records for 1993. In addition, we reviewed various memoranda and interviewed the two attorneys and other DFG staff members.


Similar to the DPA's direction, the DFG's Operational Manual, Section 12315.9, which was in effect in April 1994, stated that 4C employees have no right to take time off by the recording of additional hours worked, except for ordered work of up to eight hours on a holiday. However, although the 4C employees had no right to such time off, the same manual made a provision for 4C employees to take administrative time off "in recognition of additional hours worked." This administrative time off was to be for short periods when the employee's services were not required by his or her supervisor. The manual specified, however, that such time off was not intended to replace or supplement vacation or sick leave. The DFG referred to this administrative time off as "Z" time. Although its exempt employees recorded the "Z" time worked and taken off on their time sheets, the DFG did not formally track the "Z" time balances.


In May 1994, the DFG issued a draft of proposed attendance reporting requirements for 4C employees that specified that such employees would not be authorized to receive overtime compensation. The DFG revised its operational manual in July 1994. The revised manual specified that overtime worked by 4C employees was noncompensable and that neither cash compensation nor CTO would be provided.

Nevertheless, we found that, contrary to DPA policy, the DFG continued to allow 4C employees to take CTO. Specifically, on March 18, 1994, the deputy director of administration issued a memorandum to all supervisors, managers, and 4C employees, specifying that the DFG would eliminate the practice of recording and taking off "Z" time. However, the same memorandum stated that the DFG would allow supervisors to make informal


arrangements to reduce employees' current "Z" time balances until December 1, 1994. We could not determine exactly how many employees were allowed to take "Z" time off after the DPA issued its policy. However, we did determine that at least two employees were granted such time off.

Attorney Number One

From July through August 1994, the DFG improperly allowed one of its attorneys to take 304 hours (38 days) of "Z" time off. In November 1993, the employee wrote to her supervisor, informing him that she was expecting to give birth in late May 1994. She requested her supervisor's approval to take 1,272.5 hours, or more than seven months, of leave using a combination of nonindustrial disability leave, annual leave, "Z" time, and other kinds of leave. Although she acknowledged that the time off would create a hardship on the department's division, she said that she would do as much as possible to minimize the disruption. Her supervisor granted her leave until January 1995.


*One attorney was allowed
to take 304 hours of
unofficial time off*

On January 24, 1994, the employee notified the DFG's personnel programs branch (personnel) of her intent to take time off from late May 1994 until sometime in January 1995 and asked for its assistance in verifying her leave balances and applying for nonindustrial disability insurance.


The employee began her nonindustrial disability leave on June 6, 1994, and reported that type of leave through July 15, 1994. When she submitted her July time sheet, she did not indicate any absence past July 15. However, in a note to her supervisor, she said, "The remainder of the month is covered by my accumulated Z-time. (All of August and most of September will also be covered by Z-time.)"

On September 2, 1994, personnel returned the employee's July time sheet to her, asking her to show the leave used from July 18 through the end of the month. The employee resubmitted her time sheet showing that she took annual leave on Tuesdays and Thursdays, but did not indicate her absences on Mondays, Wednesdays, or Fridays. She notified personnel that she would be using "Z" time on alternate days, when she was not using annual leave.


However, personnel was still concerned that the employee's use of "Z" time did not comply with the DFG's operational manual, which specified that such time off was not intended to replace or


supplement vacation or sick leave. As a result, personnel advised the employee's supervisor on September 29, 1994, not to approve the use of "Z" time during maternity leave but told the supervisor that the final decision was up to him. Personnel management also directed its staff to process the employee's time sheets as approved by the supervisor.

With her supervisor's approval, the employee continued to take "Z" time through October 17, 1994. As a result, the State paid the employee \$11,256 for 304 hours of "Z" time. Instead, the DFG should have charged the 304 hours to the employee's annual leave balance.

Attorney Number Two

From August through December 1994, the DFG improperly allowed one of its attorneys to take 39 hours (approximately 5 days) of CTO and at least 111 hours (more than 13 days) of "Z" time off. The DFG hired this individual as a graduate assistant in March 1993 and, in August 1993, promoted the employee to a 4C position (staff counsel), retroactive to April 1, 1993. In June, July, and August 1993, the employee accumulated 51 hours of CTO even though, as stated earlier, 4C employees are not entitled to CTO. Consequently, the DFG should have removed the 51 hours from the employee's leave balances when it retroactively promoted the employee to a 4C position.


Another employee was allowed to use 111 hours of unofficial time off


On April 5, 1994, the first DFG attorney discussed sent a memorandum to the 4C employees in the unit who were under her supervision, asking them to report to her the number of "Z" time hours each employee had accumulated as of April 1, 1994, so she could plan how staff members could reduce their "Z" time balances before December 1, 1994. The second employee responded that he had a balance of 115 hours of "Z" time to use before December 1, 1994.⁴

On April 29, 1994, the second employee wrote to the first employee, requesting time off from August 1 through August 23, 1994. With the first employee's approval, the second

⁴ At least four other employees reported that they had "Z" time balances as of April 1, 1994. However, we did not attempt to determine whether any or all of these employees subsequently used "Z" time for absences.

employee took the time off and charged 25 hours to CTO.⁵ Although he did not record the other absences on his time sheet, the employee confirmed that he used "Z" time for the other 111 hours.⁶ In addition, the DFG improperly permitted the employee to charge 6 hours of absence to CTO in October 1994 and 8 hours of absence to CTO in December 1994. As a result, the State paid the employee \$2,785 for 111 hours of "Z" time and 39 hours of CTO. Instead, the DFG should have charged the 150 hours to the employee's vacation leave balance. Moreover, as of January 25, 1994, the DFG showed the employee as having a balance of 13 hours of CTO coming to him. In fact, the employee is not entitled to this time.

Conclusion

Contrary to the Fair Labor Standards Act and state regulations and policies, the DFG permitted exempt employees to charge absences to CTO. For example, it permitted two attorneys to charge more than 450 hours (56 days) of absences to "Z" time or CTO. As a result, the State paid these employees a total of more than \$14,000 for time off that should have been charged to their legitimate leave balances.

Agency Response

The DFG acknowledged that it "was in error in the method and procedures it allowed for the phase out of the 'Z' time practice." Although it concluded that it was reasonable for employees to rely on approvals by supervisors in charging time off to "Z" time or CTO, the DFG also concluded that the first attorney we discussed charged 104 hours of absence that was not in accordance with her approved leave plan. As a result, the DFG stated that it is reducing the employee's annual leave balance by 104 hours. In addition, it concluded that the first attorney's supervisor acted unsuitably when he ignored personnel's recommendation that he not approve the first attorney's leave plan. The DFG is considering additional actions to be taken against the first attorney.

⁵ Although the employee reported 25 hours of CTO on his time sheet, the DFG charged his CTO leave balance for only 24 hours.

⁶ The DFG had already improperly accrued 51 of the "Z" time hours as CTO. Consequently, the employee received credit for working 51 hours more than he actually reported working.

Chapter 3

Other Improper Personnel and Payroll Practices

Chapter Summary

Employees of the Department of Forestry and Fire Protection (CDF) and the Department of Developmental Services (DDS) engaged in improper practices related to personnel and payroll. A manager at one of the CDF's ranger units directed a volunteer and an employee to falsify documents. The employee did not follow the manager's instructions to falsely claim overtime, but the volunteer submitted travel reimbursement claims that overstated the number of miles he drove. As a result, the State improperly paid the volunteer approximately \$1,950.

The same manager improperly directed a personnel officer to substitute another form of leave credits for compensatory time off (CTO) hours previously used by employees. In this manner, the CDF restored the employee's CTO balances and later improperly paid eight employees a total of more than \$9,700 for this CTO.

In addition, employees at the DDS's Porterville Developmental Center (center) improperly placed on a hiring list at least two job applicants who could not speak or understand English. The center also improperly appointed two individuals to positions.

***Department of Forestry and Fire Protection,
Allegation I940002.1***


A manager at one of the CDF's ranger units approved a volunteer's falsified expense claims. The manager also improperly instructed a ranger unit employee to falsify official payroll documents. Further, he instructed a ranger unit personnel officer to improperly substitute another form of leave credits for CTO already used by eight ranger unit employees, including the manager. This process restored the employees' CTO balances so that the employees could receive cash in exchange for their CTO, contrary to departmental policy.

Results of Investigation

The CDF investigated and substantiated the allegations. After it completed its investigation, we reviewed the CDF's investigative files and performed further investigative fieldwork to determine the extent of the improper activities. To conduct our investigation, we reviewed time sheets, travel expense claims, payroll records, and departmental policies. Further, we interviewed the manager and several CDF employees.

The Manager Authorized a Volunteer To Falsify Travel Expense Claims

The manager authorized a volunteer to falsify travel expense claims so that the volunteer would receive compensation he was not entitled to receive. As a result, the CDF paid the volunteer approximately \$1,950 for miles not actually traveled.



*Departments cannot
reimburse volunteers for
lunches unless they are on
travel status*

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

The CDF's Volunteers in Prevention Program uses volunteers to assist in the prevention of fires. According to the CDF's Fire Prevention Procedures Handbook, a volunteer is any person who of his or her own free will provides goods or services without any financial gain. Although the CDF may reimburse volunteers for vehicle use and certain out-of-pocket expenses, it cannot reimburse volunteers for

lunch expenses unless the volunteers are traveling on state business longer than 24 hours.

The volunteer lived 6 miles from the ranger unit's office where he volunteered; therefore, he was entitled to payment of round-trip mileage for 12 miles each day he drove to the office. Between July 1, 1988, and November 18, 1989, the volunteer submitted 16 travel expense claims requesting mileage reimbursement for the round trip between his home and the ranger unit's office. Although he was ineligible to receive compensation for lunches on the days he worked at the ranger unit's office, the volunteer stated that the manager authorized him to claim mileage not actually traveled to compensate for lunches or other meals. As a result, for 180 of the 212 days for which he requested reimbursement for the round trip between his home and the ranger unit's office, the volunteer falsely claimed that he drove more than 12 miles.⁷ For example, on one occasion in June 1989, the volunteer falsely claimed 298 miles for the round trip between his home and the ranger unit's office.


The manager authorized a volunteer to claim mileage not actually traveled to compensate for lunches or other meals

When questioned by CDF investigators, the manager stated that the policy on lunches and dinners was vague. We disagree. In fact, the CDF requested permission from the Department of Personnel Administration (DPA) to pay its volunteers for lunches on trips of less than 24 hours. On September 21, 1988, the DPA specifically denied the request. In addition, the manager told the CDF's investigators that he "didn't put a whole lot of energy into reviewing what [the volunteer] was doing." However, the manager signed 7 of the 16 claims submitted by the volunteer, thereby approving payment of the claims. As a result of the falsifications and the manager's approval, the CDF paid the volunteer approximately \$1,950 more than he was entitled to receive.⁸

The Manager Directed a Department of Forestry and Fire Protection Employee To Falsify Attendance Records

The manager instructed a CDF employee to charge 20 overtime hours the employee did not work to compensate the employee for out-of-state travel expenses.


⁷ The volunteer sometimes claimed mileage for trips to other locations. We did not question the miles claimed for trips to other locations.

⁸ Although we began our review of travel expense claims with July 1, 1988, we discovered evidence indicating that the volunteer falsified claims as early as December 1987.

In late 1990, a ranger unit employee received approval from the CDF to attend a conference in Denver, Colorado. Shortly before the conference, the manager informed the employee that CDF lacked sufficient travel funds for him to attend the conference. The manager instructed the employee to falsely add approximately 20 hours of overtime to the employee's time sheet to compensate the employee for his travel expenses. However, because he was uncomfortable with reporting unworked hours, the employee canceled his trip and did not report the 20 hours.

The Manager Instructed the Personnel Officer To Improperly Convert Leave Balances

The manager directed a CDF personnel officer to substitute another form of leave credits for CTO hours previously used by employees. In this manner, the CDF restored the employees' CTO balances and later improperly paid eight employees a total of more than \$9,700 for this CTO.



The personnel officer improperly restored hours of previously used compensatory time off for eight employees

The CDF may compensate employees for overtime worked by paying cash or offering CTO credits. However, accrued CTO credits are eligible for cash payment only at the CDF's option. During 1990, the CDF offered employees the option of cashing out their CTO balances. At the manager's direction, the ranger unit's personnel officer restored hours of previously used CTO for eight employees, including the manager. The personnel officer then charged the time off taken by these employees to other forms of leave, such as vacation or annual leave.

The personnel officer stated that she was relatively new to the CDF at the time and did not know whether this procedure was appropriate. As a result, she asked the transactions specialist in her region about the procedure; the transaction specialist referred the question to her supervisor in the CDF's Personnel Services Unit in Sacramento. However, the ranger unit failed to wait for approval from the Personnel Services Unit and paid all eight of the employees for their CTO balances in October 1990. Table 2 summarizes the number of leave hours improperly converted and the amounts improperly paid to each of the eight employees.

Table 2***Amounts Improperly Paid for
Compensatory Time Off Hours***

| Employee | Hours Converted | Hourly Pay Rate | Total Improperly Paid to Employee |
|-----------------|----------------------------|----------------------------|--|
| No. 1 | 186.0 | \$24.04 | \$4,471.44 |
| No. 2 | 60.0 | 26.41 | 1,584.60 |
| No. 3 | 52.0 | 26.41 | 1,373.32 |
| No. 4 | 27.0 | 26.41 | 713.07 |
| No. 5 | 26.5 | 22.86 | 605.79 |
| No. 6 | 16.0 | 24.04 | 384.64 |
| No. 7 | 16.0 | 24.04 | 384.64 |
| No. 8 | 8.0 | 26.31 | 210.48 |
| Total | 391.5 | | \$9,727.98 |

On January 22, 1991, the CDF's Personnel Services Unit notified the region chiefs that employees cannot retroactively substitute another form of leave for CTO previously used and, thereby restore the CTO so that employees can instead receive cash for it. If any ranger units had processed this type of transaction, the memorandum further instructed them to take the necessary steps to correct the transactions. However, neither the region office nor the ranger unit corrected the transactions. According to a CDF region administrator, the ranger unit did not correct the transactions because the conversions were made in a previous fiscal year. The fact that the conversions occurred in a previous fiscal year, however, would not prevent the CDF from correcting the transactions. We believe that the ranger unit should have made the necessary adjustments and established accounts receivable for the amounts improperly paid to the employees.

Conclusion

A manager at one of the CDF's ranger units improperly approved a volunteer's falsified expense claims. As a result, the CDF paid the volunteer approximately \$1,950 more than he was entitled to receive. In addition, the manager improperly instructed a ranger unit employee to falsify official payroll documents. However, the employee did not follow the manager's direction. Further, the manager improperly directed a ranger unit personnel officer to retroactively substitute another form of leave for CTO already used by eight employees, including the manager. This process restored the employees' CTO balances so that the employees could receive cash for their CTO. As a result, the CDF improperly paid the eight employees more than \$9,700. Finally, the ranger unit failed to correct these improper leave transactions despite specific direction by the CDF.

Agency Response

The CDF has not completed its corrective action.

***Department of Developmental Services,
Allegation I940192***

Employees at the Porterville Developmental Center (center) within the DDS improperly scored the performances of at least two job applicants at a Qualifications Appraisal Panel (QAP) interview. In addition, employees at the center improperly appointed two employees to permanent positions.

Results of Investigation



The DDS and our agency investigated and substantiated the allegations. We reviewed personnel files, job specifications, information provided by the State Personnel Board (SPB), and interviewers' notes from the QAP interviews. In addition, we listened to audiotapes of the interviews. Finally, we interviewed DDS and center employees and obtained departmental correspondence concerning their investigation.


Improper Scoring of Applicants

In December 1993, the center conducted interviews for an upholsterer position to establish a hiring list. Typical tasks for upholsterers include supervising and instructing helpers from the center's resident population, ordering materials, keeping records, and preparing reports. In addition, the examination announcement for the position states that the applicants should have the ability to read and write at a level appropriate to the classification.


A panel of three center employees conducted the interviews for the upholsterer position. One panel member was bilingual in Spanish and English. Two candidates for the position spoke Spanish but not English. One of the two Spanish-speaking candidates brought an interpreter with him to the interview. The interpreter translated the panel's questions into Spanish and the candidate's answers into English. The panel ranked this candidate second on the hiring list. The second Spanish-speaking candidate did not bring an interpreter. However, the bilingual panel member translated both the panel's questions and the candidate's answers. The panel ranked this candidate first on the hiring list.

Both candidates indicated on the State of California examination application that, in addition to English, they possessed verbal fluency

in Spanish. However, based on the documentation in the interview files and our review of the interview tapes, neither of the candidates possessed verbal fluency in English. Further, although the SPB's policy gives disabled candidates the right to reasonable accommodation, including the provision of an interpreter, according to the manager of the SPB's Affirmative Action Programs Unit, this right does not apply to language barriers. According to the SPB manager, because they were unable to complete the interview in English, the candidates should neither have passed the examination nor been ranked on the hiring list. Moreover, because someone was allowed to interpret both the questions and the answers in the interviews, there was no independent assurance that the answers to the questions accurately reflected the candidates' responses to the questions asked by the panel.



According to a State Personnel Board manager, candidates who were unable to complete the interview in English should not have been eligible for the position



Appointment of a Non-English-Speaking Candidate

The center improperly hired the non-English-speaking candidate in rank one for the upholsterer position. Before doing so, the center checked with the DDS's exam unit in Sacramento to obtain its interpretation of the minimum qualifications. Specifically, one qualification is that the individual be able to read and write at a level appropriate to the classification. The exam unit stated that because the requirements did not specify the ability to read and write English, English was not a requirement.

We disagree with the DDS's interpretation. As stated above, an official at the SPB stated that candidates who are unable to complete the interview in English should not receive a passing score on the examination. In addition, according to the position specifications, the typical tasks include instructing and supervising helpers from the center's resident population, ordering materials, keeping records, and preparing reports. An individual cannot effectively perform these functions if he is unable to speak or understand English.

Appointment of a Candidate Who Did Not Meet the Minimum Qualifications

The DDS also received and investigated a complaint that the center improperly and illegally appointed an individual who did not meet the minimum qualifications for a Peace Officer II, Developmental Center, position. On April 5, 1994, the SPB approved the establishment of the new classification of Peace Officer II, Developmental Center. This classification required candidates to have completed Peace Officers Standard Training (POST) at a

certified academy before appointment. Incumbents in similar classifications could be "grandfathered" into the classification without having met the POST requirement.

However, on July 20, 1994, the center improperly appointed to the new position an individual who had a limited-term appointment to a Peace Officer II, Developmental Center, position. This individual had not completed the POST requirement. In addition, because he was in a limited-term position, he was ineligible to be grandfathered. To correct the illegal appointment, the center returned the employee to a limited-term position on November 15, 1994. The DDS is proposing a revision to the Peace Officer II, Developmental Center, specifications to make the minimum qualifications less restrictive.

Conclusion

The center improperly ranked on a hiring list at least two job applicants who could not speak or understand English. In addition, employees at the center improperly appointed two employees to positions.

Agency Response

Because the employee who was hired as an upholsterer had mastered the English language sufficiently to have passed probation, the DDS did not remove him from his position. The SPB has approved this action.

Chapter 4

Improper Procurement and Contracting Practices

Chapter Summary

Employees at the Department of Forestry and Fire Protection (CDF) and the Department of Rehabilitation (DOR) engaged in improper procurement or contracting practices. Specifically, the same CDF manager discussed in Chapter 3 purchased approximately \$97,000 in Smokey Bear memorabilia and related merchandise. The memorabilia included items such as watches, dolls, baby paraphernalia, and ashtrays. According to the manager, some of the merchandise was placed in the CDF's Smokey Bear museum. However, we determined that much of the memorabilia was given to state employees, vendors, and other individuals. In addition, we found that other CDF managers also purchased Smokey Bear merchandise. However, because the CDF did not maintain records of how the memorabilia was distributed, we could not determine how much if any, of the merchandise was appropriately used or distributed.

The manager also made at least 286 personal long-distance telephone calls lasting a total of more than 27 hours at the State's expense. The cost of these calls totaled more than \$710.

Further, the DOR circumvented the State's competitive bidding requirements by using interagency agreements with California State University, Long Beach (CSULB), to purchase training services. In the interagency agreements, the department specified that CSULB should subcontract with specific entities to actually provide the training. As a result, the department denied other vendors the opportunity to compete for the State's business and paid at least \$72,290 more for the services than was necessary.

***Department of Forestry and Fire Protection,
Allegation I940002.2***

A manager at the CDF made gifts of public funds in the form of Smokey Bear merchandise to state employees, volunteers, and others. In addition, the manager authorized unnecessary and wasteful purchases of Smokey Bear memorabilia and related materials. Further, because the CDF has inadequate controls over Smokey Bear memorabilia and related items, the State has no assurance that it has appropriately spent the taxpayers' money. Finally, the manager placed personal long-distance calls at the State's expense.

Results of Investigation

The CDF conducted a limited investigation and substantiated some of the allegations. After it completed its investigation, we reviewed the CDF's investigative files and performed further fieldwork to determine the extent of the improper activities. Further, we substantiated additional allegations. To conduct our investigation, we reviewed purchasing documents, inventory listings, telephone records, and travel expense claims. Finally, we interviewed the manager and other CDF employees.

Background

According to the manager, he helped establish the CDF's Smokey Bear Museum (museum). The museum is contained in a trailer that can be transported to county fairs and other events. The museum collection includes Smokey Bear dolls, books, buttons, clothing, stamps, and many other items. In the beginning, most of the items were from the manager's personal collection of Smokey Bear paraphernalia, which he either loaned or donated to the museum. Gradually, the manager began to purchase large amounts of Smokey Bear items with state funds. Between July 1987 and February 1995, the manager authorized at least 61 purchases of Smokey Bear items, or other supplies related to the display of Smokey Bear items, totaling more than \$96,994 in state funds. The manager stated that Smokey Bear items were distributed primarily to school children and members of the public to promote fire safety awareness. Table 3 provides examples of the types and number of Smokey Bear items purchased by the manager and what they cost the State.

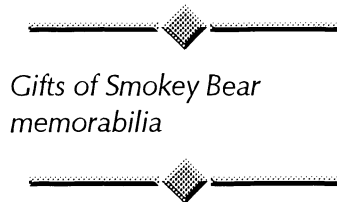
Table 3

***Examples of Smokey Bear Items Purchased
by the Manager***

| Description | Quantity | Total Price |
|-------------|----------|-------------|
| Pins | 8,460 | \$9,346 |
| Watches | 406 | 6,648 |
| Dolls | 322 | 5,458 |
| Auto shades | 1,000 | 2,424 |

The Manager Made Gifts of Public Funds

The California Constitution, Article XVI, Section 6, prohibits gifts of public funds. In determining whether an appropriation of public funds or property is to be considered a gift, the primary question is whether the funds are to be used for a public or private purpose. In addition, as stated in Chapter 3, page 26, Section 8314 of the California Government Code prohibits state employees from using or permitting others to use state funds for personal advantage.



Further, the California Government Code, Section 19990, prohibits a state employee from engaging in any activity that is clearly inconsistent, incompatible, or in conflict with or inimical to his or her duties as a state employee. Prohibited activities include using the prestige or influence of the State for the employee's private gain or advantage or the private gain of another and using state supplies for private gain or advantage.

Although some of the Smokey Bear items were purchased for the museum and other legitimate fire prevention activities, we found that the manager gave many of the items to CDF employees and volunteers. The manager told us that he used many of the items as going-away presents, awards, and thank-you gifts for state employees and volunteers. These items included watches, clocks, belt buckles, pen sets, and pins. For example, the manager told us that he showed his appreciation for the hard work of the clerical employees in his field office at the end of the fiscal year by giving them watches. One employee said the manager gave her 6 or 8 Smokey Bear watches, and other clerical employees had as many as 12 watches. Although the state law and policies allow for awards to employees upon completion of 25 years of state service or at retirement, they do not allow for going-away presents, awards, or gifts under other

situations.⁹ Moreover, we believe that the State adequately compensates its employees for the performance of their duties. If the manager wanted to show his personal appreciation to his employees, he should have done so at his own expense.

In addition, although the manager stated that he thought giving Smokey Bear memorabilia to state employees promoted the CDF's fire prevention message, we do not agree. We observed that the manager and several other CDF employees had numerous Smokey Bear items in their offices, including watches, mugs, and dolls. We fail to see how the employees' use of Smokey Bear mugs or display of Smokey Bear dolls in their offices promotes the CDF's fire prevention awareness message to the public. Moreover, we assume that employees of the CDF are already well aware of fire safety issues and do not need to be reminded of the need for fire prevention.

The manager also gave Smokey Bear items to volunteers in the CDF's Volunteers in Prevention (VIP) program in recognition of their efforts. The CDF's Fire Prevention Procedures Handbook states that recognition is an important part of the volunteer program and that recognition efforts may include certificates, articles in the local newspaper, letters of appreciation or commendation, and praise. However, the allowed recognition efforts do not include giving gifts purchased with public funds.

Furthermore, we found one instance when the manager gave a gift of Smokey Bear items to a vendor. Specifically, the manager purchased \$75 in Smokey Bear rubber stamps from a vendor. Because the vendor sold the items to the State at cost, the manager gave the vendor a Smokey Bear doll and pin.

The Manager and Other Department Employees Authorized Unnecessary and Wasteful Purchases

Departments should expend funds in ways that are in support of their goals. Clearly, fire prevention is a primary goal of the CDF. In working toward that goal, the CDF attempts to increase public awareness of fire hazards and the need for fire prevention. In fact, the CDF has set aside funds for such activities. For example, the VIP program exists to recruit, train, and supervise private citizens for volunteer fire prevention activities. For fiscal year 1994-95, the

⁹ Although the cost of each allowed award may not exceed \$75, in fiscal year 1993-94, the manager purchased 28 "superior service awards" at a cost of \$83 each.

CDF allocated \$18,000 to \$26,350 in VIP program funds to each of the State's 23 ranger units, for a total of \$464,175.

In addition, the Fire Prevention Fund supports field activities related to fire prevention education, information, and other general prevention activities. Further, the Fire Prevention Education Fund is intended to pay for the costs of the statewide coordination and administration of the CDF's education program and mass media efforts.


We found that these and other funds were used by the manager discussed earlier and other managers in the CDF to purchase significant quantities of Smokey Bear merchandise. Table 4 summarizes the funds and amounts spent to purchase Smokey Bear items.

Table 4

Funds Used to Purchase Smokey Bear Items and Related Supplies

| Fund Description | Fund Source | Amount |
|---|---|---------------------|
| Fire Protection Administrative Services | General Fund, Reimbursed, Federal Fund | \$88,358.62 |
| Volunteers in Prevention | General Fund | 48,958.57 |
| Fire Prevention | General Fund | 8,625.80 |
| Ground Attack | General Fund | 2,718.61 |
| Executive and Administrative Services | General Fund, Reimbursed, Federal Fund | 1,632.47 |
| Fire Prevention Activities | Federal Fund | 1,566.68 |
| Unknown | Unknown | 1,300.00 |
| Conservation Camps | General Fund | 772.74 |
| Coins for Conservation | Coins for Conservation | 565.47 |
| California Department of Corrections Camps Expansion and New Camps | Reimbursed | 532.55 |
| Fire Prevention Education | General Fund | 201.88 |
| Fire Safe Planning | General Fund | 201.88 |
| Engineering | General Fund | 201.88 |
| Mapping Hazardous Areas | General Fund | 158.19 |
| Total | | \$155,795.34 |

Although some of the items purchased appear to be congruent with the goal of improving the public's awareness of the need for fire prevention, we believe that many of the purchases were unnecessary and wasteful. According to 30 of the 61 purchase orders approved by the manager discussed earlier and 14 of the purchase orders approved by other department personnel, the Smokey Bear items being purchased were educational materials in accordance with Section 3571.1 of the State Administrative Manual (SAM). The total cost of these purchases was more than \$106,501. The SAM defines educational materials as textbooks, educational films and videotapes, slides, records, photographs, disks, microfiche, microfilm, publications, periodicals, manuscripts, documentary material prepared by governmental agencies, and the like. Based on this definition, \$51,532 of these purchases, including posters, thematic guides, and activity guidebooks, appear to be educational materials.



Funds for fire prevention were spent on items such as ashtrays, pill boxes, and baby shoes

Nevertheless, many of the items purchased did not meet the SAM's definition of educational materials. For example, items purchased by the manager included lapel pins, service awards, T-shirts, ashtrays, pill boxes, jewelry, baby shoes, dolls, postcards, caps, and thimbles. These items clearly do not fall within the SAM's definition of educational materials.



Furthermore, based on a review of a small sample of purchase orders approved by other CDF personnel, we found that their purchases of Smokey Bear items included at least 719 additional watches at a cost of more than \$11,760 and 144 Smokey Bear fishing lures at a cost of more than \$463. We fail to see how purchases of such items further the CDF's goals.

Although having one of each of these items in the Smokey Bear museum might be justified, we do not believe that it was necessary to buy these items in large quantities, especially in view of the fact that many of the items were improperly given away to state employees, volunteers, and others.


Moreover, we question the manager's and other employees' use of funding sources to pay for some of the Smokey Bear items and related supplies. For example, the Ground Attack funds are intended for firefighting expenses. As shown in Table 4, at least \$2,718.61 from this fund was spent on Smokey Bear merchandise. We believe that these funds should have been spent on fighting fires.

Finally, one employee used more than \$1,566 in federal funds to purchase Smokey Bear calendars, mugs, and dolls. Again, we see no


connection between the purchase of these items and the prevention of fires.

The Department of Forestry and Fire Protection Has Inadequate Controls Over Inventory

The Financial Integrity and State Manager's Accountability Act requires state agencies to establish and maintain a system of internal accounting and administrative controls to safeguard the State's assets. This requirement was established in recognition of the fact that a lack of such controls can result in fraud and errors. In addition, Section 8600 of the SAM states that property accounting procedures should be designed to maintain uniform accountability for state property. A combination of accurate accounting records and strong internal controls also must be in place to protect against and detect the unauthorized use of state property. Furthermore, the department's Fire Prevention Procedures Handbook states that all supplies and property owned or controlled by the CDF will be managed by procedures that will ensure an efficient system for the use, accountability, protection, and disposal of these supplies and property.



We could not determine how many of Smokey Bear items purchased were legitimately used to further the department's goals



The CDF does attempt to maintain a current inventory of the items contained in the Smokey Bear museum; however, it does not have procedures to record Smokey Bear inventory items purchased with state funds when they are received. Further, the CDF does not maintain records indicating the disposition of the items purchased. As a result, we could not determine how many of the Smokey Bear items purchased were legitimately used to further the CDF's goals. For example, since April 1988, the CDF has purchased at least 1,125 watches at a cost of more than \$18,409; however, staff members could not account for these watches.

The manager told CDF investigators that "it was fairly evident that we needed a fairly good supply of those types of things." These "types of things" included watches, pen sets, and other Smokey Bear items. He further explained to our investigator that his role was essentially to keep the shelves stocked. Nevertheless, he conceded that there were inadequate controls over the items he purchased. Specifically, he said that CDF employees would take the items when they needed them for presentations to schools, other fire prevention activities, or gifts for employees or volunteers. He said that, at one point, there had been a list to indicate when employees took "one of the pricier items, such as a watch"; however, the practice of maintaining such a list was discontinued, and the old lists no longer exist.

Consequently, the State has no assurance that the CDF has appropriately spent more than \$155,000.

The Manager Made Personal Long-Distance Telephone Calls at the State's Expense

As stated earlier, Section 8314 of the California Government Code prohibits state employees from using state resources for personal advantage. Further, the SAM, Section 4520, prohibits employees from making personal long-distance calls on state telephones unless the call will be billed to the caller. The policy also states 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.

However, between January 1994 and May 1995, the manager made at least 286 personal long-distance calls totaling more than 27 hours and 36 minutes to his residence at a cost to the State of more than \$710. Specifically, the manager used cellular phones, a state calling card, and his regular state telephone to make personal long-distance telephone calls to his residence from other locations in the State.

Although the manager has worked for the State for 25 years, he told us that he was unaware of the prohibition against making personal long-distance calls at the State's expense. Further, he stated that he often calls his home to notify his family of his work and travel schedule and to retrieve work-related messages at his home. We do not believe that it is necessary for the manager to receive many work-related calls at his residence because, in addition to his state office telephone, which is equipped with voice mail, the manager has a cellular telephone and a pager.

Conclusion

A manager at the CDF made gifts of public funds in the form of Smokey Bear merchandise to state employees, volunteers, and others. In addition, the manager and other department employees authorized unnecessary and wasteful purchases of Smokey Bear memorabilia and related materials. Further, because the CDF has inadequate controls over Smokey Bear memorabilia and related items, the State has no assurance that it has appropriately spent more than \$155,000. Finally, the manager placed at least 286 personal long-distance telephone calls totaling more than 27 hours and 36

minutes at the State's expense. The cost of these calls totaled more than \$710.

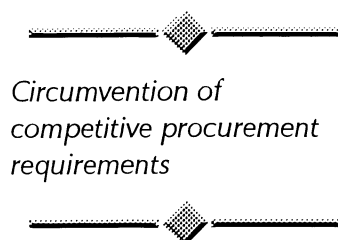
Agency Response

The CDF has not completed its corrective action.

***Department of Rehabilitation,
Allegation I940273***

An official of the Department of Rehabilitation (DOR) circumvented state competitive bidding requirements by directing its contracting unit to inappropriately use interagency agreements with the California State University, Long Beach (CSULB) to provide training to the DOR's clients.

Results of Investigation



*Circumvention of
competitive procurement
requirements*

We investigated and substantiated the allegation. Specifically, under the direction of a DOR official, the DOR's contracting unit used three interagency agreements, totaling more than \$294,000, to provide Americans with Disabilities Act (ADA) training to the DOR's clients and to produce a training videotape.¹⁰ However, these interagency agreements contained specific language that required the CSULB to subcontract only with selected individuals and organizations. By entering into the interagency agreements, the DOR avoided competitive bidding requirements. Consequently, the State has no assurance that it obtained the best possible services at the best possible price. In addition, the department denied other service providers the opportunity to compete for the State's business. Further, the DOR paid at least \$72,290 more for the services under the two interagency agreements than it would have had to pay had it contracted directly with the service providers.

To conduct our investigation, we interviewed staff members from the DOR's contracting and fiscal units and DOR officials, including the assistant director and the director. We also interviewed staff members at the CSULB. Finally, we examined documents, both at the DOR and CSULB, related to the awarding of the agreements and related subcontracts.

Background

The governor designated the DOR to be the lead state agency to coordinate the implementation of the ADA throughout California. In August 1992, the DOR created the ADA Implementation Section to provide public information, training, and technical assistance for employers and businesses, state and local governments, consumers,


¹⁰ After we submitted our report to the Health and Welfare Agency, the DOR canceled the third interagency agreement, which was for a training videotape.

and disability rights organizations. However, the DOR contracted with CSULB, through interagency agreements, to develop an ADA training curriculum, to provide ADA training to department staff and staff from state independent living centers, and to create ADA training materials.


The Department of Rehabilitation Circumvented State Requirements for Obtaining Competitive Proposals

Sections 10340 and 10373 of the California Public Contract Code require state agencies to secure at least three competitive bids or proposals for each contract or consulting services contract. In addition, the SAM states that in those rare instances when three bids or proposals cannot be obtained, a full explanation and justification must accompany the contract and must be approved by the Department of General Services (DGS).

The DOR did not, however, obtain competitive bids or obtain approval to award the contract for ADA training without competitive bids. Instead, it entered into three interagency agreements, dated October 6, 1992, February 9, 1994, and June 30, 1994, with the CSULB. As mentioned earlier, the department canceled the third interagency agreement.



The Department of Rehabilitation directed the California State University, Long Beach, to issue subcontracts to specific service providers



The SAM, Section 1206, permits state agencies to use interagency agreements to contract with other state agencies, and Section 1235 exempts such agreements from competitive bidding requirements. Subcontracts that result from any such interagency agreements, however, are subject to applicable state contracting procedures. Nevertheless, the DOR directed the CSULB to issue subcontracts to specific service providers. CSULB subcontracted with these providers without obtaining competitive bids and justified its actions by stating that the DOR had required that the subcontracts be awarded to the specified providers. However, because CSULB contracting procedures do not require DGS' approval on contracts under \$100,000, the subcontracts did not receive any outside oversight. We believe that the DGS would not have accepted this justification for not soliciting competitive proposals.

If the DOR had contracted directly with the service providers without obtaining competitive bids, it would have been required to provide the DGS a credible explanation of why it was impossible to obtain competitive bids. However, by using interagency agreements that required the CSULB to subcontract with preselected providers, the DOR circumvented the requirement for the DGS' approval and violated the intent of the State's competitive bidding requirements.

As a result, the State has no assurance that it obtained the best possible services at the best possible price. Further, the department denied other service providers the opportunity to compete for the State's business.

Moreover, it appears that the DOR paid more for the services than it would have had to pay had it contracted with the service providers directly. Table 5 shows the total cost of the three interagency agreements, the amounts paid to CSULB, the specific amounts charged by the university for overhead, and the amounts paid to the subcontractors for providing the training. Because the DOR canceled the third agency agreement after we submitted our report to the Health and Welfare Agency, the totals do not include the amounts for that agreement. According to the DOR, it did not pay any costs related to the third agreement.

Table 5

Interagency Agreements Between the Department of Rehabilitation and California State University, Long Beach for ADA Training

| Agreement | Agreement Cost (Including Amendments) | CSULB Overhead Fees | CSULB Salaries and Benefits | Other CSULB Costs | Cost of Work Performed by Subcontractors | Number of Subcontracts |
|-----------------------------------|--|----------------------------|------------------------------------|--------------------------|---|-------------------------------|
| 1 | \$164,333 | \$26,790 | \$26,000 | \$20,150 | \$91,393 | 4 |
| 2 | 95,343 | 10,150 | 9,350 | 9,141 | 66,702 | 4 |
| 3 | 34,612 | 3,304 | 0 | 0 | 31,308 | 1 |
| Total Agreements Finalized | \$259,676 | \$36,940 | \$35,350 | \$29,291 | \$158,095 | 8 |

Although the DOR would have had to pay some of the costs it paid to CSULB if it had contracted directly with the service providers, it would not have had to pay at least \$72,290 of the costs. For example, the DOR paid CSULB \$36,940 in overhead fees to administer the first two contracts. In addition, the DOR paid \$35,350 in salaries and benefits for CSULB employees to spend part of their time as a project director and an office assistant for the contracts. During fiscal year 1992-93, the first full year that the ADA Implementation Section existed, the DOR paid more than \$277,000 in salaries alone for five employees in the section. In fiscal year 1993-94, the DOR was authorized to spend more than \$277,000 in salaries to employees in the section. We believe that existing DOR

employees could have performed the tasks performed by the CSULB employees.

Reasons Cited for Not Complying with Requirements for Obtaining Competitive Proposals

We interviewed staff members within the DOR's contracting office who told us that executive level staff members directed them to complete these interagency agreements. In addition, contracting office staff members told us that it was unusual for the DOR to specify subcontractors in interagency agreements, such as had been done in these three agreements.

We asked a department official why she directed DOR staff members to enter into the interagency agreements with CSULB. She stated that a former official had specified that the training must be delivered at a university to enhance the training's credibility. We also asked the official why the work was not competitively bid. She stated that she had attempted to survey potential service providers but that she had no records of the calls she made. She conceded that at the time the first agreement was awarded, there were approximately 40 to 50 qualified ADA trainers in the United States, but only 3 or 4 in California. The official stated that she knew all the subcontractors specified in the interagency agreements based on her professional interaction with them on disability issues. The official agreed that there might be an appearance of a conflict of interest in the granting of the subcontracts based on her prior relationships with the individual service providers. However, she believed that it was her responsibility as a DOR official to maintain professional relationships with individuals within the disabled community.

Conclusion

The DOR circumvented the State's competitive bidding requirements by using interagency agreements to purchase ADA training services. Without competitive bidding, there is no assurance that the State received the best possible services at the lowest possible price. In addition, the DOR denied other vendors the opportunity to compete for the State's business. Finally, by entering into the interagency agreements, the DOR paid at least \$72,290 more for the services than was necessary.

Agency Response


As stated earlier, the DOR canceled the third interagency agreement after we submitted our report to the Health and Welfare Agency. The Health and Welfare Agency also ordered the DOR not to require the award of subcontracts to specified parties in any future agreements. Finally, the Health and Welfare Agency believed that we implied that existing DOR employees could have provided the training instead of the service providers. We did not attempt to determine whether existing DOR employees had the expertise to conduct the training. However, we believe that existing DOR employees had the expertise to administer contracts with service providers.

Chapter 5

Incompatible Activities

Chapter Summary

Employees from the Department of Boating and Waterways (DBW); the California State University, Long Beach (CSULB); the Department of Parks and Recreation (DPR); the Department of Social Services (DSS); the University of California, San Francisco (UCSF); and the Department of Consumer Affairs (DCA) engaged in activities incompatible with their duties as state employees. These activities included working at other jobs on state time, representing nonstate organizations on state time, improperly using the State's prestige for the private gain of another, and using state resources for personal benefit.


Employees worked for other entities on state time, used the State's prestige for private gain, and used state resources for personal benefit

According to the California Government Code, Section 19990, a state employee shall not engage in any employment, activity, or enterprise that is clearly inconsistent, incompatible, or in conflict with or inimical to his or her duties as a state employee. Incompatible activities include using state time or supplies for private gain or advantage. They also include receiving or accepting money or any other consideration from anyone other than the State for the performance of a state officer's or employee's duties. The same law also prohibits state employees from using the prestige or influence of the State for the private gain of another.

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

Further, State Administrative Manual, Section 8539, requires agencies to maintain complete records of attendance and absences for each employee during each pay period. The employee's supervisor is responsible for certifying the attendance, and, the instructions for completing the state time sheets require employees to report all absences and sign the time sheet to certify that it is

correct. Each supervisor is responsible for seeing that employees comply with the regulations governing absence from work.

To investigate the complaints introduced in this chapter, we reviewed pertinent documents, such as time and attendance records, personnel files, telephone records, and other records held by the offices of the Secretary of State and the Attorney General. In addition, we interviewed the subjects of the investigation, their supervisors, and other departmental employees. When applicable, we interviewed and reviewed records of secondary employers.

***Department of Boating and Waterways,
Allegation I940221***

An employee of the DBW did not always properly report absences from her state job when she left to work at her second job. In addition, the employee's supervisor was aware that the employee did not properly report her absences.


Results of Investigation

We investigated and substantiated the allegation.

The Employee Worked for Another Employer on State Time but Did Not Report Her Absences

An employee of the DBW worked for at least 33 hours at a second job on state time. Specifically, on 41 days during July through December 1994, the employee worked 64.5 hours for her second employer during her regular work hours for the State. Although the employee charged a total of 31.5 hours on 21 of the 41 days to some form of leave, she did not take any formal leave for the other 33 hours and falsely certified that she had worked these hours for the State. In addition, although her supervisor knew that the employee's time sheets did not accurately reflect the employee's attendance, the supervisor signed the time sheets.

The employee's supervisor stated that although the employee sometimes informally took time off, she made up the time by working extra hours at other times. However, we question whether the employee worked all the hours for which the State paid her. The employee's supervisor told us that she kept track of when the employee actually took time off and provided her calendar on which she had noted employees' absences. However, we found that we could not rely on those records. As a result, we have no assurance that the supervisor did, in fact, keep track of the employee's absences and that the employee worked additional time to make up for the times she was absent.


*The employee knowingly
put false information about
her location on the sign-out
board*



Moreover, the employee has not always been truthful regarding her whereabouts during the work day. Specifically, in addition to attesting on her time sheets that she worked hours for the State that she did not work, the employee knowingly put false information about her location on the DBW's sign-out board, which led other employees to believe she was at work-related meetings. The

employee often indicated on the board that she was going to the State Personnel Board (SPB) for task force meetings. However, the SPB had no record of the employee serving on any of its task forces. When we questioned the employee about her meetings at the SPB, she stated that she typically attended monthly meetings of at least two different groups and said that she would provide us with a list of the participants. However, she later declined to provide the names and told us that she attended only a couple of meetings at the SPB. The other times when she indicated that she was at the SPB, she was actually working at her second job. The employee's supervisor was aware of the employee's deceptions and, in fact, condoned them.

The Employee Improperly Reported Absences as Sick Leave

As stated earlier, the employee charged some form of leave on 21 of the 41 days when she was working at her secondary employment. However, she did not always charge her vacation leave balance, as she should have done. For example, on July 20 and July 27, 1994, the employee claimed she was absent from her state job all day on family sick leave. However, she worked for her secondary employer for more than two hours on each of those days.

Family sick leave is charged against state employees' sick leave balances. Specifically, 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. The distinction between reporting sick leave and reporting vacation 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 addition, unused vacation and annual leave hours are more valuable to the employee and cost the State more money than unused sick leave. Specifically, the State must pay employees for each hour of their unused vacation or annual leave when employees separate from state employment.

Conclusion

Although an employee of the DBW did not always properly report absences from her state job when she left to work at her second job, she certified that her time sheets were accurate. In addition, although her supervisor knew that her time sheets did not accurately reflect the employee's attendance, the supervisor signed the time sheets. Further, with her supervisor's concurrence, the employee intentionally deceived other department employees about her location during state work hours. Finally, although both the employee and her supervisor claim that the employee worked all the hours for which she was paid, the State has no credible assurance that she did so.


Agency Response

The DBW director concluded that our investigation was not decisive. In addition, because the employee transferred to another state department, the director concluded he no longer had jurisdiction over her and informed her that no further action would be taken. However, he issued a letter of instruction to the employee's supervisor informing her that recurrences of activities similar to those we reported would result in formal action against her. Finally, the director stated that he issued a memorandum to his managers, reminding them of their responsibility in verifying the accuracy of employees' time reporting.

***California State University, Long Beach,
Allegation I940158***

An employee of the Public Safety Department (PSD) at CSULB, accepted compensation from other organizations for performing duties that were considered part of his employment at CSULB. These duties were developing and making presentations related to date rape for other community organizations.

Results of Investigation


An employee accepted compensation from other organizations for performing duties that were considered part of his state job

We investigated and substantiated the complaint.

As stated earlier, state law prohibits employees from receiving or accepting money or any other consideration from anyone other than the State for the performance of his or her duties as a state officer or employee. In addition, the PSD's policy manual states that no employee shall solicit or accept rewards, presents, gratuities, or any form of compensation, which in any manner could be construed to be in connection with his employment with CSULB other than that paid by CSULB. The manual also states that any award, gratuity, present, or unauthorized compensation that comes into an employee's possession shall immediately be forwarded to the director of the PSD, accompanied by a written report, with a copy for the president of CSULB or his duly appointed representative, outlining all circumstances.

Nevertheless, we found that from 1989 through 1993, a CSULB employee accepted compensation from other organizations for performing duties that were considered part of his employment at CSULB. According to the employee, in late 1989 and early 1990, with the approval of his supervisors at the time, he developed a program concerning date rape with the goal of presenting it to various organizations in the local community. From 1989 through 1993, the employee made numerous presentations to fraternity groups, athletic groups, police agencies, high schools, and other university groups. In addition, the employee stated that he had been invited by several radio and television talk shows to discuss date rape.

The employee stated that his immediate supervisor at the time approved the date-rape presentations as a function of the PSD. Because of this, he gave presentations during his regular work hours and generally charged overtime to CSULB for presentations he gave that were outside of his regular work hours. Because of a lack of

detail on the employee's time records, we could not determine the total number of regular and overtime hours that he spent on date-rape presentations for other organizations. However, from the available records, we found that from 1989 through 1993, he charged at least 47.5 hours of overtime for these presentations. However, the employee also stated that on some occasions he worked more overtime hours than he claimed to the CSULB.

According to the employee, he received a total of between \$700 and \$800 from the various organizations for his date-rape presentations. The employee also stated that he reported this compensation to his immediate supervisor and was advised to keep the money for out-of-pocket expenses related to the presentations. However, we were unable to confirm this information with this supervisor because he is no longer employed by CSULB. In any case, as stated earlier, the employee should have reported and turned over the compensation to the director of the PSD.

Conclusion

An employee of CSULB accepted at least \$700 from organizations for performing duties that were part of his duties as a CSULB employee. These duties included developing and making presentations concerning date rape for other organizations.

Agency Response

Because of this and other misconduct identified by the CSULB, the CSULB dismissed the employee.

***Department of Parks and Recreation,
Allegation I940217***

An employee of the DPR misused state telephones and time.

Results of Investigation

We investigated and substantiated the allegation.

Misuse of Telephones

The State's policy governing the use of state telephones prohibits employees from making personal long-distance calls from state telephones unless the employee bills the calls to another number. However, during the five months from August 1 through December 31, 1994, the employee made 46 personal long-distance telephone calls lasting a total of more than 5.5 hours.

Thirty-four of the long-distance telephone calls from his state telephone, lasting a total of more than 3.5 hours, were placed to members of a nonstate organization (council), of which the employee is an officer. The employee also placed at least 12 other personal long-distance calls lasting a total of almost two hours.

Although the total charge for these 42 calls was under \$35, the cost of personal use of state telephones includes not only the actual charges for personal calls, but the cost of time spent on personal business while employees should be working. At the employee's rate of pay, the State paid him approximately \$134 for the 5.5 hours he spent on these personal long-distance calls.

In addition, the State's policy requires state employees to keep the number and length of personal calls to a minimum. In June 1994, however, the employee issued correspondence on council letterhead, asking "Members of the Board" to pass resolutions in support of the council's efforts, and in this correspondence, he gave his state telephone number for individuals to call if they had any questions regarding the council. When state employees list their state telephone number as a number to be called for nonstate business, they are clearly not keeping the number of their personal calls to a minimum. When the employee's supervisor became aware that the employee had been giving his state telephone number to solicit calls related to the council, the supervisor had the employee's telephone disconnected and a new number assigned to him.

The employee told us that many of the calls we questioned were made to persons or organizations with direct interests in the department's programs and therefore were related to his job. The employee, however, declined to offer any specific information regarding the calls we questioned.

When we questioned the employee about the number of calls that appeared to be related to the council, he told us that the DPR has a long-standing tradition of tolerating and even encouraging the use of state time for community service work. In addition, he stated that many other DPR employees spend state time working for outside nonprofit organizations. However, as of June 6, 1995, the council was not registered as a nonprofit organization with the Attorney General's Registry of Charitable Trusts. In addition, the organization had not filed articles of incorporation with the Secretary of State. Despite the employee's claims that the DPR condones the use of state time for community service, his supervisor counseled him in August 1994 to stop all council-related calls during work hours. Clearly, the employee did not heed his supervisor's instructions.

Failure To Report Attendance Accurately

The employee did not record his time and attendance properly during the period we investigated. He told us that he often worked unofficial overtime and that his supervisor allowed him to accumulate informal time off instead of being paid overtime pay. The employee could then use this accumulated informal time off in lieu of traditional leave, such as vacation. Neither the unofficial overtime nor the unofficial time off was recorded on the employee's time sheets.

The supervisor stated that, with his approval, the employee worked up to eight hours of informal overtime per month and took informal time off. However, accounting for state time informally is improper. All public servants have a responsibility to accurately account for their time, and to credibly account for their time, they must use a formal, accurate, written record. Without such a record, the State has no assurance that employees worked all the hours for which they were paid. In addition, allowing employees to work overtime without paying the proper compensation for that overtime may create a liability for the State.

Further, informal timekeeping can lead to abuse. For example, on at least one occasion, the employee conducted business related to the council on state time without his supervisor's knowledge or approval.

The employee's supervisor told us that, as of January 1995, he no longer allows any of his employees to accrue informal time off.

Conclusion

The employee used his state telephone to make personal telephone calls at the State's expense. He also improperly reported that he was working for the State when he was, in fact, conducting personal business. Finally, the employee's supervisor improperly allowed him to inaccurately report his time and attendance.

Agency Response

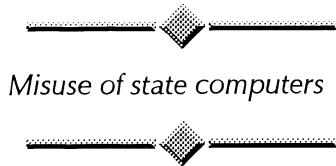
The DPR has not completed its corrective action.

***Department of Social Services,
Allegation I940186***

An employee of the DSS used computer equipment for personal advantage. In addition, she failed to perform her duty to promptly process vendor invoices for payment.

Results of Investigation

The DSS's legal division investigated and substantiated the complaint. To investigate the complaint, the legal division reviewed documents stored on the employee's desktop computer and in the DSS's computer system. The legal division also interviewed the employee and other DSS staff members. Finally, the DSS reviewed the employee's handling of vendor invoices.



Misuse of state computers

An Employee Used State Equipment for Her Personal Advantage

The DSS's legal division confirmed that the employee used her state computer to produce several documents of a personal nature, including documents related to her membership in an organization devoted to the study of medieval society. Specifically, the employee accessed 37 separate personal documents on 37 different days from July 25, 1991, through April 28, 1992.

Although we generally attempt to determine how much the State paid employees while they were conducting personal business instead of working, the DSS's employee was not an hourly worker. The compensation she received from the State—approximately \$4,000 per month—is based on the premise that she is expected to work as many hours as are necessary to provide the public services for which she was hired. As a result, we were unable to conclude that the employee prepared the personal documents on “state time.”

An Employee Failed To Perform Her Duty

The California Government Code, Section 926.17, requires state agencies to pay for services obtained under contract promptly. Even if the contract between a vendor and the State does not specify a date for payment, the agency must pay the vendor within 50 calendar days after the postmark of the vendor's invoice. If the

agency does not pay vendors in accordance with the law, the State is subject to a penalty.

For the period from January 1, 1993, through June 30, 1994, the DSS contracted with a firm for the purchase of photographic film and processing services. As part of her assigned duties, the employee was responsible for reviewing invoices from the vendor, approving them for payment, and forwarding them to accounting for payment. Although the vendor's invoices specified that they were due by the tenth day of the month following the date of the invoice, as of July 31, 1994, the employee had not processed 22 vendor invoices totaling more than \$895. Nineteen of the invoices were dated more than 50 calendar days before July 31, 1994.¹¹ When the DSS questioned the employee about the unpaid invoices, she said that it was her fault and attributable to her "sloppiness."

Conclusion

On 37 separate days, an employee used a state computer to produce and edit 37 documents unrelated to state business. In addition, the employee failed to perform her duty to promptly process vendor invoices for payment.

Agency Response

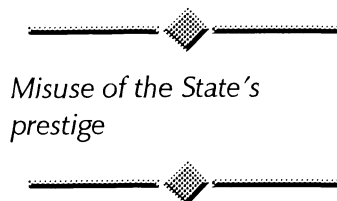
The DSS reduced the employee's salary from \$4,139 per month to \$3,942 per month for a six-month period beginning on July 1, 1995. In addition, it updated its incompatible activities policy and will distribute the policy throughout DSS.

¹¹ The DSS did not identify the amount of penalties due.

***Department of Social Services,
Allegation I940263***

An employee of the DSS improperly directed staff members to use state time and DSS letterhead to distribute a letter soliciting gifts on behalf of a nonstate entity. Moreover, the letter falsely represented to businesses and other organizations that the entity for which donations were being solicited was a nonprofit organization.

Results of Investigation



*Misuse of the State's
prestige*

We investigated and substantiated the allegation. To investigate the complaint, we obtained a copy of the letter used to solicit gifts from businesses and other organizations. In addition, we interviewed the supervisor and other DSS staff members. Finally, to determine whether the nonstate entity was, in fact, a nonprofit organization, we contacted the offices of the Attorney General and Secretary of State, which maintain information on charitable organizations and corporations.

Background

The State's food stamp program is administered by individual counties within the State, under the supervision of the DSS. The DSS's Operations Improvement Bureau (OIB) staff members are involved in a variety of activities at the county level as well as the development and implementation of state-level corrective actions. For example, the OIB staff works jointly with county staff to develop and present regional conferences for eligibility workers and eligibility supervisors.

Five regional conferences have been held each year, including one sponsored by the Bay Area Food Stamp Corrective Action Committee (committee). In 1994, the committee hosted a two-day conference in Monterey, attended by county food stamp eligibility workers.

The Misrepresentation of Nonprofit Status

A supervisor in the OIB directed a staff member to solicit gifts from businesses and organizations on behalf of the committee in October 1994. On state time, the staff member prepared letters on DSS letterhead that stated that donations would be used to conduct

a raffle for the benefit of county employees attending the 1994 conference hosted by the committee. However, the letter falsely represented to potential donors that the committee was a nonprofit organization.

Moreover, the letter sent to potential donors stated, "As you may know, charitable donations are tax deductible and offer publicity." Although gifts to the State or its political subdivisions can be reported as charitable donations for tax purposes under certain circumstances, the committee is not such a political subdivision. Further, to be a charitable donation, the gift must be made for exclusively public purposes. In this case, however, the gifts received were used as raffle prizes. According to the supervisor, proceeds from the raffle were to be used to reduce the cost of the committee's 1995 conference and registration fees. In some cases, this would be a savings to the county governments. In other cases, however, it would be a savings to individual attendees. Further, as described below, some of the funds may have been used to purchase personal items.

Improper Use of State Time, Materials, and Prestige

Staff used state time and resources to solicit raffle prizes

As stated earlier, state law prohibits employees from using the prestige or influence of the State for the private gain of another. In addition, the same law and policy prohibit state employees from using state time or supplies for the private gain or advantage of another. Nevertheless, as stated before, OIB staff members used state time and letterhead to prepare letters soliciting donations on behalf of a nonstate entity. However, the DSS has no assurance that the proceeds from the raffle were not spent for personal benefit. Specifically, neither the DSS nor Monterey County had control over the proceeds of the raffle. According to a checkbook provided to us by the committee chairperson—a Monterey County employee—raffle proceeds of \$982 were deposited into a checking account on November 30, 1994. According to the committee's chairperson, she and two other Monterey County employees have access to the checking account. Although the account is under the control of three county employees, the account is outside the controls established over funds deposited into the State's or the county's treasuries.

Further, because the funds derived from the donations were commingled with other funds in the account, we do not know which

funds were spent for which expenditures.¹² However, we do know that some funds from the account were spent for items that appear to have personally benefited individuals. For example, the committee spent \$457 for sweatshirts and \$1,570 for coffee cups. In addition, after the conference, one check for approximately \$6 was written to an individual for lunch, another check for \$112 was written to the chairperson of the committee to reimburse her for a January lunch for committee members, and another check for \$20 was written to an individual for a sweatshirt. According to the records provided by the committee chairperson, the checking account had a balance of \$1,051 as of January 27, 1995.

Conclusion

An employee of the DSS improperly directed staff members to use state time and DSS letterhead to solicit gifts on behalf of a nonstate entity. Moreover, the letter falsely represented to businesses and other organizations that the entity for which donations were being solicited was a nonprofit organization.

Agency Response

Because the DSS concluded that the supervisor's actions resulted from bad judgment rather than a specific intent, it issued an informal reprimand to the supervisor. The DSS also directed the supervisor and his staff members to refrain from such activities in the future.

¹² Other funds deposited to the account include conference registration fees.

***University of California, San Francisco,
Allegation I940164***

An employee of the UCSF, misappropriated approximately \$800 in parking vouchers for her personal use.

Results of Investigation



The UCSF investigated and substantiated the allegation. To investigate the complaint, the UCSF reviewed parking voucher records and interviewed the employee. The employee admitted that she received parking vouchers for personal use but claimed that paid parking was part of her employment agreement. The UCSF concluded that the employee had misappropriated approximately \$800 in parking vouchers.

Agency Response


The UCSF issued a letter of warning to the employee.

***Department of Consumer Affairs,
Allegation I940252***

An employee of the DCA improperly authorized the use of the DCA's name when he provided a testimonial to a retail computer store.

Results of Investigation

The DCA conducted a limited investigation and substantiated the allegation. In addition, we examined newspapers for a 20-day period, reviewed the DCA's files, interviewed the DCA attorney who investigated the case, and interviewed the employee.


*Misuse of the State's
prestige*

On at least four days during October 1994, a retail computer store ran a newspaper advertisement that contained the testimonial of an employee of the DCA. In addition to the employee's testimonial, the advertisement contained the employee's name, his photograph, the name and logo of the DCA, and the words "State of California." The advertisement, as it appeared in the newspaper, purports to be an endorsement of the retail computer store by the employee, the department, and the State of California.

The employee stated that the owner asked him if he would be willing to write a brief testimonial that the store could use for advertising. The employee agreed to provide the testimonial because of the good service and low price he received. However, the employee denied to us that he authorized the company to use the DCA's or the State's name. Specifically, the employee stated that he told the owner that he was purchasing the equipment for his own use, that he was in no way representing the State, and that he had no authority to do so. In addition, the employee stated that he explained to the owner that the advertisement could identify him only generically as a state employee. Based on their discussion, the employee felt confident that the owner understood his concerns and would honor his request.

The employee apologized for his actions and stated that it was never his intent to offer the DCA's name for a commercial endorsement. Further, he stated under the penalty of perjury that he did not receive any form of benefit in exchange for his testimonial.

Finally, because the DCA believes that the advertisement is deceptive on several grounds in violation of the Business and Professions Code, it forwarded the results of its investigation to the

deputy district attorney, inviting the district attorney to consider legal action against the retail computer store. Although the district attorney agreed that the computer store violated the law prohibiting false advertising, the district attorney believed that a trial court would not be inclined to levy anything other than a nominal penalty against the store. As a result, the district attorney declined to take action.

Conclusion

An employee of the DCA improperly authorized the use of the DCA's name in an advertisement for a retail computer store.

Agency Response

The DCA issued a formal letter of reprimand to the employee.

Chapter 6

Misuse of State Telephones

Chapter Summary

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

◆
State employees may not make personal toll calls at the State's expense and must keep the number and length of personal calls to a minimum

In addition, the State's policies covering the use of state telephones prohibit employees from placing personal long-distance calls from state telephones unless they are charged to another number. In addition, the policies require employees to keep the number and length of personal calls to a minimum. These policies, which are found in the State Administrative Manual, also state that agencies should establish a process of reviewing telephone calls to identify violations of personal use policies.

The State employs more than 400,000 individuals. Although the cost to the State of one individual misusing a state telephone can be minimal, the cost of the misuse of state telephones statewide is likely to be extremely high. Such costs include not only the actual charges paid for personal calls, but also the cost of time spent on personal business while employees should be working.

During the period from January 1 through June 30, 1995, we completed five investigations that substantiated allegations that state employees misused state telephones. To investigate these complaints, we reviewed telephone records and interviewed the employees involved. One of these five cases is reported in Chapter 4 on page 42. Another is reported in Chapter 5 on pages 56 and 57.

***Department of General Services,
Allegation I940269***

An employee at the Division of the State Architect, Department of General Services (DGS), made an excessive number of personal telephone calls on state time and telephones.

Results of Investigation

We investigated and substantiated the complaint. From July 19 through November 10, 1994, this employee placed personal toll calls from her state telephone during lunch and break periods, during her regular work hours, and while she was presumably working overtime. Table 6 summarizes the number of calls placed, the length of the calls, the telephone charges, and the amounts paid to the employee that we believe should not have been paid.

***Table 6
Summary of Employee's Personal Toll Calls
July 19 Through November 10, 1994***

| When Placed | Number of Calls | Length of Calls | Total of Tolls | Salary Over Paid |
|----------------------------|------------------------|---------------------------------|-----------------------|-------------------------|
| On lunch and break periods | 73 | 3 hours, 38 minutes | \$ 20.34 | 0 |
| During regular work hours | 336 | 15 hours, 27 minutes | 78.95 | \$176.70 |
| During overtime hours | 38 | 1 hour, 38 minutes | 8.66 | 25.68 ^a |
| Totals | 447 | 20 hours, 43 minutes | \$107.95 | \$202.38 |

^a This is the amount that was paid only for the 1 hour and 38 minutes. It does not cover the amounts paid to the employee for overtime that may have not been necessary if the employee had not spent her regular hours on personal calls.

Agency Response

The DGS reported that it would issue a counseling memorandum to the employee. In addition, it stated that it would collect the appropriate amount for the personal toll calls and the salary paid to the employee during overtime hours when personal toll calls were made. Finally, the DGS stated that it would direct the manager of

the field office in which the employee works to issue a memorandum to his staff, reiterating the State's policies covering the use of state telephones.


***California Energy Commission,
Allegation I950017***

An employee of the Energy Commission (commission) placed personal telephone calls at the State's expense.

Results of Investigation

We investigated and substantiated the complaint.

Personal Calls Placed at the State's Expense


The commission's employee placed 190 personal calls to areas outside Sacramento

From November 1994 through March 1995, the commission's employee placed 190 personal calls to areas outside Sacramento. These calls, which lasted a total of more than 13 hours, cost the State more than \$84. The calls ranged in length from under 1 minute to 1 hour and 50 minutes. Most of the calls were placed to the city of Davis. However, several calls were placed to other states. In addition, the employee made at least 35 personal calls to Sacramento numbers during the five-month period. These calls lasted a total of approximately three hours.

With the exception of one call lasting less than a minute, all the calls were placed Monday through Friday, between 8:50 a.m. and 3:25 p.m. Although we generally attempt to determine how much the State paid employees while they were conducting personal business instead of working, the commission's employee is not an hourly worker. The compensation he receives from the State—\$4,547 per month—is based on the premise that he is expected to work as many hours as are necessary to provide the public services for which he was hired. As a result, we were unable to conclude that the employee placed his personal calls on "state time."

Personal Use of State Telephones Not Controlled

We attempted to determine whether anyone at the commission reviews telephone bills to assess whether the telephones are used appropriately. The employee's supervisor told us that she does not review telephone bills. Although the commission's accounting officer told us that the accounting office distributes cellular telephone bills to supervisors for review, the accounting office does not distribute regular telephone bills. In addition, although the accounting officer told us that supervisors can come to the

accounting office to review telephone bills, he said that such review rarely occurs. Because it appears that no one at the commission periodically reviews telephone bills, misuse of the commission's telephones is likely to go undetected.

Agency Response

The commission issued a letter of reprimand to its employee and will require him to reimburse the State for the cost of his personal calls. In addition, the commission is establishing a procedure for reviewing telephone bills to identify instances of possible misuse of state telephones.


***State Teachers' Retirement System,
Allegation I940235***

An employee of the State Teachers' Retirement System used state time and equipment to prepare personal letters and used state facsimile machines to transmit them.

Results of Investigation

We investigated and substantiated the allegation. To investigate the complaint, we obtained copies of the letters that were prepared on state computer equipment and then transmitted over state facsimile machines. In addition, we interviewed the employee.

The employee admitted to using state computer equipment and facsimile machines on seven separate occasions to create and send personal letters.


*Personal use of state
computer and facsimile
equipment*

Agency Response

The State Teachers' Retirement System issued an informal reprimand to the employee and reissued its policy concerning the use of state property to its employees.

Chapter 7

Corrective Action Taken on Previously Reported Investigations

As stated on page S-3, 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***

*Gross mismanagement of
the Center for Prehospital
Research and Training*


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 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 UCSF and the Fire Department of the City and County of San Francisco. These conflicts of interest resulted in the unauthorized use of UCSF 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 UCSF. We also reported many other improper governmental activities at UCSF. Even though several UCSF officials became aware of many of the problems before we reported them to UCSF, these officials failed to correct them. As a result, UCSF cannot assure the State's taxpayers that the university's funds were accounted for and spent properly. The UCSF also did not safeguard its resources and failed to promote an effective and efficient use of resources at the CPRT.

Corrective Action

UCSF reported that it terminated its employment contract with the executive at the Department of Medicine and issued letters of warning to three former employees of the CPRT.¹³ It also reported that it repaid the City and County of San Francisco for the amounts it had overcharged the fire department. According to the City and County of San Francisco, UCSF refunded a total of \$7,798 for overbillings in fiscal years 1990-91 through 1992-93.

¹³ As we reported on February 8, 1995, in public report I95-1, UCSF closed the CPRT in November 1994.

***Department of Transportation,
Allegation I940067***




*Employees used computer
equipment for personal gain*

We reported the investigative findings on this allegation on February 8, 1995, in report I95-1. We reported that two state employees used state time and computer equipment for their personal gain. We also reported that a third employee used state equipment for personal gain. Finally, we reported that one of the three employees may have falsified his time sheets.

Corrective Action

The Department of Transportation dismissed the first two employees and suspended the third employee for six days without pay.

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


Gambling on state time


We reported the investigative findings on this allegation on February 8, 1995, in report I95-1. We reported that a highway engineer of the Department of Transportation 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 of Transportation dismissed the employee.

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: August 8, 1995

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Appendix

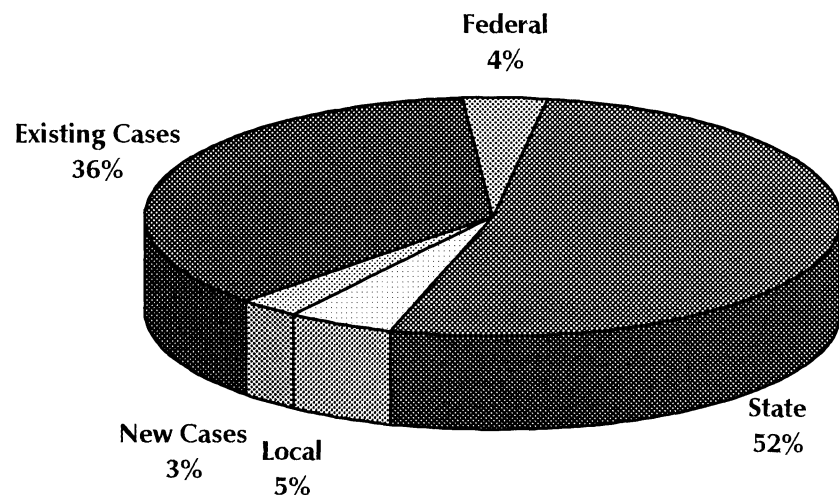
Activity Report

Calls Received on the Whistleblower Hotline

From January 1 through June 30, 1995, the Investigations Unit received 2,402 calls on the whistleblower hotline. Of these calls, 1,456 (61 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. We referred 1,245 (52 percent) of the calls to other state agencies, 128 (5 percent) of the calls to local agencies, and 83 (4 percent) of the calls to federal agencies. For 78 (3 percent) of the calls received, we established case files. The remaining 868 calls (36 percent) were related to previously established case files. These calls came from either the original complainants, additional complainants, or witnesses. Figure 1 shows the disposition of calls received over the whistleblower hotline during the first six months of 1995.

Figure 1

***Disposition of Calls to the Whistleblower Hotline
January 1 Through June 30, 1995***



Work Performed on Investigative Cases

In addition to the 78 cases opened based on calls received over the hotline, we opened 12 cases based on complaints received through the mail and 4 cases based on information provided by individuals who visited us at our office, for a total of 94 case files opened from January 1 through June 30, 1995. Moreover, as of December 31, 1994, 26 cases were awaiting review or assignment, and 21 cases were still under investigation by either this office or other state departments or agencies on our behalf. Furthermore, for 3 other cases, investigations had been completed and publicly reported, but the employing departments had not completed their corrective action. Chapter 7 summarizes corrective actions taken since December 31, 1994, on these 3 investigations.

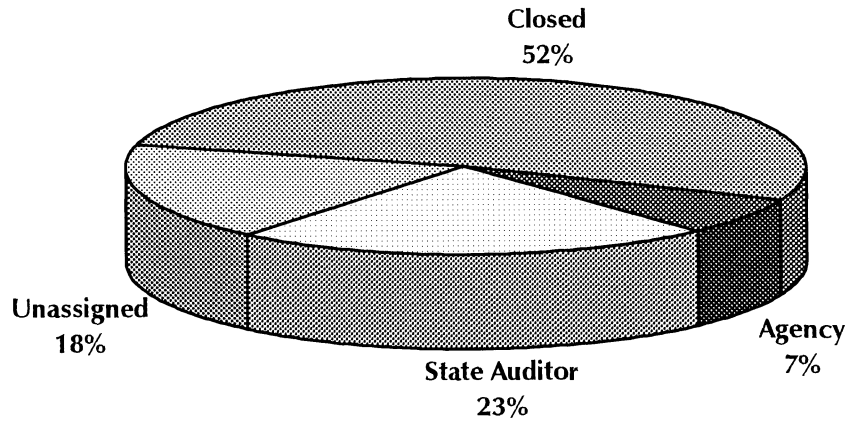
The act states that the state auditor may conduct an investigation upon receiving specific information that any employee or state agency has engaged in an improper governmental activity. After reviewing the information provided by complainants and preliminary work by investigative staff, we assess whether sufficient evidence of wrongdoing exists to mount an investigation. In 76 cases, we concluded that there was not enough evidence of improper governmental activity for us to mount an investigation. However, in 7 of the 76 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 January 1 through June 30, 1995, state departments investigated ten cases on our behalf. Departments substantiated allegations on two (28.6 percent) of the seven cases they completed during the period.

In addition, we investigated 34 cases during the period from January 1 through June 30, 1995. We substantiated allegations on 15 (68.2 percent) of the 22 cases we completed during the period. Figure 2 shows action taken on case files during the period from January 1 through June 30, 1995.

Figure 2

**Action Taken on Cases
January 1 Through June 30, 1995**



Index to Reports of Investigation

| Department | Allegation Number | Allegation | Page Number |
|--|------------------------------|--|------------------------|
| Boating and Waterways | 1940221 | Incompatible activities, time and attendance abuse, and false statements | 51 |
| California State University, Long Beach | 1940158 | Incompatible activities and time and attendance abuse | 54 |
| Consumer Affairs | 1940252 | Incompatible activities and use of the State's prestige for the benefit of another | 65 |
| Developmental Services | 1940192 | Improper personnel practices | 31 |
| Energy Commission | 1950017 | Misuse of state telephones | 70 |
| Fair Employment and Housing | 1940122 | Failure to investigate discrimination complaint and falsification of records | 2 |
| Fish and Game | 1940214 | Improper awarding of overtime compensation | 20 |
| Forestry and Fire Protection | 1940002.1 | Falsification of travel claims and improper payroll practices | 26 |
| Forestry and Fire Protection | 1940002.2 | Gifts of public funds and misuse of state telephones | 36 |

| Department | Allegation Number | Allegation | Page Number |
|---|-------------------|--|-------------|
| General Services | I940269 | Misuse of state telephones | 68 |
| Integrated Waste Management Board | I930248 | Improper certifications and payments of recycling incentives | 9 |
| Parks and Recreation | I940217 | Incompatible activities, time and attendance abuse and misuse of state telephones | 56 |
| Rehabilitation | I940273 | Improper contracting practices | 44 |
| Social Services | I940186 | Incompatible activities, misuse of state equipment, and failure to perform duty | 59 |
| Social Services | I940263 | Incompatible activities, use of the State's prestige for the benefit of another, and misrepresentation of nonprofit status | 61 |
| State Teachers' Retirement System | I940235 | Misuse of state telephones | 72 |
| Transportation | I940017 | Follow-up on time and attendance abuse | 76 |
| Transportation | I940067 | Follow-up on misuse of state time and equipment for personal gain | 75 |
| Transportation | I950008.1 | Improper compensation of overtime | 17 |
| University of California, San Francisco | I930279 | Follow-up on gross mismanagement, conflicts of interest, and falsification of payroll documents | 74 |
| University of California, San Francisco | I940164 | Misuse of state resources | 64 |

cc: Members of the Legislature
Office of the Lieutenant Governor
Attorney General
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps