

**Investigations of  
Improper Governmental  
Activities:**

**July 1 Through December 31, 1995**

March 1996  
Report I96-1

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# CALIFORNIA STATE AUDITOR

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March 5, 1996

Investigative Report I96-1

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

Dear Governor and Legislative Leaders:

Pursuant to the Reporting of Improper Governmental Activities Act, the Bureau of State Audits presents its report concerning investigations of improper governmental activities completed from July 1 through December 31, 1995.

Respectfully submitted,

KURT R. SJOBERG  
State Auditor

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# Summary

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## *Results in Brief*

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### ***Investigative Highlights:***

*Employees engaged in improper governmental activities, including:*

- Received tens of thousands of dollars from improper contracting practices.*
- Improperly spent state funds on alcoholic beverages and personal entertainment.*
- Illegally deposited millions of dollars in a nonstate account.*
- Misused the prestige of a state position to sell life insurance to subordinates.*
- Made thousands of dollars in personal telephone calls at the State's expense.*
- Used a state postage meter to mail wedding invitations.*

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.

This report details the results of investigations that were completed between July 1 and December 31, 1995, and that substantiated complaints. Complaints we substantiated include the following:

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

- One employee received approximately \$55,200 and another received more than \$7,900 from improper contracting activities.
- By not complying with state laws requiring competitive contracting practices, a unit improperly paid employees' family members and friends approximately \$79,000.

### ***22nd District Agricultural Association (District)***

- Directors and management improperly spent more than \$15,800 in state funds on alcoholic beverages at the district's 1994 and 1995 annual fairs.

- Because the district did not bill its directors for the cost of their personal entertainment, the State improperly paid at least \$5,920.

***California State University, Los Angeles***

- Continuing Education illegally deposited \$3.5 million into a nonstate auxiliary organization account. As a result, Continuing Education had to pay approximately \$122,000 more for administrative fees than it should have paid and has had to spend an estimated \$30,000 per year more for instructors' benefits than necessary.
- Continuing Education also overcharged students \$152,000 for fees.
- Further, for the amount that Continuing Education lost on one five-day summer program attended by 14 students, it could have sent 40 students to one quarter of graduate school full time.

***Department of Motor Vehicles***

- A supervisor misused the prestige of his position by attempting to sell life insurance to his subordinates; used state telephones for his personal advantage, placing at least 458 personal calls on state telephones; and used state facsimile machines.
- Although the supervisor's job performance was adversely affected by his outside employment and although his manager had been informed of his activities, his manager did not take appropriate action.

***Department of Developmental Services***

- An executive improperly claimed travel reimbursements to which she was not entitled, made at least 123 personal telephone calls at the State's expense, and falsified a document she provided to us.

***Department of Industrial Relations***

- A supervisor and his subordinate wasted state money by communicating via cellular telephones when regular telephones were available and placed personal telephone calls that cost the State at least \$1,546.

***Department of Transportation***

- An attorney violated state law and department policy by representing private clients in lawsuits against public entities.

***Department of General Services and  
the California Tahoe Conservancy***

- Employees placed personal telephone calls at the State's expense.

***California State University, Sacramento***

- An employee used a state postage meter to mail wedding invitations.

  
Whistleblower hotline:  
(800) 952-5665  


If, after investigating allegations, the state auditor determines that there is reasonable evidence to believe that 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.

In addition, Appendix A provides statistics on the complaints received by this office between July 1 and December 31, 1995. This report also summarizes our action on those complaints and 21 other complaints that were awaiting review or assignment as of June 30, 1995.

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



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# Chapter 1

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## ***Department of Social Services: Conflicts of Interest, Incompatible Activities, and Improper Contracting Practices***

### ***Allegation I940241***

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**E**mployees of the Language Services Bureau (bureau), a part of the Department of Social Services (department), engaged in illegal and improper activities related to translation services.

### ***Results of Investigation***

◆  
*One employee received approximately \$55,200 and another employee received more than \$7,900 from improper contracting activities.*

◆

We investigated and substantiated the allegations. Specifically, two employees of the bureau violated the State's conflict of interest and incompatible activities laws. The first employee improperly contracted with other state agencies and received payments from other individuals who were doing business with the department. This employee received approximately \$55,200 from these improper activities. Also, both this employee and his supervisor misused the prestige of the State. In addition, the first employee used state time and equipment to perform work he obtained through the improper contracting practices. Further, a second employee improperly performed most, if not all, of the translation work his wife obtained under contract with the bureau. As a result, he and his wife improperly received more than \$7,900.

Finally, the bureau did not comply with state laws requiring competitive contracting practices. As a result, it improperly paid employees' family members and friends approximately \$79,000. In addition, the bureau denied others the opportunity to compete for the State's business. Also, the State has no assurance that it received the best possible services at the lowest possible cost. For example, the bureau sometimes gave translation assignments to unqualified individuals. Further, abuses such as those mentioned above were allowed to occur.

### ***Scope and Methodology***

For our investigation, we interviewed the bureau's manager and employees. We also interviewed other employees of the department and several contractors who had provided translation services to the bureau. In addition, we reviewed summary reports listing payments to interpreters and contractors for 1993 and 1994 and invoices submitted to the bureau by a number of contractors for the services they performed. We also reviewed the bank documents of two bureau employees and a contractor. Further, we reviewed backup copies of files from a bureau employee's state computer and the results of the department's internal review. Finally, we provided our investigation results to the state attorney general for use in criminal and civil proceedings.

### ***Background***

The Language Services Bureau, which is a part of the Department of Social Services, translates forms, pamphlets, scripts, booklets, documents, posters, notices, press releases, and other written materials for the department. The bureau offers these services in five languages that it considers as mandated (Spanish, Vietnamese, Chinese, Cambodian, and Lao) and other languages that it does not consider mandated.

In the late 1980s, the bureau began to offer translation services to other state agencies through interagency agreements. As of March 1995, departmental requests for translation services accounted for approximately 25 percent of all official translation requests that the bureau received; the remaining 75 percent were from other state agencies.

Because of the increased demand for translation services generated by interagency agreements, bureau employees identified contractors fluent in various languages who would provide the translation services. To complete an interagency translation assignment, a bureau employee who acted as a project coordinator generally would use one contractor to translate the assignment and another to proofread the translation. For a finished product, the contractor who translated the assignment generally would need to provide the project coordinator with a camera-ready copy of the translation. After the finished product was delivered to the requesting state agency, the bureau would bill the requesting state agency on a cost reimbursement basis. For fiscal year 1994-95, the bureau had more than \$380,000 in interagency contracts for translation services.

In addition to the interagency translation assignments, the bureau also received translation requests from other public and private entities. Even though these entities did not have formal agreements with the bureau, it assigned these unofficial requests, designated as "courtesy jobs," to contractors. Specifically, the bureau manager would assign such a request to a contractor for him or her to coordinate. The contractor who coordinated the courtesy job would bill the entity directly and, in turn, the entity would pay the contractor directly. However, the bureau often acted as a conduit for forwarding work and invoices between the contractor and the entity. The contractor would then be responsible for compensating any other contractors whom he or she recruited to provide the services.

***Two Bureau Employees Violated Conflict of Interest and Incompatible Activities Laws***

Two employees of the bureau violated the State's conflict of interest and incompatible activities laws. Conflict of interest laws are grounded on the notion that government employees owe paramount loyalty to the public interest. To protect the public interest, state employees cannot contract on their own behalf with any state agency to provide services or goods. In addition, state employees cannot benefit personally from state contracts with others unless required to do so as a condition of their state employment. Because Californians have an interest in their spouses' incomes, a state employee cannot engage in activities related to income that his or her spouse may receive through a state contract. Further, state employees cannot contract with other entities doing business with the employees' departments or engage in other activities that are incompatible with their duties as state employees.<sup>1</sup>

***One Employee Knowingly Violated Conflict of Interest and Incompatible Activities Laws***

In violation of state laws and departmental policies, the first employee contracted directly with other state agencies to provide translation services. Both the employee and his supervisor knew that he was violating the laws and policies by doing so. Further, in violation of state laws and departmental policies, this employee subcontracted with at least three individuals who contracted directly with the bureau to provide translation services. In addition, this employee received payments from two other contractors with the bureau who presumably were subcontracting work to the employee's spouse. Because the employee had a financial interest in his

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<sup>1</sup> Appendix B contains a more detailed description of the state laws governing conflict of interest and incompatible activities.

spouse's income and because he performed some of the work, he further violated conflict of interest laws. The employee received a total of approximately \$55,200 from all these improper contracting arrangements. Table 1 shows the money the employee received from all the improper contracting arrangements.

**Table 1**


***Money Employee Received From Improper Contracting***

Type of Contract Arrangement	Amount
Direct contracts with other state agencies	\$ 3,700
Subcontracts with department contractors	10,000
Spouse's subcontracts with department contractors	41,500
<b>Total</b>	<b>\$55,200</b>

*Contracted With Other State Agencies*

On at least 15 different occasions from 1991 through 1994, the first employee violated the Public Contract Code by personally contracting with other state agencies to provide translation services. As a result, the employee improperly received \$3,700. Most of the translation assignments were given to the employee by his supervisor after these state agencies contacted the bureau for translation services. However, both the employee and his supervisor were aware that this arrangement was improper. Furthermore, both the employee and his manager violated laws prohibiting incompatible activities by misusing the prestige of the State.


In October 1988, the supervisor wrote a memorandum to the department's personnel office, requesting approval of a proposed bureau policy that would permit bureau staff members to provide translation services to other state agencies on their own time. In November 1988, the department's personnel officer responded to the supervisor, indicating that, after consulting with the department's legal staff, he had determined that the proposed policy was inappropriate and in violation of the department's incompatible activities policy.

  
*The employee and his supervisor ignored warnings.*

In addition, the supervisor was aware that the employee received a letter in March 1989 from the department's personnel officer warning the employee not to contract with other state agencies to provide translation services and not to use the name and prestige of his official position for personal gain or for the personal gain of another.

Nevertheless, with his supervisor's knowledge and participation, the employee violated the prohibitions by contracting with other entities for at least 15 courtesy jobs. The different entities paid the employee approximately \$3,700 for these 15 assignments.

According to the supervisor, he did not regard the personnel officer's letters as a prohibition against the employee to contract with other independent or state agencies. The supervisor did admit that he had given to the employee some translation assignments from state agencies that did not have formal agreements with the bureau, knowing that the employee would perform the work. However, the supervisor indicated that he emphasized to the employee that the transactions were between the employee and the state agencies and that the bureau had nothing to do with the translation assignments.



  
*The employee and his supervisor misused the prestige of the State.*

In spite of the supervisor's claim that the employee's outside work had nothing to do with the bureau, we noted that on at least six occasions, the supervisor signed a department form that was used by the employee to bill state agencies for work he performed under contract. In addition, the supervisor certified that the translation on one courtesy job was "a complete, faithful, and accurate translation from the Spanish language to the English language, rendered by a competent translator/interpreter known or recommended by an experienced and reliable source." The supervisor made this certification on department letterhead and signed it as the chief of the bureau. Furthermore, the supervisor sent the translation to the agency that had requested the services. Clearly, both the employee and the supervisor were using the prestige of the State for the employee's personal benefit. Later in this chapter, we provide additional information on how the actions of the supervisor allowed abuses.

#### *Accepted Compensation From Contractors*

This same employee knowingly violated the conflict of interest provisions of the Public Contract Code and the incompatible activities provisions of the Government Code by subcontracting with at least three contractors who contracted directly with the bureau to provide translation services. In addition, the employee received payments from two other contractors with the bureau. In these last two cases, the contractors presumably

were subcontracting work to the employee's spouse. However, because the employee had a financial interest in his spouse's income and because he performed some of the work, these subcontracts also were improper.

  
*The employee again  
ignored warnings.*  


The employee also was warned in 1989 that he was not to accept referrals to provide services of any nature to any organization or person who has or seeks to have a contract with the bureau. Specifically, state law and department policy prohibit employees from performing an act in other than their capacity as officers or employees of the State if such acts may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the officers or employees. Despite the warning, the employee proceeded to subcontract with three contractors who had contracts with the bureau and to take part in work that was presumably subcontracted to his wife. In several of these cases, the employee was responsible for recruiting the contractor. Further, in most of the cases, the contractors paid the employee at least 50 percent of the amount they received for performing their assignments.

***Received Payments for Directly Assisting Contractors.*** The employee recruited his former mother-in-law in 1991 to contract with the bureau to provide proofreading and translation services on interagency assignments. She stated that the employee delivered translation assignments to her and retrieved them from her when she was done. According to the records of the employee's former mother-in-law, from January 1991 through March 1992, she paid the employee more than \$4,500 (57 percent) of the \$7,900 she received in translation assignments from the bureau. In most instances, the employee received half of the contract amounts that were paid to his former mother-in-law by the State. However, in one instance, the employee received the full contract amount of \$276.20, and in another, he received \$1,496.50 (75 percent) of a contract totaling \$1,993. All these payments were for work he performed after he had been warned by the department that such work was improper.

The employee also subcontracted in 1991 to proofread translations for his former wife, who was a Spanish-language contractor with the bureau. Although we were unable to determine how much the contractor received for the assignments, she paid the employee approximately \$2,400. Again, the employee accepted this work and payment after he had been warned that it was improper to do so.

Further, the employee subcontracted with a third Spanish-language contractor to assist her with proofreading, computer input, and layout of her translation assignment. According to

the third contractor, the employee approached her at the end of 1992, saying that he wanted to recommend her for a contract to translate in Spanish an assignment from another state agency. The contractor subsequently received the translation assignment from a bureau manager and then subcontracted with the employee for his services. In March 1993, the contractor paid the employee \$3,150 (50 percent) of the \$6,300 she received for this assignment. The employee indicated on his invoice that he provided consultation, direction, proofreading, and computer layout services to the contractor; again, he did this after having been warned that such activity was improper.


***Received Payments From Two Contractors Through His Spouse.*** In addition to improperly contracting with other state agencies and subcontracting with department contractors, the employee further violated prohibitions against conflicts of interest by performing work and receiving payments for work that his current wife obtained under subcontract with two other bureau contractors. Both of these contractors paid the employee a substantial portion of the amount they received for the work. As stated earlier, state law prohibits employees from engaging in any activity in which they have a financial interest if that activity is funded by a state department through a contract.

According to the employee, in 1988, he hired Contractor A as a contractor to translate departmental work because of a shortage of bureau staff. Further, according to Contractor A, in early 1992, she again began contracting with the bureau, this time to provide translation services in Spanish on the bureau's interagency and courtesy translation assignments. As a matter of practice, the employee delivered assignments to and picked up completed assignments from Contractor A's home.

—◆—  
*Contractor A paid the  
employee, not his  
spouse.*  
—◆—

Contractor A, the employee, and the employee's wife all claimed that the contractor subcontracted some of the work on bureau assignments to the employee's wife. However, for a number of reasons, we believe that the employee, rather than his wife, performed most if not all of the services provided. Specifically, in all but one instance, Contractor A paid the employee instead of his wife for services that the contractor said she received from the employee's wife. According to subpoenaed bank records, between February 1992 and November 1994, Contractor A wrote 46 checks totaling \$36,790 to the employee and 1 check for \$326 to his wife, for a total of approximately \$37,116. In addition, the contractor endorsed 7 checks totaling approximately \$3,100 that were


issued to her by the State to the employee, who then deposited them into his bank accounts.<sup>2</sup> Both Contractor A and the employee stated that it was more convenient for the contractor to write the checks in the employee's name. However, we did not find this explanation credible.

  
*The employee did the work, not his spouse.*

In addition, we found notes from Contractor A to the employee on an edit copy of one of the contractor's assignments that indicated that the format had been completed by the employee, not his wife. The notes also made specific suggestions to the employee to modify the format. Further, the employee stored more than 226 files related to Contractor A's translation assignments on his state computer.

We also found evidence that the employee's spouse was not capable of performing all the work purportedly subcontracted to her. For example, according to the employee's wife, the employee closely supervised her in completing her assignments because she was not very proficient in using the computer to format Contractor A's translations.

In addition, we do not believe that the employee's wife was qualified to perform translations. She admitted that her husband helped her on many of the translation assignments she performed under subcontract with Contractor A. Further, both the employee and his wife admitted under oath that she was not qualified to perform translations when she performed them. In fact, on July 14, 1995, when questioned why she did not contract directly with the bureau to provide translation services, the employee's wife testified that she was not a professional translator.

  
*Contractor A almost always paid the employee at least half of the amount she received.*



Because we do not know how much Contractor A received for courtesy assignments, we do not know exactly what proportion of the total amount that she received that she paid to the employee. However, it appears that Contractor A frequently paid the employee at least 75 percent of the translation fees that she received. According to records provided by Contractor A, she paid the employee at least 75 percent of the amount that she was to receive on 120 (57 percent) of 210 assignments. Further, the contractor paid the employee less than 50 percent of the amount that she was to receive on only 6 (3 percent) of the 210 assignments. According to Contractor A, she compensated the employee's wife from 50 to 80 percent of the

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<sup>2</sup> Although Contractor A claimed that she made payments in cash for services provided by the employee's wife, we were unable to determine the amount of cash that the employee or his wife received from the contractor.





contract amount, depending on the complexity of the assignments.

  
*Contractor A paid the employee to do work that the bureau paid someone else to do.*  


In addition, we found some indication that Contractor A was providing work to the employee or employee's spouse unnecessarily. Specifically, according to Contractor A, she subcontracted with the employee's spouse because she did not have a computer and printer at home. However, the contractor subsequently obtained a computer and printer. Contractor A claimed that she continued to retain the services of the employee's wife as a proofreader for her own personal benefit to ensure that her translations were accurate. However, we do not believe that this explanation is credible. It was the bureau's practice to pay another contractor to proofread a contractor's translations. If in fact Contractor A was paying part of her fees to the employee or his spouse for proofreading, the bureau was unnecessarily paying twice for the same services. Moreover, we question why Contractor A would be willing to pay the employee part of her fees unnecessarily.

Another one of the bureau's contractors made payments totaling approximately \$1,900 to the employee. As with Contractor A, Contractor B, the employee, and the employee's wife all claimed that Contractor B subcontracted with the employee's wife to perform some of the work on the assignments she received. We did not find any evidence on the employee's state computer that he performed work on Contractor B's assignments. However, Contractor B stated that she had no contact with anyone at the bureau except the employee. According to the contractor, the employee delivered translation assignments to her and retrieved them from her when she was done. Further, although Contractor B indicated that the employee's wife translated most of the assignments she received and that she (the contractor) only proofread and reviewed the final version of the employee's wife's translations, as stated earlier, the employee's wife was unqualified to perform translations.

According to invoices from the employee's wife to Contractor B, the employee's wife charged the contractor \$1,337.62 for 11 translation assignments from December 1992 through August 1993. This represents 75 percent of the \$1,783.50 that Contractor B received from the bureau for the 11 assignments.



  
*Contractor B paid the employee, not his spouse.*  


Although the invoices show that the employee's wife charged Contractor B only \$1,337.62, we found that the contractor paid the employee approximately \$1,900. Contractor B wrote a check to the employee for \$88, and after that, she endorsed checks that she received from the State totaling approximately \$1,800 to the employee, who, in turn, deposited them into his

bank accounts. According to the employee, Contractor B endorsed the state checks over to him because she did not like going to the bank. Both the employee and Contractor B indicated that the employee returned to Contractor B her share of the payments. We were able to confirm that the employee wrote two personal checks to Contractor B—one in January 1993 and the other in September 1993—totaling approximately \$210. However, we were unable to determine if the employee reimbursed Contractor B the remaining, unbilled \$340 in some other way.

### **The Same Employee Misused State Resources for Personal Gain**

State law prohibits state employees from using state time, facilities, equipment, or supplies for private gain or advantage. The law also provides for substantial penalties against employees who do so.

  
*The employee used state resources to engage in the improper contracting activities.*  


However, the same employee used state time and equipment to perform work his wife subcontracted to perform. Specifically, the employee stored at least 226 files related to Contractor A's translation assignments on his state computer.<sup>3</sup> Of these 226 files, 148 files related to assignments on which the employee's wife supposedly worked under a subcontract with Contractor A and for which the employee was paid. Of the 148 files, we found that the employee used his state computer to work on 82 of the files during his office hours and on 66 during his off-hours.<sup>4</sup> These instances represent only the most recent time that the employee made a change to the individual files. We could not determine exactly how many times the employee worked on the files using his state computer or how long he spent working on each file. We noted, however, the employee sometimes worked on several files related to a specific assignment. For example, the employee worked on 8 different files related to one assignment at 8:35 a.m., 8:41 a.m., 9:04 a.m., 9:09 a.m., 9:18 a.m., 10:35 a.m., 10:43 a.m., and 10:51 a.m. on a Tuesday in 1994. In addition, the employee worked on 10 other files related to this assignment on state time and 11 other files during off-hours on other days. The employee's wife billed Contractor A for \$1,502 (75 percent) of the \$2,003 total contract amount for this assignment.

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<sup>3</sup> These were files that were still on the employee's computer when we copied them in January 1995. We could not determine whether any files related to Contractor A or others were deleted by the employee before January 1995.

<sup>4</sup> We could find no evidence that the employee or his wife received any compensation for the remaining 78 files related to Contractor A's work.

In addition, the employee sometimes used the state scanner and printer at his office to scan graphics for work his spouse supposedly performed under subcontract with Contractor A. Although the employee indicated that it was a practice of the bureau to allow contractors to print their final translations in the office, other contractors went to the bureau's office themselves to print their final translations. Clearly, the employee either was providing Contractor A special consideration or was receiving compensation by printing her translations for her.



We also found that the employee used state time and equipment to perform work on courtesy jobs for other state agencies and private entities. For example, in June 1994, on state time and using his state computer, the employee worked on a file that was related to a project for which the Franchise Tax Board paid the employee's wife \$352.

In addition, the employee worked on a file related to a project for the Department of Health Services on state time using his state computer. The employee received \$210 for his services on that project. In another instance, the employee worked on a document for a California Energy Commission project on state time using his state computer. The employee received \$42 for that project.

Finally, the employee worked on seven files related to a project for a private entity on his state computer. He worked on two of the files on state time and the remaining five files during off-hours. The employee received approximately \$1,200 from the private entity for that contract.

### **A Second Employee Also Violated Prohibitions Against Conflicts of Interest**

As stated earlier, conflict of interest provisions of the Public Contract Code prohibit state employees from engaging in any activities in which they have a financial interest and that are funded by a state agency through a contract. In 1993 and 1994, the bureau contracted with and paid a second employee's wife more than \$7,900 for translation work. However, because she was not qualified to perform translations, we believe that the employee performed most, if not all, of the translations. As discussed later in this chapter, when we tested the employee's wife, we found that she was unable to successfully translate from English into Cambodian.

  
*The second employee did the work, not his spouse.*  


The contractor admitted that she would ask her husband, the employee, to help whenever she encountered difficulties in completing her translation assignments. The employee also

confirmed that he assisted his wife by completing her work, "whether it be one-third, one-half, or three-quarters of the translation." In addition, the contractor had no contact with any bureau employee except her husband, who delivered all her translation assignments to her.

Further, we noted that the employee's wife did not receive payments from the bureau until after her husband became a bureau employee. Specifically, the employee worked as a contractor to the bureau before he became an employee on October 15, 1993. As a contractor in 1993, the employee received approximately \$32,400 for providing translation services. This employee's wife received approximately \$300 for presumably providing translation services to the bureau as a contractor in November and December 1993 and \$7,600 in 1994. As a result, we believe that giving assignments to the wife was simply a way to hide that the employee was doing the work and, therefore, violating prohibitions against conflicts of interest.

### ***The Bureau Improperly Contracted for Translation Services***

◆  
The bureau gave translation assignments worth \$79,000 to family members and friends of bureau employees.

The bureau did not comply with state laws governing contracting for services. Specifically, rather than advertise to solicit competitive bids from qualified translators, a bureau manager often directed staff members to provide friends and family members of bureau employees with translation assignments. As a result, the bureau improperly paid approximately \$79,000 to employees' family members and friends. In addition, the bureau denied others the opportunity to compete for the State's business. Further, the State has no assurance that it received the best possible services at the lowest possible cost. In fact, the bureau sometimes awarded translation assignments to unqualified individuals. Finally, abuses such as those discussed earlier were allowed to occur.

State laws and policies that govern contracts for services are designed to encourage competition for public contracts. They are also designed to aid public officials in the efficient and, to the maximum extent possible, uniform administration of public contracting for services.

In addition, state law 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 that a lack of such controls can result in fraud and errors. The law also requires all levels of management of state agencies to be involved in assessing and strengthening the systems of internal accounting and

administrative control to minimize fraud, errors, abuse, and waste of government funds.

### **The Bureau Failed to Properly Recruit and Select Contractors**

Contrary to state law, the bureau failed to properly recruit and select contractors to provide translation services. Specifically, the bureau did not advertise and did not solicit competing bids for available translation work. Instead, the bureau generally selected specific contractors to provide translation services through referrals from bureau employees.<sup>5</sup>

#### *The Bureau Gave Work to Family Members and Friends*

Rather than comply with the State's competitive contracting requirements, a bureau manager often directed his staff members to provide translation assignments to friends and family members. As a result, most of the contractors receiving work from the bureau were friends or family members of bureau employees.

For example, a friend of one bureau employee became the bureau's primary contractor to perform translations in Spanish. In addition, this same employee's former mother-in-law, former wife, and current wife obtained translation work from the bureau. Similarly, another employee's wife received translation assignments in Cambodian, and his friend received proofreading assignments. A third employee's husband, daughter, and friend received translation and proofreading assignments in Hmong and Lao. A fourth employee's husband received Chinese translation and proofreading assignments. A fifth employee's children received Vietnamese translation, proofreading, and computer input assignments. In 1994 alone, friends and family members of bureau employees received assignments worth approximately \$79,000 from the bureau.

Because the bureau did not advertise translation work, it denied others the opportunity to compete for the State's business. Further, as demonstrated below, the State has no assurance that it received the best possible services at the lowest possible price. Moreover, by ignoring the competitive process and allowing staff members to assign work to friends and family members, abuses such as those discussed earlier were allowed to occur.

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<sup>5</sup> The "contracts" that the bureau entered into with these individuals were not the standard contracts used by state agencies. However, there were written agreements between the bureau and the individuals receiving the assignments.

*The Bureau Sometimes Used Unqualified Contractors*

As a result of ignoring the State's requirements relating to contracting for services, the bureau sometimes contracted with individuals who were not qualified to perform the work. According to the manager, it was difficult to find high-quality contractors to provide translation services, especially Spanish-language contractors. Further, he added that it was practically impossible for the bureau to find high-quality contractors who met the criteria set by the bureau, including good knowledge of both spoken and written English, mastery of writing skills in the contractor's own language, and willingness to follow bureau standards and policies and to accept the bureau's payment rates and policies, among others.

However, because the bureau did not advertise for qualified translators, the manager cannot be certain that other individuals were not able and willing to meet the bureau's criteria. Further, even though the manager stated that he used these criteria as a basis of evaluating contractors, we found that many of the contractors we discuss in this report were not evaluated according to the above criteria before they were hired.

Moreover, we found that the bureau gave assignments to individuals who were not, in fact, qualified to do the work. For example, on pages 11 and 12, we discussed an employee who performed most, if not all, of the work his wife obtained under contract with the bureau. The bureau assigned translation work worth more than \$7,900 to this employee's wife in 1993 and 1994 even though she was not qualified to do translations. To assess the wife's ability to perform translations, we asked her to translate from English into Cambodian a passage taken from one of the state auditor's reports. However, the employee's wife was able to translate very little of the passage.

Passage From State Auditor's Report	Words the Spouse Could Translate
<p>We attempted to review 31 consultant contracts entered into by the Conservation and Liquidation Division (division) during 1991, 1992, and 1993. We selected for review all contracts that resulted in payments to the consultant of more than \$100,000 in one year. These contracts were for professional services, such as management consulting, investment advice, and assistance in managing the day-to-day operations of conserved insurers. They also included agreements with law firms for assistance in handling the conservation and liquidation of failed insurers. In four instances, the division entered into oral, rather than written, contracts with the consultants, although the division paid \$1.4 million to these contractors over the three-year period. Two of these four contracts were for legal services, one of the contracts was for tax assistance from a public accounting firm, and the fourth contract was for the services of a consultant to manage the day-to-day operations of one of the conserved insurers. The contract for tax assistance was a \$100,000 verbal extension of an existing contract. In addition, the contract for services of a consultant to manage the day-to-day operations of a conserved insurer was approved by the court after the contract had been awarded even though the contract was never put into writing.</p>	<p>We 31  entered into by</p> <p>We all  in payments more than  \$100,000 per year. These for  such as</p> <p>day-to-day  They also included</p> <p>In four  written,  with three</p> <p>year period.  for , one of</p> <p>of day-to-day the services  \$100,000</p> <p>day-to</p>

The contractor stated that she was neither interviewed nor evaluated by any bureau employee to determine her translation skills before she was hired as a contractor.

***Conclusion***

Two employees of the department violated the State's conflict of interest and incompatible activities laws. The first employee improperly contracted with other state agencies and received payments from other individuals who were doing business with the department. This employee received approximately \$55,200 for these improper activities. Also, both this employee and his supervisor misused the prestige of the State. In addition, the first employee used state time and equipment to perform work he obtained through the improper contracting practices. Further, a second employee improperly performed most, if not all, of the translation work his wife obtained under contract with the bureau. As a result, he and his wife improperly received more than \$7,900. Finally, the bureau did not comply with state laws requiring competitive contracting practices. As a

result, the bureau improperly paid employees' family members and friends approximately \$79,000. In addition, the bureau denied others the opportunity to compete for the State's business. Also, the State has no assurance that it received the best possible services at the lowest possible cost. For example, the bureau sometimes gave translation assignments to unqualified individuals. Further, abuses such as those mentioned above were allowed to occur.

### ***Agency Response***

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During the course of our investigation, the department took actions to correct some of the problems discussed in this report. Specifically, the department dismissed the first employee and demoted the manager to a nonsupervisory position. The department also issued a letter of reprimand to the second employee who violated conflict of interest provisions. In addition, in March 1995, the department conducted its own review of the bureau's processes and practices. As a result of the department's review, the department made significant changes in the way the bureau operates and is continuing to make improvements in the bureau's procedures. Specifically, the department terminated all interagency agreements with other state agencies for the provision of translation services. Further, the department is developing a comprehensive statewide pool and regional pools of translators to ensure an equitable distribution of work to all qualified contractors. Finally, the department has trained bureau staff on incompatible activities and conflict of interest laws, regulations, and policies.



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# Chapter 2

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## ***22nd District Agricultural Association: Misuse of State Funds and Improper Hiring Practices***

### ***Allegation I940135***


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The directors and management of the 22nd District Agricultural Association (district) improperly spent a significant amount of district funds on food and alcoholic beverages at the district's annual fairs and live horse race meets. In addition, the district improperly hired several district employees through contracts rather than through the State's civil service system.

### ***Results of Investigation***

We investigated and substantiated the complaint. Specifically, the district's directors and management staff members improperly used district funds for meals and alcoholic beverages. For example, the district's directors and managers improperly spent more than \$15,800 on alcoholic beverages during the district's 1994 and 1995 annual fairs. In addition, although the district billed directors for some of the costs related to their personal entertainment, it has not billed them for all of the costs. As a result, the State improperly paid at least \$3,305 for nine directors' personal entertainment at the 1994 and 1995 annual fairs. Further, district management staff members improperly spent more than \$7,600 on food and nonalcoholic beverages for district employees during the 1994 and 1995 annual fairs.


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*District directors and management staff members misused state funds for food and alcoholic beverages.*

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Furthermore, the district's directors and managers made questionable expenditures of approximately \$33,000 on food, nonalcoholic beverages, and costs related to the directors' dining room during the 1994 and 1995 annual fairs. These costs are questionable because there was no record of who was being entertained and for what purpose. Further, we believe that the district unnecessarily pays for staff members to work in the directors' dining room.

Moreover, the district's directors and management staff members improperly spent approximately \$4,000 on food and

beverages during the district's 1994 live horse race meet. Finally, the district violated state laws and policies by circumventing the State's civil service appointment process by contracting for the services of several employees with organizations affiliated with the district.

### ***Scope and Methodology***

To investigate the complaint, we interviewed the former president of the district's board of directors, the district's general manager and deputy general manager, current and former employees of the district, and employees of the California Department of Food and Agriculture (department). We also reviewed the most recent audit reports on the district prepared by the department. Finally, we reviewed accounting records, minutes of the directors' meetings, personnel records, and other related documents at the district and department offices.

### ***Background***

The district, also known as the Del Mar Fair, is state-supported. The district conducts an annual summer fair, operates an off-track horse race betting facility, and rents the fairground facilities for various nonfair uses in Del Mar, California. The district's directors, who are appointed by the governor, are responsible for the control and management of the district. The directors appoint a general manager, who is the executive officer of the district, to carry out the official actions of the directors and manage the operations of the district.

The department has regulatory authority and responsibility for ensuring the accountability of fairs, including the fairs' expenditure of public funds.<sup>6</sup> The department delegates this authority and assigns these responsibilities to its Division of Fairs and Expositions. In California's system of state-supported fairs, each fair is responsible and accountable for managing its own operations in compliance with state laws and regulations, subject to review by the appropriate government authorities.

State law specifies that a district agricultural association fair may expend funds for the promotional and public relations purposes of the fair. The district has a dining facility at the fairgrounds specifically designated for directors and management staff for dining purposes. According to the district's general manager, the primary purpose of this dining room, referred to as the

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<sup>6</sup> For a more complete description of the laws and regulations cited in this chapter, see Appendix B.

directors' dining room, is to provide the district's directors and management staff an opportunity to promote the activities and facilities of the district fairgrounds and to educate the community on the mission of the district. The general manager stated that all district directors, designated management staff members, and their guests are encouraged to attend the directors' dining room during the district's annual fair. He further stated that the district pays the overhead costs associated with the operation of the directors' dining room and the direct meal expenses of directors, management staff members, and their guests as long as the expenses are appropriate and of promotional or educational benefit to the district.

According to the department's guidelines, funds for promotional purposes should be used to contribute to the progress or growth of a district agricultural association. Some examples of legitimate promotional expenses for district agricultural associations provided by the department include those for hats, shirts, jackets, posters, VIP functions, and publicity luncheons. The department also stated that funds for public relations purposes should be used to promote a favorable relationship with the public. Some examples of legitimate public relations expenses for district agricultural associations include those for dues and related activities for Rotary and other service clubs, Chamber of Commerce functions, press functions, awards and recognition functions, and volunteer programs.

However, as the department's policy manual for district fairs states, "The public is sensitive to how public funds are spent. Fairs' actions to earn and retain the confidence of the public are crucial to supporting the ability of fair industry representatives to convince legislators and the governor's financial advisors that allocating state money to fairs makes sense. Every fair must consider how its actions and decisions would affect public trust . . . ."

### ***The District Misused Funds for Meals and Beverages***

Although the district has statutory authority to expend funds for promotional and public relations purposes, the legislation does not define what constitutes an appropriate use of funds for this purpose. However, the department provides guidelines to all district agricultural associations that prohibit using state funds for alcoholic beverages. In addition, the California Constitution prohibits gifts of public funds. In determining whether an appropriation of public funds is to be considered a gift, the primary question is whether funds are to be used for public or private purpose. State law also prohibits a state employee from

using the prestige or influence of the State for the private gain of the employee or of another. Consequently, state funds should not be spent for personal purposes. Further, state regulations specifically prohibit state employees from claiming meal expenses where business is incidental to the meal or the attendance of the state employee is primarily for public or community relations. In addition, state regulations prohibit payment of state employees' meal expenses that are incurred within 25 miles of the employees' headquarters.

Nevertheless, the district used state funds for all these purposes. Table 2 shows the description and amount of expenditures, including those for promotion and public relations purposes, spent in the directors' dining room during the 1994 and 1995 annual fairs and at the 1994 live horse race meet.

**Table 2**  
***Expenditures at the Directors' Dining Room***  
***and at the Live Horse Race Meet***

<b>Description of Improper or Questionable Expenditures</b>	<b>1994 Annual Fair</b>	<b>1995 Annual Fair</b>	<b>1994 Live Horse Race Meet</b>	<b>Total</b>
Alcoholic beverages	\$11,528	\$ 4,306	\$1,385	\$17,219
Personal entertainment	Unknown	3,305	2,615	5,920
Food and nonalcoholic beverages for district staff	5,786	1,821	Not applicable	7,607
Questionable expenditures	18,866	14,133	Not applicable	32,999
Amount spent on food and nonalcoholic beverages for legitimate promotion and public relations purposes	659	1,775	Not applicable	2,434
<b>Total amount spent on food and beverages</b>	<b>\$36,839</b>	<b>\$25,340</b>	<b>\$4,000</b>	<b>\$66,179</b>

**The District Misused Funds for Meals and Beverages at Its Annual Fairs**

We found that the district's directors and managers improperly used district funds for alcoholic beverages, nonalcoholic beverages, and meals at the district's 1994 and 1995 annual fairs. Specifically, of the \$62,179 that the district's directors and managers spent on food and beverages for themselves and their guests during the annual fairs of those two years, we could

confirm that only \$2,434 (3.9 percent) was spent for legitimate promotion and public relations purposes.

*The District Improperly Used State Funds on Alcoholic Beverages*

Although the general manager stated that the directors' dining room would offer alcoholic beverages for cash for anyone in attendance at the dining room, we found that the district improperly spent more than \$15,800 in state funds on alcoholic beverages for the district's directors, managers and staff members, and guests during the 1994 and 1995 annual fairs. One director spent more than \$2,770 on alcoholic beverages at the 1994 annual fair.

Table 3 shows how much of the State's money each director, a manager, and other district staff members spent on alcoholic beverages in each of the two years.

**Table 3**  
***State Funds Improperly Spent on Alcoholic Beverages***

<b>Individual</b>	<b>1994 Annual Fair</b>	<b>1995 Annual Fair</b>	<b>Total</b>
Director A	\$ 350	\$ 387	\$ 737
Director B	2,776	768	3,544
Director C	1,031	304	1,335
Director D	858	77	935
Director E	322	57	379
Director F	853	27	880
Director G	513	107	620
Director H	1,047	394	1,441
Director I	1,772	31	1,803
Manager	205	940	1,145
Staff members	1,402	223	1,625
Public relations	399	991	1,390
<b>Total</b>	<b>\$11,528</b>	<b>\$4,306</b>	<b>\$15,834</b>



Although records showed that the district spent at least \$223 on alcoholic beverages for staff during the 1995 annual fair, the district claimed that no state funds were spent on alcoholic

beverages for directors or district staff during that event. The district also stated that it would be awkward to ask guests to pay for their own alcoholic beverages. However, the department prohibits the use of state funds for any alcoholic beverages. Further, although the directors may have reimbursed the district for some of the cost of alcoholic beverages consumed in the directors' dining room during the 1995 annual fair, the district has not recovered the full cost.

*The District Improperly Paid Personal Entertainment Expenses*

As stated above, the California Constitution prohibits gifts of public funds. The general manager stated that any expenses of invited guests that do not fall into the category of promotional and public relations purposes of the fair would be billed to the directors or management staff members who invited them. However, the district did not bill several of the directors for the full cost of their personal entertainment.

Although the district claimed that it had billed directors for a vast majority of their personal entertainment in 1994, it could provide no evidence that it had, in fact, done so. In addition, the district could not provide evidence of how much it had collected from directors for their personal entertainment during the 1994 annual fair. Because, as discussed in the next section, there were no records kept of who was being entertained or for what purpose, we could not determine how many of the expenses incurred during that year were for personal entertainment. However, after we began our review, the district billed the directors approximately \$6,400 for personal entertainment expenses at the 1995 annual fair. The district claimed that these bills represented the full cost to the district for this entertainment. Nevertheless, this amount did not cover the full cost of the personal entertainment provided at this event.

  
*The directors personally benefited when the State paid for their personal entertainment.*  


The district had a management agreement with a catering company that granted the company the right to use the district's equipment when it provided food and beverages at the district. At the 1995 annual fair, as in earlier years, the caterer charged the district for food and beverages served in the directors' dining room, plus a service charge and sales tax. In addition, the caterer charged the district for the staff members who worked in the directors' dining room. The caterer charged the district a discounted price of \$10 per meal, the actual cost of beverages, \$100 per cook, from \$63 to \$108 per bartender, and from \$36 to \$55 per server assigned to the directors' dining room, a percentage service charge, and sales tax.

According to documents provided by the district, the district billed the directors \$10 per meal, the actual cost of beverages, plus a 15 percent service charge and sales tax. However, the amounts charged to the directors did not include any of the cost of the staff members who were assigned to the dining room. Moreover, although the district must legally pay sales tax calculated on the total of all charges, including the service charges, the district charged the directors for sales tax calculated only on the cost of meals and beverages. As a result, for 1995, the State paid at least \$3,305 (34.1 percent) of the \$9,700 in directors' personal entertainment. The final cost to the State of the directors' personal entertainment may ultimately be more than \$3,305 because, when we completed our fieldwork, the district had only just billed the directors, and the directors had not yet paid the bills.<sup>7</sup>

The general manager stated that the district would pay the overhead costs associated with operating the directors' dining room. However, by doing so and not billing individuals for their proportional share of the actual cost of their personal entertainment, the district was making a gift of the State's money. Moreover, the directors were personally benefiting from the State's influence when they were allowed to pay the discounted cost of the meals.

For each director, Table 4 shows the actual cost of personal entertainment, the amount billed to the director, and the percent paid by the State. These amounts include alcoholic beverages discussed in an earlier section.

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<sup>7</sup> As of February 20, 1996, the district reported that it had received \$3,393 (53 percent) of the amounts it had billed to the directors. The district expects to receive an additional \$2,020 from directors for the 1995 annual fair.

**Table 4**

***Improper Payment of Personal Expenses  
1995 Annual Fair***

<b>Director</b>	<b>Actual Cost</b>	<b>Amount Billed</b>	<b>Percent Paid by State</b>
A	\$1,456	\$ 922	36.7%
B	4,081	2,805	31.3
C	1,102	770	30.1
D	276	198	28.3
E	520	323	37.9
F	92	65	29.4
G	566	385	32.0
H	1,470	846	42.5
I	138	82	40.6
<b>Total</b>	<b>\$9,701</b>	<b>\$6,396</b>	<b>34.1%</b>

*The District Improperly Spent Funds on Food and Nonalcoholic Beverages for State Employees and Made Other Questionable Expenditures*

A district manager and other district staff members improperly spent more than \$7,600 of state funds on food and nonalcoholic beverages for district staff members during the 1994 and 1995 annual fairs held adjacent to the employees' headquarters. On June 27, 1994, a district manager hosted dinner for 14 district staff members at a cost to the State of \$325. This amount does not include the \$176 of state money spent on 14 martinis and 10 glasses of chardonnay at this dinner.


The district encourages its management staff to invite other district employees to dinner in the directors' dining room during the annual fairs. In fact, our review of the records showed that the district set aside one table in the directors' dining room for district staff on every day of the 1994 annual fair and on most days of the 1995 annual fair. The district stated that its management employees often work in excess of ten hours per day and, as a result are entitled to an overtime meal allowance. In fact, under certain conditions state regulations permit overtime meal allowances of up to \$8. However, the district did not provide any evidence that any of the meals we address



were provided when employees were working overtime. Moreover, there was no record of which employees were eating at the directors' dining room. Further, as stated on page 22, the caterer in the directors' dining room charged the district \$10 per meal; the actual cost of beverages; hourly rates for cooks, bartenders, and servers; service charges; and tax. Clearly, each employee's meal in the directors' dining room cost the State substantially more than the \$8 allowed for overtime meals.

We do not believe that the use of public funds on food and beverages for the district's management and staff members constitutes spending for a public purpose. Therefore, these expenditures were inappropriate and a gift of public funds.

In addition, the district's directors and management staff members made questionable expenditures totaling approximately \$33,000 on food and nonalcoholic beverages during the 1994 and 1995 annual fairs. These expenditures are questionable because the district does not keep a record of the guests who were invited to the district's dining facility during the annual fair. As a result, we do not know if the directors and management staff members were actually conducting district business during the annual fairs. These amounts include the cost of hiring temporary staff members for the directors' dining room during each night of the fair to serve the directors, management staff members, and their guests. These temporary staff members included several servers, a bartender, and a cook.

  
*For the 1995 annual fair, the State paid \$2,195 for bartenders and \$7,445 for cooks and servers in the directors' dining room.*

As stated previously, the district's general manager stated that the district would pay the overhead costs associated with the directors' dining room. However, we question whether the district should pay all, if any, of the overhead costs for the directors' dining room during the annual fairs. Specifically, during the 1995 annual fair, which ran 20 days, personal entertainment accounted for more than 50 percent of the cost of food and beverages served on 4 days. On 9 other days, personal entertainment accounted for more than 25 percent of the cost of food and beverages served. For the 1995 annual fair, the State paid \$2,195 for bartenders and \$7,445 for cooks and servers in the directors' dining room. As shown on page 20, we could confirm that only \$1,775 was spent on legitimate promotion and public relations entertainment in the directors' dining room during the 1995 annual fair.

*The District Ignored Warnings Against Using District Funds for Meals and Alcoholic Beverages*

The department warned the district earlier that the district is prohibited from using state funds to purchase alcohol and to provide catering services for state employees. Nevertheless, the district ignored these warnings and, as discussed earlier and again later in this report, continued to make these improper expenditures.



Specifically, in April 1994, the department prepared an audit report of the district's operations covering the period from January 1992 through December 1993. Among other expenditures, the department found the district improperly expended thousands of dollars for alcoholic beverages. At one of the district facilities, the district spent approximately \$4,300 during nonfair time on liquor purchases, and at an event held in a local hotel, it spent approximately \$4,100 on alcohol.

In addition, the department found that the district made improper purchases of consumable items such as refreshments and meals for its employees during 1992 and 1993. In 1992, the district paid approximately \$250,000 for catering services. Examples of some of the catering expenses include \$4,981 for an employees' holiday party in 1991, \$16,141 for a farewell party and sports event sponsored by Budweiser, \$604 for a supervisors' meeting, \$3,922 for a Del Mar Fair post party, \$29,301 for the directors' dining room during the 1992 annual fair, \$1,033 for district employee parties, and \$2,323 for breakfasts and lunches at the directors' dining room. The department further found that alcohol purchases were prevalent during these events. For instance, \$1,520 of the \$3,922 for the Del Mar Fair post party and \$16,458 of the \$29,301 for the directors' dining room were spent on alcoholic beverages.

**The District Misused Funds for Meals and Alcoholic Beverages at the District's Live Horse Race Meet**

Besides spending district funds on food and beverages during the annual fair, the district's directors and management staff members also improperly spent district funds totaling approximately \$4,000 on food and beverages during the district's live horse race meet. Specifically, we found that the management staff members and all but three of the district's directors incurred expenses of approximately \$5,500 during the district's 1994 live horse race meet, which ran from July 27 to

September 14.<sup>8</sup> This amount includes approximately \$1,385 that was spent on alcoholic beverages, even though the district had been warned previously that it was improper to spend state funds on alcoholic beverages.

  
*The directors benefited from the State's prestige by personally receiving discounts.*  


According to the district's deputy general manager, when directors incurred charges in the directors' dining room that were not related to the district's business, the district would bill the directors for the charges at the reduced rate of 70 percent of the charges. The district's deputy general manager further stated the 70 percent rate reflects the cost of providing the food and beverages because the catering service company, in an agreement with the district, provides the district with approximately 30 percent of its profits annually.

Thus, according to district policy, the district should have collected approximately \$3,850 of the \$5,500 from the directors and management staff members for their share of the charges. Although the district provided invoices showing that it had billed the individuals for that amount, the district collected only approximately \$1,500 of the total due to the district. Further, as discussed in an earlier section, by billing the individuals at the reduced rate, the district once again used the prestige and influence of the State for the individuals' personal gain.

### ***The District Violated State Laws in Its Hiring Practices***

We found that the district violated state laws and policies in hiring several of its employees. Specifically, the district hired several district employees without going through the State's civil service appointment process and paid their salaries through agreements with organizations affiliated with the district.

State law requires that all persons who provide services to the State under conditions that the State Personal Board (board) determines constitute an employment relationship shall, unless exempted from civil service by the state constitution, be retained under an appropriate civil service appointment. In addition, the State's Employment Development Department and Department of Finance provide guidelines for determining whether an individual performing services for the State should be classified as an employee of the State. According to these guidelines, it is presumed that the individual to be engaged is an employee if any of the following apply: (1) the worker can quit or be terminated at any time without being legally obligated to

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<sup>8</sup> We did not review invoices for the 1995 live horse race meet because they were unavailable for review when we prepared this report.

complete the job; (2) a manager (or designated person) assigns, reviews, and supervises the individual's work; or (3) the worker cannot renegotiate the amount he or she is paid for services at any time he or she chooses.

In addition, the department's guidelines provide that contracts are to be used only in the following instances:

- Whenever a district agricultural association cannot or chooses not to perform the work (e.g., space and program selling, entertainment, rodeos, racing, publicity, paving, grandstand construction).
- When a district agricultural association rents (leases) its facilities.
- When a district agricultural association needs expert judging for its competitions and exhibits.

Further, the Internal Revenue Service (IRS) has guidelines to determine an individual's work status for federal tax purposes. If the IRS determines that a contractor is, in fact, an employee, the penalties assessed by the IRS on the offending state agency may be substantial.


However, the district paid for employees through contracts rather than identifying them as employees. Consequently, the district violated both federal and state guidelines on employee/employer relationships. In addition, by contracting with other entities for their employees' services, the district is circumventing the state civil service system. Because of this, the district denied others the opportunity to compete for work at the district and cannot ensure fairness in its hiring practices.

### **Administrator**

In May 1992, the district hired an individual through a contract with the Western Fairs Association for an administrator position at the district.<sup>9</sup> However, we believe this individual was functioning as an employee of the State and required an appointment to a civil service position.

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<sup>9</sup> The Western Fairs Association is a nonprofit trade association serving the fair industry, including the district, by providing information and other services to its members throughout the western United States and Canada.


  
*The administrator worked for the district for three years before he was hired through the civil service process.*

Specifically, the administrator acted as part of the district's management team and reported directly to the district deputy general manager. The district's deputy general manager directed and controlled the individual's performance of services, determined when the individual received his pay raise and the amount, and formally evaluated his performance.

The district planned to move toward appointing the individual as a civil servant during the first six months of his employment. However, it was not until three years later that the district eventually hired this individual as a civil service employee to perform the same function as he performed under contract (i.e., providing administrative support in areas including personnel, employee training, insurance, accounting, communications, masterplanning, capital improvements, health and safety, community relations, contract negotiations, and inter-governmental relations).

In March 1994, the department conducted an examination for an associate governmental program analyst position at the district. Seven individuals, including the individual working as the administrator, participated in the examination. Although the individual became eligible for a permanent appointment as an associate governmental program analyst as a result of successfully completing the examination, at that time the district did not have approval for such a position. Eventually, however, the district sought approval from the department to establish a new civil service position—associate governmental program analyst for administration—to cover the duties performed by the administrator. On May 1, 1995, the district appointed the individual to the newly established position and terminated its agreement with the Western Fairs Association.

### **Telephone Personnel**

  
*The district hired four telephone staff members through improper contracting.*

The district also contracts for the services of at least four telephone personnel when, in fact, these individuals are acting as employees of the district. In May 1992, the district entered into an agreement to reimburse a thoroughbred club for one of its employees, who performs services for the district and who was, in fact, previously on the district's payroll. Specifically, the district entered into an agreement to reimburse the thoroughbred club \$35,000 for telephone consulting services performed by a thoroughbred club employee. This individual serves as the manager of the district's telephone department and spends a considerable amount of time on the district's business.

The district also contracted with the thoroughbred club to reimburse the thoroughbred club for a portion of the wages and

fringe benefits of several other telephone staff members since 1991. For example, from October 1993 through November 1994, the district reimbursed the thoroughbred club more than \$41,500 for the wages and fringe benefits of three employees of the thoroughbred club. At least two of these employees were previously on the district's payroll.


We believe this arrangement to procure the telephone consulting services violated state laws pertaining to the hiring of individuals to provide services to the district. Specifically, we found that these individuals in effect are district employees because the district retains the right to direct and control them, including formally evaluating their job performance. In addition, the district reimbursed the thoroughbred club for time one employee spent on jury duty—a further indication that the district treats these individuals as employees, not contractors.

According to the deputy general manager, the reason for the agreement with the thoroughbred club was the district's difficulty in locating appropriate civil service classifications for the staff. He stated that there is no appropriate state civil service classification for the manager of the telephone unit with a remuneration in the range of \$40,000. However, we found that the State has various civil service classifications for a telecommunication manager, one of which might be appropriate for the position of manager of the district's telephone unit. The deputy general manager further stated that it is more economical for the district to share the costs of these staff members with the thoroughbred club.

### **Production Personnel**

The district also entered into an agreement with the California Authority of Racing Fairs (CARF) to reimburse CARF for the wages of four employees whose work is mainly to operate, maintain, and repair equipment at the district's satellite wagering facility. CARF is a joint power authority that provides legislative advocacy, operational support, and professional development services for its members, all of which are fairs that operate horse racing or satellite wagering on horse racing. In June 1993, the district entered into an agreement with CARF to provide temporary employees to the district to support the technical systems operation in the district's satellite wagering facility. The district wanted CARF to temporarily hire four individuals, some of whom were the district's temporary employees, so that these individuals could provide technical services as CARF's employees under contract to the district.

According to the agreement between the district and CARF, the district's management would direct these individuals' job assignments and work schedules, and the individuals would report to the district's management. As compensation, the district would reimburse CARF for the cost of employing these individuals, including their wages, workers compensation insurance, and other related costs, plus a 5 percent management fee. From July to November 1994, the district reimbursed CARF more than \$47,500 for the services of the four CARF employees. In November 1994, the district hired one of the four CARF employees into a permanent civil service position. In October 1995, two other CARF employees entered into an employment agreement with the California Fair Services Authority (CFSA), a joint powers agency comprised of the department and a number of counties, for a one-year term, from October 1995 to October 1996. The CFSA, in turn, contracted their services to the district for the same one-year term. As compensation, the district would remit to CFSA more than \$81,800 for the total labor costs of the two employees, including their wages and benefits and a 5 percent processing fee to CFSA. The district is still under contract with CARF for the remaining CARF employee.

  
*The district has legitimately hired only one of the four employees who provide technical services in the satellite wagering facility.*

According to the deputy general manager, the district entered into such an arrangement with CARF because the State does not have any job classifications that are comparable to the duties performed by these technical employees. Nevertheless, we believe these agreements to procure the services of the four individuals violated state laws pertaining to the hiring of individuals to provide services to the district. These individuals are in effect district employees because the district directs and controls their job activities, including formally evaluating job performance. Therefore, these individuals were functioning as employees of the State and thus require appointments to civil service positions.

### **The District Ignored Warnings Against Violations of Personnel Laws and Rules**

The district's violation of state laws relating to the hiring of employees is not new to the district. The district had engaged in such improper practices in the past and was warned that such practices are against the law. Specifically, in March 1993, the department issued an audit report relating to the hiring of temporary employees at the district. The purpose of the department audit was to determine whether constitutional restrictions and state procedures were adhered to regarding the number of days temporary employees were permitted to work.

The department reviewed the district's records for temporary employees from January 1991 through November 1992.

The department found that the district did not comply with Article VII, Section 4(l), of the Constitution of the State of California, which limits the number of days worked by temporary employees. Specifically, the district allowed many temporary employees to work in excess of 119 days, the limit set by the State's Constitution. In addition, the department stated that it appeared that the district allowed some temporary employees to contract with the district after those employees exceeded the 119-day limitation. The department emphasized that the district was prohibited from contracting with temporary employees. In addition, the department explained that if the IRS determines that a contractor is, in fact, an employee, the IRS will assess substantial penalties. Finally, the department stated that the district was forewarned about its violations of the constitutional restrictions regarding temporary employees in the 1991 calendar year, but the district had made no significant improvements. The district has continued to circumvent the State's civil service system.

### *Conclusion*

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Even though the district had been warned that it should not do so, the district's directors and management staff members improperly used district funds for meals and alcoholic beverages. Specifically, the district's directors and management improperly spent more than \$15,800 on alcoholic beverages during the district's 1994 and 1995 annual fairs. In addition, although the district billed directors for some of the costs related to their personal entertainment, it has not billed them for all the costs. As a result, the State has improperly paid at least \$3,305 for nine directors' personal entertainment. Further, district management staff members improperly spent more than \$7,600 on food and nonalcoholic beverages for district employees during the 1994 and 1995 annual fairs. Furthermore, the district's directors and managers made questionable expenditures of more than \$33,000 on food, nonalcoholic beverages, and costs related to the directors' dining room during the 1994 and 1995 annual fairs. These costs are questionable because there was no record of who was being entertained and for what purpose. Further, we believe that the district unnecessarily pays for staff members to work in the director's dining room. Moreover, the district's directors and management staff members also improperly spent approximately \$4,000 on food and beverages during the district's 1994 live horse race meet. Finally, the district violated state laws and



policies by circumventing the State's civil service appointment process by contracting for the services of several employees with organizations affiliated with the district.

***Agency Response***

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Because the department has responsibility for ensuring the accountability of district agricultural associations, we sent our report to the department for response. However, the department forwarded our report to the district for response because, according to the department, the district agricultural associations are considered separate hiring authorities.

The district has not completed its corrective action. However, it reported that it has taken the following measures to address our concerns:

- The caterer will bill directors directly for their entertainment expenses. To be reimbursed for entertainment related to the district's promotion and public relations, directors will submit reimbursement claims to the district.
- The district will develop a system to properly document overtime meals.
- The district is reviewing its contract for telephone personnel with the Department of Personnel Administration to determine whether it must terminate the agreement and establish appropriate civil service classifications.
- The district has terminated its agreement with the CARF for one of the production staff members and is attempting to identify appropriate civil service classifications for the other two production personnel.

The department stated that its audit office will review the district's corrective action as part of its April 1996 financial and compliance audit of the district.

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# Chapter 3

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## ***California State University, Los Angeles: Improper Deposits of State Funds, Fee Overcharges, and Imprudent Management***

### ***Allegation I930249***

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Continuing Education, a division of the California State University, Los Angeles (CSLA), improperly deposited state funds into a nonstate account maintained by an auxiliary organization. In addition, Continuing Education, through its American Culture and Language Program (ACLP), overcharged students for application fees, refund fees, late fees, and exam fees. Furthermore, Continuing Education mismanaged funds by failing to follow prudent management practices and failing to follow established travel policies and procedures.

### ***Results of Investigation***

We conducted an investigation in cooperation with the CSLA's internal auditor and substantiated the allegations. Specifically, during fiscal years 1993-94 and 1994-95, Continuing Education improperly deposited \$3,484,783 in state funds into a nonstate auxiliary organization account maintained by the University Auxiliary Services (UAS).<sup>10</sup> As a result, Continuing Education paid the UAS more than \$261,358 in fees to administer the funds—\$121,967 more than it would have had to pay the CSLA to administer the same funds. In addition, Continuing Education has had to spend an estimated \$30,000 per year for instructors' benefits that it would not have had to pay otherwise.

Moreover, Continuing Education overcharged 3,414 ACLP students a total of at least \$152,280 for application fees from the spring 1991 quarter through the spring 1994 quarter. In addition, Continuing Education overcharged 46 ACLP students a total of \$230 for exam fees in February 1994. Although

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<sup>10</sup> Auxiliary organizations are nonstate business entities organized to support the campus on which they reside.

Continuing Education also overcharged some of these students \$75 each for late fees, we did not determine the total amount overcharged because it began charging this additional cost only recently and was taking steps to correct the problem. Further, although Continuing Education overcharged students \$5 per refund, we did not determine the total amount overcharged for refund fees because of the comparatively low dollar amount.

Furthermore, because of poor planning and administrative decisions, Continuing Education and the English department spent over \$21,100 (or four times) more than they took in for a five-day, 1993 summer writing program. Finally, Continuing Education and the UAS had inadequate procedures covering out-of-state and out-of-country travel, failed to follow existing procedures, and paid for questionable trips made by CSLA employees.

### ***Scope and Methodology***

To conduct our investigation, we reviewed work performed by the CSLA's internal auditor, payroll records, records of revenues, travel expense claims, and applicable policies and procedures. In addition, we interviewed CSLA and UAS employees.

### ***Background***

Continuing Education at the CSLA administers a variety of programs, courses, workshops, seminars, and conferences, including the ACLP, which provides intensive English instruction to international students. Continuing Education also administers professional development programs for working professionals. These programs are designed to serve the educational needs of businesses, industry, hospitals, schools, and government agencies.

### ***Continuing Education Improperly Deposited State Funds***

State law requires revenues from extension programs, special sessions, and other self-supporting instructional programs to be deposited in the State Treasury and credited to the Continuing Education Revenue Fund (CERF).<sup>11</sup> Moreover, the California State University (CSU) Chancellor's Executive Order

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<sup>11</sup> More detailed descriptions of state laws, regulations, and policies governing Continuing Education programs, auxiliary organizations, and travel expenses are included in Appendix B.

Number 255 states that revenues derived from noncredit Continuing Education programs and activities that award credit shall be deposited in the CERF. However, during fiscal years 1993-94 and 1994-95, Continuing Education improperly deposited \$3,484,783 in funds that should have been deposited into the CERF into a nonstate account.

Before January 1, 1991, Continuing Education deposited the ACLP revenues into the CERF. However, effective on January 1, 1991, the CSLA's vice president of Academic Affairs directed Continuing Education to transfer administration of the ACLP revenues to the UAS, a nonstate, auxiliary organization account, thereby removing the revenues from the CERF. Continuing Education also deposits revenues from its professional development programs into the UAS accounts.

Because the vice president of Academic Affairs was no longer employed by the CSLA, we asked representatives of both the CSLA and the UAS why the CSLA transferred administration of the funds to the UAS. Although various employees provided unofficial explanations for the transfer of administration, the CSLA's official response was that the transfer involved shifting financial liability and responsibility to the UAS. The response failed to explain why the CSLA transferred administration of the funds.


According to the CSLA and the CSU Chancellor's Office, because the UAS, not Continuing Education, sponsors and provides the ACLP and professional development programs, it is proper to deposit revenues generated by these programs into a nonstate auxiliary organization account instead of the CERF. We disagree.

  
*The university claims that UAS provides the ACLP and professional development programs.*  



The 1991-92 ACLP annual report states that the ACLP is offered through the Office of Continuing Education. Further, Continuing Education's catalog of courses states that Continuing Education, not the UAS, offers professional development programs. In addition, many professional development programs award the participants credit. As previously mentioned, revenues derived from Continuing Education programs that award credit must be deposited in the CERF.

Further, state regulations governing the CSU's auxiliary organizations require a written agreement between the State and the auxiliary organization if an auxiliary organization is to provide conferences, institutes, or instructionally related programs or activities. In addition, the same regulations require the agreement to specify the function the auxiliary is to manage,

the necessity for administration of the function by the auxiliary instead of by the campus, full reimbursement to the State for services performed by state employees under the direction of the auxiliary, and a method of determining to what extent the auxiliary is liable for indirect costs.

  
*Legal agreement between the CSLA and UAS does not address these programs as required.*

The CSLA does have an operating agreement with the UAS; however, that agreement does not state that the UAS will administer the ACLP and professional development programs. We asked the university whether there was specific contractual language reflecting the right or duty of the UAS to offer and support the ACLP and professional development programs, as required by the California Code of Regulations. The university's counsel stated that it would be unusual for such a provision to be included in either the formal agreement between the university and its auxiliary or a separate side agreement. He further stated that auxiliaries perform many functions that are not spelled out in formal agreements and that the absence of an agreement is not particularly relevant. However, attributable in part to the absence of a detailed agreement, the university and the CSLA were unable to provide us with convincing evidence that the UAS sponsors and provides the ACLP and professional development programs.

  
*UAS does not pay all program expenses.*

Moreover, to fully support the ACLP and professional development programs, the UAS would have to pay all the expenses associated with the programs, including salaries and wages of the instructors and the CSLA and UAS employees who work on the programs, printing costs for the catalog of courses, and rent for class facilities and office space. The UAS does pay some of these expenses. For example, the UAS directly pays the salaries for the ACLP and professional development program instructors and 14 employees who work in Continuing Education even though some of these employees work only part time on the ACLP or professional development programs. In addition, the UAS is supposed to reimburse the State for the gross salaries of the ACLP director and secretary. However, the UAS reimburses the State after the end of the fiscal year. As a result, the State loses interest during the year because it makes salary payments each month. Moreover, the UAS does not reimburse the State promptly. It did not reimburse the salary expenses for fiscal year 1993-94 salary expenses until August 22, 1994—53 days after the end of the fiscal year. Further, as of September 21, 1995—83 days after the end of fiscal year 1994-95—the UAS still had not submitted a reimbursement to the State for that fiscal year.

Furthermore, at least five Continuing Education employees work on the ACLP and professional development programs as well as

Continuing Education programs and are paid by the State, not the UAS. According to one university estimate, these state employees spend as much as 50 percent of their time performing work related to the ACLP and professional development programs.

In addition, the UAS does not pay a portion of the salary expense for other CSLA employees who may perform work on behalf of the UAS, the ACLP, or professional development programs. For example, although the CSLA's internal auditor conducted an investigation into allegations of fee overcharges by the ACLP, the UAS did not pay for those services. Further, the CSLA's receiving department personnel performed work on behalf of the UAS, the ACLP, and professional development programs without reimbursement from the UAS. Finally, Continuing Education, not the UAS, pays the salaries of two CSLA cashiers who process the ACLP and professional development programs cash receipts and transfer them to the UAS account. Clearly, the State is paying for numerous expenses associated with the ACLP and professional development programs. Therefore, the revenues from these programs should be deposited into the CERF.



#### ***Continuing Education Paid Unnecessary Costs***

Because Continuing Education does not deposit revenues from the ACLP and professional development programs into the CERF, the State and Continuing Education lose money. First, the CSLA accounting office charges 4 percent of revenues received to administer funds in the CERF. Because Continuing Education transfers the revenues to the UAS, the CSLA does not receive these fees. Second, because the UAS charges an administrative fee of 7.5 percent of revenues, during fiscal years 1993-94 and 1994-95, Continuing Education has paid the UAS more than \$261,358 to administer the funds—\$121,967 more than it would have had to pay if it had deposited the funds into the CERF. In addition, net revenues from the CERF are supposed to belong to a campus contingency reserve account used to fund local projects. A portion of this reserve, plus interest income earned on CERF monies, are to be transferred to the account used for systemwide operations and special projects. Because the ACLP and professional development revenues are not deposited into the CERF, less money accrues to the contingency reserve and systemwide operations accounts.

◆  
\$122,000 was spent  
unnecessarily.

◆  
According to the CSLA's internal auditor, other CSU campuses that have programs similar to the ACLP use auxiliary organizations to administer the funds. We did not determine

how much auxiliary organizations at other campuses may be charging to administer the funds in excess of the campuses' accounting offices.

  
*Other CSU campuses also  
may be depositing funds  
improperly.*  


In addition to increasing administrative fees, the decision to transfer administration of the ACLP to the UAS created additional payroll expenses. Continuing Education was exempt from paying Social Security taxes for the ACLP instructors. When these instructors became UAS employees, Continuing Education was required to reimburse the UAS for the instructors' Social Security taxes. Because documentation was lacking, we were unable to determine the exact amount of the additional payroll costs associated with transferring approximately 37 instructors to the UAS payroll. However, we estimate that the additional taxes amounted to more than \$30,000 per year.

Finally, for fiscal year 1994-95, the ACLP and professional development programs had a combined deficit of \$11,025. During that same fiscal year, Continuing Education unnecessarily paid more than \$54,906 to the UAS to administer the funds for those programs. If Continuing Education had properly deposited the money in the CERF, it could have used the fees paid to the UAS to offset the deficit in the ACLP and professional development programs and would have had a surplus for fiscal year 1994-95 of more than \$43,881.

### ***Continuing Education Charged Excess Student Fees***

The ACLP offered a class to prepare students for the Test of English as a Foreign Language (TOEFL). As discussed above, Continuing Education believes that the UAS sponsors the ACLP and that activities that fall within UAS can charge what the market will bear. However, the budget director of the CSU, Office of the Chancellor, stated that current policies are silent on the establishment of application fees, late fees, refund fees, and exam fees. Nevertheless, Executive Order Numbers 570 and 578 specify that only the campus president has the authority to establish, increase, and decrease fees.

The CSLA's internal auditor discovered that Continuing Education, through its ACLP, charged students more than the authorized amounts for application fees, late fees, refund fees, and exam fees. Table 5 shows the amounts that the campus president authorized and the amounts that the ACLP has charged the students.

**Table 5**  
**Fee Overcharges**

Type of Fee	Amount Authorized	Amount Charged	Amount Overcharged
Application	\$55	\$100	\$45
Late	25	100	75
Refund	5	10	5
TOEFL	25	30	5

For example, the director of the ACLP increased the application fee from \$75 to \$100 effective with the spring 1991 quarter without obtaining the campus president's approval. However, because some students had not received notification of this increase, the ACLP allowed them to pay the \$75 application fee. Therefore, the students paid either \$45 or \$20 more than the authorized amount of \$55. According to cash receipts provided by Continuing Education, the ACLP overcharged 3,414 students a total of at least \$152,280 for the spring 1991 through spring 1994 quarters.

ACLP overcharged students at least \$152,000 for application fees.

Furthermore, the ACLP began overcharging the late fees in the winter 1994 quarter and the refund fees in 1986. We did not determine the total amount the ACLP overcharged for the late fees because it began charging the additional \$75 only recently and was taking steps to correct the problem. We also did not determine the total amount overcharged for refund fees because of the comparatively low dollar amount.

Finally, when the ACLP began offering the TOEFL in February 1994, it added \$5 to the authorized fee of \$25 per student for "administrative costs," thereby overcharging 46 students a total of \$230. These fees, along with the authorized fees of \$1,150 paid by the 46 students, were collected in cash and kept in a locked cabinet in the ACLP office until the ACLP obtained a cashier's check made payable to CSLA. ACLP staff then gave a cashier's check for only \$1,150 to the University Testing Center, which administered the exam. The ACLP used \$4 of the \$230 that the students were overcharged to pay for the cashier's check and kept the remainder in the locked cabinet in the ACLP office. According to the director of the ACLP, it planned to spend the \$5 "administrative fee" on student activities, such as the end-of-




quarter party. However, at the recommendation of the CSLA internal auditor, the ACLP repaid the students the \$5 they were overcharged for the TOEFL.

***Continuing Education Imprudently Sponsored  
a Summer Program***

Because of poor planning and administrative decisions, Continuing Education and the CSLA English department spent over \$21,100 (or four times) more for one program than they took in. According to CSU, Office of the Chancellor, Executive Order Number 255, fees for Continuing Education programs shall be determined on the basis of estimated cost per person. In addition, managers should exercise prudence when assessing whether a given program is economically feasible. For example, managers of Continuing Education programs should assess whether there are sufficient numbers of students who will be willing to pay the cost of any specific course.

Continuing Education estimated that expenditures for the 1993 summer writing program, including administrative operating expenditures and faculty honoraria and travel costs, would be \$35,961. Based on the budgeted expenditures and estimated enrollment of 80 students, Continuing Education set the program fee at \$450 per person to generate revenues of \$36,000.

However, we believe Continuing Education was unrealistic in expecting 80 students to attend at that price. Only 29 students paid \$135 each to attend Continuing Education's 1992 summer writing program. The 1992 program was only two days long, but the five-day 1993 program cost \$90 per day, significantly more than the \$67.50 cost per day for the 1992 program.

  
*Although only 15  
students registered,  
Continuing Education  
did not modify or  
cancel the program.*

Further, we believe that Continuing Education should have monitored enrollment so that it could either modify the program to reduce costs or cancel the program if an insufficient number of students registered. Ultimately, Continuing Education paid less for the 1993 summer writing program than it originally estimated, but most of the reduction in cost was not as a result of action taken by Continuing Education. Table 6 shows the estimated and actual costs for the summer writing program.

**Table 6**  
**1993 Summer Writing Program**  
**Budgeted and Actual Costs**

Expense Category	Budgeted Costs	Actual Costs	Difference	Percent Difference
Instructional expenses	\$19,487	\$18,000	\$ 1,487	7.6%
Marketing	9,274	6,065	3,209	34.6
Administration	7,200	1,012	6,188	85.9
<b>Total</b>	<b>\$35,961</b>	<b>\$25,077</b>	<b>\$10,884</b>	<b>30.3%</b>

As illustrated in Table 6, although the actual cost of the program was 30 percent less than estimated, the largest portion of the reduction in costs occurred in administration. The cost for administration is a percentage of gross income generated by the program and is not, therefore, controllable by Continuing Education. In fact, the reason that the cost of this category was so much less than budgeted was that so few people attended the program.

We believe that Continuing Education should have canceled the 1993 summer writing program when it became clear that it would be unable to cover its costs. Only four students paid the full program fee of \$450 to attend the program. Ten other students attended the program, but were allowed to pay discount fees ranging from \$100 to \$350 each.<sup>12</sup> As a result, total revenues for the 1993 program, including a \$100 deposit from a student who withdrew, were only \$3,950, which, when offset by the actual costs of \$25,077, resulted in a loss of more than \$21,100.

Even though only 15 students registered for the program, Continuing Education did not consider canceling it because Continuing Education believes that the program contributes to the CSLA's goals and serves as a major marketing and recruitment tool. However, we believe that Continuing Education could have better served CSLA's goals and image.

For what it lost on the program, Continuing Education could have paid for 40 students to attend one quarter of graduate school full time.

<sup>12</sup> According to Continuing Education's director of Fiscal Operations, Continuing Education offered these discounts to encourage more students to enroll in the program. However, this strategy clearly had limited success.

For example, \$21,100 would have covered the registration fees for 40 graduate students to attend a quarter full time at CSLA.



***Continuing Education Did Not Follow  
Travel Policies and Procedures***

We reviewed out-of-state and out-of-country travel expense claims approved for payment by the Continuing Education department at CSLA. Continuing Education's travel expenses are paid from either its state account or its account with the UAS.

**Travel Paid From the State Account**

The CSLA's travel procedures require employees requesting travel to complete a travel request form and obtain proper approval. However, 18 of the 35 trips that we reviewed did not have evidence of prior approval.



Furthermore, CSU travel procedures require the officer approving a travel claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed. In addition, prudent practices require that the person assessing the necessity and reasonableness of expenses be someone other than the person incurring the expense. Nevertheless, in two instances, one employee, a "duly authorized campus officer," authorized and approved her own claim for travel expenses incurred on trips to Chicago and Hong Kong.

  
*Travel claims were filed  
up to 265 days after travel  
was completed.*  


Finally, CSU travel procedures state that expense claims should be submitted at least once a month, except that when the amount claimable for any month does not exceed \$10, the filing may be deferred for a reasonable period of time not to exceed 60 days. However, we found that 13 of the 35 travel expense claims that we reviewed had not been filed within one month after the completion of travel. These claims, which total more than \$8,100, were filed between 67 and 265 days after travel was completed, for an average filing date that was 133 days after the completion of travel. An employee who traveled to Greece from August 13 through 18, 1992, did not submit the travel expense claim for \$392 until May 10, 1993—265 days after the completion of travel.

### **Travel Paid From the UAS Account**

According to UAS instructions for completing general check requisition forms, "the disbursement must be approved by an authorized signer on the account. However, no one may authorize payment to him/herself." Furthermore, according to the CSU Chancellor's Policies/Procedures for Auxiliary Organizations, "auxiliary organizations that provide reimbursement for travel expenses must adopt and maintain a written policy for such reimbursements. . . . [In addition,] their travel reimbursement policies should generally parallel policies applicable to the CSU." Although the UAS does not have written travel policies, the director of Support Services at the UAS told us that if no receipts are attached to a travel claim for out-of-state and out-of-country travel, expenses are paid only up to the limits for meals and mileage established by the CSU.

  
*An employee approved  
her own first class travel  
to France.*  


However, the UAS and Continuing Education did not always adhere to these policies. For example, one employee authorized and approved her own travel advance of \$1,200 for a trip to attend a workshop in Archamps, France, from December 4 through December 10, 1992. Continuing Education reimbursed this employee's travel expenses through the UAS account. Moreover, Continuing Education paid for the employee to fly first class at a cost of \$6,580. The employee had a reservation to fly business class at a cost of \$3,800 but changed the reservation to first class. State regulations and the CSU internal procedures governing travel specify that claims for airline transportation shall be allowed at the lowest fare available. Claims for higher fares may be allowed if accompanied by a full explanation stating the facts constituting the official necessity. We were unable to locate an explanation for the upgraded travel.

### ***Conclusion***

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During fiscal years 1993-94 and 1994-95, Continuing Education at the CSLA improperly deposited over \$3,484,783 in state funds into a nonstate auxiliary organization account maintained by the UAS. As a result, Continuing Education paid the UAS over \$121,967 more than it would have had to pay the CSLA to administer the same funds. In addition, Continuing Education has had to spend an estimated \$30,000 per year for instructors' benefits that it would not have had to spend otherwise.

In addition, Continuing Education, through its ACLP, overcharged students for fees. Over 13 quarters, the ACLP overcharged 3,414 students a total of at least \$152,280 in application fees. In addition, the ACLP overcharged students \$5 each for refund fees, \$5 each for TOEFL fees, and \$75 each for late fees. Further, because of poor planning and administrative decisions, Continuing Education and the English department spent more than four times as much as was taken in for the five-day 1993 summer writing program. Finally, Continuing Education and the UAS had inadequate procedures covering out-of-state and out-of-country travel, failed to follow existing procedures, and paid for questionable trips made by CSLA employees.

### ***Agency Response***

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CSLA disagrees with our conclusion that revenues from the ACLP should be deposited into the CERF. Although the CSLA agrees that the UAS does not entirely pay for the ACLP, it claims that the UAS, not the State provides the program. In addition, the CSLA argues that the ACLP is not an instructional program because there is no specific instructional outcome such as course credit or leading to a degree. Instead, the CSLA claims that the ACLP is an instructionally related program, intended "to prepare participants to succeed in a university setting by understanding the English language and the American culture, and to pass the TOEFL examination." The CSLA did not address its practice of depositing revenues from its professional development programs into UAS accounts. However, it concedes that it must have a detailed operating agreement with the UAS concerning the ACLP and professional development programs, as required by regulation, and stated that the agreement would ensure that the UAS reimburses costs incurred by the CSLA.

In addition, because the CSLA contends that the UAS provides many services to the CSLA, it does not believe that the fact that Continuing Education paid higher administrative fees as a result of depositing revenues into UAS accounts constituted an imprudent business practice.

However, the CSLA has established procedures requiring Continuing Education to monitor and assess the economic feasibility of all courses and stated that it requires prompt approval and reimbursement for travel expenditures.

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# Chapter 4

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## *Department of Motor Vehicles: Incompatible Activities and Failure To Perform Duty*

### *Allegation I950135*

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A supervisor at the Department of Motor Vehicles (department) engaged in activities incompatible with his duties as a state employee by selling insurance and financial planning services to other department employees. In addition, the supervisor attempted to recruit other department employees to work for the financial services company. Further, the supervisor's outside employment adversely affected his performance of his state duties. The supervisor also used state resources for personal gain. Finally, even though other employees brought the problems related to the supervisor's outside employment to the attention of the supervisor's manager, she failed to take appropriate action.

### *Results of Investigation*

We investigated and substantiated the allegations. To investigate the complaint, we reviewed records of telephone calls originating from the state telephone assigned to the employee from May through September 1995. In addition, we reviewed the employee's personnel file, conflict of interest statements, electronic mail, day planner, and a list of business clients who were also employed by the department.<sup>13</sup> Further, we interviewed the employee, his manager, and several of his coworkers. While we were investigating the allegations, we learned that the department was also investigating the supervisor. We interviewed the department's investigator and reviewed his investigative report.

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<sup>13</sup> The supervisor told us that he has 11 clients who are department employees.

***The Supervisor Misused the Prestige and Influence of His Position***

State law prohibits state employees from using the prestige or influence of a state position for private gain or advantage.<sup>14</sup> In addition, when he came to work for the department, the supervisor signed a statement of incompatible activities acknowledging that he was aware that using the prestige or influence of a department position for private gain or advantage, either during or outside of business hours, is a cause for disciplinary action.

The supervisor began working as a part-time representative for a financial services company in late December 1993. Although there is nothing intrinsically wrong with state employees having secondary employment, the supervisor improperly used the prestige and influence of his position for his and his secondary employer's gain.

**The Supervisor Attempted To Sell Life Insurance and Other Financial Services to His Subordinates**

Although we found no evidence that the supervisor tried to coerce his subordinates into purchasing financial services from him, he was in a position to adversely affect their careers if he chose to do so. In fact, at least one of his subordinates felt pressured to purchase life insurance from the supervisor. Specifically, one employee told us that he purchased a life insurance policy from the supervisor because he felt pressured and was afraid of what might happen if he declined. This employee was particularly vulnerable to feeling pressured because he was still on probationary status with the State.<sup>15</sup> The supervisor told the department's investigator that he could not recall if the employee was on probation when he solicited him, nor did he recall if he was the employee's direct supervisor. However, the employee's probation reports clearly indicate that the supervisor was the individual who rated the employee's performance. In addition, the employee stated under penalty of

—◆—  
*At least one subordinate  
felt pressured to buy life  
insurance.*



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<sup>14</sup> Appendix B contains a more detailed description of state laws and policies covering incompatible activities and conflicts of interest addressed in this chapter.



<sup>15</sup> State employees must serve a probationary period before acquiring permanent status in their position. During their probationary periods, civil service employees are not afforded the same job security that they acquire upon becoming permanent employees.

perjury that he was on probation at the time he purchased the policy.

Yet another of the supervisor's subordinates stated that the supervisor initiated a discussion with him about purchasing insurance that would cover his mortgage payments if for any reason his income was interrupted. When the employee told the supervisor that money was tight, the supervisor presented the employee with the opportunity to participate in helping the supervisor with his financial services business. After the employee told the supervisor that he was not interested in purchasing or selling insurance, the supervisor did not approach the employee again about his outside business. Although this employee had permanent status in his position when the supervisor approached him, the supervisor still had the ability to affect the employee's career. Nevertheless, this employee did not tell us that he felt pressured to purchase financial services from the supervisor.

#### **The Supervisor Attempted To Recruit Department Employees To Work for the Financial Services Firm**

The financial services company that the supervisor works for heavily emphasizes the need to recruit new representatives and offers incentives to employees who recruit new representatives. We found that the supervisor attempted to recruit several department employees in addition to the one mentioned in the previous section. The supervisor recruited one department employee to work for the financial services company. In addition, the supervisor asked one of the employees who was still on probation if her son might be interested in attending a seminar about selling insurance. We also found notes in the supervisor's day planner indicating that he was actively recruiting another department employee who previously purchased financial services from the supervisor. Furthermore, according to one of the supervisor's coworkers, the supervisor approached her about working with him on financial loan projects; she told him she was not interested. Notes from the supervisor's day planner indicated that he set a personal goal to recruit two representatives.



  
*The supervisor set a personal goal to recruit two representatives for the financial services company.*  


#### ***The Supervisor's Outside Employment Adversely Affected His Performance***

State law and the department's current incompatible activities policy prohibit state employees from engaging in any activity that impedes their ability to comply with their obligation to



devote their full time, attention, and efforts to their state office during their hours of duty.

  
*The supervisor was unresponsive and failed to adequately perform his state duties.*  


Although the supervisor claimed that his outside work did not interfere with the performance of his state duties, we disagree. For example, several of the supervisor's coworkers stated that the supervisor spent so much time working on sales of insurance and financial planning services that he failed to adequately perform his state duties. In addition, coworkers stated that numerous department employees who had no reason to meet with the supervisor concerning state business came into the unit to speak with the supervisor for as long as 45 minutes. In addition, several coworkers stated that the supervisor was unresponsive, failed to return telephone calls, either canceled or failed to show up for department meetings, and often left the office for hours at a time without informing anyone of his location. The supervisor stated that although he has canceled meetings or has been late or unable to attend meetings, it was never as a result of his work with the financial services company.



***The Supervisor Failed To File a Statement of Economic Interests as Required***

In addition, state law required the supervisor to complete a Statement of Economic Interests form annually. Completing these forms is required to identify potential conflicts of interest on the part of state employees. Nevertheless, the employee failed to file his Statement of Economic Interests form for 1994 until after we asked to review it. Although he was to have filed his 1994 form no later than April 3, 1995, he did not file the form until October 11, 1995—191 days after it was due and one month after we asked to review it.

***The Supervisor Used State Resources for His Personal Advantage***

State law prohibits state employees from using state time, facilities, equipment, or supplies for private gain or advantage and provides for severe penalties for doing so.

Further, the State's policies prohibit employees from placing personal long-distance calls from state telephones unless they are charged to another number. Further, the policies require employees to keep the number and length of personal calls to a minimum.

  
*The supervisor placed  
at least 458 personal  
telephone calls.*  


Although the supervisor signed the department's incompatible activities statement, indicating that he knew that using state resources for private gain or advantage is a cause for disciplinary action, he used state equipment and facilities for his and his secondary employer's benefit. From May 1995 through September 1995, there were only four days when the supervisor worked at his state office without making at least one personal call. During this period, the supervisor placed at least 458 personal telephone calls that lasted a total of more than 25 hours and 25 minutes. The supervisor placed these personal calls on 96 separate days, sometimes placing 10 or more personal calls per day. At least 249 of these calls, lasting a total of 13 hours and 41 minutes, were related to his financial services business. He placed 98 calls, lasting a total of more than 6 hours, to the financial services company for which he works. The supervisor also placed 64 calls to his voice mail at the financial services company and 31 calls to three other employees of the financial services company. In addition, the supervisor placed 159 calls, lasting a total of more than 9 hours, to his residence.

In addition to placing a significant number of personal calls from his state telephone, the supervisor appears to have received a large number of calls on his state telephone related to his secondary employment. Moreover, other department employees apparently had to spend state time handling the supervisor's personal calls when he was unavailable to receive them. Also, two of the supervisor's coworkers told us that the supervisor sent and received several facsimiles related to his work for the financial services company, using the state facsimile machine. Further, two of the supervisor's coworkers stated that he used his state computer to conduct work related to the company. The supervisor also used the department's electronic mail system to send messages to other department employees relating to his work for the financial services company.

Finally, the supervisor used state facilities for business related to the financial services company. For example, one of the supervisor's coworkers stated that she saw an employee of the company visit the supervisor at the department on two separate occasions.

Although we generally attempt to determine how much the State paid employees while they were conducting personal business instead of working, the employee was not an hourly worker. The compensation he received from the State—approximately \$4,900 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 conducted his personal business on "state time."

***The Supervisor's Manager Failed To Adequately Monitor the Supervisor's Nonstate Business Activities***

The Financial Integrity and State Manager's Accountability Act states that all levels of management of state agencies must be involved in assessing and strengthening systems of administrative control to minimize abuse and waste of government funds. When managers identify weaknesses in administrative controls, they must correct them promptly.

The supervisor's manager told us that she first became aware of the supervisor's work for a nonstate business around December 1993, when she received a request for verification of employment from an insurance company. At that time, she spoke with the supervisor about his nonstate business activities and advised him to conduct his nonstate business on his own time and not let it interfere with the performance of his state duties. The manager stated that although the supervisor has had trouble meeting deadlines, it did not appear to be the result of his nonstate business activities.

However, two department employees told us that they had complained to the manager about the effect the supervisor's outside business was having on his performance and their work. On September 2, 1994, one of these employees prepared a memorandum to the supervisor outlining the supervisor's failure to perform his state duties. The employee also sent a copy of the memorandum to the supervisor's manager. The manager told the department investigator that she did not recall reading or receiving the memo; however, she said she probably spoke to the supervisor about it. Further, the manager said she could not recall the supervisor's response to the issues raised by the employee.

The manager told us that in approximately August of 1995, another department employee informed her that he had received complaints from department staff members about the supervisor regarding the supervisor's nonstate business activities and the number of calls he made and received that were unrelated to state business. Further, the employee informed her that the supervisor had sold an insurance policy to an employee under his supervision. The manager told the department's investigator that she was unaware of the amount of time the supervisor was devoting to his personal business despite warnings and information she received from her staff.

However, we believe that she could and should have taken action to determine the extent of the problems and to correct them.

Specifically, even though she had been told that the supervisor had sold insurance to a subordinate, she did not ask the supervisor whether that was the case. Further, the manager told us that she did not speak with the employee who purchased the life insurance to verify the accuracy of the allegation because the alleged activity had taken place more than a year earlier and she assumed that the employee would have told her if he had any concerns.

The manager did tell us that she asked the supervisor whether he was using a state telephone to conduct nonstate business but that he said he did not make or receive calls related to his nonstate business on his state telephone. However, we believe that the manager could have easily determined that the supervisor was, in fact, using his state telephone for business related to his outside employment. According to the supervisor's manager, she reviews the telephone records for the supervisor and the rest of the unit but for the most part would not know what to look for. If she had simply looked for the telephone number of the financial services company on the supervisor's telephone records, she would have seen that he called that number frequently.

### ***Conclusion***

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A supervisor at the department engaged in incompatible activities by attempting to sell insurance and financial planning services to other department employees, including employees under his supervision. In addition, the supervisor attempted to recruit other department employees to work for the financial services company. Further, the supervisor's outside employment interfered with his state duties. The supervisor also used state resources for his and his secondary employer's benefit. Finally, the supervisor's manager failed to adequately monitor and correct the employee's activities.

### ***Agency Response***

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The department suspended the supervisor for ten days without pay and demoted him to a nonsupervisory position. As a result of downsizing, the department has eliminated the manager's

position. As a result, the manager was terminated from that classification and has assumed a supervisory level position.

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# Chapter 5

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## ***Department of Developmental Services: Improper Reimbursement of Travel Expenses, Misuse of State Telephones, and Falsification of Documents***

### ***Allegation I950013***

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**T**he Department of Developmental Services (department) improperly paid an executive for travel expenses between her home and her headquarters. In addition, the department paid the executive for other travel expenses she claimed but was not entitled to receive. Further, the executive used state telephones to make personal, long-distance calls, including calls related to another endeavor for which she receives compensation.

### ***Results of Investigation***

We investigated and substantiated the allegations. To investigate the allegations, we reviewed the applicable state laws and policies. In addition, we examined the executive's personnel file, travel expense claims, and other information related to the executive's home office and use of state resources. Further, we reviewed records of telephone calls originating from the Sacramento state telephone assigned to the employee from October 1994 through June 1995 and the state cellular telephone assigned to her from November 1994 through June 1995. Finally, we interviewed the executive and examined documentation that she provided to our office.

### ***The Executive Telecommutes From Her Residence***

State law allows state employees to telecommute.<sup>16</sup> Telecommuting is working one or more days each week from home or from an office near home instead of commuting to a distant work place. Home-based telecommuting is working in a

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<sup>16</sup> See Appendix B for a more detailed discussion of laws and regulations cited in this chapter.

space specifically set aside as an office in an employee's residence. State law required every state agency to develop and implement a telecommuting program on or before July 1, 1995. As of October 19, 1995, the department did not have a telecommuting policy but was developing one. However, according to the State's telecommuting guidelines, state departments may incur a number of costs related to telecommuting, including the following:

- Installation and monthly charges of a second telephone line.
- A computer assigned to the employee.
- A modem.
- A facsimile machine.
- Supplies.

However, the same guidelines specify that even if the telecommute office becomes the primary work space, employees shall not be reimbursed for travel to the central office.

The department appointed the executive to her current position effective January 1, 1994. The executive's duties require her to work closely with private businesses in an effort to improve employment opportunities for the developmentally disabled. The executive told us that because these duties frequently require the executive to travel in areas that are closer to her home than to her Sacramento headquarters, the department allowed the executive to maintain a home office in an effort to save the State time and money. The department provided a computer and modem, a computer printer, a copy machine, a facsimile machine, telephone service with voice mail, and various office supplies to the executive for use in her home office. Although the department does not have a telecommuting policy, by working in her home office instead of her Sacramento headquarters, the executive is telecommuting.

***The Department Improperly Reimbursed  
the Executive for Travel to Her Central Office***

State regulations specify that reimbursement for expenses arising from travel between home and headquarters is not allowed. According to official personnel documents, the executive's

position is headquartered in Sacramento, 135 miles from her home office. According to the Department of Personnel Administration, the department cannot pay the employee for travel expenses to Sacramento if the official records show that her headquarters are in Sacramento. Moreover, as stated earlier, telecommuters are not eligible for reimbursement for travel to the central office.

Nevertheless, the department stated that it considers the executive's home office to be her "home base." In addition, the executive told us that her home office is her official headquarters. As a result, the department has paid the executive for her travel expenses to Sacramento headquarters. On the average, the executive spends approximately seven days per month in her Sacramento headquarters. From January 27, 1994, through April 10, 1995, the executive charged the department more than \$3,800 in travel expenses for trips to her Sacramento headquarters. Specifically, the department paid the executive more than \$1,259 for lodging expenses; \$835 for meal expenses; and \$1,751 for other expenses, including mileage, parking, and incidentals.<sup>17</sup>

***The Executive Claimed Reimbursement for Other Travel Expenses She Was Not Entitled To Receive***

State regulations also specify that employees who choose to stay in other than commercial lodging while on official travel status may claim \$24 per day for meals and incidentals and \$23 per day for lodging expenses. In contrast, employees who use commercial lodging may claim up to \$37 per day for meals and incidentals and actual cost up to \$79 plus tax for lodging expenses.

In addition to the executive's claims for travel between her home and her headquarters in Sacramento, she submitted claims for 15 other business trips involving lodging between February 1994 and January 1995. The executive told us that she often stays with friends or relatives when she travels on state business to save the State money. In fact, the executive indicated on her claims that she stayed in noncommercial lodging on 9 of the 15 trips she made to places other than her headquarters. However, when the executive stayed with friends or relatives, she charged the State \$24.99 for lodging

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<sup>17</sup> The executive stopped charging the State for mileage in July 1994 after the department provided her with a state-owned vehicle for her use. We did not include the cost of this vehicle in our analysis.




expenses and up to \$31.50 for meals and incidentals. The executive told us that the department's accounting office instructed her to charge \$24.99 for noncommercial lodging; however, as explained above, this is in excess of the amount allowed. Between February 1994 and April 1995, the executive overcharged the State by more than \$50.


***The Executive Placed Personal Long-Distance and Cellular Telephone Calls at the State's Expense***

As stated earlier, state law prohibits state officers and employees from using state facilities, equipment, or supplies for private gain or advantage and provides for severe penalties for doing so. Further, 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. Furthermore, the policies require employees to keep the number and length of personal calls to a minimum.

Nevertheless, the executive made personal telephone calls at the State's expense. The executive confirmed that she placed at least 123 personal calls, including 34 cellular telephone calls, from October 1994 through June 1995 on state telephones. She placed these calls on 52 separate days. Of the 123 personal calls, 102 were long distance. At least 51 of the calls, lasting a total of 5 hours and 10 minutes, were related to an endeavor for which the executive receives other compensation. The total cost of all the personal calls, which lasted 9 hours and 13 minutes, was more than \$135.

  
*The executive did not reimburse the State for personal calls until after we began our review, and then she paid for only some of the calls.*

On September 11, 1995, the executive told us that she reimbursed the department for the cost of the personal cellular telephone calls. We asked the executive to provide us with documentary evidence of her reimbursement to the department. On October 23, 1995, the executive provided us with copies of the front of two personal checks totaling \$124.73 and a copy of a handwritten memorandum from an employee in the department's accounting office acknowledging receipt of the two checks.

  
We were unable to determine which personal cellular calls the executive reimbursed to the department. Specifically, we asked the executive exactly which calls the checks were to have covered. However, despite repeated requests, the executive would not provide us with information indicating which calls she was reimbursing payment for. We were able to determine, however, that the executive did not reimburse the State for some of the calls she identified as being personal. Both of the checks that she provided copies of were dated April 30, 1995.

As of April 30, 1995, the department had received bills for calls made only through March 1995. Consequently, as of October 23, 1995—the day she provided evidence of payment—the executive had not reimbursed the department for more than \$31 in personal cellular calls made from April through June 1995. The executive herself identified these calls, which lasted more than one hour, as being personal. In addition, the executive did not provide any evidence that she reimbursed the department for any of the 89 personal calls she placed from her state office telephone. These calls lasted a total of more than six hours and eight minutes and cost the State \$38.

Further, it appears that the executive did not reimburse the department for any calls until after she became aware of our review. Specifically, although the two checks were dated April 30, 1995, the memorandum she provided that acknowledged receipt of the checks was dated September 11, 1995, the same day we met with the executive. Further, the department cashier did not receive these checks until September 21, 1995, 10 days after we met with the executive and more than four months after the date on the checks.



In addition to the calls the executive identified as being personal, she identified many other calls as being business related. However, we believe that at least some of the calls she identified as being business related were personal. Specifically, the executive stated that 25 calls she made to two telephone numbers were business related. Of these calls, 16 were long-distance calls. However, we noted that one of the telephone numbers was that of her sister and the other was that of her cousin. During the period reviewed, the executive placed 4 calls to the telephone number of her sister. These calls lasted a total of approximately 14 minutes at a cost of \$3. However, the executive made 21 calls to the telephone number of her cousin. They lasted a total of more than 4 hours. Because 11 of these calls were placed on the state cellular telephone, the total cost to the State of the 21 calls to her cousin was more than \$99. Although we were unable to determine how many of these calls may have been business related, we believe that some, if not all, of the calls were personal.

Although we generally attempt to determine how much the State paid employees while they were conducting personal business instead of working, the employee was not an hourly worker. The compensation she received from the State—approximately \$6,000 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 executive conducted her personal business on "state time."

***The Executive Falsified a Document  
She Provided to Our Office***

The executive apparently falsified documents related to the above transactions. Specifically, although both of the checks that she provided copies of were dated April 30, 1995, one check was numbered 5036 and the other was numbered 5089. In addition, one of the check numbers on the copy of the memorandum acknowledging receipt had clearly been altered after the copy was made. We attempted to contact the executive several times to ask her why two checks presumably written on the same day would be 53 numbers apart and about the alteration of the memorandum, but she failed to return our telephone calls.

  
*The executive failed to  
respond to our inquiries.*  


***Conclusion***

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The department improperly paid an executive more than \$3,800 for travel expenses between her home and her headquarters. In addition, the department reimbursed the executive more than \$50 for other travel expenses that she was not entitled to receive. Further, the executive used state telephones to make at least 123 personal calls at a cost to the State of more than \$135. These calls included calls related to another endeavor for which she receives compensation. In addition, the executive placed another 25 calls to her relatives, which she stated were business related. Although the executive reimbursed the State for \$124, we were unable to determine which calls she was reimbursing payment for. Furthermore, the executive did not provide any reimbursement to the State until she became aware of our review. Finally, the executive falsified a document she provided to our office and failed to respond to our inquiries.

***Agency Response***

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The department disagreed with our conclusion that the executive was telecommuting. As a result, the department does not agree that it improperly paid the executive for her travel expenses between her home and the Sacramento headquarters. However, the department has relocated the employee's work headquarters to one of the developmental centers. In addition,

the department's director stated that he has identified all other department employees for whom there may be a question concerning their official headquarters location. The director stated that the department will officially identify each of these employees' headquarters and provide them with guidelines concerning travel and relocation expenses.

The department further concluded that although the executive did incorrectly claim expenses while staying in noncommercial lodging, she filed her claims based on directions provided by the department's accounting office. As a result, the department will collect the amount claimed in excess of what the executive was entitled to receive and will provide training to the executive and accounting office personnel.

Further, the department stated that it will recover the cost of the executive's personal calls and has counseled the executive on the proper use of state equipment, proper record keeping, and her failure to provide us with information when we requested it. However, the department did not comment on the executive's falsification of documents.

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# Chapter 6

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## ***Department of Industrial Relations: Improper Attendance Accounting and Misuse of State Telephones***

### ***Allegation I950001***

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**A** supervisor with the Department of Industrial Relations (department) informally authorized an employee to work at home. In addition, the supervisor authorized and participated in the excessive use of cellular telephones at the State's expense.

### ***Results of Investigation***

We investigated and substantiated the allegations. Specifically, the supervisor made an informal arrangement for the employee to work at home. This informal arrangement led to several improprieties. For example, the employee and supervisor did not adhere to proper timekeeping procedures. In addition, the supervisor and the employee wasted state money by communicating via cellular telephones when regular telephones were available. Furthermore, both the supervisor and the employee placed personal cellular telephone calls at the State's expense.

### ***Scope and Methodology***

To investigate the allegation, we interviewed the supervisor, the employee, and other employees at the department. Further, we reviewed the employee's time records, records of calls placed from cellular telephones used by the employee and her supervisor, and other documents.

***The Supervisor Informally Authorized  
the Employee To Work at Home***

As stated in the previous chapter, state law allows state employees to telecommute.<sup>18</sup> However, agencies must have a written agreement with each telecommuter and should handle a telecommuter's time reporting in the same way that it handles that of other, in-office employees.


Nevertheless, in March 1994, the supervisor authorized the employee to work at home under an informal, flexible schedule. The supervisor's informal agreements with the employee led to improprieties.

***The Employee and Supervisor Improperly  
Accounted for the Employee's Time***

The supervisor's manager was unaware that the supervisor was permitting the employee to work at home, but he was aware that, because of a backlog in work, the employee was going to work a flexible schedule. However, the supervisor and employee did not adhere to state requirements for timekeeping.

Half-time employees are permitted to work hours in excess of their normal 20 hours per week. Such employees may be compensated at straight time for these excess hours or may accumulate and take that time off later on an hour-for-hour basis. However, they are required to record the excess hours worked and taken off on the State's formal attendance records.

Nevertheless, the employee's supervisor told her in a March 15, 1994, memorandum that she could "write the extra time on the calendar that I have on my desk or we can use monthly time report sheets to keep track of your extra time worked and your time taken off. Since these records are not required documents, they will be used only to [sic] for our office records."

  
*The supervisor did not  
require the employee to  
keep a formal record of  
her attendance.*

Accounting for state time informally is improper. As public servants, state employees have a responsibility to accurately account for their time. To credibly account for their time, they must have 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 fact, we were unable to

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<sup>18</sup> Appendix B contains a more detailed description of state laws and policies covering telecommuting, attendance reporting, and incompatible activities.


determine whether the employee worked all the hours for which she was paid. Further, informal agreements regarding the number of hours to be worked and taken off at a later date can result in a liability to the State. If, in fact, the employee worked and took off as many hours as are reflected on the informal time records she provided to us, she would be entitled to additional time off or compensation for her remaining excess hours. However, the department has no record of this liability.

Moreover, when employees are working somewhere other than in the office, questions arise about when and how much an employee is working. In fact, the State's telecommuting guidelines specifically address this issue and provide guidance on how to avoid situations where telecommuting employees are perceived as "goofing off" or not working all the hours for which they are being paid. Such perceptions not only damage the State's and department's reputations, but create morale problems among other state employees.

***The Supervisor and Employee Wasted State Funds Through Unnecessary Use of Cellular Telephones***

The State's guidelines for telecommuting recognize that agencies might incur certain costs as a result of telecommuting. For example, for an employee to effectively telecommute, the employee will need to stay in contact with the office via telephone. If calls are few, the guidelines state that voice communications may be handled through the telephone at the telecommuter's residence. If many calls are necessary for the tasks performed at home, the guidelines state that a second line should be installed.


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*The supervisor and the employee placed 372 calls from one cellular telephone to another, costing the State \$728.*

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However, at her supervisor's direction, the employee primarily used a cellular telephone to communicate with her supervisor and her office. Both the supervisor and his employee used cellular telephones, the bills for which were paid for by the State. The supervisor used his cellular telephone to make more than 350 telephone calls to the employee's residence telephone from March 25, 1994, through February 20, 1995—when the employee transferred to another job in the department.<sup>19</sup> These calls, which lasted a total of approximately 33 hours, cost the State \$1,129.


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<sup>19</sup> We were unable to obtain a copy of the November 1994 bill, so we were unable to determine how often the supervisor called the employee for the period covered by that bill.

In addition to the cellular calls made to the employee's residence, during this same period the supervisor made more than 191 calls to the cellular telephone issued to the employee.<sup>20</sup> Including the charges incurred by the receiving cellular telephone, these calls, which lasted a total of more than 11.5 hours, cost the State \$438. According to the supervisor and the employee, all these calls were work related and were made to the employee's residence because the employee was working at home.

Further, for the period of July 1994 through March 1995, the department paid more than \$936 for charges on the cellular telephone assigned to the employee. During the period when the employee was still reporting to her supervisor—until February 20, 1995—she made 181 calls from her cellular telephone to the supervisor's cellular telephone, lasting a total of 10.5 hours. After including the charges incurred by the receiving cellular telephone, the cost to the State for these calls totaled more than \$290.


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*Although both the supervisor and the employee claim that she was provided a cellular telephone because of threats of violence, she used the telephone to call the person who was reportedly threatening her.*

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According to both the employee and her supervisor, the employee was provided a cellular telephone as a result of threats of violence in her workplace. However, she used the cellular telephone to make calls at the State's expense before the September 16, 1994, memorandum from the supervisor addressing this issue. Although we asked the employee's supervisor why she was using a cellular telephone at the State's expense two months before his memorandum, he could not provide a credible explanation. In addition, we noted that after September 16, 1994, the employee used the cellular telephone assigned to her to call the individual she stated was threatening her. Specifically, on September 18, 1994, the employee called the individual who reportedly was threatening her three times. The three calls lasted a total of more than one hour and cost the State approximately \$8.

Further, although it seems reasonable that the supervisor, whose job requires travel, would make frequent cellular telephone calls, we believe that it was inappropriate for the employee to use a cellular telephone to communicate with her supervisor and office from her residence. First, we believe that the employee, who allegedly was issued a cellular telephone for workplace security reasons, would have little need to conduct state business on her cellular telephone. Second, the employee performed state work both at her home and at a state work site.

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<sup>20</sup> Although the State paid the bill for the cellular telephone issued to the employee, the telephone itself did not belong to the State.



Both locations had regular telephones available to the employee.

When we questioned both the supervisor and employee about the 372 calls made between the two cellular telephones and the other calls placed from the cellular telephone assigned to the employee, the supervisor told us that he directed the employee to use the cellular telephone to avoid toll charges on the employee's residential telephone. However, if the calls were for legitimate state business, the employee could have received reimbursement through the established procedures for such reimbursement.

In addition, both the employee and her supervisor told us that the supervisor sometimes called her on the cellular telephone because she was required to transcribe dictation from him and that her residence telephone was not within reach of the computer. However, with appropriate departmental review and approvals, the department could have installed a second line at the employee's residence in accordance with the State's telecommuting guidelines.



Moreover, charges for calls placed to a regular telephone would have been significantly less expensive than charges for calls placed to and from a cellular telephone. For example, the supervisor called from his cellular telephone to the employee's cellular telephone on July 21, 1994. The cost to the State was \$4.54 on his bill and another \$4.54 on her bill for this 19-minute call. The call would have cost half as much if he had called her residence telephone.

***The Supervisor and Employee Made Personal Use of Telephones at the State's Expense***

As mentioned earlier, state law prohibits state employees from using state resources for private gain or advantage and provides for severe financial penalties against employees who do so. Nevertheless, both the employee and the supervisor placed personal calls on cellular telephones at the State's expense. Specifically, the supervisor used his cellular telephone to place at least 190 telephone calls to his residence between March 9, 1994, and April 7, 1995.<sup>21</sup> These calls, which lasted a total of 11 hours, cost the State \$256. In addition, the employee used her cellular telephone to place 10 calls to her sister between July 1994 and February 1995. These calls lasted a total of 36 minutes and cost the State approximately \$9.

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<sup>21</sup> Again, we were unable to obtain a copy of the November 1994 bill for the supervisor's cellular telephone.

  
*The employee and her supervisor called each other at the State's expense 279 times during nonwork hours, holidays, or vacation.*  


Further, although both the employee and the supervisor claimed that all the calls they made to each other were for state business, we question these claims. More than 150 calls placed from the cellular telephones were placed after the employee transferred to another position and no longer reported to the supervisor. These calls lasted a total of approximately 11 hours and 15 minutes and cost the State \$359.

Furthermore, of the 722 calls placed between the employee and the supervisor while she was still under his supervision, at least 279 (38.6 percent) were placed on Saturdays, Sundays, or state holidays, including Thanksgiving and Christmas, or during nonwork hours or vacation. These calls lasted a total of more than 24 hours and cost the State approximately \$922. Although it seems reasonable to expect that the supervisor and his employee conducted some state business during the remaining 443 calls, we question whether all the calls placed between the two individuals at the State's expense were for state business exclusively.

### ***Conclusion***

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A department supervisor made an informal arrangement for an employee to use unofficial time off and to work at home. This informal arrangement led to several improprieties. For example, the supervisor and the employee did not adhere to proper timekeeping procedures. As a result, the State has no assurance that the employee worked all the hours for which she was paid. Further, the supervisor and the employee wasted state money by communicating via cellular telephones when regular telephones were available. Finally, both the supervisor and the employee placed personal cellular telephone calls at the State's expense, costing the State at least \$1,546.

### ***Agency Response***

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The department has not completed its corrective action. However, the department informally reprimanded the employee and supervisor and stated that it will recover the cost of the personal calls placed by them.

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# Chapter 7

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## *Department of Transportation: Incompatible Activities*



### *Allegation I950008.2*

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**A**n attorney with the Department of Transportation (department) violated state law and department policy by engaging in activities that are inconsistent, incompatible, or in conflict with a state employee's duties.

### *Results of Investigation*

We investigated and substantiated the complaint. To investigate the complaint, we reviewed state law and the department's policy on incompatible activities. We also reviewed the attorney's outside employment to determine whether these activities complied with state law and department policy. Further, we reviewed court documents that the attorney filed in two counties. Finally, we interviewed the attorney and other state officials.

  
*The attorney improperly represented clients in lawsuits against public entities.*  


As mentioned earlier, state law prohibits state employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, or in conflict with or is inimical to his or her duties as a state employee. As authorized by state law, the department revised its incompatible activity policy in October 1987. In the policy, the department stated that incompatible activities include engaging in outside employment as counsel involving litigation against any other public agency, including cities and counties. The department's policy further states that outside employment includes any

business arrangements where an employee receives any form of compensation for services performed. This policy was effective from October 1987 until August 1993.<sup>22</sup>

### ***The Attorney's Outside Employment***

Contrary to state law and the department's policy on outside employment, the attorney represented various clients as counsel in three separate litigations against public agencies. The attorney acted as counsel with another attorney on the three litigations. For the first case, the attorney acted as counsel in a lawsuit in October 1991 against a city. For the second case, the attorney acted as counsel in litigation against a county government that was filed in superior court. For the third case, the attorney again violated state law and department policy by acting as counsel in a lawsuit against the same county government.

The attorney told us that his outside employment as counsel was pro bono and therefore did not meet the definition of outside employment. Pro bono is defined as work or services performed free of charge. However, it is clear from court documents that the attorney planned to work for free only if he was unsuccessful in the various litigations. According to court documents prepared by the attorney and a deposition by the attorney, oral agreements existed between the attorney and his clients to represent them on a contingency basis, collecting attorney's fees from the other party if they won the litigation. Although the attorney did not ultimately collect fees for the first two cases, in the third case the court ordered the other party to pay attorneys' fees of approximately \$138,000 for 930 hours to the attorney and another attorney who worked on the case. According to the attorney, the number of hours was almost equally split between the two attorneys. Further, the attorney stated in court documents on the third case that the primary incentive for this work arrangement was the amount typically awarded in environmental and land use litigation.

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<sup>22</sup> In August 1993, the department revised its incompatible activities policy. The new policy states that employees shall not willfully engage in any other employment or activities that are illegal; that are or give the appearance of being incompatible or in conflict with their duties as state employees; that discredit their profession, the department, or the State; or that have an adverse effect on the public confidence in the integrity of government. However, the new policy does not specifically discuss outside employment involving litigation against a public agency.

According to the attorney, he sought and received approval from the department's assistant chief counsel when he was considering involvement in the litigation discussed in the third example. However, according to the assistant chief counsel, his approval was based on the attorney's statements that the case would require a minimal amount of time to complete, possibly a few briefs, and limited court appearances. As shown above, the attorney expended substantial time on the case. In addition, the assistant chief counsel gave his approval based on the understanding that the attorney would avoid any conflict of interest.

The attorney also stated that he was unaware of the department's policy on outside employment activities in connection with litigation against another public entity. He also stated that he had not been provided with a copy of the policy. However, according to the department's chief counsel, each employee in the department's legal division received a copy of this policy in the orientation package each new employee receives from the department's personnel office.

### ***Conclusion***

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By engaging in outside employment for compensation, the attorney violated state law and department policy that existed until August 1993. The attorney's outside employment was inconsistent, incompatible, and in conflict with his duties as a state employee.

### ***Agency Response***

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The department gave the attorney a corrective interview and will develop a handbook on incompatible activities to complement its current policy.

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# Chapter 8

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## ***Department of Corrections: Improper Personnel Action***

### ***Allegation I950058***

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The Department of Corrections (department) improperly promoted an employee to a Nurse Consultant II position.

### ***Results of Investigation***

The department investigated and substantiated the complaint.

According to state regulations, no person may participate in a promotional examination unless that employee has the minimum education and experience qualifications and any license, certificate, or other evidence of fitness prescribed for the class for which the examination is given. To meet the minimum qualifications for a Nurse Consultant II position, an individual must have an active, valid license as a registered nurse in California. Further, the individual must have a bachelor's degree from a school of nursing approved by the National League for Nursing or equivalent. Finally, the individual must have a master's degree in nursing or in another health-related field, preferably in public health, nursing administration, nursing education, health care, health services administration, or hospital administration.

Nevertheless, the department permitted an unqualified employee to participate in a promotional examination for a Nurse Consultant II position in 1993. In addition, on July 12, 1993, the department appointed the employee to a position in that classification. According to the department, the employee met the requirement for the bachelor's degree. However, although the employee had a master's degree, it was not in one of the required disciplines. According to the department, it was not aware of this at the time it tested and appointed the employee to the Nurse Consultant II position.

*Agency Response*

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State law specifies that when an appointment is made in good faith and then found to be erroneous, the State Personnel Board can declare it void if action is taken within one year after the appointment. Although the employee's appointment was made more than one year before the department discovered that it had erred, the department has requested and received the State Personnel Board's recognition of the appointment as a good-faith appointment.

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# Chapter 9

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## *Misuse of State Equipment*

### *Chapter Summary*

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As mentioned earlier, state law prohibits state employees from using state-compensated time or state equipment for personal advantage or for an endeavor not related to state business.<sup>23</sup> Further, employees who do so may be subject to severe penalties. The State's policies covering the use of state telephones also prohibit employees from placing personal toll 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.

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

During the period from July 1 through December 31, 1995, we completed five investigations that substantiated allegations that state employees misused state telephones or made personal telephone calls at the State's expense. Three of the cases are reported in Chapters 4, 5, and 6, and the other two are reported in this chapter. In addition, we completed three investigations that substantiated claims of misuse of other state equipment. Two of these cases are reported in Chapters 1 and 4, and the third is reported in this chapter.

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<sup>23</sup> Appendix B contains a more detailed description of state laws and policies concerning employees' incompatible activities.



***Department of General Services  
Allegation I950108***

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An employee at the Department of General Services (department) used state time and telephones to make personal telephone calls, including calls related to her work as a private travel agent.

***Results of Investigation***

We investigated and substantiated the allegation. Specifically, the employee used state time and telephones to conduct business related to her work as a travel agent. In addition, the employee used her state telephone to make other personal calls at the State's expense. The cost to the State for these 235 calls and the employee's time was approximately \$130.

To investigate the complaint, we reviewed records of telephone calls originating from the state telephone assigned to the employee from April through September 1995. In addition, we reviewed the employee's personnel file. Finally, we interviewed the employee.

The employee confirmed that in addition to her state job, she works as an independent travel agent for a local travel agency. The employee organized a group trip to the Caribbean, which took place in January 1996; the group included three other department employees. The employee told us that she spends little time working as a travel agent and that organizing trips is more of a hobby for her. She further stated that although other department employees may ask her for a brochure or travel advice, she does not actively seek out potential customers at the department. However, we observed that several department employees came by the employee's desk at different times to discuss travel plans, group meetings, and trip insurance. We were unable to determine the amount of state time the employee spent discussing travel arrangements.

  
*The employee placed at least 235 personal calls lasting more than 12 hours.*

The employee confirmed that she placed at least 235 personal calls totaling 12 hours and 19 minutes during the six months reviewed. Although she pointed out that many of these calls occurred during her lunch hour or after work, she spent over 6 hours of state time on 127 calls placed during her normal work hours. Further, she made 65 calls to the travel agency for which she works. These calls lasted 3 hours and 18 minutes. Some of the 65 calls related to the employee's work as an independent travel agent. However, because the owner of the

travel agency is also a personal friend of the employee, we were unable to determine how many of the calls were related to the travel business and how many were personal calls. Nevertheless, the employee confirmed that at least 20 other calls lasting almost 2 hours were related to her travel business.

Although the telephone charges for all the employee's personal calls totaled less than \$17, the State paid her for approximately 6.25 hours while she was engaged in personal business instead of the State's business. Based on the employee's salary, the State paid the employee \$114 for the time she spent on personal calls.

### ***Agency Response***

The employee agreed to repay the State \$130. In addition, the department will issue a counseling memorandum detailing the employee's misconduct and reiterating the department's policy on telephone usage.

### ***California Tahoe Conservancy Allegation I950071***

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An employee of the California Tahoe Conservancy (conservancy) used state telephones for personal gain.

### ***Results of Investigation***

We investigated and substantiated the complaint. To investigate the complaint, we reviewed records of telephone calls placed from the employee's state telephone from June 1993 through July 1995 and interviewed staff members from the conservancy and two other governmental agencies for which the employee taught classes.

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*The employee placed at least 79 personal long-distance calls lasting more than 10.5 hours.*

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The employee used his state telephone to make at least 79 personal long-distance telephone calls between June 1993 and July 1995. The cost of these calls, which lasted more than 10.5 hours, was \$102. Sixty-seven of these calls, lasting a total of more than eight hours, were related to classes that the employee taught and for which he received compensation. The other 12 calls were made to a business to which the employee provided consulting services.

When we questioned the employee about the telephone calls related to classes he has taught, he told us that he has been teaching erosion control classes for the past 15 years and that he considers the calls to be related to state business because many of the individuals who attend the classes are state employees. In addition, the employee stated that the calls concerned the topics he would be teaching and that the course content was of specific interest to state workers.

However, we disagree with the employee's assertion that calls regarding the class were related to state business. The entities that sponsored the classes paid the employee to present them. For example, one of the entities paid the employee \$1,125 plus travel expenses to present a one-day class in October 1994. Moreover, the sponsoring entities charged participants (including state employees) fees. As a result, we believe that the calls were made for his personal benefit and that the State should not have paid for telephone charges related to his private business.

The employee acknowledged that the other calls were made to a private business for which the employee does consulting work. However, the employee stated that the owner of the private business is a relative with whom he has sometimes discussed state business. As a result, we were unable to determine how many of the calls were related to the employee's private consulting income, how many were related to other personal affairs, and how many, if any, were related to state business.

***Agency Response***

The conservancy recovered the \$102 from the employee, counseled the employee, and issued a letter of instruction.


***California State University, Sacramento  
Allegation I950155***

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An employee of California State University, Sacramento (CSUS), used a CSUS postage meter to mail out wedding invitations for his niece.

***Results of Investigation***

CSUS's internal auditor investigated and substantiated the allegation. We provided CSUS with a copy of one of the envelopes used to mail the invitations, which identified the postage meter used and the niece's return address. To investigate the allegation, the internal auditor interviewed CSUS employees and reviewed CSUS's procedures for processing mail.

  
A state postage meter was used to mail wedding invitations.

The internal auditor reported that the CSUS employee used a CSUS postage meter in July 1995 to process approximately 270 wedding invitations for his niece. Each of the invitations was imprinted with 55 cents worth of postage from the postage meter. The employee processed the mail by assigning a valid account number for cost recovery purposes. However, the employee deleted the transactions from a computer before submitting the accounting records for additional processing.

***Agency Response***

The CSUS recovered the cost of the postage from the employee and suspended him for four days without pay.

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# Chapter 10

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## *Corrective Action Taken on Previously Reported Investigations*

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### *Chapter Summary*

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**A**s 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 when the investigative report is issued. 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 on August 8, 1995.

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

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We reported that, contrary to state regulations and policies, the Department of Transportation (Caltrans) permitted 44 attorneys in the Legal Division to accrue and/or use compensatory time off. Before issuing that report, we consulted with the Department of Personnel Administration (department), which is responsible for the administration of salaries, hours, and other personnel matters for state employees. At that time, the department confirmed that our understanding of the state regulations and policies regarding time worked by managers, supervisors, and other professionals was correct.

### *Agency Response*

Caltrans disagreed with our conclusions. Because as a matter of past practice it had allowed its attorneys to accrue hours worked in excess of 40 hours per week and to take the excess hours off at a later date, Caltrans felt it could not refuse to do so now. In addition, after we issued our report, we received inquiries from an organization representing many of the State's attorneys that asserted that the attorneys it represented were entitled to accrue time off for excess hours worked. As a result, we again met with representatives of the department. They confirmed that

Caltrans' practice concerning excess hours worked by its represented attorneys could be changed only through the collective bargaining process. The same representatives told us that the department is attempting to halt the practice through this process.

Of the 44 attorneys we addressed in the earlier report, only 4 are not represented by a labor organization. As of April 30, 1995, three of these attorneys had used 216 hours of accrued excess hours. At the three attorneys' salaries, the value of this time off is approximately \$6,960. Moreover, the same three attorneys had a total of 75 hours of accrued excess time. The value of these ending balances is approximately \$3,383.

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

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We reported that the Department of Fish and Game (DFG) permitted its managers, supervisors, and attorneys to accrue excess time worked and take the time off at a later date, contrary to state regulations and policies. We identified two attorneys who had been permitted to accrue such excess time and take it off.

***Agency Response***

The DFG has stopped the practice of allowing its managers, supervisors, and attorneys to accumulate excess time worked and take the time off at a later date. The agency also counseled the attorneys' supervisor and reduced one of the attorney's leave balance by 104 hours. That attorney has requested through the Department of Personnel Administration that the hours be restored.

***Department of Forestry and Fire Protection  
Allegations I940002.1 and I940002.2***

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We reported that a manager at one of the Department of Forestry and Fire Protection's (CDF) 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 compensatory time off (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.

We also reported that the same manager 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 on these items. 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 suspended the manager for one week without pay and has ordered him to repay the State \$710 for his personal calls. In addition, the CDF reported that it is establishing an inventory system that will account for the receipt, storage, and distribution of fire prevention items. The CDF also has stated that it is exploring establishing a nonprofit organization to purchase Smokey Bear items. In this way it hopes to purchase "items that effectively send out a fire safety message, without raising potential concerns relative to appropriate use of state funds."

Finally, the CDF concluded that it would be more costly to the State to restore the CTO for which it had previously paid the eight employees.

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

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We reported that an employee of the Department of Parks and Recreation (DPR) made 46 personal long-distance telephone calls lasting a total of more than 5.5 hours. The cost of these calls was approximately \$170, including the amount the State paid him for the 5.5 hours he spent on the personal calls. In addition, the employee improperly reported he was working one day when he was, in fact, conducting personal business.

## **Corrective Action Taken on Previously Reported Investigations**

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Finally, the employee's supervisor improperly allowed the employee to inaccurately report his time and attendance.

### ***Agency Response***

The DPR officially reprimanded 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: March 5, 1996

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# Appendix A

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## Activity Report

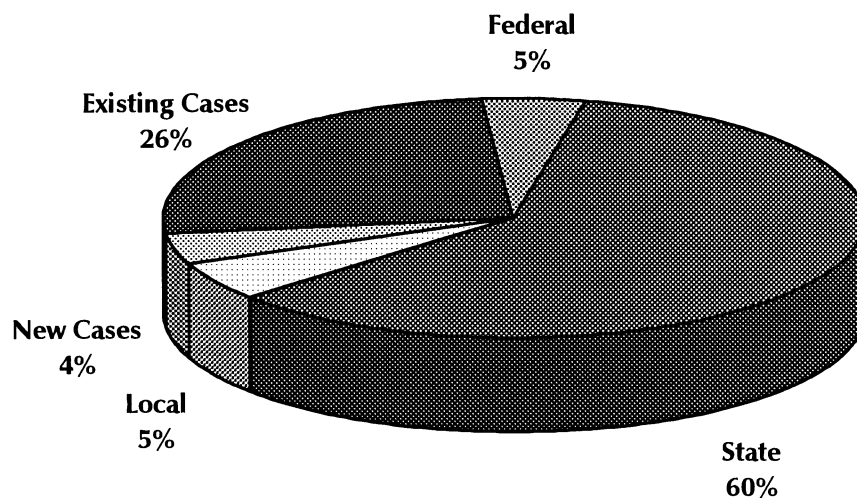
### *Calls Received on the Whistleblower Hotline*

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From July 1 through December 31, 1995, the Investigations Unit received 2,360 calls on the whistleblower hotline. Of these calls, 1,659 (70 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 1,422 (60 percent) of the calls to other state agencies, 128 (5 percent) of the calls to local agencies, and 109 (5 percent) of the calls to federal agencies. For 100 (4 percent) of the calls received, we established case files. The remaining 601 calls (26 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 last six months of 1995.

**Figure 1**

***Disposition of Calls to the Whistleblower Hotline  
July 1 Through December 31, 1995***



### *Work Performed on Investigative Cases*

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In addition to the 100 cases opened based on calls received over the hotline, we opened 27 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 131 case files opened from July 1 through December 31, 1995. Moreover, as of June 30, 1995, 21 cases were awaiting review or assignment, and 18 cases were still under investigation by either this office or other state departments or agencies on our behalf. Furthermore, for 4 other cases, investigations had been completed and publicly reported, but the employing departments had not completed their corrective action. Chapter 10 summarizes corrective actions taken since June 30, 1995, on these 4 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 95 cases, we concluded that there was not enough evidence of improper governmental activity for us to mount an investigation. However, in 25 of the 95 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 July 1 through December 31, 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.

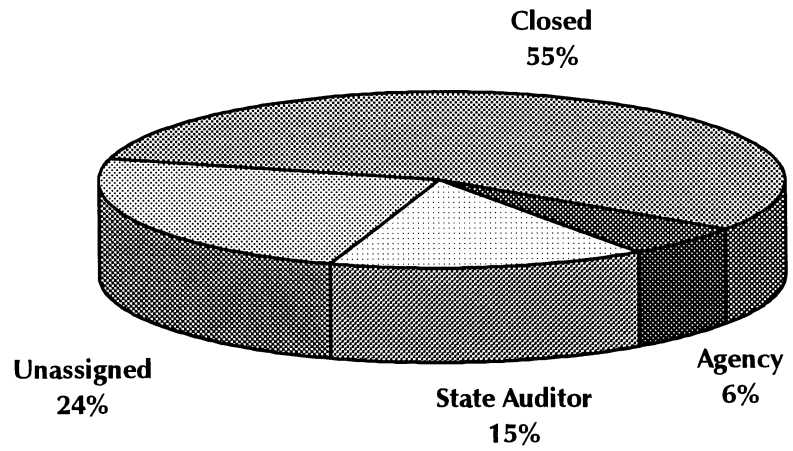
In addition, we investigated 26 cases during the period from July 1 through December 31, 1995. We substantiated allegations on 10 (71.4 percent) of the 14 cases we completed during the period.<sup>24</sup> Figure 2 shows action taken on case files during the period from July 1 through December 31, 1995.

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<sup>24</sup> One of the ten cases was reported in a separate public report—1950038—in January 1996. This case involved two employees of the California Cemetery Board.

**Figure 2**

***Action Taken on Cases  
July 1 Through December 31, 1995***



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# *Appendix B*

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## *State Laws, Regulations, and Policies*


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This appendix provides more detailed descriptions of state laws, regulations, and policies that govern employee conduct and prohibit improper governmental activities.

### *Incompatible Activities*

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Section 19990 of the California Government Code prohibits state officers and employees from engaging in activities that are clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state employees. Such activities include the following:

  
Chapters 1, 2, 4, 5, 6, 7,  
and 9 report incompatible  
activities.

- Using the prestige or influence of the State or the appointing authority for the employee's private gain or advantage or the private gain of another.
- Soliciting, receiving, or accepting money, or any other consideration, from anyone other than the State for the performance of an act that the officer or employee would be required or expected to render during state employment or as a part of his or her duties.
- Soliciting, receiving, or accepting, directly or indirectly, any gift, money, service, gratuity, favor, entertainment, free meal, hospitality, loan, or any other thing of benefit or value, from any organization or person that does, or seeks to do, business of any kind with the department, under circumstances from which it reasonably could be inferred that there was an intent to influence the officer or employee in the performance of official duties or that there was an intent to reward an official action.
- Using state resources for private gain or advantage.

- Engaging in any activity that impedes an employee's ability to comply with his or her obligation to devote full time, attention, and efforts to his or her state office during hours of duty as a state employee.

Section 8314 of the California Government Code prohibits state employees from using state resources 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.

The State Administrative Manual, Section 4520, prohibits employees from placing personal long-distance calls from state telephones unless they are charged to another number. Furthermore, the policies require employees to keep the number and length of personal calls to a minimum.


### ***Conflicts of Interest***

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Chapter 1 reports violations of the California Public Contract Code.

Section 10410 of the California Public Contract Code specifically prohibits a state employee from contracting on his or her own behalf with any state agency to provide services or goods. For example, the California Attorney General's Office has advised that state employees who prepare educational film, video, and printed materials as part of their state employment not contract with another state agency as independent contractors to provide similar services during their off-hours.

Further, Section 10410 of the California Public Contract Code prohibits state employees from engaging in any employment, activity, or enterprise for which they receive compensation or in which they have a financial interest and which is sponsored or funded by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the employee's regular state of employment. In addition, case law demonstrates that a state employee has a financial interest in his or her spouse's income. Section 10425 of the Public Contract Code provides that willful violation of the code is a misdemeanor. Further, Sections 10422 and 10423 of the same code provide felony penalties for persons involved in the corrupt performance of contracts.

  
Chapter 4 reports a violation of this section of the government code.

Section 91013 of the California Government Code requires certain state employees to complete a Statement of Economic Interest form annually and specifies that employees who fail to file these forms by the specified date are subject to a penalty of \$10 per day. These forms are required to identify potential conflicts of interest on the part of state employees.

  
Chapter 2 refers to these criteria.


### ***Agricultural Associations and Meal Expenses***

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The California Constitution, Article XVI, Section 6, prohibits gifts of public funds.

Section 4403(a) of the California Food and Agricultural Code states that a district agricultural association fair may expend funds for the promotional and public relations purposes of the fair.

The California Code of Regulations, Title 2, Section 599.622, specifically prohibits state employees from claiming meal expenses when business is incidental to the meal or the attendance of the state employee is primarily for public or community relations. In addition, Section 599.616 prohibits payment of state employees' meal expenses that are incurred within 25 miles of the employees' headquarters.

  
Chapters 2 and 8 report violations concerning the State's civil service system.

### ***Civil Service***

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Section 19130(c) of the California Government Code states that all persons who provide services to the State under conditions that the State Personnel Board determines constitutes an employment relationship shall, unless exempted from civil service by Article VII, Section 4 of the California Constitution, be retained under an appropriate civil service appointment.

The California Code of Regulations, Title II, Section 237 states that no employee may participate in a promotional examination unless that employee has the minimum education and experience qualifications and license, certificate, or other evidence of fitness prescribed for the class for which the examination is given.

***Continuing Education Programs, Auxiliary Organizations, and Travel Expenses***

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Chapter 3 refers to these criteria.

Section 89704 of the California Education Code requires revenues from extension programs, special sessions, and other self-supporting instructional programs to be deposited in the State Treasury and credited to the Continuing Education Revenue Fund (CERF). Moreover, the California State University (CSU) Chancellor's Executive Order Number 255 states that revenues derived from noncredit Continuing Education programs and activities that award credit shall be deposited in the CERF.

Further, Section 42501 of the California Code of Regulations, which governs the CSU's auxiliary organizations, requires a written agreement between the State and the auxiliary organization if an auxiliary organization is to provide conferences, institutes, or instructionally related programs or activities. In addition, Section 42502 of the same regulations requires that the agreement must specify the function that the auxiliary is to manage, the necessity for administration of the function by the auxiliary instead of by the campus, full reimbursement to the State for services performed by state employees under the direction of the auxiliary, and a method of determining to what extent the auxiliary is liable for indirect costs.


The California State University, Los Angeles, Administrative Procedure Number 206, states that employees requesting travel must complete a travel request form. The department administrator is responsible for reviewing and approving the travel requests and forwarding approved requests to the dean or senior administrator, who is responsible for forwarding all travel requests to the accounting office.

Furthermore, CSU travel procedures state that "all expense accounts shall be . . . approved by the duly authorized campus officer. It is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed." In addition, prudent practices require that the person assessing the necessity and reasonableness of expenses be someone other than the person incurring the expense.



### ***Telecommuting***

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*Chapters 5 and 6 address telecommuting issues.*

Section 14200.1(b) of the California Government Code (code) states that it is the intent of the Legislature to encourage state agencies to adopt policies that encourage telecommuting by state employees. Telecommuting is working one or more days each week from home or from an office near home instead of commuting to a distant work place. Home-based telecommuting is working in a space specifically set aside as an office in an employee's residence. Section 14201 of the code states that every state agency shall develop and implement a telecommuting program on or before July 1, 1995. Section 14202 of the code required the Department of General Services to establish a unit to oversee the State's telecommuting programs. According to guidelines developed under that section, state departments may incur a number of costs related to telecommuting, including the following:

- Installation and monthly charges of a second telephone line.
- A computer assigned to the employee.
- A modem.
- A facsimile machine.
- Supplies.

### ***Travel Expenses***

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*Chapter 5 addresses improper travel expense reimbursements.*

Section 599.626(d) of the California Code of Regulations states that reimbursement for expenses arising from travel between home and headquarters is not allowed.

Section 599.619 of the California Code of Regulations states that employees who choose to stay in noncommercial lodging may claim \$24 per day for meals and incidentals and \$23 per day for lodging expenses. In contrast, employees who use commercial lodging may claim up to \$37 per day for meals and incidentals and actual costs up to \$79 plus tax for lodging expenses.

***Attendance***

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*Chapter 6 discusses  
improper attendance  
reporting.*

The State Administrative Manual, Section 8539, requires agencies to maintain complete records of attendance for each employee during each pay period. The employee's supervisor is responsible for certifying the attendance. Further, the instructions for completing the state time sheets require employees to report all absences and sign the time sheets to certify that they are correct. Each supervisor is responsible for seeing that employees comply with regulations governing absence from work.

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Social Services	I940241	Conflicts of interest, incompatible activities, misuse of state resources, improper contracting practices.	1
Transportation	I950008.1	Follow up on improper compensation of excess time worked.	81
Transportation	I950008.2	Incompatible activities.	69
22nd District Agricultural Association	I940135	Misuse of state funds on food and beverages and personal entertainment and failure to follow civil service rules.	17

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