

**Investigations of
Improper Governmental
Activities:**

January 1 Through July 31, 1996

September 1996
Report I96-2

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September 16, 1996

Investigative Report I96-2

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

Dear Governor and Legislative Leaders:

Pursuant to the Reporting of Improper Governmental Activities Act, the Bureau of State Audits presents its report concerning investigations of improper governmental activities completed from January 1 through July 31, 1996.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt R. Sjoberg". The signature is written in a cursive style with a large, stylized initial "K".

KURT R. SJOBERG
State Auditor

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Summary



Investigative Highlights:

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

- ☑ Stealing \$2,200 in computer equipment from the State.
- ☑ Allowing the theft of \$2,800 in parking receipts.
- ☑ Falsifying time sheets to illegally receive \$2,709 for unworked overtime.
- ☑ Participating in decisions that influenced/affected their financial interests.
- ☑ Failing to report their personal use of state vehicles.

Results in Brief

The Bureau of State Audits administers the Reporting of Improper Governmental Activities Act (act), which is contained in Section 8547 et seq., of the California Government Code. The act defines "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 the Bureau of State Audits completed between January 1 and July 31, 1996, and that substantiated complaints. Complaints we substantiated include the following:

Department of General Services

- A supervisor stole at least \$2,200 worth of new computer parts and then used these stolen parts to build computers that he sold to individuals and businesses.
- The supervisor also appears to have violated conflict-of-interest laws by both favoring a particular computer vendor and accepting payments from him.

San Jose State University (University)

- Because the university's Traffic and Parking Operations had poor internal controls, the university suffered losses from the theft of parking receipts totaling \$2,800 and cannot account for over \$29,060 in missing parking tickets.

- In violation of the law, the university shared parking receipts of \$62,700 with the student union.

Department of Corrections

- A timekeeper falsified her time sheets to generate payments totaling \$2,709 for overtime that she did not work.

Department of Transportation

- An engineer had conflicts of interest when he participated in decision-making processes for the Devil's Slide project while maintaining a financial interest in a business entity that would benefit from the decisions. As a result, the department incurred unnecessary costs of approximately \$12,500, and the project was delayed.

Department of Motor Vehicles

- A manager came to work intoxicated and improperly waived registration penalties and driver's license examinations.

Department of Developmental Services

- In violation of state laws, an employee contracted with and received \$1,000 from another state entity.

University of California, Berkeley (UCB)

- A manager misused UCB resources by allowing UCB employees to work on university time at her home.

◆
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 it has not completed its corrective action within 30 days, the agency or appointing authority must report to the state auditor monthly until the action is complete.

This report summarizes corrective actions taken by agencies as a result of investigations presented in this report and investigations reported previously by the state auditor. This report also includes a report on conflicts of interest originally identified during an audit of the Department of Motor Vehicles' database redevelopment project.

In addition, Appendix A provides statistics on the complaints received by this office between January 1 and July 31, 1996. This report summarizes our action on those complaints and 41 other complaints that were awaiting review or assignment as of December 31, 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.

Chapter 1

Department of General Services: Theft of Computer Equipment

Allegation I950098


A department supervisor:

- *Stole from the State at least \$2,200 in computer parts and used them to build computers he sold to individuals and businesses;*
- *Favored one vendor supplying computer parts to OMRS;*
- *Accepted payments from the favored vendor; and*
- *Gave used state computer parts to the vendor.*

A supervisor at the Department of General Services' (department) Office Machine Repair Service (OMRS) gave a disproportionate share of the State's business to a company owned by a personal friend. The supervisor also gave used computer parts belonging to the State to this friend who sold them to other companies.

In addition, the OMRS has inaccurate inventory records. As a result, the OMRS has a limited ability to identify and prevent errors, irregularities, or illegal acts.

Results of Investigation

We investigated and substantiated these allegations and other improper governmental activities. Specifically, an OMRS supervisor stole at least \$2,200 in new computer parts from the OMRS and used these stolen parts to build computers that he sold to individuals and businesses.¹ Due to insufficient documentation, we were unable to determine whether the supervisor stole more than \$2,200 in equipment. However, since 1992, the supervisor sold at least \$22,000 worth of computers and computer parts to others. The supervisor also appears to have violated the State's conflict-of-interest and incompatible activities laws by both favoring a computer vendor who supplied computer parts to the OMRS and accepting payments from him. The supervisor also gave used computer parts belonging to the State to this vendor.

Additionally, the OMRS has inaccurate inventory records because it lacks internal controls over its inventory of office equipment parts. The OMRS therefore cannot adequately safeguard state assets nor consistently identify and prevent errors, irregularities, or illegal acts.

¹ For a description of the laws and policies related to issues reported in this chapter, see Appendix B.

Scope and Methodology

To investigate the complaint, we interviewed the supervisor in question, his supervisor, and other employees at the OMRS. We also interviewed the computer vendor who supplied significant quantities of computer parts to the OMRS and received from the supervisor most of the purportedly unusable computer parts. We also reviewed the OMRS inventory records for equipment parts, purchase invoices, and vendor records. We subpoenaed and reviewed the supervisor's bank records for the period generally from 1992 through 1995 from all the banks we could identify in which the supervisor or his wife had an account. Furthermore, we reviewed bank documents for the computer vendor.

From the supervisor's bank records, we found that the supervisor had deposited into his various bank accounts a number of checks from individuals and businesses. We then attempted to locate these individuals and businesses to determine the nature of the transaction that resulted in their issuing checks to the supervisor. However, we were not able to locate all of the individuals and businesses because some of the transactions occurred as long ago as 1992.

From the individuals and businesses we were able to contact, we learned they had purchased new or used computers or new computer parts from the supervisor. In addition, when possible, we obtained product information and serial numbers of the various component parts of the computers that these individuals and businesses purchased from the supervisor. To determine if the parts belonged to the OMRS, we then compared these serial numbers to the serial numbers of the computer parts originally purchased by the OMRS. However, because computer vendors who supplied computer parts to the OMRS did not always include serial numbers on their invoices or shipping documents during fiscal years 1993-94 and 1994-95, our ability to identify all stolen computer parts was limited.

Background

Part of the department's Office of Information Services, the OMRS is a statewide organization that services and maintains office equipment, including computers for state agencies. It has service technicians located at shops and subshops throughout the State and at two regional centers in Sacramento and Fullerton. According to OMRS staff, the OMRS carries an inventory of office equipment parts worth over \$2 million.

***A Supervisor Stole and Later
Sold Computers With Parts
Belonging to the OMRS***

During our investigation, we found that the supervisor in question stole from the OMRS at least \$2,200 in new computer parts belonging to the State. He then used these stolen parts to build computers that he sold to individuals and businesses.

We compared the serial numbers and product information from the parts in the computers purchased by individuals and businesses to the serial numbers of computer parts purchased by the OMRS. We were able to match several serial numbers from computer parts installed in the computers sold by the supervisor to serial numbers on computer parts purchased by the OMRS. Table 1 shows the computer parts that we could match:



Table 1

***Stolen State Computer Parts Sold to Private Parties,
August 1993 Through March 1995***

	Dates Supervisor Sold Computer	Parts Matched	Price Paid by OMRS
Computer A	August 1993	Input/Output Card Keyboard	\$ 26.00 46.00
Computer B	September 1993	Video Card Keyboard Color Monitor	52.00 45.00 265.00
Computer C	November 1993	Color Monitor	265.00
Computer D	March 1995	Computer System Board	430.00
Computer E	November 1994	Computer System Board Video Card Color Monitor	395.00 135.00 262.00
Computer F	August 1994	Color Monitor Keyboard	262.00 45.00
Total			\$2,228.00

We asked the supervisor how computer parts belonging to the OMRS ended up in computers he sold to individuals and businesses. He declined to answer our question.

Further, we learned that since 1992 the supervisor has sold at least \$22,000 worth of computers and computer parts to others. Specifically, the supervisor sold new and used computers and new computer parts worth more than \$22,000 to more than 20 individuals and businesses. For example, one individual bought a computer with a color monitor from the supervisor in March 1992 for \$925. In November 1994, another individual bought a computer with a color monitor and an external modem for \$1,100. The supervisor also sold computer parts, including floppy drives, hard drives, and computer modems.


The supervisor stated he paid cash for the computer parts.


The OMRS supervisor told us that he builds computers in his spare time and sells them to others. We asked the supervisor where he obtained the computer parts he used to build the computers he sold to others. He stated that he paid cash for the computer parts at computer shows and swap meets and that he bought them from individuals. When we asked if he had receipts for the purchases, he stated that he did not generally obtain receipts. In addition, because he considers this activity a hobby and not a business, he neither collected nor remitted sales tax. Moreover, he stated that he did not report the money he made as income to the taxation authorities.

Table 2 shows the amounts paid for each computer or computer part sold by the supervisor. However, it does not include all cash transactions for computers or computer parts. Some individuals who purchased computers from the supervisor told us that they paid the supervisor partially in cash. Our review of the supervisor's bank records indicates a significant number of cash deposits into one of his bank accounts, but we were unable to determine the nature or sources of these deposits.

We asked the individuals who purchased computers or computer parts from the supervisor how they knew about his selling this equipment. Most indicated they learned about the supervisor from advertisements he placed in the local print media and from their friends.

Table 2

**Computer Equipment Sold by the OMRS Supervisor
1992 Through March 1995**

Item Sold	Date Sold	Amount
1 Computer	1992 ^a	\$ 1,250.00
1 Computer	1992 ^a	900.00
1 Computer	1992 ^a	1,300.00
1 Computer	03/28/92	925.00
1 Computer	04/11/92	1,500.00
Computer Upgrade	06/07/92	150.00
1 Computer	09/25/92	700.00
1 Computer	11/30/92	825.00
1 Computer	02/06/93	925.00
1 Computer	02/09/93	901.61
1 Computer	02/09/93	300.00 ^b
1 Computer	04/10/93	1,275.00
1 Printer Memory Module	04/17/93	104.00
1 Computer	06/09/93	1,250.00
1 Computer	08/02/93	850.00
1 Computer	09/13/93	1,050.00
1 Hard Drive	10/10/93	170.00
1 Computer	11/14/93	1,000.00
1 Used Computer	12/10/93	975.00
1 Computer	08/10/94	1,350.00
1 Computer	10/28/94	1,100.00
2 Floppy Drives	11/15/94	100.00
1 Computer	11/24/94	1,100.00
2 Used Computers	12/19/94	1,150.00
1 Used Computer	03/27/95	625.00
2 Computer Modems	03/29/95	160.00
Total		\$21,935.61


^a The individuals who purchased these computers did not recall exactly when they made the purchase.


^b We were unable to locate the individual who bought this computer; however, the check issued to the supervisor indicates that the check was a deposit for a computer.

We presented the OMRS supervisor with a written statement of what he had told us during our interview with him. We asked him to review and make any necessary changes to the statement. We also requested that he sign the statement under the penalty of perjury to ensure the statement's accuracy. However, the supervisor refused to sign the statement.

The Same Supervisor May Have Violated Conflict-of-Interest and Incompatible Activities Laws

The OMRS supervisor also appears to have violated conflict-of-interest and incompatible activities laws when he accepted payments from the computer vendor who supplied a significant amount of computer parts to the OMRS. Moreover, the supervisor gave the vendor a disproportionate share of the State's business as well as its used computer equipment. The vendor then sold the used equipment to other computer companies.


State employees owe paramount loyalty to the public interest.


Underlying conflict-of-interest laws is the notion that state employees owe paramount loyalty to the public interest. Also, the laws clearly indicate that a state employee's personal and financial considerations should not enter any decision-making process related to his job duties. Hence, a state employee should not enhance his or her private interests through his or her official actions. Finally, a state employee is obligated to discharge his or her responsibilities with integrity and fidelity.

The Supervisor Accepted Payments From a Computer Vendor

The supervisor appears to have violated the State's conflict-of-interest and incompatible activities laws when he accepted payments from the computer vendor. Specifically, the supervisor, who had overall responsibility for and authority over the purchase of computer parts for the OMRS, accepted and deposited four checks totaling \$555 from an OMRS computer vendor in 1993 and 1994. The checks were written for \$200, \$175, \$80, and \$100. All except the \$200 check were personal checks issued by the vendor. The \$200 check was a company check.

According to the supervisor, the computer vendor issued the \$200 check to the supervisor to pay for some new computer memory chips. However, it is difficult to understand why a computer vendor would buy a computer part from the supervisor when the vendor could obtain any computer parts on a wholesale basis from his suppliers. The supervisor stated the remaining three checks were payments for used surfing and camping equipment he sold to the vendor.

The supervisor stated that even though he knows the computer vendor personally, their relationship is purely business oriented. We believe that the supervisor encouraged the computer vendor to obtain business from the OMRS. In fact, when the computer vendor and his wife formed their company in March 1993, they listed the supervisor as one of their references in their application to the State's Board of Equalization for a resale permit.

Whether the sums of money paid by the computer vendor to the supervisor were for merchandise or simply gifts, the supervisor benefited financially. In addition, by accepting money from a vendor who sold a significant and, as discussed below, disproportionately large number of computer parts to the OMRS, it is reasonable to deduce that there was an intent to influence the supervisor in the performance of his duties or to reward him. Clearly, the supervisor engaged in an activity that was incompatible with his duties as a state employee.

The Supervisor Gave a Vendor a Disproportionate Share of State Business

The computer vendor became the largest computer parts supplier to the OMRS.

The OMRS supervisor gave a disproportionate share of OMRS business to the computer vendor. Specifically, the computer vendor became the largest computer parts supplier to the OMRS after the vendor started doing business with the OMRS in May 1993. From May 1993 to April 1996, the OMRS bought from this vendor more than \$794,000 (23 percent) of the approximately \$3.5 million in computer parts purchased by the OMRS for that period.² Further, the OMRS was the computer vendor's main customer. The OMRS made its remaining \$2.7 million in purchases from 100 other vendors. The highest sales in computer parts that any other single vendor made to the OMRS during this period was approximately \$378,000.

Moreover, the OMRS did not obtain competing bids for the majority of the orders it gave to this computer vendor. Even though it has the delegated authority to procure goods and services, the OMRS should base its procurement process on fair competition.


² In April 1996, during our investigation, the OMRS made its last purchase from this computer vendor. As of July 1996, the vendor's company was no longer in operation.

State laws governing the acquisition of electronic data-processing goods and services are intended to enable the timely acquisition of these goods and services in order to meet the State's needs in the most value-effective manner. As a result, state laws and policies require that all electronic data-processing goods and services must be competitively procured unless the department determines that the required product is available from only one source or must be acquired on an emergency basis. State law permits the department to delegate authority for the procurement of electronic data-processing goods and services to each state agency that has demonstrated to the department's satisfaction the ability to conduct cost-effective acquisitions of electronic data-processing goods and services.

Among the reasons the supervisor gave regarding the noncompetitive procurement of computer parts from this computer vendor was that the vendor had a minority-owned business, offered reliable products and competitive prices, and provided free delivery of the merchandise. However, we found instances in which the prices the OMRS paid to the vendor for the computer parts were generally higher than those available from other companies on the OMRS vendors list. For example, on January 9, 1996, the OMRS obtained three bids for a number of computer parts it intended to purchase. One of the bidders was the computer vendor. Even though another computer vendor quoted the lowest prices, the OMRS purchased the parts from the computer vendor that quoted the highest prices for all the parts. In fact, when the vendor in question first started doing business with the OMRS, the vendor purchased from another OMRS vendor the computer parts it later sold to the OMRS.

***The Supervisor Gave the Vendor
the State's Used Computer Parts***

In addition to giving a large number of purchase orders to the computer vendor, the supervisor also gave this vendor a majority of purportedly unusable computer parts owned by the OMRS. Some of these parts had a cash value and were later sold by the vendor.


*Although the parts given
were purportedly
unusable, many were
sold to other computer
companies.*

When an OMRS service technician upgrades or replaces a computer part on a client's computer, he usually returns the old part to the OMRS. Some of these parts still work and are usable.

At the supervisor's direction, used parts collected by the OMRS were given to the computer vendor. The supervisor stated that he gave most of these parts to the computer vendor because this vendor was willing to take everything instead of picking only those parts that were worthwhile. During our investigation, we learned that the computer vendor often sold these parts to other computer companies. For example, the computer vendor sold the purportedly unusable parts he obtained from OMRS to two computer companies on three different occasions, and he received three checks dated July 20, July 26, and August 10, 1994, in the amounts of \$60, \$200, and \$115, respectively.

The OMRS Does Not Have Adequate Internal Controls Over Its Inventory

The OMRS does not maintain a complete and accurate inventory of its office equipment parts. In addition, the OMRS does not have procedures to determine if its service technicians use the office equipment parts issued to them to service OMRS clients. As a result, the OMRS cannot adequately safeguard state assets and has a limited ability to identify and prevent errors, irregularities, and illegal acts.

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 of the fact that a lack of such controls can result in fraud and errors. In addition, state policy specifies that property accounting procedures should be designed to maintain uniform accountability for state property. A combination of accurate accounting records and strong internal controls also must be in place to protect against and detect the unauthorized use of state property.

The OMRS Does Not Maintain Complete and Accurate Inventory Records

We found that the OMRS does not reconcile discrepancies between inventory records and its physical inventory of the equipment parts. Instead, the OMRS updates its records with the new counts obtained from the physical inventory and does not determine why the discrepancies have occurred.


Rather than determining reasons for inventory discrepancies, OMRS changes the records to match inventory counts.

In January 1996, we conducted a count of a sample of computer parts at the OMRS. Of the 23 items we selected, we found discrepancies between inventory records and the physical count in 13, or 56.5 percent, of the items tested. The unlocated items included 1 computer system board and 15 software kits.

At the end of May 1996, the OMRS conducted another physical inventory count, which auditors from our office observed. A review of the discrepancies between the OMRS inventory records and the physical count showed that 427 items totaling more than \$26,900 were missing or unaccounted for.

***The OMRS Does Not Require
Accountability for Office Equipment Parts***

Our review of the inventory control procedures revealed that the OMRS cannot ensure that office equipment parts are actually used in servicing a client. Once the OMRS issues an office equipment part to a service technician, OMRS staff do not track that part nor determine if the service technician uses it in servicing a client.


The OMRS cannot accurately determine if office equipment parts issued to its service technicians were actually used in servicing clients.

Because the OMRS did not maintain records for fiscal year 1993-94 on the inventory at its subshops and in service technicians' vans, we were unable to determine if office equipment parts issued were actually used to service the OMRS clients. However, we were able to review the service order forms (service orders) that service technicians used to document their repairs during fiscal year 1993-94. These forms showed that more than 100 new computer parts, ranging from system boards to monitors to hard drives, and costing the State more than \$21,000, were not properly accounted for during that fiscal year.

When an electronic technician services or repairs a computer for a client, he or she fills out a service order and generally describes the services performed and the parts used. If a technician uses an office equipment part to replace an old part for a client, he or she normally attaches the inventory bar code from the new part to the back of the service order to indicate the part installed for the client. The technician then transmits the service orders to the OMRS regional center for review by staff and later by the supervisor.

We found 60 service orders carrying more inventory bar codes than matched descriptions of parts used to service the clients. For example, one service order showed that the service technician installed a battery on the client's computer and that the client was charged for the part and its installation.

However, six inventory bar codes were attached to the back of the service order, including the bar code for the battery. Also attached were bar codes for a computer system board and four memory chips, which cost the State more than \$1,100. These other five parts were not listed on the front of the service order.

The service technician who performed the repair indicated that he did not install the five additional parts on the client's computer and did not attach the inventory bar codes to the back of that service order. He maintains that it is his practice to attach only the inventory bar codes from the parts he installed on a client's computer. Other service technicians also told us that extra inventory bar codes appeared on their service orders. These technicians did not know how the extra inventory bar codes got on the backs of the service orders. Technicians interviewed explained that they attach to service orders only the inventory bar codes for computer parts they install on client's computers.

One OMRS staff member who reviewed the service orders for accuracy indicated that she did not notice the extra inventory bar codes when she reviewed them. Further, the OMRS supervisor could not explain why there were extra inventory bar codes on the backs of the service orders.

Our review of the extra inventory bar codes showed that some of the extra inventory bar codes came from parts purchased after the service technician performed the repair. For example, an extra inventory bar code for a computer system board showed that the OMRS purchased the board on June 21, 1994. However, this bar code appeared on the back of a service order for repairs performed on December 22, 1993. Obviously, someone attached the extra inventory bar code to the back of the service order after the service technician had performed the repair. Because of such discrepancies involving bar codes for computer parts, the OMRS cannot determine whether the parts were used to repair state computers or whether the parts were stolen or missing.

Conclusion

A supervisor at the OMRS stole at least \$2,200 in new computer parts from the OMRS and used these stolen computer parts to build computers that he sold to individuals and businesses. Due to insufficient documentation, we were unable to determine whether the supervisor stole more than \$2,200 in computer parts. However, since 1992, the supervisor sold at least \$22,000 worth of computers and computer parts to individuals and businesses. Further, the supervisor appears to have violated

conflict-of-interest and incompatible activities laws by accepting payments from a specific computer parts vendor, who was the largest computer parts supplier to the OMRS, and giving it a disproportionate share of the State's business. In addition, the supervisor gave to the vendor used computer parts belonging to the State, and the vendor then sold them to other computer companies. Finally, our examination of inventory discrepancies indicates that the OMRS cannot ensure that its inventory is adequately safeguarded and its records are accurate.

Agency Response

The department has not completed its corrective action. However, the department reported that the manager strongly denied that he committed any improper activity, including stealing computer parts. The department reviewed our documentation and stated that it is actively investigating the issues we reported. The department also stated that it will provide the manager with specific details on the computer parts we identified as being stolen and will provide the manager the opportunity to provide documentation that he did not steal the parts.


Chapter 2

San Jose State University: Theft of Parking Receipts

Allegation I950068

Theft of parking receipts and other accounting irregularities occurred at Traffic and Parking Operations at San Jose State University (university).

Results of Investigation


Because of poor controls, a theft of \$2,800 occurred and over \$29,060 in parking tickets are missing.

We substantiated the complaint. Traffic and Parking Operations used poor internal controls over its cash collections from parking activities. For example, we found a complete lack of controls and accountability over sequential prenumbered parking tickets. Also, contrary to state and university policy, Traffic and Parking Operations did not deposit its parking receipts daily. As a result, the university suffered losses totaling \$2,800 from the theft of parking receipts. The university also cannot account for over \$29,060 in parking tickets.

Because of its poor internal controls, the university's ability to identify errors, irregularities, or illegal acts is hampered. For instance, Traffic and Parking Operations cannot account for a missing deposit of \$428. Further, instead of depositing parking revenue intact, Traffic and Parking Operations inappropriately used parking receipts to make cash disbursements to the university's Student Union and to employees for salary advances. In violation of the law, the university also shared parking receipts of \$62,700 with the Student Union.

To investigate the allegation, we reviewed the internal controls and accounting procedures for the receipts from parking activities. We examined the applicable state laws, the State Administrative Manual, the University Administrative Manual, and the campus procedures and policies on parking receipts. Also, we interviewed parking and other personnel, reviewed accounting records, and observed the cash collection process. We did not, however, review parking permit procedures at the university.

Background

The university's Traffic and Parking Operations operates the campus parking garages and lots that are used for daily and special-event parking. In fiscal year 1994-95, the parking collections were approximately \$508,500. The university collects the vast majority of these revenues in currency or coins. For example, the university collects \$2 from each vehicle for daily parking. In addition, depending on the type of event, the university charges \$4 or \$5 for special-event parking. Special events normally take place at the event center on campus.

State law requires each state agency to establish and maintain an adequate system of internal controls to prevent errors, irregularities, or illegal acts. The maintenance of a strong system of internal controls is critical when large amounts of cash are involved, as is the case with transactions conducted by the university's Traffic and Parking Operations.³

The University Maintains Poor Internal Controls Over Cash

A good internal control system for cash include: the deposit of each day's cash receipts intact, the separation of cash handling from recordkeeping, the requirement that no one person will handle a transaction from beginning to end, and the disbursement of funds by check and not in cash. Because of its liquidity, cash is highly susceptible to theft or misappropriation, so it needs to be stored in a secure area, and access to the area should be limited to a small number of individuals.

The university's Traffic and Parking Operations had poor internal controls over its cash collections from parking receipts, and this weakness may have contributed to the theft and disappearance of \$3,228. Specifically, in March 1995, a theft of approximately \$2,800 in daily parking receipts occurred at the university.⁴ In this instance, Traffic and Parking Operations had not properly implemented the controls designed to prevent this type of loss. For example, on the night of the theft, the security alarm for the building had not been activated. Also, Traffic and Parking Operations kept the cash receipts in an unlocked cabinet rather than in a locked safe or cabinet.


³ For a more complete description of the laws and regulations cited in this chapter, see Appendix B.

⁴ Traffic and Parking Operations reported to university police that only \$2,400 was stolen. It is unclear why it reported a smaller amount than was actually stolen.

In addition, in September 1994, Traffic and Parking Operations claimed that it deposited \$428 in quarters with the university cashier's office. However, the cashier's office claims that it never received the deposit. According to Traffic and Parking Operations, the missing quarters were never found.


The University Lacks Accountability Over Parking Tickets

When an individual pays for daily or special-event parking at the university, the individual receives a ticket. These parking tickets are prenumbered in sequential order. The individual then places the parking ticket in his or her vehicle so that university staff can determine whether the individual paid for parking. Prenumbered documents such as parking tickets are useful in maintaining control and accountability over transactions because they allow Traffic and Parking Operations to determine how many tickets it has sold during any collection period. At the end of the collection period, the amount of cash collected should correspond to the number of tickets sold. For example, if 200 tickets are sold at \$2 each, the amount of cash should equal \$400 (200 tickets multiplied by \$2). If a significant difference exists, management should investigate this difference.



The university cannot account for all tickets, does not safeguard ticket stock, or properly reconcile tickets with cash.


Traffic and Parking Operations needs to retain all voided documents so that staff can account for all tickets by either cash receipts or voided tickets. Tickets that cannot be accounted for may have been used to obtain free parking, or they may have been stolen and sold for cash. Again, if Traffic and Parking Operations cannot account for all tickets, management should investigate.



Although Traffic and Parking Operations issued prenumbered parking tickets, a complete lack of accountability has existed. In particular, Traffic and Parking Operations could not account for parking tickets for both daily and special events. Between July 1994 and May 1995, approximately 3,180 daily tickets were missing. The value of the missing daily tickets was approximately \$6,360. Similarly, more than 5,680 special-event tickets, valued at between \$22,700 and \$28,400, are also missing. For example, for January 21, 1995, the ending special-event ticket number was C11623. However, the beginning number for January 22, 1995, was C12000. Unaccounted for and missing were 376 tickets with a value of at least \$1,504. In a similar example, the ending number for daily parking tickets issued on December 2, 1994, was 383142. However, the beginning number for the next day was 384030.

Unaccounted for and missing were 887 tickets with a value of \$1,774. Employees at Traffic and Parking Operations could not explain why the parking tickets were missing.

Good internal control procedures over the tickets would require that one employee be responsible to control and account for the tickets. During our review, we found that, although the tickets were maintained in a locked cabinet, the cabinet was located in an unsecured area that is accessible to all parking employees. We also observed that the key to the cabinet was kept in the office's lunch room in an unlocked key cabinet. This lunch room was accessible to all parking employees, including the employees responsible for collecting the parking receipts. Typically, employees would get the key to the ticket cabinet and take the parking tickets. Traffic and Parking Operations did not maintain inventory records of the tickets, such as the names of employees who took tickets, the number of tickets taken or returned, and the number of voided tickets.


Employees retrieving tickets from the stock cabinet also counted cash and took receipts to the cashier.


Further, an important element in a system of internal controls is a separation of duties so that one person's work routinely serves as a check on another person's work. The separation ensures that no one person has complete control over more than one key function, such as counting cash, reconciling the parking tickets to the cash, and depositing cash receipts. Further, the employees responsible for counting the cash should not have access to the prenumbered tickets. If the employees' duties are separate, then a system exists to compare independently the parking receipts to the number of tickets used. However, the employees at Traffic and Parking Operations who retrieved tickets from the ticket cabinet also counted the cash collected from parking. These same employees also took the cash receipts to the university cashier's office.

University Staff Does Not Deposit Parking Receipts Promptly

The State's policy states that cash collections in excess of \$500 must be deposited on the day of receipt unless they are received late in the day or it is not practical to deposit them before bank closing time. In these cases, the cash should be deposited the next working day. In addition, state policy requires state agencies to use good cash management practices, which include the prompt deposit of cash. The State is vitally concerned in maximizing the interest earnings on its cash. The timing of the deposit is an important factor in permitting the State to realize the highest interest earnings from the dollars that

it collects. The University Administrative Manual states that the university will observe the state requirements for cash collections.

Contrary to state and university policy, Traffic and Parking Operations did not make daily deposits of its parking receipts for both daily and special event parking, and it frequently kept many thousands of dollars in cash at its office. Specifically, during fiscal year 1994-95, Traffic and Parking Operations reported that it received approximately \$372,000 for daily parking. However, the university's records show that cash was sometimes deposited with the university cashier's office many days after it was collected. For example, Traffic and Parking Operations did not deposit cash collections of \$2,000 from Wednesday, October 12, 1994, until the following Wednesday, October 19, 1994. In addition, cash collections of \$1,895 for the next day, Thursday, October 13, 1994, were not deposited with the university cashier until Tuesday, October 18, 1994. It is not clear from university records why the receipts for October 12 were deposited later than the receipts for October 13, 1994.


Cash and checks from special event parking often remained in the office for weeks. For example, \$3,657 in cash was not deposited for 37 days.

Moreover, cash and checks from special event parking often remained in the Traffic and Parking Operations' office for several weeks. In fact, only 9 (17 percent) of 54 deposits, representing \$11,187, were promptly deposited on the same day they were collected or during the next working day. These deposits consisted of \$10,492 from check deposits and \$695 from cash deposits. The remaining 45 deposits, representing cash deposits of \$73,700 and check deposits of \$4,276, were not promptly deposited as required by state and university policies. These late deposits represent over 87 percent of all special-event parking receipts. In one example, \$3,657 was not deposited for 37 days. In another example, \$2,641 was not deposited for 51 days. Table 3 shows the number of days Traffic and Parking Operations took to deposit the special-event parking receipts.

As a result of the delays in depositing parking receipts, the university lost interest that it could have earned if the receipts had been deposited promptly. Also, the practice of maintaining large amounts of cash in the Traffic and Parking Operations' office substantially increases the risk of losses from theft or other causes.

Table 3

***Number of Days From Event to Date of Deposit
Fiscal Year 1994-95***

Number of Days	Number of Deposits	Cash Deposits	Check Deposits	Total Deposits*
0 to 1	9	\$ 695	\$10,492	\$11,187
2 to 5	12	15,520	624	16,144
6 to 10	9	11,675	1,488	13,163
11 to 15	7	13,255	1,594	14,849
16 to 20	3	3,629	570	4,199
21 to 25	5	11,516	0	11,516
26 to 30	4	7,853	0	7,853
31 and over	5	10,252	0	10,252
Totals	54	\$74,395	\$14,768	\$89,163

* Amount deposited represents the university's share of special-event parking.

***The University Used Cash
Parking Receipts Improperly***

State policy specifies that agencies will not make cash disbursements from change funds and will deposit all funds received intact. Also, good internal controls require that disbursements be made by check, rather than cash, except in the case of minor disbursements from the petty cash fund. The use of checks instead of cash ensures that the State will obtain a receipt from the payee in the form of an endorsement on the check. Such a policy also centralizes the disbursement authority so that only designated officials are authorized to sign checks. In addition, written checks become permanent records of the disbursements and reduce the amount of cash kept on hand.

The university used cash from parking revenue to make large cash payments to the Student Union.

However, contrary to state policy and good accounting controls, Traffic and Parking Operations did not deposit its receipts intact. Instead, Traffic and Parking Operations used the cash from its special-event parking revenues to make large cash payments to the university's Student Union, which is a separate corporation and not part of the university. Under an agreement, Traffic and Parking Operations shares a portion of the revenues from special-event parking with the Student Union.⁵ To



⁵ Later in this report, we will discuss the impropriety of sharing special-event parking receipts with the Student Union.

calculate the Student Union's share, Traffic and Parking Operations subtracts and retains personnel costs, administrative costs, and \$2 for each ticket sold from the total revenue. After a special event, an employee of the Student Union collects the remaining cash from Traffic and Parking Operations. During fiscal year 1994-95, the Student Union reported receiving cash payments of approximately \$62,700 from Traffic and Parking Operations.

Before our investigation, Traffic and Parking Operations did not require the Student Union to sign any document to signify that the Student Union had received its share of the parking receipts. Consequently, Traffic and Parking Operations had no evidence that it had transferred the funds to the Student Union. As a result of this investigation, Traffic and Parking Operations now requires the Student Union to sign a document stating that the Student Union received its cash.

Traffic and Parking Operations uses a police escort when transporting cash because individuals transporting large amounts of cash are exposed to a heightened risk of physical harm. If Traffic and Parking Operations deposited all of the cash receipts and then disbursed money by check, employees of the Student Union would not be exposed to this additional risk.

Yet another example of improper use of cash by Traffic and Parking Operations occurred in January 1995. Traffic and Parking Operations used cash receipts from special-event parking to pay inappropriate salary advances to three student assistants. It made the advances outside the approved payroll system, and the advance amounts are unclear. One source indicated that the advances totaled \$450, while another source stated that the amount of salary advances was between \$1,800 and \$2,000. According to the manager of Traffic and Parking Operations, he authorized the salary advances because Traffic and Parking Operations made an administrative error by not submitting necessary forms to the university's payroll office. As a result, the payroll department would not issue payroll checks on the normal payday nor issue emergency checks to the students. The manager stated that the students repaid the advances when they received their payroll checks. However, the manager could not provide evidence of exactly how much Traffic and Parking Operations advanced to each of the three students, nor could he show documentation for the amounts the students repaid or the dates of the repayments.


Cash receipts from special events were improperly used for salary advances to students.


The Sharing of Special-Event Parking Revenues Has Violated the Law

State law requires the university to deposit the revenues it receives from its motor vehicle parking facilities with the state treasurer to the credit of the State University Parking Revenue Fund. The law also requires that all revenues be used only for the acquisition, construction, operation, and maintenance of the motor vehicle parking facilities and for the study of alternate methods of transportation for students and employees of California State University.

◆
In fiscal year 1994-95, the Student Union received \$62,700 of the \$136,500 in parking revenues.

◆

However, contrary to state law, the university signed an agreement with the Student Union to share parking revenues from special events. In February 1990, the university's public safety director and the traffic and parking manager signed the agreement. The university receives reimbursement for personnel and administrative costs, and \$2 for each parking ticket sold. The balance of the parking revenues are given to the Student Union.

In fiscal year 1994-95, the total special-event parking revenues were approximately \$136,500. The university kept \$73,800 and gave the remaining \$62,700, which should have been deposited in the State University Parking Revenue Fund, to the Student Union. As a result, for fiscal year 1994-95, the university did not have these funds available for parking facility construction, maintenance, and other legitimate transportation-related uses.

Conclusion

Traffic and Parking Operations used poor internal controls over its cash collections from parking activities. As a result, the university suffered losses from the theft of parking receipts totaling approximately \$2,800 and cannot account for a missing deposit of \$428. Further, because of its lack of accountability over tickets, Traffic and Parking Operations is missing more than \$29,060 in parking tickets. Furthermore, by not making cash deposits as required, individuals have unnecessarily been exposed to the risk of physical harm when they transport large amounts of cash. Finally, for fiscal year 1994-95, the university had at least \$62,700 less for parking facility construction, maintenance, and other legitimate transportation-related uses than it should have had available.

Agency Response

The university has strengthened controls over its parking tickets by storing cash in locked metal cabinets that are chained to the wall. Also, the university has modified its alarm system, limited access to keys, and separated duties related to the handling of parking tickets and receipts. The university has placed safes in Traffic and Parking Operations and now requires that all cash be kept in a safe. Further, the university instituted a new policy requiring that all receipts be deposited intact and that all disbursements be made by check. Finally, the university is establishing a formal lease agreement with the Student Union and event center.

Chapter 3


Department of Corrections: Falsification of Time Sheets

Allegation I940202

A timekeeper at the Department of Corrections (department) falsified time sheets, claiming that she had worked overtime that she had not in fact worked.

Results of Investigation

The department investigated and substantiated the allegation. The department concluded that the employee falsely claimed that she had worked approximately 156 hours of overtime that she had not actually worked. To investigate the allegation, the department reviewed the employee's time sheets, printouts from the personnel system, documents used to track approved overtime, and logs showing dates and times when the employee used her card key to enter her workplace. The department also interviewed the timekeeper and other department staff.


*An employee claimed
156 hours of overtime
that she did not work.*

Although state law prohibits the falsification of records, the timekeeper altered her time sheets after her supervisor had signed them. She thus entered false information into the payroll system to generate overtime payments to herself that she was not entitled to receive.⁶ Specifically, the timekeeper admitted that she had falsified her time sheet for September 1994 by adding to it 20 overtime hours after her supervisor had approved the time sheet.

The timekeeper denied falsifying any other records. However, by comparing payroll records to the records of approved overtime, reviewing records of the employee's entry into her workspace, and interviewing staff, the department concluded that the timekeeper also falsely claimed that she had worked another 136 hours of overtime from January through August 1994. As a result of these falsifications, the employee received \$2,709 that she had not in fact earned.

⁶ For a more complete description of the law cited in this chapter, see the section on theft in Appendix B.

Agency Response

The department dismissed the timekeeper and stated that it would refer the case to the district attorney for possible prosecution.

Chapter 4

Department of Transportation: Conflicts of Interest

Allegation I950055

An engineer for the Department of Transportation (department) had a conflict of interest when he developed bid specifications for repairs to the Devil's Slide area on State Highway One because he was an officer of, and had a financial interest in, a company that could have benefited from the specifications.

Results of Investigation

◆
The engineer's business would benefit from the Devil's Slide project.

We investigated and substantiated the allegations. In addition, the department conducted its own review and substantiated the allegations. The engineer violated a conflict-of-interest law because he had a financial interest and was an officer in a business entity that would benefit from the bid specifications on the Devil's Slide project. Also, the engineer engaged in incompatible activities that conflicted with his state duties because he was involved in the decision-making process for the bid specifications on the Devil's Slide project.⁷

To investigate the allegations, we reviewed state laws and the department's policy on conflicts of interest and incompatible activities. In addition, we examined various department documents and bid specifications for the Devil's Slide project. Finally, we interviewed several employees at the department, including the engineer.

Background


In January 1995, a rock slide occurred on State Highway One at an area known as Devil's Slide. The highway at Devil's Slide is a narrow two-lane road located in mountainous terrain along the Pacific Ocean in San Mateo County. The slide caused the closure of the highway from January until July 4, 1995.

⁷ For a more complete description of the laws cited in this chapter, see Appendix B.


Because there are no viable detour routes in the area, a quick reopening of State Highway One was a top priority for the department. The closure of the highway had severely impacted the communities south of the slide area and their economies.

The department used informal bidding procedures to speed completion of the work and the reopening of the highway. Also, the department compressed timelines to a minimum to expedite its development of job specifications and the processing of bids from contractors.

The department divided the Devil's Slide project into contracts for two phases. The first phase was to construct a rock-retaining drapery system that would prevent rocks from falling (rockfalls) onto the highway and provide safety for repair workers and the traveling public. The second phase was to repair the highway's damaged pavement. This investigative report discusses the first phase of the repair work, which was the construction of the rock-retaining drapery system.



The engineer recommended a draping system for rock slides.



After the slide occurred, the project's senior engineering geologist obtained the assistance of an engineer, a nationally recognized expert on rockfall and landslide mitigation who worked at another department district. This engineer had published articles on rockfalls and had worked as a consultant on rockfall problems for other states and counties. For this project, the engineer was to review available information on the Devil's Slide area, visit the site, prepare a computer analysis, and make recommendations on how to solve the rockfall problem. The engineer recommended a draping system known as submarine netting.⁸ Then the engineer, working with the senior engineering geologist, developed the job specifications for the rock-netting system for the Devil's Slide project.

In the job specifications, the department stated that it could obtain the rock-retaining drapery system from two suppliers. The department issued these job specifications to potential bidders on March 20, 1995. The department estimated the cost of the project to be \$284,280.

After issuing the bid specifications, the department received seven bid proposals, which it opened on March 28, 1995. The bidders submitted proposals ranging from approximately \$222,000 to nearly \$478,000. Later, the lowest bidder

⁸ During World War II, submarine netting was hung across harbor entrances to keep enemy submarines out of the harbors. The material consists of interconnecting metal rings also known as "ring nets."

withdrew its proposal because it had misread the specifications and had submitted an incorrect cost proposal. The next lowest bid was approximately \$353,500.

The Department Engineer Had a Conflict of Interest and Engaged in Incompatible Activities

The engineer should not have developed the project specifications because he had a financial interest in the needed materials.

The engineer had a conflict of interest and should not have been involved in designing the Devil's Slide project specifications. State law prohibits public officials from making, participating in making, or in any way attempting to use their official positions to influence government decisions in which they know, or have reasons to know, they have financial interests.⁹ In defining "financial interest," the law includes any business entity in which the public official has a direct or indirect investment worth \$1,000 or more. Also, a financial interest includes any business entity in which the public official is a director, officer, partner, trustee, or employee, or one in which he or she holds any position of management. Participation in decision making includes participation in negotiations, advice by way of research, investigations, or preparation of reports or analyses for the decision maker. The department's own policy further states that a conflict of interest is a situation in which any official action taken by an employee is, may be, or appears to be influenced by considerations of personal financial gain rather than the general public good.

In addition to a conflict-of-interest violation, the engineer also engaged in incompatible activities. Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official action. An incompatible activity is any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to a state employee's duties. The department's policy prohibits its employees from willfully engaging in any other employment or activity that is illegal or that which is or gives the appearance of being incompatible or in conflict with their duties as state employees. The policy also states that the employee shall not discredit his or her profession, the department, or the State, or have an adverse effect on the confidence of the public in the integrity of government.


⁹ For a more complete description of the laws and regulations cited in this chapter, see Appendix B.

The engineer violated these conflict-of-interest and incompatible activities policies because he had a direct investment worth over \$1,000 in a business entity that had an interest in the specified submarine netting. According to the engineer, he first became involved in the sale of submarine netting when Europeans contacted him regarding the availability of the material in the United States. The engineer would locate a source of the netting, purchase the netting, and then sell it to his European customers. Also, the engineer stated that he sold the submarine netting to one of the two suppliers listed in the job specifications for the Devil's Slide project.

In the summer of 1994, the department engineer and a friend had purchased an option to buy 800 or 900 tons of the submarine netting from a supplier. The cost of the two-year option was \$45,000. The engineer contributed \$30,000, and his friend contributed the remaining \$15,000. According to the engineer, there was no formal business agreement when they purchased the option. However, in early 1995, the engineer and his friend formed a corporation. The ownership ratio for the new corporation was the same: the engineer controlled two-thirds and his friend controlled the remaining one-third of the business. According to the secretary of state's office, the engineer was both the president and agent for the corporation.


The Engineer's Conflict of Interest Had a Negative Impact

At the time the engineer prepared the bid specification, he believed that a sufficient supply of submarine netting was available from several sources. However, after issuing the bid specifications, the department learned that the rock-retaining drapery system could not be obtained from the two suppliers listed in the specifications. The department had found that one of the two suppliers did not have the ring net material or an equivalent system. Later, the department learned that the second supplier had some ring net material, but not enough netting for the entire Devil's Slide project. Also, the second supplier could not fabricate an alternate system within the department's short time frames.



*Only the engineer's
company had a sufficient
supply of materials to
complete the project.*

On March 29, 1995, the senior engineering geologist received information from one of the bidders that it had located a new supplier of submarine netting. The bidder also stated that the new supplier would not sell any of the submarine netting because the engineer who designed the bid specifications had purchased an option on his supply, as described earlier in this chapter. The new supplier told the bidder to contact the

engineer or his business partner about buying the submarine netting. Later, the bidder contacted the engineer's business associate about buying the submarine netting. However, according to the engineer, the associate told the bidder that he could not sell any submarine netting for the Devil's Slide project. Although the engineer's business did not sell netting for this State project, the project clearly created a significant demand for the material that could have resulted in the ability of all suppliers to charge higher prices for the netting.


The department canceled the project after learning that the engineer was a supplier of the submarine netting, causing the department to waste \$12,500.

On April 3, 1995, after learning that the engineer was a supplier of the submarine netting, the department decided to cancel the Devil's Slide project designed by the engineer. The department decided that it would develop a completely new design for the rockfall problem that did not use the ring net material. The engineer did not work on the second design. The new design increased the department's cost estimate by \$42,420, from \$284,280 to \$326,700.


Because the department had to cancel the original job specifications and develop new specifications, the engineer caused the department to lose approximately \$12,500. Entirely wasted were the labor expenditures of \$3,600 through April 2, 1995, for the engineer and his supervisor because the department discarded the original design. Also wasted was a portion of the labor expenditures for other department employees who worked on the original design. Based on a department estimate, the department lost approximately \$8,900 for 40 percent of the work effort on the first design that could not be salvaged for the second design.

In addition to the negative effects it suffered because it canceled the project, the department caused the bidders for the original design to incur unnecessary costs. However, we were unable to determine the costs incurred by the original seven bidders when analyzing the bid requirements and preparing their bid proposals.

Finally, the engineer's actions delayed the completion of the Devil's Slide project by two weeks. The delay represents the time from the department's cancellation of the original project on April 3, 1995, until the department awarded the contract for the second design on April 18, 1995. Because there were no viable detour routes in the area, the delay in opening the highway severely impacted the communities south of the slide area and their economies. We cannot estimate the cost to the communities that were affected by the closure of the highway for an additional two weeks.

Such illegal actions by state employees have an adverse effect on the public's confidence in the integrity of government. As public servants, state workers have a responsibility to conduct themselves so as not to discredit their profession, the department, or the State. Illegal actions not only damage the State's and the department's reputations, but they also create morale problems among other state workers, who must deal with the problems created by the actions.

The Department Investigated the Engineer

In June 1995, the department notified the engineer that, because of the potential for further conflicts of interests involving his sale of submarine netting, the department would not use the engineer for future rockfall mitigation projects. According to the engineer, to resolve the potential conflicts, he sold all of his shares in the corporation in August 1995. The engineer also told the department and us that he resigned from all positions as an officer and director of the corporation. In addition, according to the legal counsel for the corporation, the engineer is no longer associated with the corporation in any capacity.

However, according to records at the secretary of state's office, as of April 5, 1996, the engineer remained both the president and agent for the corporation. Section 1502(e) of the California Corporations Code requires corporations to file with the secretary of state a current statement of corporate officers whenever the corporate agent changes. Although both the engineer and the corporation's counsel stated that the engineer is no longer associated with the corporation, the corporation has not notified the secretary of state's office that it has changed its agent or officers.

Conclusion

A department engineer had conflicts of interest and engaged in incompatible activities that conflicted with his state duties. He was involved in decision-making processes for the Devil's Slide project while having a financial interest in, and being an officer of, a business entity that would benefit from the bid specifications. As a result, the department incurred unnecessary costs of approximately \$12,500 for the redesign of the Devil's Slide project, bidders also incurred additional costs, and the project was delayed by at least two weeks, thereby inconveniencing the communities near the Devil's Slide area.

When the department discovered the conflict of interest and incompatible activities, it took appropriate action to reissue the bid specifications and obtain new bids for the Devil's Slide project. The engineer and the corporation's attorney later told the department that in August 1995 the engineer had divested himself of any interest in the sale of submarine netting. However, as of April 5, 1996, records at the secretary of state's office show that the engineer was still the corporation's president and agent.

Agency Response

The department reported that, as of August 20, 1996, the corporation's legal counsel claimed that although the corporation's records with the secretary of state had not been updated, the engineer's affiliation with the corporation ended August 18, 1995.

Chapter 5


Department of Motor Vehicles: Intemperance, Improper Waivers, and Misuse of State Time

Allegation I960083

A manager in one of the field offices for the Department of Motor Vehicles (DMV) came to work intoxicated and improperly waived registration penalties and driver's license examinations. In addition, another employee of the same field office conducted personal business on state time.

Results of the Investigation

In 1994, the DMV investigated and substantiated that a manager came to work apparently under the influence of alcohol. At that time, the DMV made the employee aware that others sometimes perceived that he was impaired by alcohol, and it reminded him of services available under the State's employee assistance program.


*The manager appeared
intoxicated at work
several times a week.*

We received the above allegations in 1996, and, at our request, the DMV investigated and substantiated them. Specifically, the manager typically appeared sober when he arrived at work between 9 and 10 a.m. After lunch, which typically lasted from one and one-half to two hours, the manager frequently smelled of alcohol and acted intoxicated several times a week. In addition, the manager would normally leave work between 3 and 5 p.m. each day.

Additionally, during the 34 days reviewed by the DMV, the manager improperly waived approximately \$4,600 in registration penalties that drivers should have paid. For example, the manager altered one document to waive a \$300 smog impact fee. The manager also improperly waived written examinations for driver's licenses in all 29 instances the DMV reviewed, even though written examinations were required.

During the department's review, it also verified that another employee spent state time on personal matters. The DMV estimated that, on some work days, the employee spent up to three hours on nonstate business.

Agency Response

The DMV reported that the manager retired because he believed that the evidence against him was overwhelming. The DMV will issue a formal letter of reprimand to the employee who has spent state time on personal matters.


Chapter 6

Department of Developmental Services: Improper Contracting

Allegation I950181

An employee of the Department of Developmental Services (DDS) conducted business with a second state agency, the Department of Rehabilitation (DOR).

Results of Investigation


A DDS employee violated state law when he worked for another state agency.

By working on two different occasions as a consultant for the DOR while employed by the DDS Stockton Developmental Center, the DDS employee violated state law.¹⁰ The DOR paid him \$1,000 for his services. In addition, he did not obtain a determination of whether his outside employment was incompatible with his duties at the DDS. Finally, the DDS policies and procedures concerning conflicts of interest are incomplete.

To investigate the allegation, we interviewed the employee and the DDS staff responsible for reviewing conflicts of interest. In addition, we reviewed DDS policies and procedures concerning conflicts of interest and incompatible activities as well as a portion of the employee's personnel records. Finally, we reviewed DOR authorizations for service and vendor records, and we interviewed DOR staff members.

Background


The DDS and DOR have similar and overlapping goals. The DDS ensures coordination of services to persons with developmental disabilities. One of the ways the DDS provides care and treatment to persons eligible for developmental services is through developmental centers.

¹⁰ The DDS closed the Stockton Developmental Center during fiscal year 1995-96. For a more complete description of the laws and regulations cited in this chapter, see Appendix B.

The DOR's primary goal is to rehabilitate and place into meaningful employment persons with physical and mental handicaps, particularly those with severe disabilities. The DOR can provide a full range of services including special adaptive equipment to assist in personal care and communication to severely disabled persons who can reasonably be expected to become more independent if offered independent living services.

An Employee Violated State Law and DDS Policies

State law prohibits a state employee from contracting on his or her own behalf with any state agency to provide services or goods. Further, state law 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 employment.


The employee contracted to provide similar services to the DOR as he provided to the DDS.

However, while employed by the DDS, an employee also worked as an independent consultant to the DOR. Specifically, in May and November 1995, the DOR authorized and paid him to provide services to a DOR client. These services, the assessments of appropriate communication devices and suitable accessibility to them, were the same as those he provided at the DDS Stockton Developmental Center. Even though the DDS employee apparently completed work for the DOR on his own time and did not use DDS equipment or supplies, he violated the State's Public Contract Code.

Further, the employee did not meet the requirements of the DDS Administrative Manual (manual), which stipulates that employees who wish to engage in outside employment or an activity that is directly or indirectly related to the functions and responsibilities of the employee's division seek a written determination of whether such activity is inconsistent, incompatible, or in conflict with their duties to DDS. The Stockton Developmental Center's Administrative Bulletin No. 2216, Incompatible Activities, Private Practice, and Consultation (bulletin), reiterates these requirements and defines outside employment as any service performed by a DDS employee on his or her own time during other than normal working hours for which he or she receives any form of compensation that exceeds \$250 per year. To obtain the required determination, the Stockton Developmental Center

requires employees to complete a request for determination form. Although the employee filed requests for determination in 1989, 1990, 1992, and 1993, he did not file any requests for determination in 1995. As a result, we conclude that the employee did not obtain a determination concerning the propriety of his work for the DOR.


DDS Policies and Procedures Concerning Conflicts of Interest Are Incomplete

The DDS has a number of policies and procedures to assure that DDS employees do not violate conflict-of-interest laws. However, these policies and procedures are not adequate.


The DDS manual and the bulletin cited earlier refer to the portion of state law that 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. However, neither the manual nor the bulletin addresses the portions of the law that prohibit state employees from contracting with other state agencies. Thus, the DDS does not inform its employees that it is unlawful and a conflict of interest for them to contract with other state entities, and its procedures and the form used for determining whether outside employment constitutes an incompatible activity are insufficient.

For DDS employees, activities prohibited by law include the following:

- Receiving or accepting money or any other consideration from anyone other than the State for the performance of state duties.
- Performing an act in other than his or her capacity as a state employee knowing that the act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the employee.
- Soliciting, receiving, or accepting, directly or indirectly, anything of benefit or value from any organization or person that does or seeks to do business of any kind with the employee's 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.


The DDS policy guidelines did not require employees to disclose sufficient information to determine if there was a violation of law.

In order to determine accurately whether outside employment would constitute any of the above incompatible activities or a violation of the law prohibiting state employees from contracting with other state entities, the person making the determination needs to know the name of the proposed outside employer. However, neither the bulletin nor the request for determination form specifically requires the employee to include on the form the name of the organization for which he or she will be working.


On the four requests for determination that he completed, the employee said that he wanted to provide occupational therapy evaluation services and that he would provide the services during weekends, holidays, or vacation time. However, he mentioned on just one of the four requests the organization for which he planned to provide services. As a result, the individuals making the determinations had insufficient information to assess accurately whether the employee's outside employment violated the law.

Furthermore, both the manual and the bulletin require that the person determining possible incompatible activities communicate to the employee a decision in writing within five business days. However, in three of the four cases for which the employee had submitted requests for determination, the individuals responsible signed the determinations months after the employee submitted the forms. For example, the person making the determination on the request submitted in September 1993 signed it more than a year later. If individuals who are making such determinations do not do so expeditiously, their employees may either lose their opportunities to engage in proper outside employment or engage in improper outside employment without detection.

Conclusion

A DDS employee violated state law by working as an independent contractor for the DOR on two different occasions. Further, the employee did not file a request for determination of whether his work on behalf of the DOR was incompatible with his duties with the DDS. Finally, DDS policies and procedures regarding conflicts of interest are incomplete. Consequently, DDS employees may either lose their opportunities to engage in proper outside employment or engage in improper outside employment without detection.

Agency Response

The employee is no longer employed by the State. However, the department sent to him a letter clarifying the State's law. In addition, the department reported that it will revise its policies and procedures to include references to the law that prohibits state employees from contracting with other state departments. The department stated that it will also notify developmental center executives that the department will incorporate the prohibition into its policies and direct the executives to review all requests for determination of incompatible activities within five days.

Chapter 7

University of California, Berkeley: Misuse of University Resources


Allegation I950117

A manager at the University of California, Berkeley (university) misused university personnel resources by allowing university employees to work at her personal residence on university time.


Results of Investigation

We investigated and substantiated the complaint. To investigate the complaint, we interviewed university employees. In addition, we reviewed employee time sheets, payroll records, electronic mail, and applicable state and university policies. Finally, we interviewed the manager.

The University of California (UC) Standing Order of the Regents Number 103 states that no portion of time due the university shall be devoted to private purposes. Further, UC's Business and Finance Bulletin G-29 defines "misuse of university resources" as the inappropriate use of university resources for non-university purposes, including an activity in which university personnel perform non-university work on university time.



Employees working on state time assisted the manager with an emergency at her home.





Nevertheless, university employees worked at the manager's home during their normal working hours. This misuse of university resources occurred on two separate occasions in March 1995, when the manager's home was flooded by a nearby creek. At least ten university employees, including two student assistants, went to the manager's home on one or more of three different days to help with sandbagging and cleanup work.

The manager told us that she did not ask any of the employees for help. However, the employees' presence at the manager's home was a misuse of university resources, regardless of whether the manager ordered the employees to help, requested their help, or simply allowed them to help.

Because two of the employees are exempt, we were unable to conclude that these employees performed personal work on “university time.” They receive salaries from the university and are expected to work as many hours as necessary to provide the public services for which they were hired; they are not hourly workers. Also, we were unable to determine how much time the other eight employees worked at the manager’s home at state expense. For example, because the student assistants worked only part time, we were unable to determine whether any of the hours they reported on those three days covered personal work they performed for the manager.

Two employees did not charge their leave balances for any of the time they spent performing personal work for the manager. Two other employees charged their leave balances for at least some of the time they spent helping the manager. Specifically, one employee charged 4 hours of compensatory time off, and the second employee charged his vacation balance for 2 of the 14 hours he spent helping the manager. Another employee who, according to the manager, assisted her at her home, charged 8 hours of vacation on one of the 3 days. However, the employee told the university that he did not work at the manager’s home. The last employee charged one hour of sick leave. We were unable to determine whether the employee was sick or if this one hour was some or all of the time he spent assisting the manager.


The university has no assurance the employees made up the time.


The manager told us that all employees who worked at her home during the university workday also worked additional hours for the university at other times. However, the manager did not recall specifically the number of days and hours that each employee worked at her home. Because there is no record listing the number of hours employees needed to make up nor the extra hours worked, the university has no assurance that the employees worked additional time to make up for the time they spent at the manager’s home at the university’s expense.

By allowing employees to use university time to help her with personal work, the manager created a potential liability for the university. For example, if any of the employees had been injured while working at the manager’s home, the university may have been liable.

Conclusion

A manager at the University of California, Berkeley, misused university personnel resources by allowing university employees to work at her home on university time.

Agency Response

The university counseled the manager and her staff on how to document the use of time should any similar situation occur in the future.

Chapter 8

Council on Developmental Disabilities: Personal Use of State Telephones

Allegation I950205

The State Council on Developmental Disabilities (council) permits its employees to place personal toll calls at the State's expense.

Results of Investigation

We investigated and substantiated the allegations. Specifically, the council's policy on placing personal calls does not address toll calls. As a result, it has been common practice for employees to place what they considered to be "health and safety" toll calls at the State's expense. Employees have also used their state telephones to place personal long-distance telephone calls at state expense. For example, during June through November 1995, two employees made 366 personal long-distance calls that lasted nearly 21 hours. These calls cost the State approximately \$93. The two employees paid the council for these calls during our review.

Further, during our review, the council issued a new policy that is contrary to the State's policy concerning the use of state telephones for personal long-distance telephone calls. The council's policy creates unnecessary administrative costs for the State.

Agency Response

The council believes that the two employees acted in accordance with the council's policies and the state law that permits occasional use of state telephones by state employees. As a result, it will take no action against these employees.

Chapter 9

Personal Use of State Automobiles

Allegation I940274

State employees failed to report the value of their personal use of state automobiles as taxable compensation for calendar year 1994.

Results of Investigation

We investigated and substantiated the allegation at five state departments: Department of Transportation, Department of Health Services, Department of Forestry and Fire Protection, Department of Corrections, and Department of Consumer Affairs (Contractor's State License Board). Our investigation revealed that 19 employees at these five state departments used state automobiles to commute between their homes and their headquarters during calendar year 1994 and failed to report the value of that use as taxable compensation. We estimate that 12 of these employees should have reported a total of \$4,511.50 as taxable compensation for calendar year 1994. In addition, we noted that these departments, except the Department of Health Services, as well as four others, the California Environmental Protection Agency, Department of Parks and Recreation, Department of Fish and Game, and the Department of Food and Agriculture, did not have adequate internal controls over the personal use of state automobiles.

At five departments 19 employees used state automobiles to commute to work without claiming the compensation.

To investigate the allegation, we examined a sample of automobile mileage logs and home storage permits for calendar year 1994, interviewed department employees, and reviewed applicable policies and procedures. We did not conduct a complete review at these departments of all employees who were assigned state automobiles.

Background

The Bureau of State Audits has received numerous complaints pertaining to the alleged misuse of state automobiles, including the use of state automobiles for personal benefit. Depending on the nature of their work, some state employees are allowed to use state automobiles to commute to and from work on a

daily basis. Even though state policy allows this type of automobile use, the public may nonetheless perceive that state employees are misusing the automobiles.

While employees who use state automobiles to commute to and from work may not be misusing the automobiles, they are benefiting personally from that use. According to the Internal Revenue Service, gross income includes fringe benefits, such as the personal use of an employer-provided automobile. The regulations define commuting to and from an employee's home and headquarters in a state automobile as a benefit subject to taxation.¹¹

The State employs more than 400,000 individuals and owns tens of thousands of automobiles for these employees to use for official business. Departments should use discretion when permitting employees to use a state automobile on a regular basis. In addition, departments should carefully control the use of state automobiles by all of their employees. Although the cost to the State of one individual misusing a state automobile may be minimal, the cost of the misuse of state automobiles statewide has the potential to be extremely high. These costs include not only the expenses associated with operating the vehicle, such as gasoline and maintenance costs, but lost tax revenue to the state and federal government resulting from the state employees' failure to report personal use of state automobiles as taxable compensation. Further, the failure to report the value of this personal use creates a tax liability for the employees.

Employees Have Failed To Report the Value of Their Personal Use of State Automobiles

Table 4 lists the five departments and the number of employees we identified at each of these departments who failed to report as taxable compensation the value of their personal use of state automobiles.¹²

¹¹ Regulations cited in this chapter are described in more detail in Appendix B.

¹² Although one of these employees did report \$39 for personal use of his state automobile for January 1994, he failed to report an additional \$312 for the rest of 1994.

Table 4

The Departments Whose Employees Did Not Report Personal Use of State Automobiles

Department	Number of Employees Who Failed to Report
Department of Transportation	11
Department of Health Services	4
Department of Forestry and Fire Protection	2
Department of Corrections	1
Department of Consumer Affairs	1
Total	19

Because departments lacked documentation, we could not always estimate the amount of personal benefit received.



Due to a lack of documentation, we were not always able to estimate the amount employees should have reported as taxable compensation for the personal benefit they received from using state automobiles to commute to work. However, using the documentation that was available, we estimated that 12 of the employees should have reported between \$147 and \$658.50 each for a total of \$4,511.50 in taxable compensation for calendar year 1994.

In one example, an employee at the Department of Transportation had been previously assigned to the department's Bakersfield office. However, when the department eliminated his position at that office, it permanently transferred him to another office, located 39 miles away, that needed additional staff. The department provided the employee with a state automobile to commute between the Bakersfield office and the employee's new headquarters. The employee drove his own automobile from his home to the Bakersfield office and then used the state automobile to commute to and from his new headquarters and the Bakersfield office. This arrangement continued for approximately two and one-half years, until the department reestablished the employee's previous position and transferred him back to the Bakersfield office. According to the department, the alternative was to pay relocation expenses for the employee as allowed by the California Code of Regulations, Title 2, Section 599.714.

The Department of Transportation employee, who did not move, should have reported \$495 as taxable compensation, which was the value of the commute between the Bakersfield office and his new headquarters. The employee stated that the

department did not inform him that he was required to report the value of his personal use of the state automobile as taxable compensation.

In another example, we reviewed the personal use of a state automobile assigned to an analyst at the Department of Forestry and Fire Protection's Santa Rosa office. Even though the employee's supervisor and personnel file information were located at the department's Santa Rosa office, the department considered its Morgan Hill office to be the employee's headquarters. On at least 118 occasions, during 10 months in 1994, the employee stored the automobile at his home. However, according to the mileage logs, for at least 49 (41.5 percent) of these 118 occasions, he used the automobile to commute to and from his headquarters, a 32-mile round trip from his home. Because these trips represent a personal use of a state automobile, the employee should have reported at least \$147 of taxable compensation. The employee told us that he was not aware that travel between his home and his office in a state automobile should have been reported as taxable compensation.



We do not believe the assignment of a state vehicle to an analyst was prudent in one case.


In addition to the analyst's failure to report his personal use of a state automobile as taxable compensation, we do not believe his use of the automobile was in the State's best interest. State regulations specify that it will pay for transportation expenses only when the method of transportation is in the best interest of the State. While the analyst's job at the Santa Rosa office does frequently require him to travel, the employee used the state automobile exclusively to commute more than 40 percent of the time. We believe it would be more economical to provide the employee with a state automobile to make only work-related trips. When we attempted to determine what the Santa Rosa office does to identify personal use of state automobiles, the field equipment manager in the office, who provided the state automobile to the employee, refused to respond to our inquiries.

Departments Lack Internal Controls Over State Automobile Use

In addition to the failure of employees to report the value of their personal use of state automobiles, eight of the nine departments we reviewed had inadequate controls over their employees' use of state automobiles. Table 5 on page 52 identifies the departments and the areas in which they had inadequate controls. Specifically, we found the following weaknesses:

- Eight of the departments failed to maintain valid home storage permits for employees who are required to have such permits. State regulations specify that when an employee frequently stores a state-owned vehicle at or in the vicinity of his or her home, regardless of the reason, the employee must obtain a permit in advance from the department. "Frequently" is defined as more than 72 nights over a 12-month period or more than 36 nights over any 3-month period. By failing to examine each case and maintain valid home storage permits with proper management approvals, the departments are not ensuring that the employees' use of a state-owned automobile is legitimate and in the best interest of the State.


We found several weaknesses:

- *Eight departments failed to maintain home storage permits.*
- *Employees at six departments failed to complete mileage logs.*
- *Four departments lacked adequate procedures to determine personal use.*

- Employees at six of the nine departments failed to properly complete the mileage logs required by the State, and two of the departments did not use the mileage log forms approved by the Department of General Services. California regulations require each state agency to maintain a travel log for each vehicle by using a form approved by the Department of General Services. The form shall include a record of daily mileage traveled, the date and time of travel, an itinerary, information regarding overnight storage, and the identity of the driver. This information enables the departments to monitor the personal use of the automobiles. Without this information, the departments may be unable to determine whether misuse of state automobiles has occurred.
- Four of the nine departments we reviewed did not have adequate procedures to determine whether personal use or misuse of state automobiles had occurred. For example, employees at the Department of Transportation told us that employees have the responsibility to report their personal use of state automobiles and that there are no procedures in place to ensure that employees are properly reporting this use. However, two Department of Transportation employees who failed to report the value of their personal use as taxable compensation told us that the department did not tell them they were required to report their personal use of state automobiles. By failing both to inform employees of their responsibilities and to review the use of the state automobiles, the value of the employees' personal use may go unreported and misuse or abuse may go undetected.

Table 5

Summary of the Entities That Lacked Internal Controls Over State Automobiles

Entity	Failed to Report Personal Use	Failed to Maintain Valid Home Storage Permits	Failed to Complete Mileage Log Properly	Failed to Use Approved Mileage Logs	Lacked Adequate Procedures to Detect Misuse	Personal Use of State Vehicle Not in the Best Interest of the State
Department of Transportation	√	√	√	√	√	
Department of Health Services	√					
Department of Forestry and Fire Protection	√	√	√	√	√	√
Department of Corrections	√	√				
Department of Consumer Affairs	√	√	√			
California Environmental Protection Agency		√	√		√	
Department of Parks and Recreation		√	√		√	
Department of Fish and Game		√	√			
Department of Food and Agriculture		√				
Totals	5	8	6	2	4	1

Conclusion

Nineteen employees at five state departments failed to report the value of their personal use of a state automobile as taxable compensation, thereby creating a tax liability for themselves and a loss of revenue to the State and the federal government. In addition, one department did not act in the best interest of the State when it assigned a state automobile to one of its employees. Finally, eight of the nine departments we reviewed have had inadequate internal controls over the use of state automobiles and thus may be allowing the misuse of the automobiles to go undetected.

Agency Responses

The five departments at which we substantiated that employees had not reported their personal use of state vehicles as taxable compensation were required to respond to our reports. Their responses are summarized below.

Department of Transportation

The Department of Transportation will assess compliance with its procedural standards in a follow-up audit and will aggressively pursue corrective action against employees and supervisors who fail to comply.

Department of Health Services

The Department of Health Services stated that the employees mentioned in our report had originally been assigned state vehicles when their duties required them to spend 100 percent of their time performing field reviews. When the department changed these employees' duties to include reporting to an office, the department failed to inform them of the vehicle-use reporting requirement. The department has now informed the employees of the reporting requirement and plans to issue a reminder of the policies and procedures to appropriate staff.

Department of Forestry and Fire Protection

The Department of Forestry and Fire Protection stated that it is evaluating its process for reporting taxable compensation related to the use of vehicles. The department agrees that the analyst's use of a state vehicle was inappropriate and has taken administrative action to correct the situation. In addition, the department explained that it will strengthen its policy to require a more critical administrative review of vehicle assignments and reported use. In addition, the department noted that it will revise its forms to include information necessary to monitor vehicle use and storage.

However, the department does not agree that the second employee was required to report his personal use of the vehicle assigned to him because the employee is on call to provide mechanical support. We attempted to discuss with this employee his duties and use of his vehicle, but he refused to provide us with information.

Department of Corrections

The Department of Corrections has not completed its corrective action. The department nonetheless reported that the employee cited in our review is no longer working in the program for which he was assigned a state vehicle. However, the department will inform the employee of the reporting

requirements if he is again assigned a vehicle involving home storage. The department is also developing a procedure to ensure that its home storage permits are current. Finally, the department is revising its operations manual, which defines home storage permit requirements.

Department of Consumer Affairs

The department asked the Contractor's State Licensing Board (board) to follow up on our report. The board confirmed our findings and identified weaknesses in its accountability over vehicles that are in the process of being surveyed but not yet disposed. These weaknesses allowed an employee whose duties did not warrant the use of a state vehicle to use a state vehicle without the proper training and documentation. The board is adopting procedures to prevent similar occurrences.

In addition, the department is updating guidelines covering use of state vehicles, vehicle home storage permits, and the reporting of personal use of state vehicles as taxable compensation. The department will reissue these guidelines to all boards, bureaus, and department staff. The department is also developing training for its staff on the criteria and guidelines applicable to the use of state vehicles.

Chapter 10

Update on Previously Reported Issues

Chapter Summary

Under provisions of the Reporting of Improper Governmental Activities Act, an employing agency or appropriate appointing authority is required to report to the state auditor any corrective action, including disciplinary action, that 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 it has not completed its corrective action within 30 days, the agency or authority must report to the state auditor monthly until the action is complete.

This chapter summarizes corrective actions taken by state departments and agencies since we reported related investigative findings publicly on March 5, 1996. It also summarizes conflicts of interest on the part of a former employee of the Department of Finance's former Office of Information Technology. These conflicts of interest were originally identified during an audit of the Department of Motor Vehicles' database redevelopment project.

The 22nd District Agricultural Association Allegation I940135

We reported that the 22nd District Agricultural Association (district) improperly spent district funds on meals and alcoholic beverages. Although the district billed directors for some of the costs related to their personal entertainment, it had not billed them for all of the costs. Further, the district violated state laws and policies by circumventing the State's civil service appointment process to contract with organizations affiliated with the district for the services of several employees.

Agency Response

The district reported that it has taken the following actions:

- Directors are now billed directly for all charges incurred by them and their guests.

- The district no longer purchases alcoholic beverages with district funds.
- The district has hired a new manager who is responsible for overseeing the district's personnel function. The district is evaluating positions previously filled by contract personnel to determine whether it can justify full-time, permanent positions instead.

Department of Industrial Relations
Allegation I950001

We reported that a supervisor at the Department of Industrial Relations (DIR) made an informal arrangement to have an employee 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, costing the State at least \$1,546.

Agency Response

The DIR is still attempting to recover the cost of personal telephone calls from its employees. However, the employees claim that not all of the calls we identified as personal calls were indeed personal.

Department of Finance,
Office of Information Technology
Allegation 94107.1

In 1994, the Joint Legislative Audit Committee requested the Bureau of State Audits (bureau) to perform a comprehensive audit of the database redevelopment (DBR) project at the Department of Motor Vehicles (DMV). The bureau conducted the audit and, in August 1994, presented its audit report entitled, "The Department of Motor Vehicles and the Office of Information Technology Did Not Minimize the State's Financial Risk in the Database Redevelopment Project." During the audit, there were concerns that the actions of an official at

the former Office of Information Technology (OIT), in connection with the DBR project, may have violated provisions of state law related to conflicts of interest.¹³

To determine if the official had a conflict of interest, we reviewed documents gathered during the bureau's audit and the stipulated agreement signed by the official with the Fair Political Practices Commission (FPPC). Based upon our audit work and a review of the stipulated agreement signed by the official with the FPPC, we found that the official violated the State's Political Reform Act of 1974.¹⁴

The Official Violated Conflict-of-Interest Laws

According to the stipulated agreement signed by the official with the FPPC, the official acknowledged that he had violated state laws. Specifically, after leaving state service, the official violated state law when, for compensation, he appeared before and communicated with employees at the OIT and the DMV on behalf of the DBR project main contractor (contractor), with the intent to influence the DBR project, the same proceeding in which he participated while he was an official at the OIT. Further, after leaving state service, he violated another state law when, for compensation, he assisted in representing the contractor before the OIT and the DMV in the DBR project.

The Role of the Official at the OIT

The official was employed at the OIT from March 1983 to September 1989. The purpose of the OIT was to identify new applications for information technology, to improve productivity and service to state agencies, and to assist state agencies in designing and implementing the use of information technology. In addition, the OIT adopted policies and procedures for budgeting and control of expenditures for electronic data processing. The OIT only approved proposed expenditures for electronic data processing if state agencies met and followed its established policies and procedures. The OIT performed its oversight role through its review of information included in feasibility study reports, special project reports, and other required reports; on-site discussions with departmental staff to

¹³ The OIT is now called the Department of Information Technology within the Governor's Office.

¹⁴ For a description of the laws related to issues reported in this section, see Appendix B.

verify information contained in the reports; on-site discussions with vendors, consultants, and staff of other agencies who had knowledge of the technology to be employed; and, on occasion, reviews by outside consultants hired by the OIT.

The mechanism for obtaining initial approval for information technology projects was the feasibility study report. The OIT reviewed feasibility study reports to provide an analytical basis for deciding whether the proposed project should be approved, disapproved, or approved on a modified basis. During the project life cycle, special project reports were also required to be submitted to the OIT for approval if total project costs or anticipated project costs deviated 10 percent more or less than the original estimates, if the project schedule fell behind or was anticipated to fall behind by 10 percent or more, if the program benefits deviated or were anticipated to deviate by 10 percent or more, or if a major change occurred in the project requirements methodology. If the OIT had previously approved the project feasibility study report, the OIT had to approve all special project reports. Until the OIT approved this kind of report, departments could only continue to work on the project as previously approved either in a previous feasibility study report or in a previous special project report.

On behalf of the OIT, the official approved the first feasibility study report for the DMV's DBR project in December 1987, and he recommended that the DMV receive development costs for the project of \$1.5 million for fiscal year 1988-89 and \$1.9 million for fiscal year 1989-90.

The Official's Role With a Consulting Firm

After leaving state service in September 1989, the official entered into an executive employment agreement with a consulting firm to serve as its president effective September 15, 1989. According to the agreement, the firm hired the official because he had "acquired special skills, abilities, background and knowledge" that would be of value to the firm. When the consulting firm incorporated in late 1989, the official and his wife acquired a 25 percent ownership interest and were entitled to share in any of the firm's profits and losses. In June 1990, the official served as a project manager under a contract between the consulting firm and the contractor, and he assisted the contractor and the DMV's DBR project staff in preparing a special project report that was submitted to the OIT for approval. The official subsequently left the consulting firm in September 1990 but remained a shareholder in the firm.

According to the FPPC, as an official of the OIT, the individual in question was “personally and substantially” involved in almost all aspects of the DBR project, a job situation that constitutes a “proceeding” within the meaning of the provisions of the Political Reform Act of 1974. Further, after he was hired by the contractor to assist the DMV in preparing a new special project report for the OIT’s approval, the official contacted an employee at the OIT and went to lunch twice with the employee. At the lunches, the official sought information about the status of the DBR project and the special project report, and whether the OIT had changed the special project report requirements. The official also met and worked with DMV employees to prepare the special project report. Further, the official consulted with one of the contractor’s employees to assist the DMV in rewriting a new special project report that the DMV submitted to the OIT. These activities by the official violated state law.

The FPPC concluded that, as a result of the official’s efforts and assistance, the OIT approved the new special project report in November 1990. This approval allowed the DMV to continue its effort to implement the DBR project fully and to receive additional funding for fiscal year 1990-91.

The Official Influenced Decisions in Which He Had a Financial Interest

The official was reappointed to the OIT in April 1991. According to the FPPC, after he returned to the OIT, the official again violated state law when he made decisions and participated in making decisions that had a material financial effect on the contractor. At the time, the contractor was a source of income to the consulting firm in which the official had an ownership interest.

In April 1991, when he returned to state service as an official of the OIT, the official and his wife still owned a 25 percent interest in the consulting firm. Therefore, any client of the consulting firm who paid the firm \$1,000 or more within the past 12 months was a source of income to the official. The contractor was a source of income to the consulting firm in the amount of approximately \$314,000 and made its final payment of approximately \$2,200 to the consulting firm in December 1992.

According to the FPPC, in October 1991, in response to a request for advice from the official, the FPPC issued an informal advice letter to the official. The letter advised the official not to

participate in any decision that would have a reasonably foreseeable material financial effect on the consulting firm or a client of the consulting firm.

Nonetheless, since his return to the OIT, the official made decisions to support the DMV's budget change proposals for fiscal years 1992-93 and 1993-94; treated two special project reports submitted by the DMV as only informational, rather than as requests for approval; and took no actions to halt or redirect the DBR project. These actions or failures to act, which resulted in the DMV continuing its development of the DBR project and maintaining its agreements with the contractor, violated state law.

Conclusion

An official at the OIT violated state law related to conflict of interest. After leaving state service, the official, to receive compensation, appeared before and communicated with employees at the OIT and the DMV on behalf of the DBR project main contractor, with the intent to influence the DBR project, the same proceeding in which he participated while he was an official at the OIT. He also had a conflict of interest when, after leaving state service and for compensation, he assisted in representing the contractor before the OIT and the DMV in the DBR project. Finally, he had another conflict of interest when he made decisions and participated in making decisions that had a material financial effect on the contractor, a source of income to the consulting firm, and, thus, to him.

Agency Response

The Department of Finance believes that the improper activities occurred as a result of poor judgment by the official and not as a result of a failure of any departmental rule or procedure.

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: September 16, 1996

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Appendix A

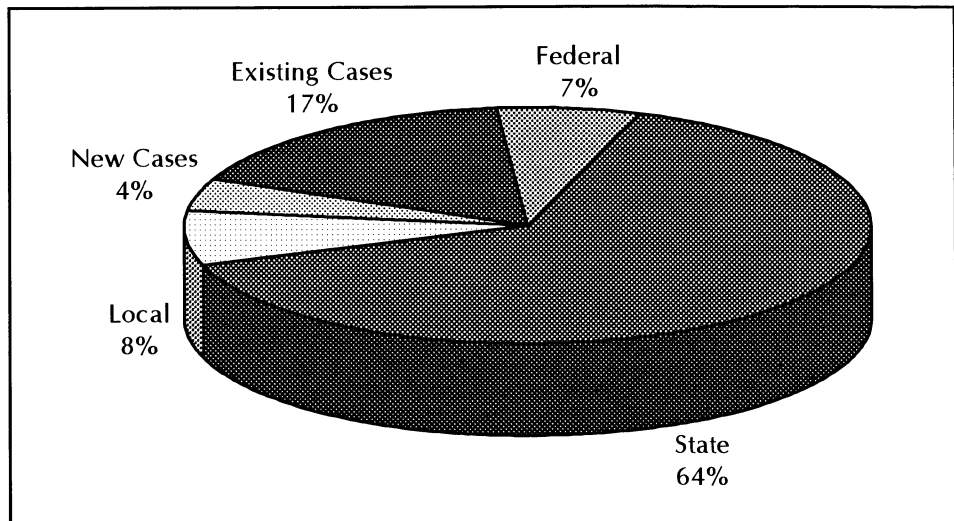
Activity Report

Calls Received on the Whistleblower Hotline

From January 1 through July 31, 1996, the Investigations Unit received 3,150 calls on the Bureau of State Audits' whistleblower hotline, (800) 952-5665. Of these calls, 2,483 (78.8 percent) were about issues outside the jurisdiction of the Reporting of Improper Governmental Activities Act (act), or they were simply requests for information. In these cases, we attempted to give the caller the telephone number of the appropriate entity. We referred 2,030 (64.4 percent) of the calls to other state agencies, 244 (7.7 percent) of the calls to local agencies, and 209 (6.6 percent) of the calls to federal agencies. For 132 (4.3 percent) of the calls received, we established case files. The remaining 535 calls (17 percent) were related to previously established case files. These calls came from the original complainants, additional complainants, or witnesses. Figure 1 shows the disposition of calls received over the whistleblower hotline during the first seven months of 1996.

Figure 1

***Disposition of Calls to the Whistleblower Hotline
January 1 Through July 31, 1996***



***Work Performed on
Investigative Cases***

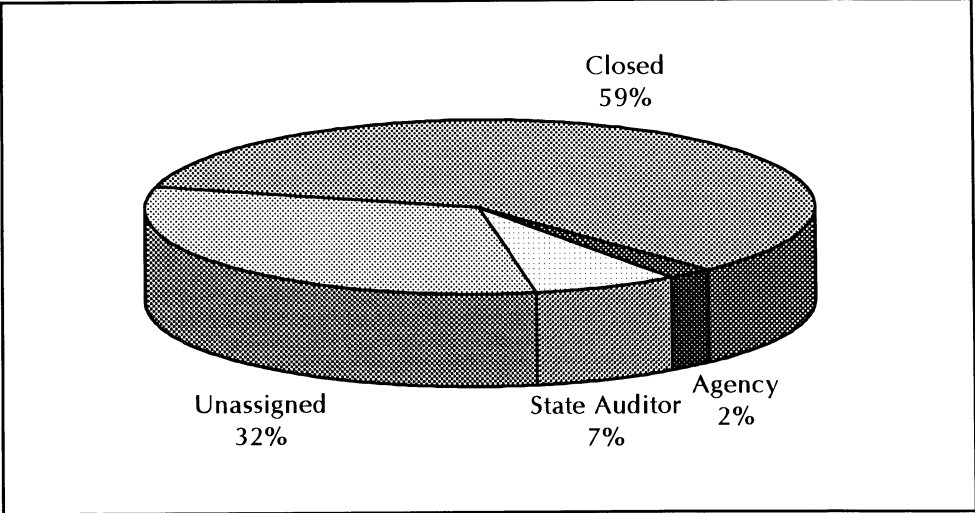
In addition to the 132 cases opened because of calls received on the hotline, we opened 29 cases based on complaints received through the mail and 8 cases based on information provided by individuals who visited us at our office, for a total of 169 case files opened from January 1 through July 31, 1996. As of December 31, 1995, 41 cases were also awaiting review or assignment, and 12 cases were still under investigation by either this office or other state departments or agencies on our behalf. Furthermore, for two 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 December 31, 1995, on these two investigations.

The act specifies 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 124 cases, we concluded that there was not enough evidence of improper governmental activity for us to mount an investigation. However, in 23 of the 124 cases, there was sufficient evidence of improper activities that may concern the departments, so we referred the details of the complaints to the departments for their information, keeping the identity of the complainants confidential.

The act also specifies that the state auditor may request the assistance of any state department, agency, or employee in conducting any investigation. During the period from January 1 through July 31, 1996, state departments investigated seven cases on our behalf. Departments substantiated allegations on two (40 percent) of the five cases they completed during the period.

In addition, we investigated 24 cases during the period from January 1 through July 31, 1996. We substantiated allegations on 7 (70 percent) of the 10 cases we completed during the period. Figure 2 shows action taken on case files during the period from January 1 through July 31, 1996.

Figure 2
Action Taken on Cases
January 1 Through July 31, 1996



Appendix B

State Laws, Regulations, and Policies

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

Theft

—◆—
*Chapters 1, 2, and 3
report thefts.*
—◆—

Section 484 of the California Penal Code states that every person who shall feloniously steal the personal property of another is guilty of theft. Further, the same section states that in determining the value of the property obtained, the reasonable and fair market value shall be the test.

Section 487 of the California Penal Code provides that grand theft is theft committed when the personal property taken has a value exceeding four hundred dollars (\$400). According to state law, grand theft generally is punishable by imprisonment in a county jail or in a state prison.

The Penal Code, Section 424, states that any person charged with the safekeeping or disbursement of public moneys who makes any false entry in an account to misappropriate the public moneys for his or her own use is guilty of embezzlement.

In addition, Penal Code Sections 503 and 504 state that it is unlawful for employees of the State to fraudulently appropriate any property in their possession or control to any use or purpose that is not in the due and lawful execution of their trust.

Incompatible Activities


—◆—
*Chapters 1, 4, and 6
report incompatible
activities.*
—◆—

Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official action. Section 19990 of the California Government Code prohibits a state employee from engaging in activities that are clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state employee. One such activity is 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 substantiated 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.

Another prohibited activity is receiving or accepting money or any other consideration from anyone other than the State for the performance of state duties. In addition, state employees are prohibited from performing an act in other than his or her capacity as a state employee knowing that the act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the employee.

Conflicts of Interest


Chapters 1, 4, 6, and 10
report conflicts of interest.

The Political Reform Act of 1974, contained in Section 87100 et seq. of the California Government Code, states that no public official shall make, participate in making, or in any way attempt to use his official position to influence a government decision in which he knows or has reasons to know he has a financial interest. The law defines a financial interest to include any business entity in which the public official has a direct or indirect investment worth \$1,000 or more. In addition, a public official generally has a financial interest if the official's decision will have a material financial effect on the official, his family, or any source of income or gift that aggregates \$250 or more. Also, a financial interest includes any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. Participation in decision making would include participation in negotiations, advice by way of research, investigations, or preparation of reports or analyses for the decision maker.

Section 87100 prohibits a state employee from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. In addition, Section 87103 specifies that a public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on other specified economic interests of the official. These specified economic interests include any business entity in which the public official has a direct or indirect interest worth \$1,000 or more; any

source of income aggregating \$250 or more provided or promised to the official within 12 months prior to when the decision is made; or any business entity in which the public official is a director, partner, or employee.

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's Office of the Attorney General 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 employment.

The California Government Code, Section 87401, provides that no former state official shall for compensation represent any person other than the State of California before any state agency in any proceeding if previously the official participated in the proceeding in his or her official capacity and if the State is a party to or has a direct and substantial interest in the proceeding. Further, Section 87402 prohibits a former state official from receiving compensation to aid or assist another to represent a person in a proceeding in which the official would be prohibited from appearing under Section 87401.


Purchasing

Chapter 1 reports violations related to purchasing.

State laws governing the acquisition of electronic data-processing goods and services are intended to enable the timely acquisition of these goods and services in order to meet the State's needs in the most value-effective manner. As a result, the Public Contract Code, Section 12100 et seq. and the State Administrative Manual, Section 5209, require that all electronic data-processing goods and services must be competitively procured unless the Department of General Services determines that the required product is available from only one source or must be acquired on an emergency basis. State law permits the Department of General Services

to delegate authority for the procurement of electronic data-processing goods and services to each state agency that has demonstrated to the department's satisfaction the ability to conduct cost-effective electronic data-processing goods and services acquisitions.


Management Responsibilities


Chapters 1 and 2 address inadequate management controls.

The Financial Integrity and State Manager's Accountability Act requires state agencies to establish and maintain a system of internal accounting and administrative controls to safeguard the State's assets. Internal controls are designed to prevent errors, irregularities, or illegal acts. State offices must ensure that a satisfactory system of internal accounting and administrative controls are in place to provide effective controls over assets, liabilities, revenues, and expenditures.

Section 8600 of the State Administrative Manual states that property accounting procedures should be designed to maintain uniform accountability for state property. A combination of accurate accounting records and strong internal controls also must be in place to protect against and detect the unauthorized use of state property.

Cash Handling


Chapter 2 reports cash handling deficiencies.

The State Administrative Manual, Section 8030.1, states that cash collections in excess of \$500 must be deposited on the day of receipt unless they are received late in the day or it is not practical to deposit them before bank closing time. In these cases, the cash should be deposited the next working day. In addition, state policy requires state agencies to use good cash management practices, which include the prompt deposit of cash.

The State Administrative Manual, Section 8030.1, also states that agencies will not make cash disbursements from change funds and will deposit all funds received intact. Also, good internal controls require that disbursements be made by check, except for minor amounts from petty cash funds. The use of checks instead of cash ensures that the State will obtain receipts from payees in the form of endorsements on the checks. A policy that requires check use also centralizes the disbursement authority in the hands of designated officials who are authorized to sign the checks. In addition, checks create permanent records of disbursements and reduce the amount of cash kept on hand.

California State University Parking Revenues

Chapter 2 reports a violation of this law.

The California Education Code, Section 89701, states that revenues received by California State University (university) from any of the motor vehicle parking facilities shall be transmitted to the state treasurer and shall be deposited to the credit of the State University Parking Revenue Fund. Also, the law requires that the university appropriate all revenues only for the acquisition, construction, operation, and maintenance of the motor vehicle parking facilities and for the study of alternate methods of transportation for students and employees of the university.

State Telephones

Chapter 8 reports misuse of state telephones.

Section 19990 of the California Government Code prohibits state officers and employees from using state facilities, equipment, or supplies for personal gain or advantage. Also, Section 8314 of the California Government Code prohibits state employees from using state equipment for personal advantage or for an endeavor not related to state business. If such use results in a gain or advantage to the individual or a loss to the State for which a monetary value can be estimated, the individual may be liable for a civil penalty not to exceed \$1,000 for each day on which a violation occurs, plus three times the value of the unlawful use.

In addition, the State's policy on state telephones, as delineated in the State Administrative Manual, prohibits employees from placing any personal long-distance calls from state telephones unless the telephone calls are charged to another nonstate telephone number. Also, the policy requires employees to keep the number and length of personal calls to a minimum.

State Vehicles

Chapter 9 addresses personal use of state vehicles.

Internal Revenue Service Regulation, Section 1.61-21(a), states that gross income includes fringe benefits, such as the personal use of an employer-provided automobile. The regulations define commuting to and from an employee's home and headquarters in a state automobile as a benefit subject to taxation.

The California Code of Regulations, Title 2, Sections 599.626(b) and 599.626.1(b), state that payment for transportation expenses will be made only for the method of transportation that is in the best interest of the State.

The California Code of Regulations, Title 2, Section 599.808(d), states that when an employee frequently stores a state-owned vehicle at or in the vicinity of his or her home, regardless of the reason, the employee must obtain a permit from the department. "Frequently" is defined as more than 72 nights over a 12-month period or more than 36 nights over any 3-month period.

The California Code of Regulations, Title 2, Section 599.807(a), requires each state agency to maintain on a form approved by the Department of General Services a travel log for each vehicle.

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