

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## **Investigations of Improper Activities by State Employees**

**January 1 Through June 30, 1997**



August 1997  
Report I97-2

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**California State Auditor  
Bureau of State Audits  
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Sacramento, California 95814**

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# CALIFORNIA STATE AUDITOR

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August 12, 1997


Investigative Report I97-2

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 investigative report concerning investigations of improper governmental activities completed from January 1 through June 30, 1997.

Respectfully submitted,

  
KURT R. SJOBERG  
State Auditor

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BUREAU OF STATE AUDITS

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# Summary

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## *Results in Brief*

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The Bureau of State Audits administers the Reporting of Improper Governmental Activities Act (act), which is contained in Section 8547 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 the toll-free Whistleblower Hotline (hotline). **The hotline number is (800) 952-5665.**

This report details the results of the nine investigations completed by the Bureau of State Audits and other agencies between January 1 and June 30, 1997, that substantiated complaints. Examples include the following:

### *Department of Health Services*

- In 1996, a supervisor in the Department of Health Services filed numerous false travel expense claims and failed to report his absences, costing the State \$5,448.
- In addition, he directed a subordinate to falsify a travel claim for \$282 on equipment the supervisor had purchased. The supervisor also failed to turn a \$50 rebate he received on the equipment purchase price over to the State.

### *Department of Parks and Recreation*

- A maintenance supervisor in the San Diego Coast District misappropriated at least \$1,358 in state funds.

***Department of Corrections***

- A prison official misappropriated an undetermined amount of funds raised on behalf of one institution's summer games. In addition, he failed to remit sales tax totaling approximately \$3,200 on merchandise he sold.

***26th District Agricultural Association***

- A district official influenced a decision to construct an irrigation system. Subsequently, the district entered into a contract with a company owned by the official to provide \$19,600 in materials and equipment for the irrigation system.

***California Polytechnic State University,  
San Luis Obispo***

- California Polytechnic State University (Cal Poly) grossly mismanaged its Executive Masters of Business Administration (EMBA) Program by failing to adequately plan its academic and financial aspects and by not obtaining the proper approvals.
- Cal Poly illegally deposited \$110,200 from this program in an account outside the State Treasury.

***Department of Insurance***

- At an estimated cost of \$56,565, a supervisor allowed seven employees to take a total of 331 days off without charging the time against their leave balances.

If, after investigating allegations, the state auditor determines reasonable evidence exists 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 employer or appointing authority receiving the report is required to report back to the state auditor corrective action taken, including disciplinary action, no later than 30 days after the date of the investigative report. If corrective action is not completed within 30 days, the employer or appointing authority must report to the state auditor monthly until the action is complete.

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

In addition, Appendix A provides statistics on the complaints received by this office between January 1 and June 30, 1997, and summarizes our action on those complaints and any others under investigation or awaiting review or assignment as of January 1, 1997.

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



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# *Chapter 1*

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## *Department of Health Services: False Travel and Attendance Claims and Gross Inefficiencies*

### *Allegation I970005*

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A supervisor at the Department of Health Services (DHS) filed numerous false travel claims and failed to report his absences. In addition, the supervisor directed a subordinate to falsify a travel claim to purchase computer equipment. The supervisor also failed to turn over a rebate on the equipment to the State.

### *Results and Method of Investigation*

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At our request, the DHS investigated and substantiated the allegations. To investigate the allegations, the DHS reviewed the two travel claims we questioned and substantiated the allegations. Because the DHS identified several irregularities in the claimed expenses, it expanded its review to include all of the supervisor's travel claims for calendar year 1996 and his attendance reports for January through June 1996. In addition, the DHS reviewed records of telephone calls placed from telephones assigned to the supervisor and calls charged to his state calling card. The DHS also reviewed the supervisor's electronic mail and reviewed a travel expense claim submitted by one of the supervisor's subordinates. The DHS concluded that, as a result of the supervisor's improper activities, the State improperly spent at least \$5,779.

### *The Supervisor Made False and Questionable Travel and Attendance Claims*

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The DHS identified 23 incidents during 1996 in which the supervisor violated laws and regulations governing travel expense claims and attendance reports.<sup>1</sup> These incidents cost the State \$5,448.

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<sup>1</sup> For a detailed description of the laws and regulations related to travel and attendance reporting, see Appendix B.

For example, the supervisor claimed that he made a trip to Seattle, Washington, on state business from April 8 through 15, 1996. The following table details the supervisor's claim.

**Table 1**  
**Travel Expense Claim**  
**April 1996**

Date	Claim	Total Cost
April 8	Drive from Fresno to Oakland, departing at 9 a.m.; fly from Oakland to Seattle. Claimed hotel, meals, mileage. <sup>a</sup>	\$213.50
April 9	Hotel, meals, parking.	177.00
April 10	Hotel, meals, parking.	177.00
April 11	Noncommercial lodging, parking.	54.00
April 12	Noncommercial lodging, parking.	54.00
April 13	Noncommercial lodging.	48.00
April 14	Noncommercial lodging.	48.00
April 15	Fly from Seattle to Oakland; drive from Oakland to Fresno, arriving at 1 p.m. Claimed meals and mileage.	72.00
Other	Parking at airport.	45.00
Other	Parking at hotel in Seattle.	45.00
Other	Gasoline for rental car.	25.00
<b>Total</b>		<b>\$958.50</b>

<sup>a</sup>The State directly paid \$84 for the airfare and \$221 for a rental car.

The supervisor's branch chief approved the claim. However, the DHS noted several discrepancies related to the supervisor's claim:


- Although the supervisor claimed that he left Fresno at 9 a.m. on April 8, his calling card bill indicated that he placed a call from San Francisco at 8:14 a.m. The supervisor told his staff that he had a meeting in Fresno on the morning of April 8, but he did not attend the meeting. On his travel claim, he said that he flew out of Oakland because he had some unspecified meetings in the area earlier that morning.
- The supervisor did not arrive at the Washington work site until approximately 10 a.m. on April 9.

- The supervisor did not arrive at the Washington work site on April 10 until approximately 10 a.m.
- The supervisor was at the Washington work site from 9 a.m. until noon on April 11, but he was not seen by his subordinates again for the remainder of the trip.
- The supervisor told several employees that he was going skiing in Canada. In fact, one of the gas receipts he submitted for reimbursement was for gas purchased in Bellingham, Washington. Bellingham is located 15 miles from the Canadian border and 140 miles north of Seattle.
- The rental car, paid for by the State, was driven 787 miles during the week it was in the supervisor's possession. However, mileage from the hotel to the work site could only account for 120 miles. The ski resort where the supervisor was presumably skiing is located approximately 240 miles from Seattle.
- Although the supervisor claimed that he returned to Fresno at 1 p.m. on April 15, he returned the rental car in Seattle on the afternoon of April 14 and retrieved his car from the Oakland airport at 8:12 p.m. on April 14.

As a result of these discrepancies, the DHS concluded that the supervisor inaccurately accounted for his time and did not charge his time off work against his leave balances for April 12 and 15. Also, he claimed expenses to which he was not entitled for April 12, 13, 14, and 15. Further, the supervisor used the rental car in excess of the amount needed to conduct state business. As a result, the State improperly paid \$1,275 for expenses and salary related to this trip alone.

### ***Grossly Inefficient Travel Patterns***

State regulations specify that reimbursement will be made only for the method of transportation that is in the best interest of the State. However, the supervisor filed several claims for travel expenses related to trips that were grossly inefficient and cost the State more than necessary.

  
*The supervisor drove 240 miles from Fresno to fly to Sacramento, only 180 miles from his point of origin.*

For example, he submitted a travel expense claim for a trip from Fresno to Sacramento on August 26 through 28, 1996. Sacramento is approximately 180 miles from Fresno. However, the supervisor claimed that he drove from Fresno to Ontario, a distance of more than 240 miles, and took a plane to


Sacramento. The supervisor did not indicate on his claim any business purpose for being in Ontario. In addition to wasting the supervisor's time, the trip cost the State \$84 for airfare and at least \$17 in excess mileage.

Moreover, the DHS found evidence that the supervisor was not actually traveling on behalf of the State for all of the time he claimed. Although he claimed that he flew from Sacramento back to Ontario on August 28, ultimately arriving in Fresno at 1 p.m., the Ontario airport parking receipt he submitted showed that he picked up his car at 8:38 p.m. on August 27. Further, according to the log at the building he was presumably visiting in Sacramento, the supervisor was not at the building on either August 26 or 28.

### ***A Subordinate's Improper Claim***

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The supervisor inappropriately used his position to influence a subordinate to file a falsified travel claim, a claim the subordinate would not have otherwise filed. Specifically, in September 1996, the supervisor asked his subordinate to file a claim for \$282 as reimbursement for the purchase of a ZIP computer drive the subordinate did not purchase. In fact, the supervisor purchased the computer drive in July 1996.

  
*The supervisor influenced a subordinate to submit a claim for equipment to avoid approval by the branch chief.*

The subordinate stated that his supervisor asked him to claim this reimbursement so the supervisor could approve the claim instead of having to submit it for the branch chief's approval. In addition, the supervisor wrote an emergency justification for purchasing the equipment even though it did not qualify as an emergency purchase. When the subordinate received payment from the State, he wrote a check to his supervisor for the amount.

In addition, the supervisor received a \$50 rebate in early December 1996 from the manufacturer on the ZIP drive. The supervisor made no effort to remit the rebate until after DHS raised questions about it in mid-January 1997.

### ***Conclusion***

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A supervisor at the DHS did indeed file numerous false travel claims and also directed a subordinate to falsify a travel claim to cover the cost of computer equipment the supervisor purchased. In addition, the supervisor failed to turn over a rebate on the equipment until investigators made inquiries about it. Further, the supervisor failed to report his absences

from work. As a result of the supervisor's improper activities, including those described above, the State improperly spent at least \$5,779.

***Agency Response***

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The DHS dismissed the supervisor.

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# Chapter 2

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## *Department of Parks and Recreation: Misappropriation of State Funds*

### *Allegation I960107*

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A maintenance supervisor (supervisor) in the Department of Parks and Recreation, San Diego Coast District (district), did not deposit funds that maintenance staff at a state park (park) generated through recycling and did not properly account for the funds.

### *Results and Method of Investigation*

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We investigated and substantiated the allegation. The supervisor took possession of at least \$1,358 maintenance staff generated through recycling efforts but did not deposit any of the funds in the account the district established for them. In addition, the district improperly allowed park staff to deposit state funds totaling \$2,692 into an account owned by a private association.<sup>2</sup>

To investigate the allegation, we reviewed applicable state law, the State Administrative Manual, department policy, accounting records of a private nonprofit organization, and recycling revenue receipts. In addition, we interviewed staff from the department, the nonprofit association, and a private accounting firm, as well as the supervisor. Also, because the funds were not properly deposited or accounted for, we analyzed prior-year recycling activity to determine the amount of recycling funds the park should reasonably have collected.

### *Background*

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Several years ago, the maintenance staff at the park started a program to recycle materials they found on park property. The purpose of the program is to purchase equipment not funded in the park's budget. Aluminum cans the staff retrieved from state-owned trash receptacles and recycle bins made up the bulk of materials collected. In approximately December 1994,

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<sup>2</sup> For a detailed description of laws governing issues reported in this chapter, see Appendix B.

the staff stopped retrieving cans from trash receptacles because of health concerns but continued to collect cans from the recycle bins. One of the park maintenance staff estimates they collect approximately 35 percent fewer aluminum cans since they stopped retrieving them from trash receptacles.

The maintenance staff periodically sold accumulations of aluminum cans to recyclers and turned over the cash and a receipt showing the amount of the sale to the supervisor. The funds were then to be deposited into a maintenance account, which was held by a private, nonprofit organization—Southwest Wetlands Interpretive Association (association)—on behalf of the park.<sup>3</sup>

### ***The Maintenance Supervisor Misappropriated Recycling Funds***

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The supervisor misappropriated at least \$1,358 in state funds. According to the supervisor, he was assigned to the park as the maintenance supervisor in December 1993. Under his supervision, park maintenance staff continued to operate the recycling program just as they did before his arrival. The supervisor showed us receipts totaling approximately \$1,358 that staff obtained from the sale of recyclable materials from June 1994 to September 1996. However, according to records of the maintenance account as of December 17, 1996, no deposits were made to that account after December 1993.

—◆—  
*No deposits were made to the maintenance account after the supervisor took over the job.*  
—◆—

The supervisor admitted that he did not deposit any of the recycling funds in the maintenance account. Initially, he kept the funds in a desk drawer in his office. He also said, under penalty of perjury, that in July 1995, he moved the funds into his personal savings account after someone broke into his office and stole some camera equipment. He later recanted this testimony and said that he did not deposit any of the recycling funds in his bank account but instead kept the funds at his home. In addition to keeping the funds at his home, the supervisor said that he kept adequate funds in his personal bank account to provide the recycling funds if they were needed.

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<sup>3</sup>In addition to depositing recycling revenue into an account held by the association, the park also deposited revenue from the sale of firewood into the camp host account, also known as the wood account, and revenue from certain park activities, such as a boat regatta, into the ranger account, also held by the association. We did not attempt to determine the appropriateness of these accounts or the district's handling of them.



We do not know whether the supervisor had sufficient money at home to restore the State's funds. However, contrary to his assertion, we know he did not have adequate funds in his savings account from January 1994 through December 1996 to provide all of the recycling funds belonging to the State.

According to the supervisor, the only time he counted the funds he held was after the break-in. He said that he had \$600 at that time. This figure matches the amount he should have had at that time based on the receipts he showed us. When we interviewed him in January 1997, the supervisor said he did not know how much cash he had but the amount should equal the total amount shown on the receipts that he held.

The supervisor stated under penalty of perjury that he kept receipts for all funds he received for recycled materials since December 1993 when he was assigned to the park.<sup>4</sup> We could not determine whether the supervisor or other park staff collected additional recycling revenue. However, we performed an analysis of recycling funds that staff deposited in the maintenance account in the two years before the supervisor arrived to determine if \$1,358 was a reasonable amount of recycling receipts for the following three years.

  
*The supervisor's receipts did not add up to the estimated amount earned by recycling cans.*  


Assuming collections of aluminum cans were reduced by 35 percent, as estimated by the park maintenance staff member, because they stopped retrieving cans from trash receptacles, the park should have collected \$2,624 from recycling in those three years. Even if collections were reduced as much as 50 percent, the park should have collected \$2,018. If collections were reduced as little as 25 percent, the park should have collected \$3,028. It appears that staff probably collected substantially more aluminum cans than can be accounted for.

### ***The District Misappropriated State Funds***

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Although state law requires all funds belonging to the State to be reported to the controller and deposited in the state treasury, the district allowed park staff to deposit \$2,692 of recycling revenue into the maintenance account.

The district administrator stated that all of the funds in the association's accounts, including the recycling funds,

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<sup>4</sup>Other park staff provided some receipts totaling \$145 for recycled materials that the supervisor did not give to us. However, all of these receipts were for sales in the first six months of the supervisor's assignment to the park and before the date of the first receipt that he showed us. Therefore, we cannot be sure that the supervisor ever saw these receipts or received the proceeds from these sales.

belong to the association. However, according to the association's president, it has held accounts for the district since 1982 based on an oral agreement with a former district manager. The president stated that neither she nor any member of the association exercises any control over deposits or withdrawals of funds in any of the district's accounts.

The district administrator believes that Public Resources Code, Section 513, provides the authority to place all funds generated by department staff in the association's accounts to be used by the association for educational and interpretive programs. However, this code section only addresses funds generated by department personnel engaged in the sale of educational or interpretive materials provided by associations. This section of the law does not apply to the funds in the maintenance account because there is no relationship between the park staff's efforts to recycle aluminum cans and the authority provided by Section 513 for department staff to sell educational or interpretive materials provided by the association.

—◆—  
*In spite of varying interpretations of the law, it was improper for employees to deposit funds in an account outside the state treasury.*  
—◆—

Also, state law specifies that all money in the possession of, or collected by, a state department is state money. Further, since May 1994, according to state policy, aluminum cans placed in recycling containers that belong to the State are the property of the State. All of the recycling receipts the supervisor showed us are dated June 1994 or later, and most of these were for recycling of aluminum or aluminum cans.

### ***Conclusion***

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A supervisor in the San Diego Coast District of the Department of Parks and Recreation misappropriated state recycling funds totaling at least \$1,358 for his personal use. Additionally, the district misappropriated state funds by allowing park staff to deposit recycling funds collected by state employees, totaling \$2,692, in an account held by a private nonprofit organization.

### ***Agency Response***

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We sent our report to the department on May 8, 1997. The department reviewed our work papers and is further investigating the theft of funds with a view of prosecuting the supervisor. However, it has not completed its corrective action.

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# Chapter 3

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## ***Department of Corrections: Misappropriation of Funds and Failure To Pay Sales Tax***

### ***Allegation I950174***

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A prison official (official) allegedly misappropriated funds raised on behalf of one institution's summer games committee.<sup>5</sup>

### ***Results and Method of Investigation***

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We and the Department of Corrections (department) investigated and substantiated these and other improprieties. Specifically, the department concluded the official did not report or account for all summer games income he received. Furthermore, the official admitted using some summer games funds for his personal use. Additionally, according to the department's report, the official violated California retail sales laws by failing to pay sales tax on merchandise he sold related to the summer games.

The department's investigator interviewed the official and other staff involved with planning, managing, or otherwise assisting with the summer games. The investigator also interviewed other department staff who conducted an audit of the summer games account in 1991. Further, the investigator reviewed inventory documents, invoices, bank account statements, canceled checks, and records of cash collections. In addition to the department's investigation, we reviewed a sample of deposits the official made to his personal bank account.

### ***Background***

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The department conducts annual summer games to promote esprit de corps and to encourage physical fitness among department employees. To help support the games, summer games committees conduct fund-raising activities. These activities include such things as the sale of roses, candy,

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<sup>5</sup> For a description of the laws and regulations governing issues discussed in this chapter, see Appendix B.

T-shirts, sweatshirts, caps, coffee mugs, etc. Additionally, committees conduct raffles of such items as jewelry and accommodations at resort hotels. The official managed the finances for some of the fund-raising activities when the games were hosted by his institution.

In August 1994, the coach of one institution's softball team informed the chief deputy warden that a county park department refused to schedule the use of a softball field for him due to an unpaid bill from 1991 charged to a summer games committee. The coach also informed the chief deputy warden that another department employee alleged other irregularities in fiscal accountability for those earlier summer games.



In September 1994, the chief deputy warden discussed the financial status of the summer games with the official and instructed him to pay the outstanding debt for use of the softball field. In an October 1994 meeting with the warden and the chief deputy warden, the official was instructed not to purchase any more of the merchandise that he was selling as part of his fund-raising activities. However, more than seven months later, the official had not followed instructions to pay the debt for the softball field and continued to purchase merchandise. In September 1995, the warden ordered an administrative inquiry into the summer games account covering the period from 1991 to 1995.

In February 1996, we asked the department to conduct an investigation into similar matters based on a call to our Whistleblower Hotline. The department informed us of their ongoing investigation and later requested our assistance. We issued a subpoena for records of one of the official's personal bank accounts and reviewed them for indications that he deposited summer games funds into this account.

### ***The Official Misappropriated Funds***

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According to the department's investigative report, the official did not properly report or account for all of the income raised to support the summer games. Moreover, he could not account for the inventory of summer games merchandise, which, according to department records, totaled \$36,000 between 1992 and 1995. Further, although the official claimed he replaced the funds, he admitted that on two occasions he used cash belonging to the summer games for personal purposes. In addition, we found that the official deposited at least two checks for the summer games in his personal bank account.

  
*Not only did the official fail to keep an inventory of merchandise or records of expenses, he used summer games funds for personal purposes.*  


To report and account for summer games revenues, the official would have to keep records of all documents related to revenues and expenditures. However, according to the department's investigator and a department employee who conducted an earlier review of the summer games finances, the official did not keep adequate records. According to the official himself, he initially kept records of fund-raising activity but stopped after an unspecified period of time.

The official also did not keep an adequate inventory of merchandise he acquired for sale in his fund-raising activities. Furthermore, he did not provide adequate security for the inventory or cash from the sale of the merchandise. According to the chief deputy warden, a department investigator, and one of his subordinates, the official left the merchandise unsecured in his office. In addition, he provided merchandise to staff at his own institution and at other institutions for them to sell but did not keep a record of how much. Therefore, he cannot tell how much merchandise he distributed or how much merchandise or cash from its sale he may have lost or misappropriated. The official also used merchandise as promotional items but kept no records of how much he gave away.

Further complicating accountability for inventory, the official did not provide adequate security for cash he received from the sale of merchandise. Two of his subordinate staff reported that people who sold merchandise placed cash from the sales in an unlocked desk drawer in the official's office. On one occasion, a visitor to the institution left between \$600 and \$700 in cash for merchandise on the official's desk.

The department also found that the official spent summer games funds inappropriately. The official told the department's investigator that he sometimes used from \$50 to \$60 in cash to purchase small items for the program, but did not keep receipts. He also said that he once reimbursed a staff member \$200 for a lost camera the member used to record games events. He also admitted that he once withdrew \$20 in cash from the summer games checking account for his personal use but repaid it within a few days. In addition, he said that he used summer games cash in his pocket on one occasion when he was in a cashier line and did not have any of his own cash with him. He said he repaid this cash as soon as he returned to his automobile.

In addition to the department's findings, we found that the official misappropriated checks he received in payment for games entry fees and fund-raisers. We reviewed copies of a

sample of checks he deposited in one of his personal bank accounts from January 1991 through October 1996 and found indications that several checks were related to the summer games. We were unable to locate all of the individuals who wrote the checks. However, we confirmed with the individuals who wrote two of them that they were for fund-raisers or fees associated with the summer games. The total amount of these two checks was \$60.

The official's failure to keep adequate records and to provide adequate security for inventory and cash makes it very difficult to determine how much cash he should have collected and reported. Therefore, we cannot determine how much he may have misappropriated. However, he misappropriated funds when he reimbursed someone for a lost camera, spent summer games funds for his personal use, and deposited summer games checks in his personal bank account.

### ***The Official Failed To Pay Sales Tax***

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According to the department's investigator, the official did not pay required sales tax for 1992 through 1995 on items he sold as part of his fund-raising activities. The official indicated that despite learning sometime in either 1992 or 1993 that he was required to pay the tax, he did not pay it. However, he included sales tax in the selling price of all the items he sold. Furthermore, he demonstrated that he knew as early as 1991 that he was required to pay the sales tax because he did pay some sales tax for that year. The department estimated the unpaid tax and penalties totaled \$3,198.

### ***Conclusion***

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The official did not report or account for all of the income he received from his fund-raising activities on behalf of the summer games. In fact, the official admitted to using summer games funds for his personal use. Furthermore, we found that he misappropriated funds by depositing summer games revenue checks into his personal bank account. Additionally, the official violated California retail sales laws by failing to pay sales tax on the merchandise he sold.

### ***Agency Response***

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Because of the above and other actions, the department initiated adverse action against the official. The official then retired.

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# Chapter 4

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## *26th District Agricultural Association: Conflict of Interest*

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### *Allegation I940210*

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**A**n official of the 26th District Agricultural Association (association) violated state conflict-of-interest laws by entering into a financial agreement with the association.<sup>6</sup>

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### *Results of Investigation*

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We referred the complaint to the Fair Political Practices Commission (FPPC). According to the stipulated agreement signed by the official with the FPPC, the official acknowledged that he had violated the State's conflict-of-interest laws and agreed to pay a \$1,000 fine.

State law prohibits a public official from influencing a governmental decision in which the official may possess a financial interest. In October 1993, the official influenced the association to approve an application to construct an irrigation system for its fairgrounds at an estimated cost of \$48,000. The association subsequently submitted the application to the Division of Fairs and Expositions, within the California Department of Food and Agriculture, which approved the undertaking of the project in March 1994. Subsequent to the approval, a landscaping company owned by the official entered into an agreement with the district to provide approximately \$19,600 in construction materials and equipment for the irrigation system from April through June 1994. As a result, the official violated the State's conflict-of-interest laws. However, the official provided his equipment at substantially less than the prevailing rates in the area, and the materials at his cost.

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<sup>6</sup> For a more detailed description of the conflict-of-interest provisions of the Political Reform Act of 1974 that apply to this chapter, see Appendix B.

***Agency Response***

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Because the Department of Food and Agriculture (department) has responsibility for ensuring the accountability of district agricultural associations, we sent our report to the department. The department's Division of Fairs and Expositions (division) has conducted seminars and workshops for members of associations' boards of directors. In addition, the division provides these members with printed material concerning conflicts of interest. Finally, the department reported that the official proposed to Amador County's district attorney a settlement under which the official would perform community service to the 26th district association as consideration for forbearance from any criminal proceeding. The association's board of directors accepted the proposal and agreed not to pursue any legal action against him.



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# Chapter 5

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## *California Polytechnic State University, San Luis Obispo: Gross Mismanagement of the Executive MBA Program*

### *Allegation I950107*

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By failing to obtain approvals for the program and failing to adequately plan and administer the program, employees at California Polytechnic State University, San Luis Obispo (Cal Poly) grossly mismanaged the Executive Masters of Business Administration (EMBA) Program.<sup>7</sup>

### *Results and Method of Investigation*

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We investigated and substantiated these and other improper activities related to the EMBA program.

As a result of the improper activities by its employees, Cal Poly was unable to correctly assign credit for completed work when students left the program before completing it. In addition, Cal Poly has no assurance that the program was self-supporting, as required by law. It overcharged 36 students a total of \$1,980, and it overpaid EMBA faculty. Further, in violation of state law, Cal Poly improperly deposited \$110,200.

To investigate the allegation, we reviewed correspondence, planning documents, minutes of committee meetings, and financial records related to the EMBA program. We interviewed Cal Poly employees who were involved with the planning and implementation of the program. Also, we reviewed applicable procedures including the California Education Code and the State University Administrative Manual. Finally, we reviewed student transcripts.

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<sup>7</sup> For a detailed description of state laws and California State University policies governing activities reported in this chapter, see Appendix B.

### ***Background***

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The Office of Extended Education (extended education) at Cal Poly offers a variety of academic and instructional programs and services to local residents. According to the State University Administrative Manual, extended education embraces all self-supporting programs operated within the framework of the Continuing Education Revenue Fund. That is, the programs should be self-supporting through student enrollment fees or outside agency funding and should not rely on state funding.

In early 1993, Cal Poly's College of Business (COB) established a committee of five employees to assess the feasibility of establishing an EMBA program. According to Cal Poly's president, the EMBA program was designed to provide working professionals the fundamental content of the traditional Masters of Business Administration (MBA) program on a convenient schedule and in a format appropriate to their needs. The EMBA program was also designed to be a self-supporting extended education program in accordance with California State University (CSU) policy. Cal Poly expected enrollment in the EMBA program to be 30 students per year. Although it was unclear how many faculty members were expected to participate, 30 were involved by the time the EMBA program began in June 1994.

The charter class of the EMBA program, which began in June 1994, consisted initially of 28 students.<sup>8</sup> Ten of these students withdrew and the remaining 18 completed the program in June 1996. Because of the numerous problems surrounding the EMBA program, Cal Poly did not begin any new classes and no longer offers the program.

### ***Cal Poly Failed To Plan and Implement the EMBA Curriculum Properly***

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Although Cal Poly administrators were aware of the program, the program itself was not formally approved and the curriculum was never submitted to the Academic Senate or Academic Programs for approval.<sup>9</sup> A careful review of the curriculum could have ensured that the content of the EMBA program adequately met established MBA standards and that

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<sup>8</sup>Thirty-six individuals applied for the program initially, and 28 were accepted.

<sup>9</sup>While it did not obtain written approval, the EMBA committee did meet with the vice president of academic affairs, the admissions director, and other Cal Poly administrators to discuss the EMBA program and provide status reports.


sufficient thought had been given to assigning academic credit to each of the program's modules. However, in its rush to begin the program, Cal Poly failed to adequately consider these critical issues. As a result, when some students left before finishing their degree, Cal Poly was unable to correctly assign credit for the work they had completed. Consequently, some students received credit for work they had not completed and others encountered difficulties in transferring credit to other institutions.

Both CSU rules and Cal Poly curriculum instructions require that special sessions, or substantial program changes, such as the EMBA program, be reviewed for consistency with existing programs and officially approved.

The EMBA committee and some other Cal Poly administrators believed the EMBA program was not a substantial change from the traditional MBA program; therefore, it was not necessary to have it reviewed. We disagree with the assessment that there were not substantial changes. Specifically, the program name was changed from MBA to EMBA and the program was theoretically administered through extended education, not the COB.<sup>10</sup>



*The structure of the new graduate program differed from that of the standard MBA program.*



Further, the structure of the program was different from the MBA program; the EMBA program used a team-teaching approach and organized and presented the course material in a series of eight modules. Each module typically integrated course material from two or more of the MBA classes. Material from a traditional MBA class would be covered over a series of modules. Thus, the EMBA program effectively created new courses.

In addition to the Academic Senate and Academic Programs, the COB has a graduate committee. This committee has oversight authority and responsibility for curriculum policy and content for all COB graduate programs. The graduate committee also oversees the administrative policy of all graduate programs offered by the COB. While the graduate committee accepted the EMBA program in principle in February 1994 and the EMBA program began in June 1994, minutes from a November 1994 meeting clearly state the EMBA had never been approved by the graduate committee.

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<sup>10</sup>Whether the EMBA program was offered by the COB or extended education was ambiguous. For example, although special sessions are supposed to be administered by extended education, the contract between extended education and the COB stated the EMBA program was offered by the COB.



Further, minutes from a January 1995 meeting of the graduate committee indicated concern about whether the program covered the same core course content as the MBA curriculum. Some graduate committee members felt the EMBA program was not in conformity with the MBA curriculum. At this time, the COB's graduate committee began a review and modification of the content of certain MBA modules. However, this meeting took place approximately seven months after the EMBA program began. Moreover, as late as January 1996, the graduate committee was still uncertain that the EMBA program conformed to the MBA curriculum.

### ***Another CSU Campus Obtained Appropriate Approvals for Its Executive Management Program***

Cal Poly did not take advantage of information available from other existing, successful executive management programs within the CSU system. In fact, Cal Poly was aware of a successful executive management program implemented in 1990 at San Diego State University (SDSU). In November 1993, the director and assistant director of the SDSU program, and the person responsible for all of SDSU's special sessions, made a presentation on SDSU's program and its administrative structure to a number of Cal Poly's faculty and administrators.

Not only did SDSU spend three years developing its EMBA program (nearly twice as long as Cal Poly), it went through a more extensive review and approval process. SDSU's Academic Procedures and Policy Committee, similar to Cal Poly's Academic Programs, approved the structure and content of the EMBA program. The special session fees were approved by the appropriate authority. SDSU's graduate council approved the EMBA program including the curriculum.

### ***Cal Poly Failed To Properly Plan the Allocation of Class Credit***

  
*The EMBA modules included parts of several MBA courses.*  


The EMBA committee failed to fully consider how it would assign class credit to each of the modules. As mentioned, the structure of the EMBA program was substantially different from the MBA program. For example, Module 5 included course content associated with the following MBA classes: Organizational Behavior, Interpersonal Skills, and Organizations and Management. Recognizing that the program was not designed to fully cover all of the day course content

during one module, the EMBA committee began developing a system in 1993 for allocating credits in certain amounts per quarter. The committee referred to this system as course mapping.<sup>11</sup>

According to a letter dated May 3, 1995, from the dean of the COB to the EMBA students, course mapping served three purposes. First, “because the bypassing of the normal course approval procedures meant that no course numbers existed for the modules,” it was necessary to identify the traditional course numbers parallel to the modules themselves. Course numbers were needed to provide credit on transcripts. Second, course mapping was intended to ensure that the content of the MBA core courses was included in the EMBA and that the core courses were reported on the official university transcript. The third purpose was to provide a vehicle for registration and to document participation in the program for those students seeking fee reimbursements by employers.

However, the same letter to the EMBA students states, “It was well understood that there was not a one-to-one correspondence between the modules and the traditional courses linked to them in the mapping.” For example, no one presumed that all the material covered in a particular MBA class would be covered in one particular module.

◆  
*Even though they had not completed all corresponding work related to courses, some students received full credit.*

All the content of the MBA courses for which the students were registered was to be covered sometime during the two-year program. However, when several students left the program after Module 5, they had not completed all the course work corresponding to the courses in which, on paper, they were enrolled. As mentioned earlier, Module 5 covered content from at least three different MBA courses. Even though not all the content was covered during Modules 1 through 5, the students leaving after completing those five modules received full credit for each of the three classes. In addition, at least two faculty members associated with the EMBA program believed the program as a whole never sufficiently covered some topic areas even though students received course credit.

A total of ten EMBA students withdrew from the program prior to completing their degree. Some of these students transferred to other MBA programs and encountered problems with the number of transfer credits they were allowed.

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<sup>11</sup>The course mapping was not finalized prior to the beginning of the EMBA program. The EMBA program began in June 1994; however, a copy of the course mapping document, dated January 20, 1995, was still labeled “working draft.”

According to a Cal Poly employee, one university was concerned the students may not have adequately completed all the necessary course content for entry into its program since the material that had been covered in the EMBA program did not correlate with the credit granted to the students. Cal Poly's failure to finalize the structure of the courses and the way in which students would receive credit for the courses is but one example of the poor planning that plagued the EMBA program.

### ***Failure To Properly Plan the Financial Aspects of the EMBA Program***

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Although the EMBA program provided a dynamic educational environment, the stated mission of the COB, its founders, did not properly plan several financial aspects of the EMBA program. As a result, Cal Poly has no assurance that the program was self-supporting, as required by law. In addition, Cal Poly overcharged students for fees and overpaid faculty. Furthermore, the committee failed to develop a credible budget before promoting the program and enrolling students. According to CSU policy, fees for extended education programs must be determined on the basis of estimated cost per person. In addition, managers should assess if a sufficient number of students will be willing to pay the cost of any specific course.

### ***Cal Poly Failed To Develop a Working Budget***

We could find no evidence that Cal Poly prepared a budget for the EMBA program before its implementation. We found only one budget for the EMBA program, which was titled EMBA Projected Budget and dated November 29, 1994—five months after the program began. In fact, this was the only budget document the dean of the COB possessed.

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*Salary issues were still being discussed two months after staff began teaching.*  
—◆—

In addition to a working budget, implementation of a program such as the EMBA requires coordination with several departments including budgets, admissions and records, personnel, payroll, and accounting. One of the EMBA committee members stated the committee attempted to check with all the different departments and offices it felt necessary. However, the committee frequently did not contact the appropriate entities until well after the program began.

For example, an August 18, 1994, memorandum by Cal Poly's director of fiscal services indicates a number of concerns still needed to be resolved. The memorandum stated that “. . . it


would have been nice if some of these issues could have been identified and resolved in advance. Since this is a new program with many new players, it is not surprising that we are 'learning by doing.' I am aware that a significant effort was made to achieve the needed coordination, but that the effort did not reach far enough into the operation support organizations (e.g., budget, accounting and payroll)."

One specific concern was how the EMBA faculty and staff would be compensated. This memorandum was written approximately two months after the EMBA program began, and these employees were already working within the program. Another item of concern was the status of financial aid arrangements, which was "not completely clear."

The director of fiscal service's reference to "learning by doing" appears to be an allusion to one of the COB's guiding principles; it subscribes to the philosophy of learning by doing. While this approach may be appropriate in certain circumstances, we believe the COB failed to act responsibly and should have done significantly more research and planning before it began "doing."

### ***Cal Poly Could Not Assure That the EMBA Program Was Self-Supporting***

As mentioned, special sessions such as the EMBA program, are required to be self-supporting instructional programs operating within the framework of the Continuing Education Revenue Fund (CERF). However, Cal Poly had no assurance that the EMBA program was truly self-supporting.

  
*Program expenses were charged to both extended education and the College of Business.*

According to a July 1995 memorandum by the dean of the COB, extended education prepared monthly operating statements for the EMBA program. However, he pointed out these were not a complete accounting of operations because they only included expenses paid by extended education. The operating statements did not include any of the costs charged against COB accounts, including salaries for two faculty members and one secretary who worked on the EMBA program, and other direct expenses charged against COB accounts. Moreover, in August 1995, the dean directed that all possible EMBA expenses should be charged against extended education accounts and any other expenses to the COB's graduate programs account.

The dean also stated that the COB accounts were supposed to be reimbursed from EMBA program revenues. However, because the COB did not track all of the expenses related to the

EMBA program, we were unable to determine the amount of EMBA expenses charged to the COB accounts, and we have no assurance that these expenses were in fact reimbursed from EMBA program revenues.

According to the COB, in the fall of 1996, EMBA program revenues exceeded expenditures by \$77,459. In March 1997, after we began our investigation, \$74,459 was transferred to the COB and \$3,000 was left in the CERF to cover any additional expenses that might not have cleared. In addition, \$5,156 was previously transferred from the CERF to the COB. According to the dean of the COB, this \$79,615 (\$74,459 + \$5,156) represents a reimbursement to the COB for the salaries of two module coordinators, five support staff, and student assistants. While the COB states that the EMBA revenues were used to reimburse these salaries, this did not occur until March 1997, more than two years after most of the employees performed their work for the EMBA program.


For the EMBA program to be self-supporting, the related salary expense for all these employees should have been paid with EMBA program revenues. At least five support staff spent time working on various aspects of the EMBA program. The COB now estimates the cost of the five employees' time spent on the EMBA program is \$39,242. However, we question the reliability of this estimate since much of the work was performed more than two years ago and the COB did not track the amount of time each of the employees actually worked on the EMBA program.

By failing to maintain accurate records for EMBA program expenses, Cal Poly has no assurance that the EMBA program was, in fact, self-supporting as required.

### ***Students Were Charged Fees Higher Than Those Approved***

CSU policy specifies that only the campus president or the president's designee may approve the establishment, increase, and decrease of special session fees. Fees per student for the two-year EMBA program included an application fee of \$110 plus \$17,000 for tuition, textbooks, other required course materials, and meals; neither of these fees was approved by the campus president or his designee. As of January 1997, Cal Poly's approved application fee for all Cal Poly programs was \$55, half the cost charged for the EMBA program.



  
*Students were charged  
double the amount of the  
approved application fee.*

Because the EMBA program charged \$55 more than the approved application fee, 36 students were overcharged a total of \$1,980.<sup>12</sup> According to one member of the EMBA committee, the application fee of \$110 was intended to help cover the costs incurred by extended education for services normally handled by the Cal Poly records office. Extended education performed the services instead of Cal Poly since the EMBA program was offered through extended education.<sup>13</sup> The committee member told us that he was not aware it was necessary to obtain the campus president's approval for the fees; however, the committee did advise the vice president of academic affairs of the fee schedule.

### ***EMBA Faculty Were Paid at Rates Higher Than Those Approved***

CSU's policy specifies that faculty be compensated according to approved salary schedules for special sessions. The approved salary schedule specifies rates for faculty pay based on the number of units taught, the number of students enrolled in the course, and the rank of the faculty. For example, a professor makes more money than an associate or assistant professor for teaching 20 students, and any professor makes more money for teaching 25 students than 20 students.



In spite of this policy, Cal Poly paid all EMBA faculty \$75 per hour, regardless of their rank. According to one EMBA committee member, the committee recognized that teaching classes in the EMBA program would require additional work for those faculty members who chose to participate. The committee believed that EMBA salaries should be sufficiently high to attract faculty to the program. The flat rate of \$75 per hour overpaid at least some of the EMBA faculty.

The special sessions pay scale is based in part on the number of quarter units taught; because the courses were team taught, we were unable to allocate an appropriate number of units to each faculty member. However, to cite one example, at least 16 faculty were involved in Module 1, for which students received four units of course credit. The EMBA program paid one of these faculty members, to whom the COB allocated less than one unit of instructional credit, \$2,100 for his participation in Module 1. Based on the faculty member's level and the

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<sup>12</sup>Based on a note in one student's file, at least this student may have received a refund of the application fee after being denied admission to the EMBA program.

<sup>13</sup>As stated previously, conflicting statements were made about whether the EMBA program was offered by extended education or the COB.

  
*Faculty were paid \$75 an hour regardless of rank or number of students.*  


number of students in the class, he should have been paid \$837 per unit. Even allowing one unit of credit (25 percent of the course credit), the employee was overpaid \$1,263 for Module 1.

Moreover, each module generally was broken up into four-hour blocks. One committee member explained that, under the pay scheme used for the EMBA program, faculty were typically paid \$300 (\$75 per hour times four hours) for each four-hour block in which they taught, even though the team teaching approach meant that each faculty member taught for only part of the four-hour block.

Not only did Cal Poly fail to follow the guidelines in the CSU policy, it failed to heed the warnings of its own director of fiscal services. In a memorandum dated August 18, 1994, to COB and Cal Poly administrators, Cal Poly's director of fiscal services documented his understanding of the discussion that took place at a meeting that same day regarding compensation of EMBA program faculty. In part, the memorandum states, "It is my understanding that the College of Business may prepare documentation that will have the result of paying all faculty (and perhaps staff) at the rate of \$75 per hour when pay for assigned time and pay for instructional time are considered. While it is up to the college to allocate assigned time in accordance with its assessment of time worked/value provided, it seems clear that any rational allocation process would probably not result in an equal hourly rate. I am aware that the college is under some pressure to achieve this result due to commitments that have been made, but I remain concerned with this approach."

The director of fiscal services wrote another memorandum dated November 8, 1994, providing guidelines for EMBA compensation, as requested by an EMBA committee member. The memorandum states that payment for EMBA instructors and staff should be in accordance with a current salary schedule, based on the number of units taught, number of students in the class, and the rank of the instructor. Further, ". . . units should not be used to equalize salaries across ranks or otherwise distort the normal operation of the salary schedule."

Once again, we believe that Cal Poly and the COB failed to act responsibly in planning and administering the EMBA program, leading to violations of CSU's own policies, student fee overcharges, and overpayments to faculty.

### ***Extended Education Did Not Deposit Funds in the Proper Account***

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Extended education deposited revenues in a university trust account rather than the state treasury.

State law and CSU policy require revenues from extension programs, special sessions, and other self-supporting instructional programs be deposited in the state treasury and credited to the CERF. However, extended education deposited more than \$110,200 into a university trust account instead of the CERF.

The May 1994 contract between the COB and extended education stated the extended education office would establish a program account for the EMBA program, establish a foundation account for incidental expenses, and deposit all funds received into one or the other of these accounts.<sup>14</sup> Further, the contract stated that extended education would establish a miscellaneous trust account to handle all student fees, disbursement of payments and salaries, and other miscellaneous costs authorized by the COB. The COB expended some of the funds directly from the trust account for expenses related to the EMBA program and eventually transferred the remainder of the funds to the CERF.

### ***Conclusion***

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Cal Poly mismanaged the EMBA program. Specifically, employees who developed the program failed to obtain formal academic review and approvals. This lack of planning and review contributed to the EMBA program not matching the standards of other CSU and Cal Poly graduate business programs and made it impossible to accurately assign credit to students who transferred before completing the EMBA program.

Because it did not develop a credible budget for the program before soliciting students and did not adequately track program costs, Cal Poly has no assurance that the program was self-supporting, as required by law. Cal Poly also did not adhere to approved student fees or faculty pay rates.

Finally, Cal Poly failed to establish adequate control over program revenues. For example, contrary to state law, extended education deposited \$110,200 in a trust account.

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<sup>14</sup>The Cal Poly Foundation is a separate, nonprofit corporation that provides self-supporting programs and performs services to assist Cal Poly in achieving its educational mission.

### ***Agency Response***

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Cal Poly believes it promptly acted to delay and ultimately terminate plans to admit a second class to the EMBA program. Cal Poly stated it will ensure that it obtains appropriate curriculum approvals for similar programs in the future. It also stated that, while it made no guarantees that earned EMBA credits would transfer to other degree programs, it will consider such issues when approving future programs.

In addition, Cal Poly believes we have unfairly suggested the EMBA program may not have been self-supporting. However, as we state in the report, because the COB did not track all the expenses related to the EMBA program and because it did not estimate how much time staff worked on the EMBA until two years after work was performed, we had no assurance the EMBA program was, in fact, self-supporting.

Cal Poly also stated that it has instructed extended education to obtain approval for all special sessions fees and that extended education will do so in the future. However, Cal Poly believes we should not have used the approved application fee of \$55 to calculate the amount students were overcharged.

Cal Poly further believes we failed to acknowledge that the CSU's policy concerning faculty salary schedules is inadequate. Specifically, Cal Poly stated the CSU's policy does not adequately provide for appropriate compensation methods for programs with unique instructional methods such as team teaching. We acknowledge in our report that, because the modules were team taught, we could not quantify exactly what proportion of each module should be attributed to each faculty member. However, Cal Poly made no effort to obtain an exception to the approved salary schedule. Moreover, Cal Poly ignored warnings from its own director of fiscal services that the method of compensating EMBA faculty was inappropriate and contrary to CSU policy. Further, Cal Poly stated that our method is flawed for calculating how much one faculty member was overpaid. However, Cal Poly did not ask to review our workpapers or ask about our methodologies.

Cal Poly acknowledged it erroneously deposited \$110,200 in EMBA program revenues and stated it will appropriately deposit such funds in the future.

Finally, Cal Poly states that, while the EMBA program had some deficiencies in planning and early implementation, the actions Cal Poly took for the second half of the program allowed it to

retain a reasonable proportion of the original number of students who enrolled in the program and allowed it to make the program self-supporting.

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# Chapter 6

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## ***Department of Insurance: Improper Personnel Practices***

### ***Allegation I950115***

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A supervisor of the Department of Insurance's (department) Sacramento unit of the Market Conduct Bureau granted employees time off without requiring them to charge their absences to their leave balances.

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

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We investigated and substantiated the allegation. We reviewed applicable laws and regulations, employees' time reporting and attendance records, travel expense claims, and department documents. In addition, we interviewed present and former department employees.

### ***Background***

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Market Conduct Bureau staff complete on-site examinations of insurance companies that write insurance in California. The staff review and audit claims, underwriting, and marketing procedures to assure the companies adhere to California regulations. Typically, the staff work in two-person teams to review closed claims for a designated period and write a report. Since 1990, the supervisor typically has arranged the market conduct examinations to start the first week of the month and to continue for 15 to 18 working days. The staff work on-site at the insurance company for three weeks and in the Sacramento office for one week each month. Some examinations are at insurance company locations outside California.

Because the cost of staff members staying over the two weekends during an out-of-state examination is generally less than the cost of coming home, the department will not pay for staff to come home on weekends during an out-of-state examination. Therefore, for out-of-state examinations, staff are away from home for three weeks during the month.

***Supervisor Allowed Employees  
To Go Home Without Charging Leave***

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State law prohibits employees from using state-compensated time for personal advantage or for an endeavor not related to state business.<sup>15</sup> In addition, state policy requires agencies to maintain complete records of attendance and absences for each employee during each pay period.

Present and former Market Conduct Bureau employees told us they were sent home between market conduct examinations because they had no work and office space was limited. They referred to this as “dead time.” The Market Conduct Bureau did not require them to use vacation or other leave time, and it did not keep formal records. Employees viewed this extra time away from work as a perquisite because they traveled so much.

Because the department’s records were incomplete and inaccurate, we were unable to document the extent of the practice of sending employees home during dead time. For example, half of the 224 possible attendance records covering time between January 1990 and June 1995 that the department should have had for seven employees were not in the files, were not signed, or were signed by the supervisor for the employee.

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*Seven employees took  
331 days off valued  
at \$56,565 without  
charging leave.*  
—◆—

Moreover, none of the attendance records on file reflected dead time. However, the supervisor admitted that, between 1990 and the middle of 1995, he allowed employees to leave work for two days of the month without requiring them to use vacation, annual leave, or personal days. In addition, the supervisor allowed staff to take six days off without charging leave in December 1994. During the four years from July 1991 through June 1995, seven Market Conduct Bureau employees took 331 days off valued at a total of \$56,565 without charging leave balances.

The supervisor said he felt he had the supervisory discretion to allow this flexibility. He said he was trying to provide a balance for so much time spent away from home by the employees on behalf of the State.

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<sup>15</sup>For a more complete discussion of the laws and policies governing attendance, see Appendix B.



***Conclusion***

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A supervisor allowed seven employees to go home for two days a month without requiring the employees to charge leave for their time away from work. In addition, he permitted staff to take six days off without charging leave in December 1994. As a result, even though the seven employees took off a total of over 331 days from July 1991 through June 1995, the time off was not charged to their leave balances. We estimate the cost of this time to be \$56,565.

***Agency Response***

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The department demoted the supervisor to a nonsupervisory position.

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# Chapter 7

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## ***State Teachers' Retirement System: Improper Personnel Actions***

### ***Allegation I960056***

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**T**he State Teacher's Retirement System (STRS) paid two individuals who fit the definition of common-law employees as independent contractors.

### ***Results and Method of Investigation***

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We investigated and substantiated the allegation. To investigate the allegation, we reviewed the applicable federal and state laws and state policies, reviewed STRS vendor records for two fiscal years, and interviewed STRS staff members who supervised and worked with the two individuals.

### ***Background***

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For at least seven years, STRS paid two individuals as independent contractors to provide part-time professional guidance and oversight to field consultants in the Disability Services Division's (division) vocational rehabilitation program. Usually, one of the individuals worked two days per week, and the other worked three days per week.

### ***The Distinction Between Employees and Independent Contractors***

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The distinction between employees and independent contractors is an important one. Both the Internal Revenue Service (IRS) and the Employment Development Department (EDD) have provided clear guidelines for making this distinction.<sup>16</sup>

The "right of control," whether or not exercised, is the most important determinant in concluding whether an individual is an employee or an independent contractor. The right to

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<sup>16</sup>For a description of factors used to make the distinction, see Appendix B.

discharge a worker at will and without cause is strong evidence of the right of control, as is the employer's legal right to control both the method and means by which services are rendered and the results are achieved.

***STRS Improperly Paid Employees  
as Independent Contractors***

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Applying the factors identified by the IRS and the EDD, we conclude the two individuals designated by the STRS as independent contractors were, in fact, common-law employees. These factors clearly show the STRS had the right of control over their actions. For example, it controlled the work of the individuals by limiting the hours they worked. Neither individual could work more than his normal schedule unless approved ahead of time by the division chief. In addition, they reported daily to the STRS the work they performed and the hours spent.

Further, the individuals' services were integrated into the normal business of the division; their names appeared on its organization chart and telephone directories, and each had an electronic-mail address through STRS. Also, the individuals were the primary STRS contacts for outside consultants and signed correspondence on behalf of the STRS on its stationery.

The right to discharge a worker at will and without cause is strong evidence of the right of control. The STRS had the right to discharge the individuals and to increase or decrease the number of hours they worked. For example, according to the division chief, the STRS reduced the individuals' combined work hours from five days per week to one day per week while it implemented a different organizational structure approximately three years ago. After the STRS found that the proposed structure was ineffective, it increased the individuals' combined work hours back to five days per week.



Finally, a worker's right to quit without incurring liability is also an indication that one is an employee. Contractors cannot quit performing the terms of a contract without risking legal liability for breaching the contract. The two individuals could have terminated their relationship at any time without incurring liability, primarily because they had no contractual agreement with the STRS.

When we reviewed the 20 common-law factors determined by the IRS and the 4 California factors determined by the EDD, we concluded that the two individuals should have been categorized as employees for 17 of the 24 factors.

***Adverse Effects of STRS' Actions***

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The division began reviewing the proper categorization of these two individuals before we began our investigation in April 1996 but did not resolve the matter until December 1996, when the STRS appointed one of the two individuals to a full-time, permanent, civil-service position. Although the STRS continued to pay the other individual as an independent contractor as of February 1997, it planned to end its use of this individual's services by April 1, 1997.

  
*The STRS paid the individuals almost double the salary paid to an employee to perform the services.*  


The STRS paid substantially more for the combined services of these two part-time positions than it does for one full-time civil service position to perform the same functions. Specifically, the STRS paid the two individuals \$60 per hour as part-time independent contractors for a total of more than \$105,100 in fiscal year 1994-95. The STRS is presently paying approximately \$53,100 per year in salary and benefits for one of these individuals as a full-time employee. This expense is only slightly more than one-half of the amount it paid the two individuals to work a combined full-time schedule in fiscal year 1994-95.

Also, the STRS could have been, and may still be, held liable for not treating these individuals as employees. Specifically, the IRS states if an employer treats an employee as an independent contractor without having a reasonable basis for doing so, the person responsible for the collection and payment of withholding taxes—a STRS employee—may be held personally liable for an amount equal to the taxes that should have been withheld. The penalty can be equal to the taxes not paid plus interest.

In addition, according to the EDD, if the IRS determines that a contractor is an employee, the offending state agency can be held liable for the following penalty assessments:

- Failure to withhold income taxes, a penalty equal to 1.5 percent of the wages paid plus 20 percent of social security taxes that should have been paid by the individuals;
- Unpaid portion of the employer's contribution to social security taxes; and
- Failure to withhold 31 percent of a noncorporate independent contractor's pay, a penalty equal to 100 percent of what the contractor would have paid in taxes.

Although good business practices dictate that an agency should have a written contract with individuals who are providing long-term services as independent contractors, the STRS had no such written contract with the two individuals who were the subject of our investigation.

In fact, the STRS' chief of the administrative services division conceded that the STRS potentially faced legal action because it did not have written contracts. For example, if either individual had become injured while working at the STRS facility, it would not have been clear whether the situation was a workers' compensation issue or a liability insurance issue. This discrepancy could have delayed payment to the injured individual and opened the STRS to court action and subsequent legal fees. Further, its responsibilities were not clear in the event of a suit against one of the individuals for his action on behalf of the STRS.

### ***Conclusion***

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The STRS paid two individuals who fit the definition of common-law employees as independent contractors from at least 1989 through 1996. As a result, the STRS paid substantially more for the services than necessary. In addition, it could be penalized if the IRS determines that the individuals were employees, not independent contractors. Further, STRS could have been subject to other legal action.

### ***Agency Response***

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The STRS believes it was appropriate to use independent contractors at the time but acknowledges that establishing a civil service position to perform this work now is correct.

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# Chapter 8

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## *Department of Food and Agriculture: Failure To Perform Mandated Duty*

### *Allegation I960204*

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Contrary to state law, the Department of Food and Agriculture (department) is not inspecting carbon monoxide chambers used to kill dogs and cats.<sup>17</sup>

### *Results of Investigation*

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We investigated and substantiated the allegation. Specifically, state law requires the department to inspect semiannually any carbon monoxide chamber used to kill any dog or cat. However, the department confirmed that, as a result of budget reductions, it suspended its program of routine inspection of euthanasia chambers along with a number of other programs. However, to the extent that chamber owners or other affected parties are willing to fund them, the department will perform inspections. The department also stated that it would meet with chamber operators and animal rights organizations to explore other options for funding the inspections.

### *Agency Response*

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Absent an increase in the department's budget for this program, the department will perform inspections only to the extent that they are funded by some other source.

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<sup>17</sup>For a description of the law related to such inspections, see Appendix B.

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# Chapter 9

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## *Department of Health Services: Misuse of State Equipment*

### *Allegation I960190*

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Three employees in the Department of Health Services' (department) data systems branch placed personal telephone calls at the State's expense. In addition, one of the three employees used the State's e-mail system for personal purposes.<sup>18</sup>

### *Results of Investigation*

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At our request, the department investigated and substantiated the allegations. We provided the department with records of telephone calls placed from telephones assigned to the three employees and with copies of seven e-mail messages sent by one of the three employees to numerous state employees at this and other departments.

The three employees admitted they had used state resources for personal purposes.

### *Agency Response*

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The department counseled the three employees and issued a reminder to all branch staff about possible sanctions for the misuse of state resources. In the case of the employee who misused the State's e-mail system, the department issued an informal letter of reprimand because of the large volume of her personal calls and because she had been previously counseled about her personal use of e-mail.

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<sup>18</sup>For a description of laws governing personal use of state resources, see Appendix B.

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# Chapter 10

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## *Update on Previously Reported Issues*

### *Chapter Summary*

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Under provisions of the Reporting of Improper Governmental Activities Act, an employing agency or appropriate appointing authority is required to report to the state auditor any corrective action, including disciplinary action, it takes as a result of a state auditor's investigative report no later than 30 days after the report is issued. If it has not completed its corrective action within 30 days, the agency or authority must report to the state auditor monthly until the action is complete.

This chapter summarizes corrective actions taken by state departments and agencies related to investigative findings since we last reported on them on March 18, 1997.

### *Department of Education Allegation I940262*

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We publicly reported the results of this investigation on September 9, 1996. We reported that a manager of the California Department of Education (CDE) improperly managed the funds of a statewide student vocational club under its jurisdiction and the funds of a charitable corporation that received payments from CDE contracts.

Specifically, the manager illegally paid over \$44,100 of personal expenses out of California Association of Vocational Industrial Clubs of America Leadership Foundation (foundation) and California Association of Vocational Industrial Clubs of America (CAVICA) funds. He also submitted false claims that resulted in improper payments totaling over \$17,745 for travel expenses and illegally exchanged at least \$4,100 in airline tickets purchased with federal funds for other tickets used for personal trips, among other improper activities.

We also reported that the manager and other CDE employees circumvented state policies and controls by using fiscal agents to pay \$37,480 for services not received, to purchase more than

\$76,000 in services and computer equipment without obtaining competitive bids, and to pay over \$13,500 for travel expenses not allowed by state regulations and policies.

***Agency Response***

The manager retired from state service, effective August 8, 1996. As reported earlier, the CDE strengthened controls over program operations to ensure compliance with laws and regulations and replaced the chain of command responsible for vocational service organizations. After reviewing our working papers, the CDE identified additional improper activities by one employee and suspended the employee for 60 days. In addition, the CDE has recovered over \$63,000 from one fiscal agent and has billed another fiscal agent for over \$12,000.

***Department of Personnel Administration  
Allegation I960030***

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On October 16, 1996, we publicly reported that a former employee of the Department of Personnel Administration (DPA) stole deferred-compensation funds totaling at least \$381,000 held by the State on behalf of three plan participants. The DPA is responsible for the State's Savings Plus Program (SPP), which includes the deferred-compensation plan. On March 18, 1997, we publicly reported that the same former employee also stole another \$19,700 in funds being held for yet another plan participant.

***Agency Response***

The DPA completed its internal review of the SPP and has hired a consultant to review the program's administrative operations and to compare those operations with "industry best practices."

In response to our inquiry after the investigation, the DPA also stated it would establish an out-of-balance condition to temporarily fund the amounts stolen and the earnings that would have accrued in each account had the funds not been stolen. The DPA further stated that if any of the affected employees or account beneficiaries requested payout of the funds, it would provide them. However, to do this, the DPA would have to borrow funds belonging to other plan

participants. The DPA assured us that it is working with the Department of Finance to identify methods to permanently fund the out-of-balance condition created by the thefts.

***Department of Transportation  
Allegation I950149***

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On March 18, 1997, we publicly reported that a supervisor at the Engineering Services Branch within the Department of Transportation (Caltrans) in Los Angeles used state time, computers, telephones, and employees to conduct his own businesses from 1989 through 1995. Another employee who used state resources when performing work for one of the supervisor's businesses also used state computers and time in 1995 for personal business, including using an on-line service to engage in discussion groups and to download adult materials.

***Agency Response***

We reported these improper governmental activities to Caltrans on December 30, 1996. Caltrans reviewed our work papers and has been investigating further the issues we reported. However, Caltrans has not completed its investigation or its corrective action.

***Department of Social Services  
Allegation I960019.2***

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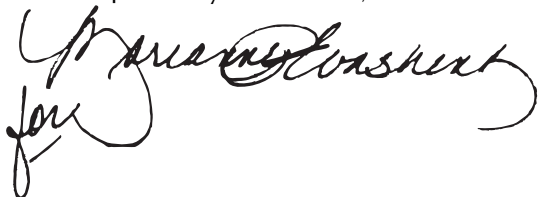
On March 18, 1997, we publicly reported that an employee of the Department of Social Services (DSS) filed travel expense claims for miles that she did not drive in her personal vehicle. Also, the employee improperly claimed a higher mileage reimbursement rate than she was entitled to receive, resulting in an overpayment of \$2,842. In addition, the employee claimed lodging expenses of \$4,623 but refused to provide us with any information on the lodging facility. Further, the employee claimed at least \$629 for unnecessary meal and incidental expenses. Finally, the employee did not work at least 36.75 of the total hours claimed on her time sheets during February and March 1996.

**Agency Response**

After reviewing our work papers, DSS obtained additional information from the employee. DSS did not believe it could prevail in an administrative hearing if it took adverse action against the employee. As a result, DSS reassigned the employee to a different caseload involving less travel. In addition, DSS will more closely scrutinize her claims. Finally, the employee has agreed to repay \$1,043 in monthly installments of \$50.

We conducted these investigations under the authority vested in the California State Auditor by Section 8547 of the California Government Code and in compliance with applicable investigative and auditing standards. We limited our review to those areas specified in the scope sections of this report.

Respectfully submitted,



KURT R. SJOBERG  
State Auditor

Date: August 12, 1997

Investigative Staff: Ann K. Campbell, Manager, CFE  
William Anderson, CGFM  
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Virginia Anderson Johnson  
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Dore C. Tanner, CPA, CFE

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# Appendix A


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## Activity Report


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### **Action Taken as a Result of Investigative Reports**

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*Investigations completed  
over the past four years  
have identified improper  
governmental activities  
that cost the taxpayers  
\$7.6 million.*

Since July 1993, when the Bureau of State Audits (bureau) reactivated the Whistleblower Hotline (formerly administered by its predecessor, the Office of the Auditor General) investigations have identified improper governmental activities totaling approximately \$7.6 million. These improper activities included theft of state property, false claims, conflicts of interest, and personal use of state resources. In addition, investigations substantiated other improper activities that cannot be quantified in dollars but have had a negative societal impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

  
Although the bureau investigates improper governmental activities, it does not have enforcement powers. As stated in the Summary, when allegations of improper governmental activity are substantiated, the state auditor reports the nature and details of the activity to the head of the state entity or the appointing authority. It is then up to the state entity or authority to take whatever corrective action it deems appropriate. However, the recipient of the state auditor's report is required to report any corrective action taken, including disciplinary action, no later than 30 days after the date of the investigative report. If it does not complete corrective action within 30 days, the state entity or appointing authority must report to the state auditor monthly until the action is complete. In addition, the Reporting of Improper Governmental Activities Act (act) empowers the state auditor to report improper governmental activities to other appropriate authorities, such as law enforcement or other entities having jurisdiction over the activities.

Corrective actions taken on cases contained in this report are described in the individual chapters. Table 2 summarizes all of the corrective actions taken by agencies since the bureau activated its Whistleblower Hotline in July 1993.

**Table 2**

***Corrective Actions Taken  
July 1993 Through June 1997***

Type of Corrective Actions	Instances
Referrals for criminal prosecution	59
Convictions	3
Job terminations	19
Demotions	5
Pay reductions	7
Suspensions without pay	6
Reprimands	59

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

***New Cases Opened  
January Through June 1997***

We receive allegations of improper governmental activities in several ways. The largest proportion of allegations come from individuals who call our Whistleblower Hotline at (800) 952-5665.<sup>19</sup> In the first six months of 1997, we opened 142 new cases. Of these, 110 (77 percent) came as a result of individuals calling the hotline. We also opened 28 new cases based on complaints received in the mail and 4 new cases based on complaints from individuals who visited our office. Figure 1 shows the sources of cases opened from January 1 through June 30, 1997.

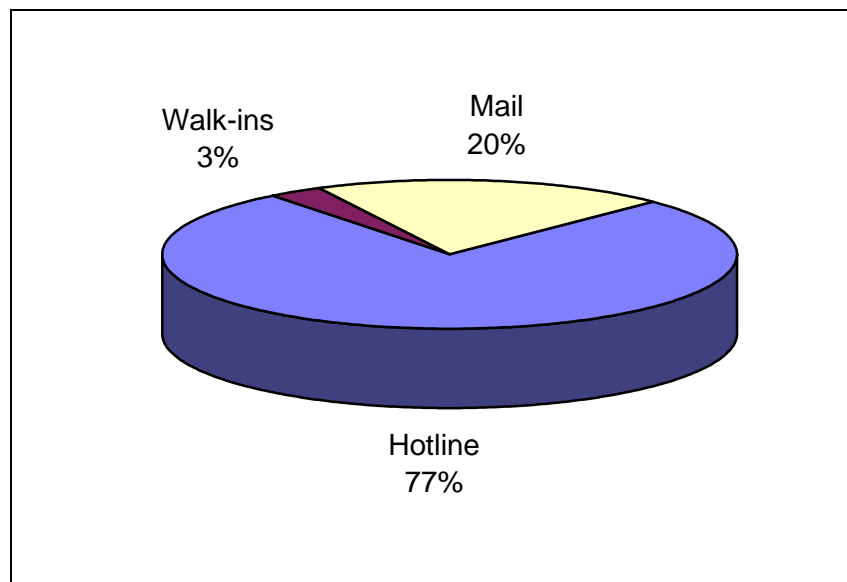
***Work on Investigative Cases  
January Through June 1997***

In addition to the 142 new cases opened during the six-month period, 62 cases were awaiting review or assignment and 25 were still under investigation by either this office or other state agencies on January 1, 1997. As a result, 229 cases required some level of review during the period. For 4 other

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<sup>19</sup>In total, we received 2,874 calls on the Whistleblower Hotline from January 1 through June 30, 1997. However, 2,358 (82 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to give the caller the telephone number of the appropriate entity to handle their complaints. Another 406 (14 percent) were related to previously established case files.



**Figure 1****Sources of 142 New Cases Opened  
January 1 Through June 30, 1997**

cases, investigations had been concluded and publicly reported, but the employing departments had not completed corrective actions. Chapter 11 summarizes corrective actions taken on these four investigations since we last reported them.

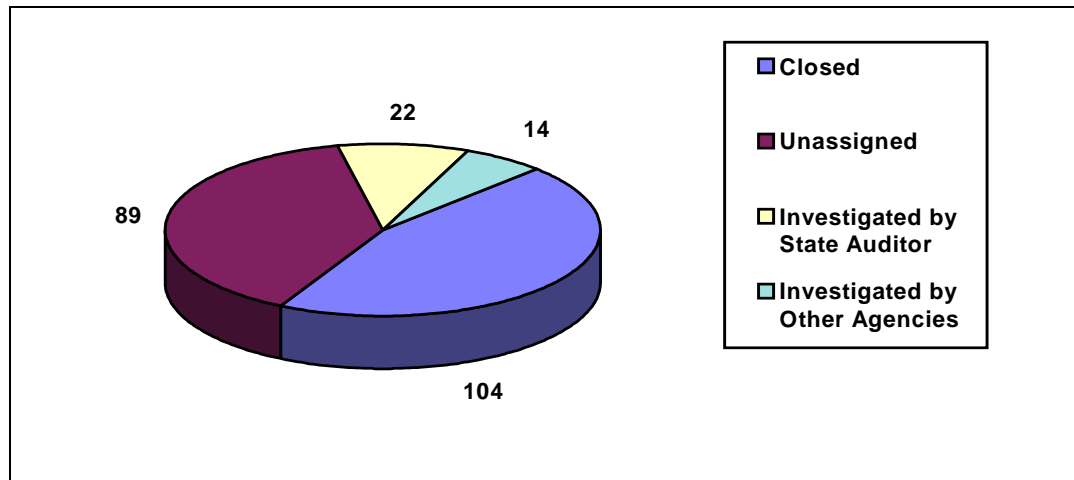
The act specifies that the state auditor may conduct an investigation upon receiving specific information that any employee or state entity has engaged in an improper governmental activity. After reviewing the information provided by complainants and the preliminary work by investigative staff, we assess whether sufficient evidence of wrongdoing exists to mount an investigation. In 104 of the 229 cases, we concluded that there was not enough evidence of improper governmental activity for us to mount an investigation.

The act also specifies that the state auditor may request the assistance of any state entity, or employee in conducting any investigation. In the first half of 1997, state agencies investigated 14 cases on our behalf and substantiated allegations on 4 (50 percent) of the 8 cases they completed during the period.

In addition, we investigated 22 cases and substantiated allegations on 5 (42 percent) of the 12 cases we completed during the period. Figure 2 shows action taken on case files during the first half of 1997.

**Figure 2**

***Disposition of 229 Cases  
January 1 Through June 30, 1997***



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# *Appendix B*

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## *State Laws, Regulations, and Policies*

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

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### *Requirements and Prohibitions of Political Reform Act of 1974*

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#### **Chapter 4 reports violations of the Political Reform Act**

Section 87100 of the California Government Code, part of the Political Reform Act of 1974, states that no public official shall make, participate in making, or in any way attempt to use an official position to influence a government decision in which that public official knows or has reason to know he or she has a financial interest. The law defines a financial interest as any business entity in which the public official holds an office, is an employee, or has a direct or indirect investment of \$1,000 or more. If the decision will have a material financial effect on the official, his family, or any source of income or gift totaling \$250 or more provided or promised to the official within 12 months prior to when the decision is made, it is considered a financial interest.<sup>20</sup> Participation in decision making includes negotiations, advice by way of research, investigations, or preparation of reports or analyses for the decision maker.

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### *Criteria Related to Travel Expense Claims*

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#### **Chapter 1 reports improper claims for travel expense reimbursements**

Penal Code Section 72 states that every person who, with intent to defraud, presents for payment to any state officer any false or fraudulent claim is punishable either by imprisonment, fine, or by both.

Title 2, Article 2, of the California Code of Regulations permits reimbursement for actual and necessary out-of-pocket expenses incurred by state employees because of travel on official state business.

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<sup>20</sup>The gift limit of \$250 is adjusted biennially by the Fair Political Practices Commission. The limit was \$270 for calendar years 1993 and 1994, and \$280 for calendar years 1995 and 1996.

## ***State Laws, Regulations, and Policies***

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Section 599.626.1 of Title 2 of the California Code of Regulations states that reimbursement will be made only for the method of transportation that is in the best interest of the State.

### ***Records of State Employees' Time and Attendance***

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#### **Chapters 1 and 6 address attendance reporting violations**

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

### ***Laws Governing Theft***

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#### **Chapters 2 and 3 report thefts**

The California Penal Code, Section 484, states that every person who knowingly defrauds any other person of money is guilty of theft. Moreover, Section 487 states that grand theft includes theft of a value exceeding \$400. Section 489 specifies that grand theft is generally punishable by imprisonment in a county jail or in the state prison.

### ***State Managers' Responsibilities***

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#### **Chapters 2, 3, and 5 report management weaknesses and mishandling of state funds**

The Financial Integrity and State Manager's Accountability Act contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain an adequate system of internal controls. Internal controls are designed to prevent errors, irregularities, or illegal acts. Because cash is a highly liquid asset, it can easily be converted for improper uses, such as theft or misappropriation. A good internal control system for cash would include separating cash handling from record keeping and not allowing any one person to handle a transaction from beginning to end. Specifically, one person should not be responsible for receiving cash, maintaining cash receipt records, and making deposits.

Except as otherwise provided by law, Section 16301 of the California Government Code requires all funds belonging to the State to be reported to the controller and deposited in the state treasury.<sup>21</sup>

State Administrative Manual, Section 1930.3, specifies that recyclable aluminum cans placed in recycling containers that belong to the State are the property of the State.

California Revenue and Taxation Code, Section 6051 requires retailers to pay sales tax on sold merchandise.

***Criteria Governing Extended Education and  
Special Sessions at the California State University***

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**Chapter 5 reports violations of these criteria**

According to California State University's (CSU) Office of the Chancellor Executive Order Number 466, academic standards associated with all aspects of special sessions, such as the EMBA program, are identical to those of comparable instructional programs. California Polytechnic State University, San Luis Obispo's (Cal Poly) own academic standards require that curriculum for new instructional programs and substantial changes to existing academic programs be reviewed and approved by the Academic Senate and Academic Programs. According to Cal Poly's curriculum instructions, changes to the program name, new or deleted courses, or changes in course mode constitute substantial changes.

According to the CSU's Office of the Chancellor Executive Order Number 255, fees for extended education programs shall be determined on the basis of estimated cost per person.

CSU's Office of the Chancellor Executive Order Number 466 specifies that faculty shall be compensated according to approved salary schedules for special sessions.

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

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<sup>21</sup>Under certain circumstances, state departments can deposit state funds in banks or savings and loan associations, but only when approved by the Department of Finance.

## ***State Laws, Regulations, and Policies***

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The State Administrative Manual, Section 8030.1, states that accumulated collections totaling \$50 or more must not remain undeposited for more than five working days.

## ***Factors Used To Determine Whether Individuals Are Common-Law Employees or Independent Contractors***

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**Chapter 7 addresses this issue**

The Internal Revenue Service's Publication 937, "Employment Taxes," identifies 20 factors that can help determine an employer-employee relationship exists for purposes of withholding taxes. They are listed in Table 3.

**Table 3**

***Internal Revenue Service Factors***

<b>Factor</b>	<b>Common-Law Employee</b>	<b>Independent Contractor</b>
Instructions	An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.	A contractor decides how to do the job and establishes his or her own procedures without supervision. The hiring entity is interested only in the end result.
Training	If an employer provides training, this is evidence that the employer controls how the work is to be done.	A contractor ordinarily uses his or her own methods and receives no training from the employer.
Integration	An employee's services are so integrated into an employer's operations that the performance of the services are important to the success or continuation of the business.	A contractor's performance of services affects his or her own business reputation and not the businesses of those who purchase the services.
Services Rendered Personally	An employee renders services personally.	A contractor has a right to substitute another's services to reach the desired result.
Hiring Assistants	The employer hires, supervises, and pays an employee's assistants.	A contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor to reach the end result.
Continuing Relationships	The relationship is continuing or recurring even if the work is completed on a part-time basis.	The relationship ends when the specific job is finished.
Set Hours of Work	The employer sets the hours of work.	A contractor is master of his or her own time.
Full-time work	Full-time work restricts an employee from doing other gainful work.	A contractor is free to work when he or she chooses. A contractor would normally perform services less than full-time for one principal.

**State Laws, Regulations, and Policies**

<b>Factor</b>	<b>Common-Law Employee</b>	<b>Independent Contractor</b>
Work Done on Premises	An employee performs work on the employer's premises or at a designated location.	A contractor may complete the work away from the employer's premises.
Order of Sequence Set	The employer sets the order or sequence of work or retains the right to do so.	A contractor sets the order or sequence of work.
Reports	An employee submits regular oral or written reports to account for his or her action.	Other than reports related to an end product, a contractor is not required to file reports that constitute a review of his or her work.
Payments	Payments by the hour, week, or month represent an employer-employee relationship.	Payment on a commission or job basis is customary.
Expenses	Payment of an employee's business and travel expenses by the employer indicates an employer-employee relationship.	Generally, a contractor pays his or her own expenses.
Tools & Materials	An employee uses tools and materials furnished by the employer.	A contractor furnishes his or her own tools and materials.
Investment	The employer furnishes all the necessary facilities.	A significant investment in facilities by the individual is an indication of contractor status. To be significant, the investment must be real, essential, and adequate.
Profit or Loss	An employee is insulated from loss or is restricted in the amount of profit he or she can gain.	A contractor has a possibility of profit or loss. Profit or loss implies the use of capital.
Work for More Than One Person or Firm	An employee may work for more than one employer and still be an employee. The issue is the control by employer.	A contractor often works for a number of persons or firms at the same time.
Offers Services to General Public	An employee does not advertise his or her services to the general public, does not hold a business license, and does not hire assistants.	A contractor offers services to the general public, often in his or her own office, with the aid of hired assistants, etc.



<b>Factor</b>	<b>Common-Law Employee</b>	<b>Independent Contractor</b>
Right to Fire	The employer has the right to discharge an employee at will without liability.	A contractor cannot be discharged as long as he or she produces a result that measures up to the contract specifications. The relationship can be terminated with liability.
Right to Quit	An employee has the right to quit at any time without incurring any liability.	A contractor usually agrees to complete a specific job and is responsible for satisfactory completion.

The Employment Development Department issued Management Memo 95-18 on July 31, 1995. This document identified four additional factors, which are listed in Table 4.

**Table 4**

**California Factors**

<b>California Factor</b>	<b>Common-Law Employee</b>	<b>Independent Contractor</b>
Custom in Industry & Location	A civil service employee traditionally completes the work under the direction of a supervisor.	A contractor traditionally completes the work without supervision.
Required Level of Skill	A low level of skill is strong evidence of an employment relationship since as skill level declines there is less room to exercise the discretion necessary for independence.	A high level of technical skill is important when combined with other factors.
Belief of Parties	Both the employee and the employer believe it is an employment relationship or either the employee or employer believes it is an employment relationship.	All parties agree the relationship is that of a contractor.
Business Decisions	An employee cannot make business decisions that would enable him or her to earn a profit or incur a loss.	A contractor makes business decisions that enable him or her to earn a profit or incur a loss.

***Requirement for Inspection of Carbon Monoxide Gas Chambers***

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**Chapter 8 deals with this type of inspection**

California's Business and Professions Code, Section 13201, requires the Department of Food and Agriculture to inspect semiannually carbon monoxide gas chambers used to kill any dog or cat.

***Incompatible Activities Defined***

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**Chapters 1, 2, 3, 4, 6, and 9 report incompatible activities**

Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official action.

California Government Code, Section 19990, prohibits a state officer from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict, or inimical to his or her duties as a state officer. Such activities include using the prestige or influence of the State for private gain or advantage. They also include using state time, facilities, equipment, or supplies for private gain or advantage. In addition, a state employee is prohibited from receiving or accepting, directly or indirectly, any gift, money, service, gratuity, favor, entertainment, hospitality, loan, or any other thing of benefit or value from anyone who does or seeks to do business of any kind with the employee's department, under circumstances from which an intent to influence the employee in the performance of official duties or an intent to reward an official action could be reasonably substantiated. These prohibited activities also include not devoting full time, attention, and efforts to his or her state job during hours of duty as a state employee.

***Prohibition Against Personal Use of State Resources***

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**Chapters 1, 6, and 9 report personal use of state resources**

California Government Code, Section 8314, prohibits state employees from using state equipment, travel, or time for personal advantage or for an endeavor not related to state business. If such use results in a gain or advantage to the employee or a loss to the State for which a monetary value can

be estimated, the employee 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.

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# *Index to Reports of Investigations*

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