California State Auditor

BUREAU OF STATE AUDITS

Investigations of Improper Governmental Activities by State Employees

February 1 Through June 30, 1998

September 1998
Report I98-2

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CALIFORNIA STATE AUDITOR

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September 2, 1998 Investigative Report I98-2

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 activity completed from February 1 through June 30, 1998.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

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Summary

Investigative Highlights . . .

State employees engaged in improper activities, including the following:

- ☑ ***Improper approval of plans for a $4 million hospital project.***
- ☑ ***Failure to disclose financial interests.***
- ☑ ***Filing of false attendance reports and claims for reimbursement, costing the State more than $31,000.***
- ☑ ***Improper or questionable management decisions.***

The Bureau of State Audits (bureau) administers the Reporting of Improper Governmental Activities Act (act) contained in Section 8547, and following, of the California Government Code. The act defines "improper governmental activity" as any action by a state agency or state employee during the performance of 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 receives and investigates complaints of improper governmental activities. To enable state employees and the public to report these 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 eight investigations completed by the bureau and other agencies between February 1 and June 30, 1998, that substantiated complaints. Following are examples of the substantiated improper activities:

Office of Statewide Health Planning and Development

- An employee took a leave of absence from OSHPD to work for a corporation regulated in part by OSHPD. Prior to his leave, he improperly approved plans for a $4 million project the corporation submitted.

- During his leave of absence, this same employee improperly represented the corporation before OSHPD on projects he had previously approved while working at OSHPD.

- This same employee failed to disclose his financial interest in the corporation.

Department of Health Services

- As a result of filing false attendance claims, one employee received $3,817 from the State for 154 hours she did not work.

- A manager may have allowed this same employee to work overtime without compensation, thereby creating a potential liability for the State of more than $100,000.

- Another employee improperly claimed, and her manager improperly approved, $19,000 in reimbursements for relocation and commuting expenses.

- Yet another manager improperly claimed reimbursement of $748 for meals and other expenses.

- Two other employees failed to disclose their financial interests in outside employment.

Public Utilities Commission

- One rail inspector improperly claimed $1,414 in travel reimbursements although his state calling card records indicate that he was not on business-related travel.

- This same rail inspector and five others improperly claimed at least $6,570 in reimbursements for lodging expenses they did not incur.

Department of Corrections

- An attorney improperly accepted transportation on a private airplane from an opposing counsel's law firm.

- This same attorney failed to disclose these gifts of transportation on her statement of economic interests.

Stephen P. Teale Data Center

- Despite knowing a procurement analyst had a personal relationship with a vendor's account executive, a manager directed her to continue purchases from the vendor. As a result, an appearance of a conflict of interest was created.

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

If, after investigating any allegations, the state auditor determines reasonable evidence exists of improper governmental activity, the bureau confidentially reports the details of the activity to the head of the employing agency or

the appropriate appointing authority. The employer or appointing authority is required to notify the state auditor of any corrective action taken, including disciplinary action, no later than 30 days after the date the state auditor transmits the confidential investigative report. If employers or appointing authorities do not complete the actions within 30 days, they must report to the state auditor monthly until they complete the actions.

In addition, Appendix A contains statistics on the complaints received by the bureau between February 1 and June 30, 1998. It also summarizes our actions on those or other pending complaints as of February 1, 1998.

Finally, Appendix B details the laws, regulations, and policies that govern the improper activities discussed in this report.

Chapter 1

Office of Statewide Health Planning and Development: Conflicts of Interest

Allegation I970100

An employee with the Facilities Development Division (FDD) of the Office of Statewide Health Planning and Development (OSHPD) had a conflict of interest when he represented a corporation whose business is at least partially regulated by the OSHPD.

Results and Method of Investigation

We investigated and substantiated the complaint. Specifically, the employee appears to have violated state conflict-of-interest laws. The employee took a leave of absence from his job at the OSHPD to work for a nonprofit corporation partially regulated by the OSHPD. This corporation submitted construction plans for a $4 million hospital construction project. After receiving the employment offer, but prior to his leave, the employee approved construction plans related to the project, creating a conflict of interest.

He also had a conflict of interest when he submitted to the OSHPD the corporation's plans and documents for approval for at least four projects. The employee had previously approved plans related to these four projects while on OSHPD's staff.

An employee did not disclose economic interest in a corporation partially regulated by the OSHPD.

Finally, the employee failed to complete the required Leaving Office Statement of Economic Interests, and thereby failed to disclose his financial interest in the corporation.

To investigate the complaint, we interviewed the OSHPD employees and reviewed time sheets, project files, personnel files, and the OSHPD's conflict-of-interest code.

Background

In the event of a major disaster, including earthquakes, hospitals must be able to safely provide care to the community. Therefore, to ensure that California hospitals conform to high standards, state law requires that the OSHPD approve

construction plans. Since 1991, the OSHPD's Facilities Development Division (FDD) has been the single point of accountability and authority for the design and construction of health facilities.

As a senior structural engineer from 1993 through 1997 with the OSHPD's FDD, the employee in question reviewed plans and other supporting documents submitted to the OSHPD to ensure that construction of acute-care hospitals, skilled nursing facilities, and other designated structures, complied with regulations.

The employee maintained a financial interest in a nonprofit corporation that owns five health care facilities serving San Francisco and San Mateo counties. For any type of construction project, this corporation must submit its plans to the OSHPD for approval. The employee reviewed and approved several of the corporation's plans.

The Employee Appears to Have Had a Conflict of Interest

On April 16, 1997, the corporation offered employment to the OSHPD employee. On April 17, 1997, the employee requested and received a one-year leave of absence from his position at the OSHPD, effective June 12, 1997, to take the position with the corporation.[1]

The employee's last day of work for the OSHPD was April 23, 1997.[2] On this date, the employee approved plans the corporation submitted related to a $4 million project. Because he received an offer for employment from the corporation and requested a leave of absence from the State to accept the offer before approving the construction plans, it appears the employee had a conflict of interest.

The OSHPD's legal counsel stated he discussed conflicts of interest with the employee.

Laws prohibiting conflicts of interest are grounded on the notion that government officials owe paramount loyalty to the public interest.[3] The objective of these laws is to limit the possibility of any personal influence that might sway an official's decision. In addition, case law and common law also prohibit conflicts of interest. State law provides that no public employee shall

[1] Although more than one year has gone by since OSHPD granted the employee his leave, as of June 22, 1998, the employee had not yet submitted a formal resignation and officially was still on leave.

[2] The employee used his accumulated state leave balances from April 24, 1997, through June 11, 1997.

[3] For a more detailed description of the specific prohibitions contained in law, see Appendix B.

make, participate in making, or in any way attempt to use his official position to influence a government decision in which he knows or has reason to know he has a financial interest. A financial interest includes any source of income, other than gifts or specified loans, aggregating $250 or more provided or promised to the employee within 12 months prior to the decision. The job offered to the employee by the corporation paid over $80,000 per year; an amount of significant financial interest to the employee.

An FDD administrator approved the leave of absence and knew of the employee's new position. He said that he suggests subordinates leaving the OSHPD meet with the OSHPD's legal counsel to discuss prohibited activities, including conflicts of interest. The administrator believes he recommended this to the subject of this investigation and the OSHPD's legal counsel told us that he met with the employee before he left the OSHPD. The counsel specifically informed him that he should not attempt to influence the OSHPD in general or contact its staff regarding his new employer. In contrast, the subject told us, under penalty of perjury, that no one at the OSHPD made such a recommendation. The employee told us that he approved the plans because he was the only structural engineer in the unit at the time and he was simply performing his job duties. He said that he was not aware that his job offer constituted a financial interest or that he should not review the plans.

The Employee Improperly Represented the Corporation Before the OSHPD

As the corporation's new construction project manager, the employee signed at least 48 documents related to 20 projects submitted to the OSHPD.

State law prohibits former state employees from representing any person, other than the State of California, for compensation before any state agency in any proceeding if previously the employee participated in the proceeding.[4] The term proceeding includes, among other things, any application or a request for a ruling or other determination.

The employee began his new job at the corporation on April 28, 1997, as a construction project manager. The following day, and into March 1998, he improperly participated in the submission of construction plans and other documents to the OSHPD on behalf of the corporation. Specifically, during that period the employee signed at least 48 documents related to 20 projects submitted to the OSHPD on behalf of the corporation. Each project would be considered a proceeding.

[4] Although the employee was on a leave of absence and not permanently separated from state employment when he represented the corporation before OSHPD, the Fair Political Practices Commission, which is responsible for enforcement of the Political Reform Act of 1974, has previously deemed state officials on leave to be separated from state service.

The employee had previously reviewed 4 of these projects while a structural engineer with the OSHPD. Yet, he signed 9 documents for projects on behalf of the corporation.

In fact, on April 29, 1997, just one day after beginning his new job, the employee certified the final construction costs the corporation submitted to the OSHPD for the same $4 million project he reviewed while an employee of the OSHPD.

The Employee Failed to File a Leaving Office Statement of Economic Interests

Finally, contrary to state law and OSHPD policy, the employee left state service without completing a Statement of Economic Interests. Both state law and OSHPD policy required the employee to file a statement disclosing any business positions held or received at any time after the closing date of the last statement and the date of leaving office.

Personnel staff told us the employee did not complete a Leaving Office Statement because he had just completed his conflict-of-interest statement the previous month. Nevertheless, state law still required him to complete a Leaving Office Statement, which should have alerted other OSHPD staff to his financial interest in the corporation. The OSHPD could then have notified the corporation that the employee was prohibited from submitting construction plans to the OSHPD or working on projects submitted to the OSHPD.

Agency Response

OSHPD management reviewed all of the employee's work on the corporation's projects and concluded that the employee had not given the corporation any special treatment while still working for the OSHPD. In addition, the OSHPD reported that there has been no indication that the employee has attempted to influence the OSHPD's review or approval of the corporation's projects since he went to work for the corporation. Nevertheless, the OSHPD will do the following to ensure that similar violations of conflict-of-interest provisions do not occur in the future:

- Distribute to all affected employees, including the employee in question, a copy of the Fair Political Practices Commission's document, *The Revolving Door and Related Restrictions of the Political Reform Act*, and emphasize the importance of following all conflict-of-interest requirements.

- Emphasize the importance of following all conflict-of-interest requirements to the former employee, and request that he complete a Leaving Office Statement.

- Change the personnel procedures to ensure that all affected employees complete a Leaving Office Statement.

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Chapter 2

Department of Health Services: Incompatible Activities and False Attendance Claims

Allegation I970038

An employee at the Department of Health Services' (DHS) Medi-Cal Operations Division (division) did not charge official leave for the time she was away from her state job to work for another employer. In addition, the employee's manager inappropriately allowed this improper activity.

Results and Method of Investigation

We investigated and substantiated the allegations. Specifically, between February 1995 and December 1997, the employee received $3,817 from the State for 154 hours that she did not work. In addition, the employee's manager inappropriately certified that the work for which the employee claimed payment was solely for the benefit of the State when, in fact, the employee was working for another employer during part of those days. Because the manager and the employee shared a residence, and because the manager allowed this improper activity, the manager creates the impression that she gives the employee preferential treatment.

An employee received $3,817 for 154 hours she did not work.

The manager additionally claims that the employee worked 1,418 hours of unofficial overtime without compensation; however, it would be improper to allow this because the State could then be liable for over $100,000.

Finally, the employee charged sick leave for time she claimed she was too ill to work for the State even though she was well enough to work for another employer.

To investigate the allegations, we examined signed monthly time sheets the employee submitted to the DHS and to the nonstate employer. In addition, we reviewed applicable state laws and regulations and the DHS time-reporting policies.[5] Finally, we interviewed the employee and the manager.

[5] For a more detailed description of the laws and regulations referred to in this chapter, see Appendix B.

The State Paid the Employee for Hours She Did Not Work

State law requires state departments to identify those activities that are in conflict with employees' duties. In its statement of incompatible activities, the DHS prohibits its employees from receiving dual compensation from the State and another source for the same time period. This does not apply to employees while they are on vacation, military leave, or officially taking time off as compensation for overtime.

However, between February 1995 and December 1997, this employee's signed time sheets falsely reported hours on at least 74 separate days when she was, in fact, working for a nonstate employer. The following table shows, for each year, the number of days and hours the employee improperly claimed that she was working for the State and the amounts she was overpaid as a result of her improper claims.

Table 1

Times the Employee Improperly Claimed She Was Working for the State

Year	Number of Days	Number of Hours	Overpaid Amount
1995	18	42	$1,056
1996	27	54	1,363
1997	29	58	1,398
Total	**74**	**154**	**$3,817**

The employee did not charge the 154 hours she spent at the nonstate employer during her normal state hours to her state leave. The employee signed all but two of the time sheets, certifying that, to the best of her knowledge and belief, the facts shown on the time sheets were accurate and in full compliance with legal requirements. The State paid the employee $3,817 for those 154 hours.

The employee's manager was aware that the employee was working for the nonstate employer on state time, yet the manager signed all but one of the employee's time sheets, certifying that the time sheets were accurate and in full compliance with legal requirements.

As discussed in the following section, the manager allowed the employee to take informal time off to show her appreciation for the extra effort the employee made because the employee worked extra hours. However, informally accounting for time worked is improper. The Fair Labor Standards Act requires employers to keep records regarding wages, hours, and other conditions and practices for employees such as the one discussed here. In addition, all public servants have a responsibility to accurately account for their time with a formal, written record. Without such a record, the State has no assurance that employees work all the hours for which they are paid.

In addition, other employees in the office were aware that the employee and the manager shared a residence and that the manager permitted the employee to take time off without charging her leave balances, giving the other employees in the office the impression that the employee was receiving special privileges.

The Manager May Have Improperly Allowed the Employee to Work Extra Hours Without Compensation

The manager estimated that, over a two-year period, the employee worked 1,418 hours of uncompensated overtime in the morning, during lunch, in the evening, or on weekends. None of the unofficial overtime was recorded on the employee's time sheets. The manager stated that, to demonstrate appreciation for the employee's extra effort, she sometimes allowed the employee to leave three hours early on Friday afternoons.[6]

Contrary to labor laws, the employee worked 1,418 hours of uncompensated overtime.

Allowing employees to work overtime without proper compensation may create a liability for the State. Specifically, the Fair Labor Standards Act requires that employees such as the one discussed here be compensated, either through payments or compensating time off, for overtime. If, in fact, this employee actually worked 1,418 hours of uncompensated time, the State could be liable for more than $100,000 in back pay.

[6] As stated earlier, all but four of the days when the employee worked for the other employer while being paid by the State were on Fridays. The manager identified three other Fridays (in addition to the times we identified when the employee was working for another employer) when she granted the employee three hours of unofficial time off. The State paid the employee $231.56 for this additional unofficial time off.

The Employee Improperly Reported Absences as Sick Leave

In addition to the improper reporting of time discussed above, it appears the employee improperly reported that she either had an injury or illness during her absences on three separate days; although she actually worked at her other job for at least two hours of each day she charged to sick leave. Nevertheless, the employee's manager signed two of these time sheets, certifying that the requirements for sick leave had been met. DHS procedures state that a supervisor will approve sick leave only after ascertaining that the absence is for authorized reasons including employee illness or injury. We question how, if the employee was too sick to work at her state job, she was well enough to work at her nonstate job.

Although on three occasions she reported illness or injury, the employee actually worked at her non-state job.

The distinction between using sick leave rather than vacation for time off is important because the State does not pay employees for their unused sick leave. In contrast, unused vacation and annual leave hours are more valuable to the employee because the State must pay employees for each hour of their unused vacation or annual leave when employees separate from state employment.

Agency Response

The DHS directed the employee to surrender 154 hours of vacation time, or $3,817, for the time she improperly reported she was working. The DHS also counseled the employee's manager and ordered her to obtain training in office procedures, time and stress management, and improving employee morale.

Chapter 3

Department of Health Services: Improper Claims for Relocation and Commuting Expenses

Allegation I960095

An employee at the Department of Health Services' (DHS) Medi-Cal Operations Division (division) improperly claimed relocation expenses. Further, the employee's manager improperly approved the reimbursement of these relocation expenses.

Results and Method of Investigation

A DHS employee improperly claimed $19,000 in relocation and commuting expenses.

The DHS investigated and noted that the employee's manager violated DHS policy when he approved reimbursement of the employee's relocation expenses. We investigated further and substantiated additional improper activities. Specifically, the employee improperly claimed approximately $19,000 in relocation and commuting expenses, which her manager improperly authorized for reimbursement. Further, someone may have forged the signature of the employee's immediate supervisor on her reimbursement claims.

To investigate the allegations, we reviewed the DHS's investigation and the employee's personnel and relocation expense records. We also interviewed the employee and other DHS staff. We gave the employee a written summary of her statements during our interview and asked her to make any necessary changes. We also requested that she sign the statement under the penalty of perjury to ensure its accuracy, but the employee refused. Although we report our understanding of what the employee told us, we have less confidence in the accuracy of the statements because of her unwillingness to both confirm the statements and to certify them under penalty of perjury.

Background

State regulations permit a state employee to receive relocation expenses when the employee is required to move as a result of the appointing power changing the employee's officially

designated headquarters for the advantage of the State.[7] In the case of a nonpromotional transfer, reimbursement is made only when the transfer is deemed to be in the best interest of the State, and is not made when the transfer is primarily for the benefit of the employee. Also, the regulations specify that employees must submit these claims within two years of reporting to the new headquarters. Extensions of this deadline are not permitted.

Additionally, state employees are generally not permitted reimbursement for mileage from their residences to their headquarters, or for meals eaten within the vicinity of their headquarters.

According to the DHS's personnel records, on February 1, 1992, the employee made a voluntary, nonpromotional transfer from the division's San Francisco office to the Sacramento office. At least through the end of 1992, the employee continued to commute from her home in Danville. According to the employee, she initially used a state vehicle, and then used her personal vehicle and a carpool to commute to Sacramento. The employee then rented an apartment in the Sacramento area where she stayed during the work week. However, we were unable to determine exactly when she rented it. We do know that in January 1994, the employee sold her home in Danville and had her household property moved to the Sacramento area.

In December 1992, the employee voluntarily accepted a training and development assignment as an analyst for the division in Sacramento. Her supervisor at the time told us that when she appointed the employee as an analyst, she specifically told her she could not claim relocation expenses.

The Employee Improperly Claimed Reimbursement for Moving, Relocation, and Commuting Expenses

According to the employee, she sold her home in January 1994 because she believed the department would promote her later that year. In fact, the employee was promoted on July 1, 1994, whereupon she asked her new supervisor and manager to reimburse her for relocation expenses, almost two and a half years after her initial transfer to Sacramento. On August 31, 1994, the employee submitted a claim and received reimbursement for $16,030 in relocation expenses.

[7] For a more detailed description of the regulations and laws discussed in this chapter, see Appendix B.

Under state regulations, the employee was not entitled to relocation reimbursements because she voluntarily accepted the nonpromotional transfer to the Sacramento headquarters in 1992. Even if the relocation had met the terms for reimbursement, the employee did not submit her claim until August 1994—seven months after the deadline.

On August 31, 1994, the employee also submitted travel expense claims for 44 days during March, April, and May 1993.[8] She requested $2,940 for meals, parking, tolls, and round-trip mileage from Danville to Sacramento. The employee characterized these expenses as, "travel expense prior to relocation in best interest of State." However, as stated earlier, employees are not allowed reimbursement for commuting mileage or for meals eaten within the vicinity of their headquarters.

The Employee's Manager Improperly Approved Her Requests for Reimbursement

A supervisor's signature, on the employee's travel reimbursement claims may have been forged.

Although the employee was not entitled to the reimbursements discussed above, her manager improperly authorized them. In addition, the DHS noted that the manager violated its policy when he improperly signed the authorization for reimbursement of the employee's relocation expenses both for himself and for his superior, the deputy director for the division. One week afterward, the manager requested the deputy director's approval; however, he could not explain to the DHS's investigator why he signed on behalf of the deputy director before obtaining his approval. Further, the manager improperly justified the reimbursement by stating that the employee was a nonpromotional transfer from San Francisco to Sacramento that he deemed to be in the best interest of the State, even though the employee had been working in Sacramento for more than two years.

Further Improper Approval of the Employee's Travel Expense Claims

When we asked the employee's immediate supervisor why he approved the claims for travel reimbursement, he stated that he could not recall signing the claims. When we showed him the signature on the claim forms, he stated that the signature may not be his. In fact, there appears to be significant differences between the signatures on the claims and the supervisor's signatures on other documents.

[8] The employee improperly claimed $66.82 twice for May 10, 1993.

Agency Response

The DHS concurs with our conclusion that the employee submitted her claim for relocation expenses after the deadline and reports that it will make an effort to prevent the approval of untimely claims in the future. Nevertheless, the DHS believes that the employee's manager mistakenly believed he had the authority to approve relocation expenses and that the employee's claim was valid. The DHS also will examine its protocol for reviewing and approving claims and will inform managers as to those who have the authority to approve relocation expense claims.

Finally, because the DHS found no evidence of fraud, collusion, or other aspects of evil intent to defraud the DHS, and because of the length of time since the employee's claim was approved, the DHS believes it is unable to recover the money or take any formal adverse action.

Chapter 4

Public Utilities Commission: Improper Travel Expense Claims and Telephone Abuse

Allegation I960236

An employee in the Public Utilities Commission's (PUC), Railroad Safety Branch in Southern California filed false travel expense claims (TEC).

Results and Method of Investigation

We investigated and substantiated this and other improper governmental activities. Specifically, the employee—a rail inspector—improperly claimed $1,414 in reimbursement for meals, incidentals, and/or lodging on 60 occasions when his calling card records indicated that he was not on travel status. In addition, six inspectors, including the one in question, improperly claimed at least $6,570 in reimbursements for commercial lodging. Although the inspectors may have been eligible for noncommercial per diem rates, these were not the rates they claimed.

Six inspectors claimed nearly $8,000 in improper travel claims.

To investigate the allegation, we reviewed TECs, state vehicle travel logs, activity summary reports, state automobile fuel charge card records, cellular telephone records, and state calling card records. To determine whether identified problems were systemic in nature, we reviewed these records covering January 1996 through February 1997 for eight employees assigned to the Operations and Safety Section of the Railroad Safety Branch of the Southern California Area of the PUC. In our review of these records, we identified instances in which dates, times, and locations shown on TECs differed from dates, times, and locations shown on other documents. We interviewed employees to determine the reasons that records reflected different geographical locations at specific dates and times.

Background

The PUC inspects all railroads required to operate in accordance with federal and state regulations. The PUC's federally certified inspectors inspect railroad equipment, tracks,

operations, signals, and hazardous materials, as well as railroad accidents. According to a senior transportation supervisor, the PUC's inspectors travel extensively to fulfill these inspection requirements.

PUC employees are entitled to reimbursement for expenses incurred 50 miles or more from their headquarters or their residences.[9] Employees submit a TEC that identifies dates, times of day, and geographical locations for reimbursable expenses. State regulations require the State to reimburse employees for expenses they incur while on travel status. The regulations and Memoranda of Understanding (MOU) specify maximum amounts for reimbursement for meals, incidental expenses, and lodging. The MOU covering employees in this investigation requires the State to reimburse employees for actual costs for lodging expenses in commercial facilities up to a maximum of $79 plus applicable taxes. Although the employee must submit a receipt to claim lodging expenses greater than $25, the agreement allows reimbursement of up to $24.99 for commercial lodging expenses without a receipt.

Inspector A Falsely Claimed Some Reimbursements

One inspector improperly claimed expense reimbursements on 60 occasions.

One of the inspectors, inspector A, improperly claimed reimbursement for meals, incidentals, and/or lodging on 60 occasions when his state calling card records indicate that he was not on travel status. The telephone records show that he was either at home in La Habra, near his home, or near his work headquarters in Los Angeles instead of in the area where he claimed to have incurred expenses. On 42 of these occasions, he made the calls from telephones in his residence. Inspector A improperly claimed approximately $1,414 on these 60 occasions.

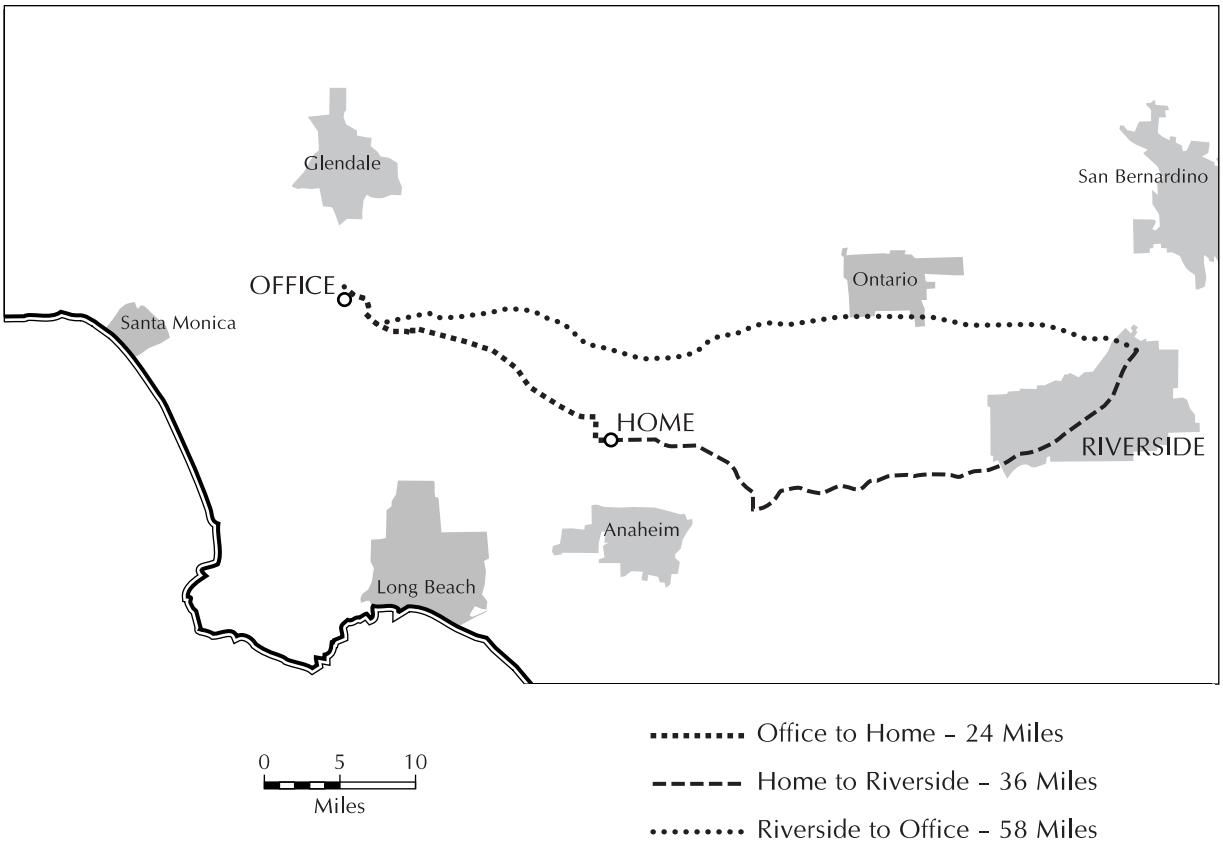
For example, inspector A's TEC shows that he departed for Riverside at 5 a.m. on August 19, 1996, and claimed three meals, incidentals, and lodging; however, calling card records for this date show that he made 10 calls from his residence between 7:03 a.m. and 6:06 p.m. The pattern of calls indicates that he was in or near his residence all day from at least 7:03 a.m. until 6:06 p.m. on this date; therefore, he was not entitled to claim reimbursement for breakfast, lunch, or dinner.

[9] For a more detailed description of the regulations concerning travel expense reimbursements, see Appendix B.

Furthermore, we believe he is not entitled to claim lodging for that night, and, because he was not away for 24 hours or more, he is not entitled to claim reimbursement for incidental expenses. The total amount he improperly claimed for this date was $62. For the month of August, he improperly claimed reimbursement for $278. The following map shows the relative location of inspector A's residence, his work headquarters, and Riverside.

Figure 1

Locations of Employee A's Headquarters, Home, and Inspection Site



We asked inspector A to explain the discrepancies between the TECs and the calling card records. He said that he could not remember the specific circumstances for some of these calls, although he did remember these specific calls:

- On three occasions, he said that he was riding on trains from Los Angeles to San Diego and stopped at home to use his fax machine.

- On two other occasions, while riding the San Diego train, he said he made calls from the Los Angeles train station near his headquarters.

- On some occasions, he found it convenient to stop at his residence to conduct business while traveling between locations other than those shown on his TEC.

He also said that the locations shown on the TEC are not necessarily the places where he incurred the expense. Instead, he said, the locations shown are locations where he made inspections in the performance of his job. He could not explain, however, how his calling card could have been used at the Sacramento International Airport on June 25, 1996, while his TEC shows that he was in Bakersfield on another inspection.

Inspector A also filed duplicate TECs for expenses he incurred in May 1996. On both of these TECs, he claimed three meals, lodging, and incidentals for May 1 and three meals on May 2. He signed one of these claims on May 30, 1996, and the other one on August 31, 1996, for a total of $94. He said that he filed the August claim in error.

Inspector A and Five Other Employees Improperly Claimed Reimbursement for Commercial Lodging

We found that six of the eight employees whose records we reviewed claimed commercial lodging expenses of $24.99[10] per night even though they did not incur these expenses. In total, the six employees improperly claimed at least $6,570. As discussed later, the employees may have been eligible for noncommercial per diem on some of their trips at a lower reimbursement rate, nonetheless, they did not claim these rates. Table 2 shows the improperly claimed amounts.

[10] Inspector A claimed $24.95 for 23 of the 115 times that he claimed reimbursement for commercial lodging without a receipt. Another employee, inspector F, claimed $24.50 for the four days that he claimed reimbursement for commercial lodging without a receipt.

Table 2

Six Inspectors' Improper Claims for Commercial Lodging Expenses

Inspector	Number of Occasions	Amount Improperly Claimed
A	115*	$2,873
B	102	2,549
C	27	675
D	10	250
E	5	125
F	4	98
Total	**263**	**$6,570**

* These 115 occasions were in addition to inspector A's claims for lodging reimbursement when telephone records indicate he was at home.

The inspectors said they stayed in second residences, cars, homes of friends and relatives, motels, trailers, or camped out.

The inspectors offered a number of explanations for these claims. Inspector A said that he stayed in a second residence on many of these nights. He also said that he spent some of these nights with a friend of a fellow employee, in his car, and in railroad company crew quarters. However, he said he does not remember where he stayed for three nights that he spent in Sacramento in January 1997.

Inspector B said that he stayed with friends or camped out, but most of the time he stayed at inspector A's second residence.

Inspector C said that, on some occasions, he stayed in motels. Under those circumstances, he would be entitled to claim $24.99. However, he also told us that he stayed in inspector A's second residence, stayed with relatives or friends, and camped out. Further, on two occasions, he said he stayed in a hotel "hospitality room" rented by the Federal Railroad Administration. For at least 16 of the 27 nights in question, inspector C did not incur a commercial lodging expense. Nevertheless, he improperly claimed approximately $400 for those 16 nights.

Inspector D said that he stayed 10 nights in a trailer that he owns. The total for these ten claims was approximately $250.

Inspector E claimed $24.99 on five occasions for a total of approximately $125. He said that he stayed with friends, relatives, or in his truck.

Although they were not entitled to the amounts claimed, the six employees may have been entitled to the lower non-commercial subsistence rates.

Finally, inspector F said that he stayed four nights with his wife in a time-share residence. He claimed $24.50 for each of those nights for a total of $98.

Although the six employees were not entitled to the reimbursements they claimed, they may have been entitled to claim noncommercial subsistence rates. Both the Memorandum of Understanding and the PUC's policies permit employees who incur expenses when using noncommercial facilities, such as house trailers and camping facilities, or when staying with friends or relatives, to claim for each 24-hour period a fixed amount of $24 for food and incidentals and $23 for lodging. It appears that in many of the above cases, the employees could have claimed these amounts; however, they claimed $61.99 for food and lodging per day, $14.99 more than they were entitled to claim.

The PUC's employee handbook assigns responsibility to the supervisor approving the TEC to determine its reasonableness. However, some of the supervisors signing the TECs we reviewed believed that claims for commercial lodging were appropriate under the PUC's travel policy when staying with friends, relatives, in a second residence or trailer, camping, or staying in their vehicle. Other supervisors believed that these claims were appropriate simply because the employee did not submit a receipt.

Agency Response

The PUC reported that, although it believes the six employees misunderstood the reimbursement policies, it would recover the excess expenses from them. The PUC also stated that it would recover other unjustified expense reimbursements paid to inspector A. In addition, the PUC held a full-day training session for all Railroad Safety Branch staff to review, explain, and clarify guidelines for travel expenditures and other administrative concerns.

Chapter 5

Department of Corrections: Improper Acceptance of and Failure to Disclose Gifts

Allegation I970228

An attorney at the Department of Corrections (department) improperly accepted a flight in a private airplane from an opposing counsel.

Results and Method of Investigation

We investigated and substantiated the allegation. In fact, the attorney improperly accepted two rides—one in February 1996 and one in April 1997—on a private airplane owned by an opposing counsel's law firm. Although the attorney returned two unused airline tickets the department purchased, she failed to report the value of the flights as gifts on her statement of economic interests. The February 1996 ticket was valued at $167 and the April 1997 ticket was valued at $212.

To investigate the allegation, we reviewed the attorney's travel expense claims and statements of economic interests for 1996 and 1997. We also reviewed applicable state laws and department policies. We interviewed the opposing counsel who provided the airplane rides, the attorney, and the attorney's current and previous supervisors.

Background

The attorney represents the department before administrative agencies and in state and federal courts on issues relating to current and former department employees. These cases frequently require the attorney to travel throughout the State.

The Attorney Improperly Accepted Gifts

Incompatible activity prohibitions prevent outside influence on state employees in performing their official duties.[11] State law and department policy prohibit state employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, or in conflict with their duties, including accepting, directly or indirectly, any gifts, money, or any other item of benefit or value from anyone who does business of any kind with the employee's department, under circumstances from which it could reasonably be substantiated that there was an intent to influence the employee in the performance of official duties or that there was an intent to reward an official action.

February 1996 Trip

As mentioned, the department's attorney accepted flights on a private airplane in February 1996 and again in April 1997. On February 1, 1996, the attorney was attending a personnel hearing in Crescent City; however, because the hearing would not conclude in time for her to catch her return flight to Sacramento, the opposing counsel said he offered her a ride on his firm's private airplane so they could finish the hearing. The opposing counsel said that he did not go out of his way to benefit the attorney. He also pointed out that he never asked her to share the costs for the flight since he was already scheduled to have the private plane. Moreover, the department's attorney did him a favor by saving him a return trip to Crescent City to complete the hearing.

Although the department's attorney told us that she did not believe the airplane rides were gifts because she intended to pay for them, we found no evidence that she intended to pay for this flight. As stated, the opposing counsel told us that he never asked her to share the costs. In addition, the department's attorney told us she notified her then supervisor, supervisor A, of the trip, but supervisor A does not remember this nor does she remember the attorney mentioning the possibility of the department paying for a portion of the cost.

The department's attorney explained that, since she had only been a state employee for a few months at the time, she had not been familiar with all the rules about public officials accepting gifts. The attorney said that, in this situation, there was absolutely nothing for the opposing counsel to gain by

[11] For a more detailed description of the laws discussed in this chapter, see Appendix B.

offering her a ride since they had submitted all the evidence to a judge. However, the opposing counsel said that, by accepting the ride, the department's attorney saved him both time and money.

Department records indicate that the attorney returned the unused portion of her round-trip airline ticket, valued at $167. However, by accepting an airplane ride from the opposing counsel and failing to pay for it, the attorney created the appearance that she may have been influenced in the performance of her official duties or rewarded by an outside entity for an official action.

April 1997 Trip

On April 15, 1997, the attorney again traveled to Crescent City to represent the department at a personnel hearing. The attorney's return flight to Sacramento on April 16, 1997, was canceled. The same counsel involved in the 1996 trip was also scheduled on the canceled flight. To return to Sacramento, he had the firm's private airplane pick him up, along with the department's attorney. The opposing counsel said he would bill the department for the flight. Although the opposing counsel said he instructed the firm's accountant to send a bill, he learned later from the department's attorney that she never received one. He told her not to worry about it.

The attorney told us that she notified her supervisor, supervisor B, about the flight, and that the firm would bill the department. Supervisor B confirmed that the attorney told her about the flight and billing and that she told the attorney she would approve the bill for payment. However, the opposing counsel's firm apparently failed to send the bill.

As with the 1996 trip, the attorney returned the unused portion of her round-trip airline ticket, valued at $212.

The Attorney Failed to Report the Gifts

State law requires designated employees to file annual statements of economic interests that disclose the sources of income, and of gifts aggregating $50 or more.

In March 1998, we attempted to review the attorney's statement of economic interests for 1996 and 1997. However, even though the 1996 statement was due by April 1, 1997, the attorney did not complete the statement until May 11, 1998, nearly 2 months after we first asked the department for the statement and more than 13 months after it was due. The attorney completed her 1997 statement on March 31, 1998, one day before the April 1, 1998, deadline. However, the attorney failed to disclose the fact that she received the gift of a private airplane ride from opposing counsel on both her 1996 and 1997 statements. According to the attorney, she did not report the gifts because she intended to pay for the flights.

Agency Response

The department disagrees that its attorney engaged in incompatible activities or that she was required to report the airplane rides as gifts. However, the department has requested invoices from the opposing law firm and will pay the bills in accordance with state procedures. In addition, the department will coordinate training for its staff with the Fair Political Practices Commission regarding gifts, incompatible activities, and economic disclosure statements.

Chapter 6

Department of Health Services: Improper Claims for Reimbursement and Incompatible Activities

Allegation I960255

A manager in the Division of Environmental and Occupational Disease Control (division) at the Department of Health Services (DHS) overclaimed travel and other reimbursements. The same manager engaged in incompatible activities when, as a contract manager for the DHS, he approved reimbursement of travel expenses the contractor paid on his behalf.

Results and Method of Investigation

A DHS manager improperly claimed $748 for meals and other expenses, and submitted a number of late or inaccurate claims.

We investigated and substantiated the allegations. Specifically, between August 1994 and September 1997, the manager claimed $748 for meals and other expenses he was not entitled to receive and frequently submitted late or inaccurate claims. Moreover, although the DHS's accounting office caught several errors in the manager's travel expense claims, it nevertheless reimbursed him money he was not entitled to receive in other instances. The manager also did not renew his professional license on time, yet claimed reimbursement of $60 for the late filing fee. Moreover, during the time he was unlicensed, he failed to meet the requirements of his job. Finally, we believe the manager engaged in incompatible activities because he approved invoices that included charges for some of his travel expenses paid for by a contractor.

To investigate the allegations, we examined travel expense claims submitted by the manager to the DHS and to the contractor. In addition, we reviewed applicable state regulations and departmental travel policies. Finally, we interviewed the manager and two of his superiors.

The Manager Overclaimed Reimbursements for Travel Expenses in 49 Instances

California regulations outline when meal expenses are reimbursable to employees.[12] Employees are to claim only their actual expenses but are limited to certain maximums. Moreover, no meal reimbursements are allowed at any location within 25 miles of the employee's headquarters.

We did not find any instances where the manager improperly claimed reimbursement for meals between October 1996 and September 1997. Between November 1994 and September 1996, the manager improperly claimed reimbursement for meals or incidentals in 49 instances. As a result, he received an extra $658. Usually the manager was within 25 miles of his headquarters when he incurred the expense, or traveled within times that preclude reimbursement. In addition, the manager submitted two claims to the DHS for duplicate reimbursement of expenses related to a trip on June 7, 1995. The manager submitted one claim on June 9, 1995, charging $33.52 for the trip, and the other claim on July 6, 1995, charging $30.62. The manager was unable to explain why the amounts were different or why he submitted two claims for the same trip.

The manager also told us that he was not familiar with the State's travel regulations and delegated the task of preparing his claims to his assistant. However, he acknowledged that he was sloppy in his review of the claims, and did not pay sufficient attention to detail when certifying that the claims were true and in accordance with state regulations. The manager also said that he had not intended to claim inappropriate reimbursements and that he is willing to pay back to the State any money to which he is not entitled.

The Manager Submitted 24 Travel Expense Claims Late

California regulations require employees to submit travel expense claims at least once a month. Between August 1994 and September 1997, the manager submitted 30 travel expense claims to the DHS. While the manager submitted 6 of the claims on time, 24 were an average of 76 days late. In one example, the manager traveled on 5 different days in January 1997 but did not submit his travel expense claim until

[12] For a more detailed discussion about the laws and regulations discussed in this chapter, see Appendix B.

November 17, 1997—260 days after it was due. The manager said he was not aware that the State required employees to file claims for travel reimbursement once a month.

By not submitting claims promptly, the manager may have compromised the accuracy of his claims. For example, on a claim submitted to the DHS in June 1995, the manager claimed reimbursement for an all-day trip to Sacramento on March 13, 1995; however, a claim he submitted to the contractor shows that the manager flew to New York that morning. When we asked the manager about this discrepancy, he said the trip to Sacramento must have occurred on another day.

The DHS Inadequately Reviewed the Manager's Claims

The DHS approved the manager's reimbursements despite irregularities in his claims.

The officer approving claims must properly ascertain the necessity and reasonableness of the expenses. In addition, state law requires state agencies to establish and maintain a system of internal accounting and administrative controls to safeguard the State's assets. This requirement was established in recognition of the fact that a lack of such controls can result in fraud and errors.

As mentioned, the DHS's accounting office caught several errors in the manager's travel expense claims. For example, it found receipts missing for some expenses, so it disallowed these claims. In addition, on one occasion the accounting office did not pay late fees claimed by the manager for his dues in a professional organization. Nevertheless, as discussed further in a section below, the accounting office and the officers approving payment reimbursed the manager for other improper claims.

The Manager Renewed His Professional License Late and Improperly Claimed Reimbursement for the Extra Fee

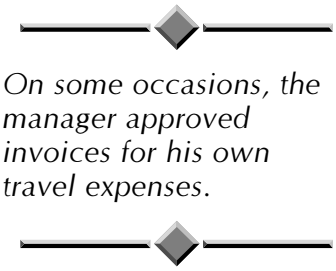
The manager also submitted two claims for reimbursement of professional license fees. The minimum qualifications for the manager's position require him to meet the legal requirements to practice medicine in California. The Medical Board of California requires that the manager renew his professional license by March 31 every two years. State law permits the reimbursement of professional license fees.

However, in 1995, the manager did not renew his license until May 10, 1995—40 days after the expiration date. In 1997, the manager did not renew his license until May 27, 1997—

57 days after the expiration date. Consequently, the manager did not meet the legal requirements of his position during these periods. Moreover, when the manager submitted his claim for reimbursement for the 1997 renewal, he claimed, and the DHS paid, $60 for late fees. We do not believe it is appropriate for the State to reimburse the manager for late fees since it was he who failed to renew his license on time.

The Manager Engaged in Incompatible Activities

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



On some occasions, the manager approved invoices for his own travel expenses.

Since 1988, the DHS has contracted with a nonprofit organization for assistance in administering its programs, and the manager oversees this contract. Under the terms of the contract, the nonprofit pays for many of the manager's trips to conferences worldwide. The contractor paid for some of the manager's trips with funds from the DHS contract. Because the manager is responsible for reviewing and approving the invoices submitted for payment by the contractor, we believe he engaged in incompatible activities since he indirectly approved payment of his own travel expenses.

The manager's supervisors in the division told us that they learned of this situation about a year ago. At that time, they spoke with the manager and decided that the contractor must submit a request to the division for an employee to attend a conference. The division could then decide who would attend so the manager was not the only person to attend such conferences.

Moreover, as a result of our investigation, the assistant division chief told us that the division now intends to review not only the expense claims submitted to the division, but also the expense claims submitted to the contractor to ensure that employees are not billing both entities for the same expenses and that all expenses charged are appropriate. In one case, we found that the manager charged the DHS $17 (the maximum allowed at the time) for dinner on August 30, 1995, and also charged the contractor for the entire meal expense.

Agency Response

The manager accepted responsibility for the overclaimed travel and late fee reimbursement and repaid the DHS $759. He also acknowledged the late submittal of his travel expense claims and late renewal of his professional license. However, the manager did not believe that he engaged in incompatible activities. While the DHS concluded that the manager did not willfully violate incompatible activity laws, it nevertheless issued him a formal letter of reprimand, admonishing him to avoid the appearance of engaging in incompatible activities. In addition, the division chief has instituted procedures to closely monitor travel reporting by employees in his division.

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Chapter 7

Stephen P. Teale Data Center: Appearance of a Conflict of Interest

Allegation I970191

An employee of the Stephen P. Teale Data Center (Teale Data Center) was improperly involved in purchases made from a computer vendor.

Results and Method of Investigation

Because Teale Data Center is part of the Business, Transportation and Housing Agency (agency), we asked the agency to investigate the allegation on our behalf. The agency investigated and substantiated the allegation. The agency reviewed the employee's personnel file and all documents for purchases made from the vendor from March 1996 through May 1998. The agency also obtained a statement from the employee and interviewed other officials at Teale Data Center.

The Employee and Her Manager Created the Appearance of a Conflict of Interest

State law prohibits state employees from having a financial interest in contracts made by them in their official capacity.[13] Additionally, application of conflict-of-interest laws are not limited to actual instances of fraud, dishonesty, or unfairness, but to their appearance as well. The fact that a contract is fair and untainted by fraud is irrelevant.

A manager directed an employee to purchase equipment from a vendor despite the employee's personal relationship with the vendor's account executive.

The agency concluded that, although the employee did not have an actual conflict of interest related to purchases from the vendor, an appearance of a conflict of interest existed. Specifically, in her capacity as a procurement analyst, the employee participated in the decision to purchase several data processing units from a particular vendor in early 1996. Later, in April 1996, the employee met, and established a personal relationship with, the vendor's account executive. According to the employee, she notified her manager in June 1996 that she wanted herself removed from any transactions that might

[13] For a more detailed description of the laws discussed in this chapter, please see Appendix B.

involve the vendor because of her relationship with the account executive. By removing herself from transactions with this vendor, the employee would have avoided any conflicts of interest.

However, the employee's manager asked her to purchase additional equipment from the vendor as late as May 1997 because, according to the manager, other staff were on vacation and unavailable, and because the employee was familiar with the equipment and the vendor. Consistent with her manager's request and her job description, the employee continued to evaluate purchases of equipment of the type sold by the vendor and prepared purchase orders, thereby creating the appearance of a conflict of interest.

Although the employee continued to have some responsibility for additional purchases from the vendor, the agency concluded that she was not solely responsible for these purchasing decisions. In addition, the agency found no evidence that Teale Data Center paid more for any equipment or services purchased as a result of the employee's involvement. Consequently, the agency concluded that the employee's relationship did not influence the purchases.

Agency Response

Teale Data Center reassigned the employee to remove her from any situation that could allow, or create the impression of, a conflict of interest. In addition, it will inform all procurement analysts of the legal prohibitions against conflicts of interest and will continue reviewing purchases to ensure that they are made in a competitive manner. Teale Data Center has also revised its conflict-of-interest policy and submitted it to the Fair Political Practices Commission for approval.

In addition, the agency has directed Teale Data Center to train its managers and supervisors in the legal prohibitions of conflicts of interest and in recognizing the potential for such conflicts. Teale Data Center will schedule this training in fiscal year 1998-99. Teale Data Center must also establish a policy that requires managers to immediately address potential or apparent conflicts of interest.

The agency emphasized that the manager's instruction to the employee to continue working with the vendor in spite of knowing that the employee had a personal relationship with the vendor's account executive is unacceptable. The agency directed Teale Data Center to further review the facts

surrounding the manager's ignorance of the proper procedures and to take appropriate personnel action. Teale Data Center's acting director has counseled the manager.

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Chapter 8

Department of Health Services: Failure to Disclose Financial Interests and Obtain Permission for Outside Employment, Improper Use of State Telephones, and Improper Travel Expense Claims

Allegation I970205

Two employees of the Department of Health Services' (DHS) Licensing and Certification Division (division) improperly held outside employment and misused state telephones.

Results and Method of Investigation

Four DHS employees were implicated in several improper activities.

The DHS investigated and substantiated these and other improper activities. Specifically, employees A and B failed to disclose their financial interests in outside employment. In addition, the same two employees and two other employees—C and D—failed to obtain a written determination from their supervisors of whether their outside employment was incompatible with the employees' duties to the DHS. Employees A and D also used state telephones for their own personal benefit and employee A improperly claimed duplicate reimbursement for $235.90 in travel expenses.

Two Employees Failed to Disclose Their Financial Interests

State law and regulations require certain designated employees to disclose in statements of economic interests the names and addresses of each source of income totaling $250 or more in value.[14] In addition to their jobs at the DHS, all four of the subject employees worked for a California partnership that trains and certifies administrators of facilities regulated by the Department of Social Services. Employee B, who was one of two general partners in the business, disclosed his financial interest on his 1996 statement of economic interests. Employees A and C did not disclose their financial interests as

[14] For a more detailed discussion of the laws and regulations discussed in this chapter, see Appendix B.

required. Employee D, who was the other general partner in the business, was not designated as an employee required to file a statement of economic interests.

Four Employees Failed to Obtain Written Determinations of the Compatibility of Outside Employment With Their State Jobs

DHS policy requires its employees to obtain a written determination of whether any outside employment may be incompatible with their duties at the DHS. In fact, because the DHS has no jurisdiction over the clients of the partnership for which the four employees worked, the employees' activities were not incompatible, as long as they did not use DHS time or other resources on behalf of the partnership. Nevertheless, although employee A informally asked for an opinion regarding his outside employment, none of the four employees obtained the required written determination.

Two Employees Used State Telephones for Personal Benefit

State law prohibits employees from using state equipment, including telephones, for personal gain or advantage. Nevertheless, from January through August 1997, employees A and D used their state telephones to place calls related to their outside employment. Such misuse is also an incompatible activity under state law.

One Employee Improperly Filed Duplicate Travel Expense Claims

In August 1997, employee A filed a travel expense claim for $236 for expenses related to a meeting in Anaheim, including airfare, lodging, meals, and incidentals. However, in September 1997, he filed another claim for the same airfare and in October 1997, he filed yet another claim for the same lodging, meals, and incidentals. All of the claims were approved for payment. As a result, the DHS improperly duplicated payments for the same expenses.

Agency Response

Employee D resigned from state service in January 1998 and accepted a position with a health care facility. Because employee D is employee A's spouse, this created a potential for a conflict of interest since the health care facility is regulated by

the DHS. DHS management has taken action to ensure that employee A does not participate in any DHS regulatory action related to employee D's new employer.

The DHS has asked the two employees who failed to disclose their financial interests to file amended statements of economic interests for 1996. In addition, the DHS has reemphasized the need for employees to obtain written determinations from their supervisors regarding outside employment and DHS duties. The DHS will ask employees A and D to pay the cost of the personal calls they placed. Finally, the DHS will require employee A to repay the duplicate payment for travel expenses.

We conducted this investigation under the authority vested in the California State Auditor by Section 8547, and following, 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 of the report.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

Date: September 2, 1998

Investigative Staff: Ann K. Campbell, Director, CFE
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Appendix A

Activity Report

Action Taken as a Result of Investigative Reports

Investigations completed over the past five years have identified improper governmental activities that cost the taxpayers $10.8 million.

The Bureau of State Audits (bureau) has identified improper governmental activities totaling approximately $10.8 million since July 1993 when it reactivated the Whistleblower Hotline (formerly administered by the Office of the Auditor General). These improper activities included theft of state property, false claims, conflicts of interest, and personal use of state resources. The bureau's investigations also 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. When the bureau substantiates allegations, it reports the details of the activity to the head of the state entity or the appointing authority, who is responsible for taking appropriate corrective action. The Reporting of Improper Governmental Activities Act (act) also empowers the state auditor to report these activities to other appropriate authorities, such as law enforcement or other entities with jurisdiction over the activities.

Corrective actions taken on cases contained in this report are described in the individual chapters. Table 3 summarizes all of the corrective actions taken by agencies since the bureau activated its Whistleblower Hotline in July 1993.

Table 3

Corrective Actions Taken
July 1993 Through February 1998

Type of Corrective Actions	Instances
Referrals for criminal prosecution	65
Convictions	3
Job terminations	28
Demotions	6
Pay reductions	7
Suspensions without pay	8
Reprimands	75

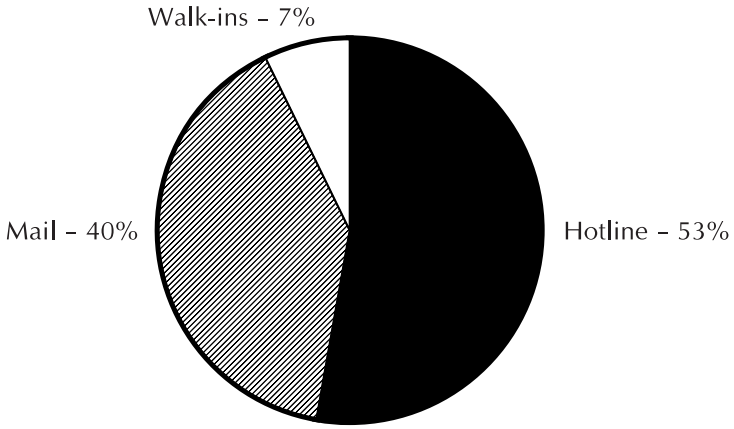
In addition, dozens of agencies have modified or reiterated their policies and procedures to prevent future improper activities.

New Cases Opened
February Through June 1998

From February through June 1998, we opened 77 new cases. We receive allegations of improper governmental activities in several ways. Forty-one (53 percent) of our new cases came from callers to our Whistleblower Hotline at (800) 952-5665.[15] We also opened 31 new cases based on complaints received in the mail and 5 new cases based on complaints from individuals who visited our office. Figure 2 shows the sources of all cases opened from February 1 through June 30, 1998.

[15] In total, we received 383 calls on the Whistleblower Hotline from February 1 through June 30, 1998. However, 315 (82 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to refer the caller to the appropriate entity. Another 27 (7 percent) were related to previously established case files.

Figure 2
Sources of 77 New Cases Opened
February 1 Through June 30, 1998



Work on Investigative Cases February Through June 1998

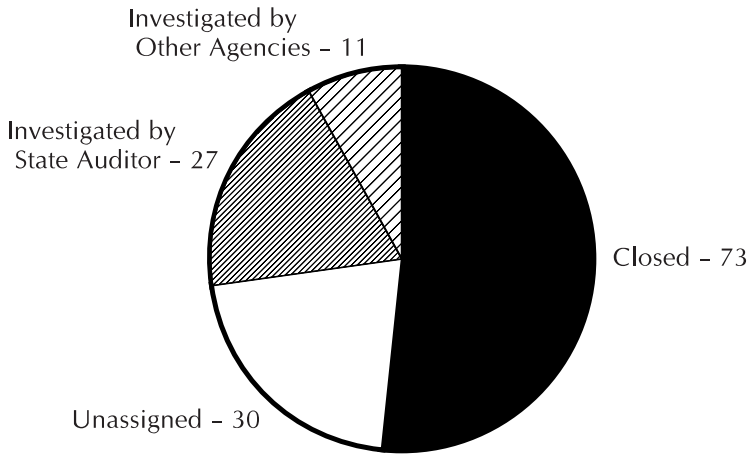
In addition to the 77 new cases opened during this five-month period, 48 cases were awaiting review or assignment and 16 were still under investigation, either by this office or other state agencies, on February 1, 1998. As a result, 141 cases required some review during the period.

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 73 of the 141 cases, we concluded that not enough evidence existed for us to mount an investigation.

The act specifies that the state auditor may request the assistance of any state entity or employee in conducting any investigation. From February through June 1998, state agencies investigated 11 cases on our behalf and substantiated allegations on 2 (29 percent) of the 7 cases they completed during the period.

In addition, we independently investigated 27 cases and substantiated allegations on 7 (41 percent) of the 17 cases we completed during the period. We issued a separate public report on 1 of the 7 substantiated cases on March 3, 1998. Figure 3 shows action taken on case files from February through June 1998. As of June 30, 1998, 30 cases were awaiting review or assignment.

Figure 3
Disposition of 141 Cases
February Through June, 1998



Appendix B

State Laws, Regulations, and Policies

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

Laws Governing Hospital Construction

Chapter 1 concerns hospital construction plan review

The Alfred E. Alquist Hospital Facilities Seismic Safety Act, found in the Health and Safety Code, Sections 129675 and following, gives responsibility to the Office of Statewide Health Planning and Development for reviewing all hospital construction plans to ensure that they comply with high construction standards.

Laws Governing Conflicts of Interest

Chapters 1 and 7 report issues related to conflicts of interest

The Political Reform Act of 1974, codified in Section 87100 and following of the California Government Code, states in pertinent part that no public employee shall make, participate in making, or in any way attempt to use his official position to influence a government decision in which he knows or has reason to know he has a financial interest. Section 87103 of the same code defines a financial interest to include any business entity in which the public employee has a direct or indirect investment worth $1,000 or more, or any source of income, other than gifts and specified loans, aggregating $250 or more provided or promised to the employee within 12 months prior to when the decision is made.

The California Government Code, Section 87401, provides that no former state administrative official, after the termination of his or her employment or term of office, shall for compensation represent any person other than the State of California before any state agency in any proceeding if previously the employee participated in the proceeding. According to Government Code Section 87400(b), a state administrative official includes an employee of a state administrative agency who, as part of his or her official responsibilities, engages in any proceeding in other than a purely clerical, secretarial, or ministerial capacity. The term proceeding includes, among other things, any application or a request for a ruling or other determination.

Section 1090 of the California Government Code prohibits state employees from having a financial interest in contracts made by them in their official capacity. Conflict-of-interest laws are concerned not merely with what actually happened, but also with what might have happened. Therefore, application of the law has not been limited to actual instances of fraud, dishonesty, or unfairness but to their appearance as well. The fact that a contract is fair and untainted by fraud is irrelevant.

Further, the courts have determined that conflict-of-interest laws are concerned with any interest, other than perhaps remote or minimal interest, that would prevent state officials involved from exercising absolute loyalty and undivided allegiance to the best interest of the State. The fact that the state official's interest might be small or indirect is immaterial so long as it deprives the State of an official's overriding fidelity to it and places the official in a compromising situation where, in exercise of official judgment or discretion, the official may be influenced by personal considerations rather than public good.

In addition to specific statutory prohibitions, common law doctrines against conflicts of interest exist. Common law is a body of law made by decisions of the California Supreme Court and the California Appellate Courts. Both the courts and the attorney general have found conflicts of interest by public officials to violate both common law and statutory prohibitions. For example, common law doctrines state that a public officer is bound to exercise the powers conferred on the officer with disinterested skill, zeal, and diligence and primarily for the benefit of the public. Further, another judicial interpretation of common law doctrine is that public officers are obligated to discharge their responsibilities with integrity and fidelity. According to the attorney general, where no conflict is found in statutory prohibitions, special situations could still constitute a conflict under the long-standing common law doctrine.

Laws Requiring Disclosure of Financial Interests or Gifts

Chapters 1, 5, and 8 report failures to disclose financial interests or gifts

California Government Code Section 87302, part of the Political Reform Act of 1974, requires that every designated employee who leaves office shall file within 30 days of leaving office, a statement disclosing business positions held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.

The Conflict of Interest Code for the Office of Statewide Health Planning and Development requires designated employees to complete a leaving office statement.

The Political Reform Act of 1974, contained in California Government Code Section 81000 and following, requires designated employees to file annual statements of economic interests that disclose the sources of income and gifts. Gifts aggregating $50 or more must be disclosed on the statement of economic interests.

Incompatible Activities Defined

Chapters 2, 5, 6, and 8
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 1999 prohibits a state officer or employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. 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.

The same section requires state departments to define incompatible activities. In its statement of incompatible activities, the Department of Health Services further prohibits its employees from providing their service for compensation of any nature from any person so that such employees are receiving dual compensation from the State and from another source for the same period. This does not apply to employees while they are on vacation, compensating time off, or military leave.

The Department of Corrections' Director's Rules, Section 3413, also prohibits a Department of Corrections employee from engaging in any employment or activity inconsistent or incompatible with employment by the Department of Corrections.

The Department of Health Services Administrative Manual, Section 6-5130, requires that a departmental employee engaging in outside employment must first receive a written determination from their supervisor that such employment is not inconsistent, incompatible, in conflict with, or inimical to the employee's duties to the department.

Criteria Governing Unused Sick Leave

Chapter 2 reports improperly reported absences

According to the California Public Employees' Retirement System, unused sick leave at time of retirement may be considered as additional service credit for the purpose of calculating retirement benefits.

Criteria Governing Reimbursement of Relocation and Commuting Expenses

Chapter 3 reports improper claims for relocation and commuting expenses

The California Code of Regulations, Title 2, Section 599.714, et seq., permits a state employee to receive moving and relocation expenses when the employee is required to move as a result of the employee's appointing power changing the employee's officially designated headquarters for the advantage of the State. Moving expenses include the cost of moving an individual's household or personal effects. Relocation expenses are actual and necessary costs of selling a home, including real estate brokerage commissions, title insurance, and escrow fees. In the case of a nonpromotional transfer, such reimbursement is made only when the transfer is deemed by the appointing authority to be in the best interest of the State, and is not made when the transfer is primarily for the benefit of the employee. Also, the regulations specify that claims for relocation expenses must be submitted within two years following the date the employee reports to the new headquarters. Extensions of this deadline are not permitted.

State employees are not permitted reimbursement for mileage from their residence to their headquarters. Consequently, when an employee has not yet located new housing and commutes from an old residence to the new headquarters, the employee cannot claim reimbursement for mileage. In addition, state regulations do not allow reimbursement for meals eaten within

the vicinity of an employee's headquarters. An employee who is eligible for reimbursement of moving and relocation expenses may claim meal costs for up to 60 days while searching for permanent housing at the new location. However, the meal allowance must terminate upon establishment of a permanent residence.

Criteria Governing Travel Expense Claims

Chapters 4 and 6 report improper travel expense claims

Section 599.621(a) of Title 2 of the California Code of Regulations addresses reimbursement of travel expenses for represented employees. The section delegates the specific amounts the State will reimburse for expenses to Memoranda of Understanding (MOU) with appropriate collective bargaining units. In the case of the Public Utilities Commission (PUC) employees that we reviewed, travel reimbursements are covered in Article 12 of the MOU between the State and Bargaining Unit 11, Engineering and Scientific Technicians. In part, the MOU requires the State to reimburse employees for actual costs for lodging expenses in commercial facilities up to a maximum of $79 plus applicable taxes. Although the employee must submit a receipt to claim lodging expenses greater than $25, the agreement allows reimbursement of up to $24.99 for commercial lodging expenses without requiring the employee to provide a receipt.

The California Code of Regulations, Title 2, Section 599.619, outlines when meal expenses are reimbursable to an excluded employee. For example, on a trip of 24 hours or more, the employee may claim dinner on the last day of travel if the trip ends at or after 7 p.m. If the trip lasts less than 24 hours, the employee may claim breakfast if the travel begins one or more hours before the regularly scheduled workday and may claim dinner if the travel ends one or more hours after the regularly scheduled workday. An employee is not entitled to claim reimbursement for lunch if a trip lasts less than 24 hours. Employees are to claim only their actual expenses but are limited to certain maximums. At the time most of the trips discussed in this report were made, the following maximums were in effect: breakfast, $5.50; lunch, $9.50; and dinner, $17.[16] Moreover, Section 599.616 of the California Code of

[16] Effective January 1, 1996, this section was revised and for trips of 24 hours or more, employees can now claim breakfast on the first day of travel if the trip begins at or before 6 a.m. Also, in computing reimbursement for continuous travel of less than 24 hours, actual expenses up to the maximums will be reimbursed for breakfast if travel begins at or before 6 a.m. and ends at or after 9 a.m., and for dinner if travel begins at or before 4 p.m. and ends at or after 7 p.m. Additional changes do not affect this analysis.

Effective July 1, 1997, the maximum meal reimbursements were raised to $6 for breakfast, $10 for lunch, and $18 for dinner.

Regulations states that no meal reimbursements shall be allowed at any location within 25 miles of the employee's headquarters.[17]

The California Code of Regulations, Title 2, Section 599.638.1, requires employees to submit travel expense claims at least once a month, unless the claim is for less than $10; a claim for less than $10 may be deferred until June 30 or until the total amount claimed exceeds $10. According to this same section, it is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed.

The California Code of Regulations, Title 2, Section 599.922, permits the reimbursement of professional license fees to nonrepresented employees.

Criteria Governing State Managers' Responsibilities

Chapter 6 reports inadequate review of claims

The Financial Integrity and State Manager's Accountability Act of 1983 contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain an adequate system of internal controls.

Prohibition Against Personal Use of State Resources

Chapters 2 and 8 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.

Until September 1996, the State Administrative Manual (SAM), Section 4520, provided guidance regarding the use of state telephones for personal use. The guidance stated that state telephones are provided for the conduct of state business. It also prohibited employees from using state telephones for personal long distance calls unless the call was charged to another number. Furthermore, it directed employees to keep the number and length of personal calls to a minimum. With

[17] Section 599.616.1 became effective January 1, 1996, and states that no meal reimbursements shall be allowed at any location within 50 miles of the employee's headquarters.

the change to SAM in September 1996, Section 4510 of SAM now directs state agencies to establish policies and controls related to the personal use of state telephones.

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