

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

274

CERTAIN FISCAL POLICIES AND PRACTICES
OF THE
DEPARTMENT OF CONSUMER AFFAIRS
SHOULD BE CURTAILED

OCTOBER 1976



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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November 2, 1976

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of
the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on certain inappropriate fiscal activities of the Department of Consumer Affairs.

The Auditor General's report and the response of the Department's Director reflect a highly charged point and counterpoint. Standing committee chairmen to whom this report will be referred for review and appropriate action may well wish to consider public hearings.

By copy of this letter, the Department is requested to advise the Joint Legislative Audit Committee within sixty days of the status of implementation of the recommendations of the Auditor General that are within the statutory authority of the Department.

The auditors are: Robert M. Neves, Curt Davis and Eugene Potter.

Respectfully submitted,

MIKE CULLEN
Chairman

MC:tsw

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SUMMARY

The boards, bureaus and commission of the Department of Consumer Affairs have been inappropriately charged for services which were unrelated or not reasonably related to their activities. The boards have also been overcharged for services related to their activities. Additionally, in 1972 the Department borrowed \$784,520 from seven boards. To date, the Department has not repaid these loans nor credited interest due on the outstanding loans. These practices have placed a financial burden on some boards and, in turn, have affected the licensees of the various regulatory boards.

The Department of Consumer Affairs has made loans to the boards and bureaus from the Consumer Affairs Fund. In the opinion of the Legislative Counsel, this practice is unlawful. However, we believe that the fiscal practices described above have contributed to the need for these loans.

We have made recommendations that will assist the Department in correcting improper financial practices involving the Consumer Affairs Fund. These recommendations will also assist the boards, bureaus and commission in becoming self-sufficient by relieving them of unwarranted charges by the Department.

INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee, we examined (1) the method of allocating the cost of centralized administrative operations of the Department of Consumer Affairs to its boards, bureaus and commission, and (2) the security guard training program administered by the Department's Bureau of Collection and Investigative Services. This examination was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code.

The Department of Consumer Affairs is organized within the Agricultural and Services Agency and is composed of 23 boards, five bureaus and one commission. The Department Director oversees the five bureaus and has administrative responsibility for the boards and commission which have independent policymaking authority. Each board, bureau and commission regulates a professional or occupational group. The Department's primary purpose is to protect the health, safety and welfare of California's consumers. Hereafter, the boards, bureaus and commission are referred to collectively as boards.

Administrative services are provided to the boards by a centralized operation consisting of the following four program elements:

- Division of Administration
- Division of Investigation
- Division of Consumer Services
- Building Maintenance and Operations.

Expenditures of the Department's centralized operations, and expenditures of the boards (except their payrolls) are paid from the Consumer Affairs Fund, which receives funds from the following sources:

- Advances from the boards to provide approximately two months' prepayment of operating expenses
- Rental receipts from tenants of the Consumer Affairs building
- Monthly reimbursement for administrative service of the Department's centralized operations allocated to the boards
- Monthly reimbursement for operating expenditures paid for the boards.

The Consumer Affairs Fund is also used as the operating fund for the Division of Consumer Services and the Division of Investigation within the central operations of the Department. During fiscal year 1975-76, the costs of the Division of Consumer Services were paid from the accumulated surplus of this fund and from pro rata assessments

to the various boards of the Department. The costs of the Division of Investigation are also paid from the fund, then reimbursed by the board that used its services.

FINDINGS

THE BOARDS OF THE DEPARTMENT OF
CONSUMER AFFAIRS HAVE BEEN OVER-
CHARGED \$2,375,000.

During the last several years, the boards of the Department of Consumer Affairs were overcharged \$2,375,000. Of this amount, approximately \$1,404,000 represents charges for services unrelated or not reasonably related to the activities of the boards, and \$971,000 represents charges for services related to the activities of the boards, but in excess of Department costs. The overcharges have placed a financial burden on some boards and this in turn has affected the licensees of the various regulatory boards. The Department has taken corrective action to eliminate the previous practice of overcharging for services; however, action has not been taken to repay overcharges in prior years.

Overcharges for Services Unrelated
or Not Reasonably Related to the
Activities of the Boards

The Division of Consumer Services was formed in 1970 to advance the interests of consumers through education, protection, competition, and representation. Until the current fiscal year, expenditures of the Division were absorbed by charges to the special funds of the boards and by charges against the Consumer Affairs Fund. In 1976, the Attorney General issued an opinion (Appendix A) that to the extent activities of the Division are not reasonably related to the activities of the boards, fiscal support for such activities should be derived from the General Fund and not from the boards.

The Division of Consumer Services is now funded jointly by the General Fund and the Consumer Affairs Fund, which is a revolving fund for the boards' special funds, on a ratio of approximately 80 percent and 20 percent, respectively. This ratio agrees closely with data accumulated during our study which revealed that for fiscal year 1975-76, 78 percent of the Division's activities had no relationship to the boards' activities.

The Governor's message in the current Budget Act (Item 154) reflects the opinion of the Attorney General and mandates the Department of Consumer Affairs to study the relationship of its services to the boards. We have been informed by the Department that its study shows a funding mix of 77 percent General Fund and 23 percent special funds.

While the current Budget Act corrects the practice of charging the boards for services not reasonably related, it does not correct inappropriate charges which occurred in prior years. For the years before fiscal year 1975-76, the Department has no data to support an allocation of cost between the General Fund and special funds. We believe, however, that unless the Department can substantiate a different cost ratio, the 1975-76 cost ratio should be used to estimate the amount of prior year overcharges. Based upon our funding ratio for fiscal year 1975-76, respective boards should be refunded approximately \$1,404,000. Moreover, we believe that to the extent these excessive charges caused the boards to increase licensing fees, the refunds should be used primarily to reduce existing or proposed license fee schedules.

The study methodology for determining the amount of the inappropriate charges is described in Appendix B.

Overcharges for Services Related to the Activities of the Boards

The costs of administrative services are paid from the Consumer Affairs Fund. These costs are reimbursed to the fund by a pro rata charge to the various special funds of the boards, based upon a ratio of each board's total expenditures to the total expended by all boards.

The costs of building operations are also paid from the Consumer Affairs Fund. These costs are offset by rents collected from tenants.

If the costs of administrative services and building operations are less than the amount charged to the boards, the additional amount collected is reflected as an increase in the accumulated surplus of the Consumer Affairs Fund. As of June 30, 1976 the accumulated surplus in the fund was \$1,312,000.

Approximately \$971,000 of the accumulated surplus resulted from (1) the Department charging boards a greater amount for administrative services than the costs to provide these services and from (2) the interest earnings realized from investing money in the State Surplus Money Investment Fund. The Department has taken corrective action to eliminate future excessive charges for administrative services, but has not taken action to refund overcharges and interest earnings for prior years.

Approximately \$341,000 of the surplus resulted from the Department charging tenants of the Consumer Affairs building a greater amount for rent than the Department pays for building operating costs. We believe this portion of accumulated surplus serves a useful purpose and should be used to pay for future building improvements and to partially repay a \$784,520 building construction loan owed to seven boards. (Discussed on page 9)

We believe the portion of the surplus that resulted from overcharging boards for administrative services (\$971,000) can and should be returned to the boards. This refund should also be used to reduce existing or proposed license fee schedules.

CONCLUSION

The boards of the Department of Consumer Affairs have been overcharged \$2,375,000. This has placed an unnecessary financial burden on these organizations. Of the total overcharge, \$1,404,000 resulted from inappropriate charges for services of the Division of Consumer Services which were unrelated or not reasonably related to the activities of the boards. The remaining \$971,000 represents charges to the boards which were for services related to their activities but in excess of Department costs.

RECOMMENDATIONS

We recommend that the Legislature enact legislation to appropriate \$1,404,000 from State General Fund to repay the special funds of the various boards for inappropriate charges for operating costs of the Division of Consumer Services.

We recommend the Department of Consumer Affairs return to boards the accumulated surplus in the Consumer Affairs Fund (\$971,000), which resulted from overcharges for administrative services and interest earnings. The amount returned to each board should be based on a formula that provides for an equitable distribution of the funds.

BENEFITS

Implementation of these recommendations will properly revert \$2,375,000 of overcharges to the special funds of the boards. These funds could be used to offset proposed fee increases, reduce existing fee levels, or assist the boards in becoming self-sufficient.

THE DEPARTMENT HAS PLACED AN ADDITIONAL
FINANCIAL BURDEN ON SEVEN BOARDS BY NOT
REPAYING BORROWED FUNDS

In 1972, seven boards agreed to loan funds to the building account of the Department of Consumer Affairs. The Department assured the seven boards that the loans would be interest bearing and would be repaid from rents received. Additionally, a commitment was made to the boards that if at any time funds were required to meet operating expenditures, such funds would be immediately returned. As of June 1976, none of these assurances and commitments had been kept. The Department has not made principal payments nor credited interest due on the outstanding loans.

The fiscal officer of the Department stated that he was unaware that payments were not being made; as far as we could determine from other departmental sources, the failure to make payments was an oversight.

At June 30, 1976, the principal balance owed the seven boards was \$784,520. If the Department credits interest on the loans, an additional \$231,436 will be due the boards. Repayment of the loans should be made from surplus in the Building Maintenance and Operation account.

* We computed interest at the average rate earned by the State's Surplus Money Investment Fund during the period from December 1972, when the loans were made, through June 30, 1976.

This account has had surplus balances each year since these loans were made. The fiscal year-end surplus amounts for the Building Maintenance and Operation account follow:

June 30, 1972	\$ 399,068
June 30, 1973	746,108
June 30, 1974	1,048,017
June 30, 1975	603,278
June 30, 1976	341,321

CONCLUSION

The Department of Consumer Affairs has not made payments nor credited interest on \$784,520 in loans from seven boards, nor has it established a procedure to do so. The boards have been unnecessarily burdened while surpluses existed in the account from which repayment could have been made.

RECOMMENDATION

We recommend that the Department of Consumer Affairs adopt and implement a schedule to pay principal and interest to the seven boards. The amount of payment in any one year should depend on the availability of funds in the Department's building account. The payment should include interest from the loan's

inception, calculated at the average rate earned by the State's Surplus Money Investment Fund.

BENEFIT

Implementing this recommendation will establish a regular schedule for loan repayment and will financially aid the boards in performing their regulatory functions.

THE DEPARTMENT OF CONSUMER AFFAIRS
PRACTICE OF MAKING LOANS FROM THE
CONSUMER AFFAIRS FUND IS UNLAWFUL

In addition to providing working capital for the Department, the accumulated surplus in the Consumer Affairs Fund is used to make interest-free loans to pay the expenses of boards with deficits. During fiscal year 1975-76, sixteen boards received "loans" of this type. At various times during the year, these boards owed to the Consumer Affairs Fund between \$270,000 and \$1.1 million. However, if the Department complies with the Legislative Counsel opinion issued in 1976, loans of this type will no longer be made. According to this opinion, the Department may not use the Consumer Affairs Fund to pay the expenses of boards which have exhausted their funds.

Unless fees are increased, the Department projects fund deficits for 19 boards during the next three years. Without the availability of loans from the Consumer Affairs Fund, these boards may find it necessary to curtail their operations unless appropriate action is taken to assure that each board becomes self-sufficient. However, recommendations which we made earlier in this report, if implemented, should aid in alleviating these projected fiscal crises.

Legal Issues

Section 202 of the Business and Professions Code states in part that the funds of one board shall not be used to pay the expenses

of another. To determine if Section 202 applies to funds in the Consumer Affairs Fund, we asked the Legislative Counsel if the Department may use the Consumer Affairs Fund to pay expenses of boards which are temporarily out of cash. In Opinion No. 10453 (Appendix C) the Legislative Counsel concluded:

The Department of Consumer Affairs may not use funds derived from a pro rata charge to the special fund agencies within the department, made in advance for estimated administrative expenses, to pay expenses of boards which are out of funds. (Our emphasis.)

Reasons for Temporary Loans From
the Consumer Affairs Fund

The following factors have contributed to the need for boards to obtain financial assistance from the Consumer Affairs Fund:

- Cash shortages pending fee collections
- Delays in obtaining budget revisions
- Overestimates of license fee income.

Cash Shortages Pending Fee Collections

License fees provide the major source of funds for the boards and they are collected on either an annual or biennial basis.

Frequently, however, the boards will incur operating costs before the fees are collected. When this happens, expenses are paid out of surplus in the Consumer Affairs Fund.

During fiscal year 1975-76, ten boards required financial assistance from the Consumer Affairs Fund for payment of operating expenses pending fee collections; for example, during one three-month period, operating costs of \$618,000 were paid from the Consumer Affairs Fund while the Board of Medical Quality Assurance awaited fee collections.

Delays in Obtaining Budget Revisions

Section 11006 of the Government Code and Section 32 of the Budget Act prohibit expenditures in excess of the amount appropriated without prior written consent of the Department of Finance. However, under procedures used by the Department of Consumer Affairs, this limitation on expenditures is disregarded and spending is permitted in excess of budget limits. The Department informs us that some budget revisions are delayed at the request of the Department of Finance, pending adjustments at year-end.

The Consumer Affairs Fund is used as a revolving fund. Expenditures of the boards, except payroll, are made from the fund. The fund is reimbursed for these expenditures monthly when a "plan of financial adjustment" is submitted to the State Controller. This financial adjustment transfers money from the special funds of the boards to the Consumer Affairs Fund. If, however, the expenditures

of the boards exceed their budget appropriation, the Department continues to pay operating expenses without reimbursement until a budget revision is obtained from the Department of Finance. This may be a short period, or it may take over a year. At June 30, 1975, eleven boards owed the Consumer Affairs Fund approximately \$463,000 for expenditures paid subject to fiscal year 1974-75 budget appropriations. Because each of these boards had insufficient funds appropriated, a budget revision was required before the Consumer Affairs Fund could be reimbursed. At June 30, 1976, one year later, five of these boards still owed the Consumer Affairs Fund \$123,000 because necessary budget revisions had not yet been approved.

Overestimates of
License Fee Income

Boards are authorized to charge a license fee within prescribed minimums and maximums. A board usually adopts a fee after estimating projected expenditures and license renewals. If a board incorrectly estimates fee income, the Department provides money from the surplus in the Consumer Affairs Fund.

Failure to accurately forecast the number of fee renewals can result in large cash shortages; for example, the Board of Medical Quality Assurance estimated that it would collect fees from approximately 75,000 physicians and surgeons during its February 1976 license renewal period. The Board set its fee level based on this estimate. However, only 62,500 or 83 percent of the estimated number of licenses

were renewed. As a result, the Board projected a fund deficiency of \$1.6 million before its next renewal period in February 1978. Even if loans to the boards were legal, it is doubtful that sufficient cash would be available in the Consumer Affairs Fund to finance a loan of this magnitude.*

CONCLUSION

According to an opinion issued by the Legislative Counsel, the Department may not use the Consumer Affairs Fund to provide temporary financial assistance to the boards.

RECOMMENDATIONS

We recommend that the Department of Consumer Affairs:

- Stop the practice of using the Consumer Affairs Fund to make loans to boards
- Stop the practice of delaying the filing of budget revisions with the Department of Finance.

We recommend that the boards re-evaluate the fees charged to licensees and, where necessary, take appropriate action to assure that each board is self-sufficient. If the boards do not become self-sufficient, it may be necessary to curtail their operations.

*Since we completed our fieldwork, the projected fund deficiency for the Board of Medical Quality Assurance was reduced from \$1.6 million to \$250,000. The reduced deficit will be effected by delays in filling new positions authorized to implement medical malpractice legislation enacted in 1975.

BENEFITS

Implementing these recommendations will bring the Department into compliance with the law and will assist the boards in becoming self-sufficient.

OTHER INFORMATION REQUESTED BY THE LEGISLATURE

The following information is in response to a legislative request on the Security Guard Training Program Contract.

On August 7, 1974, the Bureau of Collection and Investigative Services awarded a contract to the American Analysis Corporation for designing and developing a firearms training program for uniformed security guards and patrolmen. Under the terms of the contract, the contractor was to be paid \$12,900 (later reduced to \$10,500) to design and develop training courses dealing with the following subjects:

1. Care and safe handling of firearms, including legal and moral implications and situational decision-making regarding firearms use, and
2. Exercising the powers of arrest, including the proper use of force, detention, and search and seizure.

The training courses for both subject areas were designed early in 1975, and final payment to the contractor was approved on May 6, 1975. However, shortly before the program dealing with the care and safe handling of firearms was to be implemented, a change in the administration of the Bureau occurred and the new Bureau Chief decided to discard this portion of the training program. He stated that his decision was made after consulting with personnel within the uniformed security guard and patrolman industry, who also did not agree with the format

of the scheduled program. The new Bureau Chief offered the following two reasons for his decision to discard the program:

1. The program did not satisfactorily concern itself with the safety aspects relating to firearms. "Only 29 lines of the 43 page manual were devoted to this subject".
2. The program required employers of the uniformed guards and patrolmen to conduct the training and testing. This did not provide adequate control over licensing.

In lieu of the discarded care and safe handling of firearms program, the Bureau uses a firearms course established by the Commission on Peace Officer Standards Training (POST). This course, which includes firing range qualification, is required to be conducted at an institution approved by either the Bureau or by POST.

The program dealing with the exercise of powers of arrest has been adopted by the Bureau and is currently in use.

Cost to State

Under the assumption that the discarded portion of the contract with American Analysis Corporation equaled one-half of the total contract amount, we estimate the cost to the State for the

discarded firearms program is \$10,650, computed as follows:

One-half of contract amount	\$ 5,250
Cost of manual preparation:	
Printing	3,250
Binders	1,947
Envelopes	<u>203</u>
	<u>\$10,650</u>

Contract Procedures

We reviewed the contract bid procedures used by the Bureau prior to the selection of the contractor. The selection process appeared to meet all state contract standards. Thirteen requests for proposals were solicited from contractors in the learning development field. The Bureau received five proposals, one of which failed to meet specifications. According to the Bureau's summation of the bid proposals, the American Analysis Corporation's bid was selected based on the following factors:

1. The base bid for delivery was the lowest bid submitted
2. The validation procedure proposed was considered the most specific by the Bureau and had the greatest assurance that the completed course would meet the Bureau's specifications

3. The American Analysis Corporation has demonstrated its capabilities in the development of numerous training programs of law enforcement throughout California.

Legal counsel for the Department of Consumer Affairs indicated to us that recourse from American Analysis Corporation for the unused portion of the training program was not possible because:

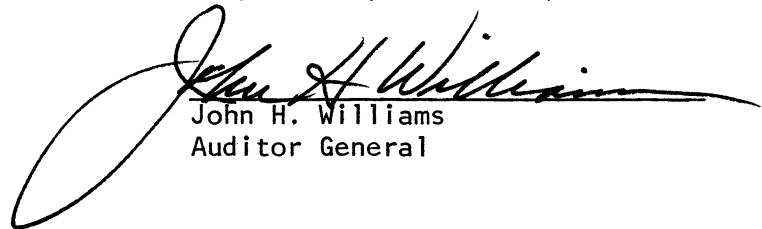
1. Time lapsed between notification of job completion and the current date, and
2. The contractor was notified in May 1975 that "The contract is now fully completed and we are therefore in a position to make final payment of \$2,625, which constitutes 25 percent of the total amount of contract retained by the state until completion thereof."

CONCLUSION

From our review of the contract for the program on the care and safe handling of firearms for security guards and patrolmen, we have concluded:

1. Adequate bid procedures for soliciting contract proposals were used in conformance with the State Administrative Manual
2. The final contract was approved by all requisite control agencies and appears to be correctly processed
3. The contract, as completed, apparently met the specifications required by the Bureau at the time final payment was made
4. The rejection of the portion of the contract dealing with the care and safe handling of firearms was based on a policy decision of a new administration rather than conditions on non-performance by the contractor
5. Recovery by the State of any of the contract amount is improbable because final payment to the contractor has been made, thereby indicating contract satisfaction.

Respectfully submitted,



John H. Williams
Auditor General

October 28, 1976

Staff: Robert Neves
Curt Davis
Eugene Potter



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October 28, 1976

Mr. John Williams
Auditor General
State of California
925 L Street
Sacramento, CA 95814

Dear John:

I have reviewed your recent report on the Department of Consumer Affairs entitled, "Certain Fiscal Policies and Practices of the Department of Consumer Affairs Which Should Be Curtailed". Before I offer specific comments on your conclusions and recommendations, certain general observations are in order.

The Department has been concerned for some time about many of the problems highlighted in this report. Indeed, we brought several to the attention of your auditors in the entrance conference and early in their field work. This information was provided to assist you, and in hopes that the Department would receive some assistance from you in resolving the issues equitably. Instead, the report once again points out these same problems and makes general recommendations, but offers little in the way of specific methods to correct the problems. In my opinion, the report is accusatory in tone and makes little recognition that the Department had taken steps to correct the questionable practices before the audit began.

The audit in numerous instances relies on questionable methodology and assumptions. I realize that this may be due to lack of hard data, but in my opinion an auditor has a responsibility to report the facts objectively and not to rely on opinion unless all views are solicited and presented fairly.

Our comments on the specific conclusions and recommendations of the report follow:

OVERCHARGES FOR SERVICES NOT REASONABLY RELATED TO THE ACTIVITIES OF THE BOARDS (pp. 4 - 5)

The budget of the Division of Consumer Services was increased substantially in 1975-76 by the Legislature to enable the Department

to implement the mandates of the Consumer Affairs Act of 1970. The Act had been barely implemented prior to that time.

Staff was added and by late 1975-76 the activities of the Division had been completely reoriented. In the Spring of 1976 the Attorney General issued his opinion that the activities of the Division not "reasonably related" to the activities of the Boards and Bureaus should be funded from the General Fund. An in-house study indicated that approximately 80% of the Division's activities could be so characterized. Then your study showed that at that point in time approximately 78% of the activities of the Division had no relationship to the Board's activities.

You state that "hard data" do not exist to document the activities of the Division between 1970 and 1975. However, much information in reports and publications does exist which indicates that the activities of the Division in those years related to functions assumed from Boards rather than to the mandates of the Consumer Affairs Act. This information would gladly have been made available if your audit staff had indicated to us an interest in prior years' activities. (Staffers remain who could have told you of those ancient times.)

It is also important to point out that in each of those years the Legislature regularly appropriated funds from the Consumer Affairs Fund for the support of the Division.

Considering the redirection of the Division in 1975-76, evidence that the Division was primarily servicing the Boards and Bureaus before 1975-76, and the annual legislative approval of the Division's budget, we must seriously question your blanket and baseless assumption that 78% of the activities were "unrelated" in those past years, or even in the first half of 1975-76.

Since the Attorney General's opinion was issued, the Department has established a time accounting system which documents in detail the activities of the Division as they relate to the Boards and Bureaus.

OVERCHARGES FOR SERVICES RELATED TO THE ACTIVITIES OF THE BOARDS
(pp 6 - 7)

You are correct that approximately \$971,000 of the accumulated surplus in the Consumer Affairs Fund on June 30, 1976 resulted from past practices of basing the pro rata assessment on budget estimates rather than on actual cost of administrative services. We are unable to determine why the over-assessments were made by past administrations, but we do know the practice was corrected in 1973-74 so that assessments to Boards currently are adjusted after the close of the fiscal year to reflect the actual cost.

OVERCHARGES FOR SERVICES RELATED TO THE ACTIVITIES OF THE BOARDS, Cont'd.

Our records indicate that the surplus was accumulated over many years. For example, the 1954-55 Governor's Budget shows that on June 30, 1953, the surplus of the fund consisted of three elements: building, administration, and reserve for major repairs. Because of the length of time over which the surplus was accumulated, it will be difficult, if not impossible, to accurately distribute the surplus to Boards that were originally over-assessed. However, we are in agreement that the surplus should be returned and we will work to develop an equitable basis for distribution.

REPAYMENT OF BORROWED FUNDS (pp. 9 - 11)

The current administration of the Department was unaware that a regular schedule had not been established and implemented to repay those Boards that had loaned funds to the building account of the Department. This was brought to the attention of our staff by your staff during the course of their field work. We are in complete agreement that a schedule should be established to repay the principal balance of the loans, and this is already being done.

Section 403 of the Business and Professions Code gives the Director of Consumer Affairs the discretion to pay interest on such building loans with the approval of the Director of General Services. Historically these loans have been interest-free. We can find no firm evidence that the Director at that time pledged that interest would be paid on the loans made in 1972 or that any attempt was made to secure the approval of the Director of General Services to do so. In the absence of such evidence, we question your recommendation that interest be paid, or our power to pay it.

TEMPORARY "LOANS" TO BOARDS FROM THE CONSUMER AFFAIRS FUND (pp. 12 - 14)

You are correct that the Department has on occasion made short term "loans" from the Consumer Affairs Fund to Boards and Bureaus when they experience cash flow problems pending collection of fees. All operating expenses for Boards are paid initially from the Consumer Affairs Fund and subsequently reimbursed from the individual funds of the Boards by plans of financial adjustment. The "loans" are made by not processing the plan of financial adjustment until sufficient cash is available. In no instance has this been done where there is any doubt that the Board will be able to "repay" in a short period of time.

So far in 1976-77, "loans" in the total amount of \$85,000 have been made to five Boards, four of which have already been repaid. We expect that two more Boards may experience similar cash flow problems before the end of the current fiscal year. In no case will the Board exceed its spending authority established in the Budget Act.

Mr. John Williams

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Without the administrative flexibility which this procedure allows, severe dysfunctions could occur, including layoffs of employees and interruption of vital services provided to the public and licensees.

Since the consequences of halting this procedure will be serious, I will ask the Department Legal Counsel to review the matter in light of the Legislative Counsel's opinion before accepting your recommendation.

DELAYS IN OBTAINING BUDGET REVISIONS (pp 14 - 16)

The number of deficiencies and budget revisions indicate that the Department in the past may have disregarded budgetary spending limitations. However, this is no longer the case and since 1975-76 overspending has been virtually eliminated.

For the 1975-76 fiscal year, only two boards actually were in a deficient position, and the total sum of these two deficiencies amounted to \$20,000. Both of these deficiencies were identified long before the respective Board came up short, and the Department of Finance was notified in advance of the need and the reasons which caused the deficiency. The Department of Finance concurred with our request and it was their suggestion that we submit the budget revision after the exact magnitude of the deficiency was known.

Thank you for the opportunity to review and comment on the draft report prior to its release.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard B. Spohn". The signature is fluid and cursive, with a large initial "R" and "S".

RICHARD B. SPOHN
Director

RBS:pl

SUMMARY OF CONCLUSION FROM
ATTORNEY GENERAL OPINION NO. CV 75-334
APRIL 30, 1976

Early in 1976, the Chairman of the Assembly Ways and Means Committee requested the Attorney General to determine the legality of funding the Division's operating costs from the special funds of the boards. The following questions were asked:

1. Can the Department of Consumer Affairs legally assess the special funds of the boards and bureaus for operation of the Division of Consumer Services?
2. Was the authorization by the Department of Finance to expend \$475,000 from the Consumer Affairs Fund for fiscal year 1975-76 a legitimate use of these funds?
3. Because of its statewide consumer protection activities, should the Division of Consumer Services receive its support from the General Fund?

The Attorney General Opinion concluded:

1. Except as noted in conclusion number 2 below, the Department of Consumer Affairs can legally assess the special funds of the boards, bureaus and commissions within the department for operation of the Division of Consumer Services.
2. To the extent that the \$475,000 authorized by the Department of Finance to be expended by the Division of Consumer Services from the Consumer Affairs Funds is reasonably related to the activities of the boards, bureaus and commissions within the department, it would be a legitimate use of such funds; to the extent it is not so related, it would not be a

legitimate use because it would constitute a special law for the assessment of a tax in violation of article IV, section 16(b) of the California Constitution, and additionally, with respect to monies deposited in the contingent fund of the Board of Medical Quality Assurance after December 15, 1975, it would violate Business and Professions Code section 2454.

3. To the extent that the activities of the Division of Consumer Services do not reasonably relate to the activities of the boards, bureaus and commissions within the Department of Consumer Affairs, support of such activities should be funded from the General Fund.

METHODOLOGY FOR MEASURING WORK
ACTIVITIES OF THE DIVISION OF CONSUMER SERVICES

Measurement of Work Activities

The Division of Consumer Services is organized into seven units whose activities are concerned with: 1) Legislation, 2) Representation, 3) Advertising substantiation, 4) Consumer Relations, 5) Ombudsman activities, 6) Research and Development, and 7) Information and Education.

Prior to fiscal year 1975-76, the extent that the activities of the Division related to the activities of the various boards had never been established; records were not maintained in a manner to make this measurement with absolute accuracy. In the absence of detailed information, we measured activities based upon interviews with the staff and from questionnaire data from personnel of the Division and the boards.

Responses of the Boards, Bureaus and
Commission to Questionnaire Survey

The director from each board was asked to describe the types of service or assistance received from the seven units of the Division. The following tabulation summarizes the responses from 28 boards within the Department. (No response was received from the Board of Landscape Architects.)

<u>Operating Unit Within Division of Consumer Affairs</u>	<u>Responses from Boards</u>		
	<u>No Known Service</u>	<u>Some Service</u>	<u>No Answer</u>
Legislation	24	4	-
Representation	26	2	-
Advertising Substantiation	24	3	1
Consumer Relations	17	11	-
Ombudsman	25	2	1
Research and Development	27	-	1
Information/Education	21	7	-

Comments expressed by representatives from the boards included the following :

"This Agency is not aware of any services currently being provided for this Agency."

"We have no contact with the Division of Consumer Services whatever."

"Assistance with one letter during last two years."

"None. To the contrary, they appear to be working to eliminate or reduce the authority of the board."

"Services from this division are available normally on an as-needed basis. Therefore, even though such services may not yet have been used does not

necessarily indicate such service is not worthwhile and that it will not be used in the future."

"Refers to us those complaints it receives pertaining to the operations of the industry."

Responses of Staff Personnel

Staff personnel from the Division of Consumer Services were asked to complete a questionnaire which required them to describe their work activities and to estimate the time spent monthly on each activity. The employees then apportioned this time among the three classifications listed below:

1. Board-related activities
2. General Department administration activities
3. General consumer activities.

After adjusting for directly reimbursed activities, such as consumer complaint acceptance and referral, the questionnaire results show that 78 percent of the Division's work effort is devoted to general consumer activities. A summary of the questionnaire results follows:

<u>Classification</u>	<u>Percentage</u>
Board-related activities	8%
General Department administration activities	14%
General consumer activities	<u>78%</u>
Total	<u>100%</u>

Work related to activities of the boards and Department administration is a proper charge to the boards; work related primarily to consumer activities is the responsibility of the General Fund. No data are available to accurately compute the cost of services for each classification or the proportional amount of services rendered to each classification in prior years. However, reasonable estimates can be made.

We assumed that the percentage of staff time devoted to each classification is representative of cost apportionment. Thus, we estimate that for fiscal year 1975-76 the General Fund, rather than the boards and the Consumer Affairs Fund, should have paid \$634,044 or 78 percent of the Division's actual operating costs of \$812,877. In addition, if the same cost apportionment had existed during the prior five fiscal years, the General Fund would have absorbed an additional \$769,841. Based on this calculation, the total General Fund responsibility for fiscal year 1970-71 through fiscal year 1975-76 should have been \$1,403,885, as shown below.

<u>Fiscal Year</u>	<u>Expenditures</u>	<u>General Fund Portion (78%)</u>	<u>Special Fund Portion (22%)</u>
1970-71	\$ 9,690	\$ 7,558	\$ 2,132
1971-72	67,039	52,290	14,749
1972-73	166,818	130,118	36,700
1973-74	295,442	230,445	64,997
1974-75	<u>447,987</u>	<u>349,430</u>	<u>98,557</u>
Sub-total	986,976	769,841	217,135
1975-76	<u>812,877</u>	<u>634,044</u>	<u>178,833</u>
Total	\$ <u>1,799,853</u>	\$ <u>1,403,885</u>	\$ <u>395,968</u>

Legal Issues

Before the issuance of the Attorney General's Opinion cited in Appendix A, the Department maintained that all costs of the Division of Consumer Services were chargeable to the Consumer Affairs Fund and could be considered an administrative expense within the meaning of Sections 201 and 203 of the Business and Professions Code.*

* Section 201 of the Business and Professions Code authorizes the Department to assess the boards for the estimated administrative expenses of the Department, and Section 203 provides that the Department shall pay all of its necessary administrative expenses out of the Consumer Affairs Fund. Sections 150 and 305 place the Department under the control of a director and provide the director with administrative powers to enforce the provisions of this chapter.

In a March 1976 letter to the Chairman of the Assembly Ways and Means Committee of the California Legislature, the Director of the Department of Consumer Affairs summarized the Department's position by concluding that "... our position in this matter is that all costs of the Division of Consumer Services are properly charged to the Consumer Affairs Fund."

Several items pertinent to the Division's activities were noted:

1. Not all boards benefit equally from divisional activities. For example, most boards state they receive no service, while others, such as the Bureau of Collection and Investigative Services, indicate they receive substantial aid in legislative matters, complaint handling, and information and education activities.
2. Some of the services provided to the boards are charged on a direct basis; for example, the Los Angeles and San Francisco offices of the Division handle an extensive amount of complaint services for the boards. However, the costs for these services are charged directly to the agency receiving the services.

3. Some of the services provided by the Division are mandated by the Legislature and relate directly to the activities of other state agencies not located within the Department. No financial aid is received from these agencies. Several research studies, for example, are currently underway regarding issues of concern with the Department of Food and Agriculture and the Department of Education.
4. Four boards indicate they provide more service to the Division than they receive in return; for example, advice and assistance is rendered to the Division on matters which require a board's expertise. No reciprocal payment is received by the boards for these services.
5. Some duties extend beyond a single classification and provide parallel benefits to the general consumer and the boards. Examples of these duties include complaint processing, legislative programs, and research activities,

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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California

June 22, 1976

Honorable Mike Cullen
Assembly Chamber

Consumer Affairs Fund - #10453

Dear Mr. Cullen:

QUESTION

You have asked if the Department of Consumer Affairs may use funds derived from a pro rata charge to the special fund agencies within the department, made in advance for estimated administrative expenses, to pay expenses of boards which are out of funds.

OPINION

The Department of Consumer Affairs may not use funds derived from a pro rata charge to the special fund agencies within the department, made in advance for estimated administrative expenses, to pay expenses of boards which are out of funds.

ANALYSIS

The Department of Consumer Affairs is headed by a director appointed by the Governor (Secs. 150 and 151, B. & P.C.). The director is vested with, among other powers and duties, the power to administer the department, including the organization thereof (Sec. 152, B. & P.C.) and to investigate the work of the various boards within the department (Sec. 153, B. & P.C.), and the duty to represent and promote the interests of consumers (Sec. 310, B. & P.C.) and to investigate consumer complaints (Sec. 325, B. & P.C.).

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JIMMIE WING
CHRISTOPHER ZIRKLE
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To carry out these administrative powers and duties, the department has established an administrative program which is grouped into the Divisions of Administration, Investigation, and Consumer Services.

The administrative program is funded partially by a pro rata charge against the various funds of the boards, bureaus, commissions, divisions, and agencies within the department, pursuant to Section 201 of the Business and Professions Code, which authorizes such a charge which may be made in advance, at the discretion of the director, for the administrative expenses of the department. The undistributed costs are paid from the Consumer Affairs Fund (Secs. 203 and 405, B. & P.C.; see also Items 123.1 and 123.2 of the 1974-75 Budget Act, Chapter 375 of the Statutes of 1974).

The pro rata charge for such administrative expenses is withdrawn from the various special funds to cover the share of any specified board's expenses and is deposited in the Consumer Affairs Fund (Secs. 202 and 203, B. & P.C.). The fund of one board may not be used to pay the expenses of any other board (Sec. 202, B. & P.C.), and the department is required to pay all of its necessary administrative expenses out of the Consumer Affairs Fund (Sec. 203, B. & P.C.).

The various specified agencies within the Department of Consumer Affairs deposit the fees and charges collected from persons and organizations regulated by such agencies into special funds established for the particular agencies and which are reserved for the support of the particular functions of the agency. The revenues collected by such agencies are impositions for purposes of regulation only and are permanently set apart under continuing appropriation provisions for the use of such agencies and, in this respect, the revenues are in the nature of a trust fund raised for a particular purpose (Daugherty v. Riley, 1 Cal. 2d 298).

Thus the pro rata charge made against the various special funds of the boards within the department which is deposited in the Consumer Affairs Fund may only be used to pay each board's pro rata share of administrative expenses incurred by the department.

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Thus the Department of Consumer Affairs may not use funds derived from a pro rata charge to the special fund agencies within the department, made in advance for estimated administrative expenses, to pay expenses of boards which are out of funds.

Very truly yours,

George H. Murphy
Legislative Counsel

By 
Eugene L. Paine
Deputy Legislative Counsel

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