

California State Auditor

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

Investigations of Improper Activities by State Employees

July 2001 Through February 2002



June 2002
I2002-1

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CALIFORNIA STATE AUDITOR

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June 18, 2002

Investigative Report I2002-1

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from July 2001 through February 2002.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

Investigative Highlights . . .

State employees engaged in improper activities, including the following:

- Used state resources to copy and sell compact discs.*
 - Accepted \$4,000 from a non-state entity for performing state duties.*
 - Provided preferential treatment to individuals by allowing them to stay at state park campsites for free.*
 - Used state equipment and employees for their private businesses.*
 - Failed to maintain accountability over equipment and supply inventories.*
-

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The act defines “improper governmental activity” as any action by a state agency or 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. To enable state employees and the public to report these activities, the bureau maintains the toll-free Whistleblower Hotline (hotline). **The hotline number is (800) 952-5665.**

If the bureau finds reasonable evidence of improper governmental activity, it confidentially reports the details to the head of the employing agency or to the appropriate appointing authority. The employer or appointing authority is required to notify the bureau of any corrective action taken, including disciplinary action, no later than 30 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

This report details the results of the six investigations completed by the bureau and other state agencies on our behalf between July 1, 2001, and February 28, 2002, that substantiated complaints. Following are examples of the substantiated improper activities and actions taken to date.

OFFICE OF CRIMINAL JUSTICE PLANNING

An employee used state resources to copy and sell compact discs (CDs). Specifically, the employee used an Office of Criminal Justice Planning (OCJP) CD burner to copy CDs that he then sold for a “donation” of \$5. He sold at least 30 CDs and gave away at least 18 more. The employee also used the OCJP’s e-mail system to distribute lists of the CDs he had available for sale. The employee resigned after the OCJP initiated termination proceedings against him.

CONTRACTORS STATE LICENSE BOARD

An executive improperly accepted \$4,000 from a non-state entity for serving on an advisory panel that was related to his job at the Contractors State License Board (CSLB). The executive also used the influence of his position to circumvent civil service hiring procedures in connection with a person he sought to hire as an employee. The executive first directed a public relations contractor, whose contract renewal was pending, to hire the person to perform work for the CSLB. This contractor paid the employee \$6,825 for six weeks' work in November and December 1997 on behalf of the CSLB, but the CSLB never reimbursed the contractor for those payments. The CSLB then, in 1998, illegally made an emergency appointment and then a permanent appointment of this employee to a Career Executive Assignment (CEA). As a result of these improper appointments and at least four other CEA appointments that involved irregularities, the State Personnel Board revoked the CSLB's authority to conduct CEA examinations.

In addition, the executive failed to disclose pertinent facts regarding a traffic accident involving a state vehicle he was driving. The executive retired from state service before we completed our investigation. The State and Consumer Services Agency plans to provide briefings to key managers on ethical standards and is assessing what other measures it might take to prevent a recurrence of the types of behavior we reported.

DEPARTMENT OF PARKS AND RECREATION

The San Diego Coast District provided preferential treatment to Department of Parks and Recreation (DPR) employees and other individuals by allowing them to reserve campsites that are not on the public reservation system and by permitting them to use the sites for free. However, the DPR concluded that in some cases, allowing DPR employees such as lifeguards and rangers to camp for free added value and safety to the public because of the employees' special skills. The DPR has revised its policies and procedures to formalize when it will allow employees and others to reserve these "off-system" sites and when it can waive fees for those individuals.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

An attorney used state equipment, a state employee, and courier services paid for by the State for activities related to his private arbitration and mediation business. Although the cost to the State was nominal, the attorney benefited in that he did not have to use any of the more than \$18,000 he earned from his business from June 1998 through August 2001 to pay for the services. The California Department of Transportation is assessing what action it should take.

DEPARTMENT OF JUSTICE

An attorney used the services of another Department of Justice (Justice) employee to assist him with paperwork related to his private arbitration business. We do not know how much this improper use of state time cost the State. However, this attorney earned at least \$2,250 for arbitrating issues during 1998 and 1999. Justice is evaluating what action it should take concerning its attorney's actions. However, it reported that it will issue clarifications and reminders to its legal staff regarding incompatible activities.

DEPARTMENT OF CORRECTIONS

A manager at the Substance Abuse Treatment Facility failed to perform his responsibility to maintain accountability over equipment and supply inventories and to report missing items. For example, although his subordinates had pointed out that items valued at approximately \$1,000 were missing, he did not take any action. In addition, the manager was willfully insubordinate in that he refused to talk to investigators who were investigating this and other alleged improprieties. The Department of Corrections notified the manager that it would dismiss him effective October 18, 2001. However, the manager retired two days before the dismissal took effect.

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

Appendix A contains statistics on the complaints received by the bureau from July 1, 2001, through February 2002, and summarizes the actions we have taken on those and other complaints pending as of February 28, 2002. It also provides information on the cost of improper activities substantiated since 1993 and the corrective actions taken as a result of our investigations.

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

Appendix C provides information on actual or suspected acts of fraud, theft, or other irregularities identified by other state entities. Section 20080 of the State Administrative Manual requires state agencies to notify the bureau and the Department of Finance of actual or suspected improper acts. It is our intention to inform the public of the State's awareness of such activities and to publicize that agencies are acting against wrongdoers and working to prevent improper activities.

See the Index for an alphabetical listing of all agencies addressed in this report. ■

CHAPTER 1

Office of Criminal Justice Planning: Use of State Resources to Copy and Sell Compact Discs

ALLEGATION I2001-765

An Office of Criminal Justice Planning (OCJP) employee used OCJP equipment to copy and sell compact discs (CDs).

RESULTS AND METHOD OF INVESTIGATION

We asked the OCJP to investigate the allegation on our behalf. The OCJP substantiated the allegation. Investigators for the OCJP interviewed witnesses, printed out data stored on the employee's OCJP computer, and interviewed the employee.

When we asked the OCJP to investigate the allegation, it already was investigating on its own. In fact, the employee's supervisor already had told the employee to stop the activity. Because of our letter, the OCJP contracted with an investigative firm to conduct a more in-depth investigation.

The investigators hired by the OCJP found evidence that, in violation of state laws and OCJP policy, the employee had used the OCJP's CD burner to copy CDs and had used the OCJP's e-mail system to advertise the sale of the CDs he had available for a "donation" of \$5.¹ The employee sold a minimum of 30 CDs to other OCJP employees and gave away at least 18 more.

When questioned by an investigator, the employee denied engaging in the improper activity after his supervisor instructed him to stop. Nevertheless, investigators found evidence to the contrary. The employee also said that he did not believe using the State's e-mail system to send a list of available music to coworkers was a violation because he sent the messages during his off time. Further, he said he did not know that duplicating

¹ For a more detailed description of these laws and OCJP policy, see Appendix B.

and/or selling duplicated CDs was a crime but believed his off hours should be of no concern to his employer, even though his activities could be criminal.

Regardless of when the employee engaged in these activities, he used state resources for his personal benefit and the benefit of others, in violation of state laws and OCJP policy. The employee confirmed that he had signed the OCJP's Incompatibility Statement and Standard of Conduct, which prohibits these activities, but he told the investigator that he had not read it.

AGENCY RESPONSE

The employee resigned effective November 1, 2001, after the OCJP initiated termination proceedings. ■

CHAPTER 2

Contractors State License Board: Improper Acceptance of Outside Pay, Circumvention of Personnel Rules, and Failure to Cooperate With Investigators

ALLEGATION I2000-753

An executive at the Contractors State License Board (CSLB) engaged in activities that were incompatible with his position with the State when he accepted payment from a non-state entity for serving on an advisory board that was related to his state duties. The same executive circumvented civil service hiring policies, did not disclose pertinent facts about a collision he had in a state vehicle, and made inconsistent statements to internal affairs investigators.

RESULTS AND METHOD OF INVESTIGATION

After we began our investigation, we learned that the Department of Consumer Affairs (Consumer Affairs), which oversees the CSLB, already had investigated and substantiated some of the above allegations. Specifically, Consumer Affairs concluded that, while a new contract with one contractor was pending approval, the executive directed the contractor to hire an individual, employee A, to perform work for the CSLB. The executive later made an emergency appointment and then a permanent appointment of employee A to a position at the CSLB. The State Personnel Board (personnel board) became involved after the State and Consumer Services Agency (agency), which oversees Consumer Affairs, notified the personnel board of allegations of hiring irregularities at the CSLB. The personnel board concluded that the executive's emergency and permanent appointments of employee A were illegal. It also found at least four other appointments to be improper or questionable and rescinded the CSLB's authority to conduct examinations for certain types of appointments. Consumer Affairs also found that the executive had failed to disclose several pertinent facts about the accident he had in a state vehicle.

We substantiated that the executive had engaged in activities considered incompatible with his position as a state employee. In the executive's role as a state employee, he participated in a consumer advisory panel for a non-state entity. This entity paid him stipends totaling \$4,000 for participating in the panel. During 1999 and 2000, the executive attended at least 14 meetings or events sponsored by the non-state entity, which also paid \$7,495 for the executive's travel expenses. Some of these reimbursements were at rates higher than allowed for state employees. State employees who serve on advisory panels as part of their official duties are prohibited from accepting stipends for their service on such panels.

In investigating these allegations, we reviewed Consumer Affairs' audit workpapers and performed some additional work. In addition, we obtained information from the non-state entity and interviewed the executive.

BACKGROUND

The mission of Consumer Affairs is to promote and protect the interests of California consumers. Among other things, it is responsible for overseeing the CSLB, which licenses and regulates contractors in the construction industry. Within Consumer Affairs is the Division of Investigation (DOI), which conducts investigations of the boards and bureaus under the umbrella of Consumer Affairs, including the CSLB.

THE EXECUTIVE ENGAGED IN INCOMPATIBLE ACTIVITIES

In violation of state law, the executive accepted \$4,000 from a non-state entity for serving on an advisory panel that was related to his state duties.² The law states that the salary fixed by law for each state officer is compensation in full for that office and for all services rendered in any official capacity during the term of office; state officers are prohibited from receiving any fee or perquisite for the performance of any official duty. State law also prohibits state employees from engaging in any

The executive violated state law by accepting \$4,000 for serving on an advisory panel as part of his official duties.

² For a more complete description of the laws discussed in this chapter, see Appendix B.

employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state officers or employees. Receiving or accepting money or any other consideration from anyone other than the State for the performance of state duties is defined in the law as an incompatible activity.

The non-state entity selected the executive to be a member of its consumer advisory panel (advisory panel). The CSLB board members were aware of and condoned the executive's participation in the advisory panel.³ In addition, the executive told us that both he and the board members believed his participation was congruent with his duties at the CSLB.

After the non-state entity selected the executive to be part of the advisory panel for a two-year term, the executive participated in 14 separate events—10 meetings, 2 facility tours, a breakfast social, and a reception. The non-state entity paid the executive a total stipend of \$4,000, or \$400 for each of the 10 meetings he attended. In addition, because the executive worked in Sacramento and the non-state entity is located in Southern California, the non-state entity paid for the executive's travel expenses. The expenses, including air fare, rental cars, hotel accommodations, and meals, totaled more than \$7,495.⁴ The reimbursed expenses sometimes included as much as \$75 per day for food. According to state policy, the executive would be entitled to receive a maximum meal allotment of \$34 per day. The executive's two-year term on the advisory panel ended in December 2000.⁵ The executive violated state law by accepting payment from an entity other than the State for the performance of his state duties. In addition, the State, and not the other entity, should have paid for the executive's travel expenses, at the appropriate rates.

³ The CSLB has a 15-member board, appointed by the governor and the Legislature. The board appoints the CSLB executive officer and directs administrative policy.

⁴ This includes two round-trip flights for which the executive did not use the return portion of the ticketed trip, returning instead from different airports and buying new one-way tickets at the expense of the non-state entity. We were unable to determine whether the non-state entity ever received a credit for the unused portion of the flights. The value of the unused flights was approximately \$313.

⁵ The executive left the CSLB and began working for another state agency effective August 14, 2000. According to a board member, since the last advisory panel meeting of the executive's two-year term would be in October, they wanted him to complete his service.

THE EXECUTIVE INTENTIONALLY CIRCUMVENTED CIVIL SERVICE HIRING PRACTICES

The DOI concluded that the executive created a situation that would have allowed a CSLB contractor to “launder state contract funds.” The executive did this by directing a contractor to pay an employee, employee A, to work for the CSLB during November and December 1997, rather than following standard civil service procedures for the position. However, although the DOI concluded that the executive created this situation, it appears the laundering of state contract funds did not occur, because the contractor told us the CSLB did not reimburse it for the amounts it paid employee A.

State law prohibits state employees from using the prestige of the State for the private gain of another person. In addition, state laws and regulations require that positions like the one to which the executive appointed employee A be filled through a competitive examination of candidates.

In 1998 the executive made an emergency and then a permanent appointment of employee A to a state position. In January 1999 the agency, which oversees Consumer Affairs and therefore the CSLB, forwarded a letter containing allegations of hiring irregularities at the CSLB to the personnel board. In February 1999 the DOI asked the director of Consumer Affairs for approval, which she granted, to conduct an investigation into an allegedly inappropriate appointment of employee A. It appears the DOI may have become aware of the situation after an article appeared in a local paper. In March 1999 the personnel board, which is responsible for ensuring that the State’s civil service system is free from political patronage and that employment decisions are based on merit, found the appointments to be illegal and canceled them. The personnel board also investigated other appointments made by the executive and found several improprieties.

The State Personnel Board concluded that the executive’s emergency and subsequent permanent appointment of employee A were illegal and canceled them.

The Executive Used the Prestige of the State for the Benefit of Another Person

On October 9, 1996, the CSLB entered into a \$400,000 contract with the contractor in question, a public relations firm. An amendment to the contract extended the end of the term

from September 30, 1997, to November 30, 1997. Sometime between September and November 1997, the executive asked the contractor to hire employee A to provide services for the CSLB until the executive could officially appoint him to a state position. Although the records are unclear as to the exact date of this request, it occurred before the CSLB or the Department of General Services (General Services) formally approved a second contract with the contractor. General Services did not approve this second contract until February 17, 1998.

A representative of the contractor told us that it was never repaid for what it paid employee A on behalf of the CSLB.

According to Consumer Affairs' records, a representative of the contractor told Consumer Affairs' auditors that she had asked the executive whether this arrangement was legal and that he had said yes. The contractor's representative asked the executive for a contract for the arrangement but never got one. The contractor ultimately paid employee A \$6,825 for six weeks of public relations work he performed for the CSLB during November and December 1997. An employee of the contractor provided Consumer Affairs' auditors with a copy of an invoice she said the contractor had submitted to the CSLB for the cost of employee A's services. The auditors were unable to find a copy of the invoice in Consumer Affairs' or the CSLB's records or any evidence that the CSLB ever paid the contractor for the cost of employee A's services. A representative of the contractor told us that it was never repaid for what it paid employee A on behalf of the CSLB.

The contractor told DOI investigators that it did not believe its contracting relationship with the CSLB was contingent upon hiring employee A. However, it is reasonable to assume that it would indeed feel pressured because the executive had enough power to influence the awarding and approval of the contract. The executive did not sign the contract and told us that, while he was part of the panel that made the selection, the decision to select the contractor essentially had been made before his involvement. Nevertheless, the executive had a level of authority that would have allowed him to influence the awarding of the contract substantially. Although it appears that the CSLB announced its intention to award the contract to this contractor before the executive made his request, General Services did not formally approve the contract until February 1998.

DOI investigators questioned the executive about this situation, knowing that he had appointed employee A as an emergency hire after the contractor stopped paying him. The investigators asked the executive why he could not have appointed employee A as an emergency hire initially, instead of directing the contractor to pay him. The executive responded, "I actually don't have the answer to the question."

In influencing the contractor to hire employee A, the executive used his position with the State for the private gain of that employee.

In influencing the contractor to hire employee A, the executive used his position with the State for the private gain of that employee. As we mentioned previously, state law prohibits state employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state officers or employees. Incompatible activities include using the prestige or influence of the State for one's own private gain or advantage or for the private gain of another.

The CSLB Made Illegal Emergency and Permanent Appointments of Employee A

Although the contractor paid employee A only for work during November and December 1997, employee A continued to perform work for the CSLB during 1998 and 1999 under emergency and permanent appointments that the personnel board ultimately determined to be illegal.

On February 2, 1998, the CSLB sent a memorandum to Consumer Affairs requesting that it make an emergency appointment of employee A to a Career Executive Assignment (CEA) position, retroactive to January 1, 1998.⁶ According to the personnel board, Consumer Affairs approved the appointment, though its reason for doing so is unclear. Clearly, the employee already had been working for the CSLB without any formal agreement or approval.

State law allows departments to make emergency appointments under certain circumstances, including preventing the stoppage of public business when an actual emergency arises. According

⁶ State law defines a Career Executive Assignment as an appointment to a high administrative and policy-influencing position within the state civil service system in which the incumbent's primary responsibility is the managing of a major function or the rendering of management advice to top-level administrative authority.

to the personnel board, emergency appointments provide flexibility for responding to staffing needs that are so urgent, unusual, or short term that they cannot reasonably be met through other civil service appointment procedures. In March 1999 the personnel board concluded that there was nothing unusual or of an emergency nature that required the filling of a CEA position with an emergency appointment. In fact, it found that the record reflected that the CSLB was deliberately avoiding the competitive employment process.

The State Personnel Board found that the CSLB was deliberately avoiding the competitive employment process.

On March 23, 1998, the CSLB announced an examination for the permanent CEA position. Nine candidates, including employee A, applied for the position. The CSLB reported that on April 1, 1998, a two-person evaluation panel that included the executive screened the applications based on detailed rating criteria. No interviews were held. The CSLB permanently appointed employee A to the position on the same day as the evaluation. The personnel board determined that the permanent appointment was illegal because the position never was established through the required process; preselection of employee A was evident; and the examination was a spurious process intended to give the appearance of a competitive examination.

The personnel board canceled employee A's illegal appointments, both the emergency and permanent appointment. Employee A, with the support of the CSLB, appealed the decision, and the personnel board ultimately overturned the cancellation of the emergency appointment because more than one year had passed between the appointment and the personnel board's attempt to cancel it. State law permits the personnel board to declare an appointment void from the beginning if such action is taken within one year after the appointment when an appointment was made and accepted in good faith but was unlawful. The cancellation of the permanent appointment was not overturned. Because it found no evidence that employee A had acted in other than good faith when he accepted the appointments, the personnel board allowed employee A to retain the \$75,485 in compensation he earned from January 1998 through March 1999.

TABLE

Other Questionable or Improper Appointments by the CSLB

Employee	Date	Situation	Personnel Board Decision
B	September 1997	The executive directed that a new CEA position be created or a vacant CEA position be moved in order to appoint employee B. CSLB later conducted an examination for the position.	The personnel board found that the examination was conducted in order to appoint employee B and that the minimum qualifications and desirable qualifications stated on the bulletin unduly limited competitors.
C	September 1998	The CSLB appointed employee C to a CEA-level position.	The personnel board granted temporary approval but determined that the policy-making role and responsibility of the position did not justify a CEA level and disapproved CSLB's request to make the appointment permanent.
D	December 1998	The CSLB appointed employee D to a CEA position, indicating that it was the result of an examination.	The personnel board found no record of an examination being held; however, one was not necessary. The personnel board directed the CSLB to correct the records to reflect what actually happened.
E	January 1999	The executive directed the conversion of an existing position to a significantly different one and appointed employee E.	The personnel board voided the appointment because it determined that the CSLB had improperly established the position without the personnel board's approval. The personnel board said that the CSLB's actions raised the specter of possible circumvention of the requirements of the selection process.

The CSLB Made Other Questionable or Improper Appointments

On April 13, 1999, the personnel board notified the CSLB that, in light of its recent findings regarding the processes the CSLB used to select and appoint individuals for CEAs, it was revoking the CSLB's authority to conduct examinations for these assignments. State law gives the personnel board's executive officer the authority to delegate selection activities to an appointing power. When the personnel board has substantial concerns regarding a department's capability in this regard, it can require that it preapprove or be involved with all aspects of the examination process. The personnel board had concerns with four other appointments, as shown in the Table.

Although not all these situations constituted improper appointments, they demonstrate why the personnel board had concerns about the CSLB's ability to use its authority appropriately to select and appoint employees to CEA positions. Further, these examples support the personnel board's decision to revoke that same authority from the CSLB.

THE EXECUTIVE FAILED TO DISCLOSE PERTINENT FACTS ABOUT A COLLISION TO DOI INVESTIGATORS

The DOI conducted another investigation in 1999 after the executive was involved in a traffic accident while driving a state vehicle. The investigation revealed that the executive did not disclose pertinent facts and made inconsistent statements to the investigators.

The executive did not tell DOI investigators that he ran a red light before the state vehicle he was driving collided with another vehicle.

The DOI investigators concluded that the executive did not disclose that he ran a red light, which apparently resulted in a collision with another vehicle and damage to the state vehicle, or that he damaged the back bumper of the state vehicle when he backed into city property. In addition, the executive made inconsistent statements regarding his activities before the accident. State law outlines actions that constitute causes for discipline of state employees. The actions include dishonesty and other failure of good behavior, either during or outside of duty hours that are of such a nature that they cause discredit to the appointing authority or the person's employment.

We reviewed transcripts of the DOI investigators' interviews with the executive, the two individuals who were in the other vehicle involved in the accident, and an officer who arrived at the accident scene. The accident occurred at the intersection of two one-way streets controlled by traffic lights in each direction. The executive first told the DOI investigators that he stopped for the red light and then said that one of them (he or the other driver) "jumped the light." Then he said he did not know whether he ran the red light. Contrary to those statements, both individuals in the other vehicle told DOI investigators that the executive had not stopped and that he ran the red light. Further, the police officer who first arrived at the accident scene recalled that the executive admitted that he had run the red light.

The two other individuals involved in the accident stated that, when moving the state vehicle out of the intersection, the executive backed up over the sidewalk into a pole, either a light pole or parking meter, apparently causing further damage to the vehicle. In his interview with DOI investigators, the executive did not deny backing into a pole but said he did not know of any damage other than to the front of the state vehicle damaged in the collision with the other vehicle.

In his interview with DOI investigators, the executive said he “may be at fault” and later said there was “no way to show who’s at fault.” Again, contrary to the executive’s statements, the police officer who arrived on the scene a few minutes after the accident said the executive accepted responsibility. Both individuals in the other vehicle also said the executive admitted fault.

The executive’s statements to DOI investigators regarding the circumstances of his accident conflicted with his earlier statement to the police officer who arrived on the scene a few minutes after the accident.

The same police officer also told DOI investigators that the executive told her he was exhausted after a day of traveling and was trying to get home. In his interview with DOI investigators, the executive said he was on his way home from the airport, having driven there to look for a credit card he had lost several days earlier. When DOI investigators asked the executive about these contradictions, he said he could not explain them but that it probably was easier to tell the officer he had been traveling than to explain the real reason for his trip to the airport. When investigators asked the executive if he realized that the contradictions looked damaging, he replied, “I’m sorry if that’s the case, but I’m basically telling you the truth.” There was no further explanation of what he meant by “basically” telling the truth. The DOI investigators also learned the executive failed to disclose to them that he already had canceled the credit card four days before he allegedly went to the airport, essentially nullifying any need to locate it.

Based on these numerous inconsistencies, even within his own statements, it seems evident that, in violation of state law, the executive was dishonest and behaved in a manner that brought discredit to the CSLB. Nevertheless, although the DOI’s report substantiated wrongdoing by the executive, we found no evidence that Consumer Affairs took any corrective or disciplinary action against the executive, and the executive confirmed to us that none was ever taken.

AGENCY RESPONSE

The agency plans to provide briefings to key departmental managers on compliance with ethical standards and to determine other appropriate actions that could be taken to prevent a recurrence of this type of behavior. In addition, the agency secretary has asked for a review to determine whether further actions should be taken against the subject employee, even though the employee has retired from state service. ■

CHAPTER 3

Department of Parks and Recreation: Preferential Treatment for Campsite Reservations

ALLEGATION I2000-796

The Department of Parks and Recreation (DPR), San Diego Coast District (district), allowed DPR employees to stay at district campsites free of charge. Also, the district provided preferential treatment to DPR employees and employees of local public safety agencies when reserving campsites.

RESULTS AND METHOD OF INVESTIGATION

We asked DPR to investigate the allegations on our behalf. DPR concluded that its employees usually did not pay to camp at San Elijo State Beach or South Carlsbad State Beach. However, DPR also concluded that in many cases its employees, primarily lifeguards and rangers, added value and safety by virtue of being at the sites and available to use their special skills and abilities if necessary.

To investigate the allegations, DPR reviewed its own policies as well as applicable statutes. DPR also interviewed the district superintendent, supervisors, and employees and examined documents related to the campsites.

State law prohibits employees from using resources such as state land for private gain or advantage.⁷ DPR manages more than 260 park units throughout 23 districts, which include nearly 18,000 campsites that can be reserved by members of the public. DPR maintains a small percentage of campsites off the reservation system. These “off-system” sites are held for a variety of reasons, including use by volunteers who assist campers or as a backup in case of problems with other sites. It has long been an informal DPR policy to allow employees to camp for free if

⁷ For a more complete description of the laws, regulations, and policies discussed in this chapter, see Appendix B.

they do not displace a paying guest. In addition, informal policy has allowed local firefighters and police officers to use off-system campsites. DPR believes that allowing its own employees and local public safety officers to stay at these campsites enhances the security of the parks at no additional cost.

Although DPR initially told us that districts are not authorized to take reservations for sites they hold off the system, we obtained several documents that indicated otherwise. After we provided these documents to DPR, it reviewed activities at its district and found that South Carlsbad State Beach maintains 18 of 222 sites off the system and that San Elijo State Beach maintains 21 of 171 sites off the system. Based on DPR's review of requests for off-system campsites, it appears that, between February and September 2001, DPR received 51 requests from its own employees and 10 requests from non-DPR employees to stay at South Carlsbad State Beach for free. Two other requests for off-system sites from DPR employees indicated that the employees planned to pay the fees. In addition, DPR may have given preferential treatment to as many as 34 non-DPR employees by allowing them to request off-system sites, although it appears that these other campers probably paid to use the sites. San Elijo State Beach kept records of off-system sites only for September 2001. DPR reviewed the records for that month and found that 13 of 15 submitted requests were from DPR employees to stay at the sites free. One of these requests was denied because the campground was full. Of the remaining 2 requests, only 1 indicated that camping fees would be paid.

AGENCY RESPONSE

DPR has revised its policies and procedures relating to fee waivers and the use of campsites for governmental employees. The new policy states that campsites will be available on a first-come, first-served basis or by reservation. Fees will be paid for use of facilities but will not apply to state officers and employees on official business. The parks may waive fees when there is a documented, quantifiable benefit to the State. ■

CHAPTER 4

Departments of Transportation and Justice: Improper Use of State Resources and Equipment

ALLEGATIONS I990172 AND I2001-603

Attorneys at the California Department of Transportation (Caltrans) and Department of Justice (Justice) used state equipment, prestige, and other resources to conduct private mediation and arbitration practices.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation at Caltrans, and Justice investigated and substantiated the allegation concerning its attorney. Specifically, we found that the Caltrans attorney used state equipment, employees, and courier services paid for by the State for activities related to his private arbitration and mediation business. The Justice attorney used the services of another Justice employee for activities related to his private arbitration business.

To investigate the allegation at Caltrans, we interviewed Caltrans and private sector employees and reviewed information held by Caltrans, such as accounting records and personnel files, as well as records held by outside entities. To investigate the allegations about both the Caltrans and Justice attorneys, we also reviewed court files associated with their private arbitrations and mediations and other documents held by the courts. We provided copies of the documents we received from the courts to Justice and asked it to investigate the allegation further. Justice interviewed its employees in the attorney's chain of command, the attorney, and his legal secretary. Justice also reviewed its attorney's personnel file, attendance records, statements of economic interest, and the documents we provided.

BACKGROUND

Numerous courts throughout California employ alternative dispute-resolution methods for settling civil cases to help clear their case backlog, including arbitration and mediation. Arbitration is a binding or nonbinding process in which an arbitrator applies the law to the facts of the case and issues an award. If the arbitration is nonbinding, either party may reject the award and request a trial. One California Superior Court maintains a list of approved arbitrators who have practiced law for at least five years with a certain amount of trial and/or arbitration experience. If the disputing parties select an arbitrator from the court's panel, the court pays the arbitrator's fees. The fee is typically \$150 per case. An arbitrator also may choose to waive the arbitration fee.

Mediation is a nonbinding process in which a trained mediator helps disputants come to an agreement by facilitating communication between disputants and assists parties in reaching a mutually acceptable resolution of all or part of their dispute. Unlike arbitration, the mediator does not resolve the dispute but instead explores the evidence and law and also the parties' underlying interests, needs, and priorities. The disputants themselves decide the final outcome. Court-approved mediators must meet specific qualifications and adhere to court-approved mediator ethics. For court-ordered mediation sessions, if the parties in a civil case choose an arbitrator or mediator from a court's panel of approved mediators, the court will pay the mediator's fees. For cases filed before February 28, 2000, the court compensated mediators at a rate of \$150 per day, with a maximum of two days. Since February 2000, mediators have been compensated at a rate of \$150 per hour for a maximum of four hours.

The attorney used state-owned equipment and the prestige of his state job for personal financial gain in his private arbitration and mediation business.

A CALTRANS ATTORNEY MISUSED STATE RESOURCES

Before we met with the Caltrans attorney against whom the allegations had been made, he listed his Caltrans telephone number, fax number, and his job title at Caltrans on arbitration and mediation listings. He also received documents relating to his private arbitrations and mediations through Caltrans' fax machine. State law prohibits state employees from using

state time, facilities, equipment, or supplies for private gain.⁸ Caltrans' policies explicitly state that all employees are to use department computers and equipment to acquire or transmit information pertaining to state business only. Caltrans' policies further require that employees use state resources, information, or their state positions for the work of the department and not for private gain.

Law offices and legal departments frequently use courier services to pick up, deliver, and file court documents. The Caltrans legal office established a contract with a local attorney services agency to perform these duties. For a flat \$50 monthly fee, the contractor makes two daily pickups at the office and performs routine, nonrush filings at courthouses within the county. Court filings with a rush status incur an additional charge.

The State paid a total of \$40 for two rushed court filings related to the attorney's private arbitration business.

We found that the attorney included at least 126 court documents associated with his personal arbitration and mediation practice with Caltrans court documents delivered by the contract agency from June 1998 through August 2001. The monthly retainer fee paid with state funds covered the delivery of these documents. The attorney admits to asking his secretary to send Statements of Agreement, which must be filed with the court, through the attorney services agency. In two instances, the State paid a total of \$40 for rushed court filings associated with the attorney's private arbitrations. When shown copies of these two documents, the attorney stated that he had "no recollection of the circumstances surrounding those, and the documents attached do not appear to have warranted priority treatment."

The attorney also stated that he had asked his state secretary to send form letters declining mediation appointments to attorneys who had chosen him as a mediator. These letters apologized to the attorneys for the fact that he had to reject their case because he had received too many appointments. The attorney stated that he believed this was appropriate because the appointments were sent to him in his state position and he was returning them as such.

⁸ For a more detailed description of the laws and policies discussed in this chapter, see Appendix B.

State law prohibits state employees from using state resources, such as facilities, equipment, supplies, or state-compensated time for private gain or advantage or for an outside endeavor not related to state business. Although most of the attorney's use of services paid for by the State did not result in additional cost to the State, the attorney benefited by not having to pay for those services himself. Courts paid the attorney at least \$18,000 during the period that he used state-paid-for services to deliver documents related to his arbitrations and mediations. The fact that the attorney used state resources for activities related to his private practice constitutes an improper use of state resources.

When asked about his participation on the mediation and arbitration panels, the attorney stated that he had discussed his participation on the mediation panel with the present chief counsel for Caltrans, who had approved of the process as long as the attorney took vacation time and did not use state resources, and as long as there was no adverse effect on the operation of Caltrans' office. The attorney believes that no adverse impact has occurred as a result of his participation on the mediation panel. He also said he believes that his participation on the mediation and arbitration panels provides benefits to the State in numerous ways. First, he said that participation enhances the stature of the lawyers with the members of the bench and bar. Second, he said that when lawyers and judges know that the attorneys in his office are being selected to arbitrate and mediate matters of importance, it increases their respect for his office and the State. Third, he said that the State also has benefited monetarily from his office's increased respect among members of the bar. He said that if one compares the settlements in his office with the settlements in the other Caltrans offices, there is no question that his office fares very well. It is his belief that this is due, in part, to the fact that the local bar respects his office, in some part due to his participation on the arbitration and mediation panels.

A JUSTICE ATTORNEY MISUSED STATE RESOURCES

The attorney at Justice who was the subject of these allegations has had an arbitration business from as early as July 1988 through at least early 2000. According to documents we obtained from the court, this attorney consistently used

A Justice attorney consistently used the services of another Justice employee to assist him with paperwork related to his personal business.

the services of another Justice employee to assist him with paperwork related to his arbitrations. Specifically, the other employee served documents related to the attorney's arbitrations via mail. According to documents we obtained from the court, it paid Justice's attorney \$2,250 for arbitrations he conducted from 1998 through 1999. We were unable to determine whether the attorney has waived payment for arbitrations since 1999. However, Justice confirmed that its attorney used state resources for his arbitration business as recently as April 2000.

AGENCY RESPONSES

Caltrans reports that it has issued a letter of reprimand to the attorney and received payment of his pro rata share of the courier service costs attributable to the additional court documents included in the courier deliveries (\$304). In addition, Caltrans reported that it intends to issue a formal written policy regarding its participation in court-sponsored dispute resolution programs.

Justice is evaluating what action it will take concerning its attorney's activities. Justice also reported that it will issue clarifications and reminders to its legal staff regarding its incompatible activity policy and will have its legal division staff sign the policy again to acknowledge their receipt and understanding of it. ■

CHAPTER 5

Department of Corrections: Failure to Report Missing Property

ALLEGATION I2000-687

A manager at the Substance Abuse Treatment Facility of the Department of Corrections (department) failed to maintain accountability of inventory and to report discrepancies involving missing or stolen property.

RESULTS AND METHOD OF INVESTIGATION

We referred the allegation to the department, and its Investigative Services Unit (ISU) investigated on our behalf. The ISU substantiated the allegation and further concluded that the manager was willfully insubordinate by refusing to be interviewed as the subject of the investigation. To investigate the allegation, the ISU obtained and reviewed documentary evidence, including memorandums and purchase orders, and interviewed department employees.

State law requires each state agency to establish and maintain an adequate system of internal accounting and administrative controls.⁹ The manager was responsible for maintaining accountability of equipment and supply inventories and for reporting discrepancies to the warden so the warden could determine whether an investigation was necessary. The manager failed to fulfill these responsibilities. Under state law, incompetency, inefficiency, inexcusable neglect of duty, dishonesty, and other failure of good behavior are causes for discipline.

We provided the department with a list of five items, valued at a total of approximately \$1,000, that allegedly were missing from the inventory. The items included a 90-foot chain, welder, vise, saw, and 27-inch television set. It appears that some of the items may have been missing since 1998. Based on interviews with witnesses and a review of documents, the ISU concluded that other department employees had told

⁹ For a more detailed description of the laws discussed in this chapter, see Appendix B.

The manager refused to submit to interviews as a subject in this or other investigations. As a result, the Investigative Services Unit concluded he was willfully insubordinate.

the manager about the missing items both verbally and in writing, yet he failed to act. Further, according to the ISU, the documentation also showed that the manager prevented the information from being reported to his supervisors. Even more telling was the fact that the ISU investigator found the manager himself had stolen the chain.

The ISU served the manager with an Advisory of Intent to Conduct an Investigatory Interview. At the time he was served, the manager admitted that he knew a television set was missing but claimed it had been found later; however, the ISU found no evidence that this was true. The manager repeatedly refused to submit to interviews as a subject in this or other investigations involving areas under his responsibility. As a result, the ISU concluded that the manager was willfully insubordinate, which is a cause for discipline under state law.

AGENCY RESPONSE

The department notified the manager that he would be dismissed from the department effective October 18, 2001. However, the department subsequently received notification from the Public Employees' Retirement System that the manager had applied for and was approved for retirement effective October 16, 2001. Therefore, the manager's retirement became effective before the dismissal. ■

CHAPTER 6

Update on Previously Reported Issues

CHAPTER SUMMARY

The California Whistleblower Protection Act, formerly known as the Reporting of Improper Governmental Activities Act, requires an employing agency or appropriate appointing authority to report to the Bureau of State Audits (bureau) any corrective action, including disciplinary action, it takes in response to an investigative report not later than 30 days after the report is issued. If it has not completed its corrective action within 30 days, the agency or authority must report to the bureau monthly until it completes that action. This chapter summarizes corrective actions taken on two cases since we last reported them.

STEPHEN P. TEALE DATA CENTER CASE I960159

We publicly reported the results of this investigation on August 21, 1997. From 1993 through 1996, an official, official A, at the Stephen P. Teale Data Center (Teale Data Center) awarded \$5.2 million in contracts and purchase orders to four vendors after accepting \$3,176 in prohibited gifts from them, causing conflicts of interest. The Teale Data Center subsequently reimbursed two vendors \$1,825. Official A also accepted a prohibited gift of \$1,585 from a fifth vendor. However, he did not disclose any of these gifts. Another official, official B, accepted and failed to disclose prohibited gifts totaling \$1,084 from two vendors.

Further, official A improperly claimed reimbursement for more than \$2,000 in educational expenses he incurred to obtain an external doctoral degree in business management from an unaccredited private school in Louisiana.

Finally, the Teale Data Center paid approximately \$1,550 in improper expenses incurred during conferences attended by the two officials, including luxury lodging and golf course fees.

Updated Information

We submitted our report to the Business, Transportation and Housing Agency (agency) and the Fair Political Practices Commission (FPPC). Official A reimbursed the Teale Data Center \$2,930 for both travel and tuition expenses and resigned. Official B reimbursed the Teale Data Center \$195 for travel expenses. The agency provided training to Teale Data Center employees concerning expenses and the reporting of gifts. It was awaiting the outcome of the FPPC's review before determining whether to discipline official B.

In July 2001 the FPPC entered into a stipulated agreement with official B. According to the agreement, official B would pay a penalty of \$2,500 for accepting prohibited gifts from a company doing business with the Teale Data Center, for failing to disclose the gifts, and for participating in a governmental decision involving the company from which he had received the gifts.

In January 2002 the FPPC entered into a stipulated agreement with official A. According to the agreement, official A would pay a penalty of \$3,500 for failing to disclose gifts from two companies doing business with the Teale Data Center.

Official A agreed to pay a \$3,500 penalty and official B a \$2,500 penalty to FPPC for their violations of the Political Reform Act.

CALIFORNIA DEPARTMENT OF TRANSPORTATION CASE I980141

On April 3, 2001, we publicly reported that a California Department of Transportation (Caltrans) employee had a conflict of interest and engaged in incompatible activities. Specifically, the employee participated in departmental decisions that benefited a company owned by his wife. In addition, he misused his state position to influence Caltrans contractors and private businesses to do business with his wife's company. The employee also used state resources to solicit work for his private consulting business. The employee discredited Caltrans and the State because of his conflicts of interest and his attempts to influence private businesses. Finally, Caltrans did not require this employee, nor does it require others in similar classifications, to file annual statements of economic interests. Requiring more employees to file these statements could help Caltrans become more vigilant in monitoring employees to prevent the occurrence of incompatible activities and conflicts

of interest. In this case, however, Caltrans was aware of this employee's outside financial interests, yet failed to take sufficient action to eliminate the potential for conflicts of interest to arise, thereby allowing the employee's activities to discredit Caltrans.

Caltrans told us it suspended the employee for 45 days without pay and reassigned him to a job where he no longer will have responsibilities that could constitute a conflict of interest. Caltrans also reported that it found no evidence that an earlier decision to revoke a proposed disciplinary action against the employee was motivated by bias or favoritism. Finally, Caltrans issued revised policies on conflicts of interest and incompatible activities.

Updated Information

Although Caltrans told us it suspended the employee for 45 days without pay, we discovered that this information was incorrect. After serving the employee with notice of a 60-day suspension without pay, the employee appealed and a formal agreement between the parties stipulated a 30-day suspension without pay. Although Caltrans says the employee did not report to work for 30 working days per the agreement, the employee continued to receive his full salary and failed to notify Caltrans of this fact.

After we brought this matter to its attention in October 2001, Caltrans notified the employee that he would have to repay approximately \$7,300 and gave him a number of repayment options. Since Caltrans made the error, it does not plan to take any further action against the employee for failing to disclose the fact that he continued to receive his full salary and benefits during his suspension. It is unclear whether Caltrans would have discovered the error or whether the employee would have brought it to Caltrans' attention. Nevertheless, Caltrans' error essentially led to the employee receiving an interest-free loan. In April 2002 Caltrans provided us with a copy of a check signed by the employee's wife and dated March 22, 2002, to repay the full amount.

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

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: June 18, 2002

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APPENDIX A

Activity Report

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling \$10.9 million since July 1993, when it reactivated the Whistleblower Hotline (hotline), formerly administered by the Office of the Auditor General. These improper activities include theft of state property, false claims, conflicts of interest, and personal use of state resources. The state auditor's investigations also have substantiated improper activities that cannot be quantified in dollars but have had a negative social 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 it substantiates allegations, the bureau reports the details to the head of the state entity or to the appointing authority responsible for taking corrective action. The California Whistleblower Protection Act (act) also empowers the state auditor to report these activities to other authorities, such as law enforcement agencies or other entities with jurisdiction over the activities, when the state auditor deems it appropriate.

Corrective actions taken on cases contained in this report are described in the individual chapters. Table A.1 on the following page summarizes all the corrective actions taken by agencies since the bureau reactivated the hotline. In addition, dozens of agencies have modified or reiterated their policies and procedures to prevent future improper activities.

TABLE A.1

**Corrective Actions Taken
July 1993 Through February 2002**

Type of Corrective Action	Instances
Referrals for criminal prosecution	73
Convictions	7
Job termination	43
Demotions	8
Pay reductions	9
Suspensions without pay	12
Reprimands	64

**New Cases Opened
July 2001 Through February 2002**

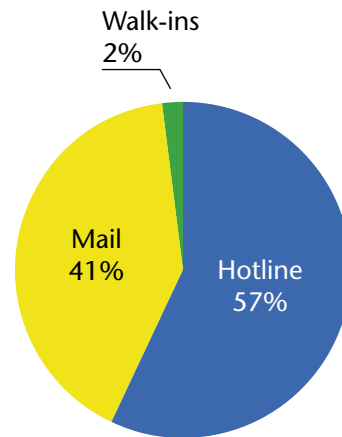
From July 1, 2001, through February 28, 2002, we opened 155 new cases.

We receive allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 89 (57 percent) of our new cases.¹⁰ We also opened 63 new cases based on complaints received in the mail and 3 based on complaints from individuals who visited our office. Figure A.1 shows the sources of all cases opened from July 2001 through February 2002.

¹⁰In total, we received 2,292 calls on the hotline from July 2001 through February 2002. However, 1,566 (68 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to refer the caller to the appropriate entity. An additional 637 (28 percent) were related to previously established case files.

FIGURE A.1

Sources of 155 New Cases Opened July 2001 Through February 2002



Work on Investigative Cases July 2001 Through February 2002

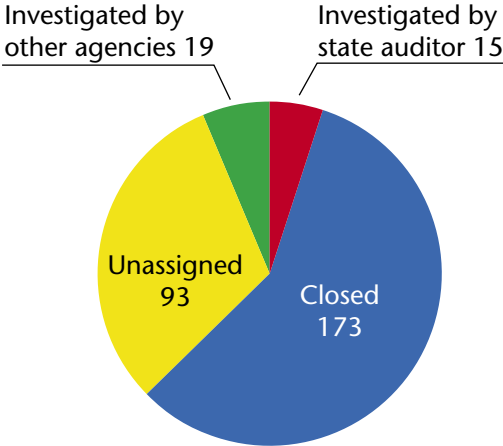
In addition to the 155 new cases we opened during this eight-month period, 129 previous cases were awaiting review or assignment as of June 30, 2001, and 16 were still under investigation, either by this office or by other state agencies, or were awaiting completion of corrective action. Consequently, 300 cases required some review during this period.

After reviewing the information provided by complainants and conducting preliminary reviews, we concluded that 173 cases did not warrant complete investigation because of lack of evidence.

The act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From July 1, 2001, through February 28, 2002, state agencies investigated 19 cases on our behalf and substantiated allegations on 4 (57 percent) of the 7 cases they completed during the period. In addition, we independently investigated 15 cases and substantiated allegations on 2 (50 percent) of the 4 cases we completed during the period. As of February 28, 2002, 93 cases were awaiting review or assignment. Figure A.2 on the following page shows the disposition of the 300 cases worked on from July 2001 through February 2002.

FIGURE A.2

**Disposition of 300 Cases
July 2001 Through February 2002**



APPENDIX B

State Laws, Regulations, and Policies

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

CAUSES FOR DISCIPLINING STATE EMPLOYEES

The California Government Code, Section 19572, enumerates the various causes for disciplining state civil service employees. These causes include incompetency, inefficiency, inexcusable neglect of duty, insubordination, dishonesty, misuse of state property, and other failure of good behavior, either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 1, 2, 3, and 4 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 actions. Section 19990 of the California Government Code prohibits a state 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. This law specifically identifies certain incompatible activities, including using state time, facilities, equipment, or supplies for private gain or advantage.

It also includes using the prestige or influence of the State for one's own private gain or advantage, or for the private gain of another. In addition, state employees are prohibited from receiving or accepting money or any other consideration from anyone other than the State for the performance of their duties.

The same law requires state departments to define incompatible activities. The Office of Criminal Justice Planning (OCJP) policy sets forth minimum ethical standards to be followed by all OCJP employees, which are intended to maintain public confidence in the State by prohibiting activities that might permit opportunity for personal gain. Further, OCJP policy states that using state time, facilities, equipment, or supplies for private gain or advantage has been determined to be incompatible with the duties of all OCJP employees.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN

Chapters 1, 3, and 4 report personal use of state resources.

The California Government Code, Section 8314, prohibits state officers and employees from using state resources such as land, equipment, travel, or state-compensated time for personal enjoyment, private gain, or personal advantage, or for an outside endeavor not related to state business. If the use of state resources is substantial enough to result in a gain or advantage to an officer or employee for which a monetary value may be estimated, or a loss to the State for which a monetary value may be estimated, the officer or 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 of state resources.

PROHIBITIONS AGAINST DUPLICATION AND SALE OF SOUND RECORDINGS

Chapter 1 reports unauthorized duplication and sale of sound recordings.

Section 653h of the Penal Code states that every person who knowingly and willfully transfers or causes to be transferred any sounds that have been recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with the intent to sell or cause to be sold the article on which the sounds are so transferred, without the consent of the owner, is guilty of a public offense punishable by imprisonment, by fine, or by both.

PROHIBITIONS AGAINST DUAL COMPENSATION

Chapter 2 reports improper acceptance of outside pay.

The California Government Code, Section 18000, states that the salary fixed by law for each state officer is compensation in full for that office and for all services rendered in any official capacity, and he or she shall not receive for his or her own use any fee or perquisite for the performance of any official duty.

CRITERIA REGARDING HIRING CERTAIN STATE EMPLOYEES

Chapter 2 reports circumvention of personnel rules and improper appointments.

It is the purpose of California Government Code, Section 19889, to encourage the development and effective use in civil service of well-qualified and carefully selected executives. The State Personnel Board (personnel board) is responsible for establishing a system of merit personnel administration specifically suited to the selection and placement of executive personnel.

This category of civil service is called "Career Executive Assignments." The California Government Code, Section 18547, defines a Career Executive Assignment as an appointment to a high administrative and policy-influencing position within the state civil service system in which the incumbent's primary responsibility is the managing of a major function or the rendering of management advice to top-level administrative authority.

The California Government Code, Section 19888.1, provides that the appointing power may make an emergency appointment, not to exceed 60 working days, to prevent the stoppage of public business when an actual emergency arises or because the work will be of limited duration. The appointing power may make these emergency appointments without utilizing persons on employment lists and, if necessary, without regard to existing classes.

The California Government Code, Section 19257, provides that any person acting in good faith in accepting an appointment contrary to the prescribed rules shall be paid the compensation promised by or on behalf of the appointing power. Further, Section 19257.5 permits the personnel board to declare an appointment void from the beginning if such action is taken within one year after the appointment when the appointment was made and accepted in good faith but was unlawful.

According to the California Government Code, Section 18654, it is the intention of the Legislature that the executive officer of the personnel board shall perform and discharge the powers, duties, purposes, functions, and jurisdiction vested in the personnel board and delegated to him or her by it. Further, the executive officer may redelegate that authority to an appointing power that he or she designates, unless personnel board rule or state law requires the executive officer to act personally.

FEE WAIVERS AND THE ISSUANCE OF CAMPSITES FOR GOVERNMENTAL EMPLOYEES

Chapter 3 reports preferential treatment given for campsite reservations.

The revised policy of the Department of Parks and Recreation (DPR) states that campsites are available on a first-come, first-served basis or by reservation. In accordance with the California Code of Regulations, Title 14, Division 3, Section 4302, fees will be paid for the use of facilities, but such fees do not apply to state officers and employees on official business nor to persons exempted by DPR for administrative reasons.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapter 5 reports weaknesses in management controls.

The Financial Integrity and State Manager's Accountability Act of 1983 (accountability act) contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain a system or systems of internal accounting and administrative controls. Internal controls are necessary to provide public accountability and are designed to minimize fraud, abuse, and waste of government funds. In addition, by maintaining these controls, agencies gain reasonable assurance that those measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. The accountability act also states that the elements of a satisfactory system of internal accounting and administrative control shall include a system of authorization and record-keeping procedures adequate to

provide effective accounting control over assets, liabilities, revenues, and expenditures. Further, this accountability act requires that, when detected, weaknesses must be corrected promptly.

In addition, in California Government Code, Section 11813, the Legislature finds and declares that waste and inefficiency in state government undermine the confidence of Californians in government and reduce the state government's ability to address vital public needs adequately.

APPENDIX C

Incidents Uncovered by Other Agencies

Section 20080 of the California State Administrative Manual requires state government departments to notify the Bureau of State Audits (bureau) and the Department of Finance of actual or suspected acts of fraud, theft, or other irregularities they have identified. What follows is a brief summary of incidents involving state employees reported from July 2001 through February 2002. Although many state agencies do not yet report such irregularities as required, some agencies not only vigorously investigate such incidents but also put considerable effort into creating policies and procedures to prevent future occurrences. It is important to note that the reported incidents have been brought to conclusion; we will not publish any reports that would interfere with or jeopardize any ongoing internal or criminal investigation.

Two state entities notified the bureau of 13 instances of improper governmental activity that had been brought to conclusion from July 2001 through February 2002. Those agencies were the Department of Motor Vehicles (DMV) and one campus of the California State University system. Of these 13 instances, 6 included financial irregularities such as embezzlement and loss of funds intended for deposit to a bank. The State lost \$29,000 because of these financial irregularities. Further, as a result of DMV employees fraudulently issuing driver's licenses or other documents, individuals paid these DMV employees or their accomplices at least \$7,800.

During the eight-month period from July 2001 through February 2002, the DMV advised this office of 12 investigations completed by its staff that substantiated improper activities by DMV employees. Of these, one case involved DMV employees and their accomplices selling fraudulent driver's licenses to nine undocumented immigrants who paid at least \$7,800 for the privilege of driving. Many of these immigrants did not take (or pass, if taken) written, vision, or driving tests. Additionally, the DMV's investigations uncovered the following improprieties:

- Two employees falsified records and waived vehicle fees and smog certification requirements for themselves and friends.

- Three employees illegally accessed DMV records for personal reasons.
- One employee stole files from a coworker's desk.
- One employee solicited sexual favors in exchange for a driver's license.
- Two employees stole vehicle registration fees.
- One employee issued operating permits with no fees on file.
- One employee fraudulently obtained a California identification card for her minor child.

One campus of the California State University reported the loss of \$21,537 from the inappropriate actions of one employee, including forging documents and writing unauthorized checks to herself.

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cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press