

California State Auditor

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

Investigations of Improper Activities by State Employees:

January 2004 Through June 2004



September 2004
I2004-2

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CALIFORNIA STATE AUDITOR

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September 23, 2004

Investigative Report I2004-2

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activities completed from January 2004 through June 2004.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

Investigative Highlights . . .

State employees and departments engaged in improper activities, including the following:

- Stole gasoline and misused state vehicles for personal use.*
 - Paid 19 employees \$128,400 more than they were entitled to receive.*
 - Improperly accessed and/or divulged confidential information.*
 - Misused state resources to conduct outside business activities.*
-

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (Whistleblower Act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The Whistleblower Act defines an “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. The Whistleblower Act authorizes the state auditor to investigate allegations of improper governmental activities and to publicly report on substantiated allegations. To enable state employees and the public to report these activities, the bureau maintains the toll-free Whistleblower Hotline (hotline): (800) 952-5665 or (866) 293-8729 (TTY).

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 Whistleblower Act requires the employer or appointing authority 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 18 investigations completed by the bureau or by other state agencies on our behalf between January 1, 2004, and June 30, 2004, that substantiated complaints. This report also summarizes actions that state entities took as a result of investigations presented here or reported previously by the bureau. Following are examples of the substantiated improper activities and actions the agencies have taken to date.

DEPARTMENT OF GENERAL SERVICES

In violation of state law, a Department of General Services (General Services) employee fueled his personal vehicle with gasoline he stole from a state garage. The employee admitted that on at least five occasions he improperly fueled his car with gasoline from a General Services garage. We estimate that for these five transactions, the employee stole 68 gallons of gasoline worth \$136. In addition, we identified 141 other questionable transactions by the employee that took place between August 2001 and March 2004 involving a total of 1,910 gallons of gasoline worth \$3,752. Although the employee told us that most of these transactions were legitimate, many involved inconsistencies or discrepancies that he could not sufficiently explain.

General Services issued a counseling memo to the employee and recovered \$139 from him for the value of the gasoline he admitted stealing.

DEPARTMENT OF HEALTH SERVICES

In an effort to justify a business need for the number of vehicles leased by a Department of Health Services office (office), the office manager allowed employees under her supervision to use state vehicles for their personal commutes to increase the monthly mileage figures. Nine employees, including the manager, used state vehicles to commute between their homes and the office in violation of state laws and regulations. We determined that as a result of their misuse of state vehicles, office employees received a personal benefit of \$12,346. Because the employees received a personal benefit as a result of the manager's decision, it appears that they violated state law prohibiting the use of state resources for personal gain.

AIR RESOURCES BOARD

An Air Resources Board (air resources) employee used his state credit card to steal 2,092 gallons of gasoline at a cost of \$3,634, none of which was used in a state vehicle. The employee also drove the state vehicle assigned to him for personal purposes. Air resources developed procedures to prevent its employees from stealing gasoline, but the employee did not follow them. Specifically, air resources requires its employees to submit monthly mileage logs and gasoline receipts for all state vehicles. Although air resources notified the employee four times to

comply with this requirement, the employee did not complete the logs as required. As a result, air resources could not account for 2,000 miles for two vehicles that it assigned to him at different times. Air resources dismissed the employee.

CALIFORNIA MILITARY DEPARTMENT

Between July 1, 2001, and June 30, 2003, 19 employees at two of the California Military Department's (Military Department) three training centers received increased pay associated with inmate supervision even though they did not supervise inmates for the minimum number of hours required to receive the pay. For the two years we reviewed, the Military Department paid its employees at two of the training centers approximately \$128,400 more than they were entitled to receive. We were unable to determine to what extent, if any, the Military Department's third training center also improperly granted its employees the increased pay because it was not able to provide supporting documents for 23 of the 24 months we requested. At least 10 of its employees received the pay increase at some time during that two-year period.

The Military Department agreed with our findings and reported that it has implemented changes to correct the problems identified. Specifically, it reported that it has returned all employees receiving the pay increase to their original pay level and implemented a policy at all three training centers for certifying when employees are eligible for the pay increase. The Military Department also implemented a policy that requires the training centers to maintain employee compensation documentation for two years. Further, the Military Department reported that its state personnel director, or his representative, will complete periodic inspections of the required documentation.

DEPARTMENT OF INSURANCE

An employee of the Department of Insurance (Insurance) inappropriately accessed confidential information. Specifically, the employee obtained private and personal information regarding an individual and then faxed the information to her secondary employer, putting both the individual and Insurance at risk for having made an unauthorized disclosure of confidential information. Although the employee maintained that she had mistakenly faxed the information to her other

employer and that she had accessed the data because it pertained to work she conducted on behalf of Insurance, Insurance investigators determined that the employee had no work-related reason for accessing the individual's records. On another occasion, the employee searched a confidential database for information pertaining to a family member but could not explain why such a search was made. Insurance also found that the employee misused various state resources.

Insurance reported that it has initiated adverse action against the employee to reduce her salary by 5 percent for 10 months for inexcusable neglect of duty, dishonesty, willful disobedience, misuse of state property, and behavior that causes discredit to the department.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

An employee of the California Unemployment Insurance Appeals Board (appeals board) mailed copies of letters received from the Employment Development Department (department) to individual claimants even though the letters contained names and Social Security numbers of numerous other claimants. State and federal laws prohibit the divulging of confidential information, specifically including Social Security numbers. Although the employee improperly divulged confidential information pertaining to 231 individuals, department investigators concluded that there was no intent to defraud or to cause injury to the State or to the parties whose information was divulged. Nevertheless, the appeals board violated the privacy rights of these individuals.

To prevent the situation from occurring again, both the department and the appeals board have changed their procedures for processing appeal documents involving multiple names and Social Security numbers. The appeals board counseled the employee following the incident. In addition, when the appeals board learned of the improper disclosure, it took immediate steps by sending security breach notification letters to the individual parties advising them that their Social Security numbers were erroneously released and subsequently sending a follow-up appeal acknowledgment to each party with the Social Security numbers removed. Finally, the appeals board completed security incident reports pursuant to state policies and counseled support staff regarding new procedures for handling appeals with multiple Social Security numbers.

STATE CONTROLLER'S OFFICE

A State Controller's Office (Controller's Office) employee used state resources to operate his private business. An investigation by the Controller's Office showed that between August 2003 and March 2004 the employee used his state computer to create and access numerous documents not related to his state job that were related to his private accounting business, most of which appeared to have been created during his normal state duty hours. The employee explained that he kept his business records on his state computer in addition to maintaining these records on his personal computer because his state job required a considerable amount of travel and he did not want to have to carry two computers while away on state business. The Controller's Office did not specify the amount of time the employee spent creating records unrelated to his state job on his state computer during his normal state work hours.

In addition, the Controller's Office reviewed telephone calls the employee made during January 2004 and found that he made several calls to his clients. The employee admitted that he made a few phone calls to his clients using the state telephone and on occasion used the state fax machine to receive faxes from his clients. The Controller's Office has not yet decided what action to take against the employee. ■

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CHAPTER 1

Department of General Services: Theft of State Gasoline

ALLEGATION I2003-0703

An employee (Employee A) at the Office of Fleet Administration (fleet administration) in the Department of General Services (General Services) fueled his personal vehicle with gasoline he stole from a General Services garage.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation as well as other improper activities. Employee A admitted that on at least five occasions he fueled his car with gasoline he stole from a General Services garage. We estimate that for these five transactions, the employee stole 68 gallons of gasoline worth \$136. In addition, we identified 141 other questionable transactions by Employee A that took place between August 2001 and March 2004 involving a total of 1,910 gallons of gasoline worth \$3,752. Although Employee A told us that most of these transactions were legitimate, many involved inconsistencies or discrepancies that he could not sufficiently explain.

During our investigation, we witnessed Employee A fueling his personal vehicle with state gasoline. We also reviewed and analyzed fuel transaction reports from July 2001 to March 2004, employee attendance reports, and vehicle mileage logs. In addition, we researched applicable state laws and interviewed General Services employees, including Employee A.

BACKGROUND

Fleet administration is responsible for establishing and implementing policies governing state-owned vehicles. It owns approximately 7,000 vehicles, which it leases on a daily or monthly basis to other state agencies. It also provides other state agencies with services such as vehicle repairs, vehicle inspection, vehicle acquisition and disposition, and consultation regarding automotive management problems. In order to provide these

services, fleet administration operates seven garages located in Fresno, Los Angeles, Oakland, Sacramento, San Diego, San Francisco, and Van Nuys. All of the garages except those in San Diego and Van Nuys dispense unleaded gasoline to state-owned vehicles.

AN EMPLOYEE STOLE GASOLINE TO FUEL HIS PERSONAL VEHICLE AT A STATE GARAGE

In violation of state law prohibiting an individual from stealing or embezzling the property of another, Employee A fueled his personal vehicle with gasoline he stole from a state garage.¹ If the value of the property is \$400 or more, such a theft is considered grand theft and is punishable by imprisonment for up to one year. State law also prohibits employees from using state resources for personal purposes.

The employee admitted he stole gasoline from the state garage on at least five occasions.

Employee A's job duties include supervising other employees who fuel and service vehicles and processing invoices related to General Services vehicles. In October 2003, we witnessed Employee A dispensing gasoline into his personal vehicle, which has a total capacity of 40 gallons. We reviewed fuel transaction reports for that day and time and determined that Employee A improperly fueled his personal vehicle with 15 gallons of gasoline worth \$30 even though the reports indicated that he had pumped gasoline into a state-owned vehicle. When asked to explain his actions, Employee A admitted that he stole gasoline on at least five occasions between 4:30 a.m. and 5 a.m. when no one else was present.

Employee A also told us that he was not certain of the extent of his gas theft and that he often arrived at 4:30 a.m., although the General Services garage does not open until 5:45 a.m. However, a General Services official we spoke with about the garage's operations explained that when a vehicle is returned to the garage, it is immediately fueled in nearly every instance. Another employee, Employee B, whose shift required him to close the garage, told us that employees who close the garage rarely fail to service and fuel vehicles before they leave. The garage manager added that employees should not be reporting to work as early as Employee A often did. As a result, we questioned him regarding all fuel transactions before 5:45 a.m. in which he was involved. Specifically, we identified 141 instances when Employee A

¹ For a more detailed description of the laws discussed in this chapter, see Appendix B.

dispensed fuel before 5:45 a.m. between July 2001 and March 2004. These transactions involved a total of 1,910 gallons of gasoline worth \$3,752.

Although Employee A maintained that most of these transactions were legitimate, many involved inconsistencies or discrepancies. For example, Employee A did not deny that he made these transactions but claimed that in most instances he fueled state vehicles that were returned but not serviced from the previous day.

The employee could not explain how he was able to fuel one vehicle three hours before it arrived at the garage or how he was able to put more fuel into another vehicle than its tank could hold.

Some of these transactions contained discrepancies that we asked Employee A to explain. For instance, five transactions indicated that Employee A fueled vehicles that another employee later fueled on the same day. In one of these five transactions, Employee A dispensed more fuel than the vehicle's tank was capable of holding. In another instance, Employee A fueled a vehicle at 4:46 a.m. even though the vehicle log showed that the vehicle in question was not returned to the General Services garage until 7:42 a.m., almost three hours later. In each instance, Employee A failed to provide an explanation for the discrepancy.

GENERAL SERVICES' INTERNAL CONTROLS DO NOT ADEQUATELY PREVENT THE THEFT OF GASOLINE

State law 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 should be designed to minimize fraud, errors, abuse, and waste of government funds. Further, state law requires that when an agency detects weaknesses, it must correct them promptly.

We noted several deficiencies in General Services' controls over its gasoline that allowed Employee A to steal gasoline. Before a fleet administration employee can dispense fuel, he or she must enter his or her employee number and the vehicle's odometer reading and license plate number into an automated fuel tracking system via a keypad.² However, this system allows employees to enter incorrect data. For example, employees may enter a valid state license plate number and then fuel a vehicle with a different license plate. Employee A noted that General

² The only instance in which a fleet administration employee should be able to dispense fuel without providing this information is in the event of an emergency, when the employee can override the system manually.

Services had contemplated implementing a system that would require employees to scan a bar code for each vehicle rather than input the information.

We noted additional weaknesses in General Services' controls over its gasoline. For example, although its fuel tracking system has the capability to require employees to enter a secret personal identification number, or PIN, General Services has not established PINs for most of the employees who fuel vehicles. Instead, most employees need enter only their two-digit employee access code in order to gain authorization to pump fuel. These codes were posted next to the terminal where employees enter transaction information, so anyone could have used them to operate General Services' gasoline pumps.

Because its fuel tracking system allows employees to input inaccurate information, General Services cannot assure itself that its employees are not stealing gasoline.

The garage manager also estimated that General Services had issued around 30 garage keys to various state employees. Employee A explained that in some instances it appeared to him that someone had been in the garage over the weekend when he arrived for work on Monday morning. Because General Services has issued so many keys, and because its fuel tracking system allows employees to input incorrect information, it cannot assure itself that its employees will access the garage to steal gasoline.

AGENCY RESPONSE

Sometime after the employee admitted his theft to us, but before we had informed General Services of the results of our investigation, the employee told his superiors of his theft. General Services issued the employee a counseling memo and recovered \$139 from him for the value of the gasoline the employee admittedly stole, not knowing that he had brought his improper activity to its attention only after he had admitted his theft during our interview with him. The employee also provided General Services with explanations for the \$3,752 in questionable transactions we mentioned in our report. General Services told us that although the employee provided plausible explanations for each discrepancy, at this late date it was unable to determine if those explanations are legitimate. General Services reported that it has strengthened its controls over gasoline dispensing activity by restricting fuel pump access to between 8 a.m. and 5 p.m., scheduling training for garage managers on the automated fuel management system, and pursuing the installation of a card key entry system to track employee access to the garage. ■

CHAPTER 2

Department of Health Services: Misuse of State Vehicles

ALLEGATION I2003-0853

Managers and employees at the Department of Health Services' (Health Services) Medical Review Branch office in Southern California (office) regularly used state vehicles for their personal commutes.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation as well as other improper acts. In an effort to justify a business need for the number of vehicles leased by the office, Manager A allowed employees under her supervision to use state vehicles for their personal commutes to increase the monthly mileage figures. Nine employees, including Manager A and Manager B, used state vehicles to commute between their homes and the office in violation of state laws and regulations. As a result of their misuse of state vehicles, we determined that office employees received a personal benefit of approximately \$12,346. Because the employees received a personal benefit as a result of Manager A's decision, it appears that the employees violated state law regarding the use of state resources for personal gain.³ Also, Manager A, Manager B, Employee A, and Employee B regularly parked state vehicles at their residences without obtaining approval to do so, as is required by state regulations.

Office employees received a personal benefit of \$12,346 through their misuse of state vehicles.

To investigate the allegation, we reviewed state laws and policies associated with the use of state vehicles. We obtained the vehicle sign-out sheets and vehicle logs for all state vehicles assigned to the office from January 2003 through April 2004. We also interviewed office employees about their use of state vehicles, including all employees mentioned in this report.

³ For a more detailed description of the laws discussed in this chapter, see Appendix B.

BACKGROUND

Medicaid is a federal program, funded and administered through a state and federal partnership, to benefit certain low-income people who lack health insurance. Health Services administers the State's Medicaid program (Medi-Cal). As the State's Medi-Cal administrator, Health Services is responsible for preventing Medi-Cal fraud, which consists of activities that cause the wrongful expenditure of Medi-Cal funds. Health Services' Medical Review Branch is responsible for preventing and detecting fraudulent acts committed by providers of medical services. As part of this effort, multidisciplinary teams consisting of physicians, registered nurses, pharmacists, analysts, and auditors employed by the office use state vehicles to conduct on-site reviews, audits, and other activities aimed at preventing fraud over a wide geographic range in Southern California.

The Office of Fleet Administration (fleet administration) within the State's Department of General Services (General Services) is responsible for the administration of state-owned vehicles. A copy of fleet administration's *Fleet Handbook*, which describes the rules governing state vehicle usage, was included with each of the 12 vehicles it leased to the office. To ensure that departments are efficiently using the state vehicles they lease, General Services reviews vehicle usage reports, which it requires departments to submit biannually, explaining the usage and action taken on any vehicles not driven at least 4,000 miles over a six-month period. Additionally, if any of the vehicles the office leases are not driven 700 miles in any month, Manager A is required to explain the reasons when she submits the office's monthly vehicle expense reports to fleet administration.

Manager A was required to explain the usage and action taken on any vehicle not driven more than 700 miles in a month.

DUE TO POOR MANAGEMENT DECISIONS AND INADEQUATE CONTROLS, HEALTH SERVICES EMPLOYEES RECEIVED A PERSONAL BENEFIT FROM THEIR MISUSE OF STATE VEHICLES

We determined that nine office employees improperly received a personal benefit totaling at least \$12,346 as a result of Manager A's decision to allow office employees, including herself, to use state vehicles to commute between their homes and the office. Public officials hold public funds and resources in trust for the people they serve and may use those resources only for authorized public purposes.

State law generally prohibits state officers and employees from using or permitting others to use public resources for personal enjoyment, private gain, or personal advantage or for an outside endeavor not related to state business. Specific state laws governing the use of state-owned motor vehicles require those vehicles to be used only in the conduct of state business and require the Department of Personnel Administration to prescribe rules and regulations that define what constitutes appropriate use of state vehicles and to distinguish such use from misappropriation of state-owned vehicles for personal purposes. Related state regulations require that departments determine the necessity for travel and indicate that such travel must represent the best interest of the State. If the personal 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, 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. Further, California Code of Regulations, Title II, Section 599.803, provides that employees shall be liable to the State for the actual costs to the State attributable to their misuse of state-owned vehicles. This section adds, however, that to the extent that a superior directs the misuse, the superior and not the subordinate shall be liable.

Health Services Employees Received a Personal Benefit From Their Misuse of State Vehicles

As a result of Manager A's decision to allow employees under her supervision to use state vehicles to commute between their homes and the office, nine office employees received a combined personal benefit of \$12,346. Because the employees used the state cars for their personal commutes, they violated both the general state law that prohibits employees from using state resources for private gain and the specific state laws and regulations governing the use of state vehicles. Specifically, Section 19993.1 of the California Government Code provides that state-owned vehicles shall be used only in the conduct of state business. Section 599.626 of the California Code of Regulations prohibits the State from paying for expenses arising from employee travel between home and headquarters.

For eight months, Employee A regularly used a state vehicle for his 180-mile daily commute.

Table 1 on the following page lists the personal benefit received by each of the nine employees through the use of state vehicles for their commutes. Employee A received the largest benefit. For approximately eight months he regularly used a state car

to commute between his home and the office, a distance of 90 miles each way. Based on the reimbursement rate the State pays its employees when they use their personal vehicles to conduct state business, we determined that Employee A received a personal benefit of \$6,576 for the 19,342 miles he drove state vehicles for his commute. Employee A claims that Manager A directed him to drive state vehicles for his commute. However, we found no evidence to support his claim, and information we obtained indicates that the opportunity to use state vehicles for their commutes was made available to all office employees.

According to Employee A, his use of state vehicles to drive between his home and the office was based on the business needs of the office and did not constitute personal use; however, he admitted that one of the reasons behind the decision to use the vehicles was that it was at times inconvenient for him to commute with his own vehicle. Specifically, Employee A told us that if he drove his personal vehicle to work and used a state car to conduct state business at a location near his residence in the afternoon, he would be in the position of having to either drive the state vehicle back to the office in the late afternoon and then drive back to his residence in his personal vehicle or take the state vehicle home and leave his personal vehicle overnight in the unguarded office parking lot. Employee A added that he conducts state business near his residence approximately once a month. Although it may be inconvenient for Employee A to commute with his own vehicle, his use of state vehicles for his 180-mile daily commute does not appear to be in the best interest of the State.

TABLE 1
Misuse of State Vehicles by Health Services Employees
From January 2003 Through April 2004

Employee	Estimated Benefit Realized by the Employee Per Mile	Personal Commute Miles	Personal Benefit Realized by Employee
Manager A	\$0.34	5,502	\$ 1,871
Manager B	0.34	3,843	1,307
Employee A	0.34	19,342	6,576
Employee B	0.34	2,982	1,014
Employee C	0.34	1,890	642
Employee D	0.34	1,451	493
Employee E	0.34	926	315
Employee F	0.34	282	96
Employee G	0.34	94	32
Totals		36,312	\$12,346

Manager A benefited significantly from her personal use of state vehicles, receiving a benefit of \$1,871 for the 5,502 miles she drove state vehicles for her commute. Manager A told us that her decision to use state vehicles for her commute was made not for her own personal benefit but to ensure that the vehicles were driven sufficiently to justify the office's business need for the vehicles it leased.

Manager B also benefited from her use of state vehicles, receiving a personal benefit of \$1,307 for the 3,843 miles she used state cars for her commute. Manager B told us that she did not always document her personal use of state vehicles in the vehicle logs and that in some instances she logged several days of her commute on one line and listed a business location to indicate a business purpose for the miles she drove for her commute. Because of her misleading entries, we were unable to determine the extent to which Manager B misused state vehicles, beyond the 3,843 miles we identified.

Manager A Encouraged Employees to Use State Vehicles for Their Personal Commute

Manager A believed that the office would lose its state vehicles if they were not driven 700 miles every month.

As we stated previously, if any of the 12 vehicles the office leases are not driven 700 miles in any month, the office must explain the reasons that the vehicles were underused when submitting the monthly vehicle expense reports to fleet administration. According to Manager A, due to unanticipated delays in hiring additional personnel, the office temporarily lacked the staff necessary to be able to drive each state vehicle 700 miles monthly. Manager A told us that she believed the office would lose the vehicles if it could not demonstrate a business need for them and that the need to drive the vehicles 700 miles each month was the most significant factor influencing her decision to allow office employees to use the state vehicles for their commutes. She added that concerns over vehicle vandalism (if left overnight in the office's unsecured parking lot) and a need to have the vehicles maintained (during their work hours, office employees drive the vehicles to facilities for scheduled preventive maintenance such as oil changes and tire rotations) also contributed to her decision. Manager A added that she did not require any employees to use the state vehicles for their commutes but instead asked all of her employees if any of them would volunteer to take the vehicles home and ensure that they were maintained.

Although the fleet administration's *Fleet Handbook* does allow state employees to store state vehicles at home when no storage is available at state or private garages, we were able to find a privately operated parking facility with spaces available located half a mile from the office; this facility charges \$5 per day.

Manager A's decision to allow her employees to use state vehicles for their commutes appears to violate state regulations, which specify that each state agency shall determine the necessity for travel and that such travel must represent the State's best interests. Considering that the major factor leading to Manager A's decision was the desire to artificially inflate the vehicles' business mileage, we do not see this type of travel as necessary or in the State's best interest. Further, because Manager A and Manager B maintained possession of the keys to the state vehicles they used for their commutes during the workdays, the vehicles were not always available for other office employees needing them to conduct official state business. Both managers told us that even though they kept the keys in their possession, the cars were still available for state business; however, this practice put employees in the awkward position of asking their superiors for the car keys. Additionally, this practice created a hardship for the office because employees using one of the managers' state vehicles had to ensure that they returned the vehicle in time for the managers to commute home.

Some office employees who used the vehicles for state business had to return them in time for the managers to commute home.

Although Manager A told us that the potential for vandalism in the office parking lot was a factor in her decision to allow her employees to use state vehicles for their commutes, we question whether this was a valid basis for her decision making. When asked for copies of police reports and vehicle damage reports relating to acts of vandalism, Manager A could provide substantiating information for only one incident of vandalism to a state vehicle occurring overnight at the office parking lot since the office began parking state vehicles there in late 2001. Further, Manager A told us that she had not looked for any privately owned parking facilities near the office until after we began our investigation. Furthermore, despite her concerns of vandalism, Manager A told us that when she used a state vehicle for her commute, she occasionally parked it overnight on the street in front of her home rather than in her garage or driveway, because it was more convenient for her to do so. We also fail to see how vehicle maintenance factored into Manager A's decision, as there is no logical connection between maintaining vehicles and allowing employees to use them for their commutes.

Manager A Did Not Establish Adequate Controls to Monitor the Use of State Vehicles

It is apparent from our review of the office's state car check-out log and the vehicle logs kept in the vehicles that Manager A did not use adequate controls to ensure that the vehicles the office leases were used only for official state business. 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. Further, this act requires that, when detected, weaknesses must be corrected promptly.

Manager A, who is responsible for overseeing the use of state vehicles by the office employees, told us that those who wish to use state vehicles are required to record their vehicle use in the office's state car check-out log, indicating who checked out the vehicle, the vehicle number, the check-out and check-in dates, and the purpose for using the vehicle. Despite this requirement, in many cases office employees, including Manager A and Manager B, did not accurately document their vehicle use in the check-out log, omitted pertinent information, or provided inaccurate information, making it very difficult to determine how long employees had vehicles checked out and for what business purpose they used the vehicles. We also found that in some cases the check-out log did not accurately reflect the actual vehicle usage when compared to the vehicle logs that are maintained in each state car. Specifically, in some instances the purpose of travel listed on the check-out log disagreed with the usage documented in the vehicle logs, and in many instances office employees did not list a business location for their trips in either the check-out log or the vehicle logs. Further, in most cases, office employees, including Manager A and Manager B, did not indicate their departure and arrival times in the vehicle logs, despite state regulations (California Code of Regulations, Section 599.807) that require each state department to complete, on a daily basis, vehicle logs for vehicles under its control, recording the daily mileage traveled, date and time of travel, itinerary, and vehicle driver. Because its employees maintained poor records documenting their personal use of state vehicles, it is impossible to determine the full extent to which office employees benefited from such use of the state vehicles.

Office employees, including the managers, omitted pertinent information or provided inaccurate information on the vehicle check-out log.

Additionally, because Manager A, Manager B, Employee A, and Employee B parked state vehicles at their residences on a regular basis without proper authorization, they violated state

regulations (California Code of Regulations, Section 599.808) that require departments to obtain home storage permits for employees who park state vehicles at or near their homes for more than 72 nights over a 12-month period or for more than 36 nights over any three-month period. We determined that during various three-month periods, Manager A parked a state vehicle at her residence overnight 76 times and that Manager B did so 71 times, Employee A 76 times, and Employee B 53 times.

AGENCY RESPONSE

Health Services reported that after conducting a cost/benefit analysis of state vehicle usage, it returned four of the 12 state vehicles the office leases to fleet administration. Additionally, as of April 8, 2004, it discontinued allowing office employees to use state vehicles for home commutes and now requires that all state vehicles be parked overnight in the office parking lot. To address the vandalism issue, Health Services requested that the local police department frequently patrol the office parking lot, especially at night and on weekends. Health Services reported that it has completed a detailed reconciliation of the state vehicle mileage logs with employee time sheets and is analyzing the data to determine the actual vehicle misuse by each employee and will propose the appropriate disciplinary action(s). Finally, on August 30, 2004, Health Services issued an "All Employee Memo" emphasizing the rules and regulations regarding the use of state-owned motor vehicles. ■

CHAPTER 3

Air Resources Board: Theft of State Gasoline and Misuse of State Vehicles

ALLEGATION I2003-0820

An employee at the Air Resources Board (air resources) used his state credit card to steal gasoline.

RESULTS AND METHOD OF INVESTIGATION

We asked air resources to assist us in evaluating the complaint. Air resources reported that it had already conducted an investigation and substantiated this and another allegation. Specifically, between August 7, 2001, and June 19, 2003, the employee used his state credit card to steal 2,092 gallons of gasoline at a cost of \$3,634, none of which was used in a state vehicle for job-related activities, and drove the state vehicle assigned to him for personal purposes. To investigate, air resources reviewed and analyzed monthly vehicle travel logs and state credit card transactions and interviewed the employee.

The employee violated state laws when he stole gasoline using his state credit card and when he used a state vehicle for personal use.⁴ State law prohibits an individual from taking the property of another, and if the value of the property taken is \$400 or more, the act is considered grand theft and is punishable by imprisonment for up to one year. In addition, state employees cannot use state resources such as state-purchased gasoline and vehicles for personal purposes. A person found guilty of this is liable for a civil penalty not to exceed \$1,000 on each day that the violation occurs plus three times the value of the unlawful use of public resources. In addition, a state employee who violates these state laws can be the subject of an adverse action.

Air resources developed procedures to prevent its employees from stealing gasoline, but the employee did not follow them. Specifically, air resources requires its employees to submit monthly mileage logs and gasoline receipts for all state vehicles.

⁴ For a more detailed description of the laws discussed in this chapter, see Appendix B.

Although it notified the employee four times to comply with this requirement, the employee did not complete the logs as required. As a result, air resources could not account for 2,000 miles on two vehicles that it assigned to him at different times.

Air resources decided to question the employee about his gasoline purchases because he had failed on numerous occasions to submit required fuel records and because it had received an allegation regarding the employee's gasoline theft. In June 2003, air resources attempted to call the employee on his state cell phone several times to tell him to report to a board executive. On the seventh attempt in two days, the employee answered the phone and said that he needed another 30 minutes to complete his work at an off-site audit, where he said he was at the time of the telephone call. Air resources instructed the employee to finish the audit and report to the executive. Immediately after speaking with the employee, air resources called the auditee and was told the employee had not been at the audit site.

When air resources questioned the employee, he denied the allegations against him; however, when presented with evidence to the contrary, he later admitted to driving a state vehicle for personal reasons during his scheduled days off and to using state credit cards to purchase fuel for his personal vehicles. He explained that he would first use his state credit card to purchase fuel for his state vehicle and then he would fill a personal vehicle, driven by another person who had followed him to the service station.

Air resources' analysis showed that from August 7, 2001, through June 19, 2003, the employee purchased 2,092 gallons of fuel at a cost of \$3,634, none of which was used in a state vehicle for job-related activities. The employee routinely purchased fuel on days he did not work, and on some of these days he or someone else used his state credit card multiple times. On two occasions, he purchased fuel in Nevada on his day off when he did not have any board-related work there. In addition, the employee routinely purchased fuel grades not authorized by state policy, purchased quantities of fuel that exceeded the capacity of his state vehicle, and purchased \$85 worth of food items that were not work-related meals.

The employee stole \$3,634 worth of gasoline by using his state credit card to fuel his personal vehicles.

AGENCY RESPONSE

Air resources served the employee with a notice of adverse action of dismissal. The employee did not appeal this action and air resources dismissed him in October 2003. ■

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CHAPTER 4

California Military Department: Improper Payments to Employees

ALLEGATION I2002-1069

The California Military Department (Military Department) improperly granted employees an increase in pay they were not entitled to receive.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. We found that between July 1, 2001, and June 30, 2003, 19 employees at two of the Military Department's three training centers received increased pay associated with inmate supervision even though they did not supervise inmates of the California Department of Corrections for the minimum number of hours required to receive the pay. For the two years we reviewed, the Military Department paid these employees \$128,400 more than they were entitled to receive. We were unable to determine to what extent, if any, the Military Department's third training center also improperly granted its employees the increased pay because it was not able to provide supporting documents for 23 of the 24 months we requested. At least 10 of its employees received the pay increase at some time during that two-year period.

Over a two-year period, the Military Department paid employees at two of its three training centers \$128,400 more than they were entitled to receive.

To investigate the allegation, we reviewed the state laws and policies associated with the pay increase for inmate supervision and obtained a list of employees receiving the pay increase, along with inmate supervision time sheets, from the Military Department. To determine the dollar amount that the Military Department improperly awarded its employees, we confirmed the number of months between July 1, 2001, and June 30, 2003, that each employee improperly received the pay increase and multiplied that number by the difference between the amount the employee received and what he or she should have been paid for those months. We then added up the employees' overpayments to determine the total amount the Military Department improperly paid its employees.

BACKGROUND

The Military Department comprises the California National Guard (Guard) and other related programs. The Guard's primary responsibility is to mobilize its unit for combat and peacekeeping missions at the direction of the President of the United States. When the Guard is not in active federal service, the governor can call it to active state duty in response to natural or man-made disasters or emergencies such as wildfires, floods, earthquakes, or riots.

To effectively fulfill the Guard's mission, the Military Department operates three training centers: Camp Roberts, Camp San Luis Obispo, and the Joint Forces Training Base—Los Alamitos (Joint Forces). At the training centers, the Military Department uses the labor of inmates and is allowed to give its employees a pay increase when they meet certain conditions involving supervision of these inmates. The Military Department is also allowed to give the supervisors of employees who meet the inmate supervision requirements the additional pay. The monthly pay increase the Military Department paid its employees averaged \$375, about 10 percent of each employee's monthly salary.

The Military Department is allowed to give its employees who supervise inmates a 10 percent pay increase.

THE MILITARY DEPARTMENT IMPROPERLY GRANTED EMPLOYEES INCREASED PAY

State law requires the Department of Personnel Administration (DPA) to establish and adjust salary ranges for each class of position in state civil service unless an employee organization has been chosen as the exclusive representative for that class.⁵ In those cases, the collective bargaining agreement between the employee organization and the State supersedes state law.⁶ Regulations related to alternate pay ranges require that unless otherwise authorized by DPA, an employee who qualifies and moves from one alternate range of a class to another must receive a salary increase or decrease equivalent to the total range differential between the maximum salary rates of the alternate ranges.

⁵ For a more detailed description of the laws discussed in this chapter, see Appendix B.

⁶ Of the 19 employees identified in this report, 17 are under the Bargaining Unit 12 contract with the State. This contract addresses alternate pay for inmate supervision and therefore supersedes state law. Two of the employees are under the Bargaining Unit 13 contract, which does not address inmate supervision. As a result, these employees are subject to the DPA policy.

The Military Department failed to follow DPA policy and its employees' collective bargaining agreement, which establishes an alternate pay range for employees who supervise inmates, by granting several of its employees alternate range pay associated with inmate supervision (pay increase) even though the employees rarely met the requirements of the bargaining unit contract. By paying the employees more than they were entitled to receive, those employees received a purely personal benefit, and the Military Department may have violated state law prohibiting gifts of public funds. Through our analysis, we determined that between June 1, 2001, and July 30, 2003, the Military Department overpaid its employees by \$128,400. The collective bargaining agreement and state law provide that when the State determines an overpayment has been made to an employee, the employee shall reimburse the State.

Camp San Luis Obispo maintained records on its employees' supervision of inmates for only one month.

We obtained a list of Military Department employees who received the pay increase in any month from July 2001 through June 2003 and the associated inmate supervision hours for two of its training centers, Camp Roberts and Joint Forces. The Military Department was unable to provide any historical information from Camp San Luis Obispo beyond one month because the training center does not keep any records on who received the pay increase or the number of hours its employees supervised inmates. This lack of record keeping concerns us because the Military Department has no way of ensuring that the pay increases made to employees at Camp San Luis Obispo were justified. Further, it appears that both Camp Roberts and Joint Forces lacked the controls necessary to prevent overpayments to the employees.

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 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 include a system of authorization and record-keeping procedures adequate

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

As Table 2 shows, employees at Camp Roberts received pay increases for supervising inmates for a combined total of 288 months, but they met the inmate supervision requirements in only 33 of those months. Similarly, employees at Joint Forces received a combined total of 105 monthly pay increase payments, but the payment was justified in only 18 of those months. As a result of its failure to ensure that its employees met the conditions required to receive the increased pay, the Military Department improperly granted its employees at Camp Roberts and Joint forces \$96,090 and \$32,310, respectively, for a total of \$128,400 in improper payments.

TABLE 2

Improper Inmate Supervision Payments for Military Department Employees From July 1, 2001, Through June 30, 2003

Training Center*	Number of Months Employees Received the Pay Increase	Number of Months in Which Employees Met the Requirements for the Pay Increase†	Number of Months Employees Improperly Received Pay Increase	Average Monthly Pay Increase	Total Amount of Improper Payments‡
Camp Roberts	288	33	255	\$377	\$96,090
Joint Forces Training Base	105	18	87	371	32,310
Totals	393	51	342	\$375	\$128,400

* The Military Department could not provide us with Camp San Luis Obispo information because that training center did not keep records of who received the pay increase and how many hours they supervised inmates.

† In order to qualify for the pay increase, an employee must directly supervise at least two inmates who substantially replace civil service employees for at least 173 hours per pay period (one month) or supervise an employee who qualifies for the pay increase.

‡ Totals will not cross foot due to rounding of average monthly pay increase figures.

AGENCY RESPONSE

The Military Department agreed with our findings and reported that it has implemented changes to correct the problems identified. Specifically, it reported that it has returned all employees receiving the pay increase to their original pay level and implemented a policy at all three training centers for

certifying when employees are eligible for the pay increase. The Military Department also implemented a policy that requires the training centers to maintain employee compensation documentation for two years. Further, the Military Department reported that because its personnel costs for the training centers are reimbursed by the federal National Guard, the State has, in effect, already been reimbursed for the overpayments; it will not pursue reimbursement from the employees who improperly received the increased pay. The Military Department provided a copy of our report to the federal National Guard, which has the authority to recoup or waive the overpayments from the State. ■

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CHAPTER 5

Department of Insurance: Inappropriate Access of Confidential Information and Misuse of State Equipment

ALLEGATION I2003-0733

An employee in the Department of Insurance (Insurance) inappropriately accessed and disseminated confidential information.

RESULTS AND METHOD OF INVESTIGATION

After receiving the allegation, we sent an inquiry to Insurance, which informed us that it had already conducted an investigation. Insurance investigated and substantiated the allegation, as well as other improper governmental activities. To investigate the allegation, Insurance investigators conducted interviews with the employee and witnesses, reviewed confidential databases the employee accessed, and analyzed the employee's telephone, Internet, and e-mail usage.

Insurance determined that the employee improperly obtained confidential motor vehicle information regarding an individual via the California Law Enforcement Telecommunications System. The employee then faxed the information to her non-state employer, thereby violating state laws and departmental policies that prohibit the unauthorized disclosure of confidential information.⁷ Although the employee maintained that she had mistakenly faxed the information to her other employer and that she had accessed the data because it pertained to work she conducted on behalf of Insurance, the department determined that the employee had no work-related reason for accessing the individual's records. On another occasion, the employee searched a confidential database for information pertaining to a family member but could not explain why such a search was made.

The employee improperly accessed confidential motor vehicle information, and then faxed that information to her non-state employer.

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

Insurance also found that the employee had misused various state resources. The employee used her work e-mail for personal use, accessed non-work-related Web sites to pay her bills and make personal purchases, and used her state computer to create personal files, including files related to her non-state employer. In addition, Insurance determined that the employee used the state office phone to make at least 121 personal phone calls totaling more than 18 hours to her other employer, nearly all of which occurred during normal working hours between July 2001 and July 2002. Furthermore, Insurance examined the employee's state cell phone records and found that she made at least 80 non-work-related calls during the three months it reviewed.

AGENCY RESPONSE

Insurance reported that it initiated adverse action against the employee to reduce her salary by 5 percent for 10 months for inexcusable neglect of duty, dishonesty, willful disobedience, misuse of state property, and behavior that caused a discredit to the department. ■

CHAPTER 6

California Unemployment Insurance Appeals Board: Improper Disclosure of Confidential Information

ALLEGATION I2004-0624

An employee of the California Unemployment Insurance Appeals Board (appeals board) improperly disclosed Social Security numbers to individuals who were not authorized to have that information.

RESULTS AND METHOD OF INVESTIGATION

The Employment Development Department (department) investigated on our behalf and substantiated the allegation. The appeals board employee improperly mailed confidential information pertaining to 231 individuals to outside parties. The confidential information that was improperly disclosed was included in appeal letters containing multiple claimant names that the department sent to the appeals board, which the appeals board then mailed to outside parties. To conduct its investigation, the department interviewed both department and appeals board employees, reviewed personnel files, and reviewed documents obtained from the department's legal office and the appeals board.

The employee improperly disclosed names and Social Security numbers of 231 individuals to outside parties.

BACKGROUND

The department makes decisions regarding payment, reduction of payment, or denial of unemployment insurance benefits. Both employers and claimants have a right to appeal the department's decision. Such an appeal leads to a hearing with an administrative law judge (judge), who gives both parties a chance to present their evidence and then renders a written decision. If the department or one of the parties wants a review of the judge's decision, the department submits the name, Social Security number, and basis for the appeal to the appeals board. The appeals board confirms receipt of the appeal and advises interested individuals of the procedural options available to them. A decision by the appeals board completes all administrative remedies.

AN APPEALS BOARD EMPLOYEE IMPROPERLY DISCLOSED CONFIDENTIAL INFORMATION

The department determined that an appeals board employee mailed copies of letters received from the department to individual claimants; the letters contained names and Social Security numbers of numerous other claimants. State and federal law prohibit the divulging of confidential information, specifically including Social Security numbers.⁸ Although the employee improperly divulged confidential information pertaining to 231 individuals, the department concluded that there was no intent to defraud or to cause injury to the State or to the parties whose information was divulged. Nevertheless, the appeals board employee violated the privacy rights of these individuals.

AGENCY RESPONSE

To prevent the situation from occurring again, both the department and the appeals board have changed their procedures for processing appeal documents involving multiple names and Social Security numbers. The appeals board counseled the employee following the incident. In addition, when the appeals board learned of the improper disclosure, it took immediate steps by sending security breach notification letters to the individual parties, advising them that their Social Security numbers were erroneously released, and it subsequently sent a follow-up appeal acknowledgment to each party with the Social Security numbers removed. Finally, the appeals board completed security incident reports pursuant to state policies and counseled support staff regarding new procedures for handling appeals with multiple Social Security numbers. ■

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

CHAPTER 7

Department of Corrections: Discourteous Treatment of Employees, Misuse of State Property, and Behavior That Brought Discredit to the State

ALLEGATION I2003-0655

A Department of Corrections (Corrections) manager had an employee perform personal errands while on state time and using state resources.

RESULTS AND METHOD OF INVESTIGATION

Corrections investigated and substantiated the allegations. To investigate, Corrections interviewed several of its employees, including the manager, and reviewed state laws and regulations.

State law prohibits employees from using state resources for personal gain and from engaging in activities that are incompatible with their duties as state employees.⁹ Additionally, state law prohibits employees from using state vehicles for non-state business and from engaging in behavior of such a nature that it causes discredit to the appointing authority. The manager violated these laws when she improperly directed one of her employees to perform tasks for her personal gain during state time and while sometimes using a state vehicle.

The employee said he felt pressured to perform personal tasks for his manager.

The employee told the department that he felt pressured to perform numerous personal tasks for the manager. These tasks included taking her personal clothing to and from the cleaners, driving her to and from nail appointments using a state vehicle, pumping gas into her private vehicle during state time, and taking several trips to the post office to send the manager's personal mail. The employee explained that he felt uncomfortable and humiliated by the manager and completed these tasks to avoid being retaliated against and hindering his promotional chances. Although the manager maintained that

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

the employee volunteered to perform these personal errands, the fact remains that the manager accepted and allowed the employee to perform these tasks during regular working hours even though the employee experienced difficulty in completing work related to his state job.

AGENCY RESPONSE

In December 2003, the department placed a letter of instruction in the manager's personnel file that will remain in effect until December 2004. ■

CHAPTER 8

State Controller's Office: Misuse of State Resources to Operate a Private Business

ALLEGATION I2003-0828

An employee of the State Controller's Office (Controller's Office) used state resources to operate his private business.

RESULTS AND METHOD OF INVESTIGATION

We asked the Controller's Office to investigate the allegation on our behalf. The Controller's Office substantiated that the employee misused state property and time, thereby violating state laws.¹⁰ To investigate, it examined the employee's computer and telephone records and interviewed the employee.

The employee used his state computer to create and access documents related to his private accounting business.

The investigation by the Controller's Office showed that between August 2003 and March 2004 the employee used his state computer to create and access numerous non-state documents related to his private accounting business, most of which appeared to have been created during normal working hours. The employee explained that he kept his business records on his state computer in addition to maintaining these records on his personal computer because his state job required a considerable amount of travel and he did not want to have to carry two computers while away on state business. The Controller's Office did not specify the amount of time the employee spent creating non-state records on his state computer during normal working hours.

In addition, the Controller's Office reviewed telephone calls the employee made during January 2004 and found that he made several phone calls to his clients. The employee admitted that he made a few phone calls to his clients using the state telephone and, on occasion, used the state fax machine to receive faxes from his clients.

¹⁰ For a more detailed description of the laws discussed in this chapter, see Appendix B.

AGENCY RESPONSE

Beginning in June 2004, the Controller's Office reduced the employee's salary by 5 percent for three months. ■

CHAPTER 9

Department of Health Services: Misuse of State Resources to Operate a Private Business

ALLEGATION I2004-0668

A Department of Health Services (Health Services) employee used his state computer, state e-mail account, and state time to run his personal business.

RESULTS AND METHOD OF INVESTIGATION

We asked Health Services to investigate on our behalf, and it substantiated the allegations. Health Services found that the employee appeared to have used his state e-mail extensively to promote, solicit, advertise, and run his outside business. To conduct its investigation, Health Services reviewed personnel files, telephone records, and computer records pertaining to the employee's e-mail and calendar.

The employee used his state e-mail to run his personal business and solicit investments from co-workers.

Health Services found that, in violation of state law and its own policy, the employee used state time and his state computer extensively to run his personal business.¹¹ In addition, the employee used his state e-mail to solicit investments from other Health Services employees. In its review of the employee's state e-mail account, Health Services found nearly 1,000 saved messages pertaining to the employee's personal business. Although Health Services was unable to determine exactly how much state time the employee spent running his personal business, it concluded the extensive volume of e-mail related to the business indicates that he abused state time. Health Services' policy states that no employee shall engage in any outside employment, activity, or enterprise that involves such a time demand that it results in less efficient or impaired performance of the employee's regular duties.

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

AGENCY RESPONSE

The employee retired effective August 31, 2004. Health Services told us it placed a formal letter in the employee's personnel file indicating that he will receive a 10-day suspension should he ever return to state service. Just previous to the time of the employee's retirement, the employee's supervisor notified him that Health Services was preparing a Notice of Adverse Action against him. The purpose of the notice was to document the employee's inexcusable neglect of duty, dishonesty, and misuse of state property for conducting personal business during work hours. ■

CHAPTER 10

Department of Insurance: Misuse of State Resources and Equipment

ALLEGATION I2003-0910

Three employees of the Department of Insurance (Insurance) used state telephones and time to make excessive and unauthorized long-distance personal telephone calls. In addition, one of the employees inappropriately used a state telephone and computer for personal business.

RESULTS AND METHOD OF INVESTIGATION

We obtained phone records from Insurance and, based on our preliminary review of those records, asked Insurance to conduct an investigation. It substantiated the allegations. To conduct the investigation, Insurance supervisors reviewed the telephone billings for the division in question and subsequently identified and interviewed the employees found to have made or received a significantly higher-than-average number of calls and those employees who appeared to have made unauthorized long-distance calls.¹²

During the three-month period from October through December 2003, Insurance found that Employee A made at least 311 personal telephone calls totaling 29 hours and 40 minutes, including 17 calls totaling 67 minutes to her outside employer, and three unauthorized long-distance calls. Insurance also substantiated that the same employee inappropriately used her state computer for personal business.

Employee A made 311 personal phone calls totaling more than 29 hours from her state telephone.

In addition, Employee B made excessive personal telephone calls, including 60 out-of-state calls and 275 unauthorized in-state calls. A third employee, Employee C, made 77 unauthorized calls, including 53 in-state long-distance calls during the three-month period.

¹² For a more detailed description of the laws discussed in this chapter, see Appendix B.

AGENCY RESPONSE

Insurance reported that Employee A resigned subsequent to the investigation. Insurance served Employee B and Employee C with formal letters of reprimand in their personnel files and stated that it would charge them for the cost of their personal telephone calls. In addition, Insurance issued new telephone usage policies and procedures to all employees. Management of the division in question met with division employees and reviewed the current policies and procedures concerning appropriate telephone usage. Finally, Insurance said that it has initiated efforts with its telephone service provider to improve Insurance's oversight of telephone call activity. ■

CHAPTER 11

Department of General Services: Misuse of State Time and Equipment

ALLEGATION I2003-1037

A Department of General Services (General Services) employee used state time and his state telephone to conduct outside business activities.

RESULTS AND METHOD OF INVESTIGATION

We asked General Services to investigate on our behalf and it substantiated the allegations. To investigate, General Services reviewed the employee's state telephone and attendance records and interviewed the employee and his supervisor.

General Services found that, in violation of state laws, during the six-month period from July 1, 2003, through December 31, 2003, the employee made 202 personal telephone calls related to his outside business activities for a total of 12 hours and 48 minutes; of that, only 31 minutes were during the employee's lunch period.¹³ The cost of the 202 calls was \$20. Based on the employee's rate of pay, General Services calculated the cost of the state time the employee spent conducting personal business, excluding the 31 minutes during his lunch period, was \$345. It is unknown how many incoming telephone calls the employee may have received related to his outside business activities or how much state time he may have spent on those calls.

AGENCY RESPONSE

General Services counseled the employee and he reimbursed General Services \$365 for the cost of the telephone calls and the state time he spent making them. In addition, he provided a written statement acknowledging the accuracy of the allegation, apologizing for his actions, and providing assurance that in the future, personal matters will not involve state equipment. ■

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

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CHAPTER 12

Department of Health Services: Time and Attendance Abuse

ALLEGATION I2003-0850

Employees at the Licensing and Certification Division of the Department of Health Services (Health Services) engaged in time and attendance abuse. Specifically, two employees inappropriately took time off when their supervisor was on vacation.

RESULTS AND METHOD OF INVESTIGATION

We asked Health Services to investigate the allegation on our behalf. It substantiated the allegation. To investigate, Health Services interviewed staff at the district office, as well as the district office manager, and reviewed attendance records and time-off approvals. Health Services confirmed that both employees inappropriately took time off when their supervisor was on vacation.¹⁴ A detailed report of the time abuse issue prepared by a supervisor for the district office manager revealed that Employee A used approximately 65 hours of sick leave and vacation time without submitting the required paperwork to be charged for the time used. Employee B requested to work fewer hours and, despite the fact that the request had not been approved, took time off without charging the time to leave.

AGENCY RESPONSE

As a result of its investigation, Health Services told us it charged Employee A's leave balances for some of the unapproved hours and docked her for the rest of them; it also docked Employee B 36 hours for her unapproved time off. ■

¹⁴ For a more detailed description of the laws discussed in this chapter, see Appendix B.

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CHAPTER 13

Department of Parks and Recreation: Misuse of State Equipment

ALLEGATION I2002-945

A supervisor at the Department of Parks and Recreation (Parks and Recreation) used his state computer to access adult-oriented material on the Internet.

RESULTS AND METHOD OF INVESTIGATION

We asked Parks and Recreation to investigate on our behalf, and it substantiated the allegation. To conduct the investigation, Parks and Recreation interviewed relevant department personnel, including the supervisor, and accessed the supervisor's computer.

In response to an earlier allegation, Parks and Recreation began a preliminary investigation of the supervisor in August 2002, but another supervisor instructed the investigator to "hold off further investigation," and the investigator placed the investigation in a pending folder awaiting further instruction. At that time, Parks and Recreation investigators believed they had reason to question the legitimacy of the allegation. After we requested a formal response to the allegation in March 2003, Parks and Recreation reopened its investigation.

Parks and Recreation determined that the employee received hundreds of adult Web site messages through his state e-mail account but could not take disciplinary action against him because it failed to investigate the allegation in a timely manner.

State laws prohibit employees from engaging in activities that are incompatible with their duties as state employees and from using state resources for personal gain.¹⁵ The supervisor first denied familiarity with a particular adult-oriented Web site but later admitted he was familiar with it and declared he was addicted to this type of Web site. Based in part on this admission by the supervisor, Parks and Recreation determined that he used state resources inappropriately to receive hundreds of adult Web site messages through his state e-mail service. Parks and Recreation also determined that Internet accessibility at the supervisor's office lacked mechanisms to screen inappropriate materials. However, because Parks and Recreation failed to investigate this allegation within the timeframes required by

¹⁵ For a more detailed description of the laws discussed in this chapter, see Appendix B.

law, it could not take disciplinary action against the employee, even though it substantiated that the employee violated department policy.

AGENCY RESPONSE

Parks and Recreation reported that the state e-mail account the supervisor had been using was closed and his new state e-mail account is under a system with more effective controls over Internet access. According to Parks and Recreation, it took no disciplinary action against the supervisor because the department's investigation took more than a year from the date it became aware of the allegation, and state law prohibits departments from taking action against an employee under such circumstances. However, Parks and Recreation counseled the supervisor about his misuse of state resources. ■

CHAPTER 14

Employment Development Department: Misuse of State Resources and Equipment

ALLEGATION I2003-0613

An Employment Development Department (EDD) employee used state equipment to view adult-oriented Web sites.

RESULTS AND METHOD OF INVESTIGATION

EDD investigated and substantiated the allegation. To investigate, EDD conducted an inspection of the employee's computer; reviewed personnel files and employee time sheets; and interviewed the employee and other employees. EDD found that the employee used his state computer for purposes unrelated to work by visiting adult-oriented Web sites on at least two occasions. Based on its inspection, EDD found that on two days in 2002 the employee's computer was used extensively to view adult-oriented Web sites. Although the employee admitted to viewing adult-oriented Web sites on his assigned state computer, he denied using his computer extensively on the dates EDD identified from its inspection. State law requires a state employee to devote his or her full time and attention to state duties during hours of duty and prohibits employees from using state resources for personal purposes.¹⁶

AGENCY RESPONSE

EDD gave the employee a corrective action memorandum advising him that he needs to adhere to EDD policy regarding internet and e-mail usage, and that future incidents of misuse could form the basis for adverse action. ■

¹⁶ For a more detailed description of the laws discussed in this chapter, see Appendix B.

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CHAPTER 15

San Francisco State University: Misuse of State Resources

ALLEGATION I2004-0696

An employee of San Francisco State University (university) used the university's mail system, including its UPS and FedEx accounts, to send personal items without reimbursing the university for these costs.

RESULTS AND METHOD OF INVESTIGATION

We asked the university to investigate on our behalf, and it substantiated the allegation. To conduct its investigation, the university reviewed the documentation available in the mail room and interviewed the employee.

The employee had university staff send his personal packages at university expense.

The university mail room provides a walk-up window to staff and students where they can mail personal items via the United States Postal Service or other private carriers. These transactions are supposed to be paid for by the sender at the time of the transaction. Departments within the university also use the mail room to send letters and packages related to university business.

The California Constitution prohibits gifts of public funds. In addition, state law prohibits state employees from using state resources for private gain or personal advantage, or for an outside endeavor not related to state business.¹⁷ During its investigation, the university found that the mail room documentation was inconclusive with respect to identifying potential abuse, since there are no shipment records that tie shipments to the return address on the parcel; they specify only the department from which the shipment originated. The employee acknowledged that he had university staff send his personal packages but stated that it was his intent to pay for the transaction after staff advised him of the cost. The employee did not explain how he expected the mail room staff to track his personal transactions. Apparently, these transactions were conducted "behind the scenes," not through the public walk-up

¹⁷ For a more detailed description of the laws discussed in this chapter, see Appendix B.

window, and were paid for by the university. The employee acknowledged that inadequate follow-up caused transactions to be overlooked. Based on the employee's own recollection and review, he discovered two instances in which his personal items were shipped at university expense, and he wrote a check to reimburse the university. However, because the university did not maintain detailed records, it was unable to determine whether there were other instances in which this employee or others sent personal items at university expense.

AGENCY RESPONSE

The university reminded mail room staff of the correct procedures to use when individuals wish to ship personal packages. In addition, a manager now reviews invoices for charges specifically related to the mail room. The university did not take further action against the employee, who works for the university under a contract that expires in October 2004. The university told us that it will not reappoint the employee. ■

CHAPTER 16

California Youth Authority: Misuse of State Resources and Equipment

ALLEGATION I2003-0914

A California Youth Authority (CYA) employee used state resources to circulate what could be considered a racially offensive e-mail.

RESULTS AND METHOD OF INVESTIGATION

CYA investigated and substantiated the allegation. Specifically, it determined that 40 CYA employees had either generated and sent, or received and forwarded, inappropriate and non-work-related e-mail messages over the State's e-mail system. CYA investigators accessed the computers of the employees involved and evaluated their contents. In addition, it discussed expectations for oversight of its employees' e-mail usage and reviewed its current e-mail policy.

CYA's e-mail policy prohibits employees from using the State's e-mail system for personal use or uses unrelated to state business. In addition, state law prohibits state employees from using state resources for personal gain.¹⁸ Section 19572 of the California Government Code describes actions that constitute cause for discipline of an employee, such as unlawful discrimination, including harassment, on the basis of race or color.

AGENCY RESPONSE

CYA reported that each of the identified employees, depending on their level of involvement, received either an admonishment or discipline in the form of a Work Improvement Discussion. In addition, the CYA director issued a department-wide notice detailing its policy regarding e-mail usage and the consequences of its misuse. CYA reported that it reissued its e-mail policy to its employees and required them to sign it, acknowledging their understanding of the policy. Finally, according to CYA, it

¹⁸ For a more detailed description of the laws discussed in this chapter, see Appendix B.

configured its e-mail system to require each employee to read and acknowledge a brief statement of the department's e-mail policy prior to completing the sign-on process. ■

CHAPTER 17

Department of Veterans Affairs: Improper Authorization and Use of State Vehicles

ALLEGATION I2004-0712

An employee of the Department of Veterans Affairs (Veterans Affairs), Barstow Veterans Home (veterans home), commuted to or from his home using a state vehicle without proper authorization and without properly completing a vehicle mileage log.

RESULTS AND METHOD OF INVESTIGATION

We asked Veterans Affairs to investigate on our behalf, and it substantiated the allegation. Veterans Affairs reviewed relevant laws and regulations and interviewed staff. It found that a manager, without authority to do so, provided approval to the employee to use a state vehicle for personal use, which he then used to commute with two other employees. Veterans Affairs also found that although the employee used both a state van and car, he did not complete the travel logs as provided in the veterans home's policy.¹⁹

A manager allowed an employee to use a state vehicle for his personal use and daily commute without authority to do so.

The veterans home policy provides guidelines for transporting veterans home members, the process of obtaining a vehicle, the driver's responsibility, checking the vehicle for damage, and who can operate the vehicle. The policy also contains a brief section related to keys and travel logs. However, the policy does not provide specific information regarding the personal use of a state vehicle. The manager who improperly provided the employee with authority to use the state vehicle said that her approval was an incentive for recruitment and retention purposes, stating that the employee, who has 30 years of experience, was performing critical work. However, Veterans Affairs pointed out that state regulations and policies do not provide for the use of a state vehicle as an incentive or for recruitment and retention. A veterans home executive confirmed that the employee has used both a state van and car to carpool with two other veterans

¹⁹ For a more detailed description of the laws discussed in this chapter, see Appendix B.

home employees since February 2004. Veterans Affairs stated that this was an inappropriate use of the vehicles, as they are not designated for carpool use. Veterans Affairs was unable to find travel logs that showed how the state van and car were used.

Because the employees used the state vehicles for their personal commutes, that use violated both the general state law that prohibits employees from using state resources for private gain and the specific state laws and regulations governing the use of state vehicles.

AGENCY RESPONSE

Veterans Affairs said it would reissue its policy on the use of state vehicles, which will include the specifics of completing the travel logs and the appropriate use of state vehicles in accordance with state regulations and policies. In addition, Veterans Affairs said it was advising the employee that all personal mileage previously accrued and to be accrued in the 2004 calendar year will be taxed as a fringe benefit. ■

CHAPTER 18

California Public Employees’ Retirement System: Inappropriate Use of State Equipment

ALLEGATION I2003-0882

An employee of the California Public Employees’ Retirement System (CalPERS) inappropriately used state resources to conduct non-state business during work hours.

RESULTS AND METHOD OF INVESTIGATION

We asked CalPERS to investigate on our behalf, and it reported that it had already substantiated this allegation, as well as others. To conduct the investigation, CalPERS observed the employee’s Internet and phone usage and reviewed his time reporting information and state phone records. CalPERS also interviewed the employee and his supervisor.

CalPERS determined that the employee’s activities were clearly incompatible with his duties as a state employee. Specifically, the employee accessed the Internet several times while on duty, despite being warned that such use should occur only during his scheduled lunch and break times. Further, CalPERS found that the employee made an excessive number of calls from his state phone. Finally, it also found that the employee had a large number of absences and left work without approval on at least three occasions over a five-month period.

State law requires state employees to devote their full time, attention, and efforts to their state jobs during hours of duty as state employees and identifies certain activities as being incompatible with state employment, including using state time, facilities, equipment, or supplies for personal gain or advantage.²⁰

²⁰ For a more detailed description of the laws discussed in this chapter, see Appendix B.

AGENCY RESPONSE

CalPERS reported that its managers have documented their concerns regarding the employee's inappropriate use of state resources for personal use and implemented an employee corrective action plan. CalPERS also reported that it will continue to monitor the employee's compliance with that plan.

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

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: September 23, 2004

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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 \$13.6 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 that 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 (Whistleblower 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.

The individual chapters describe the corrective actions that agencies took on cases in this report. Table A.1 summarizes all the corrective actions that agencies have taken 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 July 1993 Through June 2004	
Type of Corrective Action	Instances
Referrals for criminal prosecution	74
Convictions	7
Job terminations	61
Demotions	10
Pay reductions	19
Suspensions without pay	15
Reprimands	168

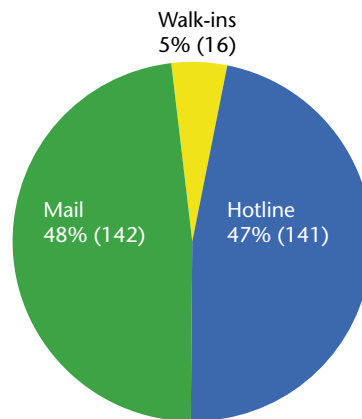
New Cases Opened Between January 2004 and June 2004

From January 1, 2004, through June 30, 2004, the bureau opened 299 new cases.

The bureau receives allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 or (866) 293-8729 (TTY) reported 141 of our new cases in this time period.²¹ The bureau also opened 142 new cases based on complaints it received in the mail and 16 based on complaints from individuals who visited the office. Figure A.1 shows the sources of all the cases opened from January 2004 through June 2004.

FIGURE A.1

Sources of 299 New Cases Opened January 2004 Through June 2004



Work on Investigative Cases January 2004 Through June 2004

In addition to the 299 new cases opened during this six-month period, 251 previous cases awaited review or assignment as of January 1, 2004; 23 were still under investigation by this office or by other state agencies or were awaiting completion of corrective action. Consequently, 573 cases required some review during this period.

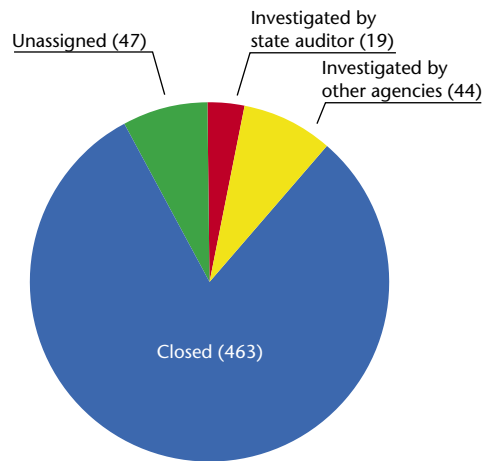
²¹ In total, the bureau received 2,342 calls on the hotline from January 2004 through June 2004. However, 1,487 (63 percent) of the calls were about issues outside the bureau's jurisdiction. In these cases, the bureau attempted to refer the caller to the appropriate entity. An additional 714 calls (30 percent) were related to previously established case files.

After examining the information gathered from complainants and preliminary reviews, the bureau concluded that 373 cases did not warrant complete investigation because of lack of evidence.

The Whistleblower Act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From January 1, 2004, through June 30, 2004, state agencies investigated 44 cases on the bureau's behalf and substantiated allegations on 16 (53 percent) of the 30 cases they completed during the period. In addition, the bureau independently investigated 19 cases and substantiated allegations on four of the 11 completed during the period. Figure A.2 shows the disposition of the 573 cases the bureau worked on from January 2004 through June 2004. As of June 30, 2004, the bureau had 47 cases awaiting review or assignment.

FIGURE A.2

**Disposition of 573 Cases
January 2004 Through June 2004**



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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 that this report describes.

CAUSES FOR DISCIPLINING STATE EMPLOYEES

The California Government Code, Section 19572, enumerates the various causes for disciplining state civil service employees. These causes include incompetence, inefficiency, inexcusable absence without leave or neglect of duty, insubordination, dishonesty, misuse of state property, and other failure of good behavior, either during or outside of duty hours, that is of such a nature that it causes discredit to the appointing authority or the person's employment.

CRITERIA CONCERNING EMBEZZLEMENT

Chapters 1 and 3 report on embezzlement and theft of state gasoline.

California Penal Code, Section 484(a), states that every person who feloniously steals, takes, carries, leads, or drives away the personal property of another or who fraudulently appropriates property that has been entrusted to him or her is guilty of theft. Section 504 of the code provides that every state officer and every director, trustee, clerk, and servant of that officer who fraudulently appropriates, to any use or purpose not in the due and lawful execution of that person's trust, any property in his or her possession is guilty of embezzlement. Section 487(a) states that an individual commits grand theft when the money, labor, or real or personal property taken exceeds \$400, and Section 489(b) establishes that grand theft that does not involve the use of a firearm is punishable by imprisonment for up to one year.

State policies limit the type of gasoline employees may purchase. Section 3687.1 of the State Administrative Manual prohibits employees from purchasing premium-grade unleaded gasoline and restricts gasoline purchase to unleaded gasoline except when the vehicle's manufacturer recommends leaded gasoline.

CRITERIA COVERING STATE MOTOR VEHICLES

Chapters 2, 3, 7, and 17 report on the improper use of state vehicles.

California Government Code, Section 19993.1, provides that state-owned motor vehicles shall be used only in the conduct of state business. Section 599.800(e) of Title 2 of the California Code of Regulations defines the use of a vehicle in the conduct of state business as driving the vehicle in the performance of, or necessary to, or in the course of the duties of state employment. The regulations permit employees to use a state vehicle to commute to work under certain approved circumstances. Specifically, Section 599.802(b)(3) of the regulations allows employees to use state vehicles to drive to or from their home or the vicinity thereof after completion of the employee's workday when no state garage facility is available. However, employees who do use state vehicles to commute must report this benefit in accordance with Internal Revenue Service Regulation 1.61-21(a), which states that gross income generally includes fringe benefits, such as use of an employer-provided automobile.

The California Code of Regulations, Title 2, Section 599.807(a), states that each state agency shall maintain an automobile travel log for each automobile. The form must be completed on a daily basis and must include daily mileage traveled, date and time of travel, itinerary, and the identity of the driver. In addition, Section 599.808 of the regulations declares that when a state-owned vehicle is to be stored frequently at or in the vicinity of an employee's home, regardless of the reason, the employee must obtain a permit in advance from his or her department. Departments issuing these permits must make them available for review by the Department of General Services (General Services), and any department may be required to submit permits to General Services for final approval. This regulation defines "frequently" as storing a state-owned vehicle at an employee's home, or in the vicinity thereof, for more than 72 nights over a 12-month period or for more than 36 nights over any three-month period. In addition, the *Fleet Handbook* of General Services' Office of Fleet Administration allows employees to obtain home storage permits in instances when state, other governmental entity, or commercial parking is unavailable.

The Department of Veterans Affairs transportation policy establishes procedures to control the usage, storage, and maintenance of state vehicles kept at veterans homes located throughout the State. The policy concerning the use of state

vehicles gives priority to the medical needs of residents, followed by other resident needs such as religious or recreational outings, and lastly, the training and administrative needs of staff.

CRITERIA COVERING EMPLOYEE PAY

Chapter 4 reports on improper payments to employees.

Section 19826 of the California Government Code requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service. The California Code of Regulations, Title 2, Section 599.681, requires that unless otherwise authorized by the director of the Department of Personnel Administration, employees who qualify under established criteria and move from one alternate salary range to another shall receive an increase or decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges and shall retain the salary adjustment anniversary date.

The Department of Personnel Administration's Pay Scales and Section 2.10 of the state contract for employees belonging to Bargaining Unit 12 permits the State to provide Alternate Range 40 compensation to incumbents in positions approved by the Department of Personnel Administration as having regular, direct responsibility for work supervision, on-the-job training, and work performance evaluation of at least two inmates, wards, or resident workers who substantially replace civil service employees for a total of at least 173 allocated hours per pay period. If the State overpays these employees, Section 19838 of the California Government Code and Section 2.7 of the contract permit the State to seek reimbursement by following agreed-upon collection methods but prohibit the State from initiating this action unless it is initiated within three years from the date of the overpayment.

REGULATIONS COVERING TRAVEL EXPENSE REIMBURSEMENTS AND PAYMENT OF COMMUTING EXPENSES

Chapters 2 and 17 report improper payment of travel or commuting expenses.

The California Code of Regulations, Title 2, Section 599.615.1, requires each state agency to determine the necessity for travel and states that this travel shall represent the State's best interest.

Sections 599.626 and 599.626.1 disallow expenses that arise from travel between home or garage and headquarters. When a trip begins or ends at the employee's home, the distance the employee travels shall be computed from the lesser of the employee's home or headquarters.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapters 1, 2, and 4 report on weaknesses in management controls, and Chapter 12 reports on department responsibilities concerning time and attendance abuse.

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 the 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, the Accountability Act requires that, when detected, weaknesses must be corrected promptly.

Title 2 of the California Code of Regulations, Section 599.665, requires departments to keep complete and accurate time and attendance records for each employee.

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 report incompatible activities.

Incompatible activity prohibitions are designed to prevent state employees from being improperly 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.

Incompatible activities also include using the prestige or influence of the State for one's private gain or advantage or 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. Further, Section 19990 requires state employees to devote their full time, attention, and efforts to their state jobs during hours of duty as state employees.

The same law also requires state departments to define incompatible activities. Title 15 of the California Code of Regulations, Section 3413, prohibits Department of Corrections' employees from engaging in any employment or activity inconsistent or incompatible with employment by the Department of Corrections, including but not limited to engaging in any employment or activity that will prevent the employee from doing his or her job as an employee of the department in an efficient and capable manner and conducting activities not related to the mission or work tasks of the department. Similarly, the Department of Health Services' *Health Administration Manual*, Section 8-1130, states that no employee shall engage in any outside employment, activity, or enterprise that involves such a time demand that it results in less efficient or impaired performance of the employee's regular state duties.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN

Chapters 1, 2, 3, 6, 8, 10, 11, 13, 14, 15, and 16 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 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.

GIFT OF PUBLIC FUNDS

Chapters 2 and 15 report on gifts of public funds.

The California Constitution, Section 6, Article XVI, prohibits the giving of any gift of public money or thing of any value to any individual for a private purpose. This constitutional prohibition is designed to ensure that the resources of the State will be devoted to public purposes.

EMPLOYEE CONDUCT

Chapter 7 reports on employee misconduct.

Title 15 of the California Code of Regulations, Section 3391, requires Department of Corrections employees to be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors, and members of the public. Employees are to avoid irresponsible and unethical conduct or conduct reflecting discredit on themselves or the department.

IMPROPER ACCESS TO CONFIDENTIAL INFORMATION

Chapters 6 and 7 report on accessing and sharing confidential information.

Title 5, Section 552a, of the United States Code, known as the Privacy Act of 1974, and Article 1, Section 1, of the California Constitution address privacy rights. Section 1798 of the California Civil Code, known as the Information Practices Act, recognizes the increased threat to privacy rights, given the proliferation of computers and other types of information technology, and imposes strict limits on the maintenance and dissemination of personal information. Section 1798.24, contained within that act, prohibits state agencies from disclosing any personal information in a manner that would link the information to the individual to whom it pertains.

The California Motor Vehicle Code, Section 1808.21, states that any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency

as authorized by other sections of this code. In addition, Section 6.08 of the Department of Insurance's policy manual for its investigators states that no unauthorized person shall have access to any assigned investigation files or related documents and prohibits investigators from releasing documents from the file to outside parties, except to other investigative agencies with whom the department is conducting a joint investigation.

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