

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 Through June 2000



August 2000
I2000-2

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CALIFORNIA STATE AUDITOR

MARY P. NOBLE
ACTING STATE AUDITOR

STEVEN M. HENDRICKSON
CHIEF DEPUTY STATE AUDITOR

August 24, 2000

Investigative Report I2000-2

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 activity completed from January through June 2000.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

CONTENTS

| | |
|----------------|---|
| <i>Summary</i> | 1 |
|----------------|---|

Chapter 1

| | |
|--|---|
| Board of Chiropractic Examiners: Theft and Misuse of State Property | 5 |
|--|---|

Chapter 2

| | |
|--|---|
| California State Prison, San Quentin: Improper Representations to Other Governmental Entities, Personal Use of Funds, and Failure to Withhold Payroll Taxes | 9 |
|--|---|

Chapter 3

| | |
|--|----|
| Department of Motor Vehicles: Misuse of the State's Prestige, Time, and Equipment | 17 |
|--|----|

Chapter 4

| | |
|--|----|
| Prison Industry Authority: Improper Contracting Practices | 21 |
|--|----|

Chapter 5

| | |
|--|----|
| Department of Transportation: Misuse of State Funds and Circumvention of Controls Over Vehicle Purchases | 29 |
|--|----|

Chapter 6

| | |
|--------------------------------------|----|
| Update on Previously Reported Issues | 35 |
|--------------------------------------|----|

Department of Corrections, Case I960094
Office of Criminal Justice Planning, Case I980135
Department of Transportation, Case I990022
California Science Center, Case I990031

Appendix A

| | |
|-----------------|----|
| Activity Report | 41 |
|-----------------|----|

Appendix B

| | |
|---------------------------------------|----|
| State Laws, Regulations, and Policies | 45 |
|---------------------------------------|----|

Appendix C

Incidents Uncovered by Other Agencies 51

Index 57

SUMMARY

Investigative Highlights . . .

State employees engaged in improper activities, including the following:

- Stealing computers and misusing state vehicles at a cost of more than \$7,000.*
 - Misusing more than \$2,600 of a nonprofit organization's funds.*
 - Awarding over \$400,000 in contracts without allowing fair competition.*
 - Spending roughly \$1,600 in state funds for gifts.*
-

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The act defines “improper governmental activity” as any activity by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency. To enable state employees and the public to report these activities, the bureau maintains the toll-free Whistleblower Hotline (hotline). **The hotline number is (800) 952-5665.**

If the bureau determines reasonable evidence exists of improper governmental activity, it confidentially reports the details of the activity to the head of the employing agency or the appropriate appointing authority. The employer or appointing authority is required to notify the 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 five investigations completed by the bureau and other state agencies between January 1 and June 30, 2000, that substantiated complaints. Following are examples of the substantiated improper activities:

BOARD OF CHIROPRACTIC EXAMINERS

An employee of the Board of Chiropractic Examiners engaged in the following improper activities:

- Stole two new laptop computers that cost approximately \$5,200.
- Misused state vehicles at a cost of more than \$2,000 to the State.

- Sold surplus state computer equipment without authorization.
- Failed to pay back a travel advance of \$500.

CALIFORNIA STATE PRISON, SAN QUENTIN

While still working at the California State Prison, San Quentin (prison), an employee engaged in the following improper activities:

- Made improper representations to other governmental entities when establishing a nonprofit organization (association) affiliated with the prison.
- Used more than \$1,300 of the association's funds for personal purposes and made other questionable expenditures from the association's account.
- Failed to withhold payroll taxes and make payments to tax authorities for employees of the association's museum.

DEPARTMENT OF MOTOR VEHICLES

An investigator at the Department of Motor Vehicles (DMV) engaged in the following improper activities:

- Abused the prestige of his official position with the State by using DMV letterhead to communicate to a court his support of one party in a private lawsuit.
- Used a state vehicle and state time to attend court proceedings on the private lawsuit.

PRISON INDUSTRY AUTHORITY

A manager at the Prison Industry Authority (PIA) engaged in the following improper contracting activities:

- Allowed one company to work on a PIA project, at a cost of approximately \$271,000, under the auspices of a second company's contract, because the first company was not a state-approved vendor.

- Awarded two other PIA projects, totaling over \$146,000, directly to the first company without following state-required procedures.

DEPARTMENT OF TRANSPORTATION

An official at the Department of Transportation (Caltrans) engaged in the following improper activities:

- Circumvented state policy to obtain a larger, more fully equipped automobile than the one he was entitled to drive.
- Spent more than \$1,600 in state funds to purchase gifts for visitors to the Caltrans office.
- Used \$226 in state funds to purchase a small refrigerator for his office.

In addition, Caltrans improperly allowed an individual who was the subject of an ongoing internal investigation to sit on the panel that was selecting the new head of the unit conducting the investigation.

SUMMARIES AND APPENDICES

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

Appendix A contains statistics on the complaints received by the bureau between January 1 and June 30, 2000, and summarizes our actions on those and other complaints pending as of December 31, 1999. It also provides information on the \$12 million in improper activities substantiated since 1993 and the corrective actions taken as a result of our investigations.

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

Appendix C provides information on actual or suspected acts of fraud, theft, or other irregularities identified by other state entities. Section 20060 of the State Administrative Manual requires state agencies to notify the bureau and the Department

of Finance of such actual or suspected acts. It is our intention to inform the public of the State's awareness of such activities and to publicize the fact that agencies are taking action against wrongdoers and working to prevent improper activities.

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

CHAPTER 1

Board of Chiropractic Examiners: Theft and Misuse of State Property

ALLEGATION I990006

An employee (employee A) at the Board of Chiropractic Examiners (board) stole two new laptop computers for his personal use.

RESULTS AND METHOD OF INVESTIGATION

When we began our investigation, we learned that the California Highway Patrol (CHP) was conducting a criminal investigation of the alleged theft. With the CHP, we investigated and substantiated the allegation and other improper activities of employee A.

In October 1998, employee A stole two new laptop computers that cost approximately \$5,200 from the board. He gave one of the laptop computers to his girlfriend and kept the other. On March 5, 1999, the CHP arrested employee A and charged him with grand theft, receiving stolen property, embezzlement, and defrauding others of money and property.¹

Employee A also possessed computer software and other equipment belonging to the board valued at more than \$1,300. We believe employee A also stole these state properties. In addition, employee A misused state vehicles for his personal benefit at a cost of more than \$2,000 to the State. Moreover, employee A sold surplus state computer equipment without authorization.

To investigate the allegations, we reviewed the board's purchase orders and inventory records. We also reviewed employee A's travel expense claims. In addition, we interviewed employee A's supervisor and other employees at the board and reviewed the evidence reports prepared by the CHP.

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

THE EMPLOYEE STOLE TWO NEW LAPTOP COMPUTERS FROM THE BOARD

Employee A used state funds to purchase two laptop computers but never used the computers for board business. Instead, he kept one computer and gave the other to his girlfriend as a birthday gift.

The employee used \$5,200 in state funds to purchase two computers. He kept one and gave the other to his girlfriend.

In September 1998, employee A provided a quote sheet from a computer vendor for two new laptop computers to another board employee (employee B) and asked her for a purchase order number so he could place a phone order to the computer vendor. On September 25, 1998, employee B prepared a requisition form, which employee A signed on September 28, confirming the order. The Department of General Services (DGS) eventually issued a purchase order for the computers on the board's behalf on October 5, 1998.

The computer vendor stated that employee A had picked up the two laptop computers from the vendor on October 2, 1998. On October 19, 1998, the board received an invoice from the vendor for two laptop computers costing roughly \$5,170, and on October 20, 1998, employee A signed and approved the invoice for payment. The board, through DGS, subsequently paid for the computers.

In November 1998, board employees became suspicious about employee A's possession of a new laptop computer. Employee A's supervisor asked him how he acquired the computer. The supervisor stated that employee A told her that he bought the computer with his personal funds. With that, the supervisor considered the matter settled.

On March 3, 1999, employee B informed the supervisor in a memorandum that employee A had used board funds to purchase two new laptop computers that the board had never received. On March 4, 1999, the supervisor asked the CHP to investigate the possible theft of the laptop computers. On the following day, the CHP retrieved one of the stolen computers from the home of employee A's girlfriend, and CHP officers arrested employee A for grand theft.

On March 6, 1999, the CHP obtained search warrants to search employee A's residence and car. From the searches, the CHP found the second laptop computer as well as other state

property, including additional computer equipment, computer software, slide projection equipment, a step stool, and a hand truck.

THE EMPLOYEE MISUSED STATE VEHICLES FOR PERSONAL BENEFIT

On 11 occasions from November 1997 to May 1998, employee A checked out state vehicles from the state garage for his personal use. The board paid more than \$2,000 for employee A's personal use of state vehicles.

By law, government employees can use state-owned vehicles only to conduct state business or, more specifically, in the performance of the duties of state employment. Moreover, state law prohibits state employees from using state resources for personal enjoyment or for an endeavor not related to state business. Although state employees can under certain approved circumstances use state vehicles to commute to work, employees who do so generally must report the value of this use as taxable income.

According to employee A's supervisor, employee A had no state business that would have required a state car on any of the 11 occasions. For example, on November 10, 1997, employee A went to the state garage in Sacramento and checked out a car for local use. He indicated on the vehicle checkout document that he would return the car on the same day. However, employee A did not return the car until November 25, 1997, 14 days late, and drove 350 miles during that period. DGS invoiced the board for \$251 on December 19, 1997, and the board paid the charges on January 20, 1998. On another occasion, on December 22, 1997, employee A checked out a state vehicle that he kept for 24 days and drove 737 miles at a cost to the board of \$424.

THE EMPLOYEE SOLD SURPLUS STATE EQUIPMENT WITHOUT AUTHORIZATION

Employee A sold surplus state computer equipment to other board employees without receiving the required approval of DGS. Employee A apparently collected checks from other board

employees for the surplus computer equipment. The checks were made payable to the board, which might explain why employee A did not cash them.

In addition, employee A sold the equipment to state employees without offering the public the opportunity to purchase the equipment. According to the State's policy, a state agency can offer surplus property for sale to the public, and state employees can participate in public sales. However, state employees can participate in these sales only if they do so in the same manner as the general public and do not use their position, office, or prestige to their advantage. Furthermore, state employees cannot participate in these sales on state time.

THE EMPLOYEE FAILED TO PAY BACK A TRAVEL ADVANCE

On April 14, 1998, employee A requested a \$500 travel advance using a Social Security number that was not his. After completing his travel, employee A submitted a travel expense reimbursement claim in the amount of \$555 using his correct Social Security number. While it is possible employee A mistakenly used an incorrect Social Security number when requesting the advance, he nonetheless kept both the travel advance and the travel reimbursement, resulting in a personal gain of \$500.

AGENCY RESPONSE

On March 3, 1999, the board filed an action to dismiss employee A for incompetence, inefficiency, misuse of state property, insubordination, and neglect of duty, among other improprieties. Employee A appealed his dismissal, but the administrative law judge upheld it, effective March 15, 1999. ■

CHAPTER 2

California State Prison, San Quentin: Improper Representations to Other Governmental Entities, Personal Use of Funds, and Failure to Withhold Payroll Taxes

ALLEGATION I990090

While employed at the California State Prison, San Quentin (prison), the employee improperly established a museum on prison grounds and, as an officer of a nonprofit organization, paid wages to that organization's employees without withholding required taxes.²

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation and other improper activities. We found that the prison employee (employee) made false representations to other governmental entities when establishing a nonprofit organization (the association). For example, the employee claimed that the prison's warden would oversee the finances and operations of the association and its museum, which was to be located on prison grounds. However, the individual who was the warden at that time did not agree to or know he had been delegated such responsibilities. The employee led the warden to believe that his intention in incorporating the association was to clearly separate it from the prison. The warden told us that he gave his permission for the association to establish a museum in an otherwise unused building on prison grounds but that the employee did not tell the warden that he had any responsibilities related to the association or its museum.

In addition, the employee mismanaged the association, placing the reputation of the prison at risk and exposing the State to potential liabilities for debts incurred by the association and for

² The prison employee retired after he engaged in these activities, but before we conducted our investigation.

his misuse of association funds. The employee used more than \$1,300 of the association's funds for personal purposes and made other questionable expenditures from the association's account. Further, as an officer of the association, the employee paid wages to five individuals who worked at the museum but did not withhold the required payroll taxes from the wages, nor did he make the required payments to tax authorities. The employee was able to engage in these improper activities, at least in part, because he was a prison employee and because he assumed all the roles related to managing the association.

To investigate the allegation, we reviewed the association's records. These included checking account statements from January 1995 through November 1999, as well as canceled checks for parts of 1995 and 1996, all of 1997, and January through August 1998. We also reviewed the association's state tax returns for 1986 through 1990 and for 1993 through 1995, and federal tax returns for 1988 through 1990 and for 1995. We reviewed federal tax guidelines and state tax laws.³ In addition, we reviewed the association's constitution and articles of incorporation. Finally, we interviewed the employee, former museum employees, and other former and current prison employees.

BACKGROUND

Beginning on August 7, 1992, the prison housed the San Quentin Museum (museum). The museum contained historic memorabilia of the prison and a souvenir and gift shop that sold memorabilia such as books, mugs, replicas of correctional officer badges, and T-shirts. In early 1999, the acting warden of the prison closed the museum because of suspected discrepancies in the museum's financial operations.

THE EMPLOYEE MISREPRESENTED THE PRISON'S ROLE IN THE MANAGEMENT OF THE ASSOCIATION

On September 18, 1986, the employee filed articles of incorporation with the secretary of state to establish the association as a nonprofit public benefit corporation. According to the articles of incorporation, the purpose of the association is to preserve, document, and display, for educational and charitable purposes,

³ For a more detailed discussion of the guidelines and laws, see Appendix B.

Although the employee led the IRS, the FTB, the secretary of state, and the attorney general to believe that the prison's warden would oversee the association, he did not tell the wardens of this responsibility.

the historic memorabilia of the prison. Furthermore, according to the articles, the association undertakes activities under the direction of the prison's warden to provide educational and cultural services to the membership and the general public. By specifying that a state official had direct responsibilities for the association, the employee improperly granted the association the prestige of the State and implied that the State supported its activities and accepted responsibility for them. The employee made similar representations in documents he submitted to the federal Internal Revenue Service (IRS) and the California Franchise Tax Board (FTB) as part of the association's application for tax-exempt status; and with the California Attorney General's Registry of Charitable Trusts. These representations further created an impression that the State and the prison accepted responsibility for the association.

The employee told us that, by his representation of the warden's responsibilities for the association, he did not mean to influence either the IRS or the FTB in their consideration of the association's applications for tax-exempt status. On the contrary, he believed that the articles of incorporation served, among other things, to separate the prison, the Department of Corrections (Corrections), and the State from the association. He told us he could not remember the specific purpose of detailing the warden's responsibilities in the documents. However, he said he might have been trying to assure the warden that, because the museum was located on prison property, the warden had the power to close it at any time.

However, the employee did not inform the two former wardens who held their positions during and after the date of incorporation, that the articles of incorporation designated the warden as having responsibilities related to the management of the association. He said that, although he never directly told them that they had no responsibilities, he intentionally led them to believe that they had none through casual remarks to them. Warden A, who was the prison's warden during the period that the association first formed, stated that he did not know that the association's articles of incorporation purport to assign the warden certain oversight obligations, including numerous financial oversight duties such as chairperson of the association's executive committee. Therefore, he did not perform any of the duties assigned by the articles of incorporation for the association.

Warden B, who became the prison's warden in January 1994, also said he was not aware that he had any responsibilities related to the association. He said his predecessor did not mention anything about the association, and nothing in any of his official files indicated he had any responsibilities for it. According to warden B, one of his staff members informed him sometime around September 1998, shortly before he retired in December 1998, that he was chairperson of the association's executive committee. However, warden B confirmed that he did not fulfill this or any of the assigned obligations.

The articles of incorporation for the association also define the role of secretary/treasurer, who is to receive all money belonging to the association and pay all expenses upon approval of the executive committee. Furthermore, the secretary/treasurer is responsible for making a report at an annual meeting of all money that was received and disbursed. However, no secretary/treasurer ever performed these functions. We were unable to determine whether the individual who was designated as the secretary/treasurer knew he had these responsibilities.

Instead, as an officer of the association, the employee controlled all the income and expenditures of association funds. The employee told us that he collected all cash receipts, deposited cash in the association's bank accounts, paid bills, ordered resale merchandise, and paid all vendors. The employee said the cash he collected came from retail sales, occasional wholesale or mail-order sales, donations from museum visitors, and association membership dues. He said that occasionally one person working in the museum also collected cash and deposited it in the association's account. The employee said that he paid all bills with checks drawn on the association's checking account.⁴ He further said that he never reconciled the bank statements to the carbon copies of association checks that he used instead of check registers. Both former wardens stated that they do not know who received and disbursed the association's funds.

Good internal controls for any organization call for duties to be separated so that one person's work routinely serves as a check on another person's work. This separation of duties ensures that no one person has complete control over more than one key financial function, such as authorizing purchases, approving

⁴ As discussed in the next section of this chapter, the employee made some payments on a bank loan for the association from his personal checking account.

expenditures, disbursing funds, or receiving income. Because the employee performed all functions related to managing the association, including those specifically assigned to other officers of the association, the association's assets were not properly managed and safeguarded.

THE EMPLOYEE SPENT ASSOCIATION FUNDS FOR PERSONAL AND OTHER INAPPROPRIATE PURPOSES

The association first obtained an automated teller machine (ATM) card in January 1998; from that date through May 1999, the employee used the card to pay for personal items at retail outlets and to obtain cash for his personal use. The employee used approximately \$1,338 of the association's cash for his own benefit in April through July 1998, October and November 1998, and January 1999—a total of 21 times. The association's bank account statements for February through November 1999 show no use of the ATM card.

Consistent with state law, the association's articles of incorporation prohibit distribution of any of the association's net income to any director, officer, member, or private person. Furthermore, the association's constitution prohibits any distribution of the net earnings of the association to its members, trustees, officers, or private persons except to pay reasonable compensation for services or to accomplish the association's tax-exempt purposes. By withdrawing association funds for his own use, the employee would seem to have been violating these rules.

The employee claims that he used the association's ATM card inadvertently. He had ATM cards from the same bank for both his personal account and the association's account, and he assigned the same personal identification number to both cards. He attributed these inadvertent uses to stress-induced inattentiveness caused by his own health problems and the grave illness of another family member. The employee said that, in mitigation, he made donations to the association that total more than the amount of funds he used inadvertently. Furthermore, he contended that those donations should suffice as reimbursement for the association funds he used for personal business. He said that he made the donations to ensure the association had adequate funds to continue making payments on a bank loan it had obtained for publishing a book. According to the employee,

Although the employee donated more than \$3,000 to the association, he improperly used more than \$1,300 of the association's cash for his personal benefit and another \$1,300 for parties.

he made donations both by depositing funds directly to the association's checking account and by making payments directly to the lender in the form of one personal check and seven personal money orders. After reviewing the association's financial documents, we concluded that the employee made deposits of \$620 to the association's checking account between January and October 1999, and made approximately \$2,645 in payments on the association's bank loan. The employee's donations totaled about \$3,265—roughly \$1,927 more than the amount of association funds he used for personal purposes.

In addition to misuse of the ATM card for personal expenses, the employee wrote at least three checks on the association's checking account for other inappropriate purposes. According to the employee, one check for \$700 and another for \$300 were advances for retirement parties for other prison employees. The employee told us that the third check, in the amount of \$300, was also for a party but that he could not remember the specific occasion. However, he said he is certain that it was for a party for someone retiring or departing because the payee was his former departmental secretary, and the only reason he ever wrote checks to her was for this type of function. The employee said that the association was reimbursed for each advance, although we could find no evidence of reimbursement. Nevertheless, the employee defied the association's articles of incorporation by using the funds for other than services or charitable purposes. Furthermore, the articles of incorporation prohibit the association from using its income for the benefit of any person. Both wardens A and B told us they did not know that the association was using its funds to pay for retirement parties or for loans for these parties. Although the employee was not formally acting in his capacity as a prison employee, he was able to establish the association and operate the museum largely because of his employment at the prison.

THE EMPLOYEE PAID WAGES TO MUSEUM EMPLOYEES BUT DID NOT WITHHOLD TAXES

The employee admitted that he paid some museum employees but failed to withhold taxes of any kind from their wages. Wardens A and B stated that they thought the museum workers were volunteers, not paid employees, and so were unaware that the association had any obligation to withhold taxes.

Although the association has tax-exempt status, it must still withhold taxes from museum employees' wages and pay the taxes to the Employment Development Department (EDD) each calendar quarter. At least five people worked for pay at the museum between 1995 and 1998, performing tasks such as opening and closing the museum, accepting visitors' donations, operating the cash register, and ordering items sold in the souvenir shop. Two of the former museum employees acknowledged that the association paid them on an hourly basis for work they performed for the museum. They also admitted that the association did not withhold taxes of any kind from their pay. Based on the records that we reviewed, the least amount the association paid any employee in one year from 1995 to 1998 was \$100. The most the association paid any employee in one year in the same period was \$3,299. The highest-paid employee earned a total of \$7,781 over the four years for which we have records.

The prison employee said that he did not withhold taxes because he did not consider the people working at the museum to be the association's employees. Instead, he considered them independent contractors because they worked variable and irregular hours. However, he admitted that he did not review any EDD or IRS literature that defines "independent contractor," nor did he contact EDD or the IRS to seek an opinion on the employees' status. One of the former museum employees told us he had an agreement with the prison employee that he would work as an independent contractor. In fact, the association's records included four memos addressed to the museum employee dated May 19, September 8, September 15, and September 22, 1995. Each memo contained the subject line, "Independent Contract—Operation of San Quentin Museum," and each identified a time period, a total number of hours, a labor rate, a benefits rate, and a total amount.

However, EDD draws a distinction between a common-law employee and an independent contractor. By definition, in a common-law relationship, the person who hires an individual to perform services has the right to exercise control over how the individual performs his or her services. EDD further states that the right to discharge a worker at will and without cause is strong evidence of the right of direction and control. It also lists 11 factors to consider when determining whether a worker is an employee or a contractor, including the following: (1) whether

the work the individual performs is a regular part of the employer's business; (2) whether the employer requires the individual to have a particular skill in order to perform the work and accomplish the desired result; and (3) whether the employer or the person providing the services supplies the tools, equipment, and place of work.

Although the employee contended that the individuals who worked at the museum were independent contractors, based on IRS guidelines, we concluded that they were employees whose wages were subject to tax withholding.

Likewise, IRS Publication 15-A points to the right of control over the means and method of accomplishing the work as a determination that a worker is a common-law employee. This publication also lists 11 factors to consider in determining whether a worker is an employee or an independent contractor. Some of the factors to consider are whether the worker is paid by the hour or by the job, the extent to which the worker can realize a profit or sustain a loss, and the extent to which the services provided by the worker are a key aspect of the regular business of the company. The IRS offers assistance to employers to determine whether their workers are employees or independent contractors.

Although we did not solicit an IRS opinion on the status of the workers, we reviewed the nature of the work performed by the museum workers in light of EDD and IRS rules and believe that they were not independent contractors but common-law employees. Therefore, we believe the association should have withheld and remitted required taxes. Again, although the employee was not formally acting in his capacity as a prison employee, he was able to establish the association and operate the museum largely because of his employment at the prison.

AGENCY RESPONSE

Corrections is further investigating the issues raised in our report. After its investigation is complete, it will decide what action to take. ■

CHAPTER 3

Department of Motor Vehicles: Misuse of the State's Prestige, Time, and Equipment

ALLEGATION I2000-642

An investigator (employee A) at the Department of Motor Vehicles (DMV) abused the prestige of his official position with the State when he used DMV letterhead to communicate to a court his support for one party in a private lawsuit. He also allegedly attended court proceedings unofficially but on state time, using a state vehicle to drive there.

RESULTS AND METHOD OF INVESTIGATION

We asked DMV to investigate the allegations on our behalf. DMV substantiated the allegations, finding that in his letter to the court, employee A supported the first party (complainant) in the lawsuit and attacked the credibility of the second party, also a DMV employee (employee B). In addition, employee A improperly used a state vehicle and state time to attend court proceedings on the private lawsuit.

To investigate the allegations, DMV interviewed both parties to the private lawsuit and DMV employees, including employee A. It also obtained and reviewed time sheets, vehicle mileage logs, and other documents.

BACKGROUND

In 1993, employee A looked into and sustained allegations that employee B had illegally accessed the complainant's DMV records. DMV disciplined employee B but has since learned that a long-standing feud existed between the complainant and employee B's family. After DMV disciplined employee B, the complainant and employee B and members of her family, several of whom were also DMV employees, filed civil complaints against each other.

EMPLOYEE A USED THE PRESTIGE OF THE STATE FOR A PRIVATE INDIVIDUAL'S BENEFIT

In July 1998, employee A wrote a letter on DMV letterhead to a superior court that was hearing a civil suit between the two parties. In the letter, employee A stated that, in an official DMV capacity, he had investigated a complaint that employee B had accessed the complainant's DMV records. Employee A also said in the letter that employee B had lied to him during the investigation whereas the complainant had never lied or been misleading in any of her conversations with him. Because employee A used DMV letterhead, the court could have concluded that his letter represented an official position of DMV. As a result, employee A used the prestige of the State to benefit the complainant in her civil dispute against employee B.

The employee used state letterhead for a letter to the superior court, thereby implying his letter represented DMV's official position in the lawsuit.

The law prohibits state employees from using the prestige of the State for the benefit of another person.⁵ DMV requires its employees to comply with that law and sign a statement of incompatible activities to document their awareness of the prohibition.

Employee A signed such a statement less than one month before he used DMV letterhead to support the complainant in her civil dispute with employee B. When asked whether he believed that he violated the incompatible activities prohibition, employee A replied that he intended only to give the court the facts, not to use the letterhead to influence the court. He believed that the complainant had suffered an injustice at the hands of DMV and that employee B had not been sufficiently punished for her improper accessing of DMV records.

EMPLOYEE A IMPROPERLY USED STATE TIME AND EQUIPMENT TO ATTEND HEARINGS ON THE CIVIL MATTER

State laws also prohibit employees from using state time and equipment for private gain or advantage. Even though employee A had signed the statement of incompatible activity in June 1998, he used state time and a state vehicle to attend hearings involving the complainant and employee B in December 1999 and February 2000. He used a total of 14 hours of state time and drove a state vehicle roughly 300 miles for these private activities.

⁵ For a more detailed description of this law, please see Appendix B.

AGENCY RESPONSE

DMV is pursuing an adverse personnel action against the employee. ■

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CHAPTER 4

Prison Industry Authority: Improper Contracting Practices

ALLEGATION I980123

We received an allegation that a manager in the Prison Industry Authority (PIA) of the Department of Corrections (Corrections) awarded contracts to a company without going through required state contracting procedures.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. The manager abused the system and improperly awarded PIA projects to a vendor without considering alternative sources and without following the Public Contract Code requirements. Specifically, the manager allowed the vendor (company A) to work on a PIA project under the authority of another vendor's (company B) contract because company A was not a state-approved vendor and company B was. The total cost of that project was more than \$271,000. In addition, the manager awarded two other PIA projects, totaling more than \$146,000, directly to company A without following state contracting procedures.

We reviewed applicable state laws and regulations as well as policies and procedures in place at both PIA and the Office of Statewide Continuous Improvement (OSCI) of the Department of Personnel Administration (DPA). In addition, we obtained and reviewed contracts and related documents. Finally, we interviewed the officials and other staff of PIA, OSCI, company A, and others.

BACKGROUND

PIA was established on January 1, 1983, as the successor to the California Correctional Industries Commission. It is a penal program that strives to employ inmates, develop inmate work

skills, and reduce the cost of operations at Corrections. As such, PIA employs inmates in the manufacturing, service, and agricultural industry programs it operates and manages statewide. It sells its products mainly to state agencies, which are required by law to make maximum use of manufactured goods from PIA. PIA manufactures a wide range of products, including textiles, license plates, and office furniture.

The California Penal Code, Section 2808, empowers PIA to enter into contracts and leases, among other things; however, PIA must follow the requirements set forth in the Public Contract Code and the State Administrative Manual (SAM), which defines state policy. With certain exceptions, state law and policy require agencies to use a competitive bidding process when selecting vendors. Specifically, agencies must secure at least three competitive bids or proposals, or, in cases of emergency, procure necessary goods and services and then request the approval of the Department of General Services.

To comply with these requirements, an agency generally prepares a Request for Proposal (RFP) or similar document that describes the product or service it wants, invites prospective vendors to submit written proposals that identify their prices, and describes the agency's evaluation process. After advertising its RFP, the agency evaluates the proposals it receives, selects the winning vendor(s), and resolves any protests filed by losing vendors. This allows the agency to select a vendor fairly and helps ensure that the agency obtains the goods or services with the best possible value for the State. As stated in the Public Contract Code, agencies should give all qualified vendors a fair opportunity to enter the bidding process, thereby stimulating competition.

Although the State generally requires its agencies to use a competitive procurement process, agencies can opt to select from an established pool of prequalified vendors.

THE MANAGER HIRED A COMPANY TO PERFORM WORK UNDER ANOTHER COMPANY'S STATE-APPROVED CONTRACT

The DPA established OSCI to assist interested state agencies in implementing the governor's Executive Order W-47-93, which encourages agencies and departments to improve all aspects of their organizations. OSCI's role in implementing the executive order includes creating a pool of prequalified quality vendors. As an alternative to the RFP process, an agency can ask OSCI to recommend vendors from this pool. OSCI bases its

recommendations on the specific nature and scope of the work, including time frames, and an approximate project budget. Effective July 25, 1997, contracts, including amendments, are limited to \$100,000 per project. After receiving OSCI's recommendations, the agency conducts evaluation interviews, selects a vendor, and finalizes the cost proposal and scope of work. OSCI then prepares a three-party contract between OSCI, the agency, and the vendor. In return for its services, OSCI assesses a fee of 10 percent of the total amount of each vendor's bill.

The manager abused this system by allowing company A, which was not a prequalified vendor, to work on a PIA project using the authority of the State's contract with company B, which was prequalified with OSCI.⁶ According to company A's president, in August 1996, the PIA manager and one of his staff met with company A's staff and discussed PIA's need for consultation on its wooden furniture product line. The manager—who knew that company A was neither on the State's approved vendor list nor a prequalified vendor with OSCI—suggested that the company could work under the contract of an OSCI prequalified bidder. The manager told us that he did so because he wanted to give the small business an opportunity to work for the State. As a result, company A contacted OSCI to obtain a list of prequalified bidders. According to company A's president, his staff spoke with four listed vendors and identified one—company B—that would agree to allow company A to perform the work for PIA under company B's contract. In October 1996, the manager and his staff again met with companies A and B and discussed PIA's needs.

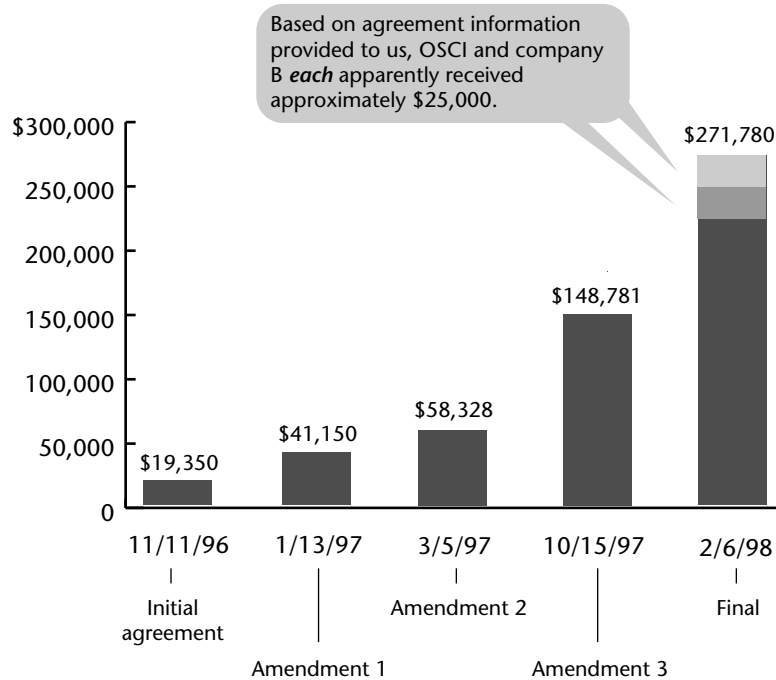
According to its president, company A entered into a separate agreement with company B. Under the terms of this agreement, company A would consult with PIA through company B's contract as if the services were provided by company B, and company B would sign on all required state documents, including the standard agreement with OSCI. In addition, they agreed that company B's role would be that of an administrator, ensuring continuity of the project and attending meetings. The two companies also agreed that company B would immediately transfer the payments it received from PIA to company A, after deducting a 10 percent fee. However, company A's president told us that he did not have a copy of the agreement with company B.

⁶ Effective July 1999, this vendor is no longer prequalified because it did not supply the necessary bid information to OSCI.

Company B, the prequalified vendor, submitted a proposal to PIA on November 4, 1996, and started the application process for an OSCI standard agreement. Company B entered into a standard agreement with OSCI on January 1, 1997, which was later amended to match the November 11, 1996, date of the interagency agreement between PIA and OSCI. The initial value of the standard agreement was \$18,000. After three contract amendments to increase the scope of services, company B received more than \$246,000, 90 percent of which went to company A.⁷ Ultimately, PIA agreed to pay \$271,780 to obtain company A's consultation services from November 11, 1996, to January 31, 1999.⁸ As a result of this scheme, PIA circumvented the controls established to protect state resources and ensure fair competition. Figure 1 shows the growth in the project cost and how much OSCI, company B, and company A apparently received as a result of this scheme.

FIGURE 1

**Increases in Interagency Agreement Amounts
From November 1996 to February 1998**



⁷ This arrangement involved two different types of agreements: an interagency agreement between PIA and OSCI, and a standard agreement between OSCI and company B. The body of this report discusses the standard agreement amounts, whereas Figure 1 shows the higher interagency agreement amounts that include OSCI's fees.

⁸ This \$271,781 amount includes a fee of about \$25,000 for OSCI's administrative services.

The manager told us that he did not use the RFP process because he did not think it was necessary. In addition, he said the RFP process is very time consuming, and he had to get the job done quickly. Moreover, he initially thought the project would be a small one. The manager said that he probably would have used the RFP process if he had known how large the project was going to be. Finally, the manager stated that he allowed company A to work for PIA under the auspices of company B's contract because it was OSCI's responsibility to check and identify the qualifications of consultants and stop any inappropriate agreements. Nevertheless, it appears to us that the manager intentionally tried to circumvent OSCI's controls.

The manager found a prequalified vendor who would let company A do the work under its contract, thus spending more of the State's money than necessary and denying other vendors the opportunity to compete for the State's business.

In fact, OSCI had no way of knowing that company B was, in effect, subcontracting the work on this contract out to company A. While OSCI knew the names and skills of the individuals who worked on the project, it did not know that the individuals identified on company B's submittals were actually employees of a subcontractor—company A—and that the subcontractor and company B were, and still are, two separate entities. In addition, OSCI's standard agreement with prequalified vendors prohibits subcontracting without the written consent of the State; we found no evidence that company B ever obtained such written consent. The PIA manager told us that he thought OSCI knew companies A and B were two separate entities. Company A's president also told us he was unaware that OSCI did not know that his company and company B were two separate entities. These statements do not seem credible because the manager, company A, and company B worked together covertly to take advantage of company B's status as a prequalified bidder. OSCI's selection process requires agencies to review bid proposals and conduct interviews, if needed; therefore, PIA had the final say on whom to select.

As mentioned, the manager had already decided that he wanted to give company A the opportunity to work for the State. Therefore, he was biased against two other prequalified bidders that OSCI had recommended. The manager admitted that he interviewed the three vendors and selected the one that would allow company A to perform the work. This action deprived other firms of the opportunity to compete for PIA's business. Finally, it appears that company B concealed the true nature of the transaction and received approximately \$25,000 simply for acting as an agent.

THE MANAGER IMPROPERLY AWARDED TWO OTHER PIA PROJECTS, AND HIS SUBORDINATES INACCURATELY RECORDED BIDS

Without following state contracting procedures, the manager awarded two additional PIA projects to company A. For one project, producing a catalog of PIA's freestanding office screens, the manager used an emergency purchase request. The SAM, Section 3511, defines an emergency condition as "one which would not have been avoided by reasonable care and diligence or [which carries] an immediate threat of substantial damage or injury to . . . employees of the agency, . . . [to] the general public, or to property for which the agency is responsible." According to PIA's production manager at that time, PIA decided to contract with an outside vendor because it needed the catalog completed in time for the May 1998 Government Technology Conference (GTC). We do not believe this situation meets the definition of "emergency condition."

Because the SAM does not require bids on emergency purchases, it is unclear why PIA would bother to obtain bids for what the manager deemed an emergency. Moreover, although PIA claimed that it obtained bids, the documents we reviewed substantiate that the bids recorded by PIA staff are questionable. For the project, which consisted of design, layout, reproduction preparation, and printing of 20,000 16-page catalogs, PIA's procurement worksheets show the bids were \$77,455 from company A; \$150,241 from competitor A; and \$157,200 from competitor B. However, competitor A showed us a copy of an original written price quote to PIA for \$20,676. According to competitor A, the amount recorded on the procurement worksheet as its bid (more than seven times its original price quote) was unrealistically high and questionable. Competitor B, which could not provide us with a copy of its original price quote, estimated its bid would have been about \$12,000. These radical discrepancies raise serious questions about the accuracy and reliability of PIA's procurement worksheet. The PIA manager stated that he did not know why the amounts on the procurement worksheet were higher than what the competitors believe they provided. The manager also stated that he relied on his staff to get the information for him, and that he signed the documents without asking for support and without ensuring the accuracy of the bids.

Although PIA claims it obtained competitive bids, the bids it recorded were not credible.

We also found other questionable entries in PIA's worksheets. For example, company A's bid did not include photography and copywriting for the catalog. The member of the manager's staff who prepared the worksheet told us that the original RFPs did not clearly describe the job; therefore, she did a follow-up request and prepared a separate worksheet for the photography and copywriting, obtaining quotes by telephone. We reviewed the follow-up worksheet and found no documentation to support the quotes provided by telephone. In fact, staff at competitor A stated that its original bid of \$20,676 included the normal cost of the photography, and they did not recall PIA ever requesting a separate bid on additional photographic services or copywriting. The manager's staff member admitted that in preparing the follow-up worksheet, she copied the amount from competitor A's original price quote and could not provide any documentation supporting the information she wrote down for the other two bidders. Therefore, it is questionable that she ever contacted any of the bidders for follow-up quotes.

It appears that PIA wound up paying more than twice as much as necessary for printing its catalog.

In total, PIA paid company A at least \$121,811 for producing the 16-page catalog, including \$77,455 for the work specified in the original RFP and an additional \$44,000 for photography and copywriting. In our review, we found that company A allocated \$55,955 of its \$77,455 bid for the printing portion of the contract but subcontracted that work to another vendor that apparently charged company A about \$20,500. In other words, company A charged PIA \$55,955 for printing that it subcontracted out to another firm at a cost of \$20,500. As a result, it appears that PIA paid well over twice the actual cost of the printing.

Another contract that the manager awarded to company A without going through the state contracting procedure was for the design and setup of the May 1998 GTC exhibit booth. PIA did not use the RFP process to collect any other proposals for this project. Neither did it obtain price quotes from other vendors through an emergency purchase request. In one of its meetings with the company, a PIA marketing team accepted company A's suggestion that it upgrade the design of the GTC exhibit booth. The manager did not consider other possible sources for this project. For the seven years prior to 1998, PIA used its internal resources to set up the GTC exhibit booth; therefore, it is questionable whether PIA even needed to hire an

outside vendor for the project. PIA paid company A \$24,926 for this project. A member of the manager's staff who worked on the project told us that she did not obtain competitive bids because she thought the exhibit booth was included in an existing contract between PIA and company B.

AGENCY RESPONSE

Corrections is reviewing the issues we reported. When it completes its review, Corrections will determine what action to take. ■

CHAPTER 5

Department of Transportation: Misuse of State Funds and Circumvention of Controls Over Vehicle Purchases

ALLEGATION I990196

We received allegations that an official at the Department of Transportation (Caltrans) misused state funds and abused his position to obtain a police car. We also received an allegation that Caltrans improperly allowed an individual who was the subject of an internal investigation to participate in hiring the person who would act as head of the unit conducting the investigation.

RESULTS AND METHOD OF INVESTIGATION

We referred the allegations to the Business, Transportation and Housing Agency (agency) for investigation on our behalf. The agency substantiated the allegations and concluded that the official circumvented state policy that allows purchasing only compact automobiles for employees of his rank and obtained instead a Ford Crown Victoria Police Interceptor. The agency also found that the official improperly spent state funds to purchase gifts costing more than \$1,600 and a small refrigerator costing \$226. Although the official purchased the refrigerator for his office, the agency considered it to be for personal use rather than the State's benefit, so his use of state funds was improper. The agency also found that Caltrans had allowed an individual who was the subject of an ongoing internal investigation to sit on the panel that was selecting the new head of the unit conducting the investigation. Further, while conducting its investigation, Caltrans was unable to account for various items purchased by Caltrans, including furniture, computer equipment, and the gifts purchased by the official. As a result, the agency concluded that the official's office had an inadequate system of control over state property.

THE OFFICIAL CIRCUMVENTED THE LIMITATIONS ON CALTRANS' AUTHORITY TO PURCHASE A STATE VEHICLE FOR HIS USE

State law requires that passenger-type motor vehicles purchased for state officers and employees, except constitutional officers, be American-made vehicles of the light class, unless excepted by the director of the Department of General Services (DGS).⁹ DGS's Office of Fleet Administration (fleet administration) defines the light class to be a compact automobile.

On March 29, 1999, Caltrans' equipment service center submitted a request to fleet administration for the acquisition of a Ford Crown Victoria. According to the request, the official needed this vehicle in his role as host to officials and dignitaries representing other states and nations. The request further stated that many of these visitors met with the official to observe Caltrans' operations and to make on-site inspections of projects in progress.

Responding to the request on April 1, 1999, fleet administration's chief (chief) wrote: "While exemptions for a larger class of vehicle may be given, we have determined that your request, at best, minimally meets the requirements for a larger vehicle." He went on to suggest that if the official purchased a midsize vehicle, he might then rent a full-size vehicle on occasion. Nonetheless, the chief approved the request, provided the vehicle would not have any law enforcement equipment or features. The chief said later that he wrote the approval memorandum in that way because he did not believe he could justify a full-size vehicle for the official. He knew that the only Crown Victoria the department could get from Ford Motor Company on state contract was the Police Interceptor model, which had special law enforcement equipment and features.

Because he had heard a rumor that Caltrans was trying to trade a specialty vehicle it owned for a Ford Crown Victoria to be purchased by the Department of Parks and Recreation (Parks and Recreation), the chief further qualified his approval. Parks and Recreation did not have delegation authority to make such vehicle trades without fleet administration's approval, so the chief assumed that he would be able to deny any request that came through for the rumored trade.

⁹ For a more detailed description of this law and other criteria discussed in this chapter, see Appendix B.

Although he had been told he was not entitled to a Crown Victoria Police Interceptor, the official arranged a swap with another department to get one.

On April 7, 1999, Parks and Recreation purchased a 1999 Ford Crown Victoria Police Interceptor, which it exchanged two weeks later with Caltrans for a vehicle described as a “garbage truck with a mechanical litter picker.” Parks and Recreation did not receive official approval for the trade as dictated by the State Administrative Manual and the State Fleet Handbook.

Interestingly, the official admitted that someone in equipment services told him he could not have a Ford Crown Victoria with police features. He wanted a car of this make and model, nonetheless, because he often visited highway construction sites and needed the extra power to rejoin the flow of traffic after such visits. He specifically requested a car similar to the one driven by the head of the California Highway Patrol—with a high-powered engine, heavy-duty suspension, and safety features in an unmarked chassis but without lights on the roof and other visible law enforcement accessories. Ultimately, the official believed that the Crown Victoria Police Interceptor he received lacked the engine power and heavy-duty suspension he expected would come with a police car. However, the car he received and drove had various, albeit unseen, law enforcement features that come standard on the Police Interceptor model of the Crown Victoria. Therefore, regardless of the actual intent of the individuals involved in buying the vehicle, as well as what the official considered a legitimate need for that type of car, Caltrans circumvented the fleet administration’s vehicle acquisition parameters.

THE OFFICIAL SPENT STATE FUNDS TO PURCHASE GIFTS FOR VISITORS AND EQUIPMENT FOR PERSONAL USE

The California Constitution prohibits gifts of public funds. In addition, the law prohibits state employees and officers from engaging in any activity that is clearly inconsistent, incompatible, in conflict with, or in opposition to his or her duties as a state employee or officer. One such incompatible activity is using state time, facilities, equipment, or supplies for private gain or advantage. In accordance with the law, Caltrans policy requires its employees to use state resources, information, and position only for Caltrans’ work and not for personal gain or the gain of another person.

The agency found that despite these prohibitions and requirements, the official spent \$1,607 of state funds on items intended as gifts for visiting foreign dignitaries. In August 1999, Caltrans purchased 150 plastic paperweights and 50 pen and pencil sets on behalf of the official. In January 2000, Caltrans bought 20 glass paperweights. Caltrans explained that the official was embarrassed that he could not reciprocate when dignitaries brought gifts. The agency concluded that giving gifts in such instances might result in the intangible benefit of goodwill toward the State. However, the potential damage to the public interest if state officials were allowed to bestow gifts under circumstances solely of their choosing would far outweigh any possible benefit.

Agency investigators located 121 of the 150 plastic paperweights in the general area of the official's office and others on employees' desks; the remainder, according to the official's staff, had been given to visiting dignitaries. Additionally, 22 of the 50 pen and pencil sets were in the same areas; again, the rest had gone to visitors. However, the official's staff could account for only 14 of the 20 glass paperweights: 13 were in the office, and the official had given 1 to a foreign dignitary, but no one could find the remaining 6, which cost \$222. After investigators raised this issue, the official's staff reported that they checked with the vendor and learned that they had ordered and received only 15 glass paperweights rather than 20. The original purchase request, however, specified 20 paperweights ordered for a total of \$741, and the invoice, although it did not note the number ordered, repeated that dollar amount.

Agency investigators were unable to account for all the items purchased by, or on behalf of, the official.

On September 27, 1999, Caltrans purchased a compact refrigerator at a cost of \$226 for the official's office. The official stated that he requested the refrigerator to spare staff the trouble of going to another floor to purchase cold drinks during meetings or when working late. Although the agency conceded that the refrigerator is convenient, it did not believe the purchase falls within Caltrans' scope of work. Except when staff are traveling, costs associated with beverage consumption are not generally paid for with public funds. Staff time saved in not going to another floor is outweighed by the potential for abuse if state officials are allowed to purchase items that cannot be perceived as related to the mandate of state government.

After the agency informed the official of these issues, he reimbursed Caltrans for the glass paperweight that he had given to a visiting dignitary. In addition, the official and three members of his staff jointly reimbursed Caltrans for the cost of the refrigerator.

INADEQUATE CONTROLS OVER EQUIPMENT, FURNITURE, AND OTHER ITEMS

The law requires each state agency to establish and maintain an adequate system of internal accounting and administrative controls to minimize fraud, errors, abuse, and waste of government funds. During the course of its investigation, the agency attempted to track the location of several items purchased by the official's staff, including computer equipment, furniture, and the gifts purchased for visitors. However, the office had no inventories for the items and had no records of when they were transferred from one location to another. The agency's only source of information was the statements of the official's staff as to the location of the furniture and equipment and the dispensation of the gifts.

QUESTIONABLE PARTICIPATION IN HIRING INTERVIEWS BY AN INTERESTED PARTY

The agency found that the subject of an ongoing investigation was allowed to participate in a hiring decision even though one person interviewed for the position was involved in conducting the investigation. Further, the person hired for this position would oversee the unit conducting the internal investigation. The other participants in the hiring decision contended that the subject of the investigation did not exhibit any discrimination or bias toward the candidate involved in the investigation. However, the agency concluded that allowing such participation created an apparent conflict of interest.

AGENCY RESPONSE

Caltrans did not agree with some of the agency's findings. According to Caltrans, the exchange of a garbage truck for a Ford Crown Victoria Police Interceptor was simply the result of networking between departments. Caltrans contended that

transfers of resources between departments, with the tacit understanding of the DGS, are common. Further, Caltrans believes that this kind of exchange allows departments to accomplish their goals while fostering interagency cooperation in the public interest. However, Caltrans has instructed its equipment service center to ensure that all vehicle purchases that require it, are approved by fleet administration.

Caltrans also reported that the Caltrans Historic Preservation Committee purchased the remaining paperweights and pen and pencil sets. In addition, Caltrans stated that issues regarding the inventory of equipment, furniture, and other items are not unique to the official's office. However, Caltrans reported that it is taking action to improve inventory controls.

Finally, with regard to ensuring that participants in hiring interviews do not have conflicts of interest, Caltrans has instructed its deputies that they must "discern when and how to address an issue of this type." ■

CHAPTER 6

Update on Previously Reported Issues

CHAPTER SUMMARY

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

DEPARTMENT OF CORRECTIONS CASE I960094

On April 11, 2000, we publicly reported that parole agents in the interstate parole unit (parole unit) of the Department of Corrections (Corrections) failed to conduct the appropriate reviews before recommending that parolees under their supervision be discharged from parole. Specifically, parole agent A recommended that two parolees under his supervision be discharged from parole, reporting in annual discharge reviews that they had no new arrests despite the fact that both parolees had been arrested again during the previous year. In addition, because several parole agents failed to perform the required discharge reviews within the time allowed by law, Corrections automatically discharged six other parolees.¹⁰ Of these six individuals, two committed other crimes, including assault with a deadly weapon and burglary, before the end of their original parole periods. We also found that 41 (19 percent) of the 217 field files we reviewed did not contain adequate evidence, such as criminal history reports, to support the parole unit's discharge recommendation.

¹⁰ State regulations require Corrections to release most parolees within 30 days following one year of continuous parole unless it finds good cause to retain them on parole. Because the parole agents failed to complete the necessary discharge reviews, Corrections lacked good cause to extend parole in these six cases.

At the time we issued our public report, Corrections was reviewing whether statute-of-limitation provisions prevent it from initiating an administrative investigation of the events we reported. Corrections also reported that it had developed an action plan that does the following: establishes time frames within which parole agents must collect information on parolees, sets documentation requirements, and defines supervisory responsibilities. In addition, Corrections reported that it had trained the parole unit's staff on current policies and procedures and that the parole unit would routinely audit parole agent caseloads to ensure compliance.

Subsequent Action

After further review, Corrections concluded that statute-of-limitations provisions prevent it from pursuing either criminal or administrative action against the parole officers.

OFFICE OF CRIMINAL JUSTICE PLANNING CASE I980135

On August 19, 1999, we publicly reported that an employee of the Office of Criminal Justice Planning (OCJP) claimed that she worked 259.5 hours for the State when, in fact, she was working for three other employers (employers A, B, and C). The State paid the employee \$6,522 for this time. Further, the leave she took from her state job was less than she would have had to take in order to work the total hours for which employer A paid her. At the employee's rate of pay, the 193.5 hours of additional leave she should have taken cost the State another \$4,688. We also uncovered at least three instances, totaling 40 hours, when the employee was out of the State on personal business but failed to charge the time as leave, which cost the State \$949.

In addition, on 10 occasions, the employee claimed she was unable to work for OCJP because she was ill or had a medical appointment. However, on these 10 occasions, she worked for either employer A or employer B. The State paid the employee \$1,103 for 46.5 hours of improperly reported sick leave. Finally, the employee charged the State for inappropriate travel expenses totaling \$1,175 and personal telephone usage totaling \$448. The employee was able to engage in all of these activities at least in part because OCJP did not exercise adequate control over attendance and travel expenses.

On April 11, 2000, we reported that OCJP dismissed the employee and recovered \$3,096 from her final paycheck. In accordance with restrictions placed on it by state law, OCJP disregarded some of the improprieties we identified because they occurred more than three years prior to our report. In addition, OCJP acknowledged that an informal compensatory time off policy existed during some of the period covered by our review and that there was an officewide practice of permitting employees to use state telephones for local calls as long as the amount of time they used was not excessive. Consequently, OCJP did not recover some of the costs related to the employee's improper activities.

However, OCJP reported that it had instituted new policies and clarified old ones to increase control over attendance and travel expenses. For example, it reported that it had produced a travel manual, detailing its policies on travel and reimbursable expenses, and had a formal policy that prohibits informal compensatory time off.

Updated Information

After we issued our report on April 11, 2000, we received information indicating that OCJP had not issued a new travel manual nor instituted a new policy prohibiting informal compensatory time off. In response to our request for copies of the manual and policy, OCJP confirmed that it had not yet distributed a new travel manual. However, it distributed the new manual on August 16, 2000. Further, OCJP reported that its earlier statement that "OCJP now has a formal policy that no informal compensatory time is permissible" refers to a preexisting policy of not allowing informal compensatory time off except on the morning after arduous travel. OCJP reported that it reinforced this policy to its managers in September 1999.

In addition, OCJP has obtained computer software that it will require its employees to use to sign in and out, including when they are on leave or site visits. The information, which will be electronically stored, will also indicate what manager has approved each absence. OCJP expects this electronic in and out board to allow it to determine its employees' whereabouts, identify the types of abuses we identified, and generally improve management oversight.

**DEPARTMENT OF TRANSPORTATION
CASE I990022**

Also on August 19, 1999, we reported that a Department of Transportation (Caltrans) superintendent improperly authorized the purchase and installation of drainage pumps from a vendor. To make it appear that Caltrans had obtained competitive bids for this transaction, the superintendent directed another Caltrans employee to obtain bids from other vendors after the pumps had been installed. After receiving the bids, the employee altered the amount of one and omitted another bid entirely, thereby creating the illusion that the pumps had been competitively procured and that the vendor that sold and installed the pumps had been the low bidder.

On April 11, 2000, we reported that Caltrans had not completed its corrective action.

Agency Response

Caltrans reported that the superintendent's actions were unintentional and were a result of his misunderstanding of the procurement process for that type of purchase. Caltrans found no evidence that there was any improper agreement or relationship between the superintendent and the vendor, or that the superintendent instructed the employee to alter the purchase documents. Consequently, Caltrans plans no further action.

**CALIFORNIA SCIENCE CENTER
CASE I990031**

On April 11, 2000, we reported that 13 public safety employees at the California Science Center (Science Center) improperly claimed duplicate overtime hours. As a result, the State paid the employees at least \$4,224 for 168 hours that they did not work. In addition, at least 4 managerial employees claimed \$74,638 for 2,325 overtime hours, although state regulations prohibit them from receiving overtime compensation. One of the managerial employees was also in the group of 13 employees who claimed duplicate overtime. Further, at least 12 employees claimed reimbursement for a total of \$730 for meals they were not entitled to. Additionally, the Science Center improperly allowed one of the managerial employees to accumulate 476 hours of compensatory time valued at more than \$13,500.

The Science Center's accounting and personnel departments failed to detect these improper claims. In addition, we discovered that the personnel department does not charge employees' leave balances for absences.

The Science Center reported that it has revised existing personnel policies and developed new policies to address concerns raised in our report.

Updated Information

The Science Center has developed an automated tracking system that should eliminate duplicate processing of overtime slips and payments for public safety employees. In addition, the Science Center reported that it has collected overpayments in full from three of the nonmanagerial employees and has entered into mutually agreeable payment plans with the other nonmanagerial employees involved to recover overpayments it made to them. The Science Center is still reviewing with counsel what action it should take with regard to the managerial employees involved and possible prosecution of one or more of its employees.

Finally, the Science Center reported that it updated the automated leave accounting system in December 1999. Because of staffing shortages, Science Center personnel staff have been able to track leave balances only manually. However, the Science Center has temporarily reclassified a vacant position to perform this work and is attempting to obtain budgetary approval for a permanent personnel analyst position.

The State and Consumer Services Agency has asked the State Personnel Board to conduct an independent review of the personnel practices of the Science Center. This review began in February 2000. In addition, the State and Consumer Services Agency will forward these issues to the Office of the Attorney General for review and advice.

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

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: August 24, 2000

Investigative Staff: Ann K. Campbell, Director, CFE
William Anderson, CFE
Stephen Cho, CFE, CGFM
Scott Denny, CPA
Cynthia A. Sanford, CPA, CFE, CGFM
Ken L. Willis, CPA
Diane Thompson

Audit Staff: Nasir Ahmadi, CPA

APPENDIX A

Activity Report

We have identified costs of \$12 million in improper activities since July 1993.

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling \$12 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 have also substantiated other improper activities that cannot be quantified in dollars but have had a negative societal impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Although the bureau investigates improper governmental activities, it does not have enforcement powers. When it substantiates allegations, the bureau reports the details of the activity to the head of the state entity or the appointing authority responsible for taking appropriate corrective action. The California Whistleblower Protection Act (act) also empowers the state auditor to report these activities to other authorities, such as law enforcement agencies or other entities with jurisdiction over the activities, when the state auditor deems it appropriate.

Corrective actions taken on cases contained in this report are described in the individual chapters. Table 3 summarizes all of the corrective actions taken by agencies since the bureau reactivated the hotline. In addition, dozens of agencies modified or reiterated their policies and procedures to prevent future improper activities.

TABLE 3

**Corrective Actions Taken
July 1993 Through June 2000**

| Types of Corrective Actions | Instances |
|------------------------------------|-----------|
| Referrals for criminal prosecution | 71 |
| Convictions | 5 |
| Job terminations | 38 |
| Demotions | 8 |
| Pay reductions | 9 |
| Suspensions without pay | 9 |
| Reprimands | 109 |

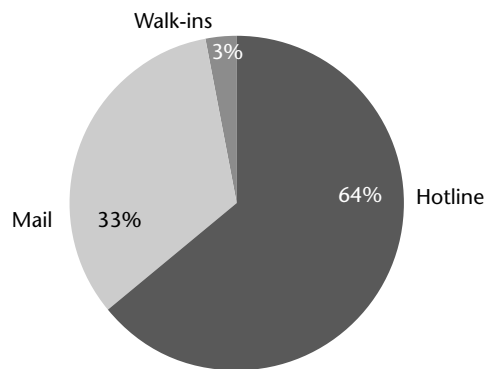
**NEW CASES OPENED
JANUARY THROUGH JUNE 2000**

From January through June 2000, we opened 154 new cases.

We receive allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 99 (64 percent) of our new cases.¹¹ We also opened 51 new cases based on complaints received in the mail and 4 based on complaints from individuals who visited our office. Figure 2 shows the sources of all cases opened from January through June 2000.

FIGURE 2

**Sources of 154 New Cases Opened
January Through June 2000**



¹¹ In total, we received 2,365 calls on the Whistleblower Hotline from January through June 2000. However, 1,894 (80 percent) of the calls were about issues outside our jurisdiction. In these cases, we attempted to refer the caller to the appropriate entity. Another 372 calls (16 percent) were related to previously established case files.

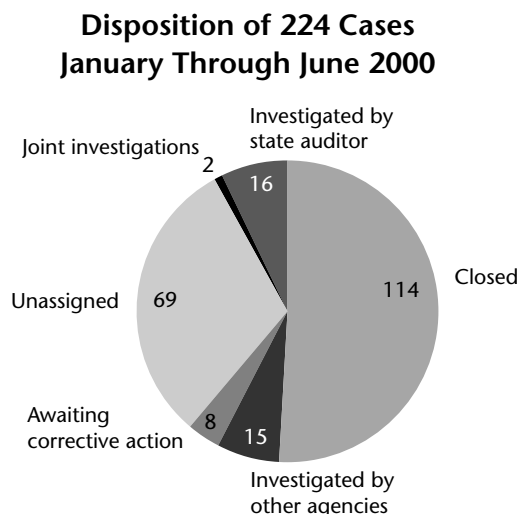
WORK ON INVESTIGATIVE CASES JANUARY THROUGH JUNE 2000

In addition to the 154 new cases we opened during this six-month period, 49 previous cases were awaiting review or assignment, and 21 were still under investigation, either by this office or other state agencies, or were awaiting completion of corrective action, on December 31, 1999. As a result, 224 cases required some review during this period.

After reviewing the information provided by complainants and the preliminary work done by investigative staff, we concluded in 114 of the 224 cases that not enough evidence existed for us to begin an investigation.

The act specifies that the state auditor may request the assistance of any state entity or employee in conducting an investigation. From January through June 2000, state agencies investigated 15 cases on our behalf and substantiated allegations on 2 (25 percent) of the 8 cases they completed during the period. We jointly investigated 2 cases with other agencies during the period and substantiated allegations in the 1 case we completed. In addition, we independently investigated 16 cases and substantiated allegations on 2 (33 percent) of the 6 cases we completed during the period. As of June 30, 2000, 69 cases were awaiting review or assignment. Figure 3 shows the disposition of the 224 cases worked on from January through June 2000.

FIGURE 3



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APPENDIX B

State Laws, Regulations, and Policies

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

LAWS GOVERNING THEFT

Chapter 1 reports theft of state property.

The California Penal Code, Section 532, provides that every person who knowingly and designedly, by any false or fraudulent representation, defrauds any other person of money, labor, or property; or who causes or procures another to report falsely on his or her wealth or mercantile character and thereby fraudulently obtains possession of property, is punishable in the same manner and to the same extent as for theft of money or property involved. Further, Section 484 states that an individual is guilty of theft if he or she knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property. Moreover, if the amount taken by an employee from an employer in aggregate is in excess of \$400 in a consecutive 12-month period, the violation is grand theft under Section 487 of the California Penal Code. In addition, Section 489 specifies that grand theft is generally punishable by imprisonment in a county jail or in the state prison.

The California Penal Code, Section 508, states that an employee who fraudulently appropriates to his or her own use property belonging to the State but under his or her control by virtue of employment is guilty of embezzlement. Further, Section 514 states that every person guilty of embezzlement is punishable in the manner prescribed for theft of property of the value or kind embezzled. If the embezzlement is of state public funds, the offense is a felony and is punishable by imprisonment in the state prison.

LAWS AND REGULATIONS CONCERNING PERSONAL USE OF STATE VEHICLES

Chapters 1 and 3 report misuse of state vehicles.

The California Government Code, Section 19993.1, requires that state-owned motor vehicles be used only in the conduct of state business. Section 19993.2(a), requires the Department of Personnel Administration (DPA) to define what constitutes use of state-owned vehicles in the conduct of state business. In Section 599.800(e) of Title 2 of the California Code of Regulations, the DPA defines use of a state vehicle in the conduct of state business as use when driven 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, although both the DPA and the Office of the State Controller generally require employees who do so to report the value of this use as taxable income. In fact, Internal Revenue Service Regulation 1.61-21(a) states that gross income generally includes fringe benefits, such as the personal use of an employer-provided automobile.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN

Chapters 1 and 3 report personal use of state resources.

The California Government Code, Section 8314, prohibits state officers and employees from using state resources such as equipment, travel, or time for personal enjoyment, private gain or 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.

POLICIES FOR DISPOSAL OF SURPLUS STATE EQUIPMENT

Chapter 1 reports unauthorized sale of surplus equipment.

The State Administrative Manual (SAM), Section 3520, requires that state agencies receive approval from the Surplus Property Section of the Office of Procurement within the Department of General Services (DGS) prior to the disposal of any state-owned personal property, other than vehicles and mobile equipment. Further, Section 3520.7 of the SAM provides that a state agency can offer surplus property for sale to the public using one of three methods: sealed bid, auction, or fixed price. However, the fixed price method is not recommended and the SAM requires that state agencies receive authorization from the director of the DGS for fixed price sales. Furthermore, Section 3520.8 of the manual specifies that state employees may participate in public sales provided that they do so in the same manner as the general public; do not use their position, office, or prestige to their advantage when participating in sales of materials; and do not participate on state time.

REQUIREMENTS FOR WITHHOLDING TAXES FROM EMPLOYEES' WAGES

Chapter 2 reports failure to withhold taxes from wages.

The California Unemployment Insurance Code, Section 13020, requires employers to withhold taxes from employees' wages, and Section 13021 requires employers to pay the taxes to the Employment Development Department each calendar quarter. Section 608 of the California Unemployment Insurance Code includes employment for a tax-exempt nonprofit corporation in the definition of entities whose employees are subject to income tax withholding. Furthermore, Internal Revenue Service Publication 15-A, Section 3, reiterates the federal requirement for withholding taxes from salaries of employees of nonprofit organizations. Section 2 of this publication explains the difference between an employee and an independent contractor. This publication makes it clear that nonprofit corporations are required to withhold federal income taxes as well as Social Security and Medicare taxes if an employee's salary was \$100 or more in a calendar year.

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 3 and 5 report incompatible activities.

Incompatible activity prohibitions exist to prevent state employees from being influenced in the performance of their official duties or from being rewarded by outside entities for any official actions. Section 19990 of the California Government Code prohibits a state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. This law specifically identifies certain incompatible activities, including using the prestige or influence of the State for one's own private gain or advantage, or the private gain of another. They also include using state time, facilities, equipment, or supplies for private gain or advantage.

CRITERIA GOVERNING VEHICLES FOR STATE EMPLOYEES

Chapter 5 reports circumvention of controls over vehicle purchases.

The California Government Code, Section 13332.09, requires that passenger-type motor vehicles purchased for state officers and employees, except constitutional officers, be American-made vehicles of the light class, as defined by the State Board of Control. However, the director of the Department of General Services may grant exceptions on the basis of unusual requirements, including, but not limited to, use by the California Highway Patrol, that justify the need for a motor vehicle of a heavier class.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapter 5 reports weaknesses in management controls.

The Financial Integrity and State Manager's Accountability Act of 1983, contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain 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 internal accounting and administrative controls, state agencies gain reasonable assurance that those measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies.

THE PROHIBITION AGAINST MAKING GIFTS OF PUBLIC FUNDS

Chapter 5 reports gifts of public funds.

The California Constitution, Article XVI, Section 6, prohibits gifts of public funds. In determining whether an appropriation of public funds is to be considered a gift, the primary question is whether funds are to be used for public or private purposes.

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APPENDIX C

Incidents Uncovered by Other Agencies

Section 20060 of the State Administrative Manual requires agencies to notify the Bureau of State Audits (bureau) and the Department of Finance of actual or suspected acts of fraud, theft, or other irregularities they have identified. This chapter summarizes incidents reported from January through June 2000.

Other state departments also take the initiative to investigate and punish wrongdoers.

It is gratifying that more agencies are discovering and reporting improper activities more frequently. For example, the Department of Motor Vehicles (DMV) has reported more than twice the number of incidents as it did in the last reporting period. Rather than suggesting a rise in improper activities by DMV employees, we speculate this increase may simply underscore the rising awareness of the need to report such activity. Credit also goes to the investigative efforts of DMV, which is responsible for uncovering the large number of incidents and referring wrongdoers for prosecution. We will not publish any reports that would interfere with or jeopardize any internal or criminal investigation; therefore, we report here only those incidents that have been brought to conclusion.

Seven state agencies alerted the bureau that they had uncovered a total of 65 instances of improper governmental activity during the first half of 2000. Those agencies were DMV, the Board of Equalization (BOE), the Department of Parks and Recreation (Parks and Recreation), the Department of Developmental Services (DDS), the Department of Fish and Game (Fish and Game), the Department of Housing and Community Development (HCD), and four facilities operated by the Department of Corrections. Incidents resulting in monetary loss to the State totaled \$526,484. Sales of fraudulent driver's licenses by DMV employees alone account for \$226,650. Within that subcategory of incidents, 15 employees were referred to local district attorneys for prosecution. Financial losses have been mitigated by restitution of \$122,704 to some of the agencies that suffered losses.

MOTOR VEHICLES

DMV reported 27 instances of improper activities that its investigators uncovered during the first half of 2000. Some activities appeared to be isolated transgressions; others involved numerous accomplices and occurrences. One DMV employee, whose driver's license was suspended for a year after a series of arrests for driving under the influence, applied for two duplicate licenses for himself in his brother's name. He felt that he should not be blamed for applying for the second duplicate because a family member destroyed it before he received it.

DMV also reported an incident involving an employee who was cut off in traffic on the way to work by a motorist who happened to work in the same building. Later that day, the offending motorist found a letter on his car threatening him with revocation of his license if his driving did not improve. The motorist recognized the person as a DMV employee and, assuming that she had improperly accessed his records, he filed a complaint with DMV. DMV investigators confirmed the allegation of improper access to the complainant's records.

Ten cases involved the sale of fraudulent driver's licenses to undocumented immigrants who paid up to \$2,000 to obtain driver's licenses improperly. One ring of conspirators linked an insurance agent with two DMV employee accomplices and accounted for more than \$200,000 in sales of fraudulent licenses. An anonymous phone tip in February 2000 alerted DMV investigators to this scam. The caller said that buyers paid the insurance agent, who gave them copies of the written driver's license test with correct answers and referred them to a particular DMV employee. After repeating a phrase to the employee, those seeking licenses gave a series of hand signals, such as touching their faces. These signals, according to the caller, were a code that was changed daily.

A search of the insurance agent's office turned up a planner with the names of more than 100 buyers and the amounts paid. A conservative estimate of the total amount collected by this operation is more than \$200,000. The insurance agent recorded payments of roughly \$90,000 in the first three months of 2000 alone. In addition, investigators found at least 13 answer keys for various DMV tests as well as driver's license applications. During the search, the insurance agent's cellular phone rang

repeatedly. Investigators who answered the phone reported that callers said the owner of the phone was helping them get driver's licenses.

A DMV investigator became enraged when an auto dealer he was investigating filed a harassment claim against him. Though that claim was found to be without merit, the investigator, against the direction of his superiors, filed both a civil (within his rights) and a criminal case with the district attorney's office against the auto dealer. He then used DMV documents in his civil case without seeking permission and attended the trial on state time using his state vehicle. Further, he failed to notify DMV that he was also self-employed, used the state seal on letterhead for his private investigator's business, and used DMV equipment to obtain information on a private case.

BOARD OF EQUALIZATION

We were notified by BOE in November 1996 of suspected fraud and theft of \$160,000 obtained through fraudulent claims for refunds for damaged cigarette tax stamps. The Department of Justice initiated a criminal investigation, and BOE immediately opened an internal review of the registration and refund processes for the Cigarette Stamp Tax Program to determine where improvements in internal controls were needed. Within a few months, those controls were drafted, approved, and implemented. In August 1998, the accomplice, who was not a BOE employee, went to prison, and \$85,322 confiscated from his bank accounts was turned over to BOE. A former employee was arrested in 1999 and awaits sentencing. It is anticipated that this person will make restitution in the amount of \$20,000.

PARKS AND RECREATION

Parks and Recreation, in a single report, advised us of 28 separate instances involving the loss of state funds, ticket inventory, and equipment. Those losses were reported by nine field offices to their audits office between July 1999 and May 2000. Confirmed losses totaled \$122,654 and consisted of \$50,645 in equipment and other items, \$71,245 in face value of park entry tickets and passes, and \$764 in collections and change funds.

DEVELOPMENTAL SERVICES

An employee at DDS submitted falsified travel expense claims to the accounting office for reimbursement, resulting in an overpayment of \$5,804 to the employee. After an investigation, adverse action was taken against the employee, who resigned. The investigative report was subsequently forwarded to the Sacramento district attorney's office for review and possible prosecution.

FISH AND GAME

Staff ascribed a cash theft of approximately \$1,288 in license sales receipts to an isolated instance of Fish and Game regional office staff not performing all the control procedures necessary for the proper transfer and storage of cash receipts from the sale of licenses. According to Fish and Game, this occurred as a result of an extremely heavy workload. Procedural failures included leaving the safe unlocked, letting cash receipts pile up without transfer to the office's cash custodian, failing to perform reconciliations, failing to make timely deposits, and failing to enforce a restriction on unauthorized employees entering the license sales area.

HOUSING AND COMMUNITY DEVELOPMENT

A hospital employee became suspicious when she received an e-mail from an HCD employee asking her to stop payment on a check she had sent to HCD for mobile home decals, write a new check payable to the HCD employee, and mail it to the HCD employee's home address. The hospital employee faxed the e-mail to HCD, which is now reviewing its overall internal controls over the handling of payments to determine whether additional safeguards are required. The HCD employee resigned when served with an adverse action.

CORRECTIONS

Four reports from correctional facilities have reached us since the last reporting period. Most instances involved petty theft of cash, and some resulted from clerical error. The sole exception occurred at Pelican Bay State Prison. There, the staff member assigned to verify and reconcile the institution's cash payment

fund became suspicious while counting the cash on hand. An investigation uncovered a shortage to the cash release fund of \$8,865. The custodian of the fund was arrested for embezzlement and grand larceny. She eventually pleaded guilty to felony embezzlement and forgery, will serve jail time and probation, and must pay \$9,000 in restitution.

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INDEX

| Department | Allegation Number | Allegation | Page Number |
|--------------------------------------|-------------------|---|-------------|
| Board of Chiropractic Examiners | I990006 | Theft and misuse of state property | 5 |
| California Science Center | I990031 | Update on false overtime claims and mismanagement | 38 |
| California State Prison, San Quentin | I990090 | Improper representations to other governmental entities, personal use of funds, and failure to withhold payroll taxes | 9 |
| Corrections | I960094 | Update on failure to perform mandated duty | 35 |
| Criminal Justice Planning | I980135 | Update on false claims and personal use of state equipment | 36 |
| Motor Vehicles | I2000-642 | Misuse of the State's prestige, time, and equipment | 17 |
| Prison Industry Authority | I980123 | Improper contracting practices | 21 |
| Transportation | I990022 | Update on contracting improprieties and alteration of documents | 38 |
| Transportation | I990196 | Misuse of state funds and circumvention of controls over vehicle purchases | 29 |

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