

California State Auditor

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

Investigations of Improper Activities by State Employees:

July 2003 Through December 2003



March 2004
I2004-1

The first five copies of each California State Auditor report are free.
Additional copies are \$3 each, payable by check or money order.
You can obtain reports by contacting the Bureau of State Audits
at the following address:

**California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
(916) 445-0255 or TTY (916) 445-0033**

OR

**This report is also available
on the World Wide Web
<http://www.bsa.ca.gov/bsa/>**

The California State Auditor is pleased to announce
the availability of an on-line subscription service.
For information on how to subscribe, please contact
the Information Technology Unit at (916) 445-0255, ext. 456,
or visit our Web site at www.bsa.ca.gov/bsa

Alternate format reports available upon request.

Permission is granted to reproduce reports.



CALIFORNIA STATE AUDITOR

ELAINE M. HOWLE
STATE AUDITOR

STEVEN M. HENDRICKSON
CHIEF DEPUTY STATE AUDITOR

March 24, 2004

Investigative Report I2004-1

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from July 2003 through December 2003.

Respectfully submitted,

A handwritten signature in cursive script that reads "Elaine M. Howle".

ELAINE M. HOWLE
State Auditor

CONTENTS

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

Chapter 1

Department of Corrections, California State Prison- Los Angeles County: Misappropriation of State Funds	7
--	---

Chapter 2

California Youth Authority: Incompatible Activities and Misuse of State Resources	15
--	----

Chapter 3

Department of Social Services: Incompatible Activities, Misuse of State Resources, and Falsification of Educational Background	19
--	----

Chapter 4

Department of Consumer Affairs, Bureau for Private Postsecondary and Vocational Education: Improper Disclosure of Confidential Information	21
--	----

Chapter 5

California Unemployment Insurance Appeals Board: Improper Contracting	23
--	----

Chapter 6

Department of Transportation: Misappropriation of State Funds	27
--	----

Chapter 7

Office of Criminal Justice Planning: Conflict of Interest	29
--	----

Chapter 8

Department of Corrections, Pleasant Valley
State Prison: Improper Hiring 31

Chapter 9

Department of Forestry and Fire Protection:
Misuse of State Resources and Equipment 33

Chapter 10

Department of Transportation: Misrepresentation of
Educational Qualifications 35

Chapter 11

Department of Transportation: Misuse of
State Property 39

Chapter 12

Department of Corporations: Misuse of
State Equipment 41

Chapter 13

Department of Justice: Improper Use of
State Resources and Equipment 43

Appendix A

Activity Report 45

Appendix B

State Laws, Regulations, and Policies 49

Appendix C

Incidents Uncovered by Other Agencies 55

Index 57

SUMMARY

Investigative Highlights . . .

State employees engaged in improper activities, including the following:

- Misappropriated money the California State Prison-Los Angeles County received from production companies that filmed at the prison.*
- Directed employees to perform tasks related to his outside employment on state time.*
- Used state resources to operate a private business.*
- Failed to deposit recycling money received for materials state employees collected from highways into a state bank account.*
- Participated in the formation of a contract with a company employing her spouse.*
- Misrepresented professional qualifications to meet the minimum requirements of a state position.*
- Used a state-owned computer to visit 3,000 adult-oriented Web sites.*

continued on next page

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (Whistleblower Act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The Whistleblower Act defines an “improper governmental activity” as any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency. The Whistleblower Act authorizes the state auditor to investigate allegations of improper governmental activities and to publicly report on substantiated allegations. To enable state employees and the public to report these activities, the bureau maintains the toll-free Whistleblower Hotline (hotline): (800) 952-5665 or (866) 293-8729 (TTY).

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

This report details the results of the 13 investigations completed by the bureau or by other state agencies on our behalf between July 1, 2003, and December 31, 2003, that substantiated complaints. This report also summarizes actions that state entities took as a result of investigations presented here or reported previously by the bureau. Following are examples of the substantiated improper activities and actions the agencies have taken to date.

State departments engaged in the following improper activities:

- ☑ *Contracted with one of its employees and paid her \$13,579 for interpreting and translating services.*
 - ☑ *Hired an employee who did not meet the minimum qualifications for the position.*
-

DEPARTMENT OF CORRECTIONS, CALIFORNIA STATE PRISON-LOS ANGELES COUNTY

The California State Prison-Los Angeles County (Los Angeles County Prison) of the Department of Corrections (Corrections) mismanaged \$3,300 it collected from television and motion picture production companies that filmed at the prison for costs prison staff incurred when providing security for film production activities. An employee responsible for coordinating with production companies misappropriated \$1,500 that the Los Angeles County Prison received from a television show for filming at the prison by directing money that should have been deposited into the department's general operating fund into the prison's employee association, an association used to support activities boosting employee morale. Additionally, Los Angeles County Prison could not demonstrate that it was reimbursed the \$1,800 in costs it incurred to accommodate filming parts of two movies at the prison.

Los Angeles County Prison also participated in an improper plan to route \$4,150 in donations it received from production companies through an inmate religious account before subsequently transferring the money into the employee association so that donors could claim their donation as a tax-deductible contribution.

CALIFORNIA YOUTH AUTHORITY

A manager with the California Youth Authority (Youth Authority) violated state law by engaging in incompatible activities and wasting state resources when he directed two of his employees to perform work related to his outside employment during their state work time.

DEPARTMENT OF SOCIAL SERVICES

A Department of Social Services (Social Services) employee used state equipment and personnel to conduct his personal business. The employee excessively used state resources including fax, Internet, e-mail, telephone, printer, and computer to run his personal business and to conduct other personal matters. In addition, the employee directed another employee to complete faxes relating to his personal matters and his personal business on state time.

Social Services also obtained evidence that led them to question whether the employee ever obtained a college diploma, a requirement for appointment to his position. Social Services asked the employee for proof of college completion, but he resigned in June 2003 instead. Social Services later confirmed that the employee had not received a college diploma.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

The Unemployment Insurance Appeals Board (Appeals Board) paid one of its employees \$13,579 for interpreting and translating services she provided between September 2002 and July 2003. State law prohibits a state employee from contracting on his or her own behalf with any state agency to provide services or goods. An Appeals Board official, Official A, sent an e-mail notification in 1998 to other Appeals Board officials, notifying them that state employees were not allowed to enter into such contracts. Regardless, the employee told us that she checked with both the official in charge of her office, Official B, and her supervisor before she began to work as a contractor and that these officials gave her permission to do so. According to Official B, other employees had contracted with the Appeals Board in the past, and both the employee and Official B said they were unaware of the prohibition.

DEPARTMENT OF TRANSPORTATION

Supervisors from two different Department of Transportation (Caltrans) districts improperly spent money their employees had received for recycling materials collected from highways. A maintenance supervisor from one district (Supervisor A) received \$865.80 for material that his employees collected from highways. Supervisor A directed an employee to take the materials to a recycling company that paid the employee in cash, and the employee gave the money to Supervisor A. Supervisor A stated he spent the money on building crew morale and did not personally benefit in any manner.

A supervisor from another district (Supervisor B) also received money his employees collected from recycling materials. Supervisor B instructed his employees to collect checks payable to him from recycling companies, which Caltrans reported he probably deposited in his personal bank account. District

management did not determine or inquire about how much money Supervisor B received from recycling, or when he started this practice, because he discontinued it in July 2002, a year before district management completed its investigation. Caltrans determined that Supervisor B spent the money he received on a barbecue for his employees.

Caltrans intends to ask for reimbursement for the \$865.80 that Supervisor A received but does not intend to ask for reimbursement from Supervisor B because he discontinued the practice before Caltrans completed its investigation. Caltrans instructed Supervisor B's staff to have the recycling company make the checks out to Caltrans in the future and send them directly to its accounting division for deposit. It also plans to provide training to Supervisor A's staff to ensure proper handling of money received from recycling. Caltrans also plans to place a letter of warning in Supervisor A's personnel file.

OFFICE OF CRIMINAL JUSTICE PLANNING

A manager in the Office of Criminal Justice Planning (OCJP) violated state law that prohibits a public officer from being financially interested in a contract made in his or her official capacity. The manager was directly involved in the formation of a \$641 contract between the OCJP and an office supply retailer that employs the manager's spouse.

DEPARTMENT OF CORRECTIONS, PLEASANT VALLEY STATE PRISON

In April 1997 Pleasant Valley State Prison (Pleasant Valley Prison), part of the Department of Corrections (Corrections), hired an employee who did not possess the minimum requirements for the position. The job specifications for the employee's position require the equivalent to graduation from college and completion of one additional year, or 24 semester units, of graduate study in an accredited school. The employee possessed a college degree but completed only 12 semester units of graduate study related to her discipline. As a result of this improper appointment, the State paid the employee \$86,000 more than she was entitled to receive based on her qualifications.

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

An employee of the California Department of Forestry and Fire Protection (CDF) used his state computer to visit 3,000 adult-oriented Web sites between September 2002 and December 2002. As discipline for these infractions, CDF reported that it reduced the employee's pay by five percent for four months.

DEPARTMENT OF TRANSPORTATION

A Department of Transportation (Caltrans) employee misrepresented his educational qualifications to meet the minimum requirements when he applied for a position with Caltrans. As discipline for these infractions, Caltrans reported that it reduced the employee's salary by 5 percent for three months. It also reported that it will require all future employee candidates with nonaccredited degrees to present evaluations from a specific credential-evaluation organization, verifying that they have the appropriate educational qualifications. ■

Blank page inserted for reproduction purposes only.

CHAPTER 1

Department of Corrections, California State Prison-Los Angeles County: Misappropriation of State Funds

ALLEGATION I2003-0896

The California State Prison-Los Angeles County (Los Angeles County Prison) of the Department of Corrections (Corrections) mismanaged money collected from television and motion picture production companies that filmed at the prison.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. Los Angeles County Prison failed to ensure the State was reimbursed for \$3,300 in costs prison staff incurred when providing security for film production activities. Employee A, who was responsible for coordinating with production companies, misappropriated \$1,500 Los Angeles County Prison received from a television show for filming at the facility by directing the money to an association used to support activities related to boosting employee morale rather than ensuring that the State was reimbursed for these costs. By directing this money to the Los Angeles County Prison employee association, Employee A violated state laws that require state money to be deposited into the State Treasury and make it a crime for any persons responsible for the receipt, safekeeping, transfer, or disbursement of public money to misappropriate state funds.¹ Also, Los Angeles County Prison could not demonstrate that it received \$1,800 to reimburse costs it incurred to accommodate filming parts of two movies at the facility. By allowing the film companies to use the prison facilities without reimbursing the prison for its costs, the Los Angeles County Prison violated the state laws prohibiting gifts of public funds for private purposes.

In addition, Los Angeles County Prison participated in an improper plan to route \$4,150 in donations it received from production companies through an inmate religious account,

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

so that donors could claim their donation as a tax-deductible contribution, and subsequently transferred the money into an employee association account. Because the employee association lacked the authority to accept tax-deductible donations and intended to use the money for purposes other than those listed as eligible for tax-deductible contributions, Los Angeles County Prison violated federal laws governing nonprofit religious organizations.

To investigate the allegation, we reviewed applicable state and federal laws and Corrections policies and procedures. We also reviewed records of productions filmed at the prison, the employee association's financial records, financial transactions involving the prison inmate religious account, and records of production companies that filmed at Los Angeles County Prison maintained by the California Film Commission. Furthermore, we interviewed employees at Corrections, an employee with the California Film Commission, and representatives from the film industry.

BACKGROUND

Any Corrections institution may receive requests for permission to conduct audio, video, or photographic activities. To address these requests, Corrections developed policies and procedures governing requests from news media, such as daily television or radio stations, or from producers of non-news media. Non-news productions, such as the documentaries, feature and short films, and television series at issue in this report, must go through screening, permitting, security, and approval processes before Corrections will grant access to film crews.

Corrections policy also addresses how institutions should bill production companies for costs the State incurs while accommodating production requests and how institutions may accept donations from these companies. Corrections policy states that production companies must pay for personnel costs when they disrupt the normal routine of the institution, require special arrangements, or require the assignment of additional personnel to cover the production crew. This policy is consistent with the State Constitution's prohibition against making a gift of public funds or resources for a private purpose. Corrections policy also allows institutions to receive contributions from the production companies for the inmate welfare fund or another beneficiary that has been approved by the Corrections director.

As we discuss later in this chapter, Los Angeles County Prison solicited donations from production companies for its employee association, which it used to promote employee morale by paying for activities such as employee parties and bereavement acknowledgements, or by participating in activities involving community-based charities. The employee association is not a legitimate nonprofit organization that is qualified to accept tax-deductible donations.

AN EMPLOYEE MISAPPROPRIATED STATE FUNDS BY DIRECTING A PRODUCTION COMPANY PAYMENT INTO AN EMPLOYEE ASSOCIATION ACCOUNT

In violation of state laws, Employee A, an individual responsible for coordinating with and billing production companies for costs incurred by Los Angeles County Prison, directed a television show that filmed at the facility to pay \$1,500 to the prison's employee association, not to the State's General Fund (General Fund), as a reimbursement. On July 14, 2002, the television show's film crew shot a segment at the prison. However, we found no evidence that Employee A billed the television show for costs the prison incurred to accommodate the film crew or that the television show reimbursed the State for these costs. The records Employee A provided to us indicate that he instructed the television show to make its payment to the employee association and that he handled the payment as a donation. Two days after receiving this payment, the employee association, which had only \$254 in its account beforehand, spent \$800 for an employee barbecue.

An employee directed a production company to pay \$1,500 to an employee association fund, rather than reimburse the State for its costs.

Employee A's mishandling of this money violated several state laws. State law provides that state funds must be deposited in the custody of the state treasurer unless otherwise authorized by the Department of Finance. State law also provides that any state employee who deposits state money in any manner not prescribed may be subject to forfeiture of his or her employment. Because the State had incurred expenses in monitoring the television show production, the amount received from the television show that covered these expenses was subject to these requirements. In addition, Section 424 of the California Penal Code makes it a crime for any public officer or any other person charged with the receipt, safekeeping, transfer, or disbursement of public money to knowingly keep a false account, make a false entry or erasure in any account, use public money for a purpose not authorized by law, or willingly fail to transfer the money as required by law. Individuals in

violation of this law may also be disqualified from holding any office in the State and are subject to imprisonment for up to four years. California courts have held that all persons having some degree of control over public funds are subject to this law regardless of specific fraudulent intent.

BY FAILING TO ENSURE THE STATE WAS REIMBURSED FOR COSTS IT INCURRED ON OTHER PRODUCTIONS, LOS ANGELES COUNTY PRISON MADE A PROHIBITED GIFT OF PUBLIC FUNDS

Since October 2001, 12 production crews filmed at Los Angeles County Prison.² Of these 12 productions, six shot scenes for feature or short films, four filmed documentaries, and two taped segments for television shows. Although it received some payments from production companies to offset its costs, Los Angeles County Prison failed to ensure the State was reimbursed for \$3,300 of those monitoring costs. As previously discussed, this includes a \$1,500 payment associated with a television production that Los Angeles County Prison did not return to the State. The remaining \$1,800 relates to costs prison staff incurred while providing security for two films shot in April and May 2002. Because it could not demonstrate the State had been reimbursed the \$1,800 for these private endeavors, Los Angeles County Prison violated state law, which prohibits the State from making a gift of public funds or resources for a private purpose.

The Los Angeles County Prison failed to ensure it was reimbursed \$1,800 in costs incurred to accommodate two film production companies filming there in 2002.

In addition, the lack of accountability related to the collection of this money violates state law requiring a system of internal controls to guard against fraud and waste of government funds. Specifically, the law requires each state agency to establish and maintain a system or systems of internal accounting and administrative controls. Necessary for public accountability, internal controls are designed to minimize fraud, abuse, and waste of government funds. Also, by maintaining these controls, agencies gain reasonable assurance that the measures they adopt protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. Section 13400 of the California Government Code, the Financial Integrity and State Manager's Accountability Act (Accountability Act) also states that the elements of a satisfactory system of internal accounting and administrative

² We obtained this information from Los Angeles County Prison and the California Film Commission, the state entity that issues film permits to production companies seeking to film on state property.

controls shall include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and expenditures. Further, the Accountability Act requires that detected weaknesses be corrected promptly.

Employee A, who was responsible for coordinating with these two production crews, told us he assigned prison staff, including himself, to monitor these productions. He also said he billed each production company for the prison's costs but could not locate any of the records he said he had for these films. Employee A admitted that although he believed he invoiced the production companies for these costs, he never followed up to ensure they were paid. Instead, he said, he instructed the production companies to mail their payments to the Los Angeles County Prison business services unit. However, a business services unit manager we spoke with said he had no knowledge of such payments. As a result, neither Employee A nor the business services unit could demonstrate that Los Angeles County Prison ever billed the production companies for these costs nor that these production companies, if billed, ever reimbursed the State.

LOS ANGELES COUNTY PRISON IMPROPERLY ROUTED DONATIONS THROUGH AN INMATE RELIGIOUS ACCOUNT BEFORE TRANSFERRING THE MONEY TO THE EMPLOYEE ASSOCIATION

According to federal tax law, a charitable contribution is a donation or gift to, or for the use of, a qualified organization. Donors may treat these contributions as a deduction for purposes of their federal income tax liability only if they make them to qualified organizations, which include nonprofit groups that are religious, charitable, educational, scientific, or literary in purpose. A qualified organization may only use the charitable contributions it receives for those purposes for which the organization is created and holds money received "in trust" for those purposes.

Despite these requirements, a prison official approved a plan recommended by Employee B to direct \$4,150 in donations received from production companies through an inmate religious account maintained by Los Angeles County Prison, which was authorized to receive charitable contributions, before transferring the money to the employee association, which was

The Los Angeles County Prison violated federal tax laws by improperly directing \$4,150 in donations received from production companies through an inmate religious account before transferring the money into the employee association account.

not qualified to accept tax-deductible donations. As shown in the Table, Los Angeles County Prison deposited donations of \$900, \$250, \$2,500, and \$500 into the inmate religious account, and then transferred the money to the employee association. According to Employee B, she asked a subordinate who managed the inmate religious account to accept these donations. Employee B then had the money transferred to the employee association, even though the association lacked the authority to receive tax-deductible donations and intended to use the money for nonqualifying purposes. The employee association used most of the money, about \$2,900, to purchase exercise equipment for the prison employees' gym. By improperly receiving and handling these payments, Los Angeles County Prison violated the laws governing charitable donations that require the money be used for the purposes for which it was received.

TABLE

Productions Filmed at the Prison From October 2001 Through July 2003

Production	Date of Shoot	Production Crew Size	Production Type	Monitoring Costs*	Monitoring Costs Returned to the State	Monitoring Costs Not Returned to the State	Donations Directed Through Inmate Religious Account	Payments Deposited to Employee Association
Production #1	10/17/01	2	Documentary	0	0	0	0	0
Production #2	04/29/02	6	Feature film	\$ 1,060	0	\$1,060	0	0
Production #3	05/29/02	50	Feature film	740	0	740	0	0
Production #4	07/14/02	6	Television series	1,500	0	1,500	0	\$1,500
Production #5	11/19/02	20	Short film	2,148	\$ 2,148	0	0	0
Production #6	12/08/02 12/09/02	170	Feature film	11,180	11,180	0	\$ 900	900
Production #7	01/18/03	20	Short film	1,920	1,920	0	0	0
Production #8	02/19/03	10	Feature film	1,960	1,960	0	250	250
Production #9	03/22/03	50	Television series	6,940	6,940	0	2,500 500	2,500 500
Production #10	04/08/03	2	Documentary	0	0	0	0	0
Production #11	06/13/03	3	Documentary	0	0	0	0	0
Production #12	07/17/03	3	Documentary	0	0	0	0	0
Totals				\$27,448	\$24,148	\$3,300	\$4,150	\$5,650

* For productions #4 through #9, monitoring costs represent the amounts Los Angeles County Prison received from production companies. For documentaries (productions #1, #10, #11, and #12) Los Angeles County Prison reported it did not incur any monitoring costs. Because the prison had no records for productions #2 and #3, we calculated monitoring costs based on our review of employee attendance records.

The diversion and use of these charitable contributions for a purpose other than the religious purposes for which they were received violates laws that require these contributions to be held in trust and used only for the authorized purposes for which they were received.

AGENCY RESPONSE

As of the date of this report, Corrections' review was still ongoing but it reported that the Los Angeles County Prison suspended the use of the employee association funds and all activities related to the employee association pending development of operational procedures, bylaws, and direction from its management. The Los Angeles County Prison is also reviewing all film records to determine whether it billed and received payment from production companies for monitoring costs. ■

Blank page inserted for reproduction purposes only.

CHAPTER 2

California Youth Authority: Incompatible Activities and Misuse of State Resources

ALLEGATION I2002-648

A manager (Manager A) of the California Youth Authority (Youth Authority) directed two of his employees (employees A and B) to perform work related to his outside employment on state time.

RESULTS AND METHOD OF INVESTIGATION

We asked the Youth Authority to investigate the allegation on our behalf; it substantiated this and other allegations. To investigate, the Youth Authority interviewed several of its employees, including Manager A and employees A and B. In addition, it reviewed state law, files from the computers of employees A and B, and the time and attendance records of Employee B.

Manager A violated state law by engaging in incompatible activities and misusing state resources when he directed employees A and B to perform tasks related to his outside employment as a teacher at a community college during their state employment.³ Because Manager A directed both employees to work on projects related to his outside employment as a college instructor on state time, the resources of the Youth Authority were used to perform these projects.

IN VIOLATION OF STATE LAW, MANAGER A DIRECTED EMPLOYEES A AND B TO PERFORM NONSTATE TASKS RELATED TO HIS OUTSIDE EMPLOYMENT

State law prohibits employees from using state resources for personal gain and from engaging in activities that are incompatible with their duties as state employees. Manager A violated these laws when he improperly directed two of his

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

employees to spend state time assisting him on tasks related to his outside employment as a college instructor. Although Manager A and Employee B denied it, the Youth Authority substantiated the allegation based on the statements of several employees, including Employee A, who admitted that he completed numerous projects for Manager A that were related to Manager A's outside employment. In addition, the Youth Authority found a number of files from employees A and B's computers that related to Manager A's outside employment.

Employee A explained he felt threatened by Manager A and completed projects related to Manager A's college classes to avoid being replaced by another employee.

Employee A admitted to completing numerous projects for Manager A, some of which were projects related to Manager A's college classes. Manager A would present some of the projects in staff meetings and then use them for his college classes. Although the manager also used some of the course materials these employees were directed to assist with during his state employment, the Youth Authority determined that other materials that the employees assisted with appear to have been used solely in the manager's outside employment. Employee A explained he felt threatened by Manager A and completed the projects to avoid being replaced by another employee.

Employee B denied working on Manager A's nonstate projects. When Youth Authority investigators questioned her about the numerous documents they copied from her computer that were related to Manager A's college classes, she explained that she could not remember typing some of the documents and others were merely used as templates to complete state projects. However, other employees stated that Employee B completed tasks for Manager A that were related to his outside employment. One employee apparently complained repeatedly to a coworker that she felt overworked because Employee B spent so much time doing work for Manager A's college classes.

Although Employee B and Manager A denied the allegation, we agree with the Youth Authority's conclusion that Manager A directed employees A and B to perform numerous projects related to Manager A's outside employment based on the materials the Youth Authority found on employees A and B's computers and the statements of Youth Authority employees, including Employee A.

AGENCY RESPONSE

In November 2003, the Youth Authority recommended a 30-day suspension without pay for Manager A and employees A and B. However, none of the employees served the suspension. Manager A retired in December 2002, before the Youth Authority completed its investigation. The Youth Authority is proceeding with its recommendation regarding employees A and B and expects to resolve the matter in a few months. ■

Blank page inserted for reproduction purposes only.

CHAPTER 3

Department of Social Services: Incompatible Activities, Misuse of State Resources, and Falsification of Educational Background

ALLEGATION I2002-1042

A Department of Social Services (Social Services) employee used a state phone and state fax machine to conduct his outside personal business.

RESULTS AND METHOD OF INVESTIGATION

We asked Social Services to investigate on our behalf. Social Services reported that it had already substantiated the allegation as well as other improper activities. To investigate the allegation, Social Services reviewed documents, fax logs, and the employee's e-mail, Internet, and phone usage. Social Services also interviewed the employee.

State laws prohibit employees from using state resources for personal gain and from engaging in activities that are incompatible with their duties as state employees.⁴ Social Services found that the employee used state resources, including fax, Internet, e-mail, telephone, printer, and computer excessively, to run his outside personal business and to conduct other personal matters. In addition, it found that the employee directed another state employee to complete faxes relating to his personal matters and his personal business. Despite being warned of these improprieties, beginning in April 2002, the employee continued to misuse state resources until Social Services began a formal review of the matter in February 2003 and initiated adverse action against him in March 2003.

Furthermore, in April 2003, Social Services obtained evidence that led it to question whether the employee ever obtained a college degree, as required by the position. Social Services asked the employee for proof of his college diploma, but he resigned in June 2003 instead of supplying proof. Social Services later

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

Although required by his position, the employee had not obtained a college degree.

confirmed that the employee had not received his college diploma. The employee may have violated state law, which requires that an employee must accept an appointment in good faith in order to be eligible to receive the compensation promised by the employer. State regulations further specify this obligation by requiring that a person accepting an appointment with the State must provide complete, factual, and truthful information necessary for a proper appointment. The regulations further state that an employee must make a reasonable attempt to seek correction of any aspect of the appointment that he or she knows is illegal.

AGENCY RESPONSE

Social Services reported that it counseled the employee on several occasions regarding state policy on the inappropriate use of state time and resources and issued him a training plan. Social Services also reported that it initiated adverse action against the employee in March 2003 but did not complete the action because the employee resigned from state service in June 2003. ■

CHAPTER 4

Department of Consumer Affairs, Bureau for Private Postsecondary and Vocational Education: Improper Disclosure of Confidential Information

ALLEGATION I2003-0652

The Bureau for Private Postsecondary and Vocational Education (BPPVE), part of the Department of Consumer Affairs (Consumer Affairs), improperly disclosed confidential personal information.

RESULTS AND METHOD OF INVESTIGATION

We asked Consumer Affairs to investigate on our behalf and it substantiated the allegation. To conduct its investigation, Consumer Affairs reviewed applicable laws and documentation related to the confidential information. In addition, it interviewed BPPVE and Consumer Affairs staff and others.

BACKGROUND

The BPPVE is responsible for approving and regulating private postsecondary educational institutions and for establishing educational standards that serve as the minimum standard for instructional quality and institutional stability for private postsecondary schools in California. Its primary objective is to develop a strong, vigorous, and widely respected private postsecondary and vocational education sector. In performing this role, the BPPVE regulates 3,000 educational institutions serving an estimated 400,000 students.

In violation of state law, BPPVE inadvertently mailed confidential loan information and Social Security numbers to an unauthorized outside party.

THE BPPVE IMPROPERLY DISCLOSED CONFIDENTIAL INFORMATION

The BPPVE violated state law when it mailed confidential student information for several students, including Social Security numbers and loan information, to a student who had

submitted a request for her own personal loan information. The Information Practices Act of 1977 (IPA) imposes various requirements on state agencies concerning the collection, use, and dissemination of personal information, and specifically prohibits a state agency from disclosing any personal information about an individual in a manner that links that personal information to the individual, except under certain specified circumstances. The IPA defines personal information to include the name and Social Security number of an individual. Related provisions of state law designed to ensure effective compliance with the IPA require that state agencies enact and maintain a permanent privacy policy. Consumer Affairs concluded that the BPPVE's inadvertent release of the students' Social Security numbers and financial information violated both the IPA and Consumer Affairs permanent privacy policy.

AGENCY RESPONSE

Consumer Affairs reported that the BPPVE immediately took corrective actions to address the inadvertent release of personal information. The BPPVE performed a comprehensive review of the process it followed in this situation and noted that its procedures were consistent with statutory requirements, but avoidable human error caused the inappropriate disclosure. The BPPVE has now centralized all its Public Records Act requests through a designated employee overseen by the BPPVE's deputy chief and, when necessary, Consumer Affairs legal staff is consulted. ■

CHAPTER 5

California Unemployment Insurance Appeals Board: Improper Contracting

ALLEGATION I2003-0836

The California Unemployment Insurance Appeals Board (Appeals Board) improperly contracted with one of its employees and paid her \$13,579 to provide interpreting and translating services.⁵

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated this allegation. To investigate the allegation, we examined several types of documentation, including all of the invoices submitted by the employee for interpreting and translating services, files pertaining to cases the employee worked on, and the employee's time and attendance records. In addition, we reviewed applicable laws and interviewed Appeals Board employees.

BACKGROUND

The Appeals Board conducts hearings of cases concerning claims for unemployment and disability benefits. These cases are appeals of determinations made by the Employment Development Department (EDD). The Appeals Board also holds hearings on petitions from taxpayers concerning assessments made by EDD's tax branch. If the taxpayers are not proficient in English, they may require the services of an interpreter. The Appeals Board is responsible for providing an interpreter at the hearings and may also need to translate correspondence from the taxpayer.

⁵ Interpreting refers to verbal communications, whereas translating refers to written communications.

THE APPEALS BOARD IMPROPERLY CONTRACTED WITH ONE OF ITS EMPLOYEES

In violation of state law, the Appeals Board paid one of its employees \$13,579 for interpreting and translating services she provided between September 2002 and July 2003.⁶ State law prohibits state employees from contracting on their own behalf as independent contractors with any state agency to provide services or goods. An Appeals Board official, Official A, sent an e-mail in 1998 to several other board officials notifying them that employees were not allowed to enter into contracts with the Appeals Board. Regardless of this notice, the employee told us that when she checked with both the official in charge of her office, Official B, and her supervisor before she began to work as a contractor, they gave her permission to contract with her state employer. According to Official B, other employees had contracted with the Appeals Board in the past, and both the employee and Official B said they were unaware of the prohibition. Officials are expected to be aware of the laws they are charged with administering. As a result, the Appeals Board violated state law when it agreed to allow the employee to work as a contractor as long as she performed the work on her own time.

The Appeals Board violated state law when it agreed to allow the employee to work as a contractor as long as she performed the work on her own time.

Official B told us that he did not receive Official A's e-mail and was therefore unaware of the prohibition. We confirmed that at the time of Official A's 1998 e-mail, Official B's position was not one that was included on Official A's distribution list for the e-mail message. In August 2003, the supervisor learned of the prohibition when she attended a meeting for Appeals Board support staff. On September 2, 2003, just over a month after we began our investigation, Official A sent another e-mail to board officials that reiterated the prohibition. This time Official B received the e-mail, and he told us that he informed the employee she would no longer be able to contract with the State.

THE EMPLOYEE CONTRACTED WITH THE STATE FOR INTERPRETING SERVICES

The employee billed the State \$7,929 for interpreting at 146 hearings. Interpreters are typically paid \$55 for up to 90 minutes.⁷ We found only one hearing the employee participated in that lasted 90 minutes, and most of the hearings

⁶ For a more detailed description of the laws discussed in this chapter, see Appendix B.

⁷ In the event that the taxpayer does not appear for the hearing, the interpreter is still allowed to bill the State \$55 for their time.

were 20 minutes or less. For each day she works for the State, the employee completes a sign-in sheet where she indicates the beginning and ending time of her workday and typically makes a notation regarding the length of her lunch period. Most of the hearings for which the employee performed interpreting services were scheduled close to noon, and the employee made notations on the sign-in sheets to indicate she took only a half-hour lunch that day because she was at a hearing.⁸ In almost every instance when she billed the State for interpreting services, she made a corresponding notation on the sign-in sheet to indicate that fact. Therefore, it appears that the employee was performing the interpreting work on her own time and was not in any way trying to conceal the fact that she was performing contract work for the Appeals Board.

THE EMPLOYEE ALSO PROVIDED TRANSLATING SERVICES

The employee also performed 253 written translations at a cost to the State of \$5,650. Translators are paid \$20 per hour for their services. Taxpayers who are not proficient in English may submit letters to the Appeals Board in their native language that then must be translated to English. From about the time she began performing translating work for the Appeals Board, it appears the employee translated all or almost all of the letters requiring translations that were written in her language of expertise.

According to the employee, when the Appeals Board received documents that required translation, other board employees would leave them on her desk. The employee told us that she took the documents home and worked on them on her own time; she usually printed the translated text at home but occasionally e-mailed it to herself at work so she could print it there.

AGENCY RESPONSE

The Appeals Board stated that it was apparent the situation occurred because Official B was not aware that Appeals Board employees were prohibited from contracting with the State. This prohibition is now covered in the Appeals Board's mandatory ethics training program. In addition, the executive director met with Official B to review office procedures and provided him with a counseling memorandum regarding the specific breach of rules. ■

⁸ The hearings are held in the same building in which the employee works.

Blank page inserted for reproduction purposes only.

CHAPTER 6

Department of Transportation: Misappropriation of State Funds

ALLEGATION I2002-874, I2002-981

Supervisors from two different Department of Transportation (Caltrans) districts improperly spent money their employees had received for recycling materials collected from highways.

RESULTS AND METHOD OF INVESTIGATION

Caltrans investigated and substantiated the allegations. To investigate, Caltrans district management interviewed the two supervisors and other Caltrans employees.

Although state law strongly encourages the recycling of various materials and specifically requires state agencies to take various measures designed to promote recycling, two supervisors violated the law by improperly spending recycling money. Section 8314 of the Government Code prohibits state officers and employees from using state resources such as land, equipment, travel, or time for personal enjoyment, private gain, or personal advantage, or for an outside endeavor not related to state business.

Caltrans policy states that employees who receive recycling money shall take the money directly to the district cashier for deposit; Caltrans uses this money to fund state highways. Additionally, state laws and administrative policies limit the circumstances under which employees may hold state funds outside the State Treasury.⁹ Section 16506 of the California Government Code requires that all money belonging to the State under the control of any state employee other than the state treasurer shall be deposited under conditions that the director of finance prescribes. California Government Code 16510 provides that any employee who deposits state money in any manner not prescribed by the Department of Finance may be subject to forfeiture of his or her employment. Furthermore,

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

Section 8002 of the State Administrative Manual specifies that in order to open an account outside of the State Treasury, a department must request approval from the Department of Finance, justifying the need for such an account.

A maintenance supervisor from one district (Supervisor A) received \$865.80 for material that his employees collected from highways and took to a recycling center. Supervisor A directed an employee to take the materials the district collected to a recycling company that paid the employee in cash. The employee gave the money to Supervisor A, who kept the money in a desk drawer. The supervisor stated he spent the money on building the morale of the crew, which included coffee and refreshments, staff barbecues, and flowers and cards for employees who were ill. According to Supervisor A, he did not purchase anything personal with the recycling money or personally benefit in any manner.

Two supervisors improperly spent recycling money on employee-related functions rather than return the money to the State.

A supervisor from another district, Supervisor B, also received money his employees collected from recycling materials. Supervisor B instructed his employees to collect checks payable to him from recycling companies. Caltrans reported that he likely deposited these checks in his personal bank account and did not return the money to Caltrans. District management did not determine or inquire about how much money Supervisor B received from recycling, or when he started this practice, because he discontinued it in July 2002, a year before district management completed its investigation. Caltrans found that Supervisor B spent the money he received on a barbecue for his employees.

AGENCY RESPONSE

Caltrans intends to ask for reimbursement for the \$865.80 that Supervisor A received, but it does not intend to ask for reimbursement from Supervisor B because he discontinued the practice a year before Caltrans completed its investigation. Caltrans instructed Supervisor B's staff to have the recycling company make the checks out to Caltrans and send them directly to its accounting division for deposit. It also plans to provide training to Supervisor A's staff to ensure proper handling of money received from recycling. Caltrans also plans to place a letter of warning in Supervisor A's personnel file. ■

CHAPTER 7

Office of Criminal Justice Planning: Conflict of Interest

ALLEGATION I2003-0902

A manager in the Office of Criminal Justice Planning (OCJP) violated state law that prohibits a public officer from being financially interested in a contract made in his or her official capacity.¹⁰

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. Our investigation showed that the manager was directly involved in the formation of a \$641 contract between the OCJP and an office supply retailer that employs the manager's spouse. Because the manager derived a financial benefit from the contract with a company that employs her spouse, we believe she violated Section 1090 of the California Government Code pertaining to conflicts of interest.¹¹

To investigate the allegation, we reviewed purchase requests, purchase orders, and other internal documents relating to all transactions between the OCJP and the office supply company from April 1999 through August 2003. We also reviewed department policies and applicable conflict-of-interest laws. Finally, we interviewed several OCJP employees and the manager.

THE MANAGER CREATED A CONFLICT OF INTEREST

While employed at the OCJP, the manager was involved in work directly related to the approval of a contract that she personally benefited from, thus violating the California Government Code, which prohibits employees from being financially interested in any contract made by them in their official capacity. Section 1090 of this code does not define when an official is financially interested in a contract. However, the attorney general has

¹⁰ In accordance with the State Budget Act of 2003-04, the OCJP no longer exists effective January 1, 2004. Based on direction from the Department of Finance, the office's programs are being transferred to other agencies.

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

interpreted this prohibition broadly and has found that an employee who participates in the formation of a contract with an entity that employs his or her spouse has a financial interest in that contract and, therefore, may be in violation of Section 1090 of the Government Code.

According to OCJP policy, when an employee had a need for a purchase that was not available through the State, he or she was to submit a purchase request to the business management branch. Once the branch received the request, it was the responsibility of the procurement officer to solicit bids and select a vendor. However, the procurement officer did not obtain this bid or take part in the decision to select the company chosen for the project.

According to a subordinate, the manager reviewed two bids previously obtained by the business management branch and had the subordinate obtain another bid, suggesting she do so from the office supply company where her spouse is employed. The subordinate added that the manager awarded the contract to the company, which was the lowest bidder, and directed her to draft a purchase request, even though neither the manager nor her subordinate ordinarily review, obtain, or select bids. The purchase request used for this project was signed by the manager and included an invoice from the company, which indicated to the procurement officer that the OCJP had already selected this company for the project. The manager maintains that she was not involved in the selection of the company and that her signature on the purchase request does not mean that she awarded the contract. However, the manager acknowledged that she signed the purchase request knowing that the company had bid the job at the amount listed on the purchase request. This evidence indicates that the manager was involved in the decision to select the company that employs her spouse for the project.

The manager was involved in work directly related to a contract that she benefited from.

AGENCY RESPONSE

The Governor's Office of Emergency Services reported that it recently absorbed the programs and personnel of the former OCJP, and is in the process of determining the appropriate level of disciplinary action to take against the manager. ■

CHAPTER 8

Department of Corrections, Pleasant Valley State Prison: Improper Hiring

ALLEGATION I2002-792

Pleasant Valley State Prison (Pleasant Valley Prison), part of the Department of Corrections (Corrections), hired an employee who did not possess the minimum requirements for the position.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. To investigate the allegation, we obtained and reviewed applicable state regulations and policies. In addition, we interviewed the employee, her former supervisor, and other Corrections employees. Finally, we obtained and reviewed files the State Personnel Board (Personnel Board) had concerning the employee's hire and discussed the Personnel Board's review with appropriate staff.

In April 1997, Pleasant Valley Prison hired the employee even though she had not completed one additional year of graduate study in an accredited school, as stated in the job specifications. State policy stipulates that, in general, an individual having completed 24 semester units as a graduate student would meet the one-year requirement.¹² Although the employee possessed a college degree and had completed 12 semester units of graduate study related to her discipline at an accredited school, she did not possess the required 24 semester units. As a result of this improper appointment in 1997, the State has since paid the employee approximately \$86,000 more than she was entitled to receive based on her qualifications.

Pleasant Valley Prison paid the employee \$86,000 more than she was entitled to receive based on her qualifications.

The employee told us that the individuals she interviewed with knew she had completed only 12 semester units of graduate work. The employee's supervisor said he, along with Pleasant Valley Prison's personnel staff, concluded that the employee met the minimum qualifications because she had completed one year of graduate studies at an accredited university. The supervisor also said that the university told him that individuals who take

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

six or more units per semester in graduate classes are considered full-time students. However, we believe this conclusion was flawed in that it failed to address whether the employee completed the required 24 semester units. In addition, when we asked the Personnel Board about this matter, it concluded that the employee did not meet the educational requirements. Further, the Personnel Board determined that although the employee had accepted the appointment in good faith, Pleasant Valley Prison failed to uphold state regulations concerning the making of good-faith appointments because it did not ensure that the employee met the appropriate job requirements before hiring her.

AGENCY RESPONSE

Corrections reported that because the appointment was made in good faith and because the one-year statute of limitation for canceling illegal good-faith appointments had passed, it would not pursue adverse action. In addition, Corrections reported that it counseled Pleasant Valley Prison staff on the proper method of clearing a certification list, and clarified that one year of graduate study equals 24 semester units. ■

CHAPTER 9

Department of Forestry and Fire Protection: Misuse of State Resources and Equipment

ALLEGATION I2002-1076

An employee for the California Department of Forestry and Fire Protection (CDF) used state equipment to view adult-oriented Web sites.

RESULTS AND METHOD OF INVESTIGATION

CDF investigated and substantiated the allegation. It found that the employee violated state law that requires a state employee to devote his or her full time and attention to state duties by using his state computer excessively for purposes unrelated to work, visiting 3,000 adult-oriented Web sites between September 2002 and December 2002.¹³ To investigate the allegation, CDF interviewed witnesses, and the California Highway Patrol (Highway Patrol) performed a forensic investigation on the employee's state computer. The Highway Patrol found evidence supporting the allegation that the employee used his state computer to view adult-oriented Web sites.

AGENCY RESPONSE

CDF reported that the adverse action against the employee consisted of a 5 percent reduction in pay for four months. ■

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

Blank page inserted for reproduction purposes only.

CHAPTER 10

Department of Transportation: Misrepresentation of Educational Qualifications

ALLEGATION I2002-742

A Department of Transportation (Caltrans) employee misrepresented his educational qualifications to meet the minimum requirements when he applied for a position as a transportation engineer.

RESULTS AND METHOD OF INVESTIGATION

We asked Caltrans to investigate on our behalf; the department reported that it had already received and investigated the allegation. It initially concluded that the employee erroneously indicated he had the educational background required of transportation engineers when he applied for the position. In response to our request to investigate the allegation, Caltrans conducted some additional analysis and determined that the employee failed in his duty to provide accurate information when he applied for the position. After receiving the Caltrans report, we performed some follow-up work and validated its analysis.

To conduct its investigation, Caltrans reviewed documents the employee submitted as proof of his educational qualifications when he applied for two different positions and asked him to submit any additional information that could prove he possessed the educational qualifications required for a transportation engineer. We reviewed the Caltrans report and supporting documents and interviewed Caltrans managers and the employee.

THE EMPLOYEE MISREPRESENTED HIS EDUCATIONAL QUALIFICATIONS

The employee knowingly misrepresented his educational qualifications when he applied for a transportation engineer position at Caltrans by indicating that he met the minimum qualifications for the position. By knowingly misrepresenting his educational qualifications, the employee violated state law,

which requires that an employee must accept an appointment in good faith in order to be eligible to receive the promised compensation. State regulations further specify this obligation by requiring that in order to accept an appointment with the State, a person must provide complete, factual, and truthful information necessary for a proper appointment.¹⁴ This regulation also requires that an employee make a reasonable attempt to correct any aspects of the appointment, such as false preemployment information, that the employee knows are illegal.

To meet the minimum qualifications for the transportation engineer position, applicants must fulfill any one of three standards. One standard allows an individual to meet the minimum qualifications by possessing a degree from a nonaccredited institution that includes the basic engineering courses normally covered in a standard four-year college engineering program and by passing a written examination covering basic engineering. When applying to take the engineering exam, the employee indicated that he possessed the educational background necessary to meet this standard when he did not.

When applying to take the engineering exam, the employee indicated that he possessed the necessary education when he did not.

Because the employee indicated that he possessed a degree from a nonaccredited institution, Caltrans allowed him to take the basic engineering exam, which he passed. After he passed the exam, the employee submitted a state employment application to Caltrans that indicated he had a diploma in civil engineering and provided documents, translated from another language into English, which appeared to confirm his education was sufficient to meet the necessary standard. Caltrans did not confirm that these translated documents were authentic or accurate.

Approximately a year after it hired the employee, Caltrans received an allegation that he did not possess the minimum educational background required for the transportation engineer position. In response to the allegation, Caltrans submitted the employee's transcripts to an independent translator who determined that the employee's education was not sufficient to meet the standard. Caltrans informed the employee that he needed to provide additional information to show that he possessed the minimum educational qualifications required, but the employee failed to do so. Based on its initial review, Caltrans determined that the employee erroneously indicated that he met the minimum qualifications for the position and demoted him to a lesser position for which he did meet the minimum qualifications.

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

Shortly after he applied for the transportation engineer position, the employee also applied for another position at Caltrans. For each position, the employee submitted documents to show he met the required qualifications. During its initial investigation, Caltrans only reviewed the educational documents the employee submitted for the transportation engineer position. After it received our request to investigate the allegation on our behalf, it conducted some additional analysis and reviewed the educational documents the employee submitted for the other position. These documents included a credential evaluation report that Caltrans apparently did not receive when the employee submitted his transportation engineer application. The credential evaluation report concluded that the employee's degree was not equivalent to a four-year college engineering degree but was instead equivalent to a high school diploma. The employee told us that he did not purposefully deceive Caltrans and believes the credential evaluation report was either accidentally not included with his transportation engineer application or was lost when he sent the report to Caltrans via fax machine. Regardless, because the employee indicated that he earned a degree from a four-year college despite possessing the credential evaluation report that indicated otherwise, Caltrans determined that the employee failed in his duty to provide accurate information when he participated in the transportation engineer exam.

AGENCY RESPONSE

As mentioned, Caltrans demoted the employee to a lesser position for which he did meet the minimum qualifications. In addition, Caltrans reduced the employee's salary by 5 percent for three months. It also reported that it will require all future transportation engineering candidates with nonaccredited degrees to present an evaluation from a specific credential evaluation organization, verifying that they have completed a four-year college engineering curriculum. ■

Blank page inserted for reproduction purposes only.

CHAPTER 11

Department of Transportation: Misuse of State Property

ALLEGATION I2003-0793

A Department of Transportation (Caltrans) employee misused his state telephone and state computer to purchase and sell automobiles and automobile parts on the Internet.

RESULTS AND METHOD OF INVESTIGATION

We asked Caltrans to investigate the allegation on our behalf. Caltrans substantiated the allegation and took disciplinary action against the employee. To conduct its investigation, Caltrans performed a forensic examination of the employee's computer and obtained and analyzed his state telephone records for inappropriate calls.

State laws prohibit employees from using state resources for personal gain and from engaging in activities that are incompatible with their duties as state employees.¹⁵ Caltrans' analysis of the employee's computer files showed frivolous use of its network connection. The employee created digital music files and other files related to his personal business of buying and selling automobiles and automobile parts on the Internet. In addition, Caltrans discovered that between February and July 2003, the employee made 101 calls totaling 164 minutes to a company that appear to be related to his personal business.

AGENCY RESPONSE

Caltrans informed us that it served the employee with a letter of warning, which it will place in his personnel file for a period up to three years. Caltrans also counseled the employee on the appropriate use of state resources. ■

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

Blank page inserted for reproduction purposes only.

CHAPTER 12

Department of Corporations: Misuse of State Equipment

ALLEGATION I2002-1102

An attorney (employee) at the Department of Corporations (Corporations) used a state fax machine in the conduct of his personal business as a Certified Public Accountant (CPA).

RESULTS AND METHOD OF INVESTIGATION

We gave Corporations copies of faxes sent to the employee at his state office and asked it to investigate the allegation on our behalf. Corporations substantiated the allegation. State law prohibits employees from engaging in any employment activity that is incompatible with their duties as state employees.¹⁶ This law specifically requires that employees devote their full time, attention, and efforts to their state employment during their hours of duty as state employees.

As part of his state job, the employee works with a wide variety of business clients. To investigate, Corporations reviewed all its program databases to determine if the businesses shown on the fax copies were related to the employee's CPA business or were clients of Corporations. After confirming that the specific documents were not related to Corporations' clients, senior management interviewed the employee. The employee admitted that the documents belonged to clients of his CPA business and confirmed that he occasionally had information faxed to him at his state office. In addition, Corporations spot-checked recent fax activity listings to identify any faxes to or from these entities or other clients of the employee. It found none.

AGENCY RESPONSE

Corporations counseled the employee on his lack of judgment and directed him to review the appropriate California Code sections regarding outside employment and incompatible

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

activities, such as using state equipment for personal gain. It directed the employee to stop using the fax machine for personal business and informed him that if he failed to follow this directive or engaged in any other inappropriate behavior, adverse action would be taken. ■

CHAPTER 13

Department of Justice: Improper Use of State Resources and Equipment

ALLEGATION I2002-842

A Department of Justice (Justice) deputy attorney (employee) used state equipment to obtain confidential information about another state employee for an inquiry he was conducting in his capacity as a private citizen.

RESULTS AND METHOD OF INVESTIGATION

Justice had already received and investigated a similar allegation. It confirmed that the employee misused state office equipment and directed him to avoid using the equipment for any activities other than those directly associated with his official duties.

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

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: March 24, 2004

Investigative Staff: Ken L. Willis, Manager, CPA
Scott Denny, CPA, CFE
Arn Gittleman, CPA, CFE, CGFM
Renju Jacob
Cynthia A. Sanford, CPA
Mike Urso

Audit Staff: Siu-Henh Ung

Legal Counsel: Donna Neville, JD

APPENDIX A

Activity Report

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling \$13.5 million since July 1993, when it reactivated the Whistleblower Hotline (hotline), formerly administered by the Office of the Auditor General. These improper activities include theft of state property, false claims, conflicts of interest, and personal use of state resources. The state auditor's investigations also have substantiated improper activities that cannot be quantified in dollars but that have had a negative social impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

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

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

TABLE A.1

**Corrective Actions
July 1993 Through December 2003**

Type of Corrective Action	Instances
Referrals for criminal prosecution	74
Convictions	7
Job terminations	56
Demotions	10
Pay reductions	18
Suspensions without pay	15
Reprimands	156

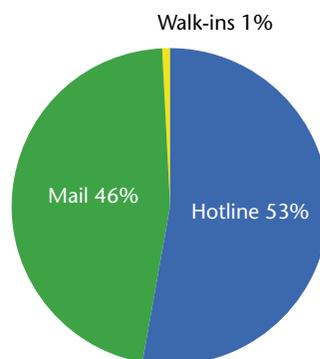
**New Cases Opened Between
July 2003 and December 2003**

From July 1, 2003, through December 31, 2003, the bureau opened 250 new cases.

The bureau receives allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 or (866) 293-8729 (TTY) reported 132 of our new cases in this time period.¹⁷ The bureau also opened 116 new cases based on complaints it received in the mail and two based on complaints from individuals who visited the office. Figure A.1 shows the sources of all the cases opened from July 2003 through December 2003.

FIGURE A.1

**Sources of 250 New Cases Opened
July 2003 Through December 2003**



¹⁷ In total, the bureau received 2,342 calls on the hotline from July 2003 through December 2003. However, 1,487 (63 percent) of the calls were about issues outside the bureau's jurisdiction. In these cases, the bureau attempted to refer the caller to the appropriate entity. An additional 714 calls (30 percent) were related to previously established case files.

Work on Investigative Cases July 2003 Through December 2003

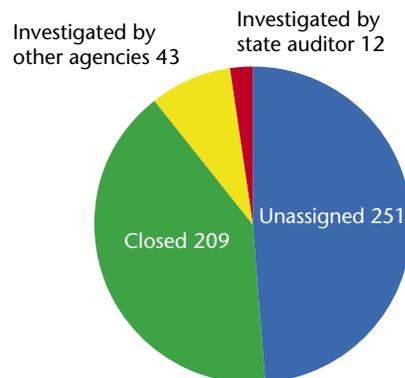
In addition to the 250 new cases opened during this six-month period, 217 previous cases awaited review or assignment as of July 1, 2003; 48 were still under investigation by this office or by other state agencies or were awaiting completion of corrective action. Consequently, 515 cases required some review during this period.

After reviewing the information gathered from complainants and preliminary reviews, the bureau concluded that 151 cases did not warrant complete investigation because of lack of evidence.

The Whistleblower Act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From July 1, 2003, through December 30, 2003, state agencies investigated 43 cases on the bureau's behalf and substantiated allegations on 12 (60 percent) of the 20 cases they completed during the period. In addition, the bureau independently investigated 12 cases and substantiated allegations on five of the eight completed during the period. As of December 31, 2003, the bureau had 251 cases awaiting review or assignment. Figure A.2 shows the disposition of the 515 cases the bureau worked on from July 2003 through December 2003.

FIGURE A.2

**Disposition of 515 Cases
July 2003 Through December 2003**



Blank page inserted for reproduction purposes only.

APPENDIX B

State Laws, Regulations, and Policies

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

CAUSES FOR DISCIPLINING STATE EMPLOYEES

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

GIFT OF PUBLIC FUNDS

Chapter 1 reports on gift of public funds.

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

CRITERIA PERTAINING TO RECEIVING CHARITABLE CONTRIBUTIONS

Chapter 1 reports violation of codes and policy pertaining to receiving charitable contributions.

California Department of Corrections Operations Manual, Section 13050.16.1, states that media or producers are welcome to contribute toward the inmate welfare fund or make other director-approved contributions to the institution, facility, or parole region. Gifts and gratuities shall not be given directly to inmates or parolees.

According to federal tax law (26 United States Code, Section 170), a charitable contribution is a donation or gift to, or for the use of, a qualified organization.

EMBEZZLEMENT OR MISAPPROPRIATION OF STATE FUNDS
Chapter 1 reports violations of California Penal Code,
Section 424.

Section 424 of the California Penal Code provides that public officers or any other persons charged with the receipt, safekeeping, or disbursement of public money who knowingly keep a false account, make a false entry or erasure in any account, use public money for a purpose not authorized by law, or willingly fail to transfer the money as required by law may be disqualified from holding office in the State and are subject to imprisonment for up to four years.

HOLDING FUNDS OUTSIDE OF THE STATE TREASURY
Chapters 1 and 6 report on the improper holding of state
funds outside of the State Treasury.

State laws and administrative policies limit the circumstances under which employees may hold state funds outside the State Treasury. Section 16305.2 of the California Government Code defines “state money” as all money in the possession of or collected by any state agency or department, except for money in the Local Agency Investment Fund. In *Bennett v. Superior Court*, 131 Cal.App.2d 841, the court stated that the proper criterion to determine whether certain funds are public money is not ultimate ownership but rather the official character in which these funds are received or held.

Section 16305.3 of the California Government Code provides that state funds must be deposited in the custody of the state treasurer unless otherwise authorized by the director of finance or deposited directly in the State Treasury. Section 16506 requires that all money belonging to the State under the control of any state employee other than the state treasurer shall be deposited under conditions that the director of finance prescribes. Further, Section 16510 provides that any state employee who deposits state money in any manner not prescribed by the director of finance may be subject to forfeiture of his or her employment. Furthermore, the State

Administrative Manual, Section 8002, specifies that in order to open an account outside of the State Treasury, a department must request approval from the Department of Finance, justifying the need for such an account.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapters 1 and 5 report weaknesses in management controls.

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

INCOMPATIBLE ACTIVITIES DEFINED

Chapters 2, 3, 5, 9, 11, and 12 report incompatible activities.

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

Incompatible activities also include using the prestige or influence of the State for one's private gain or advantage or the private gain of another. In addition, state employees are prohibited from receiving or accepting money or any other consideration from anyone other than the State for the performance of their duties. Further, Section 19990 prohibits state employees from not devoting their full time, attention, and efforts to their state jobs during hours of duty as state employees.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR PERSONAL GAIN

Chapters 2, 3, 9, 11, and 13 report personal use of state resources.

The California Government Code, Section 8314, prohibits state officers and employees from using state resources such as land, equipment, travel, or time for personal enjoyment, private gain, or personal advantage or for an outside endeavor not related to state business. If the use of state resources is substantial enough to result in a gain or advantage to an officer or employee for which a monetary value may be estimated or a loss to the State for which a monetary value may be estimated, the officer or employee may be liable for a civil penalty not to exceed \$1,000 for each day on which a violation occurs plus three times the value of the unlawful use of state resources.

CONTRACTING IMPROPRIETIES

Chapters 5 and 7 report violations of contracting rules.

California Government Code, Section 1090, prohibits state employees from being financially interested in any contract in which they participate in making a decision in their official capacity. Any employee who willfully violates this prohibition is punishable by a fine of not more than \$1,000 or by imprisonment in state prison and is forever disqualified from holding any office in the State. The Public Contracting Code provides that the State award contracts fairly. Section 10410 prohibits any state employee from contracting on his or her own behalf as an independent contractor with any state agency to provide services or goods.

CRITERIA PERTAINING TO ACCEPTING EMPLOYMENT WITH THE STATE

Chapters 2, 3, 8, and 10 report violations of state employment rules.

California Code of Regulations, Title 2, Section 8, states that in order to accept an appointment in good faith, an employee must provide the appointing power with complete, factual, and truthful information necessary for a proper appointment and make a reasonable attempt to seek correction of any aspects of the appointment that the employee knows are illegal.

To meet the minimum qualifications for the transportation engineer position one must meet one of the following standards.

Standard one:

Graduation from a four-year curriculum in civil engineering accredited by the Accreditation Board for Engineering Technology. (Registration as a senior in such a curriculum will admit an applicant to the competition, but he or she must produce evidence of graduation before being considered eligible for appointment.) (Possession of a valid certificate as an Engineer-in-Training issued by the California State Board of Registration for Professional Engineers and Land Surveyors, or issued by another jurisdiction and accepted by the California Board in lieu of the first division of the examination as an engineer may be substituted for the required education.)

Standard two:

Possession of equivalent qualifications may be demonstrated by graduation from an engineering curriculum that includes the basic engineering courses normally covered in a standard four-year engineering curriculum and by qualifying in a written examination covering basic engineering. (Registration as a senior in such a curriculum will admit an applicant to the qualifying examination, but he or she must produce evidence of graduation before being considered eligible for appointment.)

Standard three:

A master's or doctoral degree in a civil engineering curriculum from a college or university that has a baccalaureate degree program in a civil engineering curriculum that is accredited by the Accreditation Board of Engineering Technology. (Registration as a candidate in such a curriculum will admit an applicant to the competition but he or she must produce evidence of graduation before being considered eligible for appointment.)

To meet the minimum qualifications for the librarian position, employees must achieve the equivalent to graduation from college and completion of one additional year of graduate study in a library school accredited by the American Library Association. (Registration as a graduate student in a library school accredited by the American Library Association will admit applicants to the examination, but he or she must submit evidence of completion before being considered eligible for appointment.)

State policy (State Personnel Board's State Selection Manual, Vol. 2, Section 6200.200), clarifies that those individuals having completed 24 semester units as a graduate student would meet the one-year requirement.

APPENDIX C

Incidents Uncovered by Other Agencies

Section 20080 of the California State Administrative Manual requires departments to notify the Bureau of State Audits (bureau) and the Department of Finance of actual or suspected acts of fraud, theft, or other irregularities they have identified. What follows is a brief summary of incidents involving state employees that departments reported to the bureau from July 2003 through December 2003. Although many state agencies do not yet report such irregularities as required, some vigorously investigate such incidents and put considerable effort into creating policies and procedures to prevent future occurrences. Note that all the incidents included here have been resolved; the bureau does not publish any report that would interfere with or jeopardize an ongoing internal or criminal investigation.

Six state entities notified the bureau of 15 instances of improper governmental activity that they had resolved from July 2003 through December 2003. Those entities were the California State University system, the Franchise Tax Board, the Department of Consumer Affairs, the Department of Forestry and Fire Protection, the Department of Motor Vehicles, and the Air Resources Board. Incidents resulting in monetary loss to the State totaled \$20,184. Recovery and restitution of about \$4,844 has mitigated the financial losses of some of these entities.

Blank page inserted for reproduction purposes only.

INDEX

Department/Agency	Allegation Number	Allegation	Page Number
Consumer Affairs, Bureau for Private Postsecondary and Vocational Education	I2003-0652	Improper disclosure of confidential information	21
Corporations	I2002-1102	Misuse of state equipment	41
Corrections, California State Prison- Los Angeles County	I2003-0896	Misappropriation of state funds	7
Corrections, Pleasant Valley State Prison	I2002-792	Improper hiring	31
Forestry and Fire Protection	I2002-1076	Misuse of state resources and equipment	33
Justice	I2002-842	Improper use of state resources and equipment	43
Office of Criminal Justice Planning	I2003-0902	Conflict of interest	29
Social Services	I2002-1042	Incompatible activities, misuse of state resources, and falsification of educational background	19
Transportation	I2002-742	Misrepresentation of educational qualifications	35
Transportation	I2002-874/ I2002-981	Misappropriation of state funds	27
Transportation	I2003-0793	Misuse of state property	39
Unemployment Insurance Appeals Board	I2003-0836	Improper contracting	23
Youth Authority	I2002-648	Incompatible activities and misuse of state resources	15

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