



ops in California, asked OAL to review the Board's Assessors' Handbook AH 267, which interprets the welfare tax exemption and caselaw discussing it, as applied to religious housing. OAL found that the Handbook's guidelines for application of the exemption were narrower than those in either the statute or the applicable caselaw, and concluded they were regulations warranting adoption pursuant to the APA.

Privatization of Publication of CCR. In March, OAL announced that it has completed its six-year revision project to organize the former California Administrative Code (now the California Code of Regulations) into a uniform format called the Revised Official California Code of Regulations. At approximately the same time, however, the State Printer informed OAL that it would no longer publish the CCR, compelling OAL to find a private publisher. OAL contracted with Barclays Law Publishers, which will now publish the CCR to the tune of \$4,000 per set, plus \$2,000 per year for a subscription to the update service.

The Public Records Distribution Act (Government Code section 14900 *et seq.*) requires OAL to distribute at least 100 copies to state government depository libraries for free, to ensure public access to state regulations. Until April 1990, the State Printer printed and distributed the CCR to all 153 California depository libraries (not merely government depository libraries) free of charge. However, much to the chagrin of numerous depository libraries across the state, OAL did not include this provision in its contract with Barclays, thus requiring many libraries to purchase the set from Barclays.

The California State Library Government Publications Section appealed to the Governor's Office to direct OAL to continue providing the CCR to all depository libraries, but without success. Instead, the Governor directed the State Library to continue negotiations directly with OAL. In the meantime, southern California depository librarians conducted a letter writing campaign to legislators. In response, the Senate and Assembly have discussed alternatives, but a legislative solution is unlikely this session.

According to OAL General Counsel John Smith, OAL and the State Library have negotiated for OAL to provide a combination of microfiche and hard copies of the CCR to all of the depository libraries which have requested them. Additionally, OAL will provide a set to each county clerk for distribution. OAL believes that this settlement satisfies its

obligation to ensure public access to the CCR as required by the Public Records Distribution Act and by Government Code section 11344 *et seq.*, which generally charges OAL with responsibility for printing, publication, and distribution of the CCR.

LITIGATION:

In *Fair Political Practices Commission v. Office of Administrative Law, et al.*, No. 512795 (Sacramento County Superior Court), FPPC challenges OAL's authority to review FPPC regulations under the APA as it has been amended since 1974. The FPPC contends that its regulations are subject to review under the APA as it existed at the time of the electorate's approval of the Political Reform Act in 1974 (PRA), which—*inter alia*—created the FPPC.

Since that time, the APA has been amended several times to establish procedures for adopting emergency regulations by unanimous vote, and to create OAL and its regulatory review authority for the standards of necessity, authority, clarity, consistency, reference, and nonduplication. The FPPC claims that, insofar as these APA amendments impose any requirements on the FPPC other than those existing at the time of its creation in 1974, the APA amendments are a *de facto* and impermissible amendment of the PRA.

The FPPC has been concerned about OAL's review of its rulemaking since OAL was created in 1980, and seeks to preclude OAL from reviewing its regulations and issuing AB 1013 determinations regarding FPPC policies, guidelines, opinions, and advice letters. FPPC is particularly concerned about the ability of parties (or nonparties) to FPPC rulemaking to freely engage in *ex parte* contacts with the OAL staff and director during the regulatory review process. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 8-12 for background information.) The FPPC seeks declaratory relief determining whether it is subject to current APA procedures and an injunction prohibiting OAL from reviewing its rulemaking.

In *California Chapter of the American Physical Therapy Ass'n et al., v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento County Superior Court), petitioners and intervenors challenge the Board's adoption and OAL's approval of section 302 of the Board's rules, which defines the scope of chiropractic practice. Following the court's August 1989 ruling preliminarily permitting chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue

manipulation, the parties have engaged in extensive settlement negotiations. A status conference is scheduled for August 2. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 127; Vol. 9, No. 3 (Summer 1989) p. 118; and Vol. 9, No. 2 (Spring 1989) p. 112 for background information on this case.)

OFFICE OF THE AUDITOR GENERAL

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The Office of the Auditor General (OAG) is the nonpartisan auditing and investigating arm of the California legislature. OAG is under the direction of the Joint Legislative Audit Committee (JLAC), which is comprised of fourteen members, seven each from the Assembly and Senate. JLAC has the authority to "determine the policies of the Auditor General, ascertain facts, review reports and take action thereon...and make recommendations to the Legislature...concerning the state audit...revenues and expenditures...." (Government Code section 10501.) OAG may "only conduct audits and investigations approved by" JLAC.

Government Code section 10527 authorizes OAG "to examine any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property of any agency of the state...and any public entity, including any city, county, and special district which receives state funds...and the records and property of any public or private entity or person subject to review or regulation by the agency or public entity being audited or investigated to the same extent that employees of that agency or public entity have access."

OAG has three divisions: the Financial Audit Division, which performs the traditional CPA fiscal audit; the Investigative Audit Division, which investigates allegations of fraud, waste and abuse in state government received under the Reporting of Improper Governmental Activities Act (Government Code sections 10540 *et seq.*); and the Performance Audit Division, which reviews programs funded by the state to determine if they are efficient and cost effective.

RECENT AUDITS:

Report No. P-852 (January 1990) criticizes the administration of California's ten-year-old statewide



domestic violence diversion program (program). The program, established pursuant to Penal Code section 1000.6 *et seq.*, was intended to curb domestic violence by allowing judges to divert some defendants in misdemeanor domestic violence cases from criminal proceedings into treatment programs specifically designed to address the violent conduct of the defendant. Criminal proceedings may be reinstated if the diveree fails to comply with the terms of the program.

In its review of the programs in five counties, OAG found that probation departments do not regularly monitor defendants granted diversion through the program. Thus, the probation departments have no way of determining whether divertees are complying with the terms of their diversion. The report also states that county probation departments do not always require divertees to attend treatment programs specifically tailored for violent behavior, as mandated by law. Of 95 treatment programs in the five counties reviewed, nearly half of them are not specifically batterers' treatment programs. Not only did OAG find some of the treatment programs inappropriate, but it also found that many of the programs consist of only a few treatment sessions. Finally, and most seriously, the report found that some courts divert defendants from prosecution even though the defendants are not eligible for the domestic violence diversion program. As a result, some defendants are not being prosecuted appropriately.

The report recommends that county probation departments develop and implement clear and comprehensive policies for managing domestic violence cases. In addition, the legislature should require counties to standardize the requirements for the duration and content of treatment programs. Finally, OAG recommends that courts should not divert defendants who are not eligible for the program.

Report No. P-918 (January 1990) reviews vehicle maintenance programs at the California Institution for Men at Chino and the California Rehabilitation Center at Norco. It also examines the availability of two-way radios for critical staff at these institutions. The report states that the automobile maintenance records at both institutions are poorly documented due to inaccuracies and omissions. Without complete data, the records do not accurately reflect the general condition of the vehicles. As a result, the institutions may be reducing the service life of their vehicles or risking an avoidable vehicle malfunction.

The report states that both institutions are taking steps to rectify this situation. Additionally, OAG found that the number of hand-held two-way radios is adequate at both institutions for their communication needs.

Report No. F-931.1 (January 1990) and *Report No. F-931.2 (January 1990)*. OAG released a two-part report citing widespread incompetence and fraud in the Oakland Unified School District (District). During the 1988-89 school year, the District was the sixth largest in California, with an average daily attendance of 53,000 pupils and approximately 6,900 employees. In fiscal year 1988-89, the District had a general fund operating budget of approximately \$206 million. OAG found that the district has poor management practices and therefore is not adequately protecting its assets.

The results of this inadequate management include the following:

-As a result of poor controls over payroll, the District paid employees over \$62,000 more than they were entitled to receive;

-District employees are known to have stolen approximately \$30,000 in equipment and materials from the District. In fact, in a continuing investigation unrelated to the audit, thirteen district officials and employees have been arrested, and three of the thirteen have pleaded guilty to grand theft or receiving stolen property;

-Because the District does not comply with all state requirements for reporting its student attendance, it may not be receiving all the funds it is entitled to receive from the state, has suffered delays in receiving funds from the state, and has lost over \$65,000 in interest that it could have earned had it amended its attendance reports promptly; and

-The district paid for contract consulting work which was never performed, and overpaid for other contract work.

The report recommends that the district implement a broad range of financial/reporting controls and a comprehensive plan to reduce its expenditures, and determine whether it is applying for and receiving all of the funding for which it is eligible.

Report No. 949.1 (January 1990) audits the California Network System's (CALNET) design and acquisition by the Department of General Services (DGS). In 1964, the Automatic Telecommunications Switching System (ATSS) was built to serve the voice telecommunications needs of the state of California. The ATSS is still serving the

state today but is planned to be replaced by CALNET.

OAG found that the CALNET acquisition and associated procurement, involving approximately \$100 million of the state's funds, was not executed following normal state policies and generally accepted business practices. DGS management did not consistently execute good management decisions relative to the basic strategy for designing and procuring CALNET.

In general, the CALNET acquisition and procurement process was inadequately documented. This made it difficult to substantiate the basis for many of the management decisions. The investigation found that many strategic decisions were based upon nonexistent or missing analyses. DGS simply did not perform adequately documented analyses which support the reasoning behind the key decisions made. The report concludes that the acquisition of CALNET was not cost-effective and may not serve the needs of the state agency users.

OAG recommends that DGS conduct a feasibility study which complies with the guidelines of the State Administrative Manual (SAM) before proceeding with the CALNET project; comprehensively analyze user requirements so that the success of CALNET can be correctly judged; and resolve a legal conflict over the applicability of specified SAM guidelines. Additionally, OAG recommends that the administration and/or the legislature should resolve the public policy issue regarding the extent to which the state wants to and is capable of assuming telephone company-like responsibilities.

Report No. P-949.2 (January 1990) reports on the procurement practices of the Department of Motor Vehicles (DMV), which awarded a \$38.4 million contract to produce a new driver's license and identification card system. A magnetic stripe on the new, more durable license cards will store information which can be decoded by electronic readers. This system will modernize DMV's recordkeeping and issuance of license cards, as well as provide instant identification data to law enforcement agencies and retailers. The Department of General Services' (DGS) Office of Procurement provided administrative oversight during the procurement process.

OAG's report found that DMV and DGS did not uniformly follow state procurement procedures and, as a result, may have to rebid the contract to ensure that the procurement is legal and in the best interests of the state. The report cited a need to enforce a competitive



procurement process which ensures that the state receives the products for which it contracts and provides all vendors an equal opportunity to bid.

Report No. P-876 (March 1990) is a review of the Office of Statewide Health Planning and Development's (OSHPD) procedures for ensuring that health facilities meet seismic safety standards under the Alfred E. Alquist Hospital Facilities Safety Act (Act) of 1983. The Act requires that health facilities be designed and constructed so they are able to resist the forces of winds, gravity, and earthquakes. The Act designates OSHPD as the state agency responsible for implementing the provisions of the Act. OSHPD reviews construction plans for health facilities and monitors construction so that facilities are designed and constructed in accordance with the State Building Standards Code (building standards).

The report found that OSHPD staff do not ensure that resident inspectors are qualified to inspect construction; construction projects may not be adequately inspected; and OSHPD does not consistently use its authority to deter officials of health facilities from beginning construction without approval. Also, OSHPD still has not met its goal for completing initial reviews of construction plans. It has, however, recently implemented a number of measures to expedite its reviews. OAG recommended the establishment of specific goals and formal policies to ensure that health facilities' construction plans are reviewed promptly and that the construction work complies with the building standards.

Report No. P-843 (April 1990), OAG's review of the Department of Food and Agriculture's (CDFA) management of its milk marketing program, found few weaknesses. CDFA has a good enforcement record against unlawful trade practices. The Department investigated all complaints that it received; when it confirmed violations, it ensured that nearly all violators took corrective action.

One area within the program which needs improvement involves the prime interest rate that CDFA's staff used to calculate the allowances for returns on investment for processors of butter, non-fat dry milk (powder), and cheese. CDFA defines an allowance for return on investment as how much money processors could earn if they invested their capital elsewhere at an investment of equal risk. The report found that the Department used inappropriate rates and overstated processors' allowances for returns on investments. Therefore, in the

summer of 1989, the Department may have established a slightly higher manufacturing allowance than it otherwise would have. As a result of this audit, CDFA adopted a policy requiring its staff to calculate the allowances for returns on investment using a weighted average prime interest rate which corresponds with the time period studied.

Report No. P-872 (April 1990) audits the state program which provides financial assistance to homeless families. County welfare departments (counties) and the Department of Social Services Department (Department) are responsible for administering these funds. Homeless families are those which lack a regular nighttime residence designed as a regular sleeping accommodation for humans. The Department is responsible for overseeing the counties' direct implementation of the homeless assistance program. Counties administer funds to homeless families to acquire both temporary and permanent shelter. A family is eligible to receive a cycle of homeless assistance payments only once within a twelve-month period.

The report found evidence of widespread fraud and abuse in this \$90 million-per-year program. State and county administrators of the program are paying out aid to ineligible recipients, not checking carefully to prevent fraud, and failing to initiate prosecution of those caught cheating the program. The report recommended that investigation and possible prosecution of cheaters be made a priority.

Report No. P-872 (April 1990) concerns the Department of Social Services' (Department) administration of the Child Support Enforcement Program under which counties are given "incentive payments" for locating absent parents, establishing paternity, and obtaining and enforcing court-ordered child support payments. The incentive payments reimburse the counties for their costs of administering the Program; any excess revenue must be used to support the child support enforcement activities of the county's district attorney.

OAG's report focuses on DSS' need to ensure that counties properly calculate their excess revenue and establish a reserve account to restrict the use of that excess revenue solely for child support enforcement activities. The audit found that some counties are not properly calculating their excess revenues and are not restricting the use of their excess revenues. The audit recommends that the state specify the type of revenues and expenditures which should be used in the calculation of excess revenue, and

that the state require counties to establish reserve accounts to restrict the use of their excess revenue. In addition, the Department should periodically review the counties to ensure that they properly calculate and restrict their revenue.

Other Reports. Also during the past few months, OAG has released the following reports: *A Financial Review of the City of Imperial Beach* (Report No. C-959, March 1990); *A Review of Personnel Practices at the Military Department: Some Practices for State Active Duty Employees Need Improvement* (Report No. P-822, April 1990); *The California Museum of Science and Industry Needs to Modify Its Agreement with Its Foundation and Improve Management Controls* (Report No. P-939, April 1990); and *A Review of the State's Administration of the State Legalization Impact Assistance Grants* (Report No. F-944, May 1990).

LEGISLATION:

AB 4022 (Cortese). Existing law provides for the establishment of a pension plan for boxers, which is funded by boxers, managers, and promoters. AB 4022 would have required the Auditor General to calculate the number of boxers receiving benefits under that pension plan, and make a comparison with the number of persons contributing to the fund. The required report would also have included an assessment of the overall financial condition of the plan. This bill was dropped by its author, but Assemblymember Cortese has officially requested that OAG undertake the study.

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY (LITTLE HOOVER COMMISSION)

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INTRODUCTION:

The Little Hoover Commission was created by the legislature in 1961 and became operational in the spring of 1962. (Government Code sections 8501 *et seq.*) Although considered to be within the executive branch of state government for budgetary purposes, the law states that "the Commission shall not be subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the