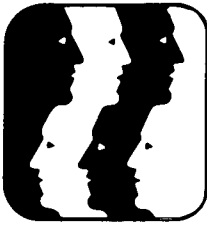


# INTERNAL GOVERNMENT REVIEW OF AGENCIES



**The Reporter summarizes below the activities of those entities within State government which regularly review, monitor, investigate, intervene or oversee the regulatory boards, commissions and departments of California.**

## OFFICE OF ADMINISTRATIVE LAW

*Director: Linda Stockdale Brewer (916) 323-6221*

The Office of Administrative Law (OAL) was established on July 1, 1980, during major and unprecedented amendments to the Administrative Procedure Act (AB 1111, McCarthy, Chapter 567, Statutes of 1979). OAL is charged with the orderly and systematic review of all existing and proposed regulations against six statutory standards—necessity, authority, consistency, clarity, reference and nonduplication. OAL has the authority to disapprove or repeal any regulation that, in its determination, does not meet all six standards. OAL also has the authority to review all emergency regulations and disapprove those which are not necessary for the immediate preservation of the public peace, health and safety or general welfare. The goal of OAL's review is to "reduce the number of administrative regulations and to improve the quality of those regulations which are adopted...."

### MAJOR PROJECTS:

*Opinions.* To date, OAL has issued eight regulatory determination opinions pursuant to Government Code section 11347.5. With the exceptions of Determinations 7 and 8, the challenged rule has been determined to be (1) subject to the requirements of the Administrative Procedure Act (APA); and (2) a "regulation" and therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State.

- September 24, 1986, OAL Determination No. 7, Docket No. 86-003. Howard Sallee requested a ruling regarding the State Personnel Board's October 27, 1981 memorandum concerning the use of "out of class" experience in civil service examinations and the Department of Food and Agriculture's use of the memorandum. In Determination No. 7, OAL concluded

that the challenged ruling was not a "regulation" and therefore not subject to the requirements of the APA.

- November 15, 1986, OAL Determination No. 8, Docket No. 86-004. Swimming Pool Chemical Manufacturers Association requested a ruling regarding the Department of Food and Agriculture's "Notice to Pesticide Registrants Pertaining to the Birth Defect Prevention Act of 1984; California Notice 86-1." OAL concluded that the challenged notice was not a "regulation," and therefore not subject to the requirements of the APA. Nine particular provisions of the challenged notice, however, which interpret, implement or make specific the Birth Defect Prevention Act of 1984 or other applicable laws were found to be (1) subject to the requirements of the APA; and (2) "regulations" and therefore invalid and unenforceable unless adopted as regulations and filed with the Secretary of State.

## OFFICE OF THE AUDITOR GENERAL

*Auditor General: Thomas W. Hayes (916) 445-0255*

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-611 (October 1986)* details an evaluation of California's plans, policies, and procedures for developing and managing its information and telecommunications systems. Included among the audit findings are the following:

- The lack of statewide information system strategic planning may lead to less long-term efficient utilization of state resources.

- The state's procurement practices are not sufficiently flexible for the changing needs of a large applications software development project. As a result, a potential exists for exceeding budget limitations and for marginal satisfaction of user requirements.

- The experience levels and number of staff at the state's Office of Information Technology are inadequate to effectively perform duties required by law and sound management practices.

*Report No. P-627 (November 1986)* summarizes a review of high school graduation requirements for special education students in nine districts. The audit determined that the districts have complied with the Education Code in adopting and applying proficiency standards for special education students.

*Report No. P-430 (December 1986)* concludes that the Employment Development Department (EDD) must improve its disability insurance programs. Auditors discovered that in fiscal year 1985-86, EDD was slow to pay benefits and to collect disability overpayments.



The report attributes these problems to specified procedural deficiencies in the disability claims process and unreliable computer equipment in field offices.

*Report No. P-629.2 (December 1986)* summarized the results of a statewide review of overtime and travel controls. Auditors found that, overall, the statewide controls are working effectively. These findings are particularly significant in light of a June 1986 OAG report indicating that the Department of Transportation has mismanaged employee overtime and travel. As a result of that audit, OAG completed the comprehensive statewide review which resulted in its December report.

*Report No. P-655 (December 1986)* discloses audit results concerning the Department of Corrections' selection of a prison site in Los Angeles County. The report states that the Department of Corrections did not follow established procedures in determining the site for a state prison reception center.

Auditors discovered that appraisers who estimated the market value of the reception center site did not consider the effect of either the hazardous waste contamination on adjacent property or the potential contamination on the site itself. As a result, completion of the reception center may be delayed.

In its audit, OAG recommends testing for hazardous waste contamination of soil at the site and reappraisal of the land's market value.

#### FUTURE AUDIT REPORTS:

As of this writing, numerous OAG audits were in progress, including those concerning unemployment insurance overpayments, therapeutic drug utilization, vocational education, the Department of Insurance, and mandated programs for AIDS. Results of several of these audits will be reported in CRLR Vol. 7, No. 2 (Spring 1987).

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

*Executive Director: Robert O'Neill (916) 445-2125*

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 Legislature." (Government Code section 8502.)

Statute provides that no more than seven of the thirteen members of the Commission may be from the same political party. The Governor appoints five citizen members, and the legislature appoints four citizen members. The balance of the membership is comprised of two Senators and two Assemblymembers.

This unique formulation enables the Commission to be California's only real, independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...."

The Commission seeks to achieve these ends by conducting studies and making recommendations as to the adoption of methods and procedures to reduce government expenditures, the elimination of functional and service duplication, the abolition of unnecessary services, programs and functions, the definition or redefinition of public officials' duties and responsibilities, and the reorganization and or restructuring of state entities and programs.

#### MAJOR PROJECTS:

*Nursing Homes.* The Commission is presently conducting its third investigation since 1977 into the state's nursing homes. In its initial report on the subject in 1977, the Commission criticized the state for poor enforcement of regulations and licensing law. In a 1982 follow-up investigation, the Commission made surprise visits to nursing homes and

conducted public hearings. Results of that investigation, documented in a 1983 report entitled "The Bureaucracy of Care," indicated a need for significant changes in the state's regulatory efforts.

The California legislature responded by passing a package of bills known collectively as the Nursing Home Patient Protection Act (NHPPA). The final elements of the NHPPA became effective in March of 1985.

The Commission's decision to conduct a third investigation closely follows publication of a recent four-part series in the *San Jose Mercury News* which reported the continuation of serious problems in nursing home patient care, despite the recent regulatory reforms. The *Mercury News* reported that Commission Chairperson Nathan Shapell has vowed to "ride herd" on nursing homes until patient care improves.

*State Controller Office Relocation.* In a December 10 letter to the Governor and state legislators, the Commission charged that California Controller Ken Cory wasted as much as \$4.7 million in his staff's recent move into a downtown Sacramento bank building.

The move into the new facilities resulted in consolidation of staff formerly housed in twelve facilities located throughout Sacramento. The Commission stated that a more detailed and comprehensive analysis of alternate locations should have been performed prior to the relocation, which more than doubled the cost of housing the Controller's 1,300 employees.

#### PUBLIC HEARINGS:

At a public hearing on November 19, 1986, the Commission received testimony regarding the impact of tax-free mail order sales on California retailers and the potential tax revenue loss to California. The Commission also heard testimony on the state's lottery operations at the hearing.

#### DEPARTMENT OF CONSUMER AFFAIRS

*Director: Marie Shibuya-Snell (916) 445-4465*

In addition to its functions relating to its forty boards, bureaus and commissions, the Department is charged with the responsibility of carrying out the provisions of the Consumer Affairs Act of 1970. In this regard, the Department educates consumers, assists them in complaint mediation, advocates their interests in the legislature, and represents