



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

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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. OAL has, in recent months, issued three regulatory determination opinions regarding manuals used by the Department of Developmental Services (DDS). In each instance, the DDS manual was 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. All three determinations were issued at the request of the California Association of Rehabilitation Facilities.

-November 5, 1986, OAL Determination No. 9, Docket No. 86-005. The DDS "Rate Procedure Manual," which sets out policies, procedures, and methodologies for establishing rates of payment to service providers for the

developmentally disabled, was determined to be a regulation.

-November 26, 1986, OAL Determination No. 10, Docket No. 86-006. The DDS "Vendorization Procedure Manual," which sets standards for providers of services to the developmentally disabled, was determined to be a regulation.

-January 21, 1987, OAL Determination No. 1, Docket No. 86-007. The DDS "Individual Program Plan Manual," which contains guidelines for and the philosophy of the Individual Program Plan, was determined to be a regulation.

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-638 (December 1986) focuses on the administration and management of the Welfare Fraud Early Detection/Prevention (FRED) programs operated by Orange, Sacramento, and Tulare counties. FRED was established under the 1983 Budget Act to detect and prevent fraud at the time an individual applies for Aid to Families with Dependent Children (AFDC) or food stamps.

The 1986 Budget Act directed OAG to conduct a FRED audit, which has indicated that counties (1) use similar criteria in selecting applications for investigation; (2) employ similar investigative techniques in conducting their FRED programs; and (3) rarely prosecute for welfare fraud while denying approximately 18.3% of applications on that basis. The audit report concluded that fraud investigations usually do not delay the payment of aid to eligible applicants.

Report No. P-569 (January 1987) reviews the Department of Corrections' program management and construction management contracts. The report charges that the Department is overpaying private consultants responsible for managing the state's massive prison construction program. Specifically, auditors determined that for two of six program management and construction management contracts for fiscal years 1984-85 and 1985-86, the Department could have saved \$941,000 while still providing a reasonable rate of profit to contractors.

Auditors also found that the Department's program management firm is not delivering cost control reports as required. The audit report makes several recommendations, as follows:

-The Department should prepare for negotiations with its contractors by



INTERNAL GOVERNMENT REVIEW OF AGENCIES

making its own preliminary estimates of the value of services being sought.

-The Department should ensure that its project directors consistently enforce its requirement that the program management firm delivers timely, periodic cost control reports.

In response to the OAG report, the Youth and Adult Correctional Agency agreed to immediately implement audit recommendations. It specifically countered some of OAG's findings, however, including the auditors' contention that the Department of Corrections does not adequately prepare for negotiations with its program and construction management contractors.

Report No. P-582.5 (January 1987) concerns the Department of Health Services' (DHS) encouragement of alternatives to land disposal of hazardous waste, its waste classifications and clean-up site scheduling processes, and its pursuit of federal funds for site clean-up.

Among auditors' specific findings were the following:

-DHS can do more to promote alternatives to land disposal of hazardous waste. Specifically, DHS (1) is not effectively studying hazardous waste generated by industry to encourage recycling of the waste; (2) is not reviewing records of waste transported to disposal facilities; and (3) has not established an effective information clearinghouse or a technical reference center, which would facilitate more waste treatment or recycling as opposed to disposal.

-DHS is slow to respond to requests to classify waste. Although Title 22 of the California Administrative Code requires that DHS respond to such requests within a 60-day period, the average response time is 223 days.

-Because of its failure to use adequate methods to establish site clean-up priorities, DHS is conducting clean-up at some sites which may pose less of a public or environmental threat than do other sites not scheduled for clean-up.

-DHS does not always pursue federal funds for clean-up of hazardous sites. As a result, it has not yet received up to \$1.7 million for assessing sites and may not receive up to \$33.5 million for site clean-up.

DHS largely concurred with the OAG audit findings. As to the issue of prioritizing site clean-ups, DHS responded that it believes its interim management decisions and reliance upon professional judgment are reasonable and responsive to public health,

safety, and environmental concerns.

Report No. P-642 (February 1987) reveals audit results regarding procedures used by the California Department of Youth Authority (CYA) and the California Department of Corrections (CDC) to assign prisoners to correctional facilities.

Specifically, auditors found that CYA has assigned some potentially violent wards to minimum security programs, posing a danger to the public, CYA staff, and other wards. Such assignments occur, says OAG, because CYA relies too heavily on staff judgments in determining the security level of its wards. Also, CYA does not routinely obtain criminal records from other states; thus, security assignments are sometimes made without knowledge of crimes committed outside of California. Finally, auditors determined that some CYA wards have been assigned to minimum security facilities even though staff had determined the wards belonged in higher-level security programs.

Regarding CDC assignment of its adult prisoners, the OAG audit report concludes that methods used by CDC for assigning inmates to minimum security facilities appear adequate.

The Youth and Adult Corrections Agency, parent to CYA and CDC, agrees with OAG's specific conclusions that CYA should obtain FBI records for wards and routinely evaluate assignment of wards who are involved in serious incidents.

Report No. P-659 (February 1987) consists of a letter to the Joint Legislative Audit Committee, in which OAG reported that it has aborted its audit of underground storage tanks containing hazardous materials. Auditors found that while there are problems in enforcing laws and regulations governing such tanks, it is not clear who is responsible for this enforcement.

Specifically, auditors were stymied by a lack of criteria on which to base a comprehensive performance audit of either the state Water Resources Control Board or the regional water quality boards. OAG claims current law does not clearly define the enforcement responsibilities or authority of any water quality board regarding registration and monitoring of underground storage tanks.

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

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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