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"WATCHDOG OF REGULATORY EXCESS," OAL,

EDITORIALIZED IN USD PUBLIC INTEREST LAW PUBLICATION

Richard Spohn, director of California's department of Consumer Affairs, launched an attack on the Office of Administration (OAL) in the most recent edition of the Center for Public Interest Law publication, claiming "the watchdog of regulatory excess" is operating an undisciplined "monarchy."

The editorial, appearing in the Center's new magazine, "The California Regulatory Law Reporter," contends the OAL has refused since its inception to subject itself to the same scrutiny that other agencies and boards must undergo. Professor Robert C. Fellmeth, editor of the "Reporter," is director of the Center for Public Interest Law located in the University of San Diego School of Law. For information, contact Professor Fellmeth at (714) 293-4806. "The California Law Reporter," compiled and edited by attorneys and law students, is designed to open the regulatory process to greater scrutiny.

Consumer Affairs Director Spohn, who supervises more than 40 major boards and commissions throughout the state, said in an editorial in the Winter edition of the "Reporter" that the OAL has failed the public by not subjecting itself to the self-discipline of published rules.

OAL, established July 1, 1980, is charged with reducing the number and improving the quality of regulations which are adopted by all California state agencies based on five statutory standards: necessity, authority, consistency, clarity and reference.

"One might assume that the watchdog of regulatory excess would establish clear and stout self-disciplining rules for itself," Spohn said in the article "Rules for the Regulators' Regulator."

"In a stroke of boldness that caught the eye of even the most willful of regulators, OAL at first declined to obey the legislative order to issue its own regulations and, with that on the table, secured a statutory release from this 'excessive' burden altogether," Spohn continued.

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Legislation which had mandated that OAL establish a set of standards by which it must operate was subsequently changed to a permissive statute. The result, Spohn pointed out, has been that "OAL has fashioned no guidelines for its own office."

Commenting on the absence of regulations at OAL, Spohn contends, "Regulations are meant to be helpful. As the OAL definition of a regulation details, they are used 'to implement, interpret, or make specific the law enforced by it, or to govern its procedures.' In short, regulations are adopted to make a governmental process work, to render it intelligible and accessible."

Spohn, whose own administration has been marked by consumer advocacy and sponsorship of deregulation proposals, says without rules, agencies are caught playing "Cat-and-mouse" and "Guess-what-I'm thinking."

"OAL's lack of regulations has enabled it both to implement 'policies' exceeding the scope of its own statutory authority and to adopt policies which might well be legitimate if properly adopted in regulation form," Spohn noted.

Spohn says problems raised as a result of no guidelines have become readily apparent in his own department. One recent consumer protection improvement that the Department of Consumer Affairs has encouraged its boards and bureaus to adopt --in regulation form-- is the establishment of procedures for disclosing complaints lodged against their respective licensees. OAL approved some of the model policy and procedures adopted by several boards and bureaus, but shortly thereafter turned down two virtually identical regulations, claiming prior approvals had been a mistake.

"When an agency can conduct its business without regulations, it can change its mind more easily," Spohn criticized. "That's what regulations are all about--to provide some constancy, consistency, predictability, order, rationality, and the rule of law."

The Consumer Affairs Director advocates that OAL reverse its prior position against devising regulations for itself. "OAL has the highest promise," he concluded, "and it should establish itself as the paragon of regulatory openness rather than as a reliquary for the bureaucractic enigmas of the past."

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