



Investigations of Improper Activities by State Agencies and Employees

Wasteful and Improper Travel Payments,
Improper Promotion and Hiring Practices,
and Misuse of State Resources

May 2019

REPORT I2019-3





CALIFORNIA STATE AUDITOR

621 Capitol Mall, Suite 1200 | Sacramento | CA | 95814



916.445.0255 | TTY **916.445.0033**

**For complaints of state employee misconduct,
contact us through one of the following methods:**



Whistleblower Hotline | **1.800.952.5665**



auditor.ca.gov/hotline



INVESTIGATIONS, California State Auditor
PO Box 1019 | Sacramento | CA | 95812



Whistleblower FAX line | **916.322.2603**

Don't want to miss any of our reports? Subscribe to our email list at

auditor.ca.gov





May 7, 2019

Investigative Report I2019-3

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

Dear Governor and Legislative Leaders:

The California State Auditor, as authorized by the California Whistleblower Protection Act, presents this report summarizing some of the investigations of alleged improper governmental activities that my office completed between July 2018 and December 2018. These cases are in addition to the eight investigations we completed during the same time period and summarized in Investigative Report I2019-2, April 2019.

This report details six substantiated allegations involving several state agencies. Our investigations found wasteful and improper travel payments, improper promotion and hiring practices, and misuse of state resources. In total, we identified about \$427,000 in inappropriate expenditures.

In two separate examples, the California Department of Transportation and the Department of State Hospitals each paid for disallowed travel expenses: a manager and an administrator were each allowed to fly from near their respective homes to their state offices in Sacramento where they either were or should have been headquartered. These two cases resulted in combined waste and improper payments of nearly \$90,000.

In another case, a senior management employee with the California Department of Fish and Wildlife dishonestly represented his work experience and received a promotion to branch chief for which he was not qualified. The employee received \$234,717 in compensation through December 2018 as a result of his improper promotion.

State agencies must report to my office any corrective or disciplinary action taken in response to recommendations we have made. Their first reports are due within 60 days after we notify the agency or authority of the improper activity, and they continue to report monthly thereafter until they have completed corrective action.

Respectfully submitted,

A handwritten signature in black ink that reads 'Elaine M. Howle'.

ELAINE M. HOWLE, CPA
California State Auditor

Blank page inserted for reproduction purposes only.

Contents

Summary	1
Introduction	3
CHAPTER 1	
Wasteful and Improper Travel Payments	5
California Department of Transportation: As a Result of Employee Misconduct, It Paid for a Manager’s Commute and Wasteful Travel— <i>Case I2017-0706</i>	7
Department of State Hospitals: Its Mismanagement Led to Wasteful Spending for an Administrator’s Travel Expenses— <i>Case I2016-1298</i>	15
CHAPTER 2	
Improper Promotion and Hiring Practices	23
California Department of Fish and Wildlife: It Made Two Improper Promotions, One Based on an Employee’s Dishonesty and One That Circumvented Required Competition— <i>Case I2017-0474</i>	25
Department of Business Oversight: A Manager Unlawfully Provided an Employee With Interview Questions for a Vacant Position— <i>Case I2018-1251</i>	33
CHAPTER 3	
Misuse of State Resources	35
California Department of Corrections and Rehabilitation: Supervisors and Managers at Correctional Facilities Misused State Vehicles for Personal Commuting Purposes— <i>Case I2017-0489</i>	37
California Department of Corrections and Rehabilitation, Valley State Prison: An Administrator Misused His Authority and State Resources by Accessing Thousands of Online Videos— <i>Case I2017-1487</i>	43
Appendix	
The California Whistleblower Protection Act	47
Index	51

Blank page inserted for reproduction purposes only.

Summary

Results in Brief

As authorized through the California Whistleblower Protection Act, the California State Auditor conducted investigative work from July 1, 2018, through December 31, 2018, on 808 allegations of improper governmental activity. In April of this year, we issued Investigative Report I2019-2, which contained eight examples of investigations we concluded during that time period. The report we are now issuing contains six more examples of investigations that substantiated improper activities, including wasteful and improper travel payments, improper promotion and hiring practices, and misuse of state resources.

California Department of Transportation

The California Department of Transportation (Caltrans) improperly and wastefully paid a total of \$41,695 for a manager to travel from her home in San Diego to Sacramento, the manager's intended headquarters location. The manager gained approval for her improper travel by submitting her reimbursement claims for travel expenses to her former supervisor.

Department of State Hospitals

As a result of mismanagement, the Department of State Hospitals improperly designated an administrator's headquarters. As a result, from mid-November 2016 through January 2018, it wasted nearly \$47,800 in excessive travel costs that it paid for the administrator to travel from the administrator's residence to its Sacramento headquarters.

California Department of Fish and Wildlife

In 2016 and 2017, the California Department of Fish and Wildlife (Fish and Wildlife) improperly promoted two senior management employees to positions as branch chiefs. In the first instance, the improperly appointed employee deliberately misrepresented his past supervisory experience and received \$234,717 from the date of his improper appointment through December 2018. In the second instance, Fish and Wildlife circumvented the competitive process when it promoted an employee.

Investigative Highlights . . .

State employees and agencies engaged in various improper governmental activities, including the following:

- » *A state agency improperly and wastefully paid nearly \$42,000 for a manager to travel from her home in San Diego to Sacramento, the manager's intended headquarters location.*
- » *A state agency improperly designated an administrator's headquarters, wasting nearly \$47,800 in state funds when it paid for the administrator to travel from the administrator's residence to its Sacramento headquarters.*
- » *A state agency improperly appointed two senior management employees to positions as branch chiefs.*
- » *A manager provided an employee with the interview questions for a vacant position before the employee's interview for that position. The employee received nearly \$23,000 as a result of her unlawful appointment.*
- » *A manager misused a state vehicle for his personal commute, resulting in nearly 42,000 commute miles and an estimated cost to the State of \$22,500. At least five other supervisors or managers routinely misused state vehicles for commuting purposes, for an estimated cost of \$58,000.*
- » *An administrator accessed thousands of YouTube videos unrelated to his work on his state-issued computer during work hours.*

Department of Business Oversight

A manager at the Department of Business Oversight provided an employee with the majority of the interview questions for a vacant analyst position before the employee's interview for that position. The employee's eventual appointment to the analyst position was not valid because it was not made or accepted in good faith. The employee received \$22,670 during her unlawful tenure as an analyst.

California Department of Corrections and Rehabilitation

From January 2016 through December 2018, a manager misused state vehicles for his personal commute from his residence to the correctional facility where he was headquartered, resulting in nearly 42,000 commute miles and an estimated cost to the State of \$22,585. Additionally, we identified at least five other supervisors or managers in correctional facilities who routinely misused state vehicles for commuting purposes, for an estimated cost of nearly \$58,000. In total, the misuse cost the State an estimated \$80,000.

In a separate case, an administrator in the education program at Valley State Prison accessed thousands of YouTube videos unrelated to his work on his state-issued computer during work hours.

Introduction

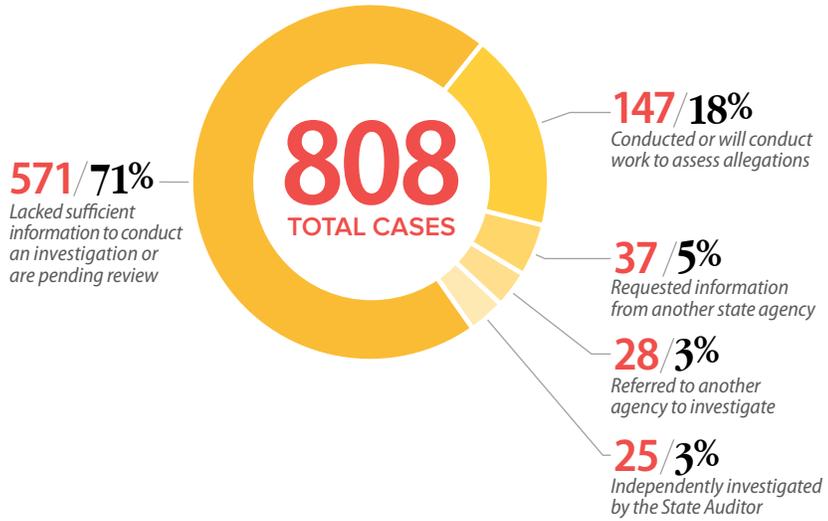
The California Whistleblower Protection Act (Whistleblower Act) allows state employees to report improper governmental activities—actions by state agencies or employees that violate the law; are economically wasteful; or involve gross misconduct, incompetence, or inefficiency—without fear of retribution. The Whistleblower Act further authorizes the State Auditor, as the recipient of whistleblower allegations, to investigate and, when appropriate, report on substantiated improper governmental activity. For more than 25 years, our investigative work has identified and made recommendations to remediate a total of \$578.3 million in state spending resulting from improper governmental activities such as gross inefficiency, theft of state property, conflicts of interest, and personal use of state resources.

The State Auditor’s Investigative Work From July 2018 Through December 2018

The State Auditor enables submission of whistleblower allegations of improper governmental activity in several ways. From July 1, 2018, through December 31, 2018, we received 636 calls or inquiries that fell within our jurisdiction. In addition, our office received hundreds of allegations that fell outside of our jurisdiction; when possible, we referred those complainants to the appropriate federal, local, or state agencies.

During this six-month period, we conducted investigative work on 808 cases that we opened either in previous periods or in the current period. As Figure 1 shows, 571 of the 808 cases lacked sufficient information for investigation or are pending preliminary review. For another 147 cases, we conducted work or will conduct additional work—such as analyzing available evidence and contacting witnesses—to assess the allegations. We notified the respective agencies for another 28 cases so they could investigate the matters further, and we independently initiated investigations for another 25 cases. Some of these cases may still be ongoing. In addition, we requested that state agencies gather information for 37 cases to assist us in assessing the validity of the allegations.

Figure 1
Status of 808 Cases, July 2018 Through December 2018



Source: State Auditor.

For more information about the State Auditor’s investigations program, including the Whistleblower Act and the State Auditor’s responsibilities and authority, please refer to the Appendix, starting on page 47.

CHAPTER 1

WASTEFUL AND IMPROPER TRAVEL PAYMENTS

This chapter includes examples of two investigations in which we substantiated allegations involving wasteful and improper travel payments. Both of these investigations involve payment of excessive travel expenses for high-level employees to fly from their homes to their designated headquarters—or where they logically should have been headquartered—in Sacramento.

In addition to the two cases we include here, we reviewed a total of 114 cases that involved allegations of waste or improper payments from July 2018 through December 2018. We conducted preliminary investigative work on 62 of the cases, and in 33 of these instances, we obtained sufficient evidence to request additional information from the respective agencies, to notify the respective agencies so they could look into the matters further, or to launch investigations of our own, some of which may still be ongoing.

Blank page inserted for reproduction purposes only.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

As a Result of Employee Misconduct, It Paid for a Manager's Commute and Wasteful Travel

CASE I2017-0706

Results in Brief

The California Department of Transportation (Caltrans) improperly and wastefully paid a total of \$41,695 for expenses a manager incurred as a result of her travel from her home in San Diego to Sacramento, the intended headquarters location for her position. Despite overwhelming evidence identifying her headquarters as Sacramento, the manager charged the State for her travel expenses, which is a violation of state law. Although she reported directly to a division chief in Sacramento, the manager submitted her expense claims for this improper travel to her former supervisor in San Diego. The former supervisor—who either knew or should have known the manager's headquarters was Sacramento—approved the claims without notifying the division chief. Caltrans' travel branch also approved the manager's travel reimbursement and did not identify these unusual travel trends for more than a year. Meanwhile, the division chief was unaware of the manager's improper claims for her travel. This circumvention, mismanagement, and misconduct led to violations of state law and a substantial waste of state funds.

Background

When Caltrans requires employees to travel for state business reasons, the State covers the cost of the travel. The covered costs include airline, rail, and car rental expenses, which Caltrans pays directly to vendors following management approval of the employees' travel. Employees on state business trips may also incur out-of-pocket expenses related to their meals and lodging, among other costs, which the State reimburses as long as employees do not incur the expenses within 50 miles of their headquarters. Caltrans employees complete a travel expense claim (expense claim) to itemize and request reimbursement for their out-of-pocket expenses. Caltrans travel branch staff then review the expense claims for accuracy and submit the claims to the accounting division for payment. Caltrans must report as taxable fringe benefits any reimbursements that result in a personal benefit to employees, such as reimbursements of commuting costs.

About the Department

Caltrans' mission is to provide a safe, sustainable, integrated, and efficient transportation system to enhance California's economy and livability. Its vision involves transparency, and its values include promoting trust and accountability for consistent and honest actions.

Relevant Criteria

Government Code section 8547.2 provides that economically wasteful activity constitutes an improper governmental activity.

California Code of Regulations, title 2, section 599.626.1, provides that expenses arising from travel between home and headquarters are prohibited, regardless of the employee's normal mode of transportation.

California Code of Regulations, title 2, section 599.616.1, defines an employee's headquarters as the place where the employee spends the largest portion of his or her regular workdays or working time and prohibits per diem expenses within 50 miles of said headquarters.

Government Code section 19838 provides that the State may take action to recover an overpayment if it does so within three years of the overpayment.

Caltrans Violated State Law by Paying for Expenses Associated With a Manager's Commute

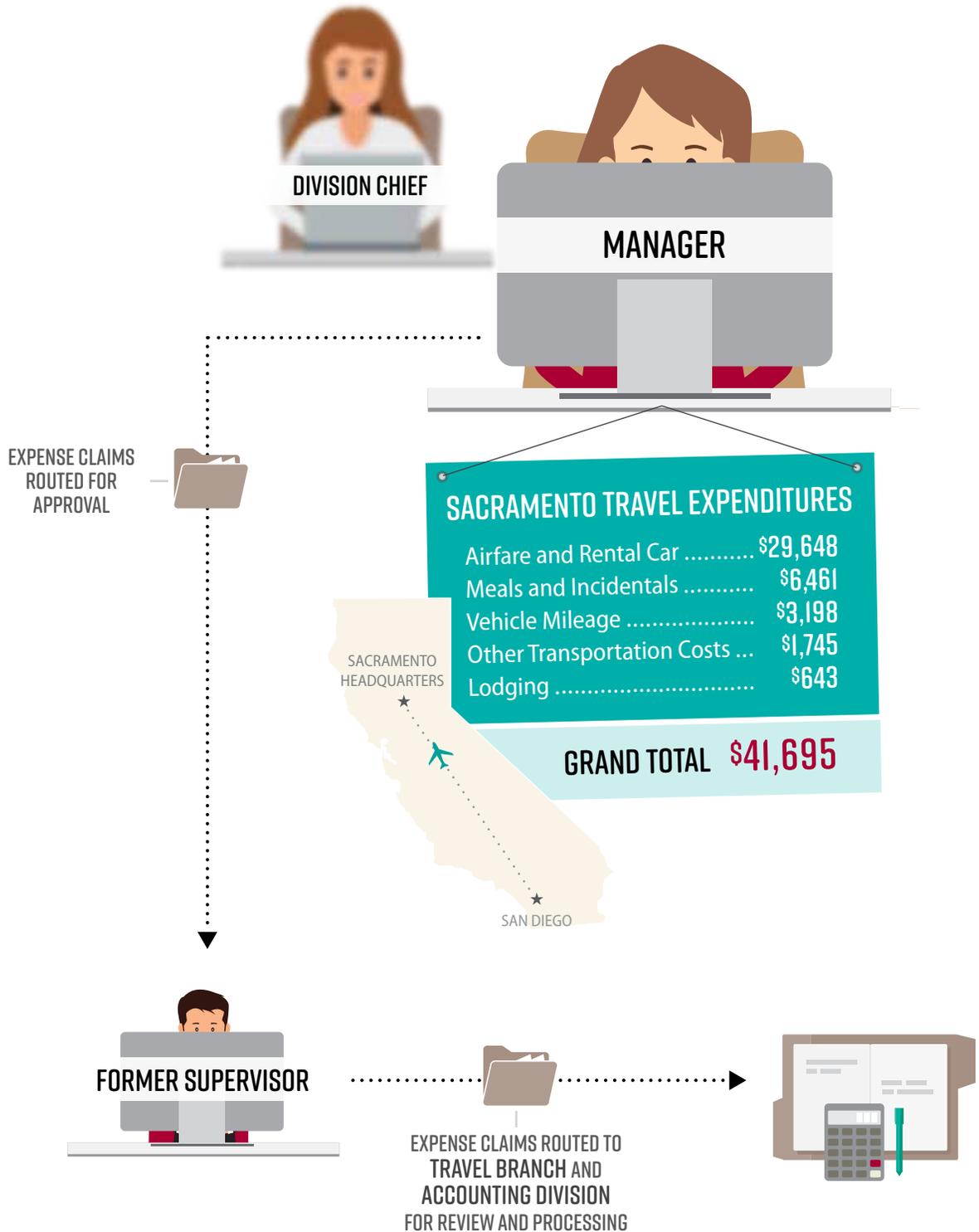
Caltrans paid for the manager's commute from her home in San Diego to her headquarters in Sacramento. From 2002 through early 2016, the manager was headquartered in Caltrans' San Diego district office. In February 2016, Caltrans appointed her to a more senior management position headquartered in Sacramento. This initial appointment was for a limited-term position with the ability to become permanent. Eight months later, in September 2016, Caltrans officially made the manager's position permanent. This change in appointment status from limited-term to permanent did not affect the manager's headquarters location—it remained in Sacramento. However, the manager never moved to Sacramento. Instead, she regularly commuted from her home in San Diego to Sacramento to attend to her duties, which included managing staff in Sacramento, conducting presentations, and attending committee meetings.

For the entire time that the manager was headquartered in Sacramento, state law prohibited payment of any expenses resulting from her travel between Sacramento and her home in San Diego.

For the entire time that the manager was headquartered in Sacramento, which included while she was in both the limited-term and permanent positions, state law prohibited payment of any expenses resulting from her travel between Sacramento and her home in San Diego. Nevertheless, Caltrans paid directly for the manager's costs related to airfare and rental cars, and the manager submitted expense claims and was reimbursed for out-of-pocket expenses. From February 2016 through the manager's retirement in March 2018, Caltrans improperly spent \$41,695 for the manager's travel to Sacramento. Figure 2 outlines how much the manager's travel cost the State by expense category.

The manager asserted that the travel payments were legitimate because San Diego was her headquarters throughout her employment with Caltrans, but the evidence does not support her argument. Specifically, the division chief—who recruited for the position—stated that Sacramento was the proper headquarters for several reasons: the manager oversaw staff located in Sacramento, the division chief and entities that the manager frequently contacted were located in Sacramento, the job was advertised as a Sacramento position, and the position's duty statement—which the manager signed, acknowledging her understanding—required the manager to work in Sacramento. In addition, all of Caltrans' hiring and personnel documentation indicated that the manager's headquarters was in Sacramento. Moreover, our analysis of the manager's expense claims shows that from February 17, 2016, through August 31, 2016, she spent more than half of her time in Sacramento, meaning that by legal definition, Sacramento was her headquarters.

Figure 2
 Caltrans Paid \$41,695 for the Manager’s Sacramento Travel From February 2016 Through March 2018



Source: Analysis of Caltrans’ accounting records.

In fact, evidence indicates the manager should have known that her headquarters was Sacramento and that she was not entitled to the travel reimbursements. As we described previously, the job announcement stated that the manager's position was located in Sacramento. Furthermore, the division chief stated that she and the manager discussed the fact that the position's headquarters was in Sacramento. The manager specifically told the division chief that she would be staying with family in Sacramento, and the division chief told the manager that she could not claim per diem expenses because Sacramento was her headquarters.

Although the manager contended that the division chief never restricted the expenses she could claim for travel to Sacramento, she submitted the expense claims to her former supervisor for approval rather than to the division chief, as Figure 2 demonstrates. The manager stated that she gave the forms to her former supervisor because she reported to him as well as the division chief. However, the evidence clearly shows that the division chief was her direct supervisor. Although the manager stated that she would want to review her own staff's expense claims if another supervisor was signing them, she did not provide the division chief the same opportunity.

The former supervisor and travel branch staff approved the manager's expense claims, airfare, and rental car reservations for more than a year without the division chief's knowledge.

The former supervisor and travel branch staff approved the manager's expense claims, airfare, and rental car reservations for more than a year without the division chief's knowledge. The former supervisor stated he signed the manager's expense claims because he had the authority to do so, he knew the reimbursement rates, and he knew generally when the manager traveled to Sacramento. According to the former supervisor, he presumed that the division chief knew that he was signing the expense claims on her behalf, but he was unable to say definitively that he had discussed signing the claims with her. He thought the plan was for the manager to continue to reside in San Diego, maintain an office in the San Diego district office, and obtain reimbursement for her travel to Sacramento.

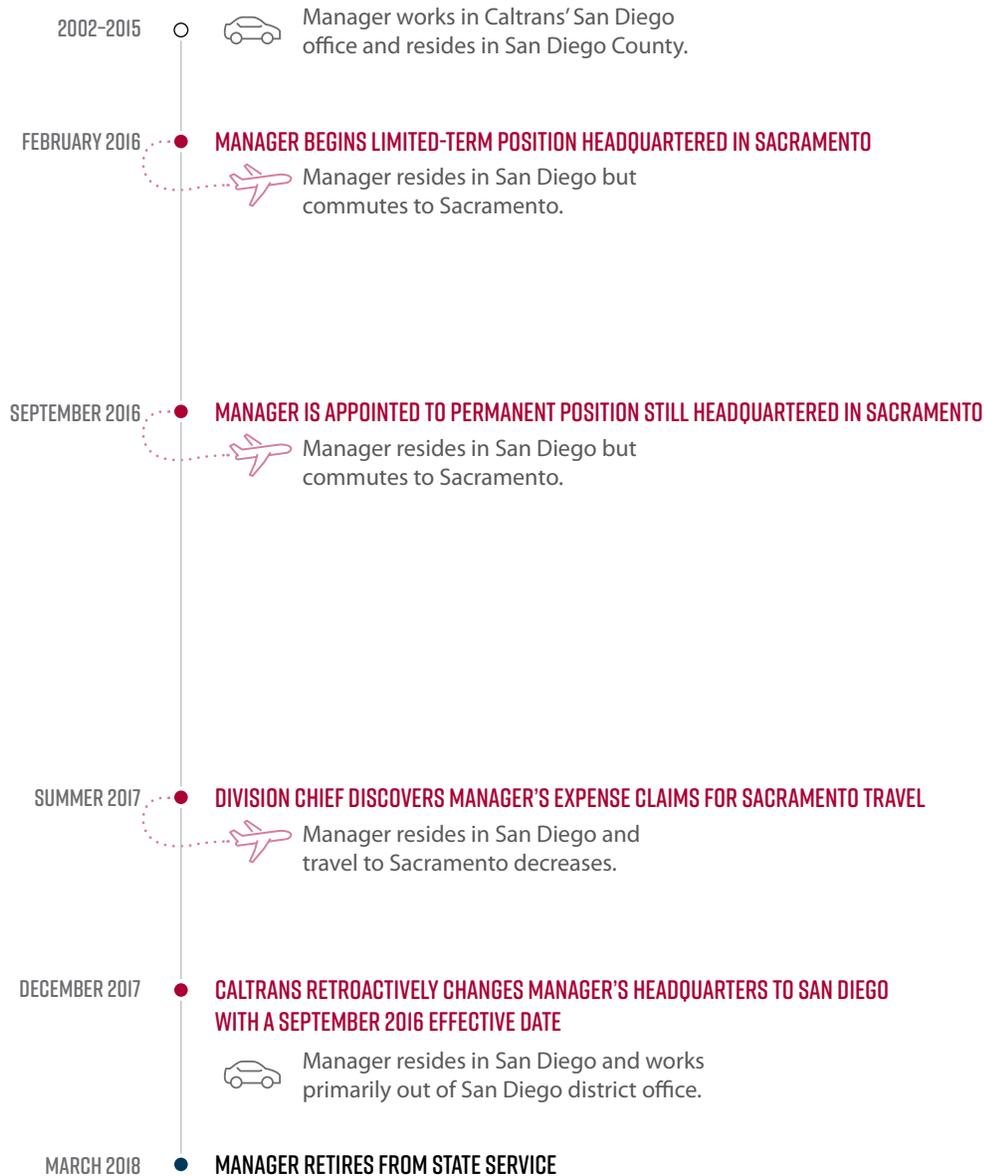
However, the former supervisor served on the hiring panel and should have known that Sacramento was the manager's headquarters, especially since he acknowledged that she spent the majority of her time there. He should have recognized that her travel expenses resulted from her commute to Sacramento and occurred within 50 miles of her headquarters. In addition, the former supervisor knew the manager reported directly to the division chief. Therefore, in our view, he should not have signed the expense claims or, at the very least, should have done so only with the division chief's express permission. Because of the former supervisor's actions, the division chief had no idea that the manager was receiving improper reimbursement for Sacramento travel expenses.

In the summer of 2017, the accounting division informed the division chief of the manager's expense claims, at which point she instructed the manager and her former supervisor to discontinue the practice immediately. The division chief considered changing the manager's headquarters to San Diego after finding out that the manager was claiming reimbursement for Sacramento travel, but the division chief ultimately decided the change might appear improper and instead curtailed the manager's travel to Sacramento. Although the division chief required the manager to submit all future travel claims directly to her, she approved the manager's subsequent Sacramento travel expenses and failed to take any remedial steps to recoup the State's improper payments. She claimed that doing so was the accounting division's responsibility.

After the division chief's discovery, the manager significantly reduced her travel to Sacramento and spent the majority of her time in San Diego until her retirement in March 2018. However, this shift in the manager's travel pattern appears to have been for her benefit and did not serve the State's interests. Specifically, the manager's position remained based in Sacramento. The individuals who served in this position before and after the manager were both headquartered in Sacramento. The division chief maintained that Sacramento was always the manager's intended headquarters, even after she started working less in Sacramento. All of the manager's staff continued to work from Sacramento, and the manager's former supervisor acknowledged that it would have been more ideal for the manager to be in Sacramento for her staff. Further, we found no evidence that the manager's duties changed or that Caltrans benefited from her increased presence in the San Diego district office. As a result, Caltrans' continued payment of the manager's transportation expenses to and from Sacramento was wasteful.

In yet another improper act, in December 2017—more than 15 months following the manager's appointment to the permanent position in September 2016—Caltrans' personnel staff retroactively changed the manager's position headquarters from Sacramento to San Diego, effective on the date of her permanent appointment 15 months earlier. Figure 3 presents the timeline for these events. We were unable to determine the basis for this change in headquarters or who authorized this change because Caltrans' personnel staff could not locate any supporting documentation, despite their attempts to do so. Of notable concern, the division chief said she had not approved such a change and was unaware that it had occurred.

Although the division chief required the manager to submit all future travel claims directly to her, she approved the manager's subsequent Sacramento travel expenses and failed to take any remedial steps to recoup the State's improper payments.

Figure 3**Caltrans Changed the Manager's Headquarters Location More Than a Year After Her Permanent Appointment**

Source: State Controller's Office records, Caltrans' personnel records, and interviews of Caltrans' staff.

The change also may have caused Caltrans to run afoul of state hiring practices. The State Restriction of Appointments (SROA) process gives hiring priority to state employees in jeopardy of layoffs. An agency may convert an employee on a limited-term appointment to a permanent appointment in the same position if it ensured that there were no interested SROA candidates when it made the limited-term appointment. This means that if

Caltrans truly intended for the permanent position to be located in San Diego, it would have had to advertise the position as such and obtain a list of eligible San Diego candidates, including SROA employees, before it appointed the manager to the limited-term position. However, it took neither of these steps.

Recommendations

To remedy the effects of the improper governmental activities identified by this investigation and to prevent those activities from recurring, we recommend that Caltrans take the following actions:

- Within 30 days, provide a detailed training memorandum to managers and supervisors informing them of who is authorized to approve employees' travel expense claims and airline, train, and rental car reservations.
- Within 60 days, provide detailed and comprehensive instructions to managers and supervisors to ensure that they understand the definition of an employee's headquarters and the state law prohibition of paying expenses related to travel from one's residence to headquarters.
- Within 60 days, document the findings of this investigation in the manager's official personnel file.
- Within 60 days, consult with the State Controller's Office to determine whether the manager's reimbursements should have been reported as taxable fringe benefits and, if so, amend any relevant tax documents.
- Within 90 days, provide training to human resources staff to ensure that they follow proper procedures for changing an employee's headquarters and retaining the appropriate documentation.
- Within 90 days, provide training to travel branch staff to ensure that they verify an employee's headquarters when reviewing expense claims and comply with state law when approving the claims.
- Within 90 days, take appropriate corrective action against the former supervisor for approving the manager's travel to Sacramento without notifying the division chief.
- Within 90 days, determine if any of the \$41,695 can be collected from the manager and, if so, attempt collection of the improper travel reimbursements.

Agency Response

In March 2019, Caltrans reported that it accepted our recommendations and that it intends to report on its progress in implementing them in its 60-day response.

DEPARTMENT OF STATE HOSPITALS

Its Mismanagement Led to Wasteful Spending for an Administrator's Travel Expenses

Case I2016-1298

Results in Brief

As a result of mismanagement and the improper designation of an administrator's headquarters, the Department of State Hospitals (State Hospitals) wasted nearly \$47,800 in state funds from mid-November 2016 through January 2018 when it paid for an administrator to travel to its Sacramento headquarters from the administrator's home in another location in California.

Background

Before 2016 the administrator worked in a management position for several years at a State Hospitals facility in California. In late 2016, State Hospitals promoted the administrator to a position for which Sacramento traditionally had been the headquarters location, including for the administrator's immediate predecessor. This position was advertised as headquartered in Sacramento. At the time of the administrator's appointment to the position, State Hospitals submitted a request and received approval from its oversight agency, the California Health and Human Services Agency (Health and Human Services), for the administrator's headquarters to be designated as the State Hospitals facility where the administrator had worked previously. In its request, State Hospitals stated that the majority of the administrator's time would be spent at this state hospital and that the administrator would travel for the following business reasons:

- Visits to State Hospitals' facilities to meet with staff.
- Critical in-person meetings with vendors at State Hospitals' facilities.
- Mandated in-person meetings in Sacramento with State Hospitals' leadership, external workgroups, and control agencies, as well as attendance at critical budget and legislative hearings.

About the Department

Created after the elimination of the Department of Mental Health, State Hospitals manages five state hospitals throughout California. The hospitals are fully licensed by the California Department of Public Health and provide mental health services to the patients they admit.

Relevant Criteria

Government Code section 8547.2 provides that economically wasteful activity constitutes an improper governmental activity.

California Code of Regulations, title 2, section 599.616.1, defines *headquarters* either as the place where employees spend the largest portion of their regular workdays or working time or as the place to which employees return upon completion of special assignments.

California Code of Regulations, title 2, section 599.626.1, provides that expenses arising from travel between home and headquarters are prohibited, regardless of the employee's normal mode of transportation.

California Code of Regulations, title 2, section 599.628.1, specifies that the departure and return for air travel must occur at an airport near the employee's home or headquarters, whichever is more advantageous to the State.

California Code of Regulations, title 2, section 599.638, provides that the officer responsible for approving a travel claim must ascertain the necessity and reasonableness of incurring the expenses for which a reimbursement is claimed.

Government Code sections 14201 and 14203 provide that every state agency must review its work operations to determine where in its organization telecommuting can be of practical benefit to the agency, and they require that each state agency must evaluate its telecommuting program.

State Hospitals' policy allows employees to telecommute if their job positions meet certain identified characteristics, they regularly work away from their designated offices for a month or longer, and they have written and approved telecommuting agreements on file with State Hospitals.

State law requires that each state agency develop and implement a telecommuting program that is both practical and beneficial to the agency. Implemented in 1998, State Hospitals' policy requires employees who wish to work from home regularly for more than a month to have an approved telecommute agreement on file.

In response to an allegation we received that State Hospitals wastefully reimbursed the administrator for travel to its Sacramento headquarters from a home elsewhere in California, we initiated an investigation.

State Hospitals Wasted Almost \$47,800 in State Funds and Failed to Enforce Its Telecommute Policy

State Hospitals mismanaged the designation of the administrator's headquarters and reimbursement of the administrator's travel expenses from the administrator's home to Sacramento, which led to its waste of state funds totaling nearly \$47,800. Specifically, State Hospitals wasted state funds as a result of the following:

- For the personal benefit of the administrator, State Hospitals changed the administrator's designated headquarters and permitted the administrator to work at a location other than its Sacramento headquarters.
- It failed to oversee the administrator's travel activity to ensure its reasonableness.

In addition, State Hospitals failed to follow its telecommute policy when it allowed the administrator to telecommute without a formal agreement.

Neither the Designation of Nor the Rationale for the Administrator's Headquarters Location Aligned With State Hospitals' Business Needs

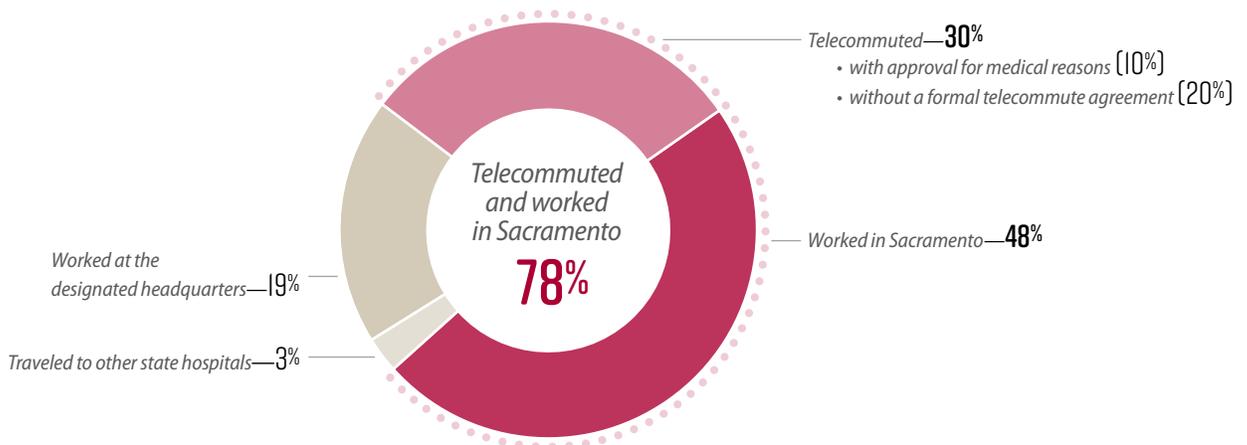
The reasons that State Hospitals noted in its request to change the administrator's headquarters location did not match either the historical requirements of the position or the administrator's eventual travel activity; moreover, the new headquarters designation did not serve the best interest of the State. State Hospitals' officials told investigators that filling the position required statewide recruitment and, to increase its candidate pool and attract highly skilled leadership, it offered candidates the possibility of working from any of its locations. However, the job announcement indicated a work location in Sacramento. When asked to explain the discrepancy, the administrator's supervisor asserted that State Hospitals always intended to recruit statewide

The reasons that State Hospitals noted in its request to change the administrator's headquarters location did not match either the historical requirements of the position or the administrator's eventual travel activity.

but later confirmed that discussions with human resources staff did not include communication regarding a hiring location. In addition, the supervisor’s practice did not include reviewing and approving job announcements before their release. Ultimately, the supervisor did not provide any evidence to substantiate the assertion that State Hospitals recruited statewide.

State Hospitals also claimed that its rationale for designating the administrator’s headquarters at another state hospital was due, in part, to “. . . the complex nature of [its] statewide [division] workforce across multiple locations [and that its] recruitment, retention, and succession planning [was] difficult for the position.” However, this claim conflicts with evidence showing that the administrator’s predecessor had been based in Sacramento and had traveled only minimally to the state hospitals to meet with staff in the year before retirement. Moreover, from mid-November 2016 through January 2018, the administrator spent only five days travelling to other state hospitals, and all of those visits occurred shortly after the administrator’s appointment to the position. Instead, as Figure 4 shows, 48 percent of the administrator’s workdays were spent attending meetings at State Hospitals’ Sacramento headquarters. Further, the administrator’s immediate subordinate employees were located at the Sacramento headquarters. During this same period, only 19 percent of the administrator’s workdays were spent at the designated headquarters, and—despite not having the required telecommute agreement on file and the supervisor being unaware of the extent of the administrator’s telecommuting—the remaining 30 percent of the administrator’s workdays were spent working from home.

Figure 4
The Majority of the Administrator’s Workdays Were Spent in Sacramento and Telecommuting From November 2016 Through January 2018



Source: Analysis of travel expense claims and other State Hospitals records documenting employee work locations.

If State Hospitals had designated the administrator's headquarters as Sacramento as it had for previous administrators in the same position, the State would not have paid for the administrator's travel.

State Hospitals Failed to Oversee the Administrator's Travel and to Ensure That It Was Reasonable and Cost-Effective

Our investigation further determined that State Hospitals did not adequately monitor the administrator's travel activity to ensure that the administrator used the method of travel that was the least costly or in the State's best interest, as state law requires. Specifically, from mid-November 2016 through January 2018, State Hospitals spent nearly \$47,800 for the administrator's travel from home to its headquarters in Sacramento. These expenses totaled 96 percent of the administrator's entire travel costs during the 14-month period. Additionally, our cost comparison of the administrator's travel during the same period showed that the administrator's flights cost the State on average \$200 to \$300 more per flight when the administrator flew from the suburban airport closest to the administrator's home rather than from the metropolitan airport closest to the administrator's designated headquarters.

If State Hospitals had designated the administrator's headquarters as Sacramento as it had for previous administrators in the same position, the State would not have paid for the administrator's travel. In addition, State Hospitals' failure to ascertain the necessity and reasonableness of the administrator's travel expenses resulted in the administrator failing to use the method of travel that was the least costly or in the State's best interest. Thus, State Hospitals wasted state funds.

State Hospitals Failed to Enforce Its Telecommute Policy and Monitor the Administrator's Work Location

Our investigation found from mid-November 2016 through January 2018, the administrator worked from home 20 percent of the time without a valid telecommute agreement on file, as State Hospital's telecommute policy requires. The administrator worked from home for an additional 10 percent of the time for medical reasons; however, those days did not require a telecommute agreement.

When we asked State Hospitals about the administrator's telecommuting, it responded that the administrator had extenuating circumstances. State Hospitals said that to maximize the administrator's workdays, it had approved the administrator to work from home on days when medical appointments were closer to the administrator's residence than to the designated headquarters. However, when we brought to the attention of the administrator's supervisor the frequency of the administrator's telecommuting, the supervisor admitted that other than the occasional medical appointment, the supervisor was unaware of

how much time the administrator actually telecommuted. The supervisor said that the administrator's frequent telecommuting was the result of a misunderstanding between the supervisor and the administrator. The supervisor admitted that State Hospitals' administrators are generally on-site employees and presumed that the administrator worked at the designated headquarters except in special circumstances. Had the administrator and the supervisor followed policy and created a telecommute agreement, they likely would have avoided this confusion.

After we brought to the supervisor's attention the amount of the administrator's travel costs and number of days the administrator typically telecommuted, the administrator's travel to Sacramento dropped significantly, as did the administrator's telecommuting activity. Specifically, from April 2018 through July 2018, only 21 percent of the administrator's workdays were spent in Sacramento, compared to 48 percent during the period of our investigation. Further, when the administrator did travel, the administrator took less costly flights from the metropolitan airport closest to the administrator's designated headquarters. During that same four-month period, the administrator spent only five workdays telecommuting. However, State Hospitals has not yet executed a formal telecommute agreement for the administrator.

Recommendations

To remedy the effects of the improper governmental activities identified by this investigation and to prevent those activities from recurring, we recommend that State Hospitals take the following actions:

- Thoroughly and appropriately evaluate the administrator's position and duties to determine the headquarters location that will best meet State Hospitals' business needs. It should also ensure that a valid telecommute agreement is on file.
- Provide training to hiring managers and human resources staff to ensure that they follow proper procedures for determining work location assignments and for clearly indicating those locations in recruiting and job announcements.
- Provide training to travel unit staff responsible for auditing travel expense claims to recognize travel patterns that may indicate improper and excessive travel expense claims.
- Provide detailed and comprehensive instructions to managers, supervisors, and employees to ensure that they adhere to State Hospitals' telecommute policy requirements and limitations.

Agency Response

In March 2019, State Hospitals stated that it is committed to improving its processes and ensuring that employees adhere to its policies and procedures. However, State Hospitals clarified information related to some of our recommendations.

In response to our first recommendation that State Hospitals thoroughly and appropriately evaluate the administrator's position and duties to determine the headquarters location that will best meet the agency's business needs, State Hospitals stated that it had performed this evaluation already and concluded that the administrator's position could be at any of its five state hospitals or at its headquarters in Sacramento. Accordingly, State Hospitals indicated that the administrator's headquarters will remain at the designated state hospital but that it will provide increased monitoring of the administrator. In addition, State Hospitals stated that twice a year it will monitor the administrator's travel costs to ensure the designated headquarters remains in the best interest of State Hospitals. Furthermore, State Hospitals stated that it now requires the administrator to conduct a cost analysis for each trip to determine the least costly method of transportation, to obtain the supervisor's preapproval for travel, and to use telepresence or computer technologies to attend meetings in Sacramento, when appropriate.

Regarding our second recommendation that State Hospitals provide training to its hiring managers and human resources staff, it reported that it implemented the recommendation by distributing an information bulletin in January 2019 to remind program managers about processes related to recruitment and hiring.

With respect to our third recommendation that State Hospitals provide training to travel unit staff, it stated that it has begun to implement this recommendation by ensuring that its travel unit staff are aware of the expectation and requirement to audit travel expense claims.

State Hospitals clarified in its response to our fourth recommendation that it intends to instruct its employees to adhere to its telecommute policy after it has updated that policy. State Hospitals stated that the telecommute policy, which it implemented in 1998, does not recognize the modern technologies that State Hospitals uses or its current operational circumstances. State Hospitals asserted that after it has implemented the updated policy, it will provide detailed and comprehensive instructions to managers, supervisors, and employees to ensure that they adhere to the updated policy's requirements and limitations.

Finally, State Hospitals conceded that it has not complied with its telecommute policy by establishing an approved agreement for the administrator; nonetheless, it asserted that permitting the administrator to telecommute furthered the Legislature's goals and remained in State Hospitals' best interest. State Hospitals stated that it will reassess the administrator's need for a telecommute agreement after it adopts an updated telecommute policy.

Blank page inserted for reproduction purposes only.

CHAPTER 2

IMPROPER PROMOTION AND HIRING PRACTICES

This chapter includes two examples of investigations in which we substantiated allegations involving improper practices related to hiring and promotions. The California Constitution and various state laws, also known as *civil service rules*, establish that the State must appoint and promote employees based strictly on merit, meaning their ability to do the job. Civil service rules also establish a competitive process for such appointments and promotions. The examples in this chapter illustrate how several employees violated these rules through dishonesty, circumvention, and other unfair practices.

In addition to the cases that follow, we reviewed a total of 84 cases that involved allegations of improper hiring or other violations of civil service rules from July 2018 through December 2018. We conducted preliminary investigative work on 24 of the cases, and in six of these instances, we obtained sufficient evidence to request additional information from the agencies, to notify the respective agencies so they could investigate the matters further, or to launch investigations of our own, some of which may still be ongoing.

Blank page inserted for reproduction purposes only.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

It Made Two Improper Promotions, One Based on an Employee's Dishonesty and One That Circumvented Required Competition

CASE I2017-0474

Results in Brief

In 2016 and 2017, the California Department of Fish and Wildlife (Fish and Wildlife) improperly appointed two senior management employees to positions as branch chiefs. In 2016 Fish and Wildlife's improper appointment of a branch chief resulted from an employee's deliberate misrepresentation of his past supervisory experience. He received \$234,717 in compensation from the date of his improper appointment through December 2018. In 2017 Fish and Wildlife circumvented the competitive process when it improperly promoted a second senior management employee to another branch chief position.

Background

The first senior management employee, whom Fish and Wildlife promoted to a branch chief position in 2016, has worked for the State since 2006. Although he did not supervise any employees during his 10-year employment with the State, his new role requires him to oversee the work of dozens of employees. The second senior management employee whom Fish and Wildlife promoted to branch chief in 2017 has worked for the State since 1998.

In response to the allegations we received that Fish and Wildlife had improperly promoted these two branch chiefs, we initiated an investigation.

A Senior Management Employee Dishonestly Represented His Work Experience, Which Resulted in His Unmerited Promotion

In May 2016, Fish and Wildlife needed to fill a vacant position of branch chief, a position that required an employee who qualified for the civil

About the Department

Employing more than 3,000 people and overseeing nearly 750 different properties throughout the State, Fish and Wildlife manages and protects California's diverse wildlife and the habitats on which that wildlife depends.

Relevant Criteria

The California Constitution, article VII, section 1, requires that all civil service promotions be based on merit and involve a competitive process.

California Code of Regulations, title 2, section 237, prohibits an employee from participating in a promotional examination unless the employee has the minimum education and experience required for the examination.

California Code of Regulations, title 2, section 243, requires that for a civil service appointment to be valid, it must be made by the hiring authority and accepted by the employee in good faith and states that the candidate must provide the hiring authority with complete, factual, and accurate information. If bad faith exists on the part of the appointing power or candidate, the State Personnel Board, which is tasked with enforcing civil service employment laws, may void the improper appointment.

Former California Code of Regulations, title 2, section 266, which was in effect at the time of the appointment, requires that when a candidate is determined to have acted in bad faith, the candidate is required to reimburse all the compensation resulting from the improper appointment.

Standard state employment applications require candidates to certify the accuracy and completeness of their applications under penalty of perjury, and any false, incomplete, or incorrect statements may result in candidates' disqualification from the examination process or dismissal from state employment.

Penal Code section 118 states that any person who declares or certifies under penalty of perjury as true any material that the person knows to be false is guilty of perjury.

Government Code section 19572 specifies that employee dishonesty constitutes cause for discipline.

service classification of staff services manager (SSM) III. The text box describes the four specific ways a candidate can demonstrate eligibility for this classification. Of the 11 applications

that Fish and Wildlife received, the hiring supervisor determined that he would interview three candidates—including the now-branch chief—for the position. At the time the branch chief applied for the promotion, he had served as a nonsupervisory SSM I for only nine months; therefore, he did not qualify according to paths 1, 2, or 3, as the text box describes. He based his qualifications on the fourth option—at least five years' management experience outside of California state service, two years of which should have included specific supervisory responsibilities.

The Four Paths Through Which a Candidate Can Qualify for Staff Services Manager III

1. One year of experience in California state service performing the duties of an SSM II.
or
2. One year of experience in California state service with responsibilities equivalent to those of an SSM II.
or
3. Two years of experience in California state service performing the duties of an SSM I.
or
4. Five years outside of California state service with increasing responsibility in management, personnel, fiscal, planning, program evaluation, or related analytical experience. At least two years of this experience must be in a supervisory capacity, with a level of responsibility not less than that of an SSM II.

Source: California Department of Human Resources' class specification for staff services managers.

When we initially reviewed the branch chief's application for the position, his experience before his state employment apparently met the minimum qualifications because he claimed to have worked full time as a general manager at a small retail business where he performed extensive supervision. However, when we compared his application for this branch chief position to applications he had previously submitted for other state positions, we noted—as Figure 5 shows—that he had provided vastly different descriptions of that same employment.

The following discrepancies were among the most troubling and difficult to explain:

- In his application for the branch chief promotion, the now-branch chief indicated that his six-year-long role at the small business was as a full-time general manager with significant supervisory and managerial experience that included the hiring, termination, scheduling, and supervision of employees. He listed his annual salary for this position as equivalent to \$43,200.
- In the prior state application, he portrayed his role at the same small business as that of a part-time salesperson performing basic tasks to help customers. He listed on this application that his hourly rate for the job equaled about \$18,600 annually. Furthermore, he listed on this application a different direct supervisor for the same time period at the same job than the supervisor he listed on his application for promotion to branch chief.

Figure 5
Two of the Branch Chief's State Employment Applications Showed Disparate Descriptions of the Same Prior Work Experience

PRIOR STATE APPLICATION

EMPLOYMENT HISTORY			
FROM (MM/DD/YY) ██████ 2003	TO (MM/DD/YY) ██████ 2009	TITLE/JOB CLASSIFICATION Salesman	SUPERVISOR NAME ██████████
HOURS PER WEEK 30	TOTAL WORKED (Years/Months) 4/7	COMPANY NAME ██████████	SUPERVISOR PHONE ██████████
SALARY EARNED \$11.95	PER Hour	ADDRESS ████████████████████	
DUTIES PERFORMED Assisted customers over the phone and in person, utilized store database to search for parts, check-in freight and adjusted quantities in computer.			
REASON FOR LEAVING			

BRANCH CHIEF APPLICATION

EMPLOYMENT HISTORY			
FROM (MM/DD/YY) ██████ 2003	TO (MM/DD/YY) ██████ 2009	TITLE/JOB CLASSIFICATION General Manager	SUPERVISOR NAME ██████████
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 6/2	COMPANY NAME ██████████	SUPERVISOR PHONE ██████████
SALARY EARNED \$3,600.00	PER Month	ADDRESS ████████████████████	
DUTIES PERFORMED As the General Manager of an independently owned ██████████ store, I oversaw the daily operations of the company's ██████████ location; which included initial hiring, termination, scheduling, and supervision of employees in order to staff the store during business hours. In addition to daily operations oversight, I directed customer outreach and new business development, which included developing sales strategies for high volume customers and negotiating exclusivity agreements with ██████████ shop owners. Analyzed market research on sales trends in order to tailor the store's inventory and maximize profit. Compiled and presented monthly and quarterly sales and earnings to the business' executive management for evaluation of the store's financial health, made recommendations and implemented new strategies further the business' growth. Business' liaison for ██████████, participated in discussions in order to shape the advertising efforts of the business' franchiser.			
REASON FOR LEAVING Economic downturn shifted priorities within the company.			

Source: Excerpts from the branch chief's state employment applications.

We contacted the small business to verify his employment and learned that the branch chief's father owned the small business and had acted as his son's supervisor. When we asked the father to describe his son's duties during those six years, he stated that the branch chief worked part time through high school, college, and after graduation performing delivery, counter sales, and cashier duties. The father further described that the branch chief worked as a full-time employee only during school breaks and that his sole supervisory duties involved occasionally overseeing two to three employees on the weekends when his father needed a day off.

When we asked about the discrepancies in the ways that he had characterized his work experience, the branch chief admitted that he realized he was "short" on meeting the minimum qualifications when he saw the job advertisement, and he agreed that he had "embellished" his experience and "probably made [his general manager experience] look a little bit better than" it actually was. He admitted to having mischaracterized his experience in the following ways:

- He did not hire or fire employees.
- He did not schedule staff.
- He did not regularly prepare monthly or quarterly sales and earnings for his father's business.

When we asked why his salary claims differed so greatly between the two applications, he asserted that he had included monthly and yearly sales bonuses in the significantly higher representation of his salary.

In addition to the branch chief's dishonest representations on his job application, which he signed under penalty of perjury, he likely also misrepresented his experience when he took the competitive exam for the SSM III classification, a required precursor to successfully qualify for promotional eligibility. During a preliminary evaluation before the electronic examination system will allow a candidate to proceed to the main part of the exam, a candidate must attest to the following facts:

- I hereby assert my intention to provide information that is true and accurate to the best of my knowledge, and that contains no willful misrepresentations or falsifications.
- I understand that, if it is later determined that I did make any false or inaccurate representations in any of my responses, I may be removed from this examination and/or the eligible list(s) resulting from the examination, suffer loss of state employment, and/or suffer loss of the right to compete in any future State of California hiring processes.

The branch chief likely misrepresented his experience when he took the competitive exam for the SSM III classification, a required precursor to successfully qualify for promotional eligibility.

- I understand that I am the person solely responsible for the accuracy of the responses I provide.

The electronic system that screens candidate eligibility to take the exam also requires candidates to clearly identify the total number of months they were employed in supervisory assignments before it permits the candidates to continue with the examination process. Based on the true extent of the branch chief's supervisory experience, he apparently provided dishonest answers to qualify to take the classification exam.

When we questioned the supervisor who made the decision to promote the branch chief, he said he recognized that the branch chief did not have any managerial experience in his state employment. However, the supervisor stated that he had relied on Fish and Wildlife's human resources (HR) staff to determine if the branch chief met the minimum qualifications for the position. The supervisor also said that although one of the references the branch chief had listed was from the small business, the supervisor's practice was to check only the most recent references, and the reference he had contacted had provided positive feedback. Based on this interview, we determined that the supervisor acted reasonably and that the branch chief's unmerited promotion resulted exclusively from his own dishonest conduct.

Our investigation revealed that the branch chief acted in bad faith when he dishonestly represented his supervisory experience on his state application; therefore, the State may void his improper appointment. Moreover, according to state law, the branch chief is required to reimburse all compensation resulting from the improper appointment. From the date of his hire through December 2018, the branch chief received \$234,717.

Fish and Wildlife Improperly Promoted a Senior Management Employee to Branch Chief Without the Required Competitive Selection Process

In March 2017, Fish and Wildlife circumvented the competitive selection process to improperly promote a senior management employee who held the requisite qualifications to a branch chief position. To bypass the competitive process, the hiring supervisor called the employee action a *promotion in place*. The text box describes the specific and limited circumstances under which an agency can promote an employee in place. The circumstances

Relevant Criteria

In very specific circumstances, California Code of Regulations, title 2, section 242, allows an agency to promote an employee "in place." Although the law was revised in July 2017, at the time in question the *California State Restriction of Appointments Policy and Procedure Manual* outlined the following restrictions for promoting an employee in place:

- The promotion in place may not involve a change of position, assignment, or supervisory/subordinate relationship.
- An employee may not promote in place to a true position vacancy.
- The promotion must follow a typical path by which an employee would move to the next higher level in a class series.

Otherwise, the California Constitution requires that all civil service appointments must be based on merit and accomplished through a competitive process.

The branch chief's promotion was invalid because it resulted in changes to her position, assignment, and supervisory relationships.

in this instance did not comply with those provisions: instead, state law required Fish and Wildlife to conduct a competitive selection process to fill the position.

The branch chief's promotion was invalid because it resulted in changes to her position, assignment, and supervisory relationships. As the result of the promotion, the branch chief moved from a position in one branch to a position in another. Her assignment also changed: instead of having full responsibility for just one unit, she became responsible for overseeing three distinct units, each with its own unit chief. Moreover, this new role was not merely an extension of the branch chief's existing responsibility because a new unit chief took over the branch chief's former assignments. Finally, the branch chief's supervisory relationships also changed. She transitioned from reporting to a branch chief to reporting directly to the hiring supervisor, and she also began overseeing the work of a significantly larger number of people who reported directly to her.

When we asked the hiring supervisor how she had vetted the promotion-in-place decision given that so many elements of the branch manager's job changed in ways that the *California State Restriction of Appointments Policy and Procedure Manual* specifically prohibits, she said that she had relied on guidance she received from a former HR chief. Furthermore, she said that the former HR chief came up with the idea to do the promotion in place and that no one raised any concerns to her regarding the promotion being impermissible. Although state laws do not currently require the approval of the California Department of Human Resources (CalHR) for these types of promotions, she also stated that she was under the impression that CalHR had approved the promotion in place for the branch chief.

However, when questioned, the former HR chief did not corroborate the hiring supervisor's statements and said that HR had made no efforts to determine whether the branch chief's promotion could be processed through a promotion in place. She also stated that the hiring supervisor never asked her to contact CalHR to approve the promotion. According to the former HR chief, another internal employee had, in fact, inquired about competing for the position but was unable to do so. In the end, the hiring supervisor's actions infringed upon the rights of other potential candidates because she did not allow for open and fair competition as state law requires.

As a result of Fish and Wildlife improperly circumventing the competitive hiring process, the State may void the appointment. However, because the employee did not appear to have acted in bad faith, she is entitled to retain the salary and benefits she earned.

Recommendations

To address the improper governmental activities we identified in this investigation, Fish and Wildlife should take the following actions:

- Take corrective or disciplinary action against the branch chief who misrepresented his past supervisory experience for his dishonest activities.
- Void any improper appointments and collect compensation received as a result of the improper appointment as allowed by state law.
- Require executive management and the current HR chief to undergo CalHR training on the proper use of promotions in place and on California's merit system.

If Fish and Wildlife fails to take appropriate action on our recommendations, we will forward the results of this investigation to the State Personnel Board and recommend that it void any improper appointments, if appropriate.

Agency Response

In April 2019, Fish and Wildlife stated that it is conducting an internal investigation into the first branch chief's dishonesty about his supervisory experience. Fish and Wildlife also stated that it will take appropriate administrative, corrective, or disciplinary action upon conclusion of its investigation.

With respect to the second branch chief, Fish and Wildlife disputed its former HR chief's statements in which she indicated that HR had made no efforts to determine whether the promotion in place was appropriate and that the hiring supervisor had never requested that she contact CalHR to approve the promotion. Fish and Wildlife asserted that the hiring supervisor recalled asking the former HR chief if CalHR approval was required and being informed by the former HR chief that CalHR approval was not necessary. Fish and Wildlife indicated that it would have sought CalHR approval if the HR chief had indicated such an approval was required. Fish and Wildlife added it repeatedly gave direction in the past to executive management to err on the side of overcommunicating with and seeking approvals from control agencies, especially when staff are unclear whether an approval is required.

Fish and Wildlife also asserted that no internal employees had asked either the hiring supervisor or the deputy director about competing for the branch chief's position. However, because Fish and Wildlife failed to publicly advertise the vacancy as required, other employees would not have known to express an interest in the position.

Despite its other statements, Fish and Wildlife reported in April 2019 that it plans to enroll its executive management, HR chief, and other HR staff in CalHR's "Best Hiring Practice" training scheduled for June 2019, which covers training on the proper use of promotions in place.

DEPARTMENT OF BUSINESS OVERSIGHT

A Manager Unlawfully Provided an Employee With Interview Questions for a Vacant Position

CASE I2018-1251

Investigative Results

In response to an allegation we received that a manager at the Department of Business Oversight (Business Oversight) provided to an employee the interview questions for a vacant analyst position before the employee's interview for that position, we initiated an investigation and requested Business Oversight's assistance in conducting it. The investigation confirmed that the manager emailed a list of interview questions to the employee in advance of the employee's interview for the position and that the majority of the questions Business Oversight used during the employee's interview matched those from the list.

In the course of the investigation, we became aware of a copy of an email that appeared to show the manager using a personal email account to send a list of interview questions to the employee's personal email account. When investigators interviewed the employee, she initially replied dishonestly and said that no one had shared any interview questions with her. However, after investigators produced a copy of the email, she acknowledged receiving it before her interview for the analyst position to which she was ultimately promoted in August 2018. During his interview with investigators, the manager stated he could not recall whether he had sent the interview questions to the employee. However, a few days after the interview, he admitted that he had used his personal email account to send the interview questions to the employee's personal email account.

Investigators compared the interview questions in the email to those Business Oversight asked during the employee's interview and found that seven of the 10 questions from the manager's email were either identical or similar to those asked during the interview. Furthermore, the manager sat on the interview panel and scored the employee higher than other applicants. Thus, his sharing of the interview questions with the employee assisted her in receiving her promotion and negatively affected other candidates' prospects. Ultimately, Business Oversight concluded that the employee's promotion was not valid because it was not made or accepted in good faith.

About the Department

Business Oversight oversees the operations of state-licensed financial institutions, including banks, credit unions, and money transmitters. It also licenses and regulates a variety of financial businesses, including securities brokers and dealers, investment advisers, payday loans, and certain other fiduciaries and lenders.

Relevant Criteria

Government Code section 19680 states that it is unlawful to willfully furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person examined, certified, or to be examined or certified under this part or rule.

California Code of Regulations, title 2, section 243, states that to be valid, all civil service appointments require that the appointing power make and the employee accept the appointment in good faith, which is presumed to exist when the appointing power intends to follow the spirit and intent of any applicable laws, regulations, and policies and acts in a manner that does not violate the rights and privileges of other persons affected by the appointment, including other eligible candidates.

Government Code section 19572 states that dishonesty constitutes a cause for discipline of an employee.

California Code of Regulations, title 2, section 243.3, states that an employee who acts in ways other than in good faith when accepting an appointment that is subsequently voided or corrected must reimburse all compensation resulting from that appointment.

After the investigation, Business Oversight informed us that it took disciplinary action to demote the manager. In addition, in January 2019, Business Oversight voided the employee's promotion to analyst. During the employee's unlawful tenure as an analyst from August 2018 through December 2018, she received a total salary of \$22,670. Business Oversight reported that it sent an accounts receivable to the State Controller's Office to collect from the employee \$1,080, which represents the difference between the compensation she received during these five months and what she would have received in her previous position during the same period.

Recommendations

To address the improper governmental activity we identified in this investigation, Business Oversight should take the following actions:

- Ensure that it collects the salary the employee improperly received during her unlawful tenure as an analyst.
- Take appropriate corrective or disciplinary action against the employee for her dishonesty during her interview with investigators.

Agency Response

In March 2019, Business Oversight reported that it had issued to the employee a corrective memorandum that included providing her with ethics training.

CHAPTER 3

MISUSE OF STATE RESOURCES

This chapter provides examples of two investigations in which we substantiated allegations involving the misuse of state resources. State law prohibits state employees from using state resources—including land, buildings, facilities, equipment, supplies, vehicles, and state-compensated time—for personal purposes. The two investigations that we highlight here focus on a manager’s misuse of a state vehicle and on another manager’s misuse of his state-issued computer and state-compensated time.

In addition to these cases that follow, we reviewed 67 cases that involved the misuse of state resources from July 2018 through December 2018. We conducted preliminary investigative work on 24 of the cases, and in 10 of these instances, we obtained sufficient evidence to request additional information from the agencies, to notify the respective agencies so they could look into the matters further, or to launch investigations of our own, some of which may still be ongoing.

Blank page inserted for reproduction purposes only.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION *Supervisors and Managers at Correctional Facilities Misused State Vehicles for Personal Commuting Purposes*

CASE I2017-0489

Results in Brief

Our investigation initially focused on a manager with the California Department of Corrections and Rehabilitation (CDCR) who misused a state vehicle for several years for his commute from his residence to the correctional facility where he was headquartered. From January 2016 through December 2018, his misuse included nearly 42,000 commute miles and cost the State an estimated \$22,585. During the course of the investigation, we discovered that the misuse of state vehicles by other supervisors and managers working at correctional facilities was widespread. We identified at least five others who routinely misused state vehicles for commuting purposes, resulting in an estimated total cost to the State of nearly \$58,000. In total, the supervisors' and managers' misuse of state vehicles resulted in an estimated cost to the State of more than \$80,000.

Background

Supervisors and managers within a certain CDCR program may be required to travel between two or more correctional facilities to perform their duties overseeing various projects. State law allows employees to use state vehicles only in the conduct of state business, such as travel between correctional facilities; it does not allow employees to use vehicles to commute from their residences to their primary work locations unless they meet one of the law's limited exceptions. The relevant exceptions include the following:

- An employee is returning from or leaving for an official trip that is away from the employee's headquarters under circumstances that make it impracticable to use other means of transportation, or the employee's home is reasonably en route to or from where the employee will start work the following day.

About the Department

CDCR has a mission to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into the State's communities.

Relevant Criteria

Government Code section 8314 prohibits state employees from using or allowing others to use state resources, including state-issued computers, state-compensated time, and state vehicles, for personal purposes that exceed minimal or incidental use.

Government Code section 19993.1 provides that state vehicles must be used only in the conduct of state business.

California Code of Regulations, title 2, sections 599.802 and 599.803, state that misuse of a state vehicle includes, with limited exceptions, using it to commute between an employee's home and work location after completion of the workday and that state employees are liable to the State for the actual costs attributable to their misuse of a state vehicle. The actual costs include, but are not limited to, the operating expenses computed on a mileage basis for the distance traveled.

California Code of Regulations, title 2, section 599.808, requires employees who store state vehicles at home for more than 72 nights during a 12-month period or for more than 36 nights during any three-month period to obtain a permit from their employing agencies, regardless of the reason.

- An employee is intending to use the state vehicle outside of normal work hours on the same day or before usual working hours on the following day, and the employee has received advance written authorization from the agency.
- An employee is required to respond to emergency calls outside of regular work hours that reasonably require the use of a state vehicle.

For example, managers who oversee projects may take state vehicles home if their homes are en route to other correctional facilities where they need to travel the following day. When employees drive state vehicles, the State may be liable for damages or injury involving those vehicles. Accordingly, use of state vehicles should be limited to necessary state business and should not include personal activities, such as commuting. In addition, the Internal Revenue Service (IRS) considers the use of a state vehicle for one's personal commute as a taxable fringe benefit that must be reported.

If an employee takes a vehicle home for more than 72 days during a 12-month period or for more than 36 nights during a three-month period, that employee must have an approved Vehicle Home Storage Request/Permit (home storage permit), which includes a justification for why the employee is storing the vehicle at a residence.

Regardless of why employees use state vehicles, they must complete mileage logs that include the dates and locations of each trip, the vehicles' starting and ending mileage for each trip, and information regarding overnight storage.

For Several Years, a Manager Misused a State Vehicle for Commuting Purposes

During our investigation, we found that a manager regularly used a state vehicle to commute between his residence and the correctional facility where he was headquartered. The manager oversaw projects at several correctional facilities and had a permissible reason to use a state vehicle on some occasions, such as when he had to travel to other facilities. However, on most days, he improperly used a state vehicle for his 112-mile roundtrip commute between his home and his headquarters. Mileage logs from January 2016 through December 2018 demonstrate that the manager improperly commuted in a state vehicle 72 percent of his workdays.

On most days, the manager improperly used a state vehicle for his 112-mile roundtrip commute.

The manager acknowledged that he regularly drove a state vehicle to and from his home, but he claimed he did not believe it was a misuse. He asserted that his superiors were fully aware and

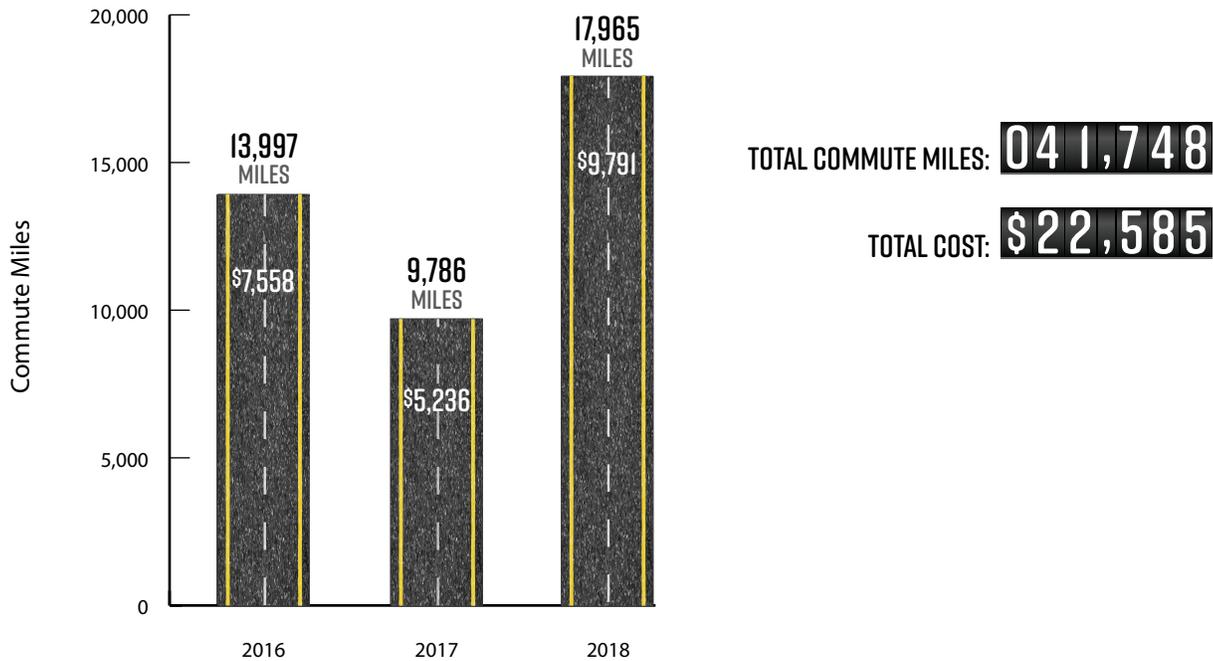
approved of how he used state vehicles. According to the manager, employees supervising projects at multiple correctional facilities had been taking state vehicles home each day for at least 20 years, and each month they are supposed to complete a form to account for the taxable fringe benefits associated with using a state vehicle for commuting purposes. He stated that he completed the form each month and that his use of state vehicles was in accordance with “the way they have been doing business for 20 years.” The manager also did not have an approved home storage permit, as state law requires. Although he stated that he did not believe it applied to his position, we found that he had signed and submitted an application for a home storage permit in February 2018. However, the approving officer had not signed it.

The manager also claimed that storing a vehicle at his home allowed him to respond to project-related emergencies in the middle of the night, which he stated occurred once or twice a month. However, he could not provide a recent example of an emergency and said that he did not keep a log of these instances. We reviewed his mileage logs and found only one entry in the past three years for a trip that originated outside of his normal commute departure times. Therefore, the evidence indicates that he very rarely, if ever, responded to emergencies outside of his regular work hours. Further, the manager did not meet other criteria that would necessitate taking a vehicle home for emergency response purposes, such as carrying specialized equipment for emergencies that is not transferable to a private vehicle.

As Figure 6 illustrates, from January 2016 through December 2018, the manager’s misuse of state vehicles for commuting purposes resulted in 41,748 unjustified miles and a cost to the State of \$22,585. We calculated the estimated cost of the manager’s misuse on a mileage basis, as state law prescribes, using the IRS standard mileage rates. The IRS bases its mileage rates on an annual study of the fixed and variable costs of operating an automobile. The actual cost of his misuse is likely much greater than Figure 6 shows in light of the manager’s acknowledgment that he used state vehicles for his commute during his 16-year tenure within the program as a supervisor.

From January 2016 through December 2018, the manager’s misuse of a state vehicle for commuting purposes resulted in 41,748 unjustified miles and a cost to the State of \$22,585.

Figure 6
The Manager Misused State Vehicles to Commute Thousands of Miles From 2016 Through 2018



Source: Analysis of CDCR vehicle mileage logs.

Other Supervisors and Managers Regularly Commuted in State Vehicles

In the course of our investigation, we found that other supervisors and managers within the program also commuted in state vehicles. The fleet supervisor, who oversees the maintenance of the state vehicles that the supervisors and managers use, told us that based on his review of the mileage logs, an estimated 30 employees apparently used state vehicles to commute. He noted that he had observed this pattern of behavior for many years. He said he discussed the issue with his manager during the last two years and explained that he believed that the supervisors and managers did not understand when taking a state vehicle home was appropriate.

We reviewed mileage logs covering 13 months for five additional supervisors and managers whose mileage logs indicated that they were using state vehicles to commute, including the fleet supervisor’s manager, and we found a pattern of misuse. We determined that these five supervisors and managers used their assigned state vehicles to commute a combined total of 35,041 miles, costing the State an estimated \$18,883. Based on this information and the fleet supervisor’s statement, we concluded that the supervisors and managers had likely misused state vehicles

to commute for many years, which increased the State's risk of being sued in the event of an accident. If the rates of vehicle misuse for these five supervisors and managers were constant from 2016 through 2018, we estimate the total cost of their misuse at \$57,725 for the three-year span.

When we interviewed an official who oversees the program, he informed us that once supervisors and managers obtained home storage permits, CDCR allowed them to take their assigned state vehicles home every day because of how frequently they traveled to correctional facilities other than their headquarters. When we asked if CDCR allowed them to take state vehicles home on days when they knew they were not planning to travel to other correctional facilities, he said he was unsure and would have to research the issue. However, the official ultimately acknowledged that supervisors and managers should not have used state vehicles for commuting purposes and that completing the taxable fringe benefit form did not authorize commuting. He further clarified that the potential for responding to emergencies was not sufficient justification for these employees' taking state vehicles home. The official also acknowledged that he had heard an employee at one of the correctional facilities had complained about supervisors and managers taking state vehicles home, but he said that he did not look into that concern because he believed it was just a rumor spread by a disgruntled employee.

Finally, none of the supervisors and managers within the program who regularly stored state vehicles at their homes had approved home storage permits. We located several home storage permit applications that supervisors and managers submitted in February 2018 to another official; however, he did not approve them because he had questions regarding the justifications that the applicants provided. The applications remain incomplete because of a misunderstanding about who was responsible for addressing the questions that the official raised. Further, in a March 2015 State Auditor report (2014-117), we found that CDCR employees were driving state vehicles without approved home storage permits, and we recommended that CDCR review justifications on home storage permits. CDCR told us it would train staff and supervisors on state vehicle usage policies. Despite this, the mileage logs we reviewed for this investigation demonstrate that some CDCR supervisors and managers are still driving state vehicles without approved home storage permits.

None of the supervisors and managers within the program who regularly stored state vehicles at their homes had approved home storage permits.

Recommendations

To address the misuse of state vehicles we identified in this investigation, CDCR should take the following actions:

- Immediately end the practice of supervisors and managers within the program taking state vehicles home except when justified on specific occasions.

- Immediately write and distribute a department-wide memo explaining the proper use of a state vehicle, describing what constitutes misuse, and clarifying that employees must have adequate justification for driving a state vehicle home on each occasion.
- Within 30 days, consider and begin legally permissible recovery efforts for the costs associated with the manager's misuse of a state vehicle for commuting purposes.
- Within 30 days, review mileage logs for the supervisors and managers in the program, including the five others discussed in this report, to identify state vehicle misuse and initiate legally permissible cost-recovery efforts.
- Immediately end the practice of taking home a state vehicle for those employees who do not have an approved home storage permit on file and who store a vehicle at their home more than 72 nights over a 12-month period, or more than 36 nights over any three-month period.
- Within 30 days, write and distribute a department-wide memo explaining the purpose of home storage permits, describing what circumstances qualify for a home storage permit, and clarifying that an authorized official must fully approve a permit application before an employee is allowed to take a state vehicle home on a regular basis.

Agency Response

CDCR reported that it will provide information on its corrective action plan and how it will implement our recommendations in its 60-day response to our office.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, VALLEY STATE PRISON

An Administrator Misused His Authority and State Resources by Accessing Thousands of Online Videos

CASE I2017-1487

Investigative Results

We received an allegation that for many years, a longtime administrator in the education program at Valley State Prison (VSP) used his state-issued computer during work hours to access thousands of YouTube videos unrelated to his work. We initiated an investigation and requested the assistance of the California Department of Corrections and Rehabilitation (CDCR). When investigators reviewed the administrator's Internet usage for the 10-month time period for which data were available, they confirmed that the administrator misused his state-issued computer and spent more than minimal or incidental time viewing YouTube content.

Although CDCR's network typically blocks YouTube on most of its employees' computers, the administrator was authorized to use his credentials to bypass the blocks because his duties sometimes required him to access certain sites. However, CDCR data showed that from September 2017 through June 2018, the administrator accessed at least 2,256 YouTube videos on his state-issued computer while on state time. On one particularly egregious day, we found that the administrator accessed 55 YouTube videos that did not appear to be related to his duties at VSP. Figure 7 shows the number of YouTube videos the administrator accessed in each of the 10 months. Most of the videos featured recreational vehicles, footage from crimes, and political or religious commentary. To access these videos, the administrator deliberately used his credentials and authority to bypass CDCR's safeguards against such activity. Although we cannot quantify the exact amount of time the administrator spent viewing videos instead of performing the duties for which the State paid him, the initial allegation claimed that he watched YouTube videos "every day, all day long, five days per week."

About the Department

CDCR enhances public safety through a variety of methods, including providing rehabilitative strategies to successfully reintegrate offenders into communities. In an effort to help offenders reintegrate and reduce recidivism, CDCR offers various education programs at each of California's 35 adult institutions, including VSP, which is located in Chowchilla, California. These programs include classroom-based education designed for adult students. At VSP, the education department offers services to about 2,400 inmates.

Relevant Criteria

Government Code section 8314 prohibits state employees from using or allowing others to use state resources, including state-issued computers, state-compensated time, and state vehicles, for personal purposes that exceed minimal or incidental use.

Government Code section 19990 prohibits state employees from engaging in any activities that are inconsistent, incompatible, in conflict with, or inimical to their duties, including using state time and equipment for private gain or advantage or failing to devote their full time, attention, and efforts to their duties.

Government Code section 19572 specifies that misuse of state property constitutes cause for discipline of state employees.

Figure 7

The Administrator Accessed Hundreds of YouTube Videos in Nearly Every Month Reviewed From September 2017 Through June 2018



Source: Analysis of the administrator's YouTube usage.

When we shared the administrator's Internet activity with his supervisor, she agreed that the evidence confirmed the poor work output she witnessed from the administrator. The supervisor stated that the administrator often revealed a surprising lack of knowledge when she asked him simple questions. Further, she stated that she could not remember a week when he had worked the expected 40 hours. The administrator admitted that she maintained the responsibility to monitor the administrator's work and affirmed that she could have increased her monitoring efforts.

After conducting this investigation, CDCR sustained the allegations against the administrator. However, before CDCR could take disciplinary action against him, the administrator retired. CDCR does not believe that the administrator was aware of the investigation or that the timing of his retirement was related to investigative activity.

Recommendations

To address the improper governmental activity we identified in this investigation, CDCR should take the following actions:

- Provide training to the supervisor regarding the proper monitoring and management of subordinate staff.
- Implement safeguards through which a supervisor would receive notifications when a subordinate employee bypasses established thresholds of access to credential-requiring Internet locations.

Agency Response

In April 2019 CDCR provided evidence demonstrating that it administered the recommended training to the supervisor in March 2019. To prevent further occurrences with subordinate staff, the supervisor also implemented bi-weekly meetings with her staff to reiterate expectations for daily operations and acceptable behavior and to discuss progress on departmental goals.

With regard to the second recommendation, CDCR stated in April 2019 that its current Internet filtering program is able to produce a report of each institution's top 25 Internet data users. CDCR indicated that it is exploring the use of this report, as well as other methods, to hold its employees accountable.

Respectfully submitted,



ELAINE M. HOWLE, CPA
California State Auditor
Date: May 7, 2019

Blank page inserted for reproduction purposes only.

Appendix

THE CALIFORNIA WHISTLEBLOWER PROTECTION ACT

The Critical Role of Whistleblowers

Whistleblowers are critical to ensuring government accountability and public safety. Under state law, anyone who reports an improper governmental activity is a *whistleblower* and is protected from retaliation.¹ An *improper governmental activity* is any action by a state agency or by a state employee performing official duties that does the following:

- Breaks a state or federal law.
- Is economically wasteful.
- Involves gross misconduct, incompetence, or inefficiency.
- Does not comply with the *State Administrative Manual*, the *State Contracting Manual*, an executive order of the Governor, or a California Rule of Court.

Ways That Whistleblowers Can Report Improper Governmental Activities

Individuals can report suspected improper governmental activities by calling the toll-free Whistleblower Hotline (hotline) at (800) 952-5665, by fax at (916) 322-2603, by U.S. mail, or through the State Auditor's website at www.auditor.ca.gov/contactus/complaint.

Of the 636 calls or inquiries that the State Auditor received in the six months covered by this report, 369 came through the State Auditor's website, 154 through the mail, 94 through the hotline, 17 via facsimile, one through an individual who visited the State Auditor's office, and one through an internal source.

¹ The Whistleblower Act can be found in its entirety in Government Code sections 8547 through 8548.5. It is available online at <http://leginfo.legislature.ca.gov>.

Investigation of Whistleblower Allegations

The State Auditor confidentially investigates allegations of improper governmental activity by state agencies and state employees. The State Auditor may conduct an investigation independently, or it may elect to have another state agency perform the confidential investigation under its supervision.

Actions the State Auditor May Take When It Finds Improper Governmental Activities

If an investigation establishes that an improper governmental activity has occurred, the State Auditor may take one or more of the following actions:

- Confidentially report the matter to the Office of the Attorney General, the Legislature, law enforcement, or any other entity that has jurisdiction over the matter.
- Issue a confidential report to the head of the agency involved or to the entity with authority to take action against the state employee involved.
- Issue a public report on the matter, keeping confidential the identities of the individuals involved.

Under the Whistleblower Act, the State Auditor may issue public reports when investigations substantiate improper governmental activities. When issuing a public report, the State Auditor must keep confidential the identities of the whistleblower, any employees involved, and any individuals providing information in confidence to further the investigation.

The State Auditor may also issue nonpublic reports to the head of the agency involved and, if appropriate, to the Attorney General, the relevant policy committees, and any other authority the State Auditor deems proper. For a nonpublic report, the State Auditor cannot release the identity of the whistleblower or any individuals providing information in confidence to further the investigation without those individuals' express permission.

The State Auditor performs no enforcement functions: this responsibility lies with the appropriate state agency, which is required to regularly notify the State Auditor of any action it takes, including disciplinary action, until final action has been taken.

The Protection of Whistleblowers

State law protects state employees who blow the whistle on improper governmental activities. The State Auditor will protect a whistleblower’s identity to the maximum extent allowed by law. Retaliation against a state employee who files a report is unlawful and may result in monetary penalties and imprisonment.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that state agencies implemented on some of the individual cases for which the State Auditor completed investigations from July 2018 through December 2018. In addition, the table summarizes all corrective actions that state agencies took in response to investigations from the time that the State Auditor opened the hotline in July 1993 until December 2018. Furthermore, these investigations have resulted in many state agencies modifying or reiterating their policies and procedures to prevent future improper activities.

Corrective Actions July 1993 Through December 2018

TYPE OF CORRECTIVE ACTION	TOTALS
<i>Convictions</i>	12
<i>Demotions</i>	23
<i>Job terminations</i>	88
<i>Resignations or retirements while under investigation</i>	27*
<i>Pay reductions</i>	59
<i>Reprimands</i>	340
<i>Suspensions without pay</i>	32
Total	581

Source: State Auditor.

* The State Auditor began tracking resignations and retirements in 2007, so this number includes only those that occurred during investigations since that time.

Blank page inserted for reproduction purposes only.

Index

DEPARTMENT/AGENCY	CASE NUMBER	ALLEGATION	PAGE NUMBER
<i>Business Oversight, Department of</i>	I2018-1251	Unfair hiring practices	33
<i>Corrections and Rehabilitation, California Department of</i>	I2017-0489	Misuse of state vehicles	37
	I2017-1487	Misuse of state time and resources	43
<i>Fish and Wildlife, California Department of</i>	I2017-0474	Improper promotions	25
<i>State Hospitals, Department of</i>	I2016-1298	Improper travel payments	15
<i>Transportation, California Department of</i>	I2017-0706	Improper travel payments	7