

STATE OF CALIFORNIA

UNRECORDED FILED

OFFICE OF ADMINISTRATIVE LAW 99 MAR 16 PM 3: 22

In re:) 1999 OAL Determination **No. 8**
 Request for Regulatory)
 Determination filed by MARK) [Docket No. 97-013]
 MCGUIRE regarding)
 Administrative Bulletin 95/1) March 16, 1999
 of the DEPARTMENT OF)
 CORRECTIONS limiting) Determination Pursuant to
 publications inmates may) Government Code Section
 possess and providing for the) 11340.5; Title 1, California
 disposition of unauthorized) Code of Regulations,
 publications¹) Chapter 1, Article 3
 _____)

Bill Jones
 BILL JONES
 SECRETARY OF STATE

Determination by: CHARLENE G. MATHIAS, Deputy Director

HERBERT F. BOLZ, Supervising Attorney
 DEBRA M. CORNEZ, Staff Counsel
 CINDY PARKER, Administrative Law Judge
 on Special Assignment
 Regulatory Determinations Program

SYNOPSIS

The issue presented to the Office of Administrative Law ("OAL") is whether the California Department of Corrections' Administrative Bulletin 95/1 ("AB 95/1" or "Bulletin"), (1) limiting publications inmates may possess, and (2) providing for the confiscation and disposition of unauthorized publications, contains "regulations" which are without legal effect unless adopted in compliance with the Administrative Procedure Act ("APA").

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OAL has concluded that:

- (1) Some of the provisions contained in AB 95/1 are restatements of existing law, or statements of fact, and are thus not "regulations," and
- (2) Some of the provisions, e.g., establishing standards for determining which publications are prohibited and designating the departmental employee to whom prohibited publications are referred, are "regulations" which are invalid unless adopted pursuant to the APA.

ISSUE

OAL has been requested to determine whether Administrative Bulletin 95/1, issued by the Department of Corrections ("Department") on January 6, 1995, which (1) limits publications inmates may possess, and (2) provides for the confiscation and disposition of unauthorized publications, contains "regulations" required to be adopted pursuant to the APA.²

ANALYSIS

I. IS THE APA GENERALLY APPLICABLE TO THE DEPARTMENT OF CORRECTIONS' QUASI-LEGISLATIVE ENACTMENTS?

Penal Code section 5058, subdivision (a), declares in part that:

"The director [of the Department of Corrections] may prescribe and amend rules and regulations for the administration of the prisons. . . . The rules and regulations *shall be promulgated and filed pursuant to [the APA]. . . .* [Emphasis added.]"

Clearly, the APA generally applies to the Department's quasi-legislative enactments.

II. DOES THE CHALLENGED BULLETIN CONTAIN "REGULATIONS" WITHIN THE MEANING OF GOVERNMENT CODE SECTION 11342?

Government Code section 11342, subdivision (g), defines "regulation" as:

"... *every* rule, regulation, order, or standard of general application *or* the amendment, supplement, or revision of any rule, regulation, order or standard adopted by *any* state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure [Emphasis added.]"

Government Code section 11340.5, authorizing OAL to determine whether agency rules are "regulations," and thus subject to APA adoption requirements, provides in part:

"(a) *No* state agency shall issue, utilize, enforce, or attempt to enforce *any* guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [']regulation['] as defined in subdivision (g) of Section 11342, *unless* the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]"

In *Grier v. Kizer*,³ the California Court of Appeal upheld OAL's two-part test⁴ as to whether a challenged agency rule is a "regulation" as defined in the key provision of Government Code section 11342, subdivision (g):

First, is the challenged rule either:

- a rule or standard of general application, *or*
- a modification or supplement to such a rule?

Second, has the challenged rule been adopted by the agency to either:

- implement, interpret, or make specific the law enforced or administered by the agency, *or*
- govern the agency's procedure?

If an uncodified rule meets both parts of the two-part test, then we must conclude that it is a "regulation" and subject to the APA. In applying the two-part test, however, we are mindful of the admonition of the *Grier* court:

"... because the Legislature adopted the APA to give interested persons the opportunity to provide input on proposed regulatory action (*Armistead, supra*, 22 Cal.3d at p. 204, 149 Cal.Rptr. 1, 583 P.2d 744), we are of the view that *any doubt as to the applicability of the APA's requirements should be resolved in favor of the APA.* [Emphasis added.]"⁵

A. IS THE CHALLENGED BULLETIN A "STANDARD OF GENERAL APPLICATION"?

This Request for Determination

The subject of this request for determination is a 1½-page Administrative Bulletin ("Bulletin" or "AB 95/1"), issued on January 6, 1995, whose subject is "Publication Restrictions." It describes the types of publications inmates of the Department may not possess, and provides procedures for the confiscation and disposition of unauthorized publications. Attached to the Bulletin is a 1-page form which correctional staff must use when disapproving all or part of a publication. The Bulletin was issued by the Chief Deputy Director of Corrections. The first sentence of the last paragraph states:

"This bulletin will remain in effect until it is incorporated into the Department Operations Manual Section 54010."

In addition to questioning whether the policies in question must be adopted as regulations, the requester has also questioned whether the Bulletin was analyzed by OAL with regard to necessity, clarity, authorization by law, and consistency with existing law, i.e., whether the Bulletin satisfies the legal standards of the APA that apply to regulations proposed for inclusion in the California Code of Regulations (necessity, clarity, authority, reference, non-duplication and consistency).

In the context of a request for determination, OAL's authority is limited to answering the question of whether the state agency has improperly issued a rule without first putting it through notice and comment and the other procedures mandated by the APA. Once an agency has complied with the APA procedural requirements in adopting a proposed regulation and has submitted the proposed regulation to OAL, then OAL will apply the six APA standards during its review of the regulation. Those issues cannot be prejudged in the determination context.

The requester contends that the policies in AB 95/1 are more restrictive and conflict with the standard of obscenity stated in Penal Code section 311, subdivision (a). The only part of this issue which OAL has jurisdiction to decide is whether the provisions in AB 95/1 interpret and implement Penal Code section 311 and therefore are without legal effect unless adopted pursuant to the APA.

Finally, the requester contends that AB 95/1 is unconstitutional. OAL does not have jurisdiction to decide this issue.

The Department contends that the contents of AB 95/1 restate duly adopted regulations which were in effect when AB 95/1 was issued on January 6, 1995.⁷ For the purposes of this determination, we will consider whether AB 95/1 restated or interpreted law which existed as of June 23, 1995, when the request for determination was submitted, and as of the date this determination is issued.

For an agency rule or standard to be "of general application" within the meaning of the APA, it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind or order.⁸

However, a different approach is taken in the case of rules applying to prisoners. California courts have long distinguished between: (1) statewide rules and (2) rules applying solely to one prison.⁹ In *American Friends Service Committee v. Proconier* (1973) (hereafter, "Proconier"),¹⁰ a case which overturned a trial court order directing the *Director of the Department* to adopt *departmental* rules and regulations pursuant to the APA, the California Court of Appeal stated:

"The rules and regulations of the Department are promulgated by the Director and are *distinguished from the institutional rules* enacted by each warden of the particular institution affected. [Emphasis added.]"¹¹

The Department does not contend in its response that the provisions in AB 95/1 are "local rules."

AB 95/1 is not limited to a single institution. Rather it applies to all inmates of all correctional institutions statewide who receive or possess publications. Therefore, AB 95/1 contains standards of general application.

B. DOES THE CHALLENGED BULLETIN CONTAIN PROVISIONS WHICH INTERPRET, IMPLEMENT, OR MAKE SPECIFIC THE LAW ENFORCED OR ADMINISTERED BY THE AGENCY OR GOVERN THE AGENCY'S PROCEDURE?

Because the provisions in AB 95/1 constitute standards of general application, OAL must determine whether they also satisfy the second part of the two-part "regulation" test.

Penal Code section 5058, subdivision (a), declares that

"The director [of the Department of Corrections] may prescribe and amend rules and regulations for the administration of the prisons"

Penal Code section 5054 declares that

"The supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the director [of the Department of Corrections]"

In 1994, Penal Code section 2600 was amended to provide that prisoners may only be deprived of such rights reasonably necessary to legitimate penological interests. Penal Code section 2601 was also amended in 1994 to provide in part:

"Subject only to the provisions of that section, each person described in Section 2600 shall have the following civil rights:

"(c)(1) to purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office. Pursuant to this section, prison authorities may exclude any of the following matter:

(A) Obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained.

(B) Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.

(c) Any matter concerning gambling or a lottery. . . ."

AB 95/1 states that it was issued to implement the restrictions on publications enacted by the 1994 amendment to Penal Code section 2601.

With certain exceptions discussed below, all of the provisions contained in AB 95/1 restate duly adopted regulations which were in effect on the date of the request for determination¹² (June 23, 1995) and on the date of issuance of this determination.

These restatements reflect the content of sections 3006, 3136, 3138 and 3147 of title 15. For example, the third paragraph on page 1 of the Bulletin, titled "Implementation," restates provisions of sections 3006 and 3138(f)(1) of Title 15 of the California Code of Regulations. The first full paragraph on page 2, which describes and defines obscene material, restates provisions of subsection 3006(c)(15). The first paragraph under "Staff Responsibilities" on page 2 restates provisions of subsections 3136(b) and 3147(a)(5) of Title 15.

Some of the provisions contained in AB 95/1 which are not restatements of duly adopted regulations are statements of fact or restatements of statute.

The first paragraph of the first page of AB 95/1, which states the purpose of the Bulletin, and the second paragraph, titled "Background," are statements of the Department's intent in issuing the Bulletin. As such, they are merely statements of fact, which do not implement or interpret existing law and do not need to be adopted pursuant to the APA.

The first sentence of the first full paragraph on page 2, which defines obscenity, is in part a general restatement of the definition of obscene matter contained in Penal Code section 311, and in part a restatement of the first paragraph of section 3006 and subsection (c)(15) of section 3006 of title 15.

There are four points in AB 95/1 which are *not* restatements of existing law or statements of fact. First: the ninth type of publication proscribed under "Implementation" is:

"Illustrations, explanations, and/or descriptions of how to sabotage, disrupt, *build, modify, or repair* computers, communications, or electronics. [Emphasis added]."

Section 3006 of Title 15, subsection (c)(9) is identical to the above proscription, except in AB 95/1 the words "build, modify or repair" have been added. Rather than merely restating subsection 3006(c)(9), the proscription in the Bulletin modifies and supplements the subsection, and is therefore a "regulation" which is without legal effect unless adopted pursuant to the APA.

Second: in AB 95/1, the tenth type of publication proscribed is:

"Catalogs, advertisements, brochures, and material *soliciting a response from an inmate*. [Emphasis added.]"

Section 3006, subsection (c)(11) proscribes:

"Catalogs, advertisements, brochures, and material whose primary purpose is to sell a product(s) or service(s) and when taken as a whole, lacks serious literary, artistic, political, educational, or scientific value."

The Bulletin modifies subsection (c)(11) by proscribing publications which solicit a response from an inmate, rather than attempt to sell something to the inmate, and the Bulletin's proscription does not include the standard that the publication must lack value as a whole. Therefore, the tenth proscribed type of publication is also a "regulation" which must be adopted pursuant to the APA.

Third, the description of obscene material that is prohibited in the Bulletin is more limited than the description of obscene material in subsection 3006(c)(15) of title 15. Subsection 3006(c)(15) proscribes *all* mail containing information regarding where, how or from whom *any* obscene material may be obtained, whereas AB 95/1 prohibits *only* that mail regarding how to obtain the particular type of obscene mail stated in the first item of the list of obscene types of publications in the first full paragraph on page 2. This provision of AB 95/1 also meets the definition of "regulation."

Fourth, under "Staff Responsibilities," AB 95/1 states:

"Publications which are to be excluded, shall be referred to a staff member at *not less than the Program Administrator level* for authorization. [Emphasis added.]"

Subsection 3136(b) of title 15 requires that such publications be referred to a "staff member not below the level of facility captain." If these are different levels, the Bulletin provision modifies the regulation, and is without legal effect unless adopted pursuant to the APA.

The four Bulletin provisions listed above are "regulations" within the meaning of the APA.

III. DO THE PROVISIONS IN THE CHALLENGED BULLETIN, FOUND TO BE "REGULATIONS," FALL WITHIN ANY *SPECIAL*¹³ EXPRESS STATUTORY EXEMPTION FROM APA REQUIREMENTS?

Penal Code section 5058, subdivision (c), added in 1995, provides that rules applying solely to a particular prison are not subject to the APA provided that *all* rules which apply to prisons throughout the state are adopted pursuant to the APA. Essentially, section 5058, subdivision (c), advises the Department of the need to abide by the APA as one of two conditions to the use of the "local rule exception."

Because AB 95/1 was issued by the Department's Chief Deputy Director to all "departmental facilities"¹⁴ (which would include state correctional facilities and prisons) statewide, the "local rule exception" of Penal Code section 5058, subdivision (c), does not apply.

IV. DO THE PROVISIONS IN THE CHALLENGED BULLETIN, FOUND TO BE "REGULATIONS," FALL WITHIN ANY *GENERAL* EXPRESS STATUTORY EXEMPTION FROM APA REQUIREMENTS?

Generally, all "regulations" issued by state agencies are required to be adopted pursuant to the APA, unless *expressly* exempted by statute.¹⁵ Rules concerning

certain specified activities of state agencies are not subject to the procedural requirements of the APA.¹⁶

FORMS

OAL considered whether the form titled "Notification of Disapproval - Publications," (CDC 1819 - 12/94) falls within the "form" exemption to the APA.

Government Code section 11342, subdivision (g), provides in part:

"'Regulation' does not mean . . . *any form* prescribed by a state agency or any instructions relating to the use of the form, *but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.* [Emphasis added.]"¹⁷

This statutory provision contains a significant restriction on the use of the "form" exemption. The limits to the "form" exemption have been covered in a previous determination:

"According to the leading case, *Stoneham v. Rushen*, the language quoted directly above creates a 'statutory exemption relating to *operational forms*.' (Emphasis added.)¹⁸ An example of an operational form would be as follows: a form which simply provides an operationally convenient space in which, for example, applicants for licenses can write down information that existing provisions of law already require them to furnish to the agency, such as the name of the applicant.

"By contrast, if an agency form goes beyond *existing legal requirements*, then, under Government Code section 11342, subdivision (b), a formal regulation is '*needed to implement the law under which the form is issued.*' [Emphasis added.] For example, a hypothetical licensing agency form might require applicants to fill in marital status, race, and religion--when none of these items of information was required by existing law. The hypothetical licensing agency would be making new law: i.e., 'no application for a license will be approved unless the applicant completes our application form, i.e., furnishes his or her name, marital status, race, and religion.'

"In other words, according to the *Stoneham* Court, if a form contains 'uniform substantive' rules which are used to implement a statute, those rules must be promulgated in compliance with the APA. On the other hand, a 'regulation is *not* needed to implement the law under which the form is issued' (emphasis added) insofar as the form in question is a simple operational form limited in scope to *existing* legal requirements.

"In sharp contrast, the Agency Response reads section 11342 as exempting from the APA 'any' form prescribed by a state agency. This reading of section 11342 is too broad.

"An interpretation of the forms language in section 11342 which permits agencies to avoid APA rulemaking requirements by the simple expedient of typing regulatory material into a form would lead to absurd consequences. There would be no limit to the degree to which agencies would be able to avoid public notice and comment, OAL review, and publication in the California Code of Regulations. Read in context, and in light of the authoritative interpretation rendered by the *Stoneham* Court, section 11342 cannot be reasonably interpreted in the broad fashion proposed by the Agency Response. [Endnote: [It is not plausible] that the *Armistead* Court would have reached a different conclusion and *upheld* the employee resignation rule involved in that case if the Personnel Board had simply thought to incorporate the rule in a form or form instruction.]"¹⁹

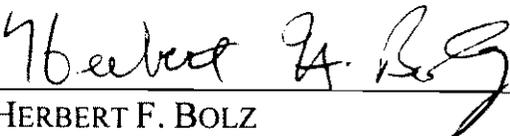
The form at issue in this determination is a general form used to document the basis for denying possession to an inmate of all or part of a publication. It contains no standards of general application and, therefore, does not require a regulation to implement the law under which the form is issued. The form has no significant effect upon inmates and contains no substantive rules. Therefore, we conclude that form CDC 1819 (12/94) is exempt under the forms exemption to the APA.

CONCLUSION

For the reasons set forth above, OAL concludes that:

- (1) Some of the provisions contained in Administrative Bulletin 95/1 are restatements of existing law and statements of fact, and are not "regulations," and
- (2) Some of the provisions, e.g., establishing standards for determining which publications are prohibited and establishing which departmental employee to whom prohibited publications are referred, are "regulations" which are invalid unless adopted pursuant to the APA.

DATE: March 16, 1999


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ENDNOTES

1. This Request for Determination was filed by Mark McGuire, P.O. Box 689, C-47837 F331, Soledad, CA 93960-0689. The agency's response was submitted by Pamela L. Smith-Steward, Deputy Director, Legal Affairs Division, Department of Corrections, 1515 "S" Street, North Building, P.O. Box 942883, Sacramento, CA 94283-0001.

On October 2, 1998, OAL published a summary of this request for determination in the California Regulatory Notice Register ("CRNR") 98, No. 40-Z, p. 1978, along with a notice inviting public comment. Except for an additional comment submitted by the requester, no other public comment was received.

This determination was filed with the Secretary of State on the date listed on the first page of this determination. This determination may be cited as "**1999 OAL Determination No. 8.**"

2. According to Government Code section 11370:

"Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act." [Emphasis added.]

OAL refers to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Administrative Regulations and Rulemaking") of Division 3 of Title 2 of the Government Code, sections 11340 through 11359.

3. (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251. A 1996 California Supreme Court case stated that it "disapproved" of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577, 59 Cal.Rptr.2d 186, 198. *Grier*, however, is still good law, except as specified by the *Tidewater* court. Courts may cite on a particular point, cases which have been disapproved on other grounds. For instance, in *Doe v. Wilson* (1997) 57 Cal.App.4th 296, 67 Cal.Rptr. 187, 197, the California Court of Appeal, First District, Division 5 cited *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596, on one point, even though *Poschman* had been expressly disapproved on another point nineteen years earlier by the California Supreme Court in *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204 n. 3, 149 Cal.Rptr. 1, 3 n. 3. Similarly, in *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 67 Cal.Rptr.2d 323, 332, the California Court of Appeal, First District, Division 4, nine months after *Tidewater*, cited *Grier v. Kizer* as a distinguishable case on the issue of the futility exception to the exhaustion of administrative remedies requirement.

The *Tidewater* case itself, in discussing which agency rules are subject to the APA, referred to "the two-part test of the Office of Administrative Law," citing *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, a case which quotes the test from *Grier v. Kizer*.

4. The *Grier* Court stated:

"The OAL's analysis set forth a two-part test: 'First, is the informal rule either a rule or standard of general application or a modification or supplement to such a rule? [Para.] Second, does the informal rule either implement, interpret, or make specific the law enforced by the agency or govern the agency's procedure?' (1987 OAL Determination No. 10, *supra*. slip op'n., at p. 8.)

OAL's wording of the two-part test, drawn from Government Code section 11342, has been modified slightly over the years. The cited OAL opinion--1987 OAL Determination No. 10--was published in California Regulatory Notice Register 98, No. 8-Z, February 23, 1996, p. 292.

5. (1990) 219 Cal.App.3d 422, 438, 268 Cal.Rptr. 244, 253.

6. The requester submitted a letter dated October 30, 1998, during the comment period.

7. Agency response, p.2.

8. *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552. See *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323-324 (standard of general application applies to all members of any open class).

9. See *In re Allison* (1967) 66 Cal.2d 282, 292, 57 Cal.Rptr. 593, 597-98 (rules prescribed by Director include "D2601," Rules of the Warden, San Quentin State Prison include "Q2601"); *In re Harrell* (1970) 2 Cal.3d 675, 698, n.23, 87 Cal.Rptr. 504, 518, n.23 ("Director's Rule" supplemented by "local regulation"--Folsom Warden's Rule F 2402); *In re Boag* (1973) 35 Cal.App.3d 866, 870, n. 1, 111 Cal.Rptr. 226, 227, n. 1 (contrasts "local" with "departmental" rules). See also *Department of Corrections*, 20 Ops.Cal.Atty.Gen. 259 (1952) ("the rules and regulations of the Department of Corrections *and* of the particular institution. . . .") (Emphasis added.)

10. (1973) 33 Cal.App.3d 252, 109 Cal.Rptr. 22.

11. *Id.*, 33 Cal.App.3d at 258, 109 Cal.Rptr. at 25.

12. Some of the provisions of the restated regulations have been renumbered without changing the content. For example, former subsections 3147(a)(9)(G) through (a)(9)(J) were renumbered on June 6, 1996 to subsections 3138(d) through (g).

13. All state agency "regulations" are subject to the APA unless expressly exempted by statute. Government Code section 11346. Express statutory APA exemptions may be divided into two categories: special and general. Cf. *Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120,126, 174 Cal.Rptr. 744, 747 (exemptions found either in prevailing wage statute or in the APA itself). *Special* express statutory exemptions, such as Penal Code section 5058, subdivision (d)(1), which exempts Corrections' pilot programs under specified conditions, typically: (1) apply only to a portion of one agency's "regulations" and (2) are found in that agency's enabling act. *General* express statutory exemptions, such as Government Code section 11342, subdivision (g), part of which exempts internal management regulations from the APA, typically apply across the board to all state agencies and are found in the APA.
14. Administrative Bulletin 95/1, p. 1.
15. Government Code section 11346.
16. The following provisions of law may permit rulemaking agencies to avoid the APA's requirements under some circumstances:
 - a. Rules relating *only* to the internal management of the state agency. (Gov. Code, sec. 11342, subd. (g).)
 - b. Forms prescribed by a state agency or any instructions relating to the use of the form, *except* where a regulation is required to implement the law under which the form is issued. (Gov. Code, sec.11342, subd. (g).)
 - c. Rules that "[establish] or [fix], *rates, prices, or tariffs.*" (Gov. Code, sec. 11343, subd. (a)(1).)
 - d. Rules directed to a *specifically named* person or group of persons *and* which do not apply generally throughout the state. (Gov. Code, sec. 11343, subd. (a)(3).)
 - e. Legal rulings *of counsel* issued by the Franchise Tax Board or the State Board of Equalization. (Gov. Code, sec. 11342. subd. (g).)
 - f. There is weak authority for the proposition that contractual provisions previously agreed to by the complaining party may be exempt from the APA. *City of San Joaquin v. State Board of Equalization* (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest). The most complete OAL analysis of the "contract defense" may be found in 1991 OAL Determination No. 6, pp. 175-177. Like *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244, **1990 OAL Determination No. 6** (Department of Education, Child

Development Division, March 20, 1990, Docket No. 89-012), California Regulatory Notice Register 90, No. 13-Z, March 30, 1990, p. 496, rejected the idea that *City of San Joaquin* (cited above) was still good law.

17. Government Code section 11342, subdivision (g).
18. *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130.
19. **1993 OAL Determination No. 5.** (State Personnel Board and Department of Justice, December 14, 1993, Docket No. 90-020), California Regulatory Notice Register (CRNR) 94, Volume 2-Z, January 14, 1994, p. 61, at p. 105; typewritten version at p. 266.