

Office of Administrative Law

NEWS RELEASE



FOR IMMEDIATE RELEASE: 11/9/2010
Contact: Linda Brown (916) 323-6225

OAL DIRECTOR SUSAN LAPSLEY ISSUES STATEMENT REGARDING LAWUIT FILED BY INSURANCE COMMISSIONER

SACRAMENTO, CA: Office of Administrative Law (OAL) Director Susan Lapsley made the following statement regarding the decision by California Insurance Commissioner Steve Poizner to sue OAL over 2010 OAL Determination No. 21, which concluded that certain requirements the Commissioner imposed on insurers he regulates were invalid “underground” regulations.

“The Commissioner is required to follow the process established by law,” said Lapsley. “The Administrative Procedure Act (APA) protects the public by requiring state agencies to publish notice of a rulemaking and follow other procedural steps before new rules can become enforceable. No state agency, including the Department of Insurance, is exempt from the APA’s requirements absent an express statutory exemption.”

“Our office is authorized by law to scrutinize rules that have been challenged as ‘underground regulations’ (regulations and rules that state agencies issue or use that have not been properly adopted pursuant to the APA),” Lapsley continued. “The procedural steps established by the APA are designed to give the public a meaningful opportunity to participate in the making of the rules that will govern them. The rules adopted using the APA process must then be submitted to OAL for its review and approval in accordance with all governing law. No matter what agency is involved and no matter what praiseworthy objective the agency has in mind, the APA requires that the proper process be utilized. The Commissioner did not follow that required process but rather simply imposed new rules unilaterally without any public input or comment. This is exactly the type of action the APA is designed to prevent.”

“Given the enduring fiscal crisis facing the state of California, it is regrettable to have to devote any public resources toward resolving this matter. Our mission of regulatory oversight makes it our responsibility and statutory obligation to issue an opinion if we believe an agency is acting outside the law using underground regulations. We stand by our opinion.”

2010 OAL Determination No. 21 is available on OAL’s website at http://www.oal.ca.gov/res/docs/pdf/determ/2010_OAL_Determination_No_21.pdf.

The law governing the rulemaking process is found in California Government Code section 11340 et seq. Proposed state regulations must also be adopted in compliance with regulations adopted by OAL (see California Code of Regulations, Title 1, sections 1-280).