



Gray Davis
Governor

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2002 OAL DETERMINATION NO. 6-L
(Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 123(c))

David B. Judson
*Deputy Director and
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September 5, 2002

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Re: Request for Determination concerning the Department of Fish and Game's
time limitations on filing citizen complaints;
OAL file no. 00-006

Dear Mr. New:

You requested the Office of Administrative Law ("OAL") to issue a determination as to whether the 90-day time limitation on filing a citizen complaint, contained in the Department of Fish and Game's ("Department") "Citizen Complaint Investigation" procedures, is a "regulation" which must be adopted pursuant to the Administrative Procedure Act ("APA"; Gov. Code, sec. 11340 et seq.).

A copy of the then current (1997) version of the Department's Citizen Complaint Investigation procedures was provided along with your determination request. The 1997 version contained the following provision: "Complaints of major violations must be received within the statute of limitations as provided in law. If no statute exists in law they must be received within one year. Complaints of infractions must be received within 90 days." It is this 90-day time limitation (herein "90-day rule") with which you are concerned.

In issuing a determination, OAL renders an opinion as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600, which should have been, but was not, adopted pursuant to the APA.

Government Code section 11342.600 defines "regulation" to mean "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.” For an agency rule to be a “standard of general application,” 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.¹

We think that, at the time your request for determination was submitted to OAL, the 90-day rule contained in the Department's “Citizen Complaint Investigation” procedures met the definition of “regulation.” The 90-day rule applied generally to all members of an open class, e.g., anyone who submitted a complaint involving an alleged infraction. Furthermore, the 90-day rule implemented Penal Code section 832.5.² OAL also determined that the 90-day rule did not fall within any express statutory exemption from the rulemaking requirements of the APA.

However, since the time of the original request for determination, the 90-day rule contained in the Department's “Citizen Complaint Investigation” procedures has been declared by the Department to be no longer in effect. In a letter to OAL dated August 6, 2002, the General Counsel of the Department stated:

“Enclosed please find a letter from Gregory L. Laret, Chief of the Conservation Education and Enforcement Branch, which states that the Department has rescinded the portion of its Citizen Complaint Investigation Policy relating to time limitations on filing of citizen complaints. . . .”

The letter from Mr. Laret, dated August 5, 2002, stated in part the following:

"Attached please find an email memorandum dated August 5, 2002, in which I rescinded the portion of the Department of Fish and Game's Citizen Complaint Investigation Policy relating to time limitations on filing of citizen complaints. As of the date of this memorandum [August 5, 2002] all complaints are to be accepted and reviewed regardless of when the incident giving rise to the complaint occurred and when the complaint was received by the Department."

Thus, as discussed above, the Department has declared that it has discontinued the use of the 90-day rule contained in the Department's “Citizen Complaint Investigation” procedures (i.e., the document is no longer in effect). Consequently, the matter having been disposed of, we contemplate no further action in its regard.³

1. *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323-324 (a standard of general application applies to all members of any open class).

2. Penal Code section 832.5 provides in part the following: "(a) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. . . ."

3. Section 123 of title 1 of the CCR provides in part the following:

“(b) OAL shall not accept for filing any request for determination if OAL finds that the state agency rule being challenged:

Sincerely,

David B. Judson
Deputy Director and Chief Counsel



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- (1) has been superseded;
 - (2) has expired by its own terms;
 - (3) *has been declared in writing by the state agency under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, to have been rescinded or to no longer be in effect;*
 - (4) has been nullified by a court in a judgment that has become final;
 - (5) is contained in a regulation adopted pursuant to the APA;
 - (6) is contained in a California statute;
 - (7) is clearly within the scope of an express statutory exemption from the APA; or
 - (8) is the same rule, or is substantially the same (i.e., has the same effect) as a rule from the same state agency, on which OAL has already issued a determination.

“(c) If, after accepting a request for determination, OAL finds that the challenged state agency rule falls within subsection (b), OAL may at any time issue a summary determination letter instead of a determination pursuant to sections 124, 125, and 126. Any summary determination letter shall be issued pursuant to section 127. [Emphasis added.]”

This summary determination letter is being issued pursuant to section 123, subsection (c), because the challenged agency rule falls within section 123, subsection (b)(3).