

**HB**

**374**

FISCAL NOTE

No. 2

Bill Version: CSIB 374 (FIN)

(H) Publish Date: 2/3/94

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: 02/03/94

Department Affected: Administration

Title: "An Act relating to reimbursable service agreements between state agencies ..."

BRU: Finance

Sponsor: Rules Committee

Component: Finance

Requestor: (H) Fin

COMPONENT SERIAL 59

Expenditures/Revenues:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Don Wanie *DW*  
Division: Finance

Phone: 465-2240  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usura *NBU*  
Agency: Administration

Date: 2/3/94

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# FISCAL NOTE

No. 1

Bill Version: CSHB 374 (FIN)

B: (H) Publish Date: 2/3/94

**STATE OF ALASKA  
1994 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Office of the Governor  
 Title: "An act relating to BRU: Management and Budget  
reimbursable service agreements..." Component: Budget Review  
 Sponsor: House Rules  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 16

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 98	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY84) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Nancy Single, Director *Nancy Single* Phone: 465-4881  
 Division: Budget Review Date: 2/2/94  
 Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: Office of the Governor

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
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### MEMORANDUM

TO: The Honorable Robin Taylor, Chairman  
Senate Judiciary Committee

FROM: Randy S. Welker *Randy*  
Legislative Auditor

DATE: March 18, 1994

RE: Reimbursable Service Agreements (RSAs) - CS for House Bill 374 (FIN)

Last fall, we issued the accompanying audit report on the Commissioner's Office of the Department of Health and Social Services. The audit criticized the department for the method used to increase the appropriation for the commissioner's office — inappropriate use of RSAs.

A legal memorandum included as an appendix on page 17 of the report from the Division of Legal Services stated:

*It is apparent that the use of an RSA to effectuate transfers between appropriations within a department, the net effect of which is to circumvent the legislature's enacted expenditure authority for the department, is an abuse of the RSA system.*

Reimbursable Service Agreements are a valid method for one agency to acquire services from another agency. A January listing of RSAs (attached) produced by the Office and Management and Budget shows in excess of \$124.6 million in RSA activity to date in FY 94. Therefore, we believe that statutory clarification is warranted.

While we do not believe that legislation can be drafted that will prevent all inappropriate use of RSAs, we do believe that clarification can be added to statute to better define the allowable uses of RSAs.

The attached legislation provides the clarification without unduly restricting the ability of agencies to acquire services from one another. The bill emphasizes two basic elements of a valid agreement: legal authority to enter the agreement and billing for services based on actual costs or a cost allocation methodology approved by the Office of Management and Budget.

A Reimbursable Service Agreement should be just that — a reimbursement for the actual cost of a quantifiable service actually provided.

Please contact me if you have any questions or if I can provide additional information.

Attachments

FY 94 RSA TRANSACTIONS IDENTIFIED BY REQUESTING AGENCY  
AS OF JANUARY 14, 1994

<u>Requesting Department</u>	<u>Amount</u>
Office of the Governor	\$ 5,957,500
Department of Administration	7,284,300
Department of Law	4,536,300
Department of Revenue	2,362,000
Department of Education	11,396,200
Department of Health and Social Services	44,990,600
Department of Labor	3,688,900
Department of Commerce and Economic Development	1,111,800
Department of Military and Veterans Affairs	2,193,600
Department of Natural Resources	3,557,800
Department of Fish and Game	2,968,400
Department of Public Safety	3,118,000
Department of Environmental Conservation	2,910,800
Department of Corrections	5,631,600
Department of Community and Regional Affairs	2,182,200
Department of Transportation and Public Facilities	20,137,900
Ombudsman	3,300
Legislative Affairs	107,100
Division of Legislative Finance	5,100
Division of Legislative Audit	2,400
Alaska Court System	98,100
University of Alaska	<u>401,600</u>
 TOTAL INTER/INTRA-DEPARTMENTAL RSAs	 <u>\$124,645,500</u>



# Audit Report

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DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
COMMISSIONER'S OFFICE  
FUND TRANSFERS AND  
RELATED EXPENDITURES

July 2, 1993

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Audit Control Number:

06-4465-93

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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July 2, 1993

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
COMMISSIONER'S OFFICE  
FUND TRANSFERS AND RELATED EXPENDITURES

July 2, 1993

Audit Control Number

06-4465-93

The audit addresses the circumstances and legal basis surrounding the Department of Health and Social Services commissioner's office use of Reimbursable Services Agreements (RSAs) to obtain funds from operating divisions to supplement the commissioner's office budget. We also attempted to ascertain whether the divisions transferring funds to the Commissioner's office were receiving services directly related to those transferred funds and how the funds were expended. The report also addresses the purpose and concept of RSAs.

The audit was conducted in accordance with governmental performance auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

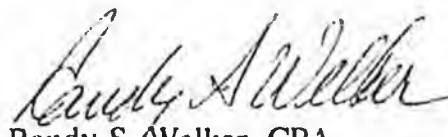
  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, an audit was conducted to address the circumstances surrounding the Department of Health and Social Services (DHSS) commissioner's office use of Reimbursable Services Agreements (RSAs) to obtain funds from operating divisions to supplement the commissioner's office budget.

### Objectives

The primary objective of this report is to document the circumstances and issues surrounding DHSS' use of RSAs to supplement the department's commissioner office budget. Secondary objectives were to evaluate the legal basis for those fund transfers and to identify whether or not DHSS' use of RSAs for this purpose was proper.

### Scope

We focused our review primarily on DHSS commissioner's office expenditures for fiscal years 1992 and 1993, RSA transactions between operating divisions and the commissioner's office, and the legal authority for those transactions.

### Methodology

Our evaluation of the decision to utilize RSAs to supplement the commissioner's office budget involved review and analysis of the following documents and interviews:

1. Fiscal years 1991 - 1993 RSAs between the commissioner's office and DHSS operating divisions.
2. DHSS documents showing the methods used to allocate the commissioner's office expenditures to the funding operating divisions.
3. An assessment of the nature and extent of the services rendered by the commissioner's office to the funding operating divisions through inquiry and review of expenditures.
4. Review of legal memorandum issued by the Legislative Affairs Agency, Division of Legal Services.

5. Discussions were held with the following personnel:

Director, DHSS Division of Administrative Services  
Administrative Assistant, DHSS Division of Administrative Services  
Budget Chief, DHSS  
Director, DHSS Division of Public Assistance  
Director, DHSS Division of Medical Assistance  
Finance Officer, DHSS Division of Family and Youth Services  
Director, DHSS Division of Public Health  
Director, DHSS Division of Alcoholism and Drug Abuse  
Acting Director, Division of Mental Health and Developmental Disabilities  
Accounting Supervisor, DHSS  
Budget Analyst, Office of Management and Budget  
Director, Division of Budget Review, Office of Management and Budget  
Budget Analyst, Division of Legislative Finance  
Counsel, Legislative Affairs Agency, Division of Legal Services

## ORGANIZATION AND FUNCTION

The Department of Health and Social Services (DHSS) Office of the Commissioner represents the governor of Alaska on health and social services issues and provides executive leadership in fulfilling the governor's goals.

The office defines and clarifies policy; has final review authority of department programs; provides a unified focus for management direction and program coordination among the divisions; and represents the department in addressing private providers, federal delegations, and the legislature.

Within the Office of the Commissioner are two deputy commissioners who are responsible for Direct Services Programs and Financial Programs, the department's special assistant for legislative affairs and the department's information officers.

The department works with a number of citizen advisory boards. Their members include citizens appointed by the governor for the purpose of advising the department about policies concerning health and social service programs.

Within the department are the following divisions and programs:

### Division of Administrative Services

Budget, Personnel, and Payroll; Facilities; Finance; Planning; and Supply Sections.

### Division of Family and Youth Services

Adult Protective Services, Foster Care, Residential Child Care, Family Services, Early Intervention Services, Youth Corrections, and Social Services Block Grants.

### Division of Mental Health and Developmental Disabilities

Community Mental Health Centers, Community support for the Developmentally Disabled, Alaska Psychiatric Institute, Harborview Developmental Center, Alaska Youth Initiative, Mental Health Housing Project, Village Suicide Prevention Program, Village Research and Demonstration Projects, Youth Peer Helper Program, and Alaska Family Resource Specialist Program.

Division of Public Assistance

Aid to Families with Dependent Children, Food Stamps, Medicaid, General Relief Assistance, General Relief Medical, Energy Assistance, Adult Public Assistance, and Alaska Work Program (JOBS).

Division of Medical Assistance

Medicaid payments, General Relief Medical payments, Medical Care Advisory Committee, and Certification and Licensing.

Division of Public Health

Public Health Nursing; Epidemiology; Maternal, Child, and Family Health; Public Health Laboratories; Emergency Medical Services; Bureau of Vital Statistics; and Health grants.

Office of Alcoholism and Drug Abuse

Alcohol and Drug Abuse Programs, Alcohol Safety Action Program, Alcohol Prevention Programs, Youth Substance Abuse Programs, Inhalant Abuse Services, Inmate Substance Abuse Programs, and Federal Block Grants.

## AUDITOR'S CONCLUSION

By using unbudgeted Reimbursable Services Agreements (RSAs), the Department of Health and Social Services (DHSS) effectuated fund transfers between appropriations for at least the past three fiscal years, which is contrary to law. Additionally, by utilizing these funds differently than originally budgeted for, DHSS violated the spirit and intent of the legislature's appropriation authority.

As discussed in greater detail in the Auditor's Analysis section of this report, DHSS determined that the funding levels provided by the legislature and approved by the governor were insufficient to meet the commissioner's operating needs. The appropriations to the commissioner's office in FY 92 and FY 93 were less than the agency had requested. Rather than adapting to the reduced funding levels, the commissioner's office continued to expend at levels originally requested by the agency. To fund the anticipated over-expenditures, the commissioner's office executed RSAs with seven divisions within the department approximating \$264,700 and \$93,900 in fiscal years 1992 and 1993, respectively. Contrary to proper use, these RSAs were not initiated based on a discernable or identifiable scope of services that the commissioner's office would render to those seven divisions, but rather were based on a desired funding level beyond that authorized. Lacking an identified scope of services at the time the RSA was executed to measure against, these RSAs did not create the contractual relationship (and therefore obligation) that should exist between a requesting and servicing agency.

The method by which the commissioner's office expenditures were charged against the RSA further supports the conclusion that there was no basis for the RSAs other than the need to maintain expenditures within the commissioner's office at their desired, rather than appropriated, levels.

Our review of the commissioner's office expenditures charged to the various divisions budgets identified a number of transactions that are of debatable benefit to those divisions. For example, we question what benefits the Division of Family and Youth Services received by paying for "fashion accessories" for foreign dignitaries, customized stationary, and travel to Russia.

Additionally, the commissioner's office personal services expenditures charged against the FY 92 RSA and allocated to the various divisions included costs for three positions which were not funded by the legislature.

This method of financing operational needs beyond that appropriated by the legislature is not limited to DHSS. We have been informed that other departments use RSAs to transfer operating funds from various divisions to fund activities in other operational areas. Recent examples of using RSAs to avoid legislative appropriation — or in response to an appropriation — include the Media Center within the Office of the Governor. Another example is the Department of Administration's plans for establishing a video teleconference network by transferring funds from departmental travel budgets, despite the possibility that

those departments may not utilize the network. We believe these types of funding decisions for programs or activities are within the purview of the legislature.

Other than indirect references in AS 36.30 (state procurement code), the Alaska Statutes are relatively silent on the purpose and use of RSAs. As evidenced by the above, RSAs can effectuate a transfer of expenditures between appropriations to circumvent the legislature's appropriation authority. We recommend that the legislature consider legislation which would statutorily define the legitimate purposes and uses of RSAs.

## AUDITOR'S ANALYSIS

In 1981, the Office of Management and Budget (OMB) requested an opinion from the Department of Law as to whether or not an appropriation to the commissioner of the Department of Health and Social Services (DHSS) could be used to pay expenses of the Board of Parole.

The Attorney General issued a memorandum, stating in part:

*The board of parole is located within the Department of Health and Social Services, AS 33.15.010. The commissioner of health and social services is the head of that department, AS 44.29.010. One of the duties of the department is to administer health and social services programs, AS 44.29.020, probation and parole. Id. All commissioners of the principal departments have broad supervisory authority over all functions of their departments, AS 44.17. Because of this relationship, we have long taken the position that an appropriation to the office of the commissioner of any department is, unless otherwise validly restricted, a lump-sum appropriation to the department. That is so here.*

*Accordingly, money appropriated to the office of the commissioner of health and social services may be expended in support of the board of parole.*

In the fall of 1990 (FY 91), the former DHSS commissioner approved an unbudgeted Reimbursable Services Agreement (RSA) which provided additional funding to the commissioner's office, Office of Personnel and Payroll, and the Division of Administrative Services. The RSA, in the amount of \$234,600, was funded by the Divisions of Public Assistance, Medical Assistance, Family and Youth Services, Public Health, Alcohol and Drug Abuse, and Mental Health and Developmental Disabilities. Of that amount, the commissioner's office received \$49,900 which was intended to cover travel expenditures for the commissioner's office for commissioner related travel to attend "high level management" meetings.

It appears that the authority which DHSS used to execute the RSA was the Attorney General's 1981 memorandum cited above. However, the funding for the "high level management" RSAs is not comparable to the 1981 situation nor is it addressed in the memorandum. Rather than providing funding from the Office of the Commissioner to operating divisions within DHSS, these RSAs are transferring funds from operating divisions to the commissioner's office.

### Commissioner's office RSA use continues despite budget reductions and governor veto

In FY 92 with the change in administration, the present DHSS commissioner continued the practice of using unbudgeted RSAs to fund the operations of the commissioner's office. For

FY 92 the commissioner requested funding for his office in the amount of \$891,400, which included \$775,100 for eleven positions. This was amended down by the Governor's Office to a request of \$825,900, which included \$712,800 in personal services for ten positions. However, the House, Senate, and Conference Committees each recommended a funding level of \$624,900, allocating \$511,800 to personal services for funding of seven positions. The legislature's appropriation of \$624,900 was further reduced by a governor's veto in the amount of \$1,500, for an authorized budget of \$623,400. This level of funding represented a \$268,000 reduction from the commissioner's request (of which the largest reduction was in personal services in the amount of \$263,300).

In response to the \$623,400 budget approved by the legislature and governor, on July 2, 1991 (two days into the new fiscal year) DHSS internally determined the commissioner's office required \$888,100 to cover operating expenditures for FY 92, representing a \$264,700 shortfall (which approximates the reduction in personal services). See Exhibit "A" below.

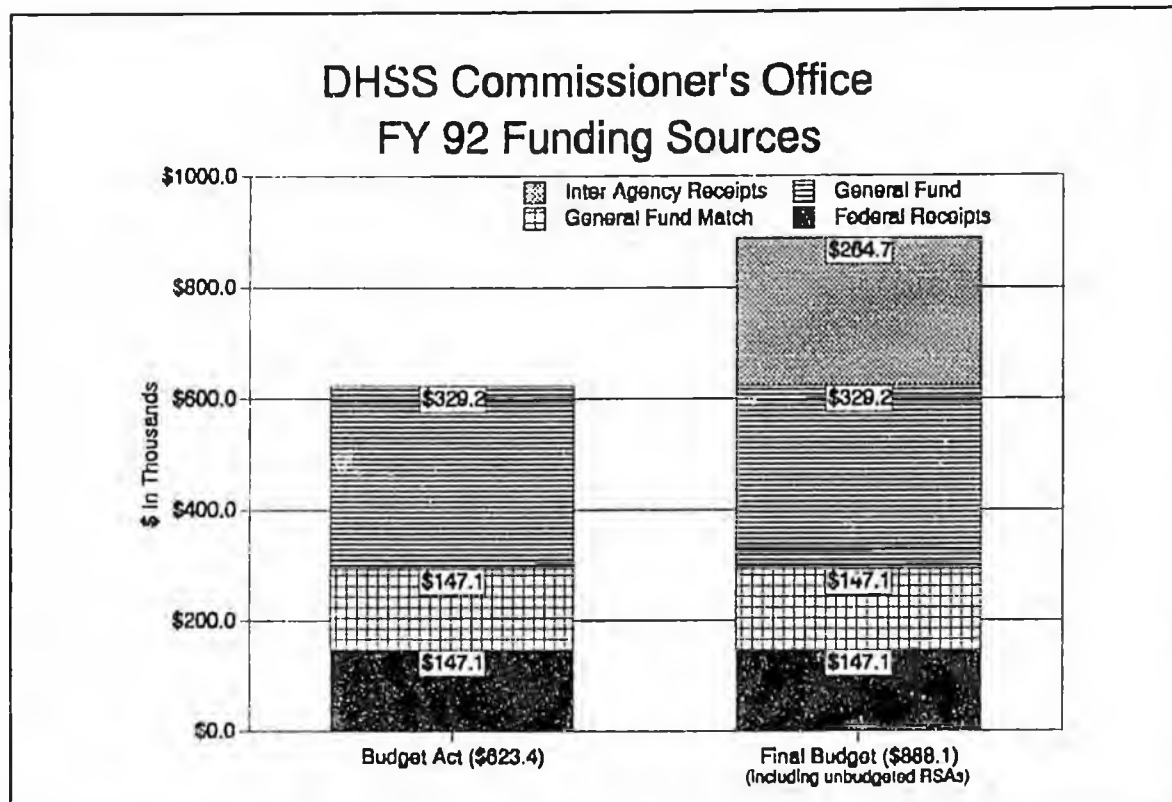


Exhibit A

To accommodate the shortfall, DHSS established an unbudgeted RSA in the amount of \$264,700. The commissioner's office expenditure authority was increased by this amount with contributions from the Divisions of Administrative Services, Public Health, Medical Assistance, Public Assistance, Family and Youth Services, Mental Health and Developmental Disabilities, and Alcoholism and Drug Abuse. Also as stated above, in its FY 92 governor's amended budget submission, the commissioner's office had requested funding for ten positions. The House, Senate, Conference Committees, and final budget act funded seven

of those positions. DHSS used the FY 92 RSA to fund personal services at the level the commissioner's office originally requested.

DHSS acknowledges commissioner office RSAs impacts program service delivery

In FY 93 DHSS budgeted for reinstatement of general fund monies in the amount of \$220,000. In its "Form C5" increment/decrement request DHSS stated that if general fund monies are restored no additional RSAs would be required, while also acknowledging "because the RSA impacts program service, a decision was made to reinstate general funds via an increment for services provided by the Commissioner's Office."

OMB approved the funding level, however, changed the funding source from general fund to inter-agency receipts. While reducing the agency request by \$73,500, the legislature and governor did approve the \$220,000 inter-agency funding source. However, in December 1992, the commissioner's office was once again projecting a shortfall. In a memorandum to all division directors the commissioner noted:

*I have reviewed the current status of the Commissioner's Office budget and have determined that it is in the best interest of the Department to continue FY93 at the current rate of expenditure. This will require additional funds from each division . . .*

The commissioner's office then executed RSAs with the seven divisions mentioned previously in the amount of \$93,900, increasing total inter-agency receipt authorizations to the commissioner's office to \$318,600. See Exhibit "B" below.

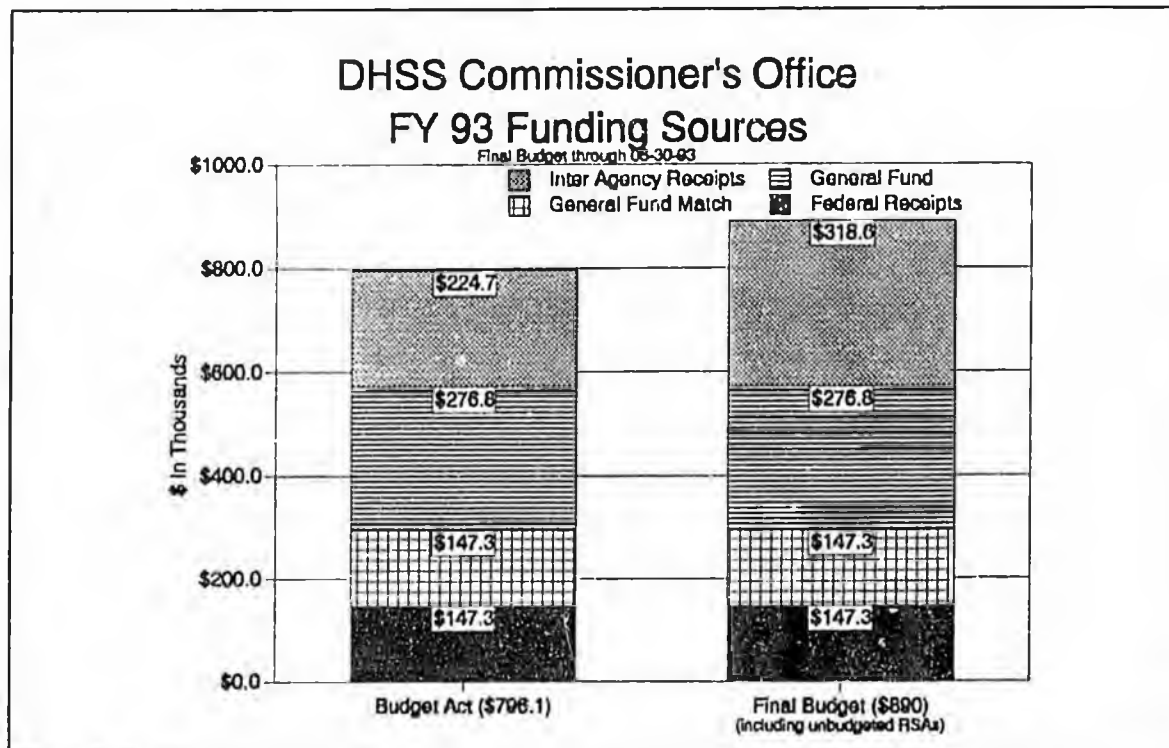


Exhibit B

Legal opinion condemns DHSS' use of RSAs to transfer expenditures

At the request of Representative Nordlund who was interested in DHSS funding methods, the Division of Legal Services, Legislative Affairs Agency issued a memorandum opinion in February 1993. The memorandum (see Appendix "A") states in part:

*You have asked whether certain transfers of appropriations from programs in the Department of Health and Social Services to the commissioner's office through the use of reimbursable service[s] agreements (RSA's) were appropriate. The short answer is no.*

The memorandum further states:

*If the legislature had wanted the commissioner's office to fulfill the functions funded by the RSA's, the legislature would have appropriated the money to the commissioner rather than to the programs. It is hard to conceive of a more blatant violation of AS 37.07.080(e) than the manipulation of the Health and Social Services budget described by [Legislative Finance].*

As was questioned in the legal opinion, we also question the method by which the commissioner's office allocated costs to the various operating divisions. The commissioner's office allocated costs to all the divisions based upon the percentage relationship between each division's personal services budget to the total departmental budget allocated to payroll. Allocation of costs under RSAs should be based upon the cost of a direct benefit received by the requesting (paying) agency and not a formula that does not take into consideration whether or not a direct benefit was received.

Expenditure review raises questions on benefit to departmental programs

Our review of expenditures occurring in the commissioner's office and charged against the RSAs to the various divisions identified a number of transactions for which there was no discernible benefit to the divisions providing the funds. That is one of the basic precepts of RSA usage - that there exists a relationship between the two agencies party to the contract and that a direct, identifiable benefit is received by the agency providing the funds.

As shown in Exhibits "C" and "D" on the following page, FY 92 and FY 93 commissioner's office expenditures exceeded that budgeted by the legislature and approved by the governor, most notably in the areas of personal services, travel, and contractual (expenditure data for FY 93 is through July 13, 1993 - additional expenditures are anticipated before the close of the accounting period for FY 93).

### DHSS Commissioner's Office FY 92 Budget Act Authorizations and Actual Expenditures

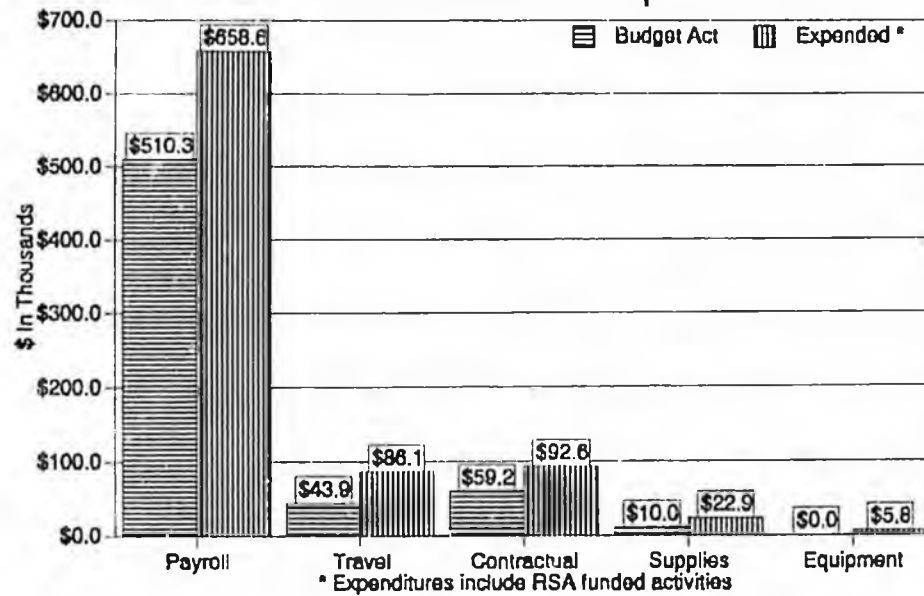


Exhibit C

### DHSS Commissioner's Office FY 93 Budget Act Authorizations and Actual Expenditures

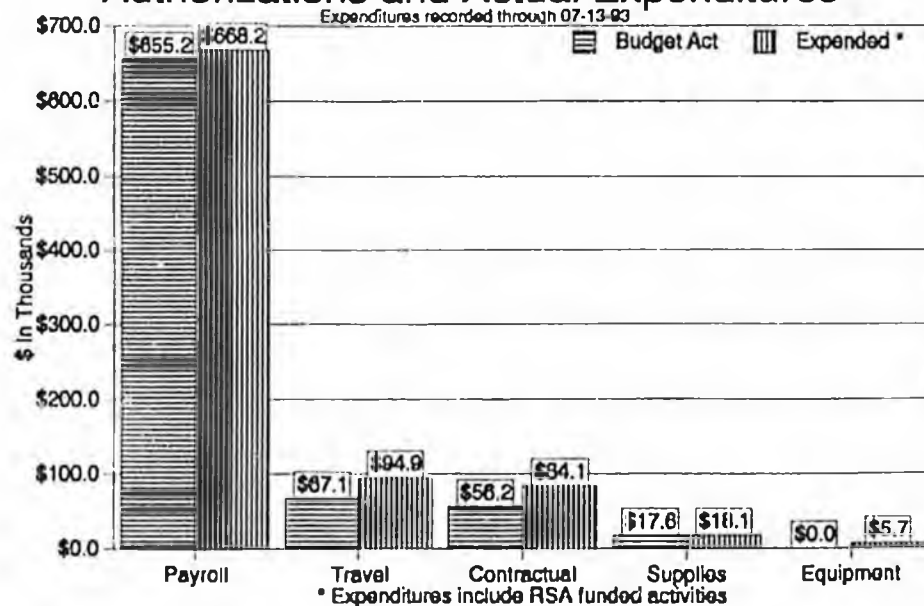


Exhibit D

### Personal Services

As discussed earlier, in FY 92 DHSS commissioner's office had requested funding for eleven positions, which the governor's office reduced by one position for a total of ten. The legislature approved a funding level which provided for seven positions. In response to the legislature's appropriation and a governor's line item veto, the commissioner's office increased its personal services budget by using RSAs to transfer payroll expenses, thereby allowing the commissioner to fill three additional positions that were not originally funded.

In FY 93, the commissioner's office requested and received funding for the ten positions.

### Travel

As shown in Exhibits "C" and "D," DHSS commissioner's office travel expenditures in both fiscal years 1992 and 1993 exceeded the amounts originally budgeted by 96% and 41% (as of July 13, 1993) respectively. The funds to accommodate the amount of travel beyond that originally budgeted came from the seven operating divisions within DHSS with whom the commissioner established RSAs. Commissioner's office travel expenditures charged to the divisions funding the RSAs included numerous trips between Juneau and Anchorage offices and other Alaska destinations by a number of commissioner's office staff; travel to Seattle, Atlanta, South Carolina, and South Dakota to attend a variety of health conferences; mental health facilities inspections in Copenhagen and attendance at a health conference in Reykjavik, Iceland; and at the request of the governor, travel to the former USSR to perform ground work in the preparation of the governor's trip to Moscow.

While these and other travel expenditures may have plausible explanations as to the benefit received for the operation of the commissioner's office or the enlightenment of the commissioner's office staff, we question the direct benefit provided to the various divisions which funded the travel.

### Other Services and Charges

Similar to travel expenditures, as shown in Exhibits "C" and "D," Other Services and Charges (OSC) expenditures in FY 92 and FY 93 exceeded that originally budgeted by 56% and 50% (as of July 13, 1993), respectively. Once again the funds used to pay for the commissioner's office charges that exceeded the original budget were those transferred from other divisions within DHSS via the RSAs.

Commissioner's office OSC expenditures charged to the operating divisions via RSA included numerous purchases of film, photo development, and picture frames; telephone charges; numerous and varied newspaper and magazine subscriptions; purchases of gifts and "fashion accessories" for visiting officials; rental of the Anchorage Egan Civic and Convention Center for departmental in-service day; printing services; minor Anchorage office renovations; office supplies; communication equipment; rental of booth space at Anchorage Fur Rondy; equipment rental; and contract for the provision of video taping services to

DHSS. Additional supply purchases consisted of: customized stationary for the commissioner, various office supplies, photographic services, and drafting supplies.

We question what benefit is received by agencies such as Public Health, Medical Assistance, and Family and Youth Services by their paying for items such as personalized stationary for the commissioner, gifts for foreign dignitaries, or foreign political/goodwill travel. We agree with the DHSS acknowledgement that use of RSAs to fund the commissioner's office operations does impact program services delivered by other divisions within DHSS.

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## FINDINGS AND RECOMMENDATION

### Recommendation No. 1

The legislature should consider amending statute to define and clarify the proper usage of Reimbursable Services Agreements (RSAs) between state agencies.

In our opinion the Department of Health and Social Services (DHSS) circumvented the legislature's appropriation authority by executing RSAs to recoup funding lost through legislative mandated budget reductions and a veto of the governor.

It is clear that DHSS' use of RSAs to restore funding cuts made to the commissioner's office violates AS 37.07.080(e), which states in part: "*transfers may not be made between appropriations except as provided in an act making the transfers between appropriations.*" The power of appropriation rests with the legislature. In FY 92 the legislature appropriated less funds to the DHSS commissioner's office than was requested. In addition to legislative funding reductions, the governor further reduced the commissioner's budget using the line item veto. However, rather than adapting to the legislative and executive mandated budget reductions, the commissioner's office used RSAs to obtain funding from divisions within the department which restored the commissioner's budget to near the full amount originally requested.

RSAs, used properly, are a means to obtain legitimate goods and services from other state agencies. These agreements are, in effect, a binding contract between the two agencies — there is a contractual relationship between the two parties where there is an exchange of identifiable goods and services and payment for those goods and services. The party providing the goods and/or services must have the legal authority to do so, and the party paying for the goods or services must have the legal authority and funds to do so. Using RSAs in the manner that DHSS did to restore funding to the commissioner's office is an inappropriate use of the RSA.

The Alaska Statutes are silent on the intent, purposes, and uses of RSAs. To avoid similar abuses and diminish the subjectivity inherent in RSA activities in the future, we believe that statutes should be amended to define the circumstances when RSAs can, and cannot, be used by state agencies.

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# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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### MEMORANDUM

February 17, 1993

**SUBJECT:** Transfer of Appropriations in Department of Health and Social Services (Work Order No. 8-LS0639)

**TO:** Representative Jim Nordlund

**FROM:** David R. Dierdorff  
Revisor of Statutes

You have asked whether certain transfers of appropriations from programs in the Department of Health and Social Services to the commissioner's office through the use of reimbursable service agreements (RSA's) were appropriate. The short answer is no.

In the interest of time and space, I will not recite the factual background. It is set out in the attached memo from Nancy Slagle.

There is no explicit statutory authority for RSA's as such, but there is one statutory reference to them (AS 47.65.100(b)). AS 36.30.700 - 36.30.790 in the procurement code provide for various intergovernmental agreements. Except for those provisions, agreements between government entities are exempt from the procurement code. See AS 36.30.850(c). The provisions found in AS 36.30 are apparently the base authority for RSA's.

RSA's are used when one agency (usually a department) purchases a service from another agency, such as the central telephone services provided by the Department of Administration. It is apparent that the use of an RSA to effectuate transfers between appropriations within a department, the net effect of which is to circumvent the legislature's enacted expenditure authority for the department, is an abuse of the RSA system.

The basic rule for transfers of appropriated money is that administrative transfers may be made between and among allocations and other items of expenditure in an appropriation, but not between appropriations except by act of the legislature. AS 37.07.080(e). Further, a state agency may not "employ additional employees, or

Representative Jim Nordlund  
February 17, 1993  
Page 2

expend money or incur obligations except in accordance with law and [a] properly approved operations plan." AS 37.07.080(d).

The executive branch has relied on a brief attorney general's opinion letter dated April 13, 1981. This reliance is misplaced. The opinion dealt with a situation where the commissioner's office had extra money and used some of it for direct program support. Clearly, because the commissioner is responsible for the execution of all duties of the department, it is appropriate for the commissioner's budgeted funds to be used to support a program that may be short of funds. The opinion letter described appropriations to the commissioner as "a lump-sum appropriation to the department."

In the instant case, program money is being used by the commissioner to support department-wide activities. Although the burden on each program is proportional to the size of the program (measured by its budget for personal services), there is no indication that the benefit to the program is proportional to its contribution. To the extent that a program receives no proportional benefit, the RSA effects a prohibited transfer between appropriations. Further, while the commissioner may have the power to perform any duty assigned to the department, units within the department, such as divisions, do not necessarily have the power to perform functions performed by the commissioner. It is basic to the concept of RSA's that the unit purchasing the services (in this case the various program units of the department) have the authority to perform all of the functions (services) that they are purchasing. It is questionable whether that authority exists in the instant case.

If the legislature had wanted the commissioner's office to fulfill the functions funded by the RSA's, the legislature would have appropriated the money to the commissioner rather than to the programs. It is hard to conceive of a more blatant violation of AS 37.07.080(e) than the manipulation of the Health and Social Services budget described by Ms. Slagle.

The review of this situation suggests that it might be appropriate for the legislature to address the subject of RSA's and other methods of contracting between and within agencies. It is obvious that RSA's can serve a salutary purpose in government. It is also obvious that they can be abused and used to circumvent legislative spending decisions.

DRD:mi  
93-028.mai

Attachment

WALTER J. HICKEL, GOVERNOR

THEODORE A. MALA, COMMISSIONER

**DEPT. OF HEALTH AND SOCIAL SERVICES**

**DIVISION OF ADMINISTRATIVE SERVICES**

P.O. BOX 110650  
JUNEAU, ALASKA 99811-0650  
PHONE: (907) 465-3082

October 11, 1993

Randy S. Welker  
Legislative Auditor  
Alaska State Legislature  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

RECEIVED  
OCT 11 1993

LEGISLATIVE AUDIT

Dear Mr. Welker:

This is in response to the confidential preliminary audit report on the Department of Health and Social Services Commissioner's Office Fund Transfers and Related Expenditures, July 2, 1993.

Recommendation No. 1

The legislature should consider amending the statute to define and clarify the proper usage of Reimbursable Services Agreements (RSA) between state agencies.

The Department of Health and Social Services has no opinion on your recommendation. However, we strongly disagree with the auditor's opinion that the Department of Health and Social Services (DHSS) circumvented the legislature's appropriation authority by executing RSAs to recoup funding lost through legislative mandated budget reductions and a veto of the governor.

RSAs are viewed by DHSS as contractual obligations between agencies rather than transfers of funds. DHSS considers the RSA in question as a normal funding necessity for effective management to accomplish the objectives and goals of the department. To attain these objectives and goals, DHSS management philosophy views that service and assistance programs must be made available to all eligible Alaskans through an effective dispersement of information. The public must be informed of available state programs rather than leaving them to search for information on programs when they need help, particularly due to the nature of needs/emergencies which arise amongst clients served by DHSS. Department employees require inservice training to become well informed of all the various programs administered by each division and to enable them to be more informative to the public. The inservice training also provides an opportunity to recognize exemplary performance of certain employees and to elevate morale.

These objectives are not funded through the regular allocation for the Commissioner's office; thus, funding support is required from divisions due to the indirect benefit to programs. While we agree that the measure of dollar direct benefit is not identifiable, we believe that the objective of public and employee program awareness has been accomplished. The determination of the share of each program is an acceptable cost allocation methodology based on the department's federally approved cost allocation plan.

DHSS never intended to circumvent the appropriation process. The generation of the RSA document was intended for proper identification and management of expenditures. The expenditures could have been directly charged to various divisions through a federally approved cost allocation methodology without generating an RSA.

DHSS also strongly rejects the assertion that the services purchased through the RSA expenditures are unrelated to the functioning of the divisions. Departmental staff whose salaries were paid through the RSA process worked directly with the divisions on media projects. An example is a media campaign to recruit foster parents. Clearly this is directly related to the mission of the Division of Family and Youth Services.

Similarly, travel by the Commissioner's Office staff is a necessary activity for overall program management. Meetings with Federal officials, many of whom are out of state, are necessary to learn of Federal changes to programs and to determine the impact that these changes will have on Alaska programs. Additionally, these meetings are opportunities for State policy makers to make Alaska's case with regard for desired changes in Federal policy. Obviously, these Federal policy changes directly impact the operations of the Department's divisions.

Finally, your assertion that DHSS "violated the spirit and intent of the Legislature's appropriation authority" implies that the existence or purpose of the questioned RSAs was unknown to the Legislature or the information was deliberately withheld by DHSS. This is not the case. For FY 92 and FY 93 DHSS Budget Subcommittees of both the House and Senate, as well as the Division of Legislative Finance, were well aware of these RSAs. As noted in your report, the Legislature appropriated \$224,700 in Interagency Receipts in the Commissioner's Office budget in FY 93. The purpose of funds from the budgeted RSA approved by the Legislature in FY 93 is indistinguishable from the purposes of the unbudgeted RSAs in FY 91 and FY 92 and the additional unbudgeted RSA of \$93,900 in FY 93.

This raises an interesting question. Is it the position of the Division of Legislative Audit that these RSAs were illegal because they were unbudgeted, i.e., the Legislature did not appropriate the Interagency Receipts in the budget, or were they invalid because there was no "contractual relationship between the two parties

where there is an exchange of identifiable goods and services and payment for those goods and services?"

If the former is the case, then *every unbudgeted RSA between state agencies is illegal*. I suspect there are *hundreds if not thousands of these each year*.

If the latter is the case, then the question of circumventing the Legislature's appropriation authority is moot insofar as even if an appropriation of Interagency Receipts was made by the Legislature with full knowledge of the purpose--as was the case with the Commissioner's Office budget in FY 93--the resulting RSAs would still be illegal because, in your opinion, a valid contractual relationship did not exist between the agencies involved. Is it the Division of Legislative Audit's opinion that the Legislature's appropriation of \$224,700 in Interagency Receipts in FY 93 was illegal?

Frankly, I do not believe you have very carefully considered the ramifications of the conclusions and recommendations in your report.

If the rules of the road regarding RSAs are to change, DHSS will comply with the new rules. I do resent, however, being told that the Department's past actions were illegal when those actions are judged by new rules which neither the Department, the Office of Management and Budget or the Legislature were aware of at the time.

Finally, as stated on page five of your report "This method of financing operational needs beyond that appropriated by the legislature is not limited to DHSS. We have been informed that other departments use RSAs to transfer operating funds from various divisions to fund activities in other operational areas". It is clear that DHSS is not alone in using RSAs in this manner. It is also unfair to solely target and criticize DHSS when other state agencies use the same funding mechanism.

Sincerely,

*Jay Lewis for*

Theodore A. Mala, MD, MPH  
Commissioner

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
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October 20, 1993

Members of the Legislative Budget  
and Audit Committee:

We have reviewed the Department of Health and Social Service's (DHSS) response to our preliminary report and have the following comments.

The department has taken no position on our recommendation that the legislature address the issue of Reimbursable Services Agreement (RSA) use and abuse. The department does, however, take exception to the instances of RSA abuse by DHSS cited in the report.

In its response, DHSS discusses their use of the RSAs in question as ". . . a normal funding necessity for effective management to accomplish the objectives and goals of the department." We do not consider the utilization of RSAs to supplement funding lost through the budget process as a normal funding necessity. DHSS does not discuss in the response the circumstances under which the RSAs were initiated or the fact that the Commissioner's Office unilaterally decided to maintain its own spending plan despite the fact that the legislature and governor had established a spending plan, albeit one lower than desired by the commissioner. As detailed in the report, the RSAs in question transferring funding from operating divisions to the Commissioner's Office were in response to the budget established by the legislature and approved by the governor.

The department also responded:

*DHSS never intended to circumvent the appropriation process. The generation of the RSA document was intended for proper identification and management of expenditures. The expenditures could have been directly charged to various divisions through a federally approved cost allocation methodology without generating an RSA.*

DHSS states that the RSA was designed for management of expenditures but yet acknowledges that ". . . the measure of dollar direct benefit is not identifiable. . .". Within this contradiction lies the premise for the proper use of RSAs: A direct identifiable benefit must be received by the paying agency. Without this relationship between the paying and providing agency, the requisite contractual relationship is non-existent and the RSA is no

more than a document used for transferring funds between appropriations. That is the case of the RSAs in question. We also point out that DHSS did in fact charge the RSA expenditures in question to the federally approved cost allocation plan, sometimes twice — which we also take exception to (See Recommendation No. 21 of the Fiscal Year 1992 Statewide Single Audit). Charging this type of expenditure to federal programs would also be inappropriate as those expenditures would fail the test of whether they were necessary and reasonable.

In its response DHSS also "*strongly rejects the assertion that the services purchased through the RSA expenditures are unrelated to the functioning of the divisions.*" We found no documentation that supports the expenditures in question, such as travels to Russia or purchases of gifts for foreign dignitaries and the like, which would show those expenditures were in fact related to the functioning of the Divisions of Public Health, Medical Assistance, Family and Youth Services, and the remaining divisions.

Finally in its response, DHSS raises two questions. Specifically DHSS asks:

*Is it the position of the Division of Legislative Audit that these RSAs were illegal because they were unbudgeted, i.e., the Legislature did not appropriate the Interagency Receipts in the budget, or were they invalid because there was no "contractual relationship between the two parties where there is an exchange of identifiable goods and services and payment for those goods and services?"*

and,

*Is it the Division of Legislative Audit's opinion that the Legislature's appropriation of \$224,700 in Interagency Receipts in FY 93 was illegal?*

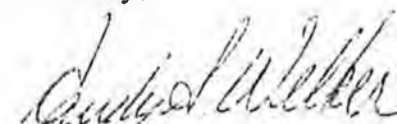
It is not our position that unbudgeted RSAs are illegal. It is common practice for agencies to enter into contractual relationships using an unbudgeted RSA. As long as the receiving agency has sufficient funds and the providing agency has the legal authority to provide the service, the use of unbudgeted RSAs are acceptable and, as DHSS points out, is common practice. However, considering the circumstances of the Commissioner's Office budget and the desire to maintain spending at levels above that approved by the legislature and governor, the use of unbudgeted RSAs to replace lost funding or pay for unanticipated bills is inappropriate. Again, we emphasize the need for a contractual relationship to exist between two agencies to have a legitimate RSA.

Also, it is not our opinion that the FY 93 Legislative appropriation was illegal. The fact that the legislature and governor approve an appropriation of inter-agency receipts does not ensure the propriety of subsequent expenditures from that appropriation if those expenditures are inappropriate. The legislature anticipates that laws, regulations, and procedures will be

followed by agencies when appropriations are made — including appropriations of budgeted inter-agency receipts.

We do not question the appropriation of budgeted inter-agency receipts or the use of unbudgeted RSAs. We do question DHSS' use of both budgeted and unbudgeted RSAs — with funds provided by the operating divisions — to supplement funding to the Commissioner's Office without a direct identifiable benefit to those divisions providing the funds.

Sincerely,



Randy S. Welker, CPA  
Legislative Auditor