

## [Commissioner Poizner Criticized By Director of Office of Administrative Law Over His Filing of Lawsuit Concerning Iran "Underground" Regulations](#)

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By [Randall Doctor](#) and [Larry Golub](#)

In response to news that, on November 9, 2010, [California Insurance Commissioner Steve Poizner](#) filed a lawsuit against the [California Office of Administrative Law's](#) (OAL) over the OAL's rejection of the Commissioner's rules relating to insurers' investments in companies that do business with Iran, OAL Director Susan Lapsley issued a [press release](#) later that same day indicating:

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 [[Administrative Procedures Act](#)]... 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."

As readers to [this blog](#) know, the [OAL issued a Determination on October 11, 2010](#), in which it concluded that the [rules Commissioner Poizner unilaterally imposed upon insurers](#) in February 2010, regarding the treatment of their investments in companies that do business with Iran, should have been promulgated pursuant to the APA.

Since the rules did not follow the correct legal process, the OAL found those rules to be void.

Not to be deterred, the Commissioner retained the California Attorney General's office to file his [lawsuit](#) against the OAL alleging that the OAL abused its discretion. (While the lawsuit is directed against the OAL as the only "respondent," the action also names as "real parties in interest" [the five insurance trade associations that brought this issue to the OAL.](#))

In a [letter to the Attorney General](#), also issued on November 9, Director Lapsley similarly criticized the Attorney General's office, stating that,

in any litigation against [the OAL], just as we have in the past, we would request and expect representation from the Attorney General's office as the Attorney General has an affirmative duty to represent state agencies... It appears to me that there is a conflict in the Attorney General representing the Insurance Commissioner and the Department of Insurance in an action against this Office. This Office has no other option but to bring this to your attention and to inform you that it does not consent to or waive the conflict."

Director Lapsley specifically noted that the Attorney General's office is currently representing the OAL in another matter involving underground regulations.

Finally, in her press release, Director Lapsley stated:

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.”

We will continue to follow and report on the developments in this matter.