STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

EGG INSPECTION BOARD

DECEMBER 1981

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-18

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

December 16, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. James Henry, Chairman
Egg Inspection Board

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Egg Inspection Board. This report is in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the State Egg Inspector, Mr. Carl R. Biehler is found on the yellow pages preceding the appendices. The Egg Inspection Board was provided with a draft of this report for their review and comment. The Board did not exercise their right to submit a written response for inclusion in this report.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

Douglas R. Norton

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Enclosure

OFFICE OF THE AUDITOR GENERAL

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TABLE OF CONTENTS

	Page
SUMMARY	i
INTRODUCTION AND BACKGROUND	1
SUNSET FACTORS	5
FINDINGS	
FINDING I	9
Consideration should be given to eliminating the Egg Inspection Board and placing the egg inspection program within the Arizona Commission of Agriculture and Horticulture.	
CONCLUSION	15
RECOMMENDATION	15
FINDING II	17
Improvements are needed to enhance the efficiency and effectiveness of the egg inspection program.	
CONCLUSION	25
RECOMMENDATIONS	25
FINDING III	27
The Egg Inspection Board has been substandard in its encouragement and use of public input in its operations.	
CONCLUSION	32
RECOMMENDATIONS	33
WRITTEN RESPONSE TO THE AUDITOR GENERAL'S REPORT	35

APPENDICES

APPENDIX I	-	Legislative Council Memorandum O-81-82, August 26, 1981
APPENDIX II	-	Legislative Council Memorandum O-81-83, September 28, 1981
APPENDIX III	-	Legislative Council Memorandum O-81-89, September 15, 1981
APPENDIX IV	-	Quality and Size Classifications
APPENDIX V	-	Quality and Weight Tolerances
APPENDIX VI	-	Attorney General Memorandum, August 19, 1975

LIST OF TABLES

	Page
TABLE 1	
Summary of the activities of Board inspectors during fiscal years 1976-77 through 1980-81	3
TABLE 2	
Summary of Egg Inspection Board revenues and expenditures during fiscal years 1976-77 through 1980-81	4
TABLE 3	
Board members holding concurrent office in the Arizona Poultry Federation (APF)	10
TABLE 4	
Allocation of inspection resources	21
TABLE 5	
Summary of the results of egg inspections at the wholesale and retail level during fiscal year 1980-81	22

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Egg Inspection Board in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Egg Inspection Board is composed of five members appointed by the Governor for five-year terms. By statute, Board members must be actively involved in the production or wholesale distribution of eggs or egg products. The Board is responsible for supervising the activities of the State Egg Inspector, who is appointed by the Board, and four deputy inspectors.

The objective of the egg inspection program is to provide consumer protection through ensuring that consumers receive the quality identified on the product label. To attain this objective, the program entails mandatory grading, licensure and registration of dealers and producers, inspections at the warehouse and retail levels, and enforcement through the issuance of stop sales orders and notices of violation.

The Board has entered into a cooperative agreement with the U.S. Department of Agriculture (USDA) to provide personnel for the enforcement of the U.S. Egg Products Inspection Act and the Agricultural Products Marketing Act. These programs entail continuous inspection of plants processing egg products, quarterly inspections of producers with over 3,000 hens and continuous inspections of plants involved in the voluntary USDA grading program. The USDA reimburses the Board for all costs incurred in administering and enforcing these Federal Acts.

The Egg Inspection Board has not maintained an appearance of independence or objectivity in its dealings with the industry. Board members' relationships with the Arizona Poultry Federation, an industry association which advises the Board, and the firms which employ them create potential conflicts of interest and may hamper the Board's ability to carry out the program's objective of consumer protection. In addition, although the Board was intended to oversee the policies and procedures of the State Egg Inspector, the Board has not performed supervisory activities or initiated actions which impact on the administration of the program. Consideration should be given to eliminating the Board and transferring the administration of the program to the Arizona Commission of Agriculture and Horticulture. (page 9)

The egg inspection program provides consumer protection and should be continued. However, improvements are needed to enhance the efficiency and effectiveness of the program. The expertise of the State Egg Inspector is underutilized in that he rarely performs inspections and devotes a significant amount of his time to clerical functions which should be delegated to support staff. The State Egg Inspector could devote more time to inspections if the program were transferred to the Arizona Commission of Agriculture and Horticulture. (page 19) Staff resources are misallocated in that excessive time is spent on retail inspections. Inspections should be concentrated at the wholesale level where the greatest opportunities to identify and intercept unacceptable eggs exist. (page 21) In addition, the program needs formal guidelines to ensure that procedures are carried out consistently. (page 24)

The Egg Inspection Board has been substandard in its encouragement of public input from consumers and in notifying license holders of Board meetings, proposed rules and regulations and Board actions. The Board needs to expand its efforts to encourage participation by consumers and to notify all licensees of Board meetings, activities and actions. (page 27)

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Egg Inspection Board in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The first law dealing with the sale of eggs was enacted in 1915. Early laws provided definitions of eggs in cold storage (1915) and fresh eggs (1939), specified standards for grades (1939), and required containers to bear stamps purchased from the Egg Inspector (1941).

Statutory revisions in 1952 repealed all previous egg laws and established requirements for licensure of producers and dealers, grading, and inspection and granted the State Egg Inspector enforcement powers including the ability to remove eggs from sale and initiate court action. Responsibility for the enforcement of the law was transferred in 1967 from the State Egg Inspector to the newly-created State Egg Inspection Board.

The Egg Inspection Board is composed of five members appointed by the Governor for five-year terms. By statute, Board members must be actively involved in the production or wholesale distribution of eggs or egg products. The Board is responsible for supervising the activities of the State Egg Inspector, who is appointed by the Board, and four deputy inspectors. Two inspectors are assigned to the Phoenix area, and one to the Tucson area. These inspectors also travel throughout the State to perform egg inspections at retail and warehouse facilities. One inspector is assigned full time to oversee USDA grading operations at a Phoenix egg packing company.

The objective of the egg inspection program is to provide consumer protection through ensuring that consumers receive the quality identified on the product label. To attain this objective, the program entails mandatory grading, licensure and registration of dealers and producers, inspections at the warehouse and retail levels, and enforcement through the issuance of stop sales orders and notices of violations.

Persons selling fewer than 750 eggs per year are required to be registered and as such are exempt from mandatory grading. All other producers and dealers must be licensed and may sell graded eggs only. Standards for weight and grade are those prescribed by the U.S. Department of Agriculture. Board inspectors visit warehouses and packers twice each month and retail stores are inspected annually. During these visits, inspectors can issue either stop sale orders or notices of violation. Stop sales orders are issued to remove poor quality eggs from the market and require unfit eggs to be destroyed and misgraded eggs to be regraded and reweighed to bring them into compliance with the grade and weight specifications shown on the container label. Board inspectors issue notices of violation for noncompliance with statutes such as those dealing with required refrigeration temperatures.

The Board has entered into a cooperative agreement with the U.S. Department of Agriculture (USDA) to provide personnel for the enforcement of the U.S. Egg Products Inspection Act and the Agricultural Products Marketing Act. The Egg Products Inspection Act of 1970 provides for the continuous inspection of plants processing egg products, and for quarterly inspections of producers with over 3,000 hens. At present, there are no firms in Arizona involved in egg products processing. A voluntary grading program established by the Agricultural Products Marketing Act requires continuous inspection of the processing of all shell eggs which bear the USDA shield. There is one firm in Arizona currently on contract with the USDA for this grading service. The USDA reimburses the Board for all costs incurred in administering and enforcing these Federal Acts.

Table 1 summarizes the activities of Board inspectors during fiscal years 1976-77 through FY 1980-81.

TABLE 1

SUMMARY OF THE ACTIVITIES OF BOARD INSPECTORS DURING FISCAL YEARS 1976-77 THROUGH 1980-81*

	Fiscal Year				
	1976-77	1977-78	1978-79	1979-80	1980-81
Sample dozens inspected	81,247	88,445	63,589	77,103	88,028
Number of stop sales orders issued	736	933	598	886	800
Dozens of eggs removed from sale	162,640	306,175	235,057	285,174	322,236
Notices of violation issued	12	20	22	30	17
Dealers licenses issued	103	105	105	105	107

Source: Egg Inspection Board Annual Reports for the applicable year.

Revenues are generated from license and inspection fees. Ninety percent of the fees collected are retained for the Board's use while ten percent are remitted to the State General Fund. The inspection fee was increased in fiscal year 1979-80 from $.045 to $.05 per 30-dozen case of shell eggs and from $.05 to $.055 per 30-pound container of egg products. Table 2 summarizes the revenues and expenditures of the Board during fiscal years 1976-77 through 1980-81.

* Excludes USDA programs.

TABLE 2

SUMMARY OF EGG INSPECTION BOARD REVENUES AND EXPENDITURES
DURING FISCAL YEARS 1976-77 THROUGH 1980-81

	Fiscal Year				
	1976-77	1977-78	1978-79	1979-80	1980-81
Revenues:					
Arizona program*	$69,046	$70,547	$ 71,805	$ 85,419	$ 90,722
USDA	28,763	27,423	29,572	33,723	37,849
Miscellaneous	72	0	0	0	187
Total Revenues	$97,881	$97,970	$101,377	$119,142	$128,758
Expenditures:**					
Personal Services	$69,036	$71,888	$73,984	$ 82,275	$ 91,430
Employee Related	10,512	13,002	14,085	15,870	18,063
Travel In State	7,471	5,996	4,881	6,873	10,589
Travel Out Of State	0	0	444	1,119	0
Other	6,158	6,556	6,669	6,020	6,813
Equipment	0	0	0	325	0
Total Expenditures	$93,177	$97,442	$100,063	$112,480	$126,895
Surplus/(Deficit)	$ 4,704	$ 528	$ 1,314	$ 6,660	$ 1,863

Source: Egg Inspection Board Annual Reports, FY 1976-77 through 1980-81.

The Auditor General expresses gratitude to the members of the Egg Inspection Board and their staff for their assistance and consideration during the course of the audit.

* Net of 10 percent deposited to General Fund.

** Board reports total expenditures only rather than expenditures segregated between Arizona and USDA programs.

SUNSET FACTORS

Nine factors were reviewed to aid in the process of determining if the Egg Inspection Board should be continued or terminated, in accordance with A.R.S. §41-2354, subsection D.

SUNSET FACTOR: THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE BOARD

The statutes contain no explicit statement of Legislative intent. According to the Board's budget request, the egg inspection program:

> "Provides consumer protection for the purchasing of shell eggs and egg products by inspecting, weighing and examining in order to determine the quality, weight and condition thereof...."

The Board was created to oversee the policies of the State Egg Inspector.

The Board has established the following goals for the program:

> "To assume complete quality control in order to eliminate the sale of egg products that do not meet the quality, grade and weight standards under which they are labeled and sold. To provide the enforcement and services required by the United States Department of Agriculture."

SUNSET FACTOR: THE DEGREE TO WHICH THE BOARD HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The egg inspection program provides consumer protection through the elimination of poor quality eggs from the market. However, the Board has performed few functions which directly affect the operation of the program and provides little supervision of program activities. (page 13)

Our review of the egg inspection program operations revealed that reallocation of resources to further concentrate inspections at the dealer/warehouse level would be more efficient and effective. (page 21)

Additionally, guidelines should be developed to provide consistency in sample size and selection procedures and reinspection of rejected eggs. (page 24)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS OPERATED WITHIN THE PUBLIC INTEREST

The egg inspection program has operated in the public interest by providing consumer protection. However, the composition of the Board and Board members' relationships with their firms and the Arizona Poultry Federation gives the appearance of a lack of independence and provides a potential conflict of interest that may not be in the public interest. (page 9)

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE BOARD ARE CONSISTENT WITH THE LEGISLATIVE MANDATE

Administrative rules and regulations promulgated by the Board must be reviewed for consistency and legality and approved by the Attorney General prior to their implementation. The rules and regulations are consistent with the statutes.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

The Egg Inspection Board has been remiss in its duty to encourage public input and to inform consumers and licensees of its actions. Our audit indicated that the Board has not updated its filing of meeting notice with the Secretary of State since its office moved in 1979. In addition, only selected licensees are notified of proposed rule changes. (page 27)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

The Board has received a limited number of complaints. The 25 complaints received over the past five years have been investigated and resolved in a timely and appropriate manner.

However, neither the statutes nor the administrative rules and regulations promulgated by the Board provide guidelines for investigations or resolution of complaints through the hearing and appeals process. As a result, the potential exists for inequitable treatment of complainants and persons against whom complaints are made. According to a Legislative Council memorandum dated August 26, 1981,* the development of guidelines for the complaint process would eliminate this potential:

> "It would seem beneficial for the inspector, the board, the complainant and the person who is the subject of the complaint to have clear guidelines for handling complaint procedures. A routine process for reviewing complaints would help to ensure that the inspector conducts effective investigations plus it would provide procedural safeguards for the person involved in the complaint...."

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER ENABLING LEGISLATION

Arizona Revised Statutes §3-734 states, in part:

> "The attorney general and county attorney, upon request, shall advise the Board, the inspector or authorized agents thereof in the performance of their duties, and shall institute and prosecute actions arising under this article...."

* Appendix I contains memorandum text.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ADDRESSED DEFICIENCIES IN THE ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

The Board has sought statutory changes three times during the past ten years. A 1971 bill granted the Board the ability to promulgate administrative rules and regulations. Two other bills, passed in 1973 and 1979, increased inspection fee limits.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE BOARD TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

Our review found that several statutory changes are needed for the State egg inspection program to comply more adequately with the factors listed in this subsection. (pages 15 and 25)

FINDING I

CONSIDERATION SHOULD BE GIVEN TO ELIMINATING THE EGG INSPECTION BOARD AND PLACING THE EGG INSPECTION PROGRAM WITHIN THE ARIZONA COMMISSION OF AGRICULTURE AND HORTICULTURE.

The Egg Inspection Board has not maintained an appearance of independence or objectivity in its dealings with the industry. Board members' relationships with the Arizona Poultry Federation and their firms create a potential conflict of interest and may hamper the Board's ability to carry out the inspection program's objective of consumer protection. In addition, the Board does not perform any functions which impact on the effectiveness of the operations of the egg inspection program.

Potential Conflict Of Interest Through Relationship With the Arizona Poultry Federation

Arizona Revised Statutes (A.R.S.) §3-709, subsection A, provides for the selection of Board members from within the industry:

> "There is established a state egg inspection board composed of five members appointed by the governor. The Arizona poultry federation board of directors shall recommend a list of qualified persons for such appointment. Members shall be residents of this state. They shall be selected on the basis of their knowledge, technical or educational qualifications, or practical experience in the production or distribution of eggs or egg products and, shall at the time of their appointment be actually engaged in the production or wholesale distribution of egg or egg products." (Emphasis added)

The Arizona Poultry Federation (APF) is an industry association involved in the promotion of eggs and egg products and in the education of the consuming public. The APF also advises the Egg Inspection Board and issues opinions concerning rules and regulations. Ten members of the egg, poultry or feed industries are currently regular APF members. Of those ten members, six are egg dealers or distributors. Four of these six are represented on the Egg Inspection Board.

A comparison of Federation officeholders with Board members over the past five years revealed that six individuals held Board membership while acting as officers of the Federation. Table 3 shows the industry affiliations of Board members during fiscal years 1975-76 through 1980-81.

TABLE 3

BOARD MEMBERS HOLDING CONCURRENT OFFICE
IN THE ARIZONA POULTRY FEDERATION (APF)

Name of Board Member	Term of Board Membership	APF Office Held	Term of APF Office
J. D. Kaffenberger*	1975-1979	President	1975
Dewey Powell	1976-1978	Vice President	1976
		President	1977
Kermit Smith	1977-1979	Vice President	1978
Bob Beuerle	1979-1980	President	1980
Alan Fisher	1981	President	1981

* J. D. Kaffenberger was also State Egg Inspector from 1951 to 1965.

Source: Board's "Annual Report to the Governor" for fiscal year 1975-76 through fiscal year 1980-81 and APF roster of officers for calendar years 1975 through 1980; minutes of APF minutes from February 1980 through March 1981.

A Legislative Council memorandum dated September 28, 1981,* states that:

> "....The fact that a member of the State Egg Inspection Board is the President of the Arizona Poultry Federation does not, without more, present a conflict of interest....A constitutional due process issue could be raised if a board member allowed the special interests of the federation to affect the board members' judgment on a board matter...." (Emphasis added)

* Appendix II contains memorandum text.

A review of minutes from Egg Inspection Board meetings and Federation meetings revealed that the Board declined to vote on such issues as hiring a part-time inspector, increasing inspection fees, and implementing new USDA grading standards until consulting with the industry through the Federation.

The Council of State Governments has addressed the issue of industry membership on regulatory boards as follows:*

> "...for many years, trade and professional groups fostered the idea that only members of their own occupational group were qualified to make judgments about entrance standards, examination content, or disciplinary matters. This professional mystique argued that the public had no role to play in the regulatory process...."
>
> Boards sometimes make decisions that serve the economic interests of the occupational group rather than those of the public....Trade and professional associations frequently are vested with the power to nominate Board candidates. This practice contributes to the notion that the Board is an extension of the association rather than an arm of state government...." (Emphasis added)

Potential Conflict of Interest

Through Employer - Employee Relationship

All current Board members are employed by major egg producer/dealers or distributors licensed by the State. These employment relationships pose potential conflicts of interest in at least three aspects of the egg inspection program: 1) establishing inspection fee rates, 2) investigating complaints, and 3) promulgating rules and regulations.

* Benjamin Shimberg and Doug Roderer Occupational Licensing: Questions a Legislator Should Ask. Lexington, Kentucky: Council of State Governments, 1978.

Board members perceive voting on the inspection fee rate as one of their major responsibilities. The inspection fee rate directly affects the firms which employ each Board member, since fees are assessed based upon number of eggs sold. While Board members have thus far voted to raise, not lower, the inspection fee rate, a Legislative Council memorandum dated September 15, 1981,* states that:

> "Under the rule as stated in Yetman, it would appear that a board member who was an employee of a dealer, manufacturer, or producer of eggs or egg products would have a conflict of interest in those cases involving a possible increase in inspection fees which are paid by his employer. As stated in Witt v. Morrow 70 Cal. App. 3d 817; 139 Cal Rptr. 161 (1977), 'a person who must make decisions which may affect his employer's purse is in a situation where he may not give full consideration to the merits of the decision....'"

The memorandum also notes that the Board would not be prevented from fulfilling its statutory duties if all Board members disclosed their conflict in the official records of the Board, as provided in A.R.S. §38-508, subsection B. However, no such disclosures have been made.

Further, Board members dual capacities as both regulators and regulatees may adversely impact complaint investigations. For example, an Auditor General review of complaints investigated by the State Egg Inspector revealed that a Board member (not currently on the Board) appeared at a complainant's home while the State Egg Inspector was investigating a complaint involving eggs processed by the Board member's firm. It seems that a complainant would have difficulty distinguishing between the member's two roles and as a result not perceive the complaint process as being fair and impartial.

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* Appendix III contains memorandum text.

Finally, the Board has notified industry members of changes to rules and regulations selectively. For example, in 1979 the Board notified only 14 of 105 licensed dealers in Arizona of a proposed rule change. Of those 14 dealers, five were members of the Federation (four of which had employee representatives on the Board) and the remaining nine were large-volume dealers.* Such action lends the appearance of partiality toward Federation members and large dealers.

Functions Performed By the Board

According to a legislator who sponsored the 1967 bill creating the Board, the Board was to oversee the policies and procedures of the State Egg Inspector and was intended to ensure that a knowledgeable person was appointed to the position.

The Board has not performed supervisory activities or initiated actions which directly affect the operation of the program. In fact, the Board performs no duties as a Board other than to approve the budget prepared by the State Egg Inspector and vote on changes to the inspection fee rate proposed by the State Egg Inspector.

All functional duties are performed by the State Egg Inspector and his staff. A review of Board minutes shows that Board members simply ratify the policies of the State Egg Inspector.

Further, the Board's role in promulgating rules and regulations has been limited in that there have been few substantive changes to the Board's statutes or rules and regulations during the last ten years. Those substantive changes that have been made to the Board's rules and regulations have generally been as a result of changes to USDA grading standards, which are not Board-initiated.

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* See page 27 for review of substandard solicitation of public input.

Finally, Board members stated that placing an inspection program under "government control" would lead to inefficiency and waste and that a Board is needed: 1) to ensure that a qualified person is appointed to be the State Egg Inspector, and 2) to prevent the position from becoming a "political appointment." Currently, the Board selects the State Egg Inspector, a position that is exempt from the State Personnel Merit System. Board sentiments notwithstanding, in our opinion the practice of industry representatives appointing the official charged with regulating their industry at best creates an apparent conflict of interest and at worst renders the regulatory process suspect. Further, it appears that the position of State Egg Inspector could be provided sufficient insulation from political tampering if the position were made part of the merit system and adequate minimum qualifications were established.

Alternative Regulatory Structures

The Council of State Governments addresses the issue of autonomous regulatory boards as follows:

> "While autonomous regulatory boards continue to exist in many states, there is a growing realization that such an arrangement...makes coordination and effective oversight very difficult...."

An Auditor General survey of six southwestern states revealed that all of their respective egg regulatory programs are located within a state Department of Agriculture. Of the three states that have egg inspection advisory boards, two do not include industry representatives on the Board.

In Arizona, the Arizona Commission on Agriculture and Horticulture is responsible for the administration of standardization programs similar in nature to the egg inspection program. These programs include nursery, seed and date standardization programs, as well as the fruit and vegetable standardization program.

CONCLUSION

The Board's appearance of independence and objectivity is tainted because of the relationship which exists between Board members and: 1) the firms which employ them, and 2) the Arizona Poultry Federation. In addition, the Board performs no functions which impact on the administration of the inspection program.

RECOMMENDATION

Consideration should be given to the following recommendation:

1. Arizona Revised Statutes §3-709 should be amended to:
   - Eliminate the requirement for a five-member Board to oversee the State Egg Inspector;
   - Eliminate the provision that the State Egg Inspector be appointed by the Board;
   - Provide for the hiring of the State Egg Inspector by the State Personnel Division under appropriate guidelines; and
   - Provide for the administration of the egg inspection program by an appropriate umbrella agency, such as the Arizona Commission of Agriculture and Horticulture, with supervision of the egg inspection program provided by the State Egg Inspector.

FINDING II

IMPROVEMENTS ARE NEEDED TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE EGG INSPECTION PROGRAM.

The State egg inspection program protects the consumer by ensuring that: 1) the size and quality of eggs are accurately labeled, and 2) those eggs that are unfit for human consumption do not reach consumers. However, improvements are needed in the program's operation to enhance its efficiency and effectiveness. Our review revealed that the program is deficient in that:

- The program's ability to protect consumers is impaired because optimal use is not being made of the State Egg Inspector and his staff.
- Some inspection procedures are not carried out consistently because the program lacks formal, written guidelines.

State Egg Inspection Program Provides Consumer Protection and Should Be Continued

The State egg inspection program provides for the examination of eggs to: 1) verify the size (weight) and quality (grade) as indicated on the carton label, and 2) determine that inedible, broken or otherwise unacceptable eggs are not on the market. The program, therefore, provides consumer protection by ensuring that size and quality are commensurate with price as well as preventing eggs which are unfit for human consumption from reaching consumers.

Eggs are candled, or held up to a high intensity light, to determine quality. Inspectors evaluate the eggs based on four criteria:

- condition of the shell;
- size of the air cell;
- viscosity and opaqueness of the white; and
- definition of the yolk against the white.

Eggs are also weighed to determine size.*

Tolerances** have been established for both grade and weight classifications. Weight tolerances define the number of eggs in a carton which may fall below the accepted average. Quality tolerances specify the percentage of individual eggs which may be contained in a carton bearing a grade designation. For example, at the warehouse level, a sample of grade AA eggs must consist of at least 85 percent grade AA eggs and may include up to 15 percent grade A or B eggs. However, it cannot contain over five percent grade C eggs or eggs with small cracks in the shell.

The need for such a regulatory program is evidenced by the operation of similar programs in other states and at the Federal level. The other 49 states have laws dealing with grading, sizing and labeling of eggs. One state which terminated its inspection program, later reinstated it at the urging of retailers who felt that the program was needed.

Federal programs supplement rather than duplicate the State program. The U.S. Department of Agriculture (USDA) surveillance inspections are performed quarterly to identify eggs which are unfit for human consumption. The State program, which provides for determination of quality and size, is conducted on an ongoing basis.

The Legislature has established similar regulatory programs for other perishable commodities:

- The Arizona Commission of Agriculture and Horticulture oversees standardization programs for dates, fruits and vegetables.

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* There are currently four grades: AA, A, B and C. Size classes are: Jumbo, Extra Large, Large, Medium, Small and Pee Wee. Appendix IV details standards for quality and size classifications as prescribed by regulations R3-6-02 and R3-6-05.

** A tolerance is a specification of the required level of acceptability. Appendix V contains tolerances for weight and quality as prescribed by regulation R3-6-03.

- The Dairy Commission is responsible for regulation of dairy products; and
- The Livestock Sanitary Board inspects livestock, meat and meat processing facilities.

Accordingly, it appears that the egg inspection program does protect the consumer and should be continued. However, improvements are needed to enhance the program's performance.

Optimal Use Is Not Being Made Of
the State Egg Inspector and His Staff

The State Egg Inspector and his staff of four deputy inspectors are responsible for inspecting eggs for proper grading, condition and quality prior to their being sold. As a means to meet that responsibility inspections are made at both the wholesale and retail level. Our review revealed that better use can be made of the egg inspection program staff if: 1) the expertise of the Inspector is better utilized, and 2) inspections are concentrated at the wholesale level where the greatest opportunities to identify and intercept unacceptable eggs exist.

The Expertise of the State
Egg Inspector Is Underutilized

The State Egg Inspector is required to be an expert in egg inspection. However, the Inspector's expertise is all but wasted in that he rarely conducts inspections for all intents and purposes and spends his time on either: 1) clerical functions that should be delegated to support staff, or 2) other unspecified activities.

A.R.S. §3-709.D requires that the State Egg Inspector meet the following qualifications:

> "He shall be possessed of not less than three years' experience in the production, sale and determining of standards and grades of eggs. He shall be possessed of technical and educational qualifications or practical experience in the handling and inspection of eggs, and in all matters relating to the egg industry. He shall provide administrative, secretarial and office services required."

The current State Egg Inspector meets the statutory requirements above. He has 22 years of pertinent experience and has been licensed by the USDA to perform regulatory duties under two federal statutes.

In spite of the State Egg Inspector's expertise, during fiscal year 1980-81, he performed only three inspections. None of these inspections was routine in that one related to a consumer complaint and two were in response to special requests by egg dealers.

Instead of conducting inspections, the State Egg Inspector devotes a significant amount of his time to such duties as license renewal processing, inspection fee collection and receipting, and preparing quarterly and annual reports. Our review revealed that approximately 56 percent of the Inspector's time is spent on these clerical functions. Thus, the remainder of the State Egg Inspector's time is apparently devoted to other activities.

According to the job description for the State Egg Inspector on file with the Department of Administration - Personnel Division, he can perform clerical and nonclerical functions not related to actual inspection such as consulting with the USDA and the industry. However, in our opinion, the position of State Egg Inspector would be better used if it were more directly involved in the inspection process.

If the State Egg Inspector were relieved of his clerical and other noninspection-related duties he could devote more time to routine inspections. This could be accomplished without adding to the staff of the egg inspection program if it were transferred to the Arizona Commission of Agriculture and Horticulture.

Inspection Should Be Concentrated At the Wholesale Level

Within the egg inspection program there is a State Egg Inspector and four deputy egg inspectors. Three of the four deputy egg inspectors* spend an average of 45 percent of their time inspecting eggs at retail outlets as shown below in Table 4. Our review revealed that the egg inspection program would be more effective if inspection at the retail level were eliminated or drastically reduced and inspections were concentrated at the wholesale level.

TABLE 4

ALLOCATION OF INSPECTION RESOURCES

		Percentage Of Time** Devoted To:		
Deputy Egg Inspectors	Location	Retail Outlet Inspections	Wholesale Level Inspections	Other Activities
Number One	Tucson	55%	40%	5%
Number Two	Phoenix	5%	90%	5%
Number Three	Phoenix	75%	20%	5%
Average Time		45%	50%	5%

The above allocation of personnel resources to inspections at retail outlets does not represent the optimal use of program staff. Inspections at the wholesale level are far more efficient and effective as is demonstrated in Table 5, which summarizes the results of egg inspections at the wholesale and retail level during fiscal year 1980-81.

* Only three inspectors are included in the tabulation because the fourth deputy inspector only performs inspections for the USDA Shield Program.

** Percentages shown are estimates provided by inspectors because the Board does not maintain such time records.

TABLE 5

SUMMARY OF THE RESULTS OF EGG INSPECTIONS AT THE WHOLESALE AND RETAIL LEVEL DURING FISCAL YEAR 1980-81

Performance Measurements	Retail Outlet Inspections		Wholesale Level Inspections		Combined Inspections	
	Number	Percentage	Number	Percentage	Number	Percentage
Estimated Inspector Hours Devoted to:		45%		50%		95%*
Dozens of Unacceptable Eggs Identified	73,401	23%	248,835	77%	322,236	100%

As shown above, inspections at the wholesale level constitute a much better use of inspectors' resources than do inspections at retail outlets. For example, retail outlet inspections accounted for 45 percent of inspection hours but only 23 percent of the unacceptable eggs identified.

In addition, the number of retail outlets in Arizona, approximately 1,760 during fiscal year 1980-81, and the rapidity with which egg inventories at those outlets turn over, precludes inspections at those outlets from having any meaningful impact. For example, one Phoenix area retail outlet turns over its inventory of 1,200 dozen eggs twice a week. If this outlet were inspected once a year, which is a program goal, less than one percent of the 125,000 dozen eggs reaching consumers from this outlet would be susceptible to being inspected.

* Five percent of the deputy inspector's time is spent on activities other than egg inspections.

Further, diverting inspection resources to retail outlets is preventing the inspection program from achieving its wholesale level inspection goals. According to the Board's annual reports:

> "Major dealer, producer and warehouse locations were inspected two times per month or as often as possible. Great emphasis is placed on these locations to eliminate mislabeled eggs from reaching the retail stores and the food service locations." (Emphasis added)

However, an examination of the records of Phoenix metropolitan area inspections at the wholesale level between January and August 1981 revealed that on the average 36 percent of the larger locations were not inspected twice each month and 50 percent of the smaller wholesale outlets were not inspected once each month.

Additional justifications for eliminating inspections at the retail outlets are:

- Eggs destined for distribution to restaurants are subject to inspection only at the wholesale level.
- The USDA surveillance program to identify unacceptable eggs prior to distribution to retail outlets is conducted solely at the wholesale level.

According to the State Egg Inspector, retail inspections serve three purposes in addition to identifying poor quality and underweight eggs:

- determination that eggs are properly stored under refrigeration;
- determination that eggs are properly advertised; and
- identification of new dealers.

However, it should be noted that during fiscal year 1980-81 only two violation notices were issued for improper refrigeration and none were issued for improper advertising and that during fiscal years 1979-80 and 1980-81 only four to six unlicensed dealers, all of whom supplied insignificant amounts of eggs, were identified. In addition, inspections to determine compliance with refrigeration, advertising and licensure requirements could be conducted by inspectors from other State programs such as the Department of Administration - Weights and Measures Division who also visit retail outlets.

Inspection Program

Lacks Formal Guidelines

Formal, written guidelines concerning inspection procedures have not been developed by either the Board or the State Egg Inspector. As a result, actual practice varies among deputy inspectors. During the course of the audit we noted inconsistencies in the following areas:

1) Size of the spot-check sample. The sample size varies between 50 and 200 eggs and is determined subjectively, based on estimated lot size.

2) Use of stop sales tags. Inspectors may issue one of two types of stop sales tags when rejecting eggs. One requires the dealer to reprocess the eggs and notify the State Egg Inspector by phone that reprocessing has been completed so that the stop sale may be released. The other states that reinspection may be required prior to releasing the stop sale. Although inspectors stated that the second type of tag is used for large lots and for lots containing inedible eggs, all lots of these types do not receive the same type of tag.

CONCLUSION

The egg inspection program appears to be necessary; however, improvements are needed in the program to improve its efficiency and effectiveness. Staff resources are misallocated in that: 1) the expertise of the State Egg Inspector is underutilized, and 2) excessive time is spent on retail inspections. In addition, the program lacks needed formal inspection guidelines.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The State Egg Inspector should perform inspections rather than clerical functions.
2. Inspections at retail outlets should be eliminated or drastically reduced.
3. The State Egg Inspector establish written procedures for: 1) spot-check sampling, including sample size and the manner in which the sample is to be selected, and 2) criteria for reinspection of rejected eggs.
4. Arizona Revised Statutes §3-709 should be amended to provide for the administration of the egg inspection program by an appropriate umbrella agency, such as the Arizona Commission of Agriculture and Horticulture.

FINDING III

THE EGG INSPECTION BOARD HAS BEEN SUBSTANDARD IN ITS ENCOURAGEMENT AND USE OF PUBLIC INPUT IN ITS OPERATIONS.

The Egg Inspection Board has been substandard in its encouragement of public input from consumers and in notifying license holders of Board meetings, proposed rules and regulations and Board actions. The Board needs to expand its efforts to encourage participation by consumers and to notify all licensees of Board meetings, activities and actions.

Board Actions Regarding Public Notice of Meetings

A.R.S. §38-431.02, subsection A, defines the responsibility of the Egg Inspection Board to provide public notice of all meetings:

> "Public notice of all meetings of public bodies shall be given as follows:
>
> 1. The public bodies of the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings."

In addition, the Attorney General in a memorandum to all state agencies dated August 19, 1975,* noted that an:

> "'Open meeting' is open only in theory if the public has no knowledge of the time and place at which it is to be held."

The Attorney General stated further that the law on open meetings was not specific, and outlined guidelines to be followed in complying with the public meeting law. He also cautioned agencies against the serious consequences for failure to comply with the law as follows:

---

* Appendix VI contains the memorandum text.

"Decisions made at a meeting for which defective notice was given may likely be declared null and void...."

The latest statement which the Egg Inspection Board has filed with the Secretary of State indicates that notices of meetings are posted in the Occupational Licensing Building at 1645 West Jefferson, in Phoenix. However, the Board's office moved from that location in May 1979, and according to the State Egg Inspector, meeting notices are posted at 1937 West Jefferson, Building E, Suite 1, not the Occupational Licensing Building.

In providing guidelines to agencies regarding what would constitute sufficient "additional" public notice of meetings beyond posting printed notices, the Attorney General stated:

"F. Additional Notice

In deciding what types of notice shall be given in addition to posting, governing bodies should consider the following:

1. Newspaper Publication

   In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. Mailing List

   Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list.

3. Articles or Notices in Professional or Business Publications

   In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field or regulation.

> "It is not necessary that all of these types of notices be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used." (Emphasis added)

The Board has not adopted any of the "additional notice" methods for notifying the public and its licensees of meetings as outlined by the Attorney General.

Although the Board notifies the Arizona Poultry Federation of meetings, four of the five licensed egg dealers who belong to the Federation currently have employees as members of the Board. Only eight licensees, representing five firms, are members of the Federation, although there are 107 current Board licensees. Therefore, current Board notification practices do not actually constitute additional notice to the public.

Board Actions Regarding Public Notice of Proposed Rules and Regulations and Other Board Actions

When proposing changes in rules and regulations, each agency is required by A.R.S. §41-1002 (Administrative Procedures Law) to file a notice of such changes with the Secretary of State at least 20 days prior to the proposed adoption date. The Secretary of State publishes the proposed changes monthly in the Administrative Procedures Digest.

The Egg Inspection Board has complied with the statute; however, a review of the distribution list for the Digest as of September 23, 1981, revealed that 88 percent of the 261 individuals or organizations receiving the Digest were legal counsel, libraries, or government agencies. Thus, the publication of proposed rules in the Digest does not appear to be an effective method of notifying the consuming public or Board licensees of proposed rule changes.

Additionally, the Board notifies the Arizona Poultry Federation and selected licensees of proposed changes. The State Egg Inspector stated that only those licensees who appear to be affected most by the proposed changes are notified. Consequently, the Board notified only 14 of the 105 licensed dealers of the September 1979 proposed change concerning increased inspection fees. Of those 14 dealers, five were also members of the Arizona Poultry Federation, and four had employees on the Board. Such selective Board notification practices effectively prevents the majority of Board licensees from having access to information about Board activities.

Methods Used By Regulatory Agencies In Arizona and Other States To Encourage Public Input

An Auditor General survey of egg regulatory agencies in six southwestern states revealed that, in order to inform the public of its activities, the majority of the states issued news releases and notified industry associations, and two notified consumer groups. An Auditor General survey of 30 Arizona regulatory Boards showed that other agencies notified complainants, consumers who requested information, news media, consumer groups, licensees/registrants and professional associations.

The Egg Inspection Board has not consistently notified the public of its activities, other than its local professional association, the Arizona Poultry Federation. Therefore, the Board is substandard in its efforts to encourage participation in its decision-making by licensees and consumers in comparison with other regulatory agencies. As a result, the public does not appear to know of the Board's existence. Consumers have not attended one Board meeting during the last five years. Attendance at these meetings has been limited to Board members, the State Egg Inspector, and occasionally an industry representative.

Methods For Improving

Public Participation

Mr. Ernest Gellhorn, former Dean of Arizona State University, College of Law and a recognized authority on administrative procedure law, has formulated recommendations for improving the Federal Administrative Procedures Act.* Many of these recommended actions are equally applicable to state regulatory bodies. Mr. Gellhorn's recommendations are:

> "1. Agency obligations....That existing procedures conform to constitutional minima is not a reason for agencies to fail to explore appropriate procedures for providing effective notice to the affected public and their representatives. (Emphasis added)
>
> . . . . . .
>
> "2. Meeting public notice needs...agencies should be required to provide identified, accessible sources of information about proceedings in which public participation is possible....
>
> At a minimum each agency should: (a) strive to provide notice as far in advance of the proceeding as possible, and (b) prepare a separate bulletin issued periodically, identifying the proceeding and providing relevant information.
>
> . . . . . .
>
> "3. Attracting and focusing public attention. The public can be made aware of important agency proceedings in many ways: press releases to...news media; requirements that applicants directly inform users; special notice to governmental bodies, citizen groups or trade associations; and separate agency listings of significant matters.... (Emphasis added)

* Ernest Gellhorn, "Public Participation in Administrative Proceedings," Yale Law Journal, Volume 81, No. 3 (January 1972) pp. 398-402.

> Coverage in the news media is perhaps the most effective way of reaching the average citizen, and public interest groups and agencies should make special efforts to encourage reporting of their activities. Factual press releases written in lay language should explain the significance of the proceedings and opportunities for public participation. Releases describing important proceedings with a local geographical impact should be sent to area news media. In major matters, agencies might consider public service advertisements and announcements over local broadcasting facilities. Direct mailings are yet another alternative." (Emphasis added)

Under A.R.S. §41-2354 (The Sunset Law), one factor that shall be considered in determining the need for continuation or termination of each agency is:

> "The extent to which the agency has encouraged input from the public before promulgating rules and regulations and the extent to which it has informed the public as to its actions and their expected impact."

In our opinion, the Egg Inspection Board has not adequately encouraged the input of license holders, consumers of licensees' services or the general public in the promulgation of rules and other actions and has not adequately informed the public of its actions and their expected impact.

CONCLUSION

The Egg Inspection Board has been substandard when compared to other Arizona regulatory agencies in its encouragement and use of public input in its operations. As a result, license holders are not adequately informed of Board meetings and activities, and consumers have little opportunity to be informed concerning Board activity.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Egg Inspection Board should adopt methods to encourage public input and participation in the promulgation of rules and regulations and development of legislative proposals, particularly by licensees. Consideration should be given to the methods being used by other Arizona regulatory bodies, the recommendations presented by Mr. Gellhorn and the recommendations of the Attorney General's Office.

2. The Egg Inspection Board should update its filing of meeting location with the Secretary of State's Office to reflect the current location of Board meetings.

CARL R. BIEHLER
STATE EGG INSPECTOR

PHONE
255-5741

State of Arizona Egg Inspection Board

1937 WEST JEFFERSON, BLDG. E, SUITE 1
PHOENIX, ARIZONA 85009

December 9, 1981

Douglas R. Norton
Auditor General
State Capitol, Suite 200
Phoenix, AZ 85007

Dear Mr. Norton:

Reference is made to your draft of the Performance Audit of the Egg Inspection Board Report 81-18.

Comments to Your Findings and Recommendations II

You are recommending that retail outlets inspections should be eliminated or drastically reduced. Several years back the egg packing and warehouse locations were inspected the same number of times as retail stores were, or 3-4 times a year. It is definitely my opinion that packing/warehouse locations should be inspected a greater number of times than the retail stores. However, you can not enforce all of the statutes to protect the consumer at the dealer locations. With no retail inspection, managers would soon realize no one was enforcing the refrigeration law and mass nonrefrigerated displays of eggs would appear in the stores and the eggs may never be refrigerated after leaving the warehouse. For proof of this fact, visit the grocery stores of a neighboring state.

No retail inspections would also open the door for an out-of-state supplier to deliver direct to the chain stores and never warehouse the eggs in Arizona. Therefore, no inspection could be made on any of these eggs.

At retail, we may inspect a store of a particular chain in Glendale today, and in 2-3 days or maybe the same day inspect a store of the same chain in Mesa or Tucson. This, in a sense, gives a day to day knowledge of the quality of eggs that particular chain is being supplied with.

You state that the inventory turnover is twice a week in the retail stores, and that less than 1% would be subject to inspection. Inventory turnover is almost daily at the packing/warehouse location and if you applied the same formula, eggs subject to inspection at warehouse locations would probably be less than that.

According to the Boards latest report to the Governor 94,443 dozen of eggs were inspected under the state and federal programs and that 56,853,230 dozens were reported sold in Arizona. The fact is, .0017 of the eggs sold were inspected by the inspectors.

You state that in 1979-80 and 1980-81 four to six unlicensed firms that were wholesaling eggs were identified by retail inspections, all of whom supplied insignificant amounts of eggs. The law does not have provisions for amounts of eggs that can be wholesaled before a license is required. The fact is, they were in violation of the law, and are required to get a license for selling 1 case or 1,000 cases.

You state because we do not inspect at restaurants, that this is justification for not inspecting the grocery stores. The chefs are more aware of egg quality than any other user of eggs. We depend on their complaints or calls to inspect at restaurants.

You state that because the USDA Surveillance Program is conducted solely at the wholesale level that this is justification for not inspecting at retail. The USDA Surveillance enforcement is for "restricted" eggs only. Restricted eggs are cracked, dirty, loss or inedible eggs, some of which are unfit for human consumption. In that law, there are no provisions for checking for weight or determining what percent AA quality eggs you have in a carton of eggs marked AA Grade Large. The eggs could be a month old and weigh out only Medium and not be rejected under the USDA Surveillance Program if they didn't exceed the tolerance for restricted eggs.

Your chart on performance measurements is misleading as to the actual time spent inspecting eggs at retail locations and inspecting eggs at wholesale locations. Eleven of the twenty-three routes that the state is divided into for inspection coverage are out of the metropolitan areas of Phoenix and Tucson and are inspected 1 time per year. On some of the routes the driving time almost exceeds the inspection time. Because the major packing/warehouses are located in or near the metropolitan areas, almost all of that time would be inspecting time.

You recommend that procedures should be established for spot-check sampling of eggs. Amendments to the Rules of the Board were properly filed with the Secretary of State, and the Board proposes to amend R3-6-06, subject to approval of the Attorney General, at a meeting to be held December 21, 1981. Part (A) is new language pertaining to spot-checking. (B) has been amended for clarification and (B)1. is new language. (Attachment #1)

You state there should be written criteria for reinspection of rejected eggs. Prior to July of 1972, no provisions were in the Regulations for reinspection of rejected lots. At that time a good share of the rejected eggs were being regraded/repacked/remarked and sold at the same or a lower grade. There appeared to be a definite need for better control at that time, and I recommended that the Board adopt provisions for reinspection. The Board amended R3-6-09 and gave authority to reinspect lots that had been rejected and to give instructions for reinspection. We cannot tell the firm they must remove the undergrades and regrade/repack them to be sold at the same or lower grade. They may do whatever is necessary to bring the eggs into compliance with the Arizona laws. They may wish

to send the rejected lot to an official USDA breaking plant or may wish to return the entire lot to their out-of-state supplier. A survey of the 7 major firms that supply approximately 90% of the eggs sold in Arizona, indicated that of the eggs rejected by inspectors, 16% were sent to a breaking plant, 28.5% were returned to the packer, 32.0% were sold directly to consumers at the warehouse locations as Grade C "Checks" and 23.5% were regraded/repacked to be sold under the same or lower grade. This regulation, and the way it is being administered, has been very beneficial to the consumer and egg inspectors and has resulted in fewer rejected eggs being regraded/repacked. More of the eggs are now returned to the out-of-state packer or sent to a breaking plant. When we are informed that eggs are being returned to California, the California inspector is notified and he in return notifies us when the eggs are released.

Not knowing your definition of "unspecified activities" and the statement that I am unable to account for 44% of my time is not true and certainly is not the fact. I do not remember being asked to specifically justify 44% or any part of my time but was asked what function I did that could be considered clerical functions. You did make a very brief reference to my job description on file with the Department of Administration. ARS-Ch 5-3-709 in part states that the State Egg Inspector shall provide administrative, secretarial and office services required. The job description on file with the Department of Administration describes the duties that I must perform (not limited to) in order to fulfill the statutory responsibilities. In fact, this description states that 95% of the State Egg Inspector's time is used in administrative and office functions, and 5% in inspection work. In establishing this 95%, with the aid of the Personnel Commission, it was determined that approximately 59% would need to be performed by the State Egg Inspector and approximately 36% could be performed by clerical staff.

This office did have a full time Clerk Typist III until July of 1974. The Egg Inspection Board is self supporting, and the appropriations are based on fees received from the amount of eggs sold in Arizona by egg dealers. Because of budget restraints, I could not justify not filling an inspectors position and recommended not to fill the clerk typist position. After reorganizing the functions of the Deputy Inspectors and the State Egg Inspector, and with occasional help from the Chief Deputy Inspector, I am able to perform all of the administrative and clerical functions required. A telephone answering device is used when I am required to be out of the office.

Comments to Your Findings and Recommendations III

In an effort to remain within our operating budget, and not take monies away from the inspecting program and diverting it to mailing and related costs for each quarterly meeting date, the Board has established definite meeting dates of the first Wednesday of the months of November, February, May and August. All licensees, both in state and out of state, have received this notice and as always it was sent to the Arizona Poultry Federation and the "Press Room" Senate Wing, Room 106, State Capitol. (Attachment #2)

This notification is in accordance with ARS 38-431.02 and the Attorney General Memorandum dated August 19, 1975. The Retail Grocers Association has been added to the meeting notice mailing list.

The correct meeting location was filed with the Secretary of State on September 25, 1981. (Attachment #3)

The following are comparisons of the year before the Board was created by the Legislature and the 1980-81 report to the Governor.

1966-67 - 7 employees (5 inspectors in travel status)
1980-81 - 5 employees (3 inspectors in travel status, 1 in USDA Plant)

1966-67 - 72,000 miles travelled for the state program
1980-81 - 35,000 miles travelled for the state and federal programs

1966-67 - 62,068 dozens were rejected under the state program
1980-81 - 337,176 dozens were rejected under the state and federal programs

1966-67 - Retail and dealer rejections were not kept separate
1967-68 - 36.1% were rejected at dealer locations (1st yr of Board)
1980-81 - 77.2% were rejected at dealer locations

1966-67 - 31 million dozens were reported sold in Arizona
1980-81 - 56 million dozens were reported sold in Arizona

1966-67 - Approximately 40.0% of the eggs were shipped into Arizona
1980-81 - Approximately 80.0% of the eggs were shipped into Arizona

1966-67 - .05 per 30-dozen case was the inspection fee rate
1980-81 - .05 per 30-dozen case was the inspection fee rate

I respectfully request that this letter and the attachments become part of your Performance Audit Report of the Egg Inspection Board.

Sincerely,

Carl R. Biehler

Carl R. Biehler
State Egg Inspector

Enc. 3

Pursuant to A.R.S. 3-712, the State of Arizona Egg Inspection Board hereby adopts the following rule:

R3-6-06. Sampling: schedule and methods for evidence

~~A.--The following schedule is the minimum number of samples to be selected and drawn by inspectors from a lot in the enforcement of quality and weight standards for shell eggs.~~

A. In an attempt to locate lots of eggs that may not meet the minimum quality or weight standards, inspectors may spot check at random by selecting and inspecting any reasonable amount of samples.

B. The following schedule is the minimum number of samples that an inspector shall select and inspect to issue a warning notice hold tag on eggs that do not meet the minimum quality or weight standards. The schedule is also used to determine the official grade and size of a lot.

When lot size is in cartons of	Minimum cartons for inspection	When lot size is in 30 doz. cases	Minimum cases for inspection
1- 4 Cartons	Each Carton	1 Case	1 Case
5- 25 Cartons (inc)	5 Cartons	2- 10 Cases (inc)	2 Cases
26-100 Cartons (inc)	10 Cartons	11- 25 Cases (inc)	3 Cases
101-200 Cartons (inc)	20 Cartons	26- 50 Cases (inc)	4 Cases
201-300 Cartons (inc)	30 Cartons	51-100 Cases (inc)	5 Cases
		101-200 Cases (inc)	8 Cases
		201-300 Cases (inc)	11 Cases
		301-400 Cases (inc)	13 Cases
		401-500 Cases (inc)	14 Cases
		501-600 Cases (inc)	16 Cases
		for each additional	50 Cases
		or fraction thereof in excess of 600 Cases	1 Case

See new chart

Attachment 1

When lot size is in cartons of	Minimum eggs for inspection
1- 4 Cartons	All
5- 30 Cartons (inc)	50
31-120 Cartons (inc)	100
121-210 Cartons (inc)	200
211-315 Cartons (inc)	300

When lot size is in 30 doz. cases	Minimum cases for inspection (1)
1 Case	1 Case
2- 10 Cases (inc)	2 Cases
11- 25 Cases (inc)	3 Cases
26- 50 Cases (inc)	4 Cases
51-100 Cases (inc)	5 Cases
101-200 Cases (inc)	8 Cases
201-300 Cases (inc)	11 Cases
301-400 Cases (inc)	13 Cases
401-500 Cases (inc)	14 Cases
501-600 Cases (inc)	16 Cases
for each additional or fraction thereof in excess of 600 Cases	50 Cases 1 Case

(1) The inspector shall take 100 eggs from each case for inspection.

~~1.--The inspector shall take 10 eggs from each carton and 100 eggs from each case for inspection.~~

1. The inspector may draw additional samples to satisfy himself and/or to determine that the lot does or does not meet the minimum requirements.

2-3. Unchanged

Former B. becomes C. Language unchanged.

Former C. becomes D. Language unchanged.

CARL R. BIEHLER
STATE EGG INSPECTOR

PHONE
255-5741

State of Arizona Egg Inspection Board

1937 WEST JEFFERSON, BLDG. E, SUITE 1
PHOENIX, ARIZONA 85009

NOTICE OF REGULAR MEETINGS

OF THE

STATE EGG INSPECTION BOARD

Pursuant to A.R.S. 38-431.02, notice is hereby given to the general public that the State of Arizona Egg Inspection Board will hold their regular quarterly meetings that are open to the public on the First Wednesday of the months of November, February, May and August. The meetings will be held at 1937 W. Jefferson, Bldg. E, Phoenix, Arizona, and will commence at 10:30 A.M..

Information concerning the Board's agenda for the meetings may be obtained by calling 255-5741.

Notification of meetings, other than the above stated regular quarterly meetings, will be published under a separate "Special Meeting Notice" and will give a specific date for the meeting.

Dated this 20th. day of October, 1981.

State Egg Inspection Board

By Carl R. Biehler
State Egg Inspector

Attachment 2

CARL R. BIEHLER
STATE EGG INSPECTOR

PHONE
255-5741

State of Arizona Egg Inspection Board

1937 WEST JEFFERSON, BLDG. E, SUITE 1
PHOENIX, ARIZONA 85009

TO: THE HONORABLE SECRETARY OF STATE
and THE CITIZENS OF ARIZONA

Pursuant to A.R.S. Ch. 38-431.02, the Egg Inspection Board hereby states that all notices of the meetings of the Egg Inspection Board will be posted in the east office window, so that it can be viewed from the outside at all times, at 1937 West Jefferson, Bldg. E, Phoenix, Arizona, and sent to the press room of the State Senate Building, 1700 West Washington, Phoenix, Arizona. Such notice will indicate the time and place of the meeting and shall include or indicate the manner in which the public may obtain information concerning the Board's agenda for the meeting.

Dated this 25th. day of September, 1981

EGG INSPECTION BOARD

By Carl R. Biehler
State Egg Inspector

Attachment 3

APPENDIX I

LEGISLATIVE COUNCIL MEMORANDUM O-81-82,
AUGUGT 26, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

August 26, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-82)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated August 18, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 3-710, subsection E requires that:

> E. A complaint filed with the board charging a noncompliance with, or violation of any provision of this article, shall be in writing and signed by the complainant.

The statutes do not provide for hearing procedures for complaints brought before the State Egg Inspection Board (board).

The State Egg Inspector (inspector) interprets the statute as follows:

1. Consumers' telephone complaints are not regarded as "formal" complaints and are therefore not required to be signed by the complainant. They are recorded on a form signed by the investigator. The inspector and/or his deputies investigate and make a disposition of the complaint as soon as possible. If, after investigation of a consumer complaint, it is determined by the investigator that there is a definite violation, the complainant is advised that a formal complaint may be filed against the alleged violator. No complainant has chosen to do so. The board is given a quarterly reporting by the inspector of the <u>number</u> of complaints handled. Those persons named in complaints are not identified.

2. A signed, "formal" complaint (i.e., a statutory complaint) has only been filed once (November, 1970). The board held a hearing on the complaint at its regular quarterly meeting and dismissed the complaint.

QUESTIONS PRESENTED:

1. Do these procedures conflict with the provisions of A.R.S. section 3-710, subsection E regarding board complaint-handling?

2. If these procedures for recording and reviewing complaints are allowable, does the inspector have the legal authority to review and dispose of "informal" complaints without any formal board action?

3. What is the effect, if any, of a failure to define procedures for a formal complaint handling on the agency's ability to protect the public or operate in compliance with the law?

4. What is the effect, if any, of the failure of the inspector to provide the board and the public with information regarding the handling of these "formal" consumer complaints?

ANSWERS:

1. The procedures detailed by the given fact situation do not conflict with the provisions of A.R.S. section 3-710, subsection E. Within certain broad limitations, the determination of proper complaint handling procedures is properly an administrative function which need not be specified by statute.

2. Yes, assuming that such disposition is with the complaining party's consent. The inspector or the board, however, has no statutory authority to preclude or inhibit in any fashion a consumer from filing a complaint in writing with the board and demanding the resolution thereof through a formalized hearing process.

3. Complaint handling procedures need not be precisely structured in every case to properly protect the public or operate in compliance with the law.

4. See discussion.

DISCUSSION:

1. Administrative agencies are creatures of legislation without inherent or common law powers. The general rule applied to statutes granting powers to them is that they have only those powers that are conferred either expressly or which follow by necessary implication. Sutherland, Statutes and Statutory Construction section 65.02 (4th ed., Sands, 1972); Corporation Commission v. Consolidated Stage Company, 63 Ariz. 257, 161 P.2d 110 (1945); Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946). The board must follow the clear dictates of the Arizona Revised Statutes in exercising its administrative powers and duties.

A.R.S. section 3-710, subsection E provides that:

> E. A complaint filed with the board charging a noncompliance with, or violation of any provision of this article, shall be in writing and signed by the complainant.

No other statute or regulation specifies what procedures the inspector or the board should follow in the investigation of these complaints.

It is helpful to remember that the board holds the administrative authority for the regulation of eggs and egg products in this state, but that authority is exercised through the inspector and his deputies. A.R.S. section 3-709, subsection F provides:

F. The duties of inspectors shall be to inspect, weigh and examine dried eggs, frozen eggs and eggs in the shell being advertised or offered for sale to determine the condition, quality, grade and weight thereof. They may examine records of a person advertising or offering for sale eggs or egg products. They shall enforce the provisions of this article and other laws relating to the sale of eggs under the supervision and direction of the board.

A.R.S. section 3-710 provides, in pertinent part, that:

The inspector and his deputies shall enforce the provisions of this article in conformity with rules and regulations promulgated by the board.

It is reasonable to assume that the authority for the inspector, under the overall supervision of the board, to determine proper complaint handling procedures would follow from this general statutory enforcement authority.

Support for the above proposition can be gathered from the fact that there is a general policy of judicial liberalness toward responsible agency interpretations of their own administrative powers. This policy is often manifested in judicial decisions giving broad legal effect to administrative actions within the scope of applicable statutory authority. Consequently, where the proper exercise of administrative powers is dependent on a fact determination, the findings and conclusions of the agency are normally assumed to be correct on judicial review. Sutherland, supra, section 65.05.

The complaint handling procedures detailed in the stated fact situation do not conflict with A.R.S. section 3-710, subsection E. There is in fact little room for such conflict in that A.R.S. section 3-710, subsection E refers simply to obligations of the complaining party to register a complaint in writing rather than to minimum complaint handling procedures to be observed by the board and the inspector. The conflict between applicable statutes and the complaint handling procedures followed by the inspector would, in any case, be indirect. The only specific statutory standard by which such procedures can be measured is the general enforcement and regulatory authority of the inspector and his deputies contained in A.R.S. section 3-709, subsection F and section 3-710, subsection F.

2. Yes, assuming that the disposition is with the complaining party's permission or consent. As noted above, the inspector is the enforcement agent for the board. As such, the inspector and his deputies are required to enforce the provisions of A.R.S. Title 3, chapter 5 and other laws relating to the sale of eggs under the supervision and direction of the board. A.R.S. section 3-709, subsection F. As previously discussed, there is a general policy of judicial liberalness toward responsible agency interpretations of their own administrative powers. Sutherland, supra, section 65.06.

If the investigation by the inspector of what is classified as an "informal" telephone complaint indicates a lack of sufficient grounds for advancing the complaint to the hearing stage, and the complainant agrees, then there is nothing in current statutes which would require that the complaint be pursued.

However, the inspector has no statutory authority to preclude any consumer from filing a complaint in writing before the board and demanding resolution of the complaint through a formalized hearing process.

3. Complaint handling procedures need not be precisely structured in every case to properly protect the public or to operate in compliance with the law. Review of the Arizona Revised Statutes indicates that the Legislature has chosen to specify by statute complaint handling procedures in some instances while in other instances an approach similar to that of A.R.S. Title 3, chapter 5 is used.

Within certain limitations, there is a public interest in providing administrative agencies with sufficient discretionary authority to respond to the potential variety of situations they will be called upon to regulate. As Sutherland, supra, section 65.03, notes "/I/egislatures create administrative agencies with the desire and expectation that they will perform efficiently the tasks committed to them." Given the subject matter, an administrative agency might find it difficult to perform efficiently with respect to complaint resolution if the procedures were specified in detail by statute and not responsive to specific and changing regulatory needs.

Even without detailed complaint handling procedures, other provisions of Arizona law provide a structured regulatory foundation from which the board and the inspector and his deputies must operate. For example, the Administrative Procedures Act (A.R.S. section 41-1001 et seq.) controls the procedural operations of all state administrative agencies except to the extent of any conflict with the statutes specifically governing the agency. The primary requirements of the Administrative Procedures Act include adequate and timely notice and opportunity to be heard to affected parties potentially subject to disciplinary sanctions and notice to parties potentially affected by proposed rule making. In the resolution of complaints which extend beyond the investigation stage, the board and the inspector are obligated to follow the Administrative Procedures Act.

It would seem beneficial for the inspector, the board, the complainant and the person who is the subject of the complaint to have clear guidelines for handling complaint procedures. A routine process for reviewing complaints would help to ensure that the inspector conducts effective investigations plus it would provide procedural safeguards for the person involved in the complaint. You may wish to recommend legislation in this regard.

4. In your fact situation, you state that no telephone complainant has yet chosen to file a "formal" complaint with the board. It is also stated that a signed "formal" complaint (i.e., a statutory complaint) has only been filed once (in November 1970). Assuming that your question references the same type of complaint; that is, one filed pursuant to statute with the board, the inspector should not be continually expected to provide information to the public and the board on the one formal complaint filed in November 1970.

If, however, your reference to "formal" consumer complaints includes consumers' telephone complaints, then, based on your stated fact situation, the inspector already does provide the board with certain complaint information (i.e., a quarterly report on the number of complaints handled with persons named in the complaints not identified). The complaint information provided to the board through the referenced quarterly report

would in fact be a public record.* Based on the stated fact situation and using this interpretation of "formal complaint", we are unable to accept the premise of your question concerning the "failure" on the part of the inspector to provide the board and the public with information concerning the handling of consumer complaints.

Further information would be required before a definitive answer could be given to this question.

RECOMMENDATION:

If your audit indicates that state regulation of the egg industry would benefit from a statutorily structured complaint handling process, corrective legislation should be recommended to the Legislature.

cc: Gerald A. Silva
Performance Audit Manager

* The Arizona Supreme Court has defined a public record as any record which "is required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law to serve as a memorial or evidence of something written, said or done". Mathews v. Pyle, 75 Ariz. 76, 251 P.2d 893 (1953). A.R.S. section 39-121 provides that "/p/ublic records or other matters in the office of any officers at all times during office hours shall be open to inspection by any person."

APPENDIX II

LEGISLATIVE COUNCIL MEMORANDUM O-81-83,

SEPTEMBER 28, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

September 28, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-83)

This is in response to a formal request submitted on your behalf by Gerald A. Silva in a memo dated September 25, 1981. No input was received from the Attorney General conerning this request.

FACT SITUATION:

The guidelines for appointments to the State Egg Inspection Board (board) provided by Arizona Revised Statutes (A.R.S.) section 3-709 require that board members are to be nominated by the Arizona Poultry Federation (APF) and at the time of their appointment are to be actually engaged in the production or wholesale distribution of eggs or egg products.

All current board members are members of APF, and one board member is also the APF President. Also, the prior president of the APF served concurrently as chairman of the Egg Inspection Board. A review of the minutes of APF board meetings shows that the APF acts as a lobbyist for the industry at the board meetings.

QUESTIONS PRESENTED:

1. Does a conflict of interest exist when regulatory board members are officeholders in an industry organization such as the APF?

2. What are the legal ramifications of regulatory board nominations being made by an organization which actively engages in lobbying for the industry at board meetings?

DISCUSSION:

1. A.R.S. section 38-503, subsection B provides that:

> B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

A member of the board, being an appointed officer of a board of this state, is subject to the requirements of this section. A.R.S. section 38-501.

A "substantial interest" is defined broadly as "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." Thus, any pecuniary or proprietary interest which a member or employee of the board has in a board ruling would be a conflict of interest under Arizona law unless the Legislature has specifically defined it as a "remote interest". Yetman v. Naumann, 16 Ariz. App. 314, 492 P.2d 1252 (1972).

Among the several classifications which the Legislature has defined as a "remote interest" in A.R.S. section 38-502, paragraph 10, two seem to apply under the facts presented in your question. Under the legislative scheme, a "remote interest" is "that of a nonsalaried officer of a nonprofit corporation" or "that of a member of a nonprofit cooperative marketing association." A.R.S. section 38-502, paragraph 10, subdivisions (a) and (d). Consequently, assuming the APF is a nonprofit corporation or a nonprofit cooperative marketing association, the fact that a member of the board is the president of the APF or that members of the board are members of the APF does not, without more, present a conflict of interest. Of course these exemptions do not extend if the APF employs a board member as a salaried employee or if the association with the APF is such that it would be impossible for a board member to make a fair and impartial decision.

The above discussion follows 79 Op. Att'y Gen. I79-142 (1979), in which the attorney general concluded that under Arizona's conflict of interest laws a member of the Arizona Board of Dental Examiners, who was a practicing dentist and a nonsalaried officer of the State Dental Association, could rule on an applicant's competency for a state dental license where the board member's pecuniary or proprietary interest in the ruling was no greater than that of other members of the profession generally.

2. The fact that members of the board are appointed from a list of candidates chosen by the APF does not seem to present a constitutional problem. Friedman v. Rogers, 440 U.S. 1; 99 S.Ct. 887 (1979). However, the United States Supreme Court has held that a person has a constitutional right to a fair and impartial hearing in any licensing or disciplinary proceeding conducted by a state regulatory board. See Friedman, supra; Gibson v. Berryhill, 411 U.S. 564, 93 S.Ct. 1689 (1973); Wall v. American Optometric Assn., 379 F. Supp. 175 (ND Ga.), aff'd., 419 U.S. 888; 95 S.Ct. 166 (1974). Therefore, a constitutional issue could be raised if a member of the board allowed the special interest of the APF to affect the board member's judgment on a board matter.

If a conflict of interest exists, A.R.S. section 38-508, subsection B states that:

> B. If the provisions of section 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

Consequently, if official action is taken in the face of an apparent conflict of interest, the board should take the greatest possible care to protect the constitutional rights of those persons appearing before the board.

CONCLUSION:

1. The fact that a member of the State Egg Inspection Board is the President of the Arizona Poultry Federation does not, without more, present a conflict of interest.

2. A constitutional due process issue could be raised if a board member allowed the special interests of the federation to affect the board member's judgment on a board matter.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX III

LEGISLATIVE COUNCIL MEMORANDUM O-81-89,

SEPTEMBER 15, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

September 15, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-89)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated August 27, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

The members of the state egg inspection board (board) are employed by five of the major egg dealers licensed by the board. One of the primary duties of the board is to vote on changes in inspection fee rates, as provided for by Arizona Revised Statutes, (A.R.S.) section 3-716, subsection B. Such changes in fee rates directly affect the firms which employ board members.

A.R.S. section 38-502 requires that public officers file signed statements disclosing substantial interest. Egg inspection board members have not signed such statements.

QUESTIONS PRESENTED:

1. Should board members be required to sign statements disclosing substantial interest, given their employment with firms regulated by the board?

2. Is there an inherent conflict of interest in the egg inspection board statutes in that board members are required to 1) be employed in the egg industry and 2) vote on matters affecting their employers, such as changes in inspection fee rates?

DISCUSSION:

1. A.R.S. section 38-503, subsection B provides that:

> B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

A member of the board, being an appointed officer of a board of this state, is subject to the requirements of this section. A.R.S. section 38-501.

A.R.S. section 38-502, paragraph 3 defines "make known" as:

/t/he filing of a paper signed by a public officer or employee which fully discloses a substantial interest of the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. . . .

Thus, if members of the board have a substantial interest in a matter before the board, they must either 1) file a signed paper disclosing this interest or 2) file a copy of the official minutes which discloses this interest.

2. In construing the meaning of "substantial interest", the Arizona Court of Appeals stated in Yetman v. Naumann, 16 Ariz. App. 314, 492 P.2d 1252 (1972), that:

> The prohibition against participation in a decision of an administrative board by a member having a "substantial interest" in the decision is clearly for the purpose of preventing a board member from placing himself in a position whereby he would have a possible conflict of interest. (Citation omitted.) The object of conflict of interest statutes is to remove or limit the possibility of personal influence which might bear upon an official's decision. . . .
>
> We do not conceive that the term "substantial interest" suffers from vagueness, as respondent contends. The legislature itself has defined the term, section 38-502, subsec. 6, and such definition is binding on the courts. (Citations omitted.) It is clear that in order to guard against conduct of a public officer or employee potentially inimical to the public interest, the legislature deemed it necessary to give the term "substantial interest" a broad encompassing definition. Therefore, according to the legislative definition, any interest which does not fall within the seven classifications set out in A.R.S. section 38-502, subsec. 5 constitutes a "substantial interest." We do not believe however, that the legislature intended that the word "interest" for purposes of disqualification was to include a mere abstract interest in the general subject or a mere possible contingent interest. Rather the term refers to a pecuniary or proprietary interest, by which a person will gain or lose something as contrasted to general sympathy, feeling or bias.

Thus, there is no inherent conflict of interest in the board statutes because members of the board must be employed in the egg industry. The question of a possible conflict of interest arises only in those cases where a board member appears to have a pecuniary or proprietary interest which would affect the member's decision in the matter before the board.

Under A.R.S. section 3-716, subsections A and B:

> An inspection fee of not more than two mills per dozen on shell eggs and six cents per thirty-pound can on egg products shall be paid by a dealer, producer-dealer, manufacturer or producer on all eggs and egg products regardless of origin, sold to a retailer, hotel, hospital, bakery, restaurant, other eating place or consumer for human consumption within this state.

Inspection fees on eggs used for the purpose of breaking, freezing or drying shall be paid by the manufactuer, dealer or distributor if sold or offered for sale to retailers or consumers for human consumption within this state.

If it appears that the revenue derived from inspection fees is more than is required for the administration of this article, the board shall have power to decrease the inspection fee and at any time thereafter it may increase or decrease the inspection fee, but at no time shall it exceed an amount of two mills per dozen on shell eggs or six cents per thirty-pound can on egg products.

Under the rule as stated in Yetman, it would appear that a board member who was an employee of a dealer, manufacturer or producer of eggs or egg products would have a conflict of interest in those cases involving a possible increase in inspection fees which are paid by his employer. As stated in Witt v. Morrow, 70 Cal. App. 3d 817; 139 Cal Rptr. 161 (1977), "a person who must make decisions which may affect his employer's purse is in a situation where he may not give full consideration to the merits of the decision."

However, if there is a declared conflict of interest by all board members pursuant to A.R.S. section 38-503, the board would not be prevented from fulfilling its required statutory duties. A.R.S. section 38-508, subsection B provides:

B. If the provisions of section 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

Thus, even if all the board members had a conflict of interest, the board could act if the members disclosed their conflict in the official records of the board and acted pursuant to A.R.S. section 38-508, subsection B. See also, 79 Op. Att'y Gen. I79-263 (1979).

CONCLUSION:

1. If members of the state egg inspection board have a substantial interest in a matter before the board, they must either file a signed paper disclosing the interest or file a copy of the official minutes which discloses this interest.

2. There is no inherent conflict of interest in the board statutes because board members are required to be employed in the egg industry. A conflict of interest would arise if a board member voted on a matter which affected his employer. However, the statutes provide a procedure for the board to deal with the situation where all the board members face an apparent conflict of interest.

cc: Gerald A. Silva
Performance Audit Manager

R3-6-02. The standards of quality of chicken eggs in the shell as determined by candling

Standards of quality:

1. AA QUALITY. The shell must be clean, unbroken, and practically normal. The air cell must not exceed 1/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and firm so that the yolk is only slightly defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects. Refer to summary chart.

2. A QUALITY. The shell must be clean, unbroken, and practically normal. The air cell must not exceed 3/16 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and at least reasonably firm so that the yolk outline is only fairly well defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects. Refer to summary chart.

3. B QUALITY. The shell must be unbroken and may be slightly abnormal and may show slight stains but no adhering dirt. Provided, that they do not appreciably detract from the appearance of the egg. When the stain is localized, approximately 1/32 of the shell surface may be slightly stained, and when the slightly stained areas are scattered, approximately 1/16 of the shell surface may be slightly stained. The air cell must not exceed 3/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and may be slightly weak so that the yolk outline is well defined when the egg is twirled before the candling light. The yolk may appear slightly enlarged and slightly flattened and may show other definite, but not serious, defects. Refer to summary chart.

4. C QUALITY. The shell must be unbroken, may be abnormal and may have slightly stained areas. Moderately stained areas are permitted if they do not cover more than 1/4 of the shell surface. Eggs having shells with prominent stains or adhering dirt are not permitted. The air cell may be over 3/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white may be weak and watery so that the yolk outline is plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged, and flattened, and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do not render the egg inedible. Small blood clots or spots (aggregating not more than 1/8 inch in diameter) may be present. Refer to summary chart.

5. DIRTY. The shell must be unbroken, it has adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/4 of the shell surface.

6. CHECK. An individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak.

STATE OF ARIZONA

EGG INSPECTION BOARD

SUMMARY OF STATE OF ARIZONA STANDARDS FOR QUALITY OF INDIVIDUAL SHELL EGGS

Specifications for Each Quality Factor

Quality Factor	AA Quality	A Quality	B Quality	C Quality
Shell	Clean. Unbroken. Practically normal.	Clean. Unbroken. Practically normal.	Clean: to slightly stained. Unbroken. May be slightly abnormal.	Clean: to moderately stained. Unbroken. May be abnormal.
Air Cell	1/8 inch or less in depth. Unlimited movement. May be free or bubbly.	3/16 inch or less in depth. Unlimited movement. May be free or bubbly.	3/8 inch or less in depth. Unlimited movement. May be free or bubbly.	May be over 3/8 inch in depth. Unlimited movement. May be free or bubbly.
White	Clear. Firm.	Clear. May be reasonably firm.	Clear. May be slightly weak.	May be weak and watery. Small blood clots or spots may be present.*
Yolk	Outline slightly defined. Practically free from defects.	Outline may be fairly well defined. Practically free from defects.	Outline may be well defined. May be slightly enlarged and flattened. May show definite but not serious defects.	Outline may be plainly visible. May be enlarged and flattened. May show clearly visible germ development but no blood. May show other serious defects.

* If they are small (aggregating not more than 1/8 inch in diameter)

For eggs with dirty or broken shells, the standards of quality provide three additional qualities. These are:

Dirty	Check	Leaker
Unbroken. May be dirty	Checked or cracked but not leaking.	Broken so contents are leaking.

R3-6-05. Standard of size: determination by weight: classes

A. The weight classes for shell eggs shall be as indicated in Table I and shall apply to grades AA - A - B. Grade C is exempt from size or weight classes.

TABLE – STATE OF ARIZONA WEIGHT CLASSES FOR SHELL EGGS
GRADE AA – A – B

Size or Weight Class	Minimum net weight per dozen	Minimum net weight per 30 dozen	Minimum weight for individual eggs at rate per dozen
	Ounces	Pounds	Ounces
Jumbo	30	56	29
Extra Large	27	50½	26
Large	24	45	23
Medium	21	39½	20
Small	18	34	17
Pee Wee	15	28	....

B. A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 percent.

R3-6-03. Grades and tolerances

A. These grades are applicable to edible shell eggs in "lot" quantities rather than on an "individual" egg basis. A lot may contain any quantity of two or more eggs. Reference in these standards to the term "case" means 30-dozen egg cases as used in commercial practices in the United States. The number of samples used during inspection to determine grades shall be on the basis of the requirements of R3-6-06.

B. GRADE AA

1. Grade AA (at origin) shall consist of eggs which are 85 percent AA quality. The maximum tolerance of 15 percent which may be below AA quality may consist of A or B quality in any combination, with not more than 5 percent C quality or checks in any combination and not more than 0.3 percent leakers or loss (due to meat or blood spots) in any combination. No dirties or loss other than as specified are permitted. Refer to Table I of summary chart.

2. Grade AA (destination) shall consist of eggs which are 80 percent AA quality. The maximum tolerance of 20 percent which may be below AA quality may consist of A or B quality in any combination with not more than 5 percent C quality or checks in any combination and not more than 0.5 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.3 percent. Other types of loss are not permitted. Refer to Table I of summary chart.

C. GRADE A

1. Grade A (at origin) shall consist of eggs which are 85 percent A quality or better. Within the maximum tolerance of 15 percent which may be below A quality, not more than 5 percent may be C quality or checks in any combination, and not more than 0.3 percent leakers or loss (due to meat or blood spots) in any combination. No dirties or loss other than as specified are permitted. Refer to Table I of summary chart.

2. Grade A (destination) shall consist of eggs which are 80 percent A quality or better. Within the maximum tolerance of 20 percent which may be below A quality, not more than 5 percent may be C quality or checks in any combination, and not more than 0.5 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.3 percent. Other types of loss are not permitted. Refer to Table I of summary chart.

D. GRADE B

1. Grade B (at origin) shall consist of eggs which are 85 percent B quality or better. Within the maximum tolerance of 15 percent which may be below B quality, not more than 10 percent may be checks and not more than 0.3 percent leakers or loss (due to meat or blood spots) in any combination. No dirties or loss other than as specified are permitted. Refer to Table I of summary chart.

2. Grade B (destination) shall consist of eggs which are 80 percent B quality or better. Within the maximum tolerance of 20 percent which may be below B quality, not more than 10 percent may be checks, and not more than 0.5 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.3 percent. Other types of loss are not permitted. Refer to Table I of summary chart.

E. GRADE C

1. Grade C shall consist of edible eggs which may be checks and/or dirties and not containing more than 1.0 percent leakers. Grade C is exempt from size or weight classes. Should a producer or packer choose to sell by size the standards of the designated weight classes shall then apply. Refer to Table I of summary chart.

2. "Origin grading" is a grading or inspection which is performed other than where the eggs are retailed or consumed.

3. "No grade" means eggs of possible edible quality that fail to meet the requirements of an official grade or that have been contaminated by smoke, chemicals, or other foreign material which has seriously affected the character, appearance, or flavor of the eggs.

4. Aggregate tolerances are permitted within each grade only as an allowance for variable efficiency and interpretation of graders, normal changes under favorable conditions during reasonable periods between grading, and reasonable variation of graders' interpretation.

5. Substitution of higher qualities for the lower qualities specified is permitted.

SUMMARY OF GRADES AND TOLERANCES

TABLE I - GRADES

(ORIGIN)	Quality Required**	Tolerance Permitted**	
		Percent	Quality
Grade AA	85 percent AA	Up to 15	A or B
		Not over 5	C or Check
Grade A	85 percent A or better . .	Up to 15	B
		Not over 5	C or Check
Grade B	85 percent B or better . .	Up to 15	C
		Not over 10	Checks

**A tolerance of 0.3 percent leakers or loss (due to meat or blood spots) in any combination is permitted. No dirties or other type loss are permitted.

(DESTINATION)	Quality Required**	Tolerance Permitted**	
		Percent	Quality
Grade AA	80 percent AA	Up to 20	A or B
		Not over 5	C or Check
Grade A	80 percent A or better . . .	Up to 20	B
		Not over 5	C or Check
Grade B	80 percent B or better . . .	Up to 20	C
		Not over 10	Check

**A tolerance of 0.5 percent leakers, dirties, or loss (due to meat or blood spots) in any combination is permitted, except that such loss may not exceed 0.3 percent. Other types of loss are not permitted.

Grade C	Shall consist of edible eggs which may be checks and/or dirties and not contain more than 1.0 percent leakers.

TABLE II - TOLERANCE FOR AN INDIVIDUAL CASE WITHIN A LOT

Grade	Minimum Quality	Origin	Destination
		Percent	Percent
Grade AA.....	AA.....	75	70
	A or B.....	15	20
	C or Check.....	10	10
Grade A.....	A.....	75	70
	B.....	15	20
	C or Check.....	10	10
Grade B.....	B.....	75	70
	C.....	5	10
	Check.....	20	20

*In lots of two or more cases see Table II for tolerances for an individual case within a lot.

Memorandum August 19, 1975

To: All State Agencies

From: Bruce E. Babbitt, Attorney General

Re: The Public Notice and Minute Taking Requirements Under Arizona's Open Meeting Act, as amended Laws 1975

Several questions have arisen as to the specific requirements imposed by Arizona's Open Meeting Act with respect to the giving of notice of public meetings. In addition, the Legislature, in its last regular session, amended the Open Meeting Act by including specific requirements with respect to the taking of minutes of public meetings. This memorandum is designed to clarify the public notice requirements imposed under the Act and to inform all state agencies of the recently enacted minute taking requirements.

If you have any questions regarding this memorandum, please call Roderick G. McDougall, Chief Counsel of the Civil Division at 271-3562.

PUBLIC NOTICE REQUIREMENTS

It has been stated than an "open meeting" is open only in theory if the public has no knowledge of the time and place at which it is to be held. 75 Harv.L. Rev. 1199 (1962). The right to attend and participate in an open meeting is contingent upon sufficient notice being given. Like other acts, Arizona's Open Meeting Act affords few statutory requirements for the mechanics of giving notice of meetings of governing bodies.

A.R.S. § 38-431.02, added Laws 1974, which sets forth the public notice requirements, provides as follows:

> A. Public notice of all regular meetings of governing bodies shall be given as follows:
>
> 1. The state and its agencies, boards and commissions shall file a statement with the secretary of state stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.
>
> 2. The counties and their agencies, boards and commissions, school districts, and other special districts shall file a statement with the clerk of the board of supervisors stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.
>
> 3. The cities and towns and their agencies, boards and commissions shall file a statement with the city clerk or mayor's office stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.
>
> B. If an executive session only will be held, the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session.
>
> C. Meetings other than regularly scheduled meetings shall not be

held without at least twenty-four hours' notice to the members of the governing body and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

D. A meeting can be recessed and held with shorter notice if public notice is given as required in paragraph A of this section.

The Open Meeting Act when originally enacted in 1962 made no specific provision for the giving of notice. While the requirements set forth in the 1974 amendments provide some guidelines, the particular mechanics of giving notice have not been set forth. Moreover, the language used in the 1974 amendments relating to notice is ambiguous, confusing and often contradictory. Without engaging in a long discussion of the many problems involved, we offer the following guidelines to be followed in complying with the notice requirements of A.R.S. § 38-431.02. Although an agency in following these guidelines will in some cases do more than required by the Act, it should never fall short of the Act's requirements. Being over-cautious is certainly justified, however, in view of the serious consequences for violating the Act. For example, a decision made in a meeting for which defective notice was given may likely be declared null and void by reason of A.R.S. § 38-431.05.

A. *Statement to Secretary of State*

Each state agency which is a governing body as defined in A.R.S. § 38-431 must file a statement with the Secretary of State stating where notices of all its meetings and the meetings of its committees or subcommittees will be posted. See Appendix A for a sample statement. The purpose of the statement is to provide information to the public regarding the place where it can find notices of the governing body's meetings. Generally, a governing body will post notices of its meetings directly outside the door to its offices or on a bulletin board in the lobby of the building in which the governing body's offices are located. Governing bodies which hold regular meetings on the same day of each month may post notices of such meetings by providing the information under the body's name in the building directory. For example, the directory listing in the lobby of the building might look as follows:

Arizona Accountancy Board Room 202
(Regular meetings every 2nd Monday of each month)

B. *Regular Meetings*

Regular meetings are generally those required to be conducted on a regular basis by statute and the dates of which are set by statute, rule, ordinance, resolution or custom. For each regular meeting, the governing body must post a Notice of Regular Meeting at the place described in the statement filed with the Secretary of State as described above. *See* Appendix B for a sample Notice of Regular Meeting. The posting of this notice must be done as far in advance of the regular meeting as is reasonable and in no event less than 24 hours prior to the meeting. In addition, the governing body must give additional notice as is reasonable under the circumstances. Several types of additional notices which might be given are described in Paragraph F below.

C. *Special Meetings Other Than Emergency Meetings*

Special meetings are all meetings other than regular meetings. For each special meeting, the governing body must post a Notice of Special Meeting at the place described in the statement filed with the Secretary of State. *See* Appendix C for a sample Notice of Special Meeting. The governing body should also give such additional notice as is reasonable under the circumstances. *See* Paragraph F below. This additional notice must include notice both to the general public and each member of the governing body. The several notices given, including the Notice of Special Meeting posted as described above, must be accomplished at least 24 hours prior to the time of the special meeting, except in the case of an emergency meeting covered under Paragraph D below.

D. *Emergency Meetings*

Emergency meetings are those special meetings in which the governing body is unable to give the required 24 hours notice. In the case of an actual emergency, the special meeting may be held "upon such notice as is appropriate to the circumstances". The nature of the notice required in emergency cases is obviously subject to a case by case analysis and cannot be specified by general rules. However, any relaxation or deviation in the normal manner of providing notice of meetings, either to the general public or to members of the governing body, must be carefully scrutinized and can be justified only for compelling practical limitations on the ability of the governing body to follow its normal notice procedures.

E. *Executive Sessions*

An executive session is nothing more than a meeting (regular or special) wherein the governing body is allowed under the Open Meeting Act to discuss and deliberate on matters in secret. *See* A.R.S. § 38-431.03. Separate notice need not be given of an executive session if it is held in conjunction with a properly noticed regular or special meeting. However, where only an executive session will be held, all notices of the meeting must state the specific provision of law authorizing the executive session, including a reference to the appropriate paragraph of Subsection A of A.R.S. § 38-431.03. *See* Appendix D for a sample Notice of Executive Session.

F. *Additional Notice*

In deciding what types of notice shall be given in addition to posting, governing bodies should consider the following:

1. *Newspaper Publications*

In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. *Mailing List*

Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list.

3. *Articles or Notices in Professional or Business Publications*

In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field of regulation.

It is not necessary that all of these types of notices be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used.

REQUIREMENTS FOR TAKING WRITTEN MINUTES

The first requirement for taking written minutes of meetings of governing bodies was included in the Open Meeting Act by the Legislature in 1974. The 1974 amendment, however, provided very little detail as to what the minutes must include. The original minute taking requirement read as follows:

> * * *B. Governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their meetings. Such minutes shall be

properly and accurately recorded as to all legal action taken and open to public inspection except as otherwise specifically provided by statute.

A.R.S. § 38-431.01.

In its last regular session, the Legislature amended this section to read in part as follows:

> * * *B. All governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their official meetings. Such minutes shall include, but not be limited to: (1) the day, time and place of the meeting, (2) the numbers of the governing body recorded as either present or absent, (3) an accurate description of all matters proposed, discussed or decided, and the names of members who proposed and seconded each motion.
>
> C. The minutes or recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article. * * *
>
> A.R.S. § 38-431.01, as amended Laws 1975 (eff. 9/12/75).

You should note that this section requires that the minutes or recording be open to public inspection, except as otherwise specifically provided by this article. The specific exception referred to is the provision in A.R.S. § 38-431.03 which provides that minutes of executive sessions shall be kept confidential.