

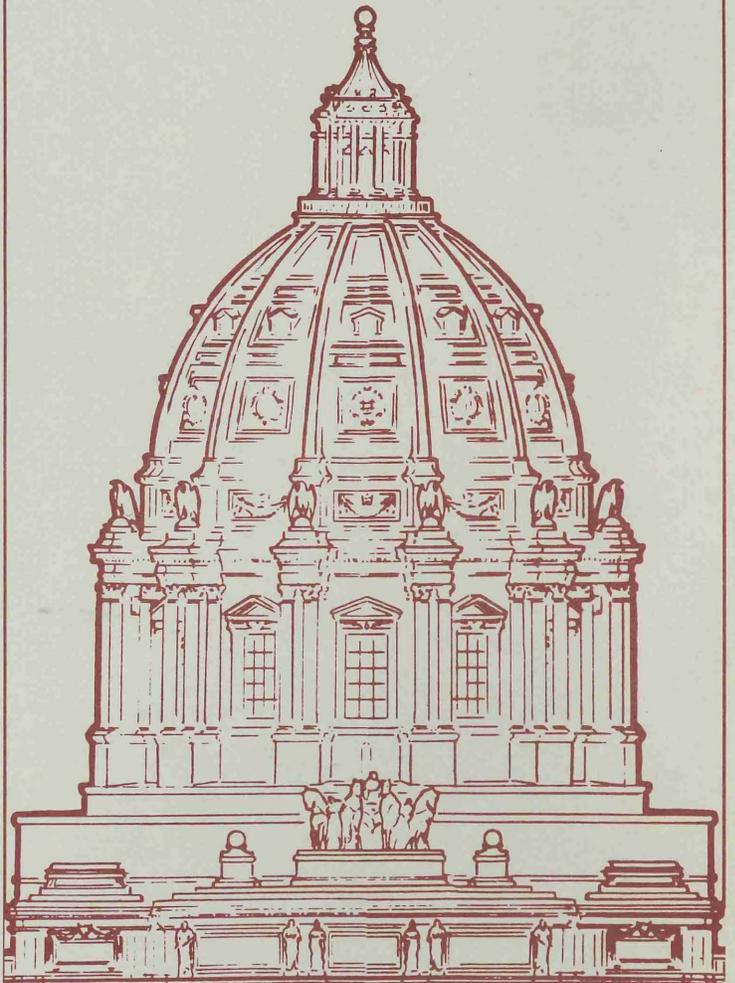


STATE OF MINNESOTA

HUBERT H. HUMPHREY III  
ATTORNEY GENERAL

# BIENNIAL REPORT

OFFICE OF THE  
ATTORNEY GENERAL



KFM  
5827.5  
.A8  
A133ax  
1983/84



**STATE OF MINNESOTA**  
**OFFICE OF THE ATTORNEY GENERAL**

**HUBERT H. HUMPHREY, III**  
**ATTORNEY GENERAL**

**ST. PAUL 55155**

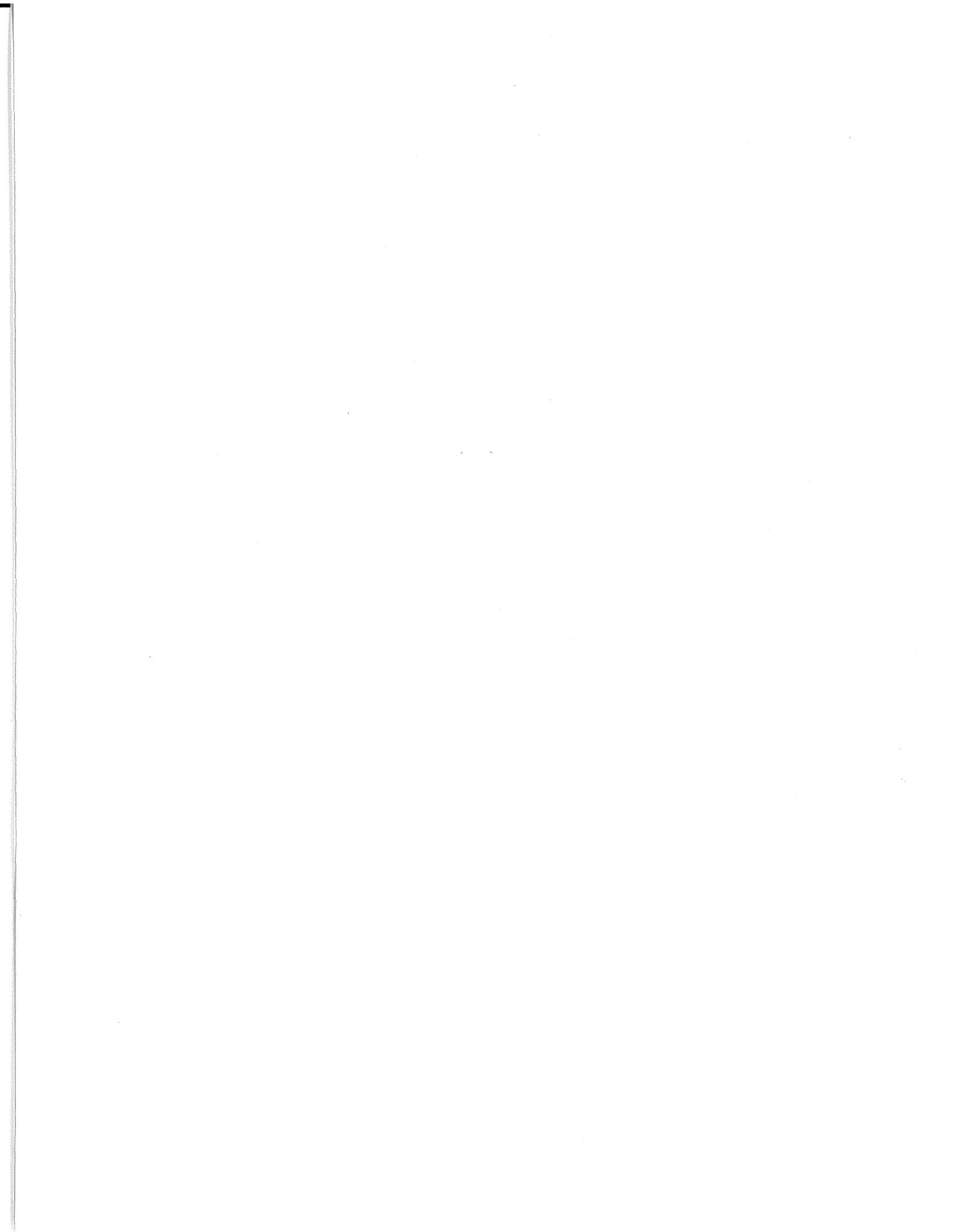
ADDRESS REPLY TO:  
102 CAPITOL BUILDING  
ST. PAUL, MN 55155  
TELEPHONE: (612) 297-3647

The Honorable Rudy Perpich  
Governor of the State of Minnesota  
State Capitol  
St. Paul, Minnesota

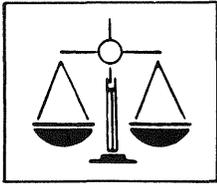
Pursuant to Minn. Stat. § 8.08, this report is respectfully submitted, highlighting the legal activities of the Office of the Attorney General on behalf of the state and its citizens for the 1983-84 Biennium.

Best regards,

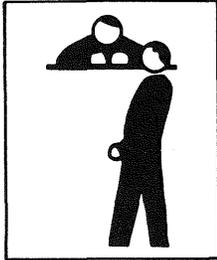
  
**HUBERT H. HUMPHREY III**  
Attorney General



# TABLE OF CONTENTS

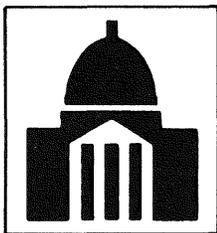


**I. RESPONSIBILITIES OF THE ATTORNEY GENERAL'S OFFICE** ..... i



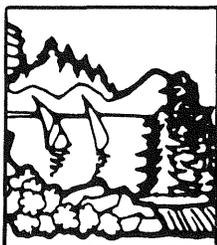
**II. PUBLIC PROTECTION** ..... 1

- A. Criminal Investigations and Prosecutions ..... 1
- B. Consumer Protection ..... 2
- C. Antitrust Enforcement ..... 4
- D. Medicaid Fraud Prosecution ..... 5
- E. Regulation of Charities and Trusts ..... 6
- F. Highway Safety ..... 7
- G. Business Regulation ..... 8



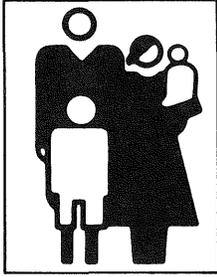
**III. PUBLIC ADMINISTRATION** ..... 10

- A. Tort Claims Defense ..... 10
- B. Tax Litigation ..... 11
- C. Administrative Agencies ..... 12
- D. State Employee Relations ..... 13
- E. Protection of Workers ..... 14
- F. Public Utility Users ..... 15



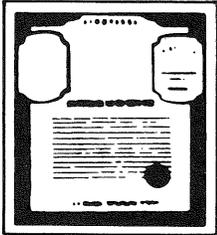
**IV. PUBLIC RESOURCES** ..... 17

- A. Environmental Protection ..... 17
- B. Natural Resources Management ..... 18
- C. Agricultural Regulation and Protection ..... 20
- D. Transportation ..... 21
- E. Utility Regulation ..... 22

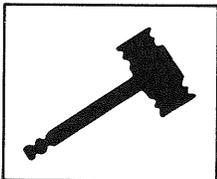


V. PUBLIC ASSISTANCE ..... 23

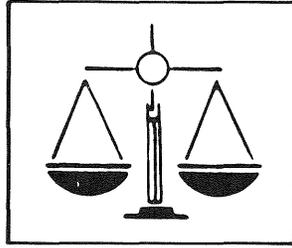
- A. Human Services ..... 23
- B. Human Rights ..... 24
- C. Health ..... 25
- D. Education ..... 26
- E. Housing ..... 26
- F. Unemployment ..... 27
- G. Residential Utility Users ..... 27
- H. Economic Development ..... 28



VI. LEGISLATION ..... 28



VII. OPINIONS ..... 29



## **RESPONSIBILITIES OF THE ATTORNEY GENERAL'S OFFICE**

The Attorney General is the chief legal officer of the State of Minnesota. His duties stem from the Constitution, state statutes, and common law. He is the attorney for all state officers, departments, boards and commissions. He represents them in all matters pertaining to their official duties. He interprets statutes and provides other legal services for local units of government. He enforces statutes and acts to protect the legal interests of Minnesotans. He also provides legal information and solves problems for citizens.

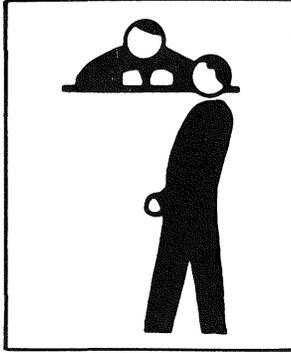
As the chief legal officer for the State of Minnesota, the Attorney General and his assistants represent the citizens of Minnesota by litigating constitutional challenges, criminal, consumer protection and antitrust cases, and by providing a variety of legal services to state agencies in the areas of commerce, human rights, the environment, energy, natural resources, health, education and many other areas of state concern.

The Attorney General appears for the state in all cases in the Minnesota State Appeals and Supreme Court, and United States District, Appellate and Supreme Court; in all civil cases in Minnesota District Court; and, upon request of the Governor or any county attorney, in any criminal case in Minnesota District Court.

The Attorney General prosecutes all actions against persons who claim an interest adverse to the state, as well as claims of the state against the federal government. He may institute, conduct, and maintain any action or proceeding he deems necessary for the enforcement of the laws of the state, preservation of order, and the protection of public rights.

The office also serves the public directly through citizen contact, public education and litigation initiated in the name of the Attorney General. It also provides substantial assistance to local officials such as county attorneys and sheriffs in their efforts to enforce the laws of this state.





# PUBLIC PROTECTION

The responsibilities of the Attorney General in the general category of Public Protection involve the office in investigation and appropriate civil litigation or criminal prosecution to enforce laws seeking to protect the lives and property of individual citizens of the state. These laws pertain to the criminal justice system, highway safety, regulation of businesses particularly with respect to unfair sales practices affecting consumers and to antitrust violations, medicaid fraud and regulation of charitable organizations and trusts.

## CRIMINAL INVESTIGATIONS AND PROSECUTIONS

The Attorney General's Office provides prosecutorial assistance on both the trial and appellate levels to the State's eighty-seven county attorneys. The assistance is concentrated especially on handling criminal appeals before the new Minnesota Court of Appeals and the Supreme Court, and on handling prosecution of complex crime, ranging from brutal murders to sophisticated white collar schemes and the increasingly visible problem of sexual offense against children. The office handles the great majority of criminal appeals for Minnesota's eighty-seven counties, except the five largest, assists in police training through lectures and classes and has the responsibility for training prosecutors statewide. The office also provides a full spectrum of legal services to the Bureau of Criminal Apprehension and the Minnesota Sentencing Guidelines Commission. Since the advent of the new Court of Appeals in November, 1983, the office has taken an increased number of criminal appeals. During the next biennium this increase is expected to continue, along with a continued heavy flow of requests for assistance from local prosecutors.

In the past biennium the Attorney General has assisted in the investigation of, and prosecuted, numerous criminal trials throughout the state. Among the many cases handled in the July 1, 1982 June 30, 1984 biennium are:

1. **State v. Jenkins** (Lincoln County). This was a complex first degree murder trial arising out of the killing of two bank officials in Lincoln County during the fall of 1983.
2. **State v. Balenger** (Carlton County). This was a homicide prosecution arising out of the brutal murder of a young woman by a male go-go dancer who picked up his victim in a Superior, Wisconsin, bar and killed her in Carlton County.
3. **State v. Koop** (Pennington County). This was a case of attempted murder and assault by an estranged husband against his former wife. The husband claimed insanity as a defense, leading to a bifurcated trial, but he was found guilty.
4. **State v. Bill Lone** (Ramsey County). In this case the defendant was convicted of swindling hundreds of unsuspecting customers by selling them unneeded basement waterproofing. It was a landmark case in the fight against consumer swindles.
5. **State v. Campion** (St. Louis County). This was a securities law violation case involving a mortgage contract swindle perpetrated by the defendant.

## Public Protection

6. *State v. Garceau* (Hubbard County). This case was prosecuted against a former assistant clerk of court for theft of public funds. It was undertaken because of a conflict of interest by the local prosecutor.

7. *State v. Allan Larson* (Stevens County). This was a successful prosecution of a disbarred attorney who had used his position of trust to swindle investors in a land development scheme. The defendant pleaded guilty after the commencement of the trial.

8. *State v. Weidauer* (Lyon County). The defendant in this case was convicted of arson in March, 1983.

## CONSUMER PROTECTION

The Attorney General's Office protects Minnesota's consumers by enforcing the laws regulating advertising and sales practices, and by assisting individual consumers in resolving problems they encounter in the marketplace.

Following a major re-structuring of our consumer representation, we now perform this function through two separate but coordinated units. In July, 1983, as part of a comprehensive reorganization of the Minnesota Department of Commerce, its Office of Consumer Services was transferred to the Attorney General's Office and merged with the Attorney General's Consumer Division. The merger resulted in an overall reduction of five positions.

Our Consumer Services Unit is composed of professional mediators, complaint analysts and support staff. They handle inquiries and complaints from consumers and attempt to mediate voluntary settlements of disputes between individual consumers and companies. Their efforts recover approximately \$450,000 annually in direct monetary compensation to consumers. In addition, they operate a telephone hotline which assists more than 60,000 consumers annually.

The Attorney General's Office has continued, and expanded, the "Circuit Rider" program. Complaint mediators travel regularly to fourteen cities throughout the state to assist consumers more directly with their problems. In addition, we now maintain an office in Duluth to provide more immediate assistance to residents of northeastern Minnesota. We also prepare and distribute a wide range of educational brochures and informational materials, and provide public speakers for various groups.

The Home Preservation Hotline is another program operated by the Attorney General. It is a clearinghouse and resource for homeowners and farmers faced with the threat of mortgage foreclosure. Since its inception in June, 1983, this program has assisted approximately 5,000 Minnesotans.

Our Enforcement Unit is composed of attorneys, investigators and support staff. Investigators collect evidence of broad patterns of fraud and other violations of Minnesota's consumer statutes. Attorneys bring formal civil actions against violators.

## Public Protection

Cases prosecuted by our office range from bait-and-switch advertising practices to home repair fraud, pyramid sales schemes, odometer "spinning", fraudulent investment plans, door-to-door sales frauds, product safety problems, auto repair frauds, and a litany of other consumer frauds. During the biennium, we have conducted over 100 investigations and have initiated approximately forty formal consumer protection legal actions. Our actions have resulted in approximately \$100,000 in civil fines and legal costs against defendants and several million dollars in refunds to consumers.

Some of the more significant actions taken by our office during the biennium were:

1. A formal legal settlement, nationwide in scope, which halted a fraudulent, pyramid-like scheme involving the sale of Jerusalem artichokes to farmers.
2. In association with our Criminal Division, the prosecution and conviction of "Doctor" Bill Lone for felony swindling in a \$3,000,000 basement-waterproofing scheme.
3. A false advertising suit against "Hawaiian Pacific Airlines"—an airline without airplanes or legal authority to fly—which halted the deceptive advertising and prompted action by the CAB, and which ultimately resulted in the recovery of more than \$1,000,000 in refunds for consumers nationwide.
4. Preparation and distribution of over 1,000 "how-to-do-it" kits to assist owners of defective General Motors autos in arbitration hearings established in settlement of a FTC suit. These informational kits have assisted Minnesotans in recovering an estimated \$300,000 in refunds.
5. Implementation of the Plain Language Contracts Act, which became effective July 1, 1983, and which requires consumer contracts to be written in simple, understandable language. Under this Act, we have formally reviewed 300 contracts for compliance, and have helped to re-write and simplify such important forms as the standard new-car order form used by most Minnesota auto dealers, multiple-listing agreements used by most realtors, and many forms used by banks and other financial institutions.
6. Vigorous administration of the Club Contracts Act, which protects members of health clubs, buying clubs and dating clubs, by requiring the clubs to maintain bonds to protect members against possible failure of the clubs. As part of this effort, hundreds of clubs have been identified and surveyed to insure compliance with the law.
7. Several formal legal actions against hearing aid distributors for door-to-door sales frauds victimizing vulnerable elderly consumers. As an outgrowth of these efforts, we proposed and drafted legislation, enacted in 1984, which now requires hearing aids sold in Minnesota to carry a 30-day money-back guarantee.
8. A successful suit against a manufacturer of insulation which failed to meet federal fire safety standards.
9. Ongoing investigation of several alleged design and manufacturing defects in autos produced by a major manufacturer.

## Public Protection

10. Negotiation of voluntary advertising guidelines for direct-mail sweepstakes promotions used by major Minnesota resort developers.

11. The development, in joint efforts with the Minnesota Auto Dealers Association, the Metropolitan Auto Dealers Association, and the Better Business Bureau of Minnesota, of fair advertising standards to guide the advertising of new and used cars, and the creation of a formal program to monitor dealers' ads.

## ANTITRUST ENFORCEMENT

The Attorney General actively engaged in a number of antitrust lawsuits and investigations on behalf of the State and political subdivisions this past biennium. During F.Y. 1983 and F.Y. 1984 the office took in revenues (damages, fines and costs) in excess of \$400,000.

The U.S. Supreme Court decision in *Illinois Brick v. Illinois*, 431 U.S. 720 (1977), has continued to have an adverse effect on antitrust recoveries by Minnesota and all other states, public bodies and consumers. In that case, the Court held that only persons who dealt directly with antitrust violators may recover damages under the federal antitrust law. Since state and local governmental units, as well as individual consumers, ordinarily purchase indirectly through middlemen, they are presently precluded from recovering many of the types of awards recovered in past years. We have worked to obtain corrective federal legislation, but have been unsuccessful thus far. In order to combat this problem at the state level, the Departments of Administration and Transportation have amended their standard procurement contracts so that all companies selling to the state agree to assign to the state any antitrust claims they may have with respect to those sales. Similar assignments have been upheld by the federal courts, and we believe that in the future this will be an aid in recovery of damages for the state. We also are encouraging local governmental subdivisions to place such provisions in their procurement contracts as well. In the meantime, we are continuing to file federal treble damage actions where we think it is appropriate.

A prime goal of the Attorney General in the past few years has been increased civil and criminal enforcement of the state antitrust law. To that end, we have increased substantially the number of investigations and state cases brought. The office has also designed and implemented a computerized bid analysis system to aid in the detection of bid rigging. The computerized system enables us not only to analyze past bidding activities, but also to continually monitor the state's bidding process for road construction projects. The office has also instituted an antitrust education program for purchasing agents and other members of the public to assist compliance with the law and in detecting anticompetitive conduct. In addition, we continue to intervene before public regulatory agencies to advocate competition in the regulatory process.

The following is a short summary of the major cases in which the Attorney General's Office was engaged during the 1983-1984 Biennium:

1. **Cement and Concrete Antitrust Litigation** — In June, 1979, we filed a lawsuit against 45 major cement producers, alleging price fixing and production limitation agreements in violation of state and federal antitrust laws. At times dur-

ing the past few years there have been severe shortages of cement in Minnesota, and we believe that one cause of these shortages has been the conspiracy alleged. This lawsuit was consolidated for pre-trial discovery purposes with similar lawsuits in Arizona. It was scheduled for trial in fall, 1984.

**2. Fine Paper Antitrust Litigation** — In January, 1978, we filed this federal treble damage action of major paper manufacturers. This case has been settled for an amount in excess of \$60 million, but Minnesota's share of this settlement is relatively small since most purchases have been through middlemen and thus are barred by **Illinois Brick**. Total damages received by the State amounted to \$12,722, although the State was also awarded \$117,154 in costs and attorneys' fees.

**3. Art Materials Antitrust Litigation** — In June, 1980, we filed a federal damage action on behalf of the State and its local governmental subdivisions against the major manufacturers of school art supplies, charging a conspiracy to fix the prices of crayons, tempura paints, finger paints, chalk and modeling clay. This action has been consolidated for pretrial proceedings in Cleveland, Ohio, where discovery is now being conducted.

**4. State v. Duluth Disposal, Inc.** — This is a state court action charging a conspiracy to suppress competition in the rubbish hauling business in St. Louis County, including price fixing and customer allocations. This case was settled for injunctive relief and \$28,000 in fines.

**5. Chicken Antitrust Litigation** — This is a federal damage action alleging a conspiracy to fix the price of broiler chicken. The state and class members were awarded \$73,460.

In addition, we have brought a number of actions to enforce investigative demands issued under Minn. Stat. 8.31, and issued several opinions on antitrust matters to local governments. The office has also continued to monitor rule-making proceedings of state agencies to advocate competition, and has conducted a large number of investigations regarding possible antitrust violations. Investigative efforts have been particularly active in the road construction industry and other public bidding areas. We have also continued to assist a number of local governmental bodies and citizens with antitrust concerns as well as public appearances and speeches to increase public awareness of antitrust law in Minnesota.

### **MEDICAID FRAUD PROSECUTION**

In September, 1983 a Medicaid Fraud Prosecution Division was established in the Attorney General's Office. It is 90 percent funded by the federal government with the state paying a 10 percent match.

Under the direction of the Attorney General, this division performs three functions:

1. Investigation and prosecution of Medicaid vendor fraud. Doctors, dentists, pharmacists, nursing homes, and other providers of health care who render services paid for by the Medicaid program (Minnesota Medical Assistance) are subject to review. Prosecutions may be criminal or civil. Recipient fraud continues to be prosecuted by county attorneys.

## Public Protection

2. Investigation and prosecution of patient abuse or neglect in health care facilities which receive Medicaid funds. This includes nursing homes, group homes for the mentally retarded, and state hospitals.

3. Investigation and prosecution of theft of patients' private funds in facilities which receive Medicaid funds.

During the second half of the biennium, the Attorney General successfully prosecuted three cases and initiated several others:

1. **State v. Nevins.** The executive director of a Minneapolis chemical dependency clinic pled guilty to six counts of felony theft involving over \$29,000 from Medicaid, Medicare, Blue Cross/Blue Shield of Minnesota, Mutual Service Insurance, Prudential Insurance and Travelers Insurance Companies. She was sentenced to six months in jail.

2. **State v. Haggerty.** A Watkins pharmacist pled guilty to the practice of substitution—billing the state for brand name medications while providing recipients with generic medications. He also admitted to billing Medicaid for non-reimbursable medications. The defendant pharmacist was ordered to make restitution of \$6,652, and pay fines and costs of prosecution totaling an additional \$13,400. He was placed on five years probation.

3. **State v. Novotny.** A Roseau County pharmacist pled guilty to felony theft for practicing substitution. He was ordered to make restitution of \$1,000, pay fines and costs of an additional \$3,000, and was placed on five years probation.

4. Other investigations underway concern nursing homes, physicians, dentists, pharmacists, personal care attendants, medical transportation firms, psychologists, and allegations of patient abuse in Medicaid funded facilities.

In April, 1984, a technical review of the division was made by the Inspector General's Office of the U. S. Department of Health and Human Services. The audit team observed that, "The unit has already shown that it is taking a no nonsense approach in its initial investigation of Medicaid fraud, and with a full staff complement, together with a planned acquisition of a micro-computer, the unit has the potential of being one of the best (Medicaid Fraud Control Units)."

## REGULATION OF CHARITIES AND TRUSTS

The Attorney General has supervisory and enforcement authority for over 2,400 currently registered charitable organizations and trusts with assets valued at approximately \$3 billion. This authority includes monitoring charitable organizations to assure their compliance with charitable solicitation laws; monitoring charitable trusts to protect the ultimate beneficiaries from breaches of fiduciary duty or other misconduct; protecting charitable property, whether held by a non-profit organization, trust or estate; protecting charitable interests in probate matters; and representing the State in those probate matters in which the deceased leaves no heirs and the estate escheats to the State. The Attorney General protects the public from improper practices used by some paid fund-raisers and litigation.

## Public Protection

Approximately 1,600 letters were sent to the chief executive officer of charitable organizations most frequently victimized by unscrupulous professional fund-raisers. The letter warned the organizations of the dangers and pitfalls of raising money in this fashion. In addition, the Attorney General has worked with local law enforcement officers in an effort to alert them to the potential civil and criminal implications of solicitations that contain false statements. In *State v. California All-Star Productions*, the "professional" fund-raiser was successfully restrained from making certain misrepresentations during the solicitation of funds.

In a group of consolidated cases concerning accidental death life insurance policies, the Attorney General monitored and is currently seeking to intervene to protect the over \$2 million that was designated by the insured for charitable purposes.

The Attorney General has been instrumental in establishing internal controls to protect the charitable assets of a number of large charitable organizations in Minnesota. For instance, in the fiscal year ending June 30, 1984, he issued three investigative orders which ultimately resulted in extensive changes in the way several charities protected their assets.

During the biennium the Attorney General monitored approximately 500 legal cases in the probate and trust area. In many of these, he took an active role. For instance, in *In the Matter of the Trusteeship of the Trust Under Article IV of the Last Will and Testament of Walter F. Holen*, an individual's claim for \$25,000 was successfully defeated, freeing the funds to be distributed for charitable purposes.

In representing the State of Minnesota in estates in which the deceased had no heirs, 54 cases were closed during the biennium and more than \$150,000 escheated to the State.

## HIGHWAY SAFETY

The Attorney General represents the Department of Public Safety in matters involving the revocation of drivers licenses and the enforcement of weight limits on commercial trucking. As such, the office has been active in assisting the Department with amending the Implied Consent/DWI laws, has litigated an extensive number of related cases, and has helped to establish policies for the imposition of fines on overweight trucks. The following is a summary of some of the major areas in which the Attorney General has been involved during the past biennium.

1. In 1982, the Legislature amended the implied consent law to provide for a new procedure for the revocation of a driver license due to driving while under the influence of alcohol or other drug. Under the new system, a driver who failed or refused to take a blood alcohol test automatically lost his or her license for the mandatory term, effective seven to ten days after the incident, with the opportunity to request judicial review of the revocation within 30 days. After extensive litigation, the Minnesota Supreme Court upheld this prehearing revocation procedure, against constitutional challenge to the statute, in *Hedden v. Dirkswager*, 336 N.W.2d 54 (Minn. 1983). In connection with this case, the Attorney General's office worked with court administrators throughout the State to implement a plan for efficient administration of the new system. As a result of their efforts, there has been a substantial decrease in the administrative costs of alcohol-related

## Public Protection

offenses. Further, prior to the effective date of the 1982 amendments, the Attorney General had a backlog of approximately 5,000 to 6,000 implied consent petitions for hearing. This petition case load has been reduced dramatically due to the statutory changes, although the office continues to handle approximately 200 to 250 implied consent hearings every month.

2. In the spring of 1984, the Attorney General's office was instrumental in assisting the Department and Legislature in further amending the Implied Consent/DWI laws to more accurately reflect the mandatory nature of blood alcohol testing and the time in which a suspected DWI driver had a right to consult with an attorney. This latter change has caused an increase in the number of cases and appeals being taken in implied consent matters.

Overall, the Attorney General has had a major role in eliminating drunk drivers from the highways of Minnesota, thereby reducing the huge costs associated with this problem.

3. Since April, 1982, the Attorney General has been instrumental in establishing an effective enforcement program, in connection with the State Patrol, in the area of overweight trucks. As a result of this improved program, he has collected approximately \$900,000.00 in civil penalties for the State. As a side benefit, it is believed that the incidents of overweight trucks on our highways has decreased, which results in less damage to our roadways.

## BUSINESS REGULATION

The Attorney General represents the Minnesota Department of Commerce in connection with its regulation of the financial industries subject to its jurisdiction, including state chartered banks, credit unions, and industrial loan and thrift companies, securities broker-dealers, real estate brokers and salespeople, franchisors, collection agencies, and insurance companies and agents. Our legal work for this client involves representation of the Department in connection with administrative actions—primarily disciplinary proceedings against licensees and cease and desist proceedings. There were approximately 119 of these administrative actions in fiscal year 1983, and 252 in fiscal year 1984.

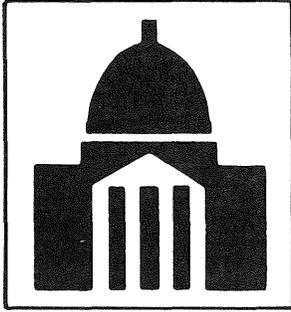
Examples of these proceedings are:

1. Administrative actions taken against Academy Life Insurance Company, Columbia National Life Insurance Company, Hawkeye National Life Insurance Company, and Life of Mid America Insurance Company during fiscal year 1984. We represented the Department of Commerce in connection with its investigation of, and administrative action against, these four insurance companies and approximately 70 of their agents. The investigation uncovered evidence of serious misrepresentations in connection with the offer and sale of life insurance which had been promoted in Minnesota as an "estate conservation" program. Consent agreements with these companies produced refunds of over \$3.5 million to over 1,000 Minnesota consumers. The Minnesota investigation also led to similar actions against some of these companies by several other states.

2. Administrative proceedings initiated against several insurance agencies, including Tri-State Agency, Inc. and Statewide Health Services, Inc. During the biennium the Attorney General's Office conducted an extensive investigation into fraud and other abuses by these agencies and other individual agents in connection with the sale of Medicare supplement insurance in Minnesota. As a result of the investigation, a total of over 20 individual insurance agent's licenses were suspended or revoked, over \$90,000 was refunded to victims and five insurance salesmen were prosecuted and convicted for various criminal violations, including forgery and theft, that were uncovered in the course of the investigation.

The Attorney General also handled significant civil litigation for the Commerce Department. One example resulted in the closing of the State Bank of Barnum in February, 1983. This was the first Minnesota bank to fail since the depression era. The bank was closed without any loss to its depositors.

During the 1983-84 biennium the Commerce Division staff of the Attorney General's Office also initiated affirmative litigation on behalf of many Minnesota electrical users. One example is the case of **Minnesota Power and Light Company v. Burlington Northern Railway Company**, a lawsuit in which the Attorney General's Office intervened to stop Burlington Northern from increasing the rates that it charged to Minnesota Power and Light Company for hauling coal to Minnesota Power's electrical generating plant. If the rate increase, which was estimated to be \$13 million per year, had been permitted to go through, much of the increase would have been passed on to Minnesota consumers of electricity. The Attorney General's Office and the utility succeeded in obtaining a temporary injunction which barred Burlington Northern from increasing its charge.



# PUBLIC ADMINISTRATION

In the general category of Public Administration, the Attorney General's office is engaged in a wide range of legal-service activities arising from its client agencies' fundamental role in state government. These agencies are charged, among other duties, with investment of state funds and state employee pension funds, collection of revenue, fiscal management and disbursement of state funds, management of state employees, management of the state's personal and real property and procurement of goods and services for all state agencies. Besides providing representation and advice with respect to the performance of these duties, the Attorney General defends the state against tort claims and enforces laws protecting employees in both the public and private sectors.

## TORT CLAIMS DEFENSE

The Attorney General is responsible for defending the state against tort claims for personal injury or property damage alleged to have been caused by the state. Tort immunity was abolished eight years ago. On August 1, 1984 the state tort claim limits were legislatively raised from \$100,000 per person and \$500,000 per occurrence to \$200,000 per person and \$600,000 per occurrence. Sixty-seven state agencies now have a tort claim officer. Of these sixty-seven agencies, thirty have been the subject of one or more tort claims since 1976. The departments of Transportation, Natural Resources, Public Safety, Human Services, and Corrections are the most frequent defendants in tort claim actions.

A substantial number of the tort claims handled by the Attorney General's office involve accidents on state highways, where damages are sought as a result of alleged design failure or inadequate highway maintenance. These cases are often time-consuming and expensive to defend because of the necessity of obtaining expert engineering testimony on the nature of road design and other relevant issues.

In Fiscal Year 1984, the first year that we attempted to analyze and develop detailed statistics regarding tort claims, claims of \$1,533,000 were reduced to \$695,000 by negotiation or litigation, a saving to the state of \$830,000.

One example of a state highway case was *Bjorkquist v. City of Robbinsdale and State of Minnesota* in which the Minnesota Court of Appeals held that timing of traffic lights is a discretionary act which exempts the state from tort liability and that the discretionary act immunity does not violate equal protection constitutional standards. The significance of this case can hardly be overestimated in terms of dollar savings to the state. Not only will this case be helpful to the Attorney General in defending against numerous claims and lawsuits brought against the Department of Transportation but it will also prevent attorneys from initiating claims and lawsuits in the first instance as their research will reveal the strength of the Bjorkquist decision.

Another example of a tort case successfully defended by the Attorney General which has far reaching effects is **Green-glo Turf Farms, Inc. v. State of Minnesota, Department of Natural Resources**. Plaintiffs asserted damage to growing crops from flooding due to the DNR's alleged negligent construction, maintenance and operation of a system of pools in the Carlos Avery Wildlife Management Area. The Minnesota Supreme Court held that Minn. Stat. 3.736, subd. 3(h) constitutionally immunizes the state from tort liability for damages caused by operation of the state's outdoor recreation areas. This decision is significant in that it provides broad protection from tort liability for the operation of the state's outdoor recreation system as defined in Minn. Stat. Ch. 86A.

While these two decisions highlight the protection the Attorney General's office has been able to provide for the Departments of Transportation and Natural Resources, there are also other equally significant decisions in cases defended by the Attorney General which provide protection from tort liability to the Department of Human Services and other state agencies.

### TAX LITIGATION

The Attorney General provides legal counsel to the Department of Revenue in the interpretation and administration of all of the applicable state tax laws and the tax levy limitation laws, of which the most important are income taxes, sales taxes, estate tax, occupation taxes, taconite production taxes, gross earnings taxes, deed tax, mortgage registry tax, petroleum taxes, cigarette and tobacco taxes. Attorney General personnel also respond to numerous inquiries from citizens on tax matters. Other functions of the Attorney General in this area of responsibility include reviewing and approving proposals by the Commissioner to abate taxes, penalties and interest.

The interpretation and administration of the tax laws give rise to a great amount of litigation, in which the Attorney General's Office represents the Department of Revenue. At the present time there are almost 900 cases pending involving litigation of the tax laws. In FY 1983 and FY 1984 litigation activity included:

**Minnesota Supreme Court:** 15 cases won, 4 lost and 27 pending.

**Minnesota Tax Court:** 88 cases won, 20 lost, 357 settled and 465 pending.

**District Court:** 5 cases won, 1 lost, 153 cases settled and 399 pending.

**Probate Court:** 1 case settled and 5 pending.

Of the many lawsuits in which the office appeared for the Department, the following are significant examples:

1. The **Erie Mining** case in which the issue concerned the method of calculation of the taconite production tax. In this case the claimed refund by the taxpayer was reduced from \$23 million to \$3 million, thus saving the State \$20 million.

2. The **Rio Vista II** case in which Attorney General personnel successfully defended from Constitutional attack the Legislature's property tax classification of subsidized low income housing.

3. The **Hegenes** case in which Attorney General personnel successfully defended from Constitutional attack the Legislature's property tax classification of multi-unit non-homestead residential properties.

## Public Administration

### ADMINISTRATIVE AGENCIES

On a day-to-day basis Attorney General personnel serve many state agency clients much as would corporate counsel in the private sector. Thus, our role often requires heavy emphasis on preventative law, as we provide prompt response to requests for advice on how to avoid or resolve problems in a multiplicity of subject areas before difficult situations ripen into formal disputes. Over the past two years, this low-visibility but crucial role has involved our office in thousands of requests for client advice, the drafting of hundreds of legal documents and the reviewing of more than 7,500 contracts for form and execution.

Familiarity with areas of law of special concern to our client agencies enhances the Attorney General's ability to be of service to the general public. During the biennium, we responded to thousands of citizen inquiries related to government data practices, public purchasing, public financing, garnishment, employee and management rights, administrative rulemaking and the building code.

During the last two years, our staff have also played crucial roles in activities which have had high visibility. Among the most significant are:

1. The **Minnesota Racing Commission** was assisted in its preliminary organization, with a massive amount of rulemaking, with formulation of and adherence to procedures which led to an orderly selection of the metropolitan area racetrack builders and operators, with personnel selection and with the multitude of other matters associated with the start of a new industry in this state. This assistance has contributed towards goal of having parimutuel horse racing "leave the post" by June of 1985.

2. The **Minnesota Cable Communications Board** was successfully represented before the Minnesota Supreme Court in **Nor-West Cable Communications Partnership v. Continental Cablevision of St. Paul, Inc., City of St. Paul and Cable Communications Board of Minnesota**. In this case, the Court upheld our client agency's decision to grant Continental Cablevision a certificate of confirmation of the franchise to operate a cable communications system in the City of St. Paul and to deny Nor-West's request for a contested case hearing in the matter. Citizens of St. Paul will therefore not be further delayed in enjoying access to cable television.

3. The **State Board of Investment** was advised and assisted with selection of external equity and fixed income money managers under new statutory provisions which enable the Board to contract for outside management of approximately \$2.7 billion of state public pension funds. The Board was also assisted with the selection of a master custodian for the purpose of accounting for the transactions entered into by the outside money managers. These selections were essential for assuring the exercise of prudent judgment in the management of the pension funds of thousands of state employees.

4. The **Department of Finance** was advised and assisted during the biennium with the issuance of \$277 million general obligation bonds and with the negotiation of a \$300,000,000 letter of credit from Morgan Guaranty & Trust Co., so as to ensure the most favorable terms and conditions possible for the state at a time when the financial community was not giving the State of Minnesota its highest rating. Even fractional differences in interest rates charged result in enormous savings to the state in debt-service expenditures.

5. The **Department of Administration, Telecommunications Division** was represented in seven different telephone ratemaking proceedings before the Public Utilities Commission. In an era of fundamental restructuring of telecommunications services, the state, as one of the largest nonresidential telephone users in Minnesota, has a vital interest in preserving services which the state has traditionally used and in reducing or stabilizing rates which, since divestiture of American Telephone and Telegraph, have risen alarmingly. Representation of the state's position, which is supported by only one other party to the ratemaking proceedings, has contributed significantly to:

A. Reduction of the general business telephone rates which are applicable to services provided to the state;

B. Fending off of significant rate increases applicable to some 18,000 Centrex lines utilized by the state;

C. Preserving the provision of TELPAK private line services. The state is the largest user of this service and if the state had been compelled to use alternative service, the change would have resulted in a considerable rate increase.

D. Fending off a proposed 30% increase in the general private line rate and additionally, a \$25 per month per private line surcharge applicable solely to the state.

The above activity has resulted in a saving to the state's taxpayers of \$7,500,000, which will carry forward to future bienniums.

## STATE EMPLOYEE RELATIONS

The Attorney General represents the Department of Employee Relations, providing all necessary legal services for the State in its role as the employer of 30,000 people. Some of the more significant accomplishments over the last biennium include:

1. Successfully defending the State Legislature's 1982 budget-balancing bill (the so-called "2% bill") against constitutional attack from the public sector labor unions, saving the State some \$67 million. **AFSCME v. Sundquist.**

2. Persuading the state Supreme Court to overturn a lower court's ruling that the grievance-arbitration process negotiated between the State and the largest union representing the state employees constituted a violation of procedural due process. **Eisen v. State of Minnesota.**

3. Advising and assisting the various state agencies in completing their preparations for a possible work stoppage in 1983 including the preparation of a litigation strategy and review of each agency's strike plan.

4. Advising and assisting the Labor Relations Bureau of the Department of Employee Relations in preparing management bargaining positions for the 1983-84 collective bargaining agreements, and handling grievances arising from those agreements.

5. Coordinating all of the employment-related litigation handled by the various divisions of the Attorney General's office, e.g. employment discrimination cases, and advising other state agencies on how to handle various personnel matters.

## Public Administration

6. Representing various state agencies in unusual or complicated disciplinary proceedings before arbitrators and administrative law judges.

7. Defending all unfair labor practice suits brought against the State or any of its agencies.

8. Advising and assisting the Department of Employee Relations in the development of data practices policies, the implementation of the state's comparable work laws, the revision of the state's mandatory retirement rules, and other significant policy decisions affecting state employees.

## PROTECTION OF WORKERS

In 1983 the legislature enacted major revisions to the Workers' Compensation Act. Many of the changes have spawned litigation. It has also been necessary to undertake extensive rulemaking activities to implement many of these legislative amendments. The overhaul of the Workers' Compensation Act has thus significantly increased the Department of Labor and Industry's need for the Attorney General's legal services.

During this biennium the Attorney General's office represented the Department of Labor and Industry in the following significant litigation:

1. The constitutionality of the Department's administrative conferences, which are the centerpiece of the 1983 amendments, was attacked on procedural due process grounds. The Attorney General's Office successfully defended the Department both in Ramsey County District Court **Emerson v. Great Central Insurance Co.** and in the Minnesota Supreme Court **Pauly v. New Hampshire Insurance Co.** Beginning with **Gran v. Bituminous Consulting and Contracting Co.**, the Department also prevailed in over fifteen lawsuits concerning the conferences before the Workers' Compensation Court of Appeals. The jurisdiction of the Commissioner of Labor and Industry to conduct these conferences has also been challenged several times. Under the old law, workers' compensation judges had authority to decide the issues that are now in the Commissioner's jurisdiction. The Attorney General convinced the Workers' Compensation Court of Appeals that these jurisdictional changes are procedural and thus can be applied retroactively. This will speed the implementation of the new law. **Zanmiller v. Montgomery Ward; Martin v. U.S. Steel.** Further challenges to other recent amendments are expected in the future.

2. A provision in the workers' compensation law awarding benefits to minors at the maximum rate was upheld by the Minnesota Supreme Court in **Boevers v. Dennison Locker Plant.** The law had been attacked as a violation of equal protection.

3. The Attorney General's office has accelerated its efforts to recover workers' compensation benefits paid to recipients who are later awarded damages in personal injury lawsuits. Additionally, action is being taken to collect benefits paid by the Special Compensation Fund on behalf of employers who fail to carry workers' compensation insurance.

## Public Administration

The following significant rulemaking proceedings have also been successfully concluded by the Attorney General's office:

1. Permanent rules were adopted limiting to the 75th percentile of the prior year's billings the reimbursement to health care providers who treat injured workers. This was an extremely controversial rulemaking proceeding which will have to be repeated to adjust fees annually.

2. Rules were promulgated in response to the decision of the Minnesota Supreme Court in **McClish v. Pan-O-Gold Baking Co.** Before **McClish** an offset for social security disability benefits could be taken against any weekly workers' compensation benefit. **McClish** limited the availability of the offset to only certain types of workers' compensation benefits, to the serious financial detriment of insurance carriers. The rules instituted a procedure for qualifying for the offset against all weekly benefits under requirements prescribed in **McClish**.

3. As required by law, a new permanent partial disability schedule was adopted by rule on January 1, 1984. It institutes a new rating system which is expected to effect major reductions in workers' compensation costs.

The State of Minnesota continued to enforce the worker safety and health (OSHA) laws for Minnesotans. The Attorney General's office, as part of this law enforcement effort, was involved in the following actions:

1. Representing the OSHA Division in 508 contested cases and 10 appeals to the State courts.

2. Obtained 69 orders for inspection enabling the safety and health inspectors to gain access to workplaces.

3. Assisted the OSHA Division in the development of rules and standards to implement the 1983 Employee Right-to-Know Act and represented the Division in its rules adoption hearing.

The Attorney General assisted the Department of Labor and Industry, Labor Standards Division in initiating enforcement changes designed to bring Minnesota's employers into full compliance with the State minimum wage, overtime and child labor statutes. He initiated one of the department's first contested cases which will lead to new enforcement efforts needed to protect workers' wages.

## PUBLIC UTILITY USERS

The Attorney General provides legal services to the Department of Public Service and the Transportation Regulatory Board. We represent the Department's position in complex utility rate matters, which are primarily contested case proceedings. In addition, we advise the director of the Department and the members of the Board on matters which affect energy and transportation policy, for instance, the impact of changes in telecommunications regulation at the federal level on intrastate telephone companies and the service they provide.

## Public Administration

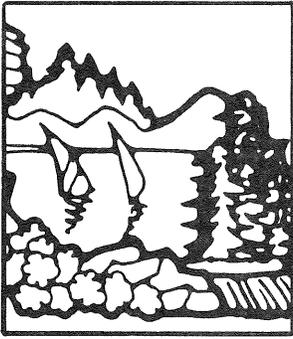
The following represent some of the significant cases in which we have been involved:

**Northwestern Bell Telephone Company.** We successfully represented the public interest in this case in which the major telephone service provider of the state sought a \$109 million increase in its rates; only a \$55 million hike was approved.

**Northern Natural Gas Company.** In this proceeding pending at the Federal Energy Regulatory Commission, we are seeking damages of \$166.3 million on the grounds that Northern's gas purchasing practices are unreasonable. If successful, Minnesota gas customers would either get refunds or billing credits.

**City of Moorhead v. Public Utilities Commission.** We successfully represented the Department of Public Service and the Public Utilities Commission as joint respondents against efforts to reduce rates to Moorhead and East Grand Forks gas customers by increasing rates paid by Northern States Power customers in the rest of the state.

**Otter Tail Power Company Depreciation Rates.** We successfully negotiated a settlement with the Company reducing its annual depreciation expense on its power plants to be paid by its customers from \$4,400,000 to \$3,600,000.



## PUBLIC RESOURCES

Grouped in the general category of Public Resources are the responsibilities and activities of the Attorney General in representing and advising state agencies charged with protecting, managing, conserving and providing the state's resources, both natural and man-made which are essential to life and economic activity in the state. Thus, the Attorney General is involved in such matters as the adherence to air and water quality standards, the preservation of wildlife, the management of forest lands, the production of agricultural products, the construction and maintenance of state highways and the regulation of utilities.

### ENVIRONMENTAL PROTECTION

In the face of increasingly serious threats to the public's health and safety caused by air pollution, the handling and disposal of hazardous waste and the proliferation of nuclear power, the Attorney General initiates affirmative litigation to protect the public in these areas. Acting at the request of the state departments of Pollution Control and Health, the Attorney General also takes legal action to enforce environmental standards and defends the state agencies when their regulatory actions are challenged in court.

One of the most serious environmental threats of our time is caused by the careless and illegal disposal of hazardous chemical waste. During the past biennium the Attorney General's office has negotiated ten hazardous waste clean-ups totaling \$17 million in estimated remedial costs and obtained reimbursements for the Minnesota Pollution Control Agency costs totaling \$487,000 through consent orders or stipulation agreements. In the most significant hazardous waste lawsuit of the biennium, **United States, State of Minnesota, et al. v. Reilly Tar and Chemical Corporation**, the state seeks clean-up and containment of contaminated ground water, provision for safe and adequate drinking water supplies and compensation for prior state expenditures and damages to natural resources. The total claim involves approximately \$10-12 million. Coal tar and creosote materials have contaminated the ground water in the St. Louis Park and Hopkins area to depths of 900 feet. The trial is scheduled to begin in the spring of 1985 and rulings of national significance have been made by the court on the scope of the federal hazardous waste laws and on the authority of the state to bring enforcement actions under the federal superfund law.

Acid precipitation has been identified as a problem that may affect the environment of northeastern Minnesota. The current levels of rainfall acidity in northeastern Minnesota (10 to 50 times more acidic than "normal" range) are similar to levels that eventually resulted in lake acidification in Norway. During the past biennium the Attorney General has assisted the Pollution Control Agency staff in the development of an acid deposition standard for sensitive areas of Minnesota. Our office has filed amicus briefs in three lawsuits involving state challenges to the United States Environmental Protection Agency decision concerning the amount of sulfur dioxide emissions allowed from various power plants. Attorney General Humphrey has been the chairman of the Midwest Attorneys General Conference on Acid Rain, an organization of eight midwestern states formed in 1983 at the request of our office.

## Public Resources

Other legal action by the Attorney General's Office on behalf of the Pollution Control Agency produced the following results:

1. Settled environmental enforcement actions for the benefit of the state which totaled \$120.6 in civil penalties for fiscal 1983 and \$254.7 for fiscal 1984.
2. Negotiated 10 hazardous waste cleanups totalling \$17,000.0 in estimated remedial costs and obtained reimbursements for the Minnesota Pollution Control Agency (MPCA) costs totalling \$487,000 through consent orders or stipulation agreements.
3. Provided legal counsel to the MPCA for implementing the new Environmental Response and Liability Act. Twenty administrative actions have been taken involving 19 hazardous waste sites and 83 responsible parties.

## NATURAL RESOURCES MANAGEMENT

The Attorney General provides complete legal services to various state agencies and programs designed to protect and manage the natural resources of Minnesota. Clients include the Department of Natural Resources, Land Exchange Board, State Soil and Water Conservation Commission, Indian Affairs Council and for particular projects other state agencies, boards, and commissions. Major programs needing legal services include but are not limited to the Wild and Scenic Rivers Program, Mineland Reclamation Program, Peat Development Program, Mineral Leasing Program, Public Waters Inventory Program, Scientific and Natural Areas Program, Land Exchange Program, Land Acquisition Program, Trails Program, and Forest Management Program.

The following examples illustrate some of the kinds of work done by the Attorney General over the past two years:

1. **Soo Line Trail (Washington Wildlife Federation v. Department of Natural Resources)**. We represented DNR in this litigation. The Minnesota Supreme Court decision in the case set a major precedent by holding that the conversion of a railroad right-of-way to a state recreational trail is not an abandonment which would trigger extinction of the right-of-way interest in the land. This case strengthens the state's ability to preserve old railroad lines for future public uses.

2. **St. Louis County, State of Minnesota, and Minnesota Chippewa Tribe v. Federal Land Bank of St. Paul**. The Attorney General defended the applicability of Minnesota's \$.25 per acre tax on severed mineral interests owned by the federally chartered but privately owned federal land bank of St. Paul. The tax court ruled in favor of the state but the Minnesota Supreme Court determined that the land bank's mineral interests were entitled to an exemption from taxation under a federal statute.

3. **Sierra Club, et al. v. United States Secretary of Interior William Clark, et al.** The Attorney General represented Commissioner of Natural Resources, Joseph Alexander, as amicus curiae in this federal litigation concerning management of the eastern timber wolf in Minnesota. The Sierra Club had challenged a proposed federal regulation of

the Secretary of Interior transferring management of the timber wolf, a threatened species, to the State of Minnesota. The federal district court invalidated the proposed regulation, and the federal government appealed to the Eighth Circuit Court of Appeals. The Commissioner of Natural Resources was joined by the International Association of Fish and Wildlife Agencies as amicus curiae in the case.

**4. Voyageurs National Park Association, et al. v. Assistant Secretary of Interior Ray Arnett and the Minnesota Department of Natural Resources.** The Attorney General represented DNR in this litigation attempting to reverse actions taken by the federal and state governments to remove from Voyageurs National Park approximately 30 acres of land consisting of islands and over 900 acres of water in Black Bay of Rainy Lake, and to add to the park approximately 120 acres of state owned land for road access and public landing sites. The litigation is pending in federal district court.

**5. State of Minnesota v. Gilbert Land Company, et al.** The Attorney General represented the State in this litigation which was the first case in which a severed mineral interest was forfeited to the State because the owner of the interest failed to register it as required by Minnesota Statutes 93.55. This was a major precedent, and should help resolve title problems associated with severed mineral interests.

**6. Land Exchanges and Land Transfers.** The Attorney General provided legal assistance to the Department of Natural Resources concerning the exchange of thousands of acres of state and private land pursuant to Minnesota Statutes 94.341 through 94.346. In addition, our staff provided legal assistance relating to the transfer of thousands of acres of land between the state and local units of government pursuant to Minnesota Statutes 94.349.

**7. State of Minnesota v. Robert Folstrom.** Our staff represented the state before the Minnesota Supreme Court in this litigation which challenged the validity of the state handgun permit laws as they applied to Indians on reservation land. The Supreme Court reaffirmed that applicability of the state handgun laws to all people in the state whether within or outside of reservations.

**8. Indian Land Claims.** The Attorney General investigated issues relating to Indian land claims within Minnesota, and advised state agencies and constitutional officers regarding alternatives for resolving the land claims issues.

**9. Reserve Mining Company Tailings Basin Permits.** The Attorney General represented the DNR on issues relating to the operation of Reserve's on-land tailings disposal system. Several DNR permits regulate the way the tailings basin is being built and operated. The division assisted the DNR in resolving the most recent problems concerning excess water and tailings build-up within the tailings basin itself.

**10. Collections.** The Attorney General assisted the DNR in collecting over \$100,000 in unpaid timber permit billings, and reduced the backlog of unpaid accounts from 111 to 77. Additional monies were collected for trespass damages and for unpaid rents.

## Public Resources

11. **Public Waters Inventory.** The Attorney General provided legal service to the DNR relating to a major public waters and wetlands inventory throughout the state, implemented pursuant to statutory mandate. The inventory has proceeded on a county by county basis, and has involved public hearings as well as court appeals. Over 20 appeals to state district court are still pending as a result of public waters and wetlands inventory process.

12. **Endangered Species Rules.** The Attorney General assisted in the promulgation of rules pursuant to Minnesota Statutes 97.488, designating Minnesota plants and animals as endangered, threatened or of special concern. Prior to the adoption of those rules, Minnesota's endangered species lists consisted only of those species included on the federal lists. Minnesota's own lists are now far more comprehensive and allow more careful management of rare plant and animal species.

13. **Peat Rules.** The Attorney General assisted in the promulgation of rules pursuant to Minnesota Statutes 93.461, regulating peat mining and peat mineland reclamation in Minnesota. The rules are designated to regulate peat mining and the subsequent reclamation of peat minelands so as to minimize adverse environmental impacts and encourage intelligent utilization of this resource.

These are but a few examples of the types of activities in which the Attorney General has been involved during the past two years. Our staff has represented the state in hundreds of state and federal court and administrative proceedings. Thousands of leases and contracts have been approved and drafted, and hundreds of land transactions have been accomplished.

## AGRICULTURAL REGULATION AND PROTECTION

The Attorney General's Office provides all legal services needed by the Department of Agriculture and the Board of Animal Health. The following is a summary of some of the more significant work performed for these two agencies over the past two years.

1. **Rulemaking.** The Board of Animal Health was counseled and represented in its contested rulemaking regarding pseudorabies. Numerous other uncontested and emergency rulemaking efforts by the Department of Agriculture were assisted, including rules to develop and implement several new programs such as the Agricultural Development Grant Program and the Export Finance Authority Loan Guarantee Program.

2. **Administrative Proceedings.** Department of Agriculture staff was represented and counseled in connection with the proceeding to recover claims **In the Matter of Kern Grain**. The Department is responsible for determining the validity of the claims submitted by farmers who sold or stored their grain at Kern Grain, and presenting its determination in the contested case proceeding.

3. **Litigation.** *Nichols v. Lewis* was commenced to enforce the food laws when inspection revealed unsanitary conditions in a bakery in Hawley, Minnesota.

*In Fate v. Nichols* the Commissioner of Agriculture was defended in an action for a writ of mandamus to compel rulemaking regarding fur farms. The Commissioner was successfully defended in the District and Appellate Courts, and the case is now pending in the Supreme Court on petition for writ of certiorari.

In *State v. Viking* representation was provided for the Department in its petition for appointment of a receiver to marshal and disburse grain and proceeds held by a defunct grain elevator.

The Family Farm Security Program was represented in several lawsuits involving lien priorities and real estate claims in connection with its loan guarantee program assisting family farmers.

**4. New Departmental Programs.** With the creation of the Export Finance Authority, the Export Information Office and the World Trade Center Board in July, 1983, legal assistance was needed and provided in connection with the development of new programs. For example, the Export Finance Authority was assisted in the preparation and promulgation of rules, the development of contracts and agreements for the export loan guarantee program, and the preparation of legislative amendments. The World Trade Center Board was represented through extensive contract negotiations involving the State's role in the development of the World Trade Center.

## TRANSPORTATION

The Attorney General's Office provides all legal services, including litigation of eminent domain actions, real estate lawsuits and contract disputes and the collection of property damage claims involving the state and its agencies. The following summarizes significant work handled in this area over the past two years:

1. Collected \$84,500 in F.Y. 1983 and \$167,800 in F.Y. 1984 from litigation on behalf of the Department of Transportation (property damage cases and miscellaneous other matters).

2. Defended the state against numerous contractors' claims for extra compensation; for example, *Central Allied v. State* settlement reduced plaintiff's claim from \$1,100,000 to \$225,000. Total savings from settlement or litigation last year, F.Y. 1984, were \$1,332,800.

3. Successfully defended the Department of Transportation in district court against four challenges to highway projects, for example, *RIP 35E v. Dole* and *Sunfish Lake v. DNR*.

4. Participated in the examination of hundreds of titles for property acquired by the Department of Transportation, assisted with the preparation and filing of eminent domain petitions and other legal documents in the acquisition process and represented the department in eminent domain hearings conducted by court appointed commissioners, district court jury trials and appellate court appeals.

5. Reviewed and approved as to form and execution hundreds of contracts for the Department of Transportation the total for the biennium was 4,123.

6. In *Kansas, Minn., et al. v. Brock*, successfully squashed a motion to recover \$700,000 in costs against several states based on their efforts to prevent the reduction of Amtrak services.

## Public Resources

### UTILITY REGULATION

The Attorney General's Office provides legal services to the Public Utilities Commission, including advice in rulemaking, in contested case proceedings, and in defense of court challenges to the agency's decisions. The following summarizes the major cases handled in this area over the past two years.

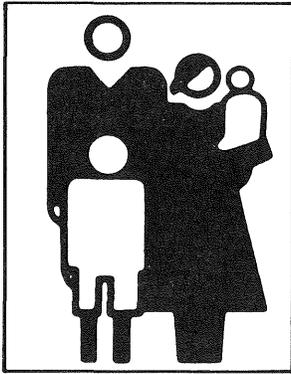
1. In **Minnesota Power & Light Company v. MPUC**, decided December 16, 1983, the agency order limiting the rate of return on common equity for the utility to 13% was successfully defended before the Minnesota Supreme Court. This saved Minnesota citizens living in MP&L's service area several million dollars in increased electric rates that would have resulted from the higher return the utility company sought. The case also clarified the application of the substantial evidence test to the agency's determination of rate of return in order to recognize the highly judgmental nature of that determination.

2. In **Reserve Mining Company v. MPUC**, decided June 3, 1983, the agency determination allocating the cost of utility service among several classes of customers on the basis of non-cost as well as cost factors was successfully defended. This decision reaffirmed the vitality of the **St. Paul Area Chamber of Commerce** decision and allowed the agency to set utility rates based upon the impact the rate change would have on customers and the risk which customers place upon the utility.

3. In **Northern States Power Company v. MPUC** the agency decision disallowing the costs incurred in the abandoned Tyrone nuclear power plant was overturned by the Minnesota Supreme Court. However, the Attorney General's Office argued in support of that decision against the claim of federal preemption made by the utility. We attempted to appeal the issue to the United State Supreme Court, but the Court refused to hear the appeal. Thus, all legal channels in which to support the agency decision were exhausted.

4. The agency was advised in the application of Greyhound Lines to abandon inter-city bus service over several routes in rural Minnesota. When Greyhound appealed the agency's denial of authority to abandon over several routes to the Interstate Commerce Commission under the new federal bus act, we filed objections on behalf of the Commission with the federal agency. The ICC decision reversing the MPUC was appealed to the U.S. Circuit Court of Appeals where we again represented the agency urging that the federal agency respect the state decision and that service should be maintained over the routes as determined by the MPUC. The Court of Appeals, however, affirmed the federal agency.

5. In the application of American Telephone & Telegraph to increase toll telephone rates within Minnesota, we advised the agency concerning acceptance of the filing and, when the agency concluded to dismiss the filing, defended it in the courts. The court action was dismissed upon agreement of the parties when AT&T decided to withdraw the filing. This saved Minnesota telephone users approximately \$12 million in increased toll rates.



# PUBLIC ASSISTANCE

The Public Assistance activity of the Attorney General involves representation of and advice to client state agencies which are concerned primarily with the health, education, housing and welfare of the state's residents and the resulting regulation of the providers of these benefits. Also in this area are agencies concerned with the economic and social conditions prevailing in the state which affect the employment opportunities available in the state.

## HUMAN SERVICES

The Attorney General's Office represents the Department of Human Services (DHS), formerly the Department of Public Welfare, in state and federal trial and appellate courts, before the Office of Administrative Hearings and the U.S. Department of Health and Human Services Grant Appeals Board.

Because of the large number of programs administered by DHS, its enormous expenditures, continually shifting state and federal statutes and regulations, the volatile nature of the programs, and the pressure from outside interest groups, legal representation of these state-provided services is complex and time-consuming. By attempting to keep up with the ever-increasing demand for assistance, particularly in litigation and rulemaking, some types of cases, including civil recoveries from medical vendors, have, of necessity, taken lower priority.

During the past fiscal year, for the first time, DHS was billed for all time spent on projects funded in whole or part by the federal government. The federal government was billed \$150,186 for FY 1984. The money was returned to the General Fund. We are examining billing practices to ensure that all reimbursable time is correctly charged to maximize federal reimbursement.

The largest current backlog of cases is the long-term care rate appeals. Over 1,000 cases are awaiting a hearing. Attorney time devoted to these cases increases the recoveries of overpaid rates, and, additionally, the federal government reimburses the state for 47.83 percent of the cost for the attorneys' time spent on these cases. The cases are complex and require many hours of attorney time, but the potential recoveries are also enormous. Revenues generated far exceed the costs of the attorneys and are returned to the General Fund. In *Richview Nursing Home v. Minnesota Department of Public Welfare*, the recovery will exceed half a million dollars.

DHS has become increasingly involved in litigation with the United States Department of Health and Human Services (HHS) concerning administration of welfare programs funded in whole or part by the federal government. HHS issued seven disallowances for payments in the past biennium, totalling \$3,934,218. Of this amount, DHS has been able to reclaim \$551,160 and disallowances totalling \$2,890,331 are still pending with HHS in the courts. In addition, as a result of our assistance to DHS, thousands of dollars have been recovered:

## Public Assistance

State hospital collections:	\$328,093
Recovery of medical assistance from employers and insurers:	\$3,033,502
Recovery of public assistance from employers and insurers:	\$436,635

DHS has begun to shift its focus for service delivery to community-based care, with an emphasis on establishing standards through rulemaking, and enforcement through the licensing process. As the agency allocates increased resources to these tasks, our office will also have to reallocate staff assignments. Several steps were taken in the past year to keep up with increased demand. Responsibility for most public assistance appeals was shifted to the counties. A paralegal was added to take over much of the routine docket control and to assist in case development, and an additional attorney was added. As a result, the Attorney General was able to increase the collections work for state hospitals (66 to 93), and recovery from third parties of public assistance funds (150 to 296). In addition, we were able to increase the number of rules we could handle simultaneously as DHS increased the resources devoted to this task.

## HUMAN RIGHTS

The Attorney General's Office conducts litigation on behalf of the Minnesota Department of Human Rights and on behalf of individuals who have filed charges of discrimination with the Human Rights Department pursuant to the Minnesota Human Rights Act. The Human Rights Act protects individuals against discrimination in employment, housing, public accommodations, public services, and education and protects against discrimination on the basis of race, sex, age, religion, disability, and status with regard to public assistance. Hearings pursuant to the Minnesota Human Rights Act occur initially and on the merits before the Office of Administrative Hearings and on an appellate level at the Court of Appeals and Minnesota Supreme Court. In the past biennium our office resolved through settlement or litigation approximately seventy-five (75) cases, and eliminated its backlog of cases awaiting handling by our attorneys. In addition to obtaining declaratory and injunctive relief for victims of discrimination, our office recovered approximately \$650,000 during the biennium in compensatory, for the most part back-pay, and punitive damages. It also negotiated a settlement in *State v. United States Steel Corporation*, which will result in the distribution of approximately \$710,000 in back wages to class members.

Two matters handled by our office should be individually noted:

1. In *State v. Kraft Foods*, the Minnesota Supreme Court held that the Minnesota Human Rights Act prohibits an employer from refusing to hire an individual on the basis that his or her spouse is already employed. This holding eliminates a significant barrier to husband/wife employment by one employer.

2. In *Roberts v. United State Jaycees*, the United States Supreme Court held that the Minnesota Human Rights Act could prohibit a national leadership training organization from refusing to grant women equal membership without violating the organization members' freedom of association. It is believed that this decision will increase the opportunity for women to participate on an equal basis with men in various community service organizations.

## HEALTH

In addition to performing all of the legal services for the Department of Health and the ten health-related licensing boards, the Attorney General is statutorily responsible for investigating all complaints received by the Department and the Boards which allege or imply a violation of the laws they are to administer or enforce. Specifically, he must respond to health-related citizen inquiries; analyze issues raised by the clients as to their legal implications; determine whether authority exists for proposed agency actions; offer legal advice and services with respect to the ongoing activities of the agencies; suggest, as appropriate, alternative courses of action; investigate all complaints filed against licensed health professionals and human services occupational registrants; and represent the health agencies in all legal proceedings in which they have an interest such as in rule promulgation hearings, disciplinary conferences, contested cases, and litigation.

As the foregoing indicates, the Attorney General's staff works closely with its clients as they fulfill their responsibilities to further the public health of the state. Some of the most significant matters in which they have been involved during the last two years are:

**1. Actions Against Licensed Health Professionals.** When people go to a health professional, they are particularly vulnerable. This is because they are placing their trust in a person in large measure due to that person's licensed status. Thus, the work of the boards plays an important public protection role. In this regard the Attorney General has represented the licensing boards as they have taken legal action against numerous licensees for such matters as incompetency; drug abuse; improper prescriptions; abuse, sexual and otherwise, of patients; and fraudulent billing practices. Some noteworthy cases are:

(a) A dentist's license was revoked because of, among other things, his abuse of patients, chemical abuse (both drugs and alcohol), threatening to kill a person, and conviction of criminal sexual assault in the fourth degree.

(b) A nurse's license was suspended because she abused the professional relationship she had with a patient by having herself appointed as conservator and then using the patient's funds for her own use and for her abuse of patients in a facility in which she worked.

(c) A doctor's license was revoked because of unprofessional conduct involving the use of unscientific methods to diagnose and treat patients.

**2. Department of Health Related Actions.** The Department of Health has multiple duties ranging from the setting and enforcement of health facility standards to the conducting of epidemiological studies and dealing with public health emergencies. Noteworthy matters involving the Attorney General in his representation of the Health Department are:

(a) Emergency mosquito spraying and related litigation: In the summer of 1983 the Department began spraying for mosquitos in central Minnesota because of the threat that they were carriers of encephalitis. The Attorney General's staff worked on emergency contracts with the companies doing the spraying and related tasks, successfully obtained from the Supreme Court an emergency reversal of a temporary restraining order on the same day that it had been issued in a special and histori-

## Public Assistance

cal midnight session of the Court, and is now defending the Department in a breach of contract suit with one of the sprayers.

(b) Defense of formaldehyde rules: The Department promulgated rules governing the amount of formaldehyde that can be in the air in residential housing units. The formaldehyde comes from the building materials. The Manufactured Housing Institute challenged the rules. Although the Supreme Court remanded the rules to the Department for further findings on the record before they can take effect, the Court's ruling established a number of beneficial principles of law consistent with arguments made by our attorneys.

(c) HMO law violations: We successfully challenged one HMO regarding several violations of the HMO laws and Department rules.

(d) Reilly Tar litigation: While PCA is the primary plaintiff, attorneys representing the Department of Health worked closely with the attorneys for PCA in coordinating Department of Health witnesses and documents regarding the case.

## EDUCATION

As counsel for all state-level educational boards and institutions, with the exception of the University of Minnesota, the Attorney General's office appears in court on behalf of these institutions. The following two cases are examples of the many cases handled by our office.

On appeal, in *Minnesota State Board for Community Colleges v. Knight*, the United States Supreme Court reversed and upheld the "meet and confer" provisions of Minnesota's Public Employment Labor Relations Act (PELRA). This decision upheld the statutory process provided by Minnesota law for professional employee consultation on employment related policy.

Another case is *Craik v. The State University Board, et al.* In 1984, the U.S. Eighth Circuit Court of Appeals generally affirmed the Minnesota District Court's decision in favor of the State University Board, but found sex discrimination in the selection of department heads for a ten-year period as well as finding sex discrimination in salary and faculty rank for a two-year period. Potential liability to the state was reduced by approximately 70 percent.

In addition, on behalf of the Teachers Board, our office investigates complaints against teachers and we respond to hundreds of letters and calls about education matters from local school officials and the general public.

## HOUSING

The Minnesota Housing Finance Agency was advised and assisted with its several real estate financing programs. As an example, the Agency was assisted in the implementation of its Home Mortgage Program by our involvement in the sale of the Agency's bonds, the drafting of all contracts and manuals relating to the acquisition and servicing of the Program's single family mortgages, the drafting and adoption of rules governing the implementation of the Program and in all legal questions relating to portfolio management of the mortgages. The Home Mortgage Program makes available below market

interest rate purchase money mortgages to low and moderate income Minnesotans. The sale of bonds made \$99,540,000 available for an estimated 2,000 mortgages for low and moderate income Minnesotans.

### UNEMPLOYMENT

The Attorney General provided assistance to the Department of Economic Security in over 400 lawsuits, the majority involving challenges to the Department's decision-making function in unemployment compensation cases. This function is significant because it supports Economic Security's efforts to uniformly and consistently implement the law which provides for unemployment compensation benefits.

The Attorney General also provided the legal services to the Department in district court, probate and bankruptcy proceedings to collect unpaid unemployment compensation taxes for a total yield of \$935,043.

### RESIDENTIAL UTILITY USERS

The Attorney General assumed the duties of the Office of Consumer Services on July 1, 1983. One of those duties is to represent the interests of residential consumers in utility matters. These duties must be contrasted with the duties of the Department of Public Service, which represents general consumer interests in utility matters. Since the Department must weigh the competing interests of large and small business users against the interests of residential customers, it has historically supported charging each customer class the costs they cause the utilities. Such positions must, by necessity, ignore or give less weight to factors such as the affordability of the rates to each customer class, the ability to pass the costs on to others, and the tax deductibility of these charges by business customers. The Attorney General on the other hand believes that those are appropriate factors to consider and in that manner supports lower rates for residential customers.

There is no comparable state agency charged with representing the interests of business users because those groups have been historically represented indirectly by the Department of Administration and by private business intervenors. It was only the residential class that was not adequately represented in these matters. Thus, the Legislature created a residential consumer advocates role which now resides with the Attorney General.

During our first year of operation, the Attorney General's Office was involved in twelve contested cases; was actively involved in five appellate cases before the District Courts, two before the Appellate Court, two before the Minnesota Supreme Court, and one before the U.S. Supreme Court.

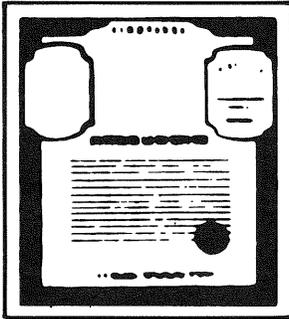
We also filed comments with regulatory agencies or participated as interested parties on sixteen matters that were resolved without formal hearings. Examples of the type of matters included in this activity are whether the sale of telephone equipment should be regulated (our position) or deregulated (Northwestern Bell's position), and whether targeted subsidy rates for residential customers should be established.

While it is difficult to place an exact dollar value on our activities, we estimate that our efforts, either alone or in conjunction with other intervenors, saved the ratepayers of Minnesota more than fifty million dollars.

## Public Assistance

### ECONOMIC DEVELOPMENT

The Minnesota Energy and Economic Development Authority was successfully represented before the Minnesota Supreme Court in **Minnesota Energy and Economic Development Authority v. Printy**. In this case, the Court upheld the constitutionality of the bond and loan insurance programs enacted by the Legislature and implemented by the Authority. These programs stimulate private investment to serve public needs for job creation, economic development, pollution control and energy conservation. Our office played a critical role in accelerating the case so that a decision from the Supreme Court was available in six months from the date the initial suit was filed, thus allowing for the sale of \$23,000,000 in bonds to fund these programs.

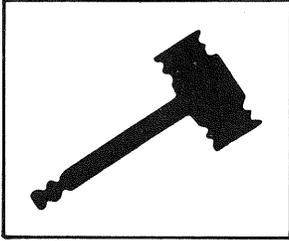


### LEGISLATION

The Attorney General's Office participates in the Minnesota legislative process by making recommendations for amendments of the laws to its state agency clients, the Governor and the Legislature, by drafting amendments, by proposing new legislation and by coordinating the review of bills passed by the Legislature before the Governor signs them.

During the past biennium the Attorney General supported and testified on behalf of numerous bills of importance to Minnesota citizens such as legislation to strengthen drunk driving laws, to provide a cleaner and safer environment through establishment of an environmental "superfund," and to provide more effective antitrust remedies for municipalities, other local units of governments and consumers.

The Attorney General has pledged an active legislative role in criminal justice issues. He supported and testified on behalf of legislation to provide stronger sanctions for home burglary and the sale and possession of stolen weapons; to provide for the forfeiture of profits from illegal drug transactions and other criminal enterprises. He also was involved in developing legislation to protect the elderly from fraudulent supplemental insurance sales, and to extend the statute of limitations in medicaid fraud cases.



# OPINIONS

The Attorney General's Office receives many requests for opinions from county, city, town attorneys or attorneys for school districts or unorganized territories, state officials and the legislature. Some requests are dropped after discussion with the person submitting the request for lack of jurisdiction, resolution without the need for an opinion, etc. Depending upon the general applicability and interest in the matter a published formal opinion or an informal letter opinion may be returned to the person requesting the opinion from the Attorney General. In Fiscal Year 1983 we prepared 18 formal and 100 informal opinions. During Fiscal Year 1984, 14 of 136 requests resulted in a formal opinion. 110 informal opinions were prepared in Fiscal Year 1984 and 12 requests were resolved without an opinion being prepared.

Several opinions rendered during the biennium warrant mention:

## 1. Public Employees

Residency requirements imposed upon city employees must be reasonable and job-related.

OP. ATTY. GEN.  
359A-19  
July 27, 1984

## 2. Retirement

A city may, consistent with the public purpose doctrine, provide an increase in hospital and medical insurance benefits for retired public employees where a city is currently providing hospital and medical insurance coverage for such retirees.

OP. ATTY. GEN.  
59a-55  
November 15, 1983

## 3. School Districts

A school district's authority to sell schoolhouse sites includes the authority to accept a purchase money mortgage to secure future payments of the purchase price.

OP. ATTY. GEN.  
622-i-8  
September 9, 1983

## 4. Resignation of Public Officers

Absence statutory or charter requirement for acceptance, resignation to take effect immediately is operative upon its authorized delivery to the appointing authority and may not later be withdrawn.

OP. ATTY. GEN.  
359a-20  
August 17, 1983

**5. Watershed Districts**

Where an existing drainage ditch is entirely within a watershed district, jurisdiction over a petition for a lateral to the ditch lies with the watershed district, even if the ditch has not been formally taken over by the watershed district from the joint county board.

OP. ATTY. GEN.  
206a  
August 4, 1983

**6. Termination of Social Security Coverage**

No state agency has the authority to terminate Social Security coverage for any group of state or municipal employees.

OP. ATTY. GEN.  
331i  
November 15, 1982

**7. Legal Expense Reimbursement**

Minn. Stat. 466.07, subd. 1(a) (1982) does not require a municipality to reimburse a council member for legal expenses in connection with defense of action seeking civil penalty for a violation of Minnesota's Open Meeting Law, Minn. Stat. 471.705 (1982).

OP. ATTY. GEN.  
471-a  
April 29, 1983

**8. Transportation of Private School Employees**

A school district which elects to transport public secondary pupils residing between one and two miles must also transport non-public pupils who reside the same distance from their private schools.

OP. ATTY. GEN.  
166a-7  
June 3, 1983

**9. Worker's Compensation Insurance**

A city is not authorized to pool its Worker's Compensation liability with that of private employers in the formation of a Worker's Compensation group self-insurance pool.

OP. ATTY. GEN.  
523e-1  
November 9, 1982

**10. Duties of County Attorney**

County Attorney does not have a general duty to prosecute misdemeanor violations occurring within a city but has duty to prosecute specific misdemeanors pursuant to certain statutes regardless of where they occur.

OP. ATTY. GEN.  
121-B-7  
October 20, 1982

KFM 5827.5 .A8 A133ax 1983/8  
Minnesota. Attorney  
General's Office.  
Biennial report

KFM 5827.5 .A8 A133ax 1983/8  
Minnesota. Attorney  
General's Office.  
Biennial report

DATE	ISSUED TO
4	

LEGISLATIVE SERVICES LIBRARY  
STATE OF MINNESOTA