

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

ANNUAL REPORT REQUIRED BY

**Minnesota Statute Sections 8.08 and
8.15, Subdivision 4 (2011)**

Fiscal Year 2012

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INTRODUCTION

This report is intended to fulfill the requirements of Minnesota Statutes Section 8.08 and 8.15, Subdivision 4, for Fiscal Year 2012 (FY 12).

The Attorney General's Office (AGO) is organized into five sections under the direction of deputy attorneys general: Agency Services, Government Services, Legal Services, Civil Law and Solicitor General. This report contains brief summaries of the services provided to state agencies and other AGO clients by these sections.

AGENCY SERVICES

ADMINISTRATIVE LAW

The Administrative Law Division provides legal representation to the departments of Administration, Agriculture, Commerce, Minnesota Management and Budget, Labor and Industry, and Natural Resources, as well as the Housing Finance Agency, Iron Range Resources and Rehabilitation Board, Minnesota State Board of Investment, Board of Water and Soil Resources, Minnesota executive branch officials, and many other boards, agencies and commissions. The Division also provides legal representation to the Minnesota State Colleges and Universities System and other state agencies in contract, lease and other transactional matters. The Division's work during FY 12 included:

- Provided advice to state agency clients on legal issues related to state government operations; assisted in drafting and revising leases, licenses and contracts and registered trademarks on behalf of a number of state agencies.
- Advised the Department of Administration on various real estate matters, including lease terminations, acquisition of property through condemnation, sales of real property, and various issues related to the construction of light rail in the capitol complex.
- Advised the Office of Administrative Hearings ("OAH") regarding municipal boundary adjustment matters.
- Provided legal representation to and/or advised the Minnesota Department of Agriculture in various matters, including food safety violations, pesticide application violations, grain and produce bond claims, data practices, draft OAH rules, the Emerald Ash Borer quarantine and the Dupont Imprelis pesticide recall.
- Provided legal representation to the Board of Animal Health regarding chronic wasting disease control, animal hold periods, bovine tuberculosis control, elk and deer regulation, and inspections.
- Provided legal representation to the Campaign Finance and Public Disclosure Board in numerous cases to enforce lobbyist and campaign finance laws.
- Advised and provided legal representation to the Department of Commerce, which is charged with regulating financial services industries in Minnesota including insurance, banks and other financial institutions, securities, mortgage lending, and the real estate industry. Worked with Commerce to resolve 59 contested cases which involved disciplinary action against licensees, including mortgage originators, real estate appraisers, real estate salespersons, collections agencies, securities salespersons, insurance salespersons and notaries public.
- Provided legal representation to the Minnesota Department of Commerce in connection with the agency's telecommunications, energy, and facilities permitting responsibilities as well as its Weights and Measures Division. Represented Commerce before the

Minnesota Public Utilities Commission, Office of Administrative Hearings, federal agencies and federal courts.

- Advised the Housing Finance Agency (“HFA”) regarding numerous loans to preserve, maintain and create low and moderate-income, single-family and multi-family housing. Provided client advice on aspects of HFA activity, including compliance with federal, state and local laws and regulations. Advised HFA on multi-family and single-family loan program requirements. Represented HFA in litigation related to real estate in which HFA is named as a defendant. Represented HFA in contested cases.
- Advised and provided legal representation to the Department of Labor and Industry (“DLI”), including the Construction Codes and Licensing Division, and the Contractor’s Recovery Fund. Handled numerous disciplinary actions against residential building contractors, remodelers, roofers, and manufactured home installers for violations, including unlicensed building contractor activity, failure to satisfy judgments, failure to complete jobs and code violations. Resolved 34 contested cases for DLI against licensed and unlicensed builders. Provided legal advice to DLI, appeared in district court, drafted pleadings involving payments to victimized homeowners.
- Provided legal representation and real estate title review to the Land Exchange Board. Prepared title opinions and drafted deeds involving land exchanges.
- Advised state agencies regarding projects funded with general obligation bonds, and facilitated bond issuances and refinancing in over \$2.2 billion in general obligation and revenue bonds. Represented the Commissioner of Minnesota Management and Budget (“MMB”) in district court actions with respect to claims made against the Torrens Assurance Fund.
- Advised Minnesota State Colleges and Universities (“MnSCU”) regarding a variety of real estate construction, contract, intellectual property and licensing matters. Drafted licensing and service-level agreements for marketing state-owned software.
- Provided legal services to the Minnesota Department of Natural Resources (“DNR”) on a wide variety of Indian law matters including continued negotiation of Phase II of the 1854 Treaty case (Fond du Lac), implementation of the 1837 Treaty protocols, White Earth settlement land transfers, and issues involving tribal sovereignty and state-tribal jurisdiction.
- Provided legal representation to the DNR in district court action regarding implementation of certain inspection activities under the DNR aquatic invasive species program.
- Provided legal representation to DNR in numerous administrative level, district court, and court of appeals matters.
- Provided legal representation to DNR on various real estate title matters, including tax forfeitures, probate proceedings, trusts, life estates, adverse possession, judgments, liens, deed restrictions, declarations and protective covenants.
- Provided legal representation to DNR forestry division on various matters, including fire suppression cost collection, bankruptcy, timber trespass, and statutory interpretation.

- Assisted DNR with real estate acquisitions totaling over \$20 million and involving approximately 23,214 acres of land.
- Represented the Peace Officer Standards and Training Board.
- Provided legal representation to the Minnesota State Board of Investment involving various investment management agreements and alternative investments.
- Provided legal representation to numerous small boards and agencies and represented those boards in contested matters.
- Provided legal representation to the Board of Water and Soil Resources ("BWSR").
- Provided legal services to the three statewide pension funds: Teachers Retirement Association ("TRA"), Minnesota State Retirement System ("MSRS"), and Public Employees Retirement Association ("PERA") regarding benefits, tax ramifications, and governance issues. Represented the funds at contested case hearings and in appeals at the Minnesota Court of Appeals.

BOARDS AND AGENCIES

The Boards and Agencies Division provides legal representation to the Departments of Corrections, Employment and Economic Development, Health, Human Rights, Labor and Industry, Veterans Affairs, and the Client Security Board.

DEPARTMENT OF CORRECTIONS

Provided a broad range of legal services to the Department of Corrections ("DOC") and state correctional facilities. Defended a high volume of lawsuits brought by inmates against the Department involving complex constitutional issues.

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

Provided advice and representation to the Minnesota Department of Employment and Economic Development ("DEED"), and participated in bankruptcy proceedings in order to protect the State's interest in collecting reemployment benefits overpayments.

DEPARTMENT OF HEALTH

Provided legal advice to the Minnesota Department of Health ("MDH") concerning its regulatory responsibilities and represented MDH in litigation and administrative enforcement actions. MDH regulates and oversees a number of different subject areas, including infectious diseases, food-borne illness outbreaks, health care facilities, environmental health hazards, health maintenance organizations (HMOs) and certain health professionals. Advised MDH with regard to legal issues concerning contracts, leases, and other transactions.

Specific examples of the division's work for the MDH in FY 12 include the following:

- ***Newborn Screening Program.*** Plaintiffs sued MDH in Hennepin County alleging that the MDH's collection, storage and use of blood samples pursuant to the Newborn Screening Program violated Minn. Stat. § 13.386, the genetic privacy law. In August 2010, the court of appeals affirmed the district court's order dismissing the case. In November 2011, the Minnesota Supreme Court reversed and remanded the case. Several groups of plaintiffs have actions pending in Hennepin County District Court seeking damages, injunctive relief, and an award of attorneys fees and costs.
- ***Licensing Laws Regarding Food, Beverages, Lodging Establishments, Public Pools, and Resorts.*** Provided legal representation to MDH in enforcement proceedings against individuals who operated unlicensed businesses, including food and beverage establishments and campgrounds and operated businesses in violation of the state food code.

A significant amount of work in FY 12 involved providing legal defense of MDH's determinations that individuals or health care facilities violated the Vulnerable Adults Act by neglecting, abusing, or financially exploiting vulnerable adults. In addition, the division provided legal defense of MDH decisions not to allow certain disqualified individuals to work in direct contact with patients or residents of health care facilities or health care service organizations (such as home care agencies). Examples of these types of cases include:

- *Sexual Abuse of Vulnerable Adults.*
- *Disqualification Appeals.*
- *Nursing Home Neglect.*

DEPARTMENT OF HUMAN RIGHTS

Represented the Department of Human Rights ("MDHR") following MDHR's determination that there was probable cause to believe that illegal discriminatory conduct has occurred. Represented MDHR in litigation regarding these matters. Involved in approximately 40 cases in FY 12. Enforcement efforts resulted in Minnesota and its citizens receiving compensatory and injunctive relief for illegal discriminatory treatment.

DEPARTMENT OF LABOR AND INDUSTRY

Provided advice and representation to the Minnesota Department of Labor and Industry ("DLI"). Engaged in litigation to enforce occupational safety and health standards, including cases regarding workplace fatalities. Engaged in litigation to enforce Minnesota labor laws, such as the Fair Labor Standards Act, including minimum wage and child labor laws. In addition to fines, litigation and negotiation efforts resulted in improvements to workplace conditions for Minnesotans.

MINNESOTA CLIENT SECURITY BOARD

Brought collection actions on behalf of the Minnesota Client Security Board to collect and preserve debt obligations to the Client Security Fund. The Fund reimburses clients who suffer economic loss because of the dishonest conduct of their attorneys.

REVENUE/SCHOOLS

OVERVIEW

The Revenue/Schools Division provides legal representation to the Minnesota Department of Revenue ("Revenue"). The division also provides legal representation to several state agencies in a wide range of bankruptcy matters in Bankruptcy Court. The division provides legal representation to the State's complex and varied educational system, handling most student and some faculty and staff-related matters for the Minnesota State Colleges and Universities ("MnSCU") system of 32 separate campuses. In addition to providing legal research to the numerous MnSCU campuses, the Division also provides legal representation to the Minnesota Department of Education, the Office of Higher Education, and the Perpich Center for Arts Education and the State Academies.

TAX LITIGATION & BANKRUPTCY

In FY 12, the division opened 107 revenue litigation and bankruptcy cases. In FY 12, the division resolved and closed 97 revenue litigation and bankruptcy cases. In addition, the division handled numerous bankruptcy matters for state agencies other than Revenue. Division attorneys appear in the Minnesota Supreme Court, the Minnesota Court of Appeals, Minnesota Tax Court, state district court, federal district court and the federal appellate court (8th Cir.) and Bankruptcy Court. The majority of new cases involve the State's income and sales taxes, including personal liability assessments against corporate officers for corporations' unpaid withholding taxes and sales taxes. The most financially significant individual cases are corporate tax refund claims and challenges to Revenue's assessments of corporate tax ranging in amounts up to \$15 million dollars.

Many of the large bankruptcy cases involved significant state contracts with vendors or service providers who subsequently declare bankruptcy. The division provides legal representation to various state agencies filing claims in bankruptcy court to recover state funds and protect the state's priority of claims.

SIGNIFICANT RESOLVED TAX LITIGATION & BANKRUPTCY CASES:

- **Corporate Tax, Computer Software Corporation.** Assisted in obtaining a favorable settlement in the Minnesota Tax Court in a suit by a large software corporation which challenged Revenue's assessment of over \$650,000 of corporate tax.
- **Corporate Tax, Multi-national Tobacco Corporation.** Assisted in obtaining a favorable settlement in the Minnesota Tax Court in a suit brought by a large

multi-national tobacco corporation which challenged Revenue's assessment of over \$3 Million and a denial of the taxpayer's refund claim of over \$1 Million.

- **Individual Income Tax.** Obtained a favorable ruling after a trial at the Minnesota Tax Court affirming the Commissioner's assessment of individual income tax against an individual who erroneously attempted to deduct gambling losses from gambling winnings.
- **Bankruptcy, Fraudulent Chapter 7 Filing of High Income Individual.** Defended Revenue in Bankruptcy Court in an action opposing an individual's fraudulent filing of a Chapter 7 Bankruptcy and the individual's attempt to discharge \$8 million dollars of combined federal and Minnesota state tax liability. Division attorneys worked closely with U.S. Department of Justice attorneys to file objections to the bankruptcy and to conduct discovery of the individual's numerous and complex financial transactions involving various trusts.

SIGNIFICANT PENDING REVENUE & BANKRUPTCY CASES:

- **Sales Tax, Electric Cooperatives.** Defended Revenue in the Minnesota Tax Court in sixteen (16) separate suits filed in Minnesota Tax Court by 16 electric cooperatives (co-ops) in which the co-ops challenge the assessment of approximately \$15 Million in sales tax.
- **Corporate Tax, Multi-National Food Corporation.** Defended Revenue in Minnesota Tax Court in a suit by a large multi-national food corporation which challenges Revenue's assessment of corporate taxes of over \$3 Million.
- **Corporate Tax, Pharmaceutical Vendor.** Defended Revenue in the Minnesota Tax Court in a suit by a pharmaceutical corporation challenging Revenue's assessment of about \$500,000 of corporate tax.
- **Bankruptcy Advising for State Agencies.** Provided legal representation to numerous state agencies, including Minnesota State Colleges and Universities, regarding their collection or claim rights when individuals file various forms of bankruptcies while owing the state agency a debt.
- **Collection Litigation for State Agencies.** Provided legal representation to numerous state agencies in seeking collection of funds owed to state agencies, defended or preserved state agencies' rights in contract actions, collection of misappropriated or stolen funds, and defended various claims challenging these collections.
- **Real Estate Matters and Property Liens for the Department.** Reviewed and responded to numerous and varied property liens, lawsuits and filings involving Revenue, including foreclosure actions, quiet title actions, land registration, notices of property sales, etc. in state and federal court.

MINNESOTA STATE COLLEGES AND UNIVERSITIES (“MnSCU”)

The division provides legal representation to the MnSCU executive staff and administrators at institutions throughout the state. It provided legal representation to MnSCU in a variety of lawsuits initiated primarily by students and some by former staff against the MnSCU institution. Examples of the Division’s work for MnSCU during the last year include:

- Faculty Member Claims of Discrimination.
- Students Claims of Discrimination.
- Dismissals and Default Judgments.
- U.S. Department of Education, Office for Civil Rights (“OCR”).
- Minnesota Department of Human Rights (“MDHR”).

STATE HIGHWAYS

The State Highway Division provides legal services to the Minnesota Department of Transportation (“Mn/DOT”). A large part of the division’s work involves eminent domain litigation. In addition, the division advises Mn/DOT and other state agencies involved in construction projects and represents the State when the contractors, subcontractors, or third parties sue the State on construction-related matters. The division also protects taxpayers by filing claims on behalf of the State against entities that perform defective work, fail to pay employees legally mandated wages, or otherwise fail to comply with contractual requirements.

The division advises client agencies on the legal ramifications of proposed activities and development projects, assists state agencies in real estate transactions and evaluates and attempts to resolve claims before litigation arises.

In FY 12, the division:

- Provided representation to the Minnesota National Guard regarding legal matters including contract review and real estate transactions.
- Provided legal representation to Mn/DOT in litigation related to eminent domain actions and appeals arising in connection with hundreds of properties that are acquired for roadways and other transportation projects such as light rail.
- Advised the Commissioner in adjudicating contested case decisions in regulatory matters such as contract debarment matters.

- Appeared before the Minnesota Court of Appeals and Minnesota Supreme Court in appeals regarding fee agreements, disadvantaged business enterprises, and commissioners' awards.
- Provided legal representation to Mn/DOT in its statutory enforcement responsibilities in attempting to recover unpaid wages for contractors' employees on Mn/DOT projects.
- Provided legal representation to and advised Mn/DOT, Minnesota State Colleges and Universities, and the Minnesota Department of Natural Resources in construction contractor claims.

SOLICITOR GENERAL

The section provides litigation services to a variety of clients. This includes legal advice and litigation for agencies and officials in all branches of government. The legal representation involves various constitutional issues, as well as employment law and tort claims. The section also serves as general counsel to the Public Utilities Commission ("PUC").

Examples of litigation include:

- Various civil rights actions brought against state officials in federal and state courts.
- The validity of a statutory cap in payment to large paper and timber companies that have enrolled forest land in a program under the Sustainable Forest Incentive Act.
- The validity of statutory prohibition against knowingly false reports of police misconduct.
- Recovery from third-parties of monies the State paid to I-35W bridge collapse victims.
- The validity of campaign finance legislation.
- A challenge to the authority of the State Board of Investment to purchase foreign government bonds.
- Challenges to Minnesota's legislative and congressional districts in light of the 2010 census.
- The validity of provisions of the Minnesota Code of Judicial Conduct prohibiting judicial candidates and judges from endorsing other candidates and from personally soliciting campaign contributions.
- State laws subjected to claims of federal preemption.

The section provides legal representation to State government on a broad range of employment issues and claims, including claims under the Minnesota Whistleblower statute, Family and Medical Leave Act ("FMLA"), Fair Labor Standards Act ("FLSA"), and claims of discrimination and harassment under federal and state anti-discrimination statutes. The section also represents the State in lawsuits involving labor issues. The section has represented state agencies in several class action lawsuits involving claims of discrimination. The section represents the State and state officials in actions filed in federal and state courts and before administrative tribunals.

The section also litigates tort claims against the State, its agencies and employees, in personal injury and property damage lawsuits. Claims include claims of negligence, medical

malpractice, defamation, infliction of emotional distress, excessive use of force, interference with business relations and violations of federal civil rights. Examples include: highway crash cases in which the Minnesota Department of Transportation is faulted for inadequate design, construction or maintenance of a state highway; suits against the Departments of Human Services and Corrections for deaths or injuries occurring in the institutions they operate; and claims against the Department of Natural Resources arising from snowmobile and ATV accidents on state trails and accidents in public waterway access sites. The section represents the State in litigation arising from the I-35W bridge collapse. Thus far, \$6 million has been recovered by the State relating to the Bridge collapse litigation, and the section saved the State over \$7.7 million in resolving claims against it related to the Bridge collapse.

The section provides representation to the PUC in both state and federal courts. In the past year, the section has defended PUC decisions in state court involving matters related to the interim rates charged by a Minnesota electric utility, the siting of a wind farm in Goodhue County, and the recovery of franchise fees by a utility from its customers. In addition, in federal court, the section defended the authority of the State to set wholesale rates for telecommunications facilities and the authority of the State to regulate the use of new coal-fired electricity in the state.

The section also advises the PUC on energy, siting and telecommunications matters that come before the agency. Energy matters for which the PUC seeks advice include: the rates and practices of electric and natural gas utilities providing energy services in the State of Minnesota. The section advises the PUC on matters related to the siting and routing of large energy facilities, including petroleum and natural gas pipelines, electric transmission lines and electric generating facilities. In addition, the section advises the Commission on telecommunications matters before the PUC, including interconnection agreements between telecommunications providers, complaints filed with the PUC alleging violations of state telecommunications law and rate and service quality issues. Finally, the section provides counsel to the PUC on issues related to the implementation of legislative directives, such as the development of the renewable energy credit tracking system.

LEGAL SERVICES

LICENSING BOARD

The Licensing Board Division performs statutory investigative services for 16 health licensing boards. The division works with the Office's Licensing Board Legal Division. The Division's investigation of complaints separates the investigative function from the Boards' quasi-judicial responsibilities. After an investigation is completed, a report with findings is forwarded to the Licensing Board Legal Division for review with the licensing board.

Some noteworthy investigations for FY 12 included:

- 1) a physician who was charged with criminal sexual assault for inappropriately touching female patients;
- 2) a psychologist whose license was indefinitely suspended for boundary violations for accepting gifts totaling over \$150,000 from a client;
- 3) a chiropractor whose license was indefinitely suspended for obtaining health care credit cards for patients by providing false income or home ownership information without their knowledge;
- 4) a licensed professional counselor whose license was revoked for 20 years for sexual contact with multiple clients and
- 5) a licensed marriage and family therapist whose license was suspended for boundary violations with clients.

During FY 12, division investigators completed over 325 investigations.

LICENSING BOARD LEGAL

The Licensing Board Legal Division provided legal representation to the State's health licensing boards, the Health Professional Services Program, Minnesota Board of Law Examiners, and the Minnesota Continuing Legal Education board.

The division advises the boards on procedural due process, statutory interpretation of disciplinary provisions, subpoena power, jurisdiction, peer review, and agency authority. The division represents the boards at disciplinary conferences, negotiates settlements, and represents the boards in contested cases. The division's work supports a wide range of regulatory activities, from initial licensure to revocation to reinstatement.

During FY 12, the attorneys in the division resolved numerous cases of professional misconduct by licensed health care providers. The division negotiated suspension agreements

and agreements requiring licensed health care providers to attend training sessions to improve substandard skills, to limit their professional practice to appropriate settings. By way of example, the division assisted the Board of Medical Practice in resolving several cases involving multiple violations of the Medical Practice Act for prescribing controlled substances, engaging in inappropriate relationships with patients, and substandard medical practice.

The division assisted the Board of Nursing in resolving multiple cases where nurses diverted prescription medications for their own use, among other substandard nursing practices. These agreements often required significant suspensions from the practice of nursing and strict conditions for return to practice. The division also worked with the various mental health boards, including the boards of Psychology and Social Work, to settle cases involving inappropriate relationships with clients.

During FY 12, the division provided legal representation to boards in contested case proceedings before the Office of Administrative Hearings involving professional misconduct, unlawful practice, and mental health/chemical dependency. The division represented the Board of Medical Practice in several contested cases where physicians engaged in improper prescribing practices. The cases resulted in public reprimands and conditions being placed upon the physicians' licenses. The division represented the Board of Dentistry in the temporary suspension of a dentist's license based upon an inability to practice due to chemical use. The case was resolved shortly before trial with the dentist agreeing to surrender his license.

In addition to contested cases before the Office of Administrative Hearings, the division provided legal representation to the boards' complaint committees directly before the boards in matters involving noncompliance with disciplinary orders, orders for mental and physical examinations, and temporary suspensions. For example, the division regularly provided legal representation to the Boards of Nursing and Medical Practice where licensees failed to maintain sobriety as required by their disciplinary orders.

BOARD OF LAW EXAMINERS

In the last year, the division defended the adverse determination of the Board of Law Examiners in situations in which applicants' failed to demonstrate the requisite character and fitness to merit admission to the Minnesota Bar. The division also represents the Board of Law Examiners in appeals from applicants who do not obtain a passing score on the Minnesota Bar Examination or are found otherwise not to meet the qualifications for admission to the Minnesota Bar.

HEALTH PROFESSIONALS SERVICES PROGRAM

The division provides legal representation to the Health Professionals Services Program, which is the health boards' diversion program for health care providers diagnosed with mental illness or chemical dependency, in establishing practice restrictions and setting boundaries for impaired physicians, nurses, pharmacists, dentists, and other health care practitioners.

STATE RESOURCES

Attorneys in the State Resources Division (“SRD”) provide legal advice and representation to the Minnesota Pollution Control Agency (“MPCA”) and the Environmental Quality Board (“EQB”).

SRD attorneys represent MPCA in carrying out its enforcement action. Many enforcement actions involve MPCA’s issuance of an administrative penalty order (“APO”) that identifies corrective actions for a party to come into compliance with environmental laws and the payment of a civil penalty in an amount up to \$10,000 for serious or repeated violations.

The division also negotiates stipulation agreements with the regulated parties to resolve more broad-based or serious violations. In situations where settlement is not reached, the enforcement matter is litigated in district court on behalf of MPCA by SRD attorneys.

In FY 12, MPCA enforcement actions resulted in approximately 105 APOs and 37 stipulation agreements. The civil penalties imposed totaled approximately \$4,121,047.50.

SRD provides legal advice and litigation services to the MPCA on a variety of non-enforcement issues. The MPCA seeks legal advice involving permitting, rulemaking, and environmental review. Additional issues include: tank leak cleanup cost recoveries; superfund cleanups; natural resource damages; asbestos removals; bankruptcies; contract disputes; hazardous and solid waste disposal; creation of conservation easements; purchases of easements and real property; groundwater contamination; federal facility superfund cleanups; individual septic treatment systems; administrative inspection orders; storm water runoff; air toxics; and federal new resource review.

In FY 12 the SRD provided legal representation to MPCA on numerous environmental review, enforcement, natural resource damage claims and permitting appeals in state district and appellate courts, the Office of Administrative Hearings, and in U.S. District Court. One such case is a lawsuit filed against Minnesota Mining & Manufacturing for natural resources damages, water pollution, and public nuisance due to pollution from manufactured PFC chemicals.

The SRD provided legal services to the MPCA on a variety of real estate and contract matters in FY 12, including several real estate transactions for MPCA’s closed landfill and tank leak programs and various contract issues often regarding liability, intellectual property, and joint powers agreement issues.

SRD provides legal advice to the Environmental Quality Board (“EQB”) with respect to the implementation of its delegated legal authorities.

ANTITRUST AND UTILITIES

The Antitrust and Utilities division investigates potential violations of state and federal antitrust laws, and enforces these laws when it uncovers evidence of anticompetitive conduct. The Minnesota Antitrust Act prohibits activities that restrain trade, including price fixing, bid rigging, group boycotts, unlawful abuses of monopoly power, and anticompetitive mergers. The division helps ensure consumers, businesses, and the government have a competitive environment in which to purchase goods and services.

The division participates in numerous coordinated investigations of potential anticompetitive conduct by multiple state and federal enforcers of antitrust laws, including other state attorneys general, the U.S. Department of Justice, and the Federal Trade Commission.

In addition, the division represents the interests of residential and small business utility consumers in the complex and changing electric, natural gas, and telecommunications industries, particularly with regard to utility rates, reliability of service, and service quality issues.

Specific examples of the division's work in FY 12 include:

- ***CenterPoint Inverted Block Rate Suspension.*** The Antitrust and Utilities Division petitioned the Minnesota Public Utilities Commission ("PUC") to suspend CenterPoint Energy's inverted block rate mechanism, whereby ratepayers paid higher rates for increased usage of gas, which was particularly harmful for low-income and elderly customers. The PUC suspended the program and ordered over \$1 million of refunds to ratepayers who were subjected to elongated billing periods at higher per-unit charges.
- ***Xcel Energy Electric Rate Case.*** Xcel filed a rate request for a \$198 million increase in rates, or 7.4 percent over existing rates. The increase was proposed to be implemented over two years, in 2011 and 2012. The Antitrust and Utilities division intervened in the rate case and contested multiple aspects of the request, including Xcel's proposed "step-in" for implementation over two years. The PUC ultimately approved a \$73 million increase (just over one-third of the original request) over two years.
- ***MERC Natural Gas Rate Case.*** Minnesota Energy Resources ("MERC") requested a \$15.6 million increase in rates, or approximately 5 percent over existing rates, and also requested a full decoupling mechanism as permitted by 2009 legislation. The Antitrust and Utilities division intervened in the rate case and contested multiple issues, including the company's sales forecast and request for full decoupling. The PUC approved a rate increase of approximately \$11 million, which remains subject to the division's and the company's requests for reconsideration of certain issues.
- ***MP Electric Rate Case.*** The Antitrust and Utilities Division opposed Minnesota Power's ("MP") request for the imposition of a \$73 million interim rate increase based on exigent circumstances affecting MP's residential ratepayers. The PUC concurred and reduced MP's interim rate increase to approximately \$48.5 million.

INFORMATION SERVICES AND LEGAL SERVICES PROCESSING

The Information Services and Legal Services Processing Divisions assists consumers, businesses and other organizations who contact it for information and assists them in obtaining settlements with other parties. Through its efforts, the division often eliminates the need for costly and time-consuming litigation for both parties.

GOVERNMENT SERVICES

DISTRICT COURT TRIAL AND APPELLATE

The District Court Trial and Appellate Division provides prosecutorial assistance to county attorneys and local law enforcement agencies in prosecuting serious crimes, and in the civil commitment of dangerous sex offenders. In addition, the division provides training for police officers and prosecutors.

The division assists counties in the prosecution of serious crimes in trial courts throughout Minnesota when requested by a county attorney. Representative work during FY 12 included:

- Convicted Thomas Fairbanks of first-degree murder for killing Mahnomen County Deputy Chris Dewey. The court sentenced Fairbanks to life in prison without parole.
- Convicted Jeffrey Silvernail of premeditated murder in Wilkin County for the death of Lori Roberts, Silvernail's former girlfriend. The court sentenced Silvernail to life in prison without parole.
- Convicted Tyron Collins of murder in Jackson County. The court sentenced Collins to 306 months in prison.
- Convicted Jeffrey Brooks of murder for killing Diane Fortenberry in her home during a burglary. The court sentenced Brooks to 420 months in prison.
- Convicted Sergio Turriabates of child abuse murder for killing Tiana Moore, age 18 months, in Renville County. The court sentenced Turriabates to 240 months in prison.
- Convicted Aaron Beaulieu and Joshua Boyd of second-degree murder for the beating death of William Nickaboine in Mille Lacs County. The court sentenced Beaulieu to 255 months in prison and Boyd to 156 months in prison.
- Convicted Jacob Cobb of second-degree murder for killing his mother, Tamara Mason, during an assault in Stevens County.
- Conducted grand jury proceedings and obtained first-degree murder indictments.
- Represented the State in post-conviction challenges to murder convictions.
- Provided continuing legal advice and assistance to a variety of boards and committees.
- Provided continuing review of Extradition paperwork for the Office of the Governor.

Division attorneys also provide assistance to county attorneys in civil commitment hearings involving dangerous sexual predators, upon the request of the county attorney. When a county attorney decides to proceed with a civil commitment petition, division attorneys assist the county attorney in preparation of the commitment petition, handling of pre-trial matters, and the handling of the commitment hearing and any appeal.

Division attorneys handled several cases relating to petitions for habeas corpus by individuals civilly committed as sexual predators. As the population of committed sexual predators increases, the number of petitions for habeas corpus from the Department of Human Services' regional treatment centers continues to grow.

The division's attorneys also represent the state at administrative hearings required by the Community Notification Act when a registered sex offender challenges the Department of Corrections' assessment of the offender's level of danger upon release from incarceration.

Additionally, the division trains law enforcement officers and prosecutors throughout the state on such topics as: sex offender commitments, predatory offender registration, stalking and harassment laws, child exploitation laws, narcotics investigations, search and seizure, suspect interrogation, evidence, working with grand juries, gang investigation and prosecution, and trial advocacy.

The division provides assistance to county attorneys in felony appeals. The cases handled in FY 2012 involved, among other crimes: murder, sexual assault, drug distribution and manufacturing, child sexual abuse and felony assault.

As part of the appellate work, the division also handled federal habeas corpus petitions challenging state-court convictions for non-metro counties during FY 12. Attorneys in the division appeared on behalf of the State on habeas petitions in federal district court and at the 8th Circuit Court of Appeals in FY 12.

Appellate attorneys assisted prosecutors by providing legal research and preparing legal memoranda, and assisted local prosecutors with legal questions.

MEDICAID FRAUD

The Medicaid Fraud Division is a federally-certified Medicaid Fraud Control Unit (MFCU) with a two-fold mission:

1. Investigate and prosecute health care providers that commit fraud in the delivery of the Medical Assistance program.
2. Review and investigate reports of vulnerable adult abuse, neglect and financial exploitation in nursing homes, group homes, foster care homes, hospitals, board and care residences, and by home care providers.

The division recovers Medicaid funds from providers that fraudulently bill the program. The division does this through local, state and federal criminal and civil prosecutions and through participation in multi-district *qui tam* litigation with other states' MFCUs.

The division receives referrals from citizens, police, county adult protection workers, county attorneys and state agencies. The staff in the division follow up on investigations to ensure that law enforcement is involved in criminal cases, and interact with county attorneys to criminally charge defendants who assault, abuse and financially exploit vulnerable adults. Division investigators assist local prosecutors by interviewing witnesses, reviewing documentation, and preparing complex financial spreadsheets that detail defendants' misconduct. Division attorneys also assist local prosecutors and accept referrals to prosecute cases around the state.

The division investigates and prosecutes Personal Care Assistants (PCAs) and Personal Care Provider Organizations (PCPOs) engaged in fraudulent billing practices. Typical schemes include billing for services not provided, billing for authorized units rather than actual units provided, billing for RN services when there is no RN employed by the agency, providing group care but billing as if one-to-one care is provided, and using identities of individuals not employed by the agency as if they were employees. Many fraud cases have a criminal neglect component because the recipient's condition is compromised due to lack of care.

One case involved the owner of a PCPO who, with the help of her husband, billed the State for services to Medicaid recipients but never actually provided the services. Investigators first cracked the case when they noticed the owner was billing services for more than 24 hours per day. MFCU investigators' subsequent investigation revealed widespread billing fraud that took place over the course of several years. The PCPO's owner entered a guilty plea to medical assistance fraud. Her husband also pled guilty to medical assistance fraud. The U.S. Department of Health and Human Services has since formally excluded the owner, and her husband, from future participation in the Medicaid program.

The unit investigated and prosecuted several cases involving financial exploitation of vulnerable adults. In one example, a greater-Minnesota sheriff's office referred a case for further investigation by the MFCU of a husband-wife team who preyed upon the modest finances of vulnerable adults. The husband-wife team also defrauded Medicaid and failed to file their income taxes. The couple pled guilty to a variety of charges including financial exploitation of a vulnerable adult, theft and failure to file taxes. The couple was then formally excluded from future Medicaid participation.

In another case, a greater-Minnesota county attorney referred an investigation to the MFCU involving theft by the financial manager of an organization that managed five assisted living facilities. The defendant's position gave her access to the company's financial accounts and to dozens of its residents' cash accounts. All of the facilities' residents were vulnerable adults. The defendant pled guilty to financially exploiting vulnerable adults and theft and was formally excluded from future Medicaid participation.

The Medicaid Fraud division also conducts civil investigations and intervenes in civil lawsuits under the Minnesota False Claims Act. The civil investigations are investigated jointly with federal agencies. Many of these cases are national in scope and involve multi-million dollar civil settlements and judgments against big pharmaceutical manufacturers, returning millions of dollars per year to the State's general fund.

In one nationwide *qui tam* case, a pharmaceutical distributor knowingly promoted the sale and use of a certain drug for unapproved uses, including use in children and adolescents, made false and misleading statements about the safety, efficacy, dosing and cost-effectiveness of the drug, and paid kickbacks to certain healthcare professionals to further its marketing strategy. As a result of the settlement \$4,499,401.53 was returned to the Minnesota treasury. The pharmaceutical distributor also pled guilty to criminal charges for introducing a misbranded drug into interstate commerce.

The division provides training to social services departments, law enforcement agencies and provider groups on financial exploitation, white collar fraud and prosecution of crimes against vulnerable adults.

PUBLIC SAFETY

The Public Safety Division provides legal representation to the Commissioner of Public Safety at thousands of implied consent hearings each year in which drivers contest the revocation of their licenses due to driving while impaired by alcohol or drugs. The division is responsible for defending actions that resulted in the collection of approximately \$3 million in driver's license reinstatement fees paid to state government over the last fiscal year. The division's litigation of overweight truck violations also resulted in substantial fines paid to the state. Efforts by the division during the last fiscal year to reduce deaths, injuries, and property damage on Minnesota's streets and highways included:

- Handled nearly 4,800 district court Implied Consent proceedings and associated appeals challenging the revocations of driving privileges under Minn. Stat. § 169A.50-.53.
- Defended the state against numerous constitutional and other challenges to the DWI, implied consent, traffic, and other public safety laws.
- Provided training on DWI procedures and traffic safety laws for law enforcement officers and prosecutors throughout Minnesota.
- Published the Attorney General's 2012 DWI/IC Elements Handbook, utilized statewide by prosecutors, judges, defense attorneys and law enforcement professionals.
- Argued appeals to the Minnesota Court of Appeals and Minnesota Supreme Court resulting from district court appearances involving the revocation, suspension, cancellation, or withdrawal of driving privileges.

The division also provides legal services to the Commissioner of Public Safety and various divisions of the Department of Public Safety including the State Patrol, Bureau of Criminal Apprehension, State Fire Marshal's Office, Office of Pipeline Safety, Office of Homeland Security and Emergency Management, Office of Justice Programs, Office of Traffic Safety, and the Driver and Vehicle Services Division. Petitions for expungement of criminal records served on the Bureau of Criminal Apprehension are monitored and challenged, where appropriate, by the division. Additionally, regulation of the private detective and security industry is enhanced by the division's representation of the Private Detective and Protective Agent Services Board.

In FY 12, nearly 18 percent of all alcohol or drug-related driver's license revocations were challenged in court, which is a significant increase over the challenge rate from prior years. Today's challenge rate follows the toughening of DWI laws by the Legislature over the years, including the ability to use an implied consent revocation to impound license plates, forfeit motor vehicles, and enhance subsequent criminal offenses to gross misdemeanor and felony violations. Because drivers have more at stake from an alcohol-related license revocation on their driving records, they are more likely to challenge the underlying revocations in the state's district and appellate courts. Moreover, the increasing complexity of our state's DWI law has created a specialized DWI defense bar that vigorously challenges more revocations. Implementation of the felony DWI law, statutory increases in the length of revocation periods, and availability of ignition interlock use for repeat offenders continue to increase the division caseload. Challenges over the accessibility to the Intoxilyzer breath test instrument's source code created a dramatic increase in the use of and challenges to the reliability of fluid testing in Minnesota. The recent decision by the Minnesota Supreme Court, *In re Source Code*, 816 N.W.2d 525 (Minn. 2012), in which the Court affirmed that the Intoxilyzer reported reliable breath test results, will significantly increase the division caseload as hundreds of cases that have been stayed for years pending a decision are processed. The Bureau of Criminal Apprehension's deployment of a new breath testing instrument in FY 12, the DataMaster DMT-G, has also resulted in challenges to the reliability of this new instrument.

The division also provides legal advice and representation to the Gambling Control Board, the Minnesota Racing Commission, the Minnesota State Lottery, and the Alcohol and Gambling Enforcement Division of the Department of Public Safety. These agencies have thousands of licensees and conduct numerous investigations each year. Many of these investigations result in contested case hearings requiring representation from this division. This division provides advice to the Alcohol and Gambling Enforcement Division on issues relating to illegal liquor sales, illegal gambling devices, and Indian gaming. The division also represents that agency in taking action against manufacturers and distributors of liquor and gambling equipment.

With regard to the Racing Commission, this division provides legal representation to the commission and stewards in appeals of disciplinary action taken against horse owners, trainers, and jockeys. The division also provides representation as it relates to the commission's daily activities and regulation at both race tracks, Canterbury Park and Running Aces Harness Park. The division provides the State Lottery with a wide range of legal advice, from internet issues to lottery retailer contract suspensions, and represents that client in disciplinary hearings against

lottery retailers and other licensees. A committee of the Gambling Control Board meets monthly with a number of licensees to discuss alleged violations of statutes and rules. The division provides representation at these settlement meetings, drafts the appropriate orders, and litigates the cases on that client's behalf in the Office of Administrative Hearings and the Minnesota Court of Appeals.

CIVIL LAW

SOCIAL SERVICES

The Social Services Division provides litigation services and legal counsel to the Minnesota Department of Human Services ("DHS"), one of the state's largest agencies. Division attorneys provide legal services to DHS in the four broad areas of Health Care, Children and Family Services, Mental Health, and Licensing.

Health Care

Division attorneys in the health care area handle matters concerning Minnesota Health Care Programs ("MHCP"), continuing and long-term care, health care compliance, and benefit recovery. MHCP includes Medical Assistance and MinnesotaCare, which together cover approximately 814,000 Minnesotans. In continuing care, division attorneys represent DHS on matters concerning nursing home rates, aging and adult services, disability services, deaf and hard-of-hearing services, and HIV/AIDS programs. In the compliance and recovery area, division attorneys handle health care compliance matters and recover payments for health care services from providers, responsible third-parties, and estates. Division attorneys also represent the state in funding disputes between the state and the federal Department of Health and Human Services.

Children and Family Services

Division attorneys in the children and family services area handle legal issues relating to public assistance programs, child support, and children protection matters. Public assistance programs include the Minnesota Family Investment Program, the General Assistance program, the Minnesota Supplemental Aid program, and the Federal Supplemental Nutrition Assistance Program ("SNAP," formerly called Food Stamps). Division attorneys represent DHS in litigation contesting the operation of these programs and advise DHS on the legal issues raised by these programs. In the child support area, division attorneys defend challenges to child support statutes and programs. In children's protection, attorneys represent DHS in matters concerning children's welfare, adoption, foster care, guardianship, tribal issues, and other matters.

Mental Health

Division attorneys in the mental health area represent DHS's adult and children's mental health programs, chemical dependency programs, state operated treatment facilities and forensic services, which include regional treatment centers, state operated community facilities, children's and adolescent behavioral health centers, the Minnesota Security Hospital ("MSH"), and the Minnesota Sex Offender Program ("MSOP"). Division attorneys represent DHS's interests in a broad spectrum of litigation including Jarvis/Price-Sheppard hearings to authorize forced medication and/or electroconvulsive therapy; Judicial Appeal Panel court trials involving

petitions for discharge from persons civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities; Section 1983 civil rights actions in state and federal district and appellate courts; petitions for Writ of Habeas Corpus in state and federal courts; as well as providing legal advice to state-operated facilities administration and staff.

Licensing

Division attorneys represent the DHS Licensing division in maltreatment cases (abuse, neglect, and financial exploitation) involving personal care provider organizations and programs licensed to provide adult daycare, adult foster care, child foster care, child care, and services for mental health, developmental disabilities, and chemical health. Division attorneys appear in administrative proceedings and appellate courts seeking to uphold disqualifications of individuals providing services in programs licensed by DHS, respond to expungement petitions in district court to preserve judicial and administrative records for disqualification, and also appear in administrative proceedings and appellate courts to uphold licensing actions against programs licensed by DHS.

The following are some examples of specific matters handled by the division:

- ***Healthstar Home Health, Inc., et al. v. Dayton, et al.***: division attorneys defended before the district court, the Minnesota Legislature's 20% reduction in reimbursements paid to personal care assistant providers for relative personal care assistant services.
- ***Supreme Court Appeal Panel***: division attorneys handled numerous hearings before the SCAP on petitions from civilly committed individuals for transfer, provisional discharge, or discharge.
- ***Jarvis/Price-Sheppard Hearings***: division attorneys handled numerous hearings to authorize medication and/or electroconvulsive therapy for patients who lack the legal capacity to make the decision themselves.
- ***Medicaid Overpayment Recovery***: division attorneys represented the State of Minnesota in connection with the recovery of overpayments in the Medicaid program.
- ***Karsjens, et al. v. Jesson, et al.***: division attorneys are defending the State of Minnesota against a class action alleging unconstitutional treatment and conditions at the Minnesota Sex Offender Program.
- ***Disqualification Matters***: division attorneys handled disqualification proceedings; for example, defending the state's disqualification of an individual who sought employment as a personal care assistant and was found to have committed third-degree criminal sexual conduct by a preponderance of the evidence.
- ***Rydberg v. Jesson***: division attorneys represented the DHS Commissioner in opposition to a petition for provisional discharge brought by an indeterminately committed sex offender.

CHARITIES/CIVIL

The Charities/Civil Division serves a number of functions. First, it oversees and regulates Minnesota nonprofit organizations and charities pursuant to the Attorney General's authority under Minnesota Statutes and common law. Second, the division maintains a public registry of charitable organizations and professional fund-raisers that operate in the State. Third, the division enforces State laws.

The Charities/Civil Division oversees laws relating to nonprofits and charitable organizations. By statute, the Attorney General's Office receives notice of certain charitable trust and probate matters filed in the district courts and has reviewed over 400 such notices in the last fiscal year. When necessary, the division acts to protect charitable assets and represents the interests of charitable beneficiaries that might otherwise be unable to represent themselves.

The division also receives notice of the dissolution, merger, consolidation, or transfer of all or substantially all assets of Minnesota charitable nonprofit corporations. It received 173 such notices in the last fiscal year. The division reviews these notices to ensure that charitable assets are protected during these transactions and used for the purposes for which they were solicited and held.

Additionally, the Charities/Civil Division responds to complaints about nonprofits and charities, and investigates allegations of fraud, misuse of funds, and other wrongdoing by nonprofits and charities. Depending on the circumstances, these investigations can lead to formal legal action, or are resolved by working with nonprofit boards to bring them into compliance with the requirements of Minnesota law.

Another oversight function of the division is to educate officers and directors of nonprofit organizations about nonprofit and charities laws in Minnesota. The division provides education to nonprofits and charities on important topics such as fiduciary duties for board members, governance issues, and solicitation and registration requirements. Typical audiences consist of: nonprofit board members, community members, leaders and volunteers, certified public accountants, and attorneys who represent nonprofits.

The division brings suit against organizations that commit charitable solicitation fraud or otherwise violate the State's nonprofit and charities laws. Through the enforcement of laws governing nonprofit and charitable organizations, the Charities/Civil Division helps combat fraudulent solicitations, deter fraud in the nonprofit sector, educate the public about charitable giving, and hold nonprofit organizations accountable for how they raise, manage, and spend charitable assets.

Minnesota law requires charitable organizations and professional fund-raisers to register and file annual reports with the Attorney General's Office. In the last fiscal year, \$574,835 in registration fees were deposited to the State's general fund. At the end of the fiscal year, the division had registered and is maintaining public files for over 9,350 charitable (soliciting)

organizations, over 2,850 charitable trusts, and almost 400 professional fund-raisers. The information from these files allows the donating public to review a charitable organization's financial information, allowing for greater transparency, and is made available to the public at the Attorney General's Office and in summary form on the "Charities" page of the Attorney General's website.

The division also enforces State laws. The following are examples of compliance reports or suits brought or resolved in the 2012 fiscal year by the Charities/Civil Division:

- The division resolved a lawsuit brought by the Minnesota Attorney General's Office against Morgan Drexen for its unlicensed debt settlement activities in the State. Morgan Drexen, an out-of-state, unlicensed debt settlement company, was hired by Minnesota consumers to help them manage their debt in the bad economy, but were left in worse financial shape after sometimes charging hundreds or thousands of dollars in unlawful fees. The lawsuit was brought under a State law passed in 2009 to regulate so-called "debt settlement" firms doing business in Minnesota. In settlement, the State enjoined Morgan Drexen from engaging in such behavior and recovered a substantial monetary judgment, including refunds for Minnesota consumers.
- The division issued a Compliance Report of Fairview Health Services' Management Contracts with Accretive Health, Inc. The review was done pursuant to Minn. Stat. Chs. 309, 501B, and 317A. The Compliance Report was based on a review of over 100,000 pages of documents and interviews and discussions with many people, including patients, employees, and hospital officers and directors. Among other things, the Compliance Report: (1) showed how the management contracts affected the hospital system as a tax-exempt public charity; (2) detailed a "culture war" showing the conflict between Accretive's aggressive collection of hospital bills and the charitable health care organization's mission to provide treatment to its patients; (3) outlined violations of the Consent Judgment entered in Ramsey County District Court between the Minnesota Attorney General and Fairview, which provided for patient protections; (4) listed privacy violations stemming from Accretive's takeover of hospitals' "revenue cycles" and other functions; (5) described violations by Accretive of federal and state debt collection laws; and (6) explained additional compliance issues as a result of Accretive's actions in and on behalf of Minnesota hospitals. After the Compliance Report was issued, Fairview took action to benefit Minnesota patients.
- The division resolved a lawsuit brought by the Attorney General's Office against Ferrellgas for its deceptive pricing of residential propane and propane-related fees. The Attorney General's Office learned that Ferrellgas, a large national propane company, did not always disclose specific per-gallon prices to consumers who filled their tanks. In addition, despite telling its customers that it would charge "competitive propane prices," or "our current market price," Ferrellgas sometimes charged rates that were significantly higher than its competitors' rates. Ferrellgas also charged undisclosed and poorly disclosed fees, including "low usage" and "no usage" fees of up to \$199 for customers who in the company's judgment did not use enough propane. In settlement, the State

enjoined Ferrellgas from engaging in such behavior and recovered a substantial monetary judgment.

- The division sued Discover credit card for its fraudulent telemarketing practices. Through its investigation, the Attorney General's Office learned that Discover enrolled customers into optional programs such as Discover's "Payment Protection Plan" and "Credit Score Tracker" plan without customers' authorization. Discover would enroll customers into the plans even though they had given no affirmative indication that they wanted the plan, thought that Discover was only sending them information, or thought they were simply receiving a "courtesy call" from Discover to describe a feature of their credit card. Discover would bill such customers through their Discover credit cards and regularly refused to provide refunds to consumers on the basis that it possessed "proof of enrollment" when in fact the recordings of telemarketing calls that Discover possessed did not prove enrollment. In settlement, the State enjoined Discover from engaging in such behavior and recovered a substantial monetary judgment.

APPENDIX A: SERVICE HOURS
By Agency or Political Subdivision for FY 2012

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Partner Agencies				
Administration--Risk Management		1,504.3		\$ 159,937.90
AURI		25.9		\$ 3,185.70
Corrections (3)	2,031.5	2,031.5	\$ 238,913.00	\$ 238,913.00
Education Department	2,625.0	2,770.9	\$ 322,875.00	\$ 340,567.70
Gambling Control Board		121.4		\$ 14,932.20
Health	4,975.0	5,289.6	\$ 594,050.00	\$ 645,982.80
Housing Finance Authority	2,750.0	2,210.8	\$ 338,250.00	\$ 271,895.40
Human Services	20,700.0	17,825.7	\$ 2,463,600.00	\$ 2,172,552.10
Iron Range Resources & Rehabilitation		1,645.3	\$ 319,200.00	\$ 202,184.90
Medical Practices Board	7,600.0	5,503.9	\$ 681,800.00	\$ 449,120.20
Minnesota Racing Commission		186.5		\$ 22,939.50
Minnesota State Retirement System		117.6		\$ 13,683.80
MnSCU	6,700.0	6,116.6	\$ 788,350.00	\$ 700,724.30
Natural Resources	6,875.0	6,344.8	\$ 836,825.00	\$ 774,195.40
Petroleum Tank Release Compensation Board		52.1		\$ 6,408.30
Pollution Control	12,900.0	11,062.6	\$ 1,586,700.00	\$ 1,360,116.80
Public Employees Retirement Association		748.2		\$ 91,902.10
Public Safety (3)	2,780.5	3,378.8	\$ 342,000.00	\$ 355,631.40
Revenue (3)	153.0	153.0	\$ 18,819.00	\$ 18,819.00
Teachers Retirement Association		129.5		\$ 15,928.50
Transportation	14,900.0	13,416.1	\$ 1,832,700.00	\$ 1,631,397.80
TOTAL PARTNER AGENCIES	84,990.0	80,615.1	\$ 10,364,082.00	\$ 9,491,018.80
Specialized Boards				
Accountancy Board		169.8		\$ 20,775.40
Animal Health Board		144.3		\$ 17,737.90
Architecture Board		257.6		\$ 31,684.80
Assessors Board		40.4		\$ 4,969.20
Barber Board		19.3		\$ 2,357.40
Combative Sports Board		8.5		\$ 990.50
Client Security Board		363.6		\$ 44,095.80
Cosmetology Examiners Board		72.9		\$ 8,966.70
Crime Victims Reparations Board		80.4		\$ 8,569.20
Land Exchange Board		5.6		\$ 688.80
Peace Officers Standards and Training Board		108.7		\$ 13,287.60
Private Detective Board		175.4		\$ 21,574.20
School Administrators Board		141.1		\$ 17,355.30
State Arts Board		35.8		\$ 4,392.40
State Fair Board		24.0		\$ 2,809.00
State Investment Board		660.5		\$ 76,060.50
Teaching Board		801.9		\$ 98,600.70
Zoological Board		37.4		\$ 3,846.70
SUBTOTAL		3,147.2		\$ 378,762.10
Health Boards/Offices				
Behavioral Health & Therapy Board		87.2		\$ 10,725.60
Chiropractic Board		1,320.8		\$ 115,623.90
Dentistry Board		3,545.7		\$ 123,120.00
Dietetics & Nutrition Practice Board		27.8		\$ 3,419.40
Emergency Medical Services Regulatory Board		280.5		\$ 32,499.50
Health Professionals Services Program		24.5		\$ 3,013.50
Licensed Drug & Alcohol Counselor Program		809.7		\$ 73,341.60
Marriage & Family Therapy Board		558.4		\$ 47,794.20
Nursing Board		3,227.2		\$ 354,551.60
Nursing Home Administrators Board		41.6		\$ 3,670.30
Optometry Board		111.8		\$ 10,858.40
Pharmacy Board		657.9		\$ 64,520.70
Physical Therapy Board		444.3		\$ 43,764.40
Podiatry Board		77.0		\$ 8,596.50
Psychology Board		1,119.4		\$ 104,680.70
Social Work Board		1,822.7		\$ 149,161.10
Veterinary Medicine Board		415.2		\$ 38,452.60
SUBTOTAL		14,571.7		\$ 1,187,994.00
Higher Education				
Higher Education Facilities Authority		0.3		\$ 36.90
Higher Education Services Office		232.4		\$ 27,996.70
SUBTOTAL		232.7		\$ 28,033.60

APPENDIX A: SERVICE HOURS
By Agency or Political Subdivision for FY 2012

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<i>Other Executive Branch Agencies</i>				
Administration Department		487.0		\$ 48,274.00
Administrative Hearings Office		234.5		\$ 28,607.00
Agriculture Department		1,092.9		\$ 133,948.20
Amateur Sports Commission		19.6		\$ 2,410.80
Black Minnesotans Council		86.3		\$ 10,405.90
Campaign Finance Board		404.9		\$ 47,998.70
Capitol Area Architectural Planning Board		10.2		\$ 1,254.60
Center for Arts Education		56.2		\$ 6,153.60
Chicano/Latino Peoples Affairs Council		16.4		\$ 1,945.70
Commerce Department		5,589.7		\$ 680,883.60
Corrections Department (3)		3,342.4		\$ 403,992.70
Corrections Department/Community Notification		928.6		\$ 92,074.80
Disability Council		14.5		\$ 1,772.50
Employment & Economic Development Department		2,412.5		\$ 226,975.50
Executive Council		11.8		\$ 1,451.40
Explore Minnesota Tourism		8.3		\$ 850.40
Faribault Academies		15.5		\$ 1,818.50
Firefighter Training & Education Board		4.4		\$ 541.20
Geographic & Demographic Analysis		3.3		\$ 224.40
Governor's Office		381.7		\$ 46,949.10
Human Rights Department		594.7		\$ 66,256.60
Indian Affairs Council		1.5		\$ 102.00
Judiciary Courts		1,565.5		\$ 191,847.00
Labor and Industry Department		3,545.5		\$ 435,563.00
Law Examiner's Board		311.0		\$ 37,912.00
Lawyer's Professional Responsibility Board		10.7		\$ 1,316.10
Legislature		363.9		\$ 31,444.20
Legislature Auditor		0.9		\$ 110.70
Mediation Services Bureau		71.0		\$ 8,733.00
Military Affairs Department		128.4		\$ 15,793.20
Minnesota Commission Serving Deaf & Hard of Hearing People		3.2		\$ 393.60
Minnesota Management & Budget		811.8		\$ 97,964.90
Office of Enterprise Technology		137.2		\$ 10,616.60
Ombudsman for Mental Health & Developmental Disabilities		7.0		\$ 756.50
Ombudsperson for Families		40.5		\$ 4,981.50
Public Defender, Local		41.0		\$ 5,043.00
Public Defender, State		20.8		\$ 2,558.40
Public Safety Department (3)		22,470.5		\$ 2,429,741.00
Public Utilities Commission		3,053.0		\$ 372,032.00
Revenue Department (3)		6,450.3		\$ 792,319.90
Rural Finance Authority		31.3		\$ 3,849.90
Secretary of State		1,608.8		\$ 193,625.40
Sentencing Guidelines Commission		36.6		\$ 4,501.80
State Auditor		5.7		\$ 646.10
State Historical Society		34.7		\$ 4,268.10
State Lottery		5.5		\$ 665.50
Veterans Affairs Department		205.9		\$ 24,610.70
Veterans Homes Board		805.9		\$ 99,043.20
Water & Soil Resources Board		310.9		\$ 38,240.70
SUBTOTAL		57,794.4		\$ 6,613,469.20

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2012				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
OTHER GOVERNMENT				
Aitkin County Attorney		245.7		\$ 22,510.10
Anoka County Attorney		267.8		\$ 23,011.90
Becker County Attorney		295.8		\$ 36,383.40
Beltrami County Attorney		563.1		\$ 57,507.80
Benton County Attorney		134.9		\$ 12,093.70
Big Stone County Attorney		322.0		\$ 35,431.50
Blue Earth County Attorney		249.3		\$ 30,190.90
Carlton County Attorney		401.1		\$ 40,056.80
Carver County Attorney		476.8		\$ 54,004.40
Cass County Attorney		180.0		\$ 21,342.50
Chippewa County Attorney		1,470.1		\$ 150,203.80
Chisago County Attorney		1,632.7		\$ 154,875.10
Clay County Attorney		287.0		\$ 32,573.00
Clearwater County Attorney		829.0		\$ 87,089.50
Cook County Attorney		104.5		\$ 12,204.50
Cottonwood County Attorney		29.5		\$ 2,088.50
Crow Wing County Attorney		300.6		\$ 28,008.80
Dakota County Attorney		324.7		\$ 25,874.60
Dodge County Attorney		284.7		\$ 27,818.60
Douglas County Attorney		521.9		\$ 59,078.70
Fillmore County Attorney		3.9		\$ 265.20
Freeborn County Attorney		395.1		\$ 43,773.80
Goodhue County Attorney		9.0		\$ 1,107.00
Hennepin County Attorney		6,265.8		\$ 532,999.90
Hubbard County Attorney		6.4		\$ 787.20
Isanti County Attorney		75.2		\$ 9,249.60
Itasca County Attorney		512.3		\$ 54,306.40
Jackson County Attorney		1,111.1		\$ 120,225.80
Kanabec County Attorney		450.4		\$ 50,834.20
Kandiyohi County Attorney		1,102.6		\$ 114,081.80
Kittson County Attorney		41.2		\$ 4,341.60
Koochiching County Attorney		1,001.4		\$ 110,346.20
Lake County Attorney		222.4		\$ 21,723.20
Lake of the Woods County Attorney		9.7		\$ 1,193.10
Le Sueur County Attorney		379.4		\$ 32,316.70
Lincoln County Attorney		132.8		\$ 16,334.40
Lyon County Attorney		218.4		\$ 26,863.20
Mahnomen County Attorney		1,839.3		\$ 198,354.40
Marshall County Attorney		1,253.2		\$ 133,397.60
Martin County Attorney		67.8		\$ 7,871.90
Meeker County Attorney		123.8		\$ 11,597.40
Mille Lacs County Attorney		1,337.5		\$ 146,522.00
Morrison County Attorney		716.5		\$ 67,944.50
Mower County Attorney		295.7		\$ 33,236.10
Nicollet County Attorney		64.1		\$ 7,389.30
Nobles County Attorney		289.5		\$ 30,042.50
Norman County Attorney		379.1		\$ 37,059.30
Olmsted County Attorney		167.4		\$ 18,703.70
Otter Tail County Attorney		893.7		\$ 94,695.60
Pine County Attorney		399.7		\$ 41,859.10
Pipestone County Attorney		13.6		\$ 1,672.80
Pope County Attorney		37.4		\$ 4,391.20
Ramsey County Attorney		1,708.3		\$ 129,166.40
Redwood County Attorney		281.2		\$ 34,532.60
Renville County Attorney		127.4		\$ 14,102.70
Rice County Attorney		1,422.5		\$ 142,336.00
Roseau County Attorney		74.9		\$ 8,349.20
Scott County Attorney		268.6		\$ 24,457.80
Sherburne County Attorney		88.7		\$ 9,232.60
Sibley County Attorney		508.4		\$ 49,388.20
St. Louis County Attorney		498.0		\$ 55,242.50
Stearns County Attorney		755.9		\$ 85,556.20
Steele County Attorney		1,111.9		\$ 106,816.20
Stevens County Attorney		517.8		\$ 50,725.90
Swift County Attorney		23.8		\$ 2,927.40
Todd County Attorney		769.9		\$ 66,108.70
Wabasha County Attorney		204.6		\$ 24,725.80
Wadena County Attorney		74.9		\$ 8,882.70
Waseca County Attorney		0.3		\$ 36.90
Washington County Attorney		170.9		\$ 20,047.20
Watsonwan County Attorney		2.5		\$ 170.00
Wilken County Attorney		639.4		\$ 67,932.20
Winona County Attorney		548.3		\$ 57,788.40
Wright County Attorney		669.2		\$ 67,731.10
Various Local Governments		70.2		\$ 8,469.60
SUBTOTAL		39,274.2		\$ 3,922,561.10

APPENDIX A: SERVICE HOURS
By Agency or Political Subdivision for FY 2012

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
TOTAL NON-PARTNER AGENCIES SUBDIVISIONS		115,020.2		\$ 12,130,820.00
TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)		80,615.1		\$ 9,491,018.80
TOTAL NON-PARTNER AGENCIES SUBDIVISIONS		115,020.2		\$ 12,130,820.00
GRAND TOTAL HOURS/EXPENDITURES		195,635.3		\$ 21,621,838.80
Notes:				
(1) The projected hours of service were agreed upon mutually by the partner agencies and the AGO. Actual hours may reflect a different mix of attorney and legal assistant hours than projected originally.				
(2) Billing rates: Attorney \$123.00 and Legal Assistant \$68.00				
(3) A number of agencies signed agreements for a portion of their legal services.				

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES
FOR FY 2012, BY AGENCY**

AGENCY		Amount
Administration	\$	405,085.03
Housing Finance Agency	\$	3,913.66
Labor and Industry	\$	6,423.79
Minnesota Management & Budget	\$	82,580.00
MnDOT	\$	12,650.00
MnSCU	\$	8,102.01
Public Safety	\$	5,949.09
TOTAL	\$	524,703.58

**APPENDIX B: SPECIAL ATTORNEY EXPENDITURES
BOND COUNSEL FOR FY 2012, BY AGENCY**

AGENCY	Amount
Employment and Economic Development	\$ 92,555.16
Higher Education Facilities Authority	\$ 26,713.48
Higher Education Services Office	\$ 163,824.26
Housing Finance Agency	\$ 203,069.30
Minnesota Management & Budget	\$ 330,354.61
MnSCU	\$ 19,527.22
Rural Finance Authority	\$ 3,390.95
TOTAL	\$ 839,434.98
NOTE: Certain bond fund counsel are paid from proceeds.	



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

September 9, 2011

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (651) 296-6196

Stephanie L. Beckman
Meeker County Attorney
325 North Sibley Avenue
Litchfield, MN 55355-2155

Dear Ms. Beckman:

I thank you for your correspondence of August 9, 2011.

You ask whether the offices of county commissioner and Housing and Redevelopment Authority (HRA) commissioner are incompatible offices "based upon statute, case law and/or the 2005 Legislative Research Department Information Brief on the Compatibility of Offices."

As you recognize, Assistant Attorney General Kenneth E. Raschke, Jr. substantially answered this question in a letter he sent to the then-counsel for the Meeker County HRA, Steven Besser, in 2009. Referencing a 1976 Attorney General's Office opinion holding that the offices of county commissioner and HRA commissioner are incompatible, Assistant Attorney General Raschke wrote:

[T]he conclusion of the 1976 opinion was based, in part upon the language Minn. Stat. § 375.09 (1974), which prohibited a county board from appointing one of its members to "any office or position of trust or emolument." The quoted language was deleted by 1986 Minn. Laws, ch. 416, § 1, and replaced with the current, narrower prohibition against a county commissioner holding "another elected office." Consequently that statute is no longer relevant to service as an HRA Commissioner.

Finally, in Minn. Laws 1979, ch. 180, § 1, the legislature amended the statutes pertaining to municipal HRAs to include the following provision:

Any member of the governing body of a municipality may be appointed and may serve as a commissioner of the authority in and for the municipality.

Minn. Stat. § 462.425, subd. 6 (1980), now encoded as Minn. Stat. § 469.003, subd. 6 (2008). Thus, the legislature provided express authority, which the 1976 opinion had found to be lacking, for members of municipal governing bodies to serve as HRA commissioners, but similar language was not added to the section now coded as Minn. Stat. § 469.006 relating to appointment of commissioners for

county and multi-county HRAs. However, Minn. Stat. § 469.007, subd. 1 (2008) provides:

Subdivision 1. **Powers.** A county or multicounty authority and its commissioners shall, within the area of operation of the authority, have the same functions, rights, powers, duties, privileges, immunities, and limitations as are provided for housing and redevelopment authorities created for cities, and for the commissioners of those authorities. The provisions of law applicable to housing and redevelopment authorities created for cities and their commissioners shall be applicable to county and multicounty authorities and their commissioners, except as clearly indicated otherwise.

Consequently, there would appear to be a basis upon which a county attorney might conclude the Op. Atty. Gen. 358-A-3, November 29, 1976 is no longer applicable.

(2009 Raschke letter at 2-3.)

You note in your correspondence that Assistant Attorney General Raschke's 2009 letter answered the question at issue "without reference to the 2005 Legislative document"—that is, without reference to "the 2005 Legislative Research Department Information Brief on the Compatibility of Offices." This appears to be what led you to write for further clarification.

The legislative document you mention is available at <http://www.house.leg.state.mn.us/hrd/pubs/comptoff.pdf>. The table contained within that document lists county commissioner and "County Housing Redevelopment Authority member" as incompatible offices, citing as authority for this proposition the 1976 Attorney General's Opinion addressed by Assistant Attorney General Raschke in the passage quoted above. As you know, information briefs from the House Research Department are often useful as introductions to dense legal subjects, but they have no legal authority unto themselves.

Very truly yours,



NATHAN J. HARTSHORN
Assistant Attorney General

(651) 752-1252 (Voice)
(651) 297-1235 (Fax)



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

February 9, 2012

Mr. Mark Vierling
Woodbury City Attorney
Eckberg Lammers
1809 Northwestern Avenue
Stillwater, MN 55082

Dear Mr. Vierling:

I thank you for your correspondence dated January 6, 2012 on behalf of the City of Woodbury ("City").

You state that the City participates in the State cooperative purchasing program under Minn. Stat. § 471.345, subd. 15(a), but does not purchase all of its needs for supplies through the State's program. The City would like to take advantage of pricing opportunities available through other cooperative groups and national organizations under Minn. Stat. § 471.345, subd. 15(b). You think there may be an implication from the wording in subdivision 15(b) that would preclude a municipality that has participated in the State cooperative purchasing program under subdivision 15(a) from also participating in cooperative purchasing opportunities offered pursuant to subdivision 15(b). Based upon the foregoing, the City requests an opinion from this Office as to whether subdivision 15(b) allows the City to participate in cooperative purchasing offered by other cooperative groups and national organizations. You also ask if the City is allowed to participate in cooperative purchasing opportunities under subdivision 15(b), what is its intent and scope in application.

As noted in Op. Atty. Gen. 629a, May 9, 1975 (copy enclosed), this Office does not generally issue legal opinions on hypothetical or factual matters. Since the answer to the City's question may turn on a number of factors, including whether the other cooperative groups and national organizations qualify for cooperative purchasing and utilize the procurement methods required by Minn. Stat. § 471.345, subd. 15(b), our remarks must be somewhat limited. I can, however, offer the following comments, which I hope you will find helpful:

First, Minn. Stat. § 471.345, subdivision 15 provides:

Cooperative purchasing. (a) Municipalities may contract for the purchase of supplies, materials, or equipment by utilizing contracts that are available through the state's cooperative purchasing venture authorized by section 16C.11. For a contract estimated to exceed \$25,000, a municipality must consider the availability, price and quality of supplies, materials, or equipment available

through the state's cooperative purchasing venture before purchasing through another source.

(b) If a municipality does not utilize the state's cooperative purchasing venture, a municipality may contract for the purchase of supplies, materials, or equipment without regard to the competitive bidding requirements of this section if the purchase is through a national municipal association's purchasing alliance or cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations.

Second, the plain language of Minn. Stat. § 471.345, subd. 15 does not preclude municipalities that have already used the State cooperative purchasing program under subdivision 15(a) for some purchases, from using non-State cooperative purchasing associations or alliances under subdivision 15(b) for any other purchases, provided that the requirements of subdivision 15(b), including a competitive bid or quotation process, are met. Subdivision 15(a) permits, but does not require, municipalities to use the State cooperative purchasing program. The only requirement in subdivision 15(a) is that for contracts estimated to exceed \$25,000, a municipality must consider the terms and conditions available if the purchase were made through the State's program before purchasing from another source. The plain meaning of the wording in subdivision 15(b) addresses the situation where a municipality chooses not to utilize the State cooperative purchasing program for a particular purchase. It authorizes municipalities to utilize alternative sources of cooperative purchasing as described therein. Subdivision 15(b)'s authorization to use alternative sources does not refer to, and is not conditioned upon, a municipality's history of utilization of the State's program, or absence thereof, for its prior purchases. Where statutory language is clear and unambiguous, the plain language of the statute must be given effect as written. Minn. Stat. §§ 645.08(1); 645.16 (2010); *Mc Carty v. Village of Nashwauk*, 286 Minn. 240, 175 N.W.2d 144 (1970).¹

Finally, the State cooperative purchasing program is administered by the Minnesota Department of Administration. You should contact Brenda Willard, Assistant Director, of its Materials Management Division for information about the scope and application of

¹ Although reference to the legislative history of Minn. Stat. § 471.345, subd. 15 is not necessary because the wording is unambiguous, nothing indicates an intent to preclude a municipality that has used the State's program from making other purchases through the method provided in subdivision 15(b). In the 2009 legislative session, proposed amendments to require municipalities to use the State's program were not enacted, and the Minnesota Department of Administration supported having municipalities consider, but not be required, to use the State program. The current wording of Minn. Stat. § 471.345 ultimately was enacted as part of the omnibus state government bill (SF 2082) by the legislature in 2009.

Mr. Mark Vierling
February 9, 2012
Page 3

subdivision 15(b). You may contact Ms. Willard at:

Brenda Willard, Assistant Director
Materials Management Division
Minnesota Department of Administration
50 Sherburne Street
St. Paul, MN 55155
(651) 201-2402

I hope the foregoing comments are helpful to you.

Very truly yours,



MICHELE M. OWEN
Assistant Attorney General

(651) 757-1322 (Voice)
(651) 297-1235 (Fax)

Enclosure: Op. Atty. Gen. 629-a, May, 9, 1975

AG: #2943559-v1 mmu



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

March 9, 2012

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

The Honorable Julianne E. Ortman
State Senator
Chair, Senate Tax Committee
120 State Capitol Building
75 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1606

Dear Senator Ortman:

I am responding to your correspondence dated February 12, 2012. You request an opinion from this Office concerning the authority of the Iron Range Resources and Rehabilitation Board ("IRRRB") to transfer money from the Taconite Economic Development Fund ("TEDF") to another State special fund, the Taconite Environmental Protection Fund ("TEPF").

For reasons noted in Op. Atty. Gen. 629a, May 9, 1975, Attorney Generals' opinions are not generally addressed to factual determinations. Notwithstanding these limitations, I can offer the following comments, which I hope you will find helpful.

First, as you know, the IRRRB held a meeting in Eveleth on October 20, 2011. The record indicates that the IRRRB considered project proposals that had been submitted to it by five ore producers for the expenditure of TEDF monies. See Minn. Stat. § 298.227 (2010) (describing the procedure for releasing TEDF monies).¹ A copy of the cover memorandum of IRRRB Commissioner Tony Sertich to the IRRRB regarding these agenda items is attached as Addendum B. At the IRRRB's next meeting on December 14, 2011, it considered project proposals for the expenditure of TEDF monies submitted by two additional ore producers.

At the abovementioned meetings, the IRRRB adopted seven resolutions regarding the seven TEDF project proposals.² Each resolution is substantially similar in form and was approved by the affirmative vote of more than seven Board members. Each resolution approved the expenditure of only a portion of the total available TEDF monies that were potentially available to each ore producer. Each resolution also explicitly denied a portion of the total

¹ A copy of the TEDF statute as it currently reads is attached as Addendum A for your reference. This statute was amended by 2007 Minn. Laws ch. 135, art. 5, § 1 and 2009 Minn. Laws ch. 78, art. 7, § 16 to add, among other text, the provisions that are highlighted in Addendum A.

² These IRRRB resolutions (Resolutions 12-009 through 12-0013, and Resolutions 12-017 through 12-018) are attached as Addendums C-J.

available TEDF monies that were potentially available to each ore producer.³ The amount of TEDF monies denied by the IRRRB for all seven ore producers totaled \$4,474,341.00. The sixth recital of each resolution indicates the IRRRB's legal rationale for the actions that it took in response to those TEDF expenditure proposals. This recital states:

WHEREAS, the Legislature in 2007 and 2009 amended the TEDF Statute to authorize the Board to deny funding for a TEDF project and act instead to authorize the expenditure of such TEDF Funds under the provisions of the Taconite Environmental Protection Fund Act; Minnesota Statutes section 298.222 to 298.225 ("TEPF Statute").

Second, in response to your letter a review was made of the proceedings of the IRRRB at its October and December meetings. The records of those proceedings are available in video form at the www.irrrb.org under the "Board Meetings" heading. The only comments offered by Assistant Attorney General Douglas Gregor with respect to the Board's proposed TEDF funding actions were in the following exchange with the Board Chair:

Chair Rep. Rukavina: Mr. Gregor would you care to weigh in on this.

Mr. Gregor: Mr. Chair/Senator Gazelka. I believe the rationale that the Chair has alluded to is laid out in the fifth Whereas -- no the Sixth Whereas -- in the Resolution. It is namely that the Legislature in 2007 and by subsequent action in 2009, amended the TEDF statute to authorize the Board to deny funding for a TEDF project and to act instead to authorize the expenditure of those funds under the TEPF Act. So the Legislation, as the Chair has alluded to, is very clear on the rationale for the Board's actions."

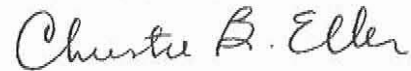
No written opinion has been issued by this Office in regard to this issue and the comments of Mr. Gregor reiterated the rationale that the Board was espousing for its actions. The Board's action was based upon the language of Minn. Stat. § 298.227(a), which reads as follows: "If a proposed expenditure is not approved by at least seven Iron Range Resources and Rehabilitation Board members, the funds must be deposited in the Taconite Environmental Protection Fund under sections 298.222 to 298.225." The Board's interpretation of section 298.227(a) appears to be reasonable.

³ Specifically, if you refer to Addendum B, page 2, each resolution approved the expenditure of the "15.4 c-p-t" portion of the total available TEDF monies for each ore producer, but denied the expenditure of the "14.7 c-p-t" portion of the total available TEDF monies for each ore producer.

The Honorable Julianne E. Ortman
March 9, 2012
Page 3

I hope this information is helpful to you.

Very truly yours,

A handwritten signature in cursive script that reads "Christie B. Eller".

CHRISTIE B. ELLER
Deputy Attorney General

(651) 757-1440 (Voice)
(651) 297-1235 (Fax)

cc: The Honorable Tony Sertich
Commissioner, Iron Range Resources and Rehabilitation Board

AG: #2963774-v1



LORI SWANSON
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

April 2, 2012

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

Todd G. Roth
Obenland Roth & Nelson
605 South Lakeshore Drive, Suite 1000
Glenwood, MN 56334

Dear Mr. Roth:

I thank you for your correspondence dated March 6, 2012, on behalf of the City of Glenwood ("City").

You state the City of Glenwood's Housing Redevelopment Authority (HRA) is a "continuing active authority" pursuant to Minn. Stat. § 469.05, subd. 4, which was legally formed and had an active program prior to June 30, 1971. You indicate that Pope County (County) established a Pope County HRA in 1994. You note that the Pope County HRA has been imposing taxes within the City's area of operation without a City resolution allowing such taxation and that in July 2011, Pope County HRA established itself as a Pope County HRA with Economic Development Authority (EDA) powers pursuant to Minn. Stat. § 469.1082.

The City notified the County that it was exercising its right not to participate with the Pope County HRA with EDA powers and the County is attempting to tax property within the City's area of operation claiming it is acting as a county HRA and is choosing not to exercise its EDA powers.

Based upon the foregoing, you present several questions on behalf of the City, as follows:

1. May the County HRA extend its taxing district to include a city without the City's approval of the County's authority to function therein?
2. May the County HRA extend its taxing district to include a city with an active City HRA without the City's approval of the County's authority to function therein?
3. May the County HRA with EDA powers extend its taxing district to include a city with an active City HRA without the City's approval of the County's authority to function therein?
4. May the County HRA with EDA powers selectively chose to tax as a HRA without EDA powers when it has already established itself as an HRA with EDA powers?

While this Office has statutory authority pursuant to Minn. Stat. § 8.07 to provide legal opinions at the request of attorneys for local units of government, opinions are generally only provided in response to a request from the attorney for the local government whose powers or duties are at issue. This is because this Office does not sit as a court of law to adjudicate disputes but rather only issues advisory opinions to provide legal guidance to a local unit of government whose authority or obligations are at issue. As this Office noted in construing Mason's Minnesota Statutes of 1927, Section 115 (now codified as Minn. Stat. § 8.07):

"the Attorney General is permitted to render official opinions on matters of city administration only upon request of the city attorney and on matters relating to county administration only upon request of the county attorney."

Op. Atty. Gen. 629a, July 1, 1935, (Unofficial) (copy enclosed).

Furthermore, for reasons noted in Op. Atty. Gen. 629a, May 9, 1975 (copy enclosed), this Office does not normally issue opinions on hypothetical or moot questions. That being said, I can, however, offer the following comments which I hope you will find useful.

1. May the County HRA extend its taxing district to include a city without the City's approval of the County's authority to function therein?

Pursuant to Minn. Stat. § 469.033, subd. 6, all of the territory included within the area of operation of a housing and redevelopment authority constitutes a taxing district for the purpose of levying and collecting special benefit taxes as provided in that subdivision. If the City HRA has been a "continuing active authority" legally formed prior to 1971 the express language of the above following provisions may provide guidance.

The area of operations and limitations applicable to a county HRA are described in Minn. Stat. § 469.005, subd. 1:

The area of operation of a county authority shall include all of the county for which it is created, and in case of a multicounty authority, it shall include all of the political subdivisions for which the multicounty authority is created; *provided, that a county authority or a multicounty authority shall not undertake any project within the boundaries of any city which has not empowered the authority to function therein as provided in section 469.004 unless a resolution has been adopted by the governing body of the city declaring that there is a need for the county or multicounty authority to exercise its powers in the city.* A resolution is not required for the operation of a Section 8 program or a public housing scattered site project.

(Emphasis added.)¹

Minn. Stat. § 469.008 provides additional guidance with respect to city HRAs created prior to June 8, 1971:

Nothing in sections 469.004 to 469.008 shall alter or impair the powers and obligations of city housing and redevelopment authorities created under Minnesota Statutes 1969, chapter 462, prior to June 8, 1971, nor shall the area of operation of such city authority be included within the area of operation of a county or multicounty authority created pursuant to sections 469.004 to 469.008. With the consent of the board of commissioners of a city authority and the governing body of the city, a city authority may become a part of a county or multicounty authority upon assumption by the authority of the obligations of the city authority.

(Emphasis added.)

2. May the County HRA extend its taxing district to include a city with an active City HRA without the City's approval of the County's authority to function therein?

The above answer to your first question equally applies to this question.

3. May the County HRA with EDA powers extend its taxing district to include a city with an active City HRA without the City's approval of the County's authority to function therein?

Minn. Stat. § 469.1082, subd.5, provides that the area of operation of a county economic development authority includes cities and townships that have adopted resolutions to participate. You state that the City has not passed such a resolution. I also note the subdivision further provides that if a city or township passes a resolution prohibiting the county HRA from operating within the city or township, the city's or township's property taxpayers are not subject to property taxes levied for a county economic development service provider.

4. May the County HRA with EDA powers selectively chose to tax as a HRA without EDA powers when is has already established itself as an HRA with EDA powers?

¹ I note that the subdivision provides an exception to the resolution requirement in situations involving operation of a Section 8 program or a public housing scattered site project.

Todd G. Roth
April 2, 2012
Page 4

Since you state that the County HRA asserts it is not exercising its EDA powers, your question is hypothetical or moot and falls outside this Office's advisory opinion process. Op. Atty. Gen. 629A, May 9, (1975).

I thank you again for your letter.

Sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

THOMAS M. O'HERN, JR.
Assistant Attorney General

(651) 757-1259 (Voice)
(651) 297-1235 (Fax)

Enclosures: Op. Atty. Gen. 629a, July 1, 1935
Op. Atty. Gen. 629a, May 9, 1975

AG: #2974379-v1



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 441
4261 HWY. 53 S.
EVELETH, MN 55734-0441
TELEPHONE: (218) 735-3042

April 3, 2012

Mr. Brian C. Bengtson
Lano, O'Toole & Bengtson, Ltd.
Attorneys for the City of Bovey
515 NE Second Avenue
Grand Rapids, MN 55744

Re: Attorney General Opinion Request

Dear Mr. Bengtson:

I thank you for your correspondence of February 29, 2012, on behalf of the City of Bovey.

You indicate that the City of Bovey has issued bonds to obtain funds to pay costs incurred in regard to certain City water and sewer utility improvements and associated street restoration work. You included a copy the City of Bovey resolution approving and directing the issuance of the City's "\$1,600,000 General Obligation Sewer and Water Revenue Bonds, Series 2009A". The provisions of the Resolution indicate that the City pledged toward the repayment of those bonds the net revenues derived from the City's utilities, from certain special assessments, and, with respect to the sewer portion, from ad valorem taxes levied by the resolution. You also included a redacted version of a typical utility service invoice that includes line item charges for "bonding" and for "capital improvement." You ask whether the City is authorized to include charges for bonding and capital improvements on the utility bills sent to its utility customers.

As you know, the Office of Attorney General has limited jurisdiction under Minnesota law. For instance, for reasons noted in Op. Atty. Gen. 629a, May 9, 1975 (copy enclosed), Attorney Generals' opinions do not generally make factual determinations or review the validity of an ordinance. Under Minnesota law a municipality, such as the City of Bovey, is largely autonomous and is governed by elected officials who are directly accountable to the citizens and who are responsible to make policy decisions related to the City. Notwithstanding these limitations, I can offer the following comments, which I hope you will find helpful.

First, statutory cities such as Bovey are authorized under the provisions of Minn. Stat. ch. 429 and in Minn. Stat. § 444.19 (copy enclosed) to issue general obligation revenue bonds in the manner provided in Minn. Stat. ch. 475 for the purpose of financing the costs of local improvement projects, for the payment of the interest costs of the bonds, and for payment of issuance costs of those bonds. Water and sewer improvements are among the local improvements specifically authorized. Minn. Stat. § 429.021 (copy enclosed).



Second, local governments have several sources of revenue, including real estate taxes, special assessments and charges or user fees. Real estate taxes are assessed based upon the value of the property taxed and are used to fund most local government activities. Special assessments, which are often used for funding local improvements such as roads, are assessed on the basis of benefits to the property served by the improvements. User fees are charged as authorized by statutes on the basis of the cost of providing certain services to persons or property. In the case of funding for the construction, improvement repair and maintenance costs of utility systems, cities are generally authorized to use all of these revenue sources. *Johnson v. City of Eagan*, 584 N.W.2d 770 (Minn. 1998); Minn. Stat. §§ 429.051, 444.075, and 444.20 (copies enclosed).

Third, Minn. Stat. § 444.075, subd. 3, Paragraph (a) authorizes a city to impose just and reasonable charges for city water and sewer systems. The specific criteria applicable to a council's determination of the reasonableness of sanitary sewer charges are set forth in subdivision 3a. Additional provisions in Minn. Stat. § 444.075 address a city council's ability to impose minimum service charges and connection fees, how the reasonableness of the charges is to be determined, and the purposes for which the revenues so generated may be used. Courts in Minnesota and elsewhere have distinguished between the standards for imposition of special assessments and those for other authorized charges. Minn. Op. Atty. Gen. 387-B-10 (March 8, 1993) (copy enclosed). The Minnesota Supreme Court upheld a substantial connection charge against property which had previously been found not to be benefitted by the improvements in question. *Nordgren v. City of Maplewood*, 326 N.W.2d 640 (Minn.1982) (copy enclosed). The Court held that connection charges were separately authorized by Minn. Stat. § 444.075 and could be imposed notwithstanding, or in addition to, special assessments. The Court relied upon *Crown Cork & Seal Co. v. City of Lakeville*, 313 N.W.2d 196 (Minn.1981) (copy enclosed), which held that while the lack of benefit to the plaintiff's property is material in evaluating a special assessment under Minn. Stat. § 444.075, subd. 4, it is not a requirement for imposition of separate charges permitted pursuant to subdivision 3, which only requires that the charges be "just and equitable." *Nordgren*, 326 N.W.2d at 642. See also *Grace Episcopal Church v. City of Madison*, 385 N.W.2d 200 (Wis.App.1986) (copy enclosed).

Finally, Minn. Stat. § 412.221 (copy enclosed) sets forth specific powers of the councils of statutory cities. Subdivisions 6, 11, and 31 grant a city council the power, by ordinance, to provide and regulate sewers, sewers systems, and water works within the jurisdiction of the City. In prescribing charges or rates for sewer and water works systems, the action of the governing body should be evidenced by adopting a proper ordinance.¹ See e.g. Op. Atty. Gen. 1952, No. 197, p. 346 (copy enclosed). Whether or not the specific formula developed by the City of Bovey for fixing the charges are just and reasonable as applied to the properties served is an issue of fact which is outside our opinion function. See, e.g. Op. Atty. Gen. 629a, May 9, 1975.

1. See discussion of the use of ordinances versus resolutions in LEAGUE OF MINNESOTA CITIES, HANDBOOK FOR MINNESOTA CITIES (2012) available at www.lmc.org/handbook.

Mr. Brian C. Bengtson
April 3, 2012
Page 3

I thank you again for your correspondence.

Sincerely,



DOUGLAS J. GREGOR
Assistant Attorney General
(218) 735-3013 (Voice)
(218) 735-3050 (Fax)

Enclosures: *Johnson v. City of Eagan*
Nordgren v. City of Maplewood
Crown Cork & Seal Co. v. City of Lakeville
Grace Episcopal Church v. City of Madison
Minn. Stat. §§ 412.221, 429.021, 429.051, 444.19, 444.20 and 444.075
Op. Atty. Gen. 629a, May 9, 1975
Op. Atty. Gen. 387-B-10, March 8, 1993
Op. Atty. Gen. 1952, No. 197, p. 346

AG: #2983589-v1



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

May 8, 2012

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

John K. Carlson
Pine County Attorney
635 Northridge Drive, Suite 310
Pine City, Minnesota 55063

Dear Mr. Carlson:

I am responding to your correspondence dated March 19, 2012.

You request an opinion from this Office whether the Pine County Board of Commissioners ("Board") has authority to approve or deny out of state travel requests for training or conferences by the Pine County Sheriff or his employees. The Board believes its travel policy is consistent with Minn. Stat. § 471.661 (2010), and requires the Sheriff, as well as other county elected officials, to obtain the Board's prior approval of expenses for out of state travel for conferences and training. You indicate the Pine County Sheriff disagrees and believes the policy as applied to the Sheriff is inconsistent with the process established in Minn. Stat. § 387.20, subdivisions 2, 6 and 7 (2010). Under that statute, the Board is to annually set the Sheriff's salary and a budget for the Sheriff's office and, in the event the Sheriff disagrees with the Board's decisions, the Sheriff may appeal to the District Court within 15 days. The Sheriff further asserts authority over how to spend the approved sums during the calendar year as long as spending is consistent with the terms of that budget so that he need not request additional permission of the Board for out of state or other specific items of expenditure.

While you have framed the question of the Board's authority over the Sheriff's out of state expenditures as a question of law, the issue turns at least in part on facts such as the specific terms of the Board's travel policy and detailed provisions of its annual budget. For the reasons noted in Op. Atty. Gen. 629a, May 9, 1975 (copy enclosed), opinions of this Office do not construe the meaning of local ordinances nor undertake to resolve facts. Notwithstanding these limitations, I can offer you the following comments, which I hope you will find helpful:

First, Minn. Stat. § 471.661 (2010) (copy enclosed) provides in pertinent part, as follows:

The governing body of each . . . county, . . . must have on record a policy that controls travel outside the state of Minnesota for the *applicable elected officials* of the relevant unit of government. The policy must be approved by a recorded vote and specify:

(1) when travel outside the state is appropriate;

- (2) applicable expense limits; and
- (3) procedures for approval of the travel.

* * * *

(Emphasis added). Section 471.661 requires the Board to adopt a policy that applies to all “applicable elected officials,” which would include a county sheriff, and makes no reference to Minn. Stat. § 387.20, which provides the statutory processes regarding the establishment by a county board of a sheriff’s salary and budget.

Second, Minn. Stat. § 387.20, subd. 6 (2010) (copy enclosed)¹ requires a county board to set the budget of the sheriff’s salary and “other expenses necessary in the performance of the duties of said office.” Section 387.20, subd. 7 allows the Sheriff to appeal the Board’s salary or budget decision to the district court. If the court finds that the board acted unreasonably, the court may set the amount of the sheriff’s salary or budget. Section 387.20 makes no reference to the county board’s authorization to adopt a travel policy under Section 471.661. The Minnesota Supreme Court held that a county sheriff is a quasi-judicial officer as distinguished from other county officials. In *Amdahl v. County of Fillmore*, 258 N.W.2d 869 (1977) (copy enclosed), the Court reviewed the trial court’s review of county board action regarding salary and budgets, as appealed by the county sheriff, auditor, treasurer and recorder. While the Court noted “the fixing of rates of compensation for county officers and the budgets of their offices is essentially a legislative or administrative act, not a judicial one,” the Court concluded “[a] sheriff is a quasi-judicial officer, and that the determination of his rate of compensation by the judiciary upon de novo consideration did not offend the constitutional mandate of separation of powers.” *Id.* (citing *Cahill v. Beltrami County*, 224 Minn. 564, 29 N.W.2d 444, 446 (1947) (copy enclosed)).²

Third, the two statutes at issue are silent as to application of the other statutes’ terms. The legislative committee hearings concerning House File 1481 relating to out of state expenses enacted as Minn. Stat. § 471.661, contain no discussion regarding concern about the travel expense of county sheriffs or about a county board’s setting of the budget of a sheriff’s office.³ Where the terms of statutes, as here, do not conflict irreconcilably

¹ Minn. Stat. § 387.20 applies to counties with a population less than 75,000. It is our understanding that this statute applies to Pine County.

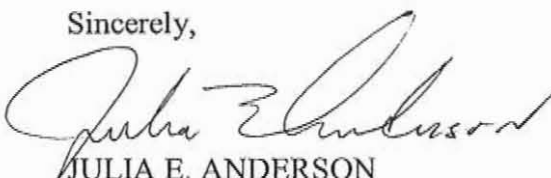
² In contrast, the Court stated that, as to county officials other than the sheriff, the legislature provided for more restrictive review; it did not provide for de novo review such that, upon a showing that the board acted unreasonably the matter must be remanded to the board for further proceedings consistent with that finding. *Amdahl v. County of Fillmore*, 258 N.W.2d 869, 873-874 (1977), distinguished on other grounds by *Madison v. Commissioner of Public Safety*, 585 N.W.2d 77 (Minn. App. 1998).

³ Copies of unofficial partial transcription of the following discussions are enclosed for your convenience: HF 1481 (House Floor, April 22, 2005), HF 1481 (Conference Committee, May 16, 2005), and HF 1481 (Conference Committee, May 17, 2005).

with one another, the legislature requires that both laws be construed so as to give effect each statute. Minn. Stat. § 645.26, subd. 1 (2010) (copy enclosed). Minn. Stat. §§ 471.661 and 387.20 can be construed so as to give each law effect. While the Board's travel policy makes several references to approval of an annual travel expense, it makes no specific reference to the process in Minn. Stat. § 387.20 for approval of the Sheriff's budget. Without the specific budgets, it is not clear whether the budgets contained an approval of travel.

Finally, we suggest that the Board evaluate its travel policy and consider amending it to state specifically how it is intended to apply to the Sheriff's office consistent with the requirements of both statutes.

Sincerely,



JULIA E. ANDERSON
Assistant Attorney General

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Enclosures: Op. Atty. Gen. 629a, May 9, 1975
Minn. Stat. § 471.661 (2010)
Minn. Stat. § 387.20 (2010)
Amdahl v. County of Fillmore, 258 N.W.2d 869 (1977)
Cahill v. Beltrami County, 224 Minn. 564, 29 N.W.2d 444 (1947)
Unofficial partial transcription of the following legislative discussions: HF 1481
(House Floor, April 22, 2005), HF 1481 (Conference Committee, May 16, 2005), and HF 1481 (Conference Committee, May 17, 2005)
Minn. Stat. § 645.26 (2010)



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

July 10, 2012

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Ms. Darlene Rivera
Mahnomen County Attorney
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Dear Ms. Rivera:

I thank you for your correspondence received June 11, 2012, on behalf of Mahnomen County.

You request an opinion from this Office regarding the scope of authority of the Mahnomen County Board of Commissioners ("Mahnomen County Board") to fill a vacancy on the board of managers that governs the six-county Wild Rice Watershed District ("Watershed District"). In 2006, the Mahnomen County Board petitioned the Minnesota Board of Water and Soil Resources ("BSWR") to redistribute the Watershed District's seven managers in order to give Mahnomen County greater representation. By order dated June 28, 2006 ("2006 Order"), the BSWR approved the petition, identified "manager areas" within the Watershed District and selected the Mahnomen County Board to appoint an additional manager (for a total of two) to represent the manager area that includes Mahnomen and Clearwater counties. In 2010, the Mahnomen County Board appointed Raymond Hanson to fill a vacancy on the board of managers. In March of 2012, a BSWR staff member informed the Mahnomen County Board he believed that Mr. Hanson was an "ineligible appointee" because Mr. Hanson is not a resident of Mahnomen or Clearwater counties although he resides within the Watershed District. You ask whether Mr. Hanson is an eligible appointee; and if not, are all of his votes from 2010 to the present offered as the manager appointed by Mahnomen County to the Wild Rice Watershed District valid?

First, the Watershed Law, Minn. Stat. ch. 103D (relevant provisions enclosed), provides that the BSWR, upon petition, establishes the watershed district, defines its boundaries, and appoints the first board of managers to terms not longer than three years. Minn. Stat. §§ 103D.101, .205, subd. 3, and 103D.225, subd. 4. Once a watershed district is established, it is "a political subdivision of the state[.]" Minn. Stat. § 103D.225, subd. 6. After appointment by the BSWR of the first board of managers, county boards appoint successive managers. Minn. Stat. § 103D.311, subd. 2. County boards are required to fill vacancies on a board of managers. Minn. Stat. § 103D.311, subd. 2(c). Eligibility criteria for such appointments are described in Minn. Stat. § 103D.311, subd. 1 as follows:

103D.311 Appointment of managers

Subdivision 1. Manager qualifications. A person may not be appointed as a manager who:

(1) is not a voting resident of the watershed district; and

(2) is a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager.

Circumstances that create a manager vacancy include resignation, as set forth in Minn. Stat. § 351.02. Minn. Stat. § 103D.315, subd. 7. To fill a vacancy, the appointing county board must provide public notice that invites interested persons to submit their names for consideration. Minn. Stat. § 103D.311, subd. 2(c) and (d).

Second, unlike managers of metropolitan watershed districts,¹ the location of a person's residence within a non-metropolitan watershed district is not a criterion for county board appointment of a manager. Minn. Stat. § 103D.311, subd. 1 states only that the person must be a resident of the watershed and not hold particular government offices. The legislature did not include explicit residency requirements for appointment of the first board of managers or in the case of managers appointed following redistribution by the BWSR. Section 103D.301 states in relevant part, as follows:

103D.301 Distribution of manager positions

Subdivision 1. More than one affected county. If more than one county is affected by a watershed district, the board must provide that managers are distributed by residence among the counties affected by the watershed district.

Subdivision 2. More than five affected counties. If more than five counties are affected by a watershed district, the board may provide for the orderly distribution of the managers by identifying the manager areas within the watershed area to appoint a manager.

Subdivision 3. Redistribution. (a) After ten years from the establishment of the watershed district, the county board of commissioners of a county affected by the watershed district may petition the board to redistribute the managers. After holding a public hearing on redistributing the managers, the board may redistribute the managers among the counties affected by the watershed district if the redistribution is in accordance with the policy and purposes of this chapter.

There is no requirement that a county board must limit its selection of a manager for a particular area (of a non-metropolitan watershed district) to those watershed residents who live within that

¹ For a metropolitan watershed district, the BWSR appoints the first board of managers "according to their residence within an area", Minn. Stat. § 103D.225, subd. 4(b) (emphasis added), after which county boards appoint "by residence of the manager appointed", Minn. Stat. § 103D.311, subd. 3(c) (emphasis added) (also applies to city-initiated watersheds).

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area. If the legislature had intended to so limit the discretion of a county board it could have done so, as it did for metropolitan manager appointments. It did not.

Third, when a statutory question involves the failure of expression rather than the ambiguity of expression, a court is not free to substitute amendment for construction and thereby supply the omissions of the legislature. *Id.* at 146-147 (citing a civil matter, *Tracy State Bank v. Tracy-Garvin Coop.*, 573 N.W.2d 393, 395 (Minn. App. 2003) (other citations omitted)).

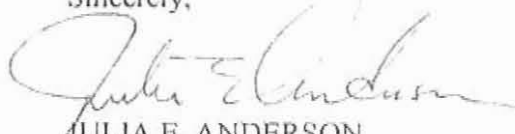
Fourth, the Board's 2006 Order gives appointment authority to the Mahnomen County Board to appoint another manager, for a total of two, to the board of managers but does not expressly limit the Mahnomen County Board's authority to appoint as its manager-representatives only persons who live in Mahnomen or Clearwater counties.

Fifth, for these reasons we conclude that the Mahnomen County Board's appointment of Mr. Hanson is reasonably consistent with the 2006 Order. Resignation created a vacancy; the Mahnomen County Board was required to fill the vacancy; and Mr. Hanson met the statutory criteria for appointment to that vacancy on the board of managers because he was a resident of the Watershed District and did not hold certain public offices.

Finally, we note the common law *de facto* officer doctrine. An appointee is presumptively entitled to possession of the office until he resigns, is properly removed or is held not to be entitled to exercise such duties in a proper judicial proceeding. *See, e.g., Huff v. Sauer*, 243 Minn. 425, 427, 68 N.W.2d 252, 254-55 (1955) (copy enclosed); Op. Atty. Gen. 330c-3, January 4, 1993 (copy enclosed) (Park commissioner may continue in *de facto* capacity after expiration of terms pending selection of successors).

I thank you again for your correspondence.

Sincerely,



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Enclosures: Minn. Stat. §§ 103D.001 - .315
Metropolitan Sports Facilities Com'n v. County of Hennepin
State v. Tracy
Minnehaha Creek Watershed District
Huff v. Sauer
Op. Atty. Gen. 330c-3, January 4, 1993

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