

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

**ANNUAL REPORT REQUIRED BY**

**Minnesota Statute Sections 8.08 and 8.15  
Subdivision 4 (2015)**

**Fiscal Year 2016**

# TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
ADMINISTRATIVE LAW .....	2
SOLICITOR GENERAL .....	15
STATE SERVICES .....	19
PUBLIC SERVICES .....	25
REGULATORY LAW .....	36
APPENDIX A: Recap of Legal Services.....	A-1
APPENDIX B: Special Attorney Appointments .....	B-1
APPENDIX C: Attorney General Opinions of Interest .....	C-1

## **INTRODUCTION**

This report is intended to fulfill the requirements of Minnesota Statutes Section 8.08 and 8.15, Subdivision 4, for Fiscal Year 2016 (FY 2016).

The Attorney General's Office (AGO) is organized into five sections under the direction of deputy attorneys general: Administrative Law, Solicitor General, State Services, Public Services and Regulatory Law. This report contains summaries of the services provided to state agencies and other AGO constituencies by these sections.

# **ADMINISTRATIVE LAW**

---

## **EDUCATION**

The Education 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 (Minnesota State) system of 32 separate campuses. In addition to providing legal representation to the numerous Minnesota State campuses, the division also provides legal representation to the Minnesota Department of Education, the Office of Higher Education, the Perpich Center for Arts Education, the State Academies and the State pension boards (MSRS, PERA and TRA).

### **MINNESOTA STATE COLLEGES AND UNIVERSITIES (MINNESOTA STATE)**

In FY 2016, the division provided legal representation to Minnesota State in a variety of lawsuits initiated primarily by students and some by former staff against Minnesota State. The division provided legal advice on a wide range of issues, including student disciplinary proceedings, employment law matters and various additional issues that arise in the context of educating, counseling and housing students. Examples of the division's work for Minnesota State during the last year include:

- Student Appeals of Disciplinary Expulsions and Suspensions. Provided legal representation to Minnesota State at the Office of Administrative Hearings against claims by students that the campus should not have expelled or suspended them for violations of Student Codes of Conduct.
- Student Claim of Disability Discrimination. Provided legal representation to Minnesota State in federal district court against claims by a student that the campus did not adequately accommodate her disability.
- Provided legal representation in federal court to Minnesota State against claims brought by female members of a sports team that was eliminated as a result of an effort in cost-containment and program realignment.
- Student Claim of Violation of First Amendment Rights. Provided legal representation to Minnesota State in federal district court and at the 8<sup>th</sup> Circuit Court of Appeals against a claim by a student that the school violated his First Amendment Rights when he used social media to threaten and harass another student regarding her disability accommodation.
- U.S. Department of Education, Office for Civil Rights (OCR), the U.S. Equal Employment Opportunities Commission (EEOC) and the Minnesota Department of Human Rights (MDHR). Provided legal advice and obtained several dismissals and findings of no discrimination of numerous complaints against various Minnesota State employees and Minnesota State campuses concerning alleged unlawful discrimination and retaliation.

## **MINNESOTA DEPARTMENT OF EDUCATION (MDE)**

The division provides legal representation to MDE, which administers and oversees the State's K-12 education programs, including charter school issues, state and federal special education programs, data practices, graduation standards and testing, the child and adult food care program, and state financial audit issues. The division's legal work for MDE included:

- Educational Adequacy Lawsuit. Seven parents (as guardian and next friend of minor children) and a non-profit corporation brought a putative class action alleging that the education the children receive in the Minneapolis and St. Paul Public Schools is inadequate on the basis of race and socioeconomic status. Three charter schools intervened in the case. Plaintiffs allege violations of the Education, Equal Protection and Due Process clauses of the Minnesota Constitution and a claim under the Minnesota Human Rights Act. The Complaint named the State of Minnesota, Governor Dayton, Minnesota Senate, Minnesota House, Senate President, Speaker of the House, Minnesota Department of Education, and its Commissioner. This case is currently being litigated at the district court and appellate court.
- Child and Adult Food Care Program. Providing legal representation to MDE in regards to approvals of non-profit organizations seeking to be sponsors in the Federal Child and Adult Care Food Program.
- Special Education. Successfully defended MDE at the Eighth Circuit Court of Appeals in an appeal challenging MDE's oversight of special education due process hearings.
- Maltreatment of Minors in Schools. Provided legal representation to MDE in maltreatment hearings contesting MDE's findings of maltreatment by school staff. Successfully defended two appeals of MDE's final determination of maltreatment to state district court.

## **OFFICE OF HIGHER EDUCATION (OHE)**

The division provides OHE with legal representation on a variety of issues that arise from OHE's administration of federal and state higher education programs, including (1) student loan and financial aid programs; (2) registration of private and out-of-state public higher education institutions that provide programs in Minnesota; and (3) licensure of private business, trade and correspondence schools.

## **STATE PENSION BOARDS**

- Division staff provided the state's pension boards - Minnesota State Retirement System (MSRS), Public Employees Retirement Association (PERA) and Teachers Retirement Association (TRA) - with legal advice and representation on a variety of issues arising from the boards' administration of the state pension funds.
- Staff also represented the TRA in several fact-finding conferences when members challenged benefit changes.

## HEALTH, LABOR, CORRECTIONS, AND ADMINISTRATIVE LAW

The Health, Labor, Corrections, and Administrative Law Division provides legal representation to the Departments of Corrections, Employment and Economic Development, Health, Human Rights, Labor and Industry, Veterans Affairs, the Client Security Board, and the Bureau of Mediation Services. Work of the division included:

### 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 DOC involving complex constitutional issues. Current and recent litigation includes:

- ***Ligons and Michaelson v. Minnesota Department of Corrections, et al.*** Two inmates sued the DOC and several of its employees in federal court, alleging that the inmates were denied proper medical care for Hepatitis C virus (HCV). The inmates plan to seek court approval to represent several classes of Minnesota inmates, which could include more than 1,000 inmates. Similar lawsuits have been brought against corrections departments in other states, as inmates infected with HCV seek new and costly direct-acting antiviral medication. Plaintiffs allege that the DOC violated their rights under the Eighth Amendment and the Equal Protection Clause, along with other claims. AGO staff are defending the DOC and its employees.
- ***Defense of Prison Employees/Policies.*** Division staff frequently defend prison employees and DOC policies against challenges under the federal Civil Rights Act (section 1983). For instance, cases litigated in FY 2016 involved the rights of inmates regarding mail, medical care, and access to court, as well as claims involving correctional officers' use of force to keep inmates and prisons secure. Division staff also defended the DOC in cases inmates brought under the Americans with Disabilities Act and the Religious Land Use and Institutionalized Persons Act.
- ***DOC Sentence Administration.*** Division staff filed a brief on behalf of the DOC and argued before the Minnesota Supreme Court to defend the DOC's method of calculating the length of a sex offender's conditional release period in a habeas corpus appeal. Division staff also defended the DOC at the Minnesota Court of Appeals in habeas corpus cases brought by offenders who challenged the DOC's calculation of their sentence expiration date, extension of incarceration, revocation of release, and imposition of prison discipline.

### DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

Provided legal representation to the Minnesota Department of Employment and Economic Development and participated in bankruptcy proceedings to protect the State's interest in collecting unemployment benefits overpayments. In the past fiscal year, cases brought by this Office prevented the discharge in bankruptcy of more than \$1.2 million of improperly received benefits.

## DEPARTMENT OF HEALTH

The Minnesota Department of Health (MDH) has authority to regulate and oversee 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. Provided legal representation to MDH concerning its regulatory responsibilities and in litigation and administrative enforcement actions.

Specific examples of the division's work for MDH in the past fiscal year include the following:

- **Medical Cannabis.** Division staff are defending MDH in a data practices lawsuit brought by an applicant that was not chosen as one of the two medical cannabis manufacturers in Minnesota. The applicant seeks an order from Ramsey County District Court that would prohibit MDH from releasing its application data to the public. Division staff are also defending the Minnesota Department of Administration in this lawsuit. The applicant sued that agency because it issued an IPAD opinion declaring that application data pertaining to another unsuccessful applicant was public data. All parties brought motions for summary judgment, which are pending before the court.
- **Infectious Disease.** Division staff petitioned the probate court on MDH's behalf to seek an order allowing law enforcement to hold a person suspected of having infectious Tuberculosis. The court granted MDH's petition after an emergency evidentiary hearing.
- **Funeral Homes.** The division provided legal representation to MDH in administrative proceedings against funeral homes and morticians that failed to follow Minnesota's statutory requirements with regard to embalming, cremation, and business practices.
- **Asbestos Contamination.** Division staff provided legal representation to MDH in actions to revoke licenses of companies that fail to comply with the Minnesota Asbestos Abatement Act and Rules.
- **Food, Beverage, and Lodging Establishments.** The division provided legal representation to MDH in enforcement proceedings against restaurants, hotels, and manufactured home parks. For instance, an unlicensed caterer was ordered to pay a \$10,000 administrative penalty after serving food that caused at least 22 Minnesota customers to become ill. That order was affirmed by the Minnesota Court of Appeals. See *In re Fay's Homestyle Catering*, A15-967, 2016 WL 1619230 (Minn. Ct. App. Apr. 25, 2016).
- **Body Art Technicians and Body Art Establishments.** The division provided legal representation to MDH in enforcement proceedings against unlicensed body art technicians and unlicensed body art establishments for not meeting the minimum licensure requirements.

A significant amount of work in the past fiscal year 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:

- ***Maltreatment of Vulnerable Adults.*** The division provided legal representation to MDH at the Minnesota Court of Appeals after MDH staff determined that a staff person at a nursing home had maltreated a vulnerable adult by neglect. The court of appeals upheld MDH's decision. *See In the Matter of R.M.M. v. State of Minn., Dep't of Health*, No. A15-1854, 2016 WL 3582771 (Minn. Ct. App. July 5, 2016). The division also provided legal representation to MDH when the owner of a Housing With Services facility challenged MDH staff's finding of maltreatment against her. The court of appeals upheld MDH's decision and the Minnesota Supreme Court denied further review. *See Balenger v. State of Minn., Dep't of Health*, No. A15-226, 2015 WL 7357192 (Minn. Ct. App. Nov. 23, 2015), *rev. denied* (Minn. Feb. 16, 2016).
- ***Disqualification Appeals.*** In one case, the division provided legal representation to MDH in a case in which a health care worker was disqualified based on theft convictions. MDH had previously granted the worker a set aside, so that she could continue to provide direct-care services to vulnerable adults despite a 2007 felony theft conviction. When she pled guilty to a new misdemeanor theft charge in 2015, however, MDH refused to set aside the new disqualification. The Minnesota Court of Appeals affirmed MDH's decision. In another case, MDH disqualified a health care worker from working with vulnerable adults after finding that there was a preponderance of the evidence to believe she committed an act that meets the definition of felony second degree assault. The division provided legal representation to MDH staff in administrative proceedings where the staff prevailed.

## DEPARTMENT OF HUMAN RIGHTS

Provide legal representation to the Department of Human Rights (MDHR) following MDHR's determination that there is probable cause to believe that illegal discriminatory conduct has occurred. For instance, division staff provided legal representation to MDHR in a lawsuit alleging that an employer discriminated against its former employee by firing him after he disclosed mental health issues and provided legal representation to MDHR in a lawsuit alleging that an employer fired an African-American employee because of his race. Division staff also filed an *amicus curiae* brief on behalf of MDHR before the Minnesota Supreme Court, arguing that the supreme court should not adopt a more restrictive standard of proof for pregnant women trying to prove employment discrimination under the Minnesota Human Rights Act.

## DEPARTMENT OF LABOR AND INDUSTRY

Provided legal 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 prevailing wage, sick leave, and child labor laws. Examples of recent litigation include:

- ***OSHA Enforcement Action Regarding Trench/Excavation Standards.*** DLI staff cited an employer for failing to properly slope a trench or provide an adequate protective system to protect an employee working in the trench and for failing to provide a safe means of egress from the trench. The trench was approximately eight feet deep with nearly vertical walls. The employer argued that it was not responsible for the violations because the employee was not authorized to be at the worksite and because the employee working in the trench did not follow work safety rules. Division staff provided legal representation to DLI in a contested case proceeding at OAH and obtained a decision upholding DLI's citations against the employer. The ALJ found that DLI proved that the employer had knowledge of the violative condition and rejected the employer's affirmative defense of employee misconduct.
- ***OSHA Enforcement Action to Enforce Process Safety Management Standard for Hazardous Chemicals.*** DLI's OSHA staff issued citations identifying numerous areas where a biodiesel fuel plant violated state and federal requirements meant to manage the dangers associated with processing hazardous chemicals. Division staff provided legal representation to DLI at an administrative hearing where the employer argued that the Process Safety Manager standard did not apply. DLI prevailed at the hearing, before the OSHA Review Board, and at the Minnesota Court of Appeals. *See Ever Cat Fuels v. Peterson*, A15-1365, 2016 WL 2946068 (Minn. Ct. App. May 23, 2016).

#### **DEPARTMENT OF VETERANS AFFAIRS**

Provided legal representation to the Minnesota Department of Veterans Affairs (MDVA). For instance, the division provided legal representation to the MDVA in discharge proceedings that included the resident failing to pay monthly maintenance charges and the inability of the Veterans Home to meet the medical needs of a resident.

#### **MINNESOTA CLIENT SECURITY BOARD**

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

#### **STATE AGENCIES DIVISION**

The State Agencies division provides legal representation to the Departments of Administration, Commerce, Employment and Economic Development, Minnesota Management and Budget, Labor and Industry, and the Minnesota Housing Finance Agency, the Iron Range Resources and Rehabilitation Board, Minnesota State Board of Investment, Minnesota executive branch officials, and many other boards, agencies, councils, 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 fiscal year 2016 included:

## **BOARDS AND COUNCILS**

- Division staff provided legal representation to boards or complaint committees at board meetings and in contested-case proceedings when boards pursued action against licensees or unlicensed individuals who should have been licensed. Boards that the division provided legal representation include: Accountancy; Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design; Barbers; Cosmetologist Examiners; Peace Officers Standards and Training; School Administrators; and Teaching. The division also provides legal representation to the Crime Victims Reparations Board in distributing funds to claimants affected by crimes, the Campaign Finance and Public Disclosure Board in enforcing lobbyist and campaign finance laws, and a variety of other state councils, commissions, ombudspersons, and other small boards. During the last fiscal year, division staff also provided legal representation to the Board of Teaching in district court litigation and subsequent appellate proceedings.

## **BONDS AND INVESTMENTS**

- Division staff provided legal representation the Commissioner of Minnesota Department of Management and Budget (MMB) in district court actions involving claims against the Torrens Assurance Fund and general fund, including tax forfeiture of real estate.
- Staff provided legal representation to MMB with respect to bond issuance and refunding by MMB of more than \$1 billion in general obligation and trunk highway bonds.
- Staff provided legal representation to the Minnesota State Board of Investment (MSBI) on various investments and investment-management agreements. Examples of the division's work in the last fiscal year include:
  - Reviewing and negotiating 20 alternative investments totaling about \$2.3 billion made by the MSBI with resource, real estate, private equity, and mezzanine asset managers.
  - Assisting the Public Facilities Authority in connection with its first issuance in several years of more than \$350 million in new money and revenue refunding bonds.

## **COMMERCE**

- Division staff provided legal representation to the Department of Commerce in numerous contested cases involving license applications, disciplinary actions against licensees, and enforcement actions against unlicensed individuals or businesses engaged in activities requiring licensure. Cases involved business and individuals in a variety of industries, including mortgage originators, real estate appraisers, real estate salespersons, collections agencies, securities salespersons, insurance salespersons, and notaries public. Staff also provided legal representation to the Real Estate Education, Research and Recovery Fund

in enforcement and district court proceedings. Examples of the division's work in the last fiscal year include:

- Continuing to defend Commerce in district and appellate courts in a still-pending lawsuit challenging the constitutionality of the state's unclaimed-property laws.
- Legal representation to Commerce in an enforcement proceeding against a credit services organization and debt settlement servicer for numerous violations of applicable laws. The company's registrations were ultimately revoked and the company agreed to pay a \$150,000 civil penalty.
- Division staff provided legal advice in defending Commerce in a lawsuit brought by a former employee who alleged wrongful termination and violations of the state data practices laws.
- Provided legal representation to Commerce in proceedings that resulted in the revocation of two bullion coin dealers' registrations. One dealer misappropriated nearly \$1 million of consumers' funds instead of filling their orders. In addition to revocation, the dealer agreed to pay full restitution and to pay a civil penalty if it did not abide by certain conditions. The other dealer mistakenly received \$200,000 from a consumer in an erroneous wire transfer but refused to return the money and then spent it. The consumer had already obtained a judgment against the dealer. In addition to revocation of its license, the dealer agreed to pay a civil penalty.
- Provided legal representation to Commerce in an enforcement proceeding to revoke an insurance producer's license after she financially exploited a senior citizen with dementia. She is challenging the decision and staff will continue to provide legal representation to Commerce. The enforcement proceeding resulted in Hennepin County pressing criminal charges against the insurance producer.
- Defending the Department's Real Estate Education, Research and Recovery Fund against a claim by a title insurance company that closed a transaction based on a photocopy of a forged check in lieu of actual legal tender. After protracted proceedings, the company ultimately dismissed its claim with prejudice.
- Division staff also provide legal representation related to the Department of Commerce's telecommunications, energy, and facilities-permitting responsibilities and its Weights and Measures division. Staff provided legal representation to the Department before the Minnesota Public Utilities Commission (PUC) and the Office of Administrative Hearings in numerous matters. Litigation and other work by division staff related to requests to build, site, or route large generators, solar facilities, gas and crude-oil pipelines, crude-oil pumping stations, and high-voltage transmission lines; valuation of energy generation pollutants; and electric-service territories. Staff further handled litigation related to telecommunications and distributed generation. Examples of the division's work in the last fiscal year include:
  - Provided legal representation to Commerce in several general rate proceedings before the PUC involving public utilities like Xcel Energy, CenterPoint Energy, Minnesota Energy Resources Corporation, Otter Tail Power, and Great Plains

Natural Gas, that sought millions of dollars in rate increases from ratepayers, including residential consumers.

- Provided legal representation to Commerce in litigation challenging the PUC's jurisdiction over interconnected VoIP providers.
- Provided legal representation to Commerce in several complex proceedings related to North Dakota Pipeline Company's request to build two new oil pipelines through environmentally sensitive areas of the state.
- Provided legal representation to Commerce in complex litigation related to Minnesota Energy Resources Corporation's request to expand its gas pipelines and border stations related to the Rochester Destination Medical Center development.

#### **CONTRACTS AND INTELLECTUAL PROPERTY**

- Division staff provided legal advice to numerous state agencies on issues related to state governmental operations; assisted in drafting and revising leases, licenses and contracts; and advised on intellectual property matters, including registering trademarks on behalf of a number of state agencies.

#### **HOUSING FINANCE**

- Division staff assisted the Minnesota Housing Finance Agency (MHFA) in responding to a fair-housing discrimination complaint and defended the MHFA in litigation related to real estate and contract matters.

#### **LABOR AND CODE ENFORCEMENT**

- Division staff provided legal representation to the Department of Labor and Industry's Construction Codes and Licensing Division and its Contractor Recovery Fund, handling numerous disciplinary and enforcement actions against residential building contractors, remodelers, roofers, electricians, and plumbers. Examples of division staff's work in the last fiscal year include:
  - Defending DLI and the Minnesota Plumbing Board in multiple proceedings related to new rules that the Board adopted. A district court action, which the plaintiff ultimately agreed to dismiss with prejudice, asserted claims under the Minnesota Government Data Practices Act. The appellate cases, one of which has been dismissed and the other of which is still pending, challenged the validity of the new rules.
  - Assisting DLI to summarily suspend a contractor's license based on the contractor engaging in numerous instances of financial misconduct on more than twenty contracts and diverting approximately \$300,000 in consumers' down payments. The contractor ultimately agreed to revocation of its license, to sign confessions

of judgment for the affected homeowners so they could access the Contractor Recovery Fund, and to pay a \$51,000 civil penalty if certain conditions were not satisfied.

#### **MINNESOTA STATE COLLEGES AND UNIVERSITIES**

- Division staff provided legal representation to Minnesota State Colleges and Universities regarding a variety of real estate construction, contract, intellectual property, condemnation, and licensing matters. Examples of division staff's work include:
  - Assisting in negotiating new food-service contracts for six universities.
  - Reviewing contractor-prepared agreements for purchases, rentals, and data-sharing for compliance with state and federal law.
  - Assisting universities with contracts related to general banking and depository services.
  - Advising various campuses on software license agreements.
  - Reviewing clinical-affiliation agreements.

#### **OPINIONS**

- Division staff responded to local governments that requested opinions under Minn. Stat. § 8.07.

#### **OTHER LITIGATION AND REPRESENTATION**

- Since 2013, division staff have defended state officials with respect to approximately forty lawsuits against law enforcement officers and other local government employees alleging these individuals improperly accessed the plaintiffs' drivers' license information in violation of the Drivers Privacy Protection Act ("DPPA"). The private plaintiffs also named the current and former Commissioners of the Department of Public Safety ("DPS") as defendants, alleging they were liable for failure to prevent the unauthorized viewing of their information. Collectively, the actions alleged several thousand improper accesses, for which the plaintiffs sought statutory damages of at least \$2,500 per access. One of the consolidated cases also named the Commissioner of the Department of Natural Resources as a defendant in a case making allegations against a conservation enforcement officer. The Commissioners have been dismissed from all of the actions. Three of the dismissals were appealed and affirmed by the Eighth Circuit. The Supreme Court denied the plaintiffs' petition for certiorari in these cases. Several other cases remain pending in the Eighth Circuit, and many cases remain pending in the district court against the officers involved. To date, no Court has held that the Commissioners can be held liable under the DPPA.
- Division staff defended the state in a challenge to the constitutionality of the state's law that generally bans automatically dialed and announced telephone calls.

- Division staff defended the Commerce and Labor Commissioners in a challenge to administration of the Minnesota Workers Compensation Reinsurance Fund.
- Division staff successfully provided legal representation to the Department of Natural Resources in a jury trial to recover fire-suppression costs
- Division staff successfully defended the State Board of Public Defenders in a data-practices challenge to the disclosure of information related to criminal proceedings.

## **TRANSPORTATION DIVISION**

The Transportation division provides legal services to the Minnesota Department of Transportation (MnDOT). A large part of the division's work involves eminent domain litigation. In addition, the division provides legal advice to MnDOT and other state agencies involved in construction projects and provides legal representation to the State when contractors, subcontractors, or third parties sue the State on construction-related matters. The division also protects taxpayers by filing claims on behalf of the MnDOT 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 2016, the division:

- Provided legal representation to MnDOT 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 and bridge replacement. The division also defended MnDOT against claims that its projects have resulted in inverse takings and provided legal assistance in voluntary sales of real estate for transportation projects.
- Provided legal representation to and advised MnDOT, Minnesota State Colleges and Universities, and the Minnesota Departments of Administration and Natural Resources in litigation, settlement negotiations, arbitration, and mediation of construction claims.
- Appeared before the Minnesota Supreme Court and Court of Appeals in appeals regarding issues including access, requirements of the Minnesota Prevailing Wage Act, the Marketable Title Act, award of attorney fees, and road turnback agreements with counties.
- Provided legal representation to MnDOT in its statutory prevailing wage enforcement responsibilities in attempting to recover unpaid wages for contractors' employees on MnDOT projects.
- Provided legal representation to the Minnesota National Guard regarding matters including contract review, real estate transactions and lease negotiations.

- Provided legal representation to MnDOT in district court actions challenging operation of the Marketable Title Act and successfully mediated numerous claims with landowner-plaintiffs.
- Provided legal representation to MnDOT and other state agencies in contested case hearings in regulatory matters addressing issues such as payment of relocation benefits and aeronautics.
- Advised MnDOT and its offices regarding programs such as Equal Employment Opportunity, Aeronautics, Railroads and Waterways, State Aid, Office of Environmental Stewardship, and Office of Civil Rights.

The division's work in FY 2016 include:

- Defended MnDOT, the Minnesota Department of Natural Resources, and the Minnesota Department of Administration against a claim by a general contractor seeking approximately \$2.5 million for damages that allegedly arose from a breach of contract when DNR terminated a contract after the contractor failed to complete work or performed defective work on the project. Division staff facilitated a settlement that achieved favorable results on damages claims.
- Provided legal representation to MnDOT in an inverse condemnation action brought by a landowner who had previously entered into a settlement of all claims against MnDOT. The district court found in MnDOT's favor and dismissed the action. On appeal, the Minnesota Court of Appeals affirmed the district court's decision concluding that the undisputed evidence showed that the settlement barred the landowner's inverse-condemnation claim.
- Defended MnDOT in a district court action brought by two counties seeking interpretation of a settlement agreement such that MnDOT would be required to pave shoulders of a county road rather than reclaim the shoulder segments to aggregate. The district court found that the unambiguous language of the agreement favored MnDOT's interpretation and dismissed the action. The Minnesota Court of Appeals affirmed the district court's decision holding that relief demanded by the counties was not supported by the clear language of the agreement.
- Provided legal representation to MnDOT in a jury trial at the district court in an appeal of a commissioners' award brought by a landowner seeking damages in excess of \$1.9 million for a taking of access. Division staff provided legal representation to MnDOT in a week-long jury trial and received a favorable verdict that was consistent with the commissioners' award of relief.
- Provided legal representation to MnDOT in an eminent domain action regarding MnDOT's reconstruction of the interchange at I-494 and TH 169. Landowners claimed damages in excess of \$11.5 million, and commissioners ordered \$3.35 million in total damages. After landowners appealed, division staff facilitated settlement in pre-trial mediation that resulted in landowners relinquishing demand for jury trial and remaining alleged damages.

- Provided legal representation to MnDOT in a landowners' challenge to the validity of MnDOT's previously-existing right-of-way pursuant to the Marketable Title Act. The Minnesota Court of Appeals affirmed the district court's dismissal of the action and upheld the validity of MnDOT's previously-existing highway easement.
- Defended MnDOT in actions seeking declaratory and injunctive relief brought by a general contractor and trucking firms seeking to prevent MnDOT's enforcement of the Minnesota Prevailing Wage Act on the work performed by the trucking firms on state projects. The Minnesota Supreme Court held that the Act applies to hauling activities to, from, or on the site of a public works project.



## SOLICITOR GENERAL

---

The Solicitor General provides litigation services to a variety of agencies in all branches of government. Solicitor General attorneys provide legal representation in cases with significant constitutional or other state interests, as well as in employment and tort claims. The section also provides legal representation to the Public Utilities Commission (PUC).

Specific examples of litigation in FY 2016 include:

- ***Kimberly Clark v. Minnesota Department of Revenue.*** In 2013, Multistate corporate taxpayer Kimberly Clark filed to amend their Minnesota franchise tax returns for tax years 2007 to 2009. Kimberly Clark alleged that it was entitled to rely on an equal-weighted apportionment formula enacted by Minnesota in 1983. *See* Minn. Stat. § 290.171 (1984). The apportionment formula was enacted as part of a larger law called the Multistate Tax Compact. In 1987, Minnesota repealed § 290.171 and replaced it with a different apportionment formula. Kimberly Clark argued that Minnesota's 1987 repeal was unconstitutional and/or ineffective, and sought to take advantage of the repealed apportionment formula. Similar litigation has arisen in other States, and numerous other corporate taxpayers in Minnesota have filed similar refund claims. The impacts of an adverse claim on Minnesota's budget are estimated at approximately \$700 million. The Minnesota Supreme Court found that the taxpayers' claims fail as a matter of law. It is unknown at this time whether the taxpayers will seek review of the United States Supreme Court.
- ***Tiffini Flynn Forslund, Justina Person, Bonnie Dominguez, and Roxanne Draughn v. State of Minnesota, Mark Dayton, in his official capacity as Governor of the State of Minnesota, the Minnesota Department of Education, Brenda Cassellius, in her official capacity as the Commissioner of Education, St. Paul Public Schools, Independent School District 625, Anoka-Hennepin School District 11, Duluth Public Schools, Independent School District 709, West St. Paul-Mendota Heights-Eagan Area Schools, Independent School District 197.*** Plaintiffs are parents of Minnesota students who claim that Minnesota teacher tenure laws are unconstitutional. Plaintiffs contend that as a result of tenure and continuing contract laws Minnesota school district hire and retain ineffective teachers, and that those ineffective teachers are more highly concentrated in districts serving predominately poor and minority students. Plaintiffs allege the statutes violate the Education Clause, Equal Protection Clause, and Procedural Due Process Clause of the Minnesota Constitution.
- ***State of Minnesota v. 3M Company.*** State brought an environmental lawsuit against 3M Company for natural resource damages caused by the release of perfluorochemicals ("PFCs") into the Minnesota environment. PFCs are a man-made chemical invented by 3M Company, and 3M disposed of the chemicals into Minnesota landfills and waters for decades. The United States Environmental Protection Agency recently issued guidance about the adverse health effects of PFCs and is recommending drinking water allowances for this chemical below current Minnesota health risk limits. The State's natural resource

damage case was being litigated by outside counsel, Covington & Burlington LLP (“Covington”), with the help of division attorneys.

- ***OutFront Minnesota et al. v. Emily Johnson Piper Harne.*** Plaintiffs challenge Minnesota Statutes section 256B.0625, subd. 3a, which excludes “sex reassignment surgery” from medical assistance coverage. Plaintiffs claim this provision violates the Equal Protection Clause and the right to privacy under the Minnesota Constitution.
- ***Bierman v. Dayton.*** Plaintiffs are homecare providers who do not want SEIU to be their exclusive representative. They have challenged Minn. Stat. § 179A.54, claiming exclusive representation violates their First Amendment right to not associate with the Union.
- ***Hoch v. State of Minnesota.*** Plaintiff brought suit challenging the legality of Minnesota gaming compacts with Native American tribes in Minnesota. Plaintiff claimed that (1) the governor lacked authority to enter into the compacts without legislative ratification; (2) the compacts violate IGRA by permitting games that are prohibited by state criminal statutes; and (3) the compacts unconstitutionally commit the state to future appropriations. The state district court found in favor of the State on all arguments and entered judgment in the State’s favor.
- ***Harlow v. Department of Human Services.*** Plaintiff is a former doctor at the Minnesota Security Hospital who gave statements to media following his termination. Officials at the DHS then responded to media questions about the doctor’s termination, and he alleges the public statements were defamatory and violated the Minnesota Data Practices Act. The Minnesota Supreme Court found that the data practices act claims failed as a matter of law, and that absolute privilege barred Plaintiff’s defamation claim against the Deputy Commissioner of DHS. The Minnesota court of appeals is charged, on remand, with determining whether Plaintiff’s only remaining claim against another DHS official also fails.
- ***Quint Stainbrook v. Department of Public Safety.*** Forty-four current and former lieutenants at the Minnesota State Patrol allege violations of the Fair Labor Standards Act. Plaintiffs allege that they are improperly categorized as overtime exempt. Minnesota State Patrol disputes the claim on the basis that the lieutenants work is primarily supervisory in nature, and therefore the lieutenant position is properly categorized as exempt from overtime under federal law.
- ***Abu Kamara v. State of Minnesota.*** Plaintiff Abu Kamara, an employee of the Minnesota Department of Human Services, brought a lawsuit under the Fair Labor Standard Act and Minnesota Fair Labor Standards Act on behalf of himself and similarly situated employees in the State of Minnesota. Plaintiff, an employee who was not classified as exempt from overtime under either statute, alleged that his overtime rate of pay was not calculated correctly. Plaintiff’s counsel sought to find other employees, and publicly represented that he expected to recover “millions of dollars in unpaid overtime.” Eighty-seven other state employees joined the collective before the case was resolved.
- ***Johnene Canfield v. Minnesota State Lottery.*** Plaintiff Johnene Canfield was terminated from the Minnesota State Lottery after an investigation by an independent agency determined that she consumed alcohol while working at home and participated in

a telephone conference while intoxicated. Plaintiff brought suit under the Minnesota Human Rights Act, alleging that her termination was based on a disability of alcoholism and gender. Division attorneys are defending the agency's decision to terminate the Plaintiff's employment.

- ***Ronaldo Ligons and Barry Michaelson v. Minnesota Department of Corrections, Thomas Roy, Dr. David A. Paulson, M.D., Nanette Larson, Dr. D. Quiram, M.D., Dr. R. Hanson, M.D.*** Plaintiffs Ronaldo Ligons and Barry Michaelson are inmates in the custody of the Minnesota Department of Corrections. Plaintiffs allege that they are candidates for medical treatment of their chronic Hepatitis C infections with newly-developed oral medications that could potentially cure their infections, and that the Department of Corrections decision not to administer treatment at early stages of the disease is unconstitutional.
- ***William Statz and Kathryn Statz as co-trustees for the next of kin of Friedrich Statz v. State of Minnesota.*** Friedrich Statz was driving home when he proceeded into an intersection and was struck from the side by a semi-truck. The intersection had undergone several signage changes, include a change just three days before the accident. Plaintiffs filed suit against MnDOT alleging negligence in their traffic control decisions regarding the intersection. Both the district court and Minnesota Court of Appeals concluded that MnDOT was immune from liability for the accident. Plaintiffs have sought review with the Minnesota Supreme Court.
- ***Brian Hanson v. Mark Germain, Commissioner of Public Safety, Department of Public Safety, Fire Marshall Division.*** Plaintiff alleged that a Minnesota Fire Investigator who investigated allegations of arson in connection with a house fire subsequently trespassed on his property. A jury trial took place on this matter between June 7 – 9, 2016. At the conclusion of the Plaintiff's case, the court granted Defendant's motion for directed verdict and entered judgment in Defendant's favor.
- ***In the Matter of the Petition of Northern States Power Company for Approval of its Proposed Community Solar Gardens Program.*** The Community Solar Garden statute, Minn. Stat. § 216B.1641 (2013) required Xcel Energy to file a plan to operate a CSG program. The statute requires that CSG customers may subscribe to solar generating facilities and receive bill credits for a portion of the energy generated from the CSG. Because this is a new program, many questions and concerns have arisen since Xcel first filed for approval of its CSG program in 2013. The Court of Appeals upheld a Commission determination to restrict gardens to 1 MW size, and the petitioners are seeking review with the Minnesota Supreme Court. In September, the Commission will determine the outcome of engineering disputes between Xcel and solar developers.
- ***Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC v. Beverly Heydinger, Nancy Lange, Dan Lipschultz, John Tuma, and Matthew Schuerger.*** Charter contends its telephone service is not subject to state regulation because it uses Voice over IP ("VoIP") to transport customer calls. Charter seeks declaratory and injunctive relief from an order of the Minnesota Public Utilities Commission asserting jurisdiction and requiring compliance with state laws, many of which protect consumers, and include programs that serve low income and deaf and hard of hearing individuals. Charter's central contention is that federal law preempts state

regulation of its telephone service. Division attorneys are defending the decision of the Public Utilities Commission.

- ***Claims Under The Imprisonment And Exoneration Remedies Act.*** In 2014, the Legislature created a process by which individuals who have been wrongfully convicted can seek compensation from the State. The statute creates a two-phase process in which the claimant must first establish eligibility for compensation, and then must establish damages related to the person's wrongful conviction. After the damages phase of the proceedings, the claim is then presented to the Legislature for consideration. Division attorneys are responding to claims filed under the Act.

More generally, employment litigation often includes claims under the Minnesota Whistleblower statute, Family and Medical Leave Act, Fair Labor Standards, and claims of discrimination and harassment under federal and state anti-discrimination statutes. The section also provides legal representation to the State in lawsuits involving labor issues. Tort claims against the State, its agencies and employees, typically arise in the form of personal injury and property damage lawsuits. Claims include negligence, medical malpractice, defamation, infliction of emotional distress, assault and battery, excessive use of force, and violations of federal civil rights. Examples of specific cases include: highway crash cases in which the Minnesota Department of Transportation is faulted for inadequate design, construction, or maintenance of state roadways and highways; suits against the Department of Human Rights and Department of Corrections for deaths or injuries occurring in institutions they operate; and personal injury claims against multiple state agencies related to sidewalk maintenance and snow removal practices or other accidents.

The section also provides legal representation to the PUC in both state and federal courts. Examples of PUC decisions the section has defended in state court include: the need for environmental review of a proposed utility infrastructure project and approvals of utility acquisition plan for renewable energy sources. In federal court, the section has defended the authority of the State to regulate the use of new coal-fired energy in the state.

In defending such claims, the division saved the State hundreds of millions of dollars.

## STATE SERVICES

---

### HEALTH OCCUPATIONS

The Health Occupations division provides legal representation to the State's health licensing boards and the Health Professional Services Program and conducts investigations at the request of the State's health licensing boards. The division advises the boards on legal issues such as procedural due process, subpoena power and board authority. The division provides legal representation to the boards at board disciplinary conferences and in contested cases at the Office of Administrative Hearings as well as in district and appellate courts.

During FY 2016, division investigators completed approximately 200 investigations involving 225 complainants. Some investigations for FY 2016 included:

- A pharmacist who dispensed medications to numerous female patients without valid prescriptions;
- A nurse who engaged in sexual conduct with three patients of a VA mental health and rehabilitation unit;
- A social worker who diverted narcotics and engaged in multiple boundary violations while providing in-home services;
- A veterinarian who negligently performed surgical procedures in unsafe and unsanitary conditions, leading to complications and death;
- A home health care nurse who, following a secret change to a will, was bequeathed the home of an elderly patient suffering from dementia;
- A pharmacist who presented a fake certificate of completion for a residency program, only to later claim she was the victim of identity theft;
- A media personality who offered spiritual healing for mental, physical, family and financial woes to members of underserved communities;
- A psychiatrist who routinely touched, and made sexual comments to, his female patients;
- A nurse who engaged in a sexual relationship with, and brought controlled substances to, an inmate at a Minnesota correctional facility; and
- A therapist who was the subject of multiple complaints for unprofessional/sexual conduct involving employees, supervisees, and independent contractors.

During FY 2016, the division provided legal representation to boards in contested case proceedings before the Office of Administrative Hearings involving professional misconduct, sexual misconduct, inappropriate dual relationships, and mental health/chemical dependency. For example, the division provided legal representation to the Board of Dentistry in a contested case against a dentist who pled guilty to felony health care fraud, having submitted \$50,000 in

false Medicaid claims for patient care that was never provided. The case resulted in the revocation of the dentist's license. The division also provided legal representation to the Board of Medical Practice in a contested case against a physician who engaged in unethical and unprofessional conduct, aided and abetted the unlicensed practice of medicine, improperly maintained patient records, and prescribed drugs for other than medically accepted purposes while practicing at a urology clinic. The case also resulted in the revocation of the physician's license.

In addition to contested cases before the Office of Administrative Hearings, the division provided legal representation to the boards' disciplinary committees in matters involving licensees' noncompliance with disciplinary orders warranting further discipline, orders for mental and physical examinations, temporary suspensions and the board's review of ALJ reports and recommendations resulting from contested case proceedings. For example, the division regularly provided legal representation to the boards where licensees failed to remain chemical free as required by their disciplinary orders or where the boards sought to temporarily suspend a license. In one such case, a dentist's license was temporarily suspended following the death of a 17-year-old patient, where the Board of Dentistry determined the dentist failed to use required monitoring equipment during oral surgery, allowed allied staff to perform duties outside their scope of practice, and failed to manage a medical emergency.

The division also provided legal representation to the boards in Minnesota district court and before the Minnesota Court of Appeals. For example, the appellate court affirmed the Board of Medical Practice's decision to revoke the license of a physician who violated an order requiring that he practice under supervision.

Finally, 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. The program establishes practice restrictions, monitoring requirements, and sets boundaries for impaired physicians, nurses, pharmacists, dentists, and other participating health care practitioners.

## **NATURAL RESOURCES**

Attorneys in the Natural Resources division (NRD) provide legal advice and representation to the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Natural Resources (DNR), Minnesota Department of Agriculture (MDA), Environmental Quality Board (EQB), Board of Water and Soil Resources (BWSR) and the Board of Animal Health (BAH).

Many cases arise out of the agencies' and boards' enforcement programs. NRD attorneys provide legal advice and representation to the agencies and boards in district courts, hearings at the Office of Administrative Hearings (OAH) and at board meetings. NRD attorneys also provide legal advice and litigation services to the agencies and boards on cases arising out of a variety of non-enforcement issues. The division gets court-ordered access needed for the inspectors to build cases and issue orders and appears in court to enforce the orders and enter the orders as judgments. The division assists the agencies and boards in negotiating settlements with regulated parties to resolve matters without litigation. In situations where settlement is not

reached, enforcement matters may be litigated on behalf of the agencies and boards by NRD attorneys in the district, appellate and administrative courts. Although less common, NRD attorneys also provide legal representation to MPCA in federal cases with the United States Environmental Protection Agency (EPA) and regulated parties. The NRD attorneys also defend the agencies and boards when parties bring actions challenging their programs or decisions.

Examples of the NRD's work for the agencies and boards during FY 2016 included:

- Legal representation of the Commissioners of MPCA, Agriculture and Commerce and the Director of Weights and Measures in a federal lawsuit brought by the American Petroleum Institute and others seeking to have the state's biodiesel mandate statute declared preempted by federal law;
- Defense of the MPCA's decision to submit a "Total Maximum Daily Load" study to the U.S. EPA at the Minnesota Court of Appeals;
- Legal representation of MDA in district court litigation (and resulting appeal to the Minnesota Court of Appeals) regarding constitutional challenges to the MDA's statutory right to inspect dairy farms for purposes of ensuring compliance with Minnesota food safety statutes and regulations.
- Provided the U.S. EPA with an Attorney General's statement in response to EPA's inquiry whether 2015 legislation modified and/or revised MPCA's authority to administer its National Pollutant Discharge Elimination System ("NDPES") program and implement its federally approved water quality standards and whether 2016 legislation invalidated water quality based effluent limits and compliance schedules for sulfate that were included in certain NPDES permits issued by the MPCA.
- Legal representation of DNR in contested case proceedings at the OAH (and resulting appeal to the Minnesota Court of Appeals) regarding challenges to the DNR's approval of a project-specific wetland replacement project, which allowed a mining company to potentially develop surplus wetland replacement credits to mitigate against future mining-related wetland impacts without depositing such credits in the state wetland bank.
- Legal representation of MPCA and DNR, as co-trustees for Minnesota, in various negotiations undertaken with other federal and Tribal trustees, seeking to settle Natural Resource Damages resulting from releases of hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.
- Legal representation of MPCA in negotiating a Schedule of Compliance requiring a regulated party to undertake investigation and contingent remedial actions to remediate perfluorochemical, or PFC, contamination in stormwater, groundwater and surface water.
- Legal representation of MPCA in a Petition brought by local governmental units, which sought a new hearing at OAH to challenge certain aspects of water quality standards adopted by the MPCA in 2014 (and approved by the EPA in 2015) to reduce "eutrophication" in Minnesota's rivers and streams.
- Legal advice and drafting assistance to MPCA, DNR and BWSR on various real estate acquisition, title, and land use matters, including ownership of submerged lands, tax forfeitures, easements (including easements for wetland and habitat protection and

wetland banking), probate proceedings, trusts, life estates, adverse possession, bankruptcy, boundary agreements, mineral forfeitures, indemnification, deed restrictions, land registration, quiet title, road vacation, condemnation, declarations, protective covenants, local government fees charged against state-owned lands, and use of state bond financed property.

- Legal representation of MPCA with respect to intervention and participation in various federal lawsuits challenging EPA-promulgated environmental rules.
- Legal representation of MPCA in various district court to obtain court orders to resolve electronic waste and solid waste burial and improper disposal cases.
- Legal representation of BAH to obtain a court order for the testing of sheep suspected of carrying scrapie.
- Filed a civil lawsuit on behalf of DNR to recover the fire suppression costs the state incurred after a forest fire set thousands of acres ablaze due to the improper disposal of charcoal briquettes on state land.
- Legal representation of MDA at the OAH related to the revocation of a food manufacturer's license due to repeated sanitary noncompliance and failure to adequately label their products. The manufacturer eventually relinquished his food handling license.
- During the last fiscal year, the division provided regular legal representation to the Minnesota Department of Agriculture and the Board of Animal Health, including challenges to state food-licensing laws, food-safety violations, food-borne illness outbreaks, dairy sales, and animal-research permits.

## **REAL ESTATE**

- Division staff provided legal advice and representation to the Department of Administration, Land Exchange Board, Board of Water and Soil Resources, Department of Natural Resources, Minnesota Pollution Control Agency, Department of Revenue, and the Department of Transportation on various real estate matters, including leasing matters, restrictive covenants, easements, quiet-title actions, land acquisitions, title opinions and commitments, deed and easement reviews.

## **TAX LITIGATION**

The Tax Litigation division provides legal representation to the Minnesota Department of Revenue ("DOR") in the Minnesota Tax Court and at the Minnesota Supreme Court, as well as the state and federal bankruptcy courts. In FY 2016, the division helped the Department secure nearly \$6 million in revenue in corporate, sales/use tax and individual income tax assessments. 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 that are collectively worth more than \$700 million dollars. Many of the large bankruptcy cases involve multi-million dollar state investments by the State Board of Investment, multi-million dollar tax debts to Revenue and



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.

The division also reviewed and responded to numerous property liens, lawsuits and filings involving Revenue including foreclosure actions, quiet title actions, land registration, notices of property sales, in state and federal court and defends or seeks to preserve the priority of state tax liens over the liens and judgments of other claimants.

#### **SIGNIFICANT RESOLVED AND PENDING TAX LITIGATION & BANKRUPTCY CASES:**

- Corporate Franchise Tax. Obtained ruling from the Minnesota Supreme Court that the Legislature's enactment of the multi-state tax compact did not create a contractual obligation that prohibited it from later repealing the apportionment formula provisions.
- Sales/Use Tax, Electric Cooperatives. Obtained favorable ruling from the Minnesota Supreme Court in a case challenging the assessment of approximately \$15 million dollars in sales tax on amounts billed to members of 16 electric cooperatives.
- Sales/Use Tax, Indirect Audits. Obtained favorable ruling from the Minnesota Supreme Court in sales tax case arising out of an indirect audit of a bar and restaurant in Minneapolis. Currently defending numerous claims arising out of indirect audits, collectively worth several million dollars.
- Individual Income Tax, Residency. Obtained a favorable ruling from the Minnesota Supreme Court in a case challenging the Commissioner's residency determination and assessment of several hundred thousand dollars in individual income tax.
- Individual Income Tax. Obtained favorable ruling from the Minnesota Supreme Court in case challenging individual income tax assessment on statutory and Due Process grounds.
- Individual Income Tax, Residency. Provided legal representation in Minnesota Tax Court and Minnesota Supreme Court in challenge to residency, resulting in judgment of more than \$150,000.
- Sales/Use. Obtained favorable settlement in case challenging application of penalties.
- Corporate Franchise Tax. Obtained favorable ruling from Minnesota Tax Court in challenge to Commissioner's determination that taxpayer and subsidiaries were a unitary business, resulting in judgment of more than \$600,000.
- Corporate Franchise Tax. Obtained favorable settlement in case challenging apportionment of income from sale of business unit.
- Commissioner Valuations of Natural Gas Pipeline and Utility Companies. Provided legal representation in the Minnesota Tax Court and the Minnesota Supreme Court in suits by multiple natural gas pipeline and utility companies challenging the Commissioner's valuation of the companies' property in the amounts of several millions of dollars. In most cases, the companies contend that the Commissioner employs methods that overstate market value of the property and result in assessments that are too high. Many also contend that the property is unfairly and unequally assessed compared to property

that is in the same class and compared to the property of similarly-situated taxpayers in violation of the Equal Protection Clause, the Uniformity of Taxation Clause, and the Due Process Clause of the Minnesota Constitution and the Due Process Clause and Equal Protection Clause of the United States Constitution.

- Tobacco Tax. Defending Minnesota Department of Revenue in \$47 million refund claim brought by tobacco company, challenging tobacco tax statute on constitutional grounds.
- Corporate Franchise Tax. Providing legal representation in challenge to commissioner's authority to alter apportionment formulas.
- Tax Protestors. Obtained several favorable decisions at the Minnesota Supreme Court, federal district court, state district court and the Minnesota Tax Court rejecting claims of tax protestors that their incomes were not subject to Minnesota income tax.

## **PUBLIC SERVICES**

---

### **TRIALS AND APPEALS**

The Trials and Appeals 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 2016 included:

- Convicted Josue Fraga of first-degree murder for the murder of his two-year old niece during a sexual assault in Nobles County. Fraga was sentenced to life in prison without release.
- Convicted Derek Hexum of burglary, arson, and two counts of murder in the first-degree for the murders of James and Catherine Hively in Lyon County. The Court sentenced Hexum to consecutive life sentences for the murder convictions and separate prison terms for the burglary and arson convictions.
- Convicted Theodore Como of two counts of second-degree murder and one count of burglary for his role in the murders of James and Catherine Hively in Lyon County. The Court sentenced him to consecutive prison terms of 278 months on the first murder conviction and 262 months on the second murder conviction and a separate term for the burglary conviction.
- Convicted Kyle Wesselink of being an accessory after-the-fact to the murders of James and Catherine Hively in Lyon County for his role in trying to conceal evidence of the murders.
- Convicted Jonas Nelson of first-degree murder for the murder of his father in their home in Le Sueur County. The court sentenced him to life in prison without parole.
- Convicted Michael Grussing of second-degree murder for the death of Kevin Richardson in Chippewa County. The Court sentenced him to 439 months in prison.
- Convicted Dwayne Case of second-degree murder for the death of Elizabeth Gregg in Renville County. The Court sentenced him to 415 months in prison.
- Conducted grand jury proceedings and obtained first-degree murder indictments.
- Provided legal representation to the State in post-conviction challenges to murder convictions.
- Provided continuing legal advice and assistance to the Bureau of Criminal Apprehension, the Child Mortality Review Board, the Violent Crime Coordinating Council, the

Advisory Committee on the Rules of Criminal Procedure, CriMNet, the Restitution Working Group, the Stop it Now Advisory Committee, the Minnesota Peace Officer Standards and Training Board, and the Minnesota Board of Law Examiners.

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. The division also provides legal assistance to the Advisory Committee on the Rules of Civil Commitment.

The division's attorneys handled numerous cases in which civilly committed sexual predators filed motions to vacate their commitments. As the population of committed sexual predators increases, the number of petitions for habeas corpus and such motions from the Department of Human Services' regional treatment centers continues to grow.

The division's attorneys also handle 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. Each month, the division handles several such cases, which affect the type of notice given to the community in which the sex offender will be released. The division also advises the BCA in registration issues and DNA collection issues, and the Department of Corrections on community notification issues.

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, trial advocacy, and appeals.

The division provides assistance to county attorneys in felony appeals. The cases handled in FY 2016 involved, among other crimes: murder, sexual assault, drug distribution and manufacturing, child sexual abuse and felony assault. Examples include:

- ***State v. Troxel:*** The Minnesota Supreme Court affirmed the defendant's first-degree murder conviction for stabbing a female acquaintance to death during a sexual assault in Pennington County.
- ***Munt v. Grandlienard:*** The Federal Eighth Circuit Court of Appeals affirmed a Blue Earth County murder conviction in which the defendant shot and killed his wife in front of their three children.
- ***State v. Riley:*** Minnesota Court of Appeals affirmed the defendant's second-degree murder conviction in which the defendant killed his cousin, dismembered his body, and burned the body parts over a drug debt in Crow Wing County.

- ***State v. Decker:*** Minnesota Court of Appeals affirmed the defendant's multiple convictions of criminal sexual conduct for abusing his daughter over many years in Faribault County.
- ***State v. Cano-Fernandez:*** Minnesota Court of Appeals affirmed the criminal sexual conduct conviction of a Cottonwood County man for sexually abusing a friend's four-year old daughter.
- ***State v. Lord:*** Minnesota Court of Appeals affirmed the defendant's conviction of domestic assault by strangulation in Stearns County.
- ***State v. Johnson:*** Minnesota Court of Appeals affirmed the defendant's conviction of first-degree controlled substance crime for the benefit of a gang in Dodge County.
- ***State v. Schwartz:*** Minnesota Court of Appeals affirmed a Meeker County man's conviction of criminal sexual conduct and multiple convictions of possession of child pornography.
- ***State v. Holisky:*** Minnesota Court of Appeals affirmed the defendant's conviction of fourth-degree assault for assaulting a corrections officer in the St. Louis County jail.
- ***State v. Garrison:*** Minnesota Court of Appeals affirmed the defendant's convictions of first-degree criminal sexual conduct, kidnapping, and domestic assault by strangulation against his girlfriend in an attack that lasted several hours in Koochiching County.
- ***State v. Greene:*** Minnesota Court of Appeals affirmed the defendant's two convictions of criminal sexual conduct for the sexual abuse of 9 and 10 year old girls. The defendant had been their basketball coach and eventually became a personal care attendant for them.
- ***State v. Rindahl:*** Minnesota Court of Appeals affirmed the defendant's conviction of malicious punishment of his four-month old baby for shaking the child, causing severe injuries, in Goodhue County.
- ***State v. Peltier:*** The Minnesota Supreme Court affirmed the defendant's conviction of first-degree murder with a past pattern of domestic abuse for the death of her four-year old stepson in Pope County.
- ***State v. Roehler:*** Minnesota Court of Appeals affirmed the defendant's conviction of criminal vehicular homicide after he crossed the center line and struck the victim's vehicle in Hubbard County.
- ***State v. Misgen:*** Minnesota Court of Appeals affirmed the defendant's arson conviction in Steele County after he burned his house down to collect insurance proceeds.
- ***State v. Mahlberg:*** Minnesota Court of Appeals affirmed six counts of criminal sexual conduct for the defendant's sexual abuse of his girlfriend's seven-year old granddaughter on multiple occasions in St. Louis County.
- ***State v. Guerrero:*** Minnesota Court of Appeals affirmed the defendant's conviction of sexually assaulting an 18-year old girl in Pennington County. Guerrero was the victim's soccer coach and was also a family friend.

- ***State v. Michener:*** Minnesota Court of Appeals affirmed the defendant's burglary conviction after he broke into the offices of the Minnesota State Community and Technical College and caused considerable damage in Becker County.
- ***State v. Barshaw:*** The Minnesota Supreme Court affirmed the defendant's convictions of first-degree premeditated murder and second-degree assault in Stearns County. Barshaw shot and killed the husband of a female friend and as police officers were trying to apprehend him he threatened one of the officers with a handgun.
- ***State v. Seeyle:*** Minnesota Court of Appeals affirmed the second-degree assault conviction of a Cass County man after he intentionally drove his vehicle into a group of people, causing one of them serious injuries.
- ***State v. Hanson:*** Minnesota Court of Appeals affirmed the defendant's convictions of second-degree assault and possession of an incendiary device in Cottonwood County. Hanson stabbed his neighbor after a disagreement, and when officers came to his home to question him, threatened the officers with a homemade explosive device.

As part of the appellate work, the division also handled federal habeas corpus petitions challenging state-court convictions for non-metro counties during FY 2016. Attorneys in the division appeared on behalf of the State on two habeas petitions in federal district court and one in the Eighth Circuit Court of Appeals in FY 2016. Attorneys also assisted prosecutors in responding to federal habeas petitions challenging state court convictions.

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. Prosecute health care providers committing fraud in the delivery of the Medical Assistance program.
2. Upon request of a county attorney, assist in prosecuting vulnerable adult abuse and neglect (including financial exploitation) in Medicaid funded facilities, and non-Medicaid board and care facilities.

The division recovers Medicaid funds from providers who 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 prosecutes health care providers who participate in the state's Medical Assistance program, and who submit false claims for reimbursement. Two of those provider-types, Personal Care Assistants (PCAs) and Personal Care Provider Organizations (PCPOs), have disproportionately engaged in fraudulent billing practices. Typical schemes include billing for services not provided, billing for authorized units rather than actual units

provided, billing for registered nurse (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 are employees. Many fraud cases have a criminal neglect component because the recipient's condition is compromised due to lack of care.

For example, one MFCU investigation and prosecution, a PCA in a non-metro county was provided PCA services and submitted timesheets to her PCPO employer. Her PCA timesheets contained dates and hours that conflicted with dates and hours when she was "punched-in" at her job at a store. The MFCU determined that DHS made overpayments based on timesheets the defendant submitted for PCA services that conflicted with times she was punched-in at her other job. The defendant was convicted of felony theft by false representation and ordered to pay full restitution. The defendant will be excluded from further participation in the Medicaid program for five years.

In another case, the MFCU prosecuted a defendant and her co-defendants (all of whom were either family members or associates) for systematically opening private duty nursing agencies and stealing \$2.6 million from the Minnesota Department of Human Services (DHS). The defendant had previously been convicted of Medicaid fraud in 2010. Based on that conviction, the federal government excluded her from any further participation in the Medicaid program for five years. Despite her federal exclusion, the defendant opened a number of fraudulent private duty nursing agencies through family members and associates, all the while concealing her involvement. The group then committed fraud by systematically obtaining DHS authorization for home-based nursing services for people who didn't need the care, and then submitting thousands of claims for nursing services that never happened. The MFCU served search warrants on a variety of California-based social-media providers that yielded incriminating e-mails and detailed directions from the defendant to her associates. The MFCU charged the entire group with racketeering and theft by swindle. All seven of the defendants have been convicted. The principal defendant received over ten years in prison. All of the defendants will be excluded from future participation in the Medicaid program.

The MFCU also charged a case involving non-emergency transportation services. Medicaid pays non-emergency transportation providers to transport Medicaid recipients, in certain circumstances, to their health care appointments. The MFCU investigated and charged a driver for a non-emergency transportation agency who falsified trip tickets for rides provided to Medicaid recipients to and from appointments. In many instances, rides were not provided at all, or rides were for much shorter distance than claimed. The driver was convicted and the MFCU is seeking \$67,000 in restitution, pending a hearing on the issue.

The MFCU brought criminal charges against a defendant who aided her husband to commit Medicaid fraud through their Personal Care Provider Agency. The Defendant and her husband submitted claims to DHS for PCA services that resulted in reimbursements, but kept almost no supporting documentation to verify that the services had been provided. The defendants claimed the documents were in a local storage facility, but the MFCU contacted all storage-unit companies doing business in the Twin Cities and confirmed that the defendants did not, in fact, rent any storage units. The defendant was convicted by jury of ten counts of aiding

and abetting Medical Assistance Fraud and the court ordered her to pay over \$225,000 in restitution. Her husband is scheduled for trial later this year.

The MFCU also prosecuted a mental health provider, who directed her staff to submit claims for 50-60 minute psychotherapy sessions, when in fact her therapists were only providing 20-30 minute medication management services. The MFCU reviewed the psychotherapy records of the clinic's patients, conducted claims-analysis and witness interviews, and determined that the mental health provider had overbilled the Medicaid program. The defendant was convicted of Theft by False Representation and the court ordered restitution of \$165,650.93. The defendant will be excluded from further participation in the Medicaid program.

The Medicaid Fraud division also intervenes in civil lawsuits under the Minnesota False Claims Act. The Minnesota MFCU participated in 12 False Claims Act cases that resulted in recoveries paid to the General Fund between July 1, 2015, and June 30, 2016, totaling \$12,213,847.55.

## **PUBLIC SAFETY**

The Public Safety division provides legal representation to the Commissioner of the Minnesota Department 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. Efforts by the division during the last fiscal year to reduce deaths, injuries, and property damage on Minnesota's streets and highways included:

- Handled approximately 5,300 district court Implied Consent proceedings and associated appeals challenging the revocations of driving privileges under Minn. Stat. §§ 169A.50-.53 and Minn. Stat. § 169A.20, subd. 2.
- Defended the state against constitutional and statutory challenges to the DWI, implied consent, refusal, traffic, and other public safety laws. The issue of whether drivers may be charged with a crime for refusing to submit to chemical tests to determine their alcohol concentration continues to affect Minnesota courts. Like all states, Minnesota imposes license revocations on drivers who are arrested for DWI and asked to submit to a chemical test as part of the implied consent process. Minnesota, like numerous other states, also makes it a crime for drivers arrested for DWI to refuse testing under the implied consent law.
- Appeared in nearly 200 district court challenges and resulting appeals to other driver's license cancellations, withdrawals, revocations, suspensions, and license plate impoundments under Minn. Stat. § 169A.60 and § 171.19.
- Provided training on DWI procedures and traffic safety laws for law enforcement officers and prosecutors throughout Minnesota.
- Published the 2016 DWI/Implied Consent Elements Handbook, which is utilized statewide by prosecutors, judges, defense attorneys and law enforcement professionals.



- Argued over 50 appeals to the Minnesota Court of Appeals resulting from district court appearances involving the revocation, suspension, cancellation, or withdrawal of driving privileges.
- Argued to the Federal District Court addressing various federal claims including equal protection claims, and claims under § 1983 and the Americans with Disabilities Act.

In FY 2016, over 20 percent of all driver's license revocations were challenged in court. Today's high challenge rate is the result of the strengthening of DWI laws by the legislature over the years, including adoption of laws allowing for the use an implied consent revocation to impound license plates, forfeiture of motor vehicles, and enhancement of subsequent criminal offenses to gross misdemeanor and felony violations. Because drivers have much at stake from an alcohol-related license revocation appearing on their driving records, they are more likely to challenge the underlying revocations in the state's district and appellate courts. The increasing complexity of our state's DWI law has resulted in a specialized DWI defense bar that vigorously challenges license 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.

The division provides legal services to the Commissioner of Public Safety and various divisions of the Department of Public Safety including the Minnesota 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. Additionally, regulation of the private detective and security industry is enhanced by the division's legal representation of the Private Detective and Protective Agent Services Board.

The division also provides legal advice and representation to the Gambling Control Board, the Minnesota Racing Commission, and the Alcohol and Gambling Enforcement Division of the Department of Public Safety. These entities issue thousands of licenses and conduct numerous investigations each year, which may result in contested case hearings requiring legal representation from this division in district court and at the Office of Administrative Hearings. The division provides legal representation to the Minnesota Racing Commission in appeals of disciplinary action taken against horse owners, trainers, and jockeys, and has provided legal representation to the commission in challenges to commission action at the appellate court level. The division also provides advice to the Alcohol and Gambling Enforcement division on issues relating to illegal liquor sales and illegal gambling devices, and provides legal representation to the division in taking action against manufacturers and distributors of liquor and gambling equipment.

## **INFORMATION SERVICES AND CONSUMER**

The Information Services and Consumer divisions assist 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 all parties.

## **HUMAN SERVICES**

The Human Services division provides litigation services and legal counsel to the Minnesota Department of Human Services (DHS), the state's largest agency. 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 867,000 Minnesotans. In continuing care, division attorneys provide legal representation to DHS on matters concerning autism services, aging and adult services, disability services, medical assistance, and personal care assistance. 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.

### **CHILDREN AND FAMILY SERVICES**

Division attorneys in the children and family services area handle legal issues relating to public assistance programs, child support, and child protection matters. Public assistance programs include the Minnesota Family Investment Program, the General Assistance program, the Minnesota Supplemental Aid program, the Federal Supplemental Nutrition Assistance Program (SNAP, formerly called Food Stamps) and Group Residential Housing. Division attorneys provided legal representation to DHS in litigation contesting the operation of these programs. In the child support area, division attorneys defend challenges to child support statutes and programs. In child protection, attorneys provide legal representation to 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 provide legal representation to 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 neuroleptic 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 provide legal representation to 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 district 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:

- ***Karsjens, et al. v. Jesson, et al.***: This is a class action whose plaintiffs include civilly committed sex offenders brought against officials of the Department of Human Services, which administers the Minnesota Sex Offender Program. The plaintiffs challenged the constitutionality of Minnesota Statutes, chapter 253D, and made various other challenges to the conditions at MSOP. The federal district court held a six week long phase one trial and ruled that chapter 253D was unconstitutional both on its face and as applied. Certain claims remain either because the district court did not rule on them upon conclusion of the phase one trial (claims related to denial of treatment, punishment, denial of less restrictive alternative confinement, and inhumane treatment) or because they are the subject of second phase of trial (claims related to the First and Fourth Amendments). The district court then ordered certain remedies, and the defendants appealed to the Eighth Circuit. The matter is presently under advisement by the appellate court.
- ***Additional MSOP litigation***: Over 70 other federal lawsuits are pending in federal court, some of which were unstayed by the federal court following the defendants' appeal in *Karsjens*. MSOP clients have also filed new lawsuits since *Karsjens* in both state and federal court, which attorneys in the division defend. These lawsuits arise out of various incidents or policies at MSOP, including client assaults, property restrictions, media restrictions, searches, use of the high security area, and religious practices.
- ***UCare Minnesota v. DHS, et al.***: In its administration of the Medical Assistance and MinnesotaCare programs, DHS contracts with outside managed care organizations to provide health insurance for many of those covered by these DHS programs. For the 2016 calendar year, the Minnesota Legislature required DHS to put out for bid its contracts for Medical Assistance and MinnesotaCare in all 87 counties. After announcing the bid results in all 87 counties, UCare challenged DHS's procurement process and sued DHS and its commissioner. The district court denied UCare's request for a temporary injunction. While the parties were engaged in pretrial discovery and shortly before trial, UCare dismissed its lawsuit.
- ***Gordon, et al. v. DHS, et al.***: Plaintiffs are recipients of the Medical Assistance program's Disability Waiver who are challenging the use of Community Residential Settings as opposed to what they allege are more integrated settings. The plaintiffs' claims are based on the Medicaid Act, the Fourteenth Amendment, the Americans with

Disabilities Act, and the Rehabilitation Act. Among other things, the plaintiffs claim that state policy and implementation by counties denies them information that would allow them to live in a setting that they believe is more integrated.

- ***Supreme Court Appeal Panel:*** division attorneys provided legal representation to the Commission of DHS on numerous hearings before the SCAP on petitions from civilly committed individuals for transfer, provisional discharge, or discharge.
- ***Jarvis/Price-Sheppard Hearings:*** division attorneys provided legal representation at numerous hearings to authorize medically necessary medication and/or therapy for patients who lack the legal capacity to make the decision themselves.
- ***Medicaid Overpayment Recovery:*** division attorneys provided legal representation to the State of Minnesota in connection with the recovery of overpayments in the Medicaid program.
- ***Disqualification Matters:*** division attorneys handled disqualification proceedings.
- ***Doe v. Jesson:*** division attorneys are defending the DHS commissioner in a lawsuit challenging the constitutionality of tribal notification in voluntary adoption matters involving Indian children.
- ***Appeal by Anthony Trussov & Maria Trussova:*** division attorneys provided legal representation to DHS in connection with an appeal from the denial of a child foster care license due to the presence of a disqualified person in the home, which was affirmed after a contested hearing.
- ***In the Matter of the Appeal of Kind Heart Daycare, Inc.:*** division attorneys provided legal representation to DHS in connection with the revocation of Kind Heart Daycare's child care license due to overbilling and other licensing violations. The appellant appealed the commissioner's decision to the court of appeals, and division attorneys successfully defended the commissioner's revocation at that court.
- ***Donald Smith v. Jesson:*** Mr. Smith, a client at the Minnesota Sex Offender Program, petitioned for transfer, provisional discharge, and discharge from his commitment. The division provided legal representation to the commissioner who opposed Mr. Smith's petition, and successfully moved to dismiss the petition.
- ***Paulos f/k/a Paul M. Lindberg v. Johnson Piper:*** Paulos, a client at the Minnesota Sex Offender Program, petitioned for transfer, provisional discharge, and discharge from MSOP. The division provided legal representation to the commissioner who opposed the petition and successfully moved to dismiss the petition.
- ***Leander Worm v. DHS:*** The commissioner denied the appellant's Medical Assistance application due to excess assets that were available in a trust created by the appellant. The district court affirmed the commissioner's denial.
- ***In the Matter of the SIRS Appeal of Manichanh Phutseevong:*** SIRS suspended the appellant due to overbilling the Medical Assistance program. Division attorneys provided legal representation to DHS in a contested case hearing, which upheld SIRS's decision.

- ***State v. I.M.:*** I.M., who co-owned a family child care center with I.M.'s spouse, petitioned to expunge records pertaining to two counts of felony criminal sexual conduct in the second degree against two children in the family child care program. The division provided legal representation to DHS when it objected to I.M.'s petition for expungement of records held by DHS so that DHS has such information for future background studies determining suitability as a licensee or employee in DHS-licensed setting. The district court denied the expungement.
- ***State v. S.G.:*** S.G. sought expungement of two counts of misdemeanor domestic assault, two counts of misdemeanor assault in the fifth degree, and misdemeanor disorderly conduct. S.G. had previously applied to be a personal care attendant, which required DHS to conduct a background study. The division provided legal representation to DHS when it objected to S.G.'s petition for expungement of records held by DHS so that DHS has access to S.G.'s records for future background studies determining S.G.'s suitability as a licensee or employee in a DHS-licensed setting. The district court denied the expungement.

## REGULATORY LAW

---

### CHARITIES

The Charities 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 enforces State charitable solicitation, charitable trust, and nonprofit laws. Third, the division maintains a public registry of charitable organizations and professional fundraisers that operate in the State.

The Charities 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. The division received approximately 174 such notices last 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 approximately 165 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 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, are resolved by working with nonprofit boards to bring them into compliance with the requirements of Minnesota law, or are referred to other government officials and agencies.

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 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 fundraisers to register and file annual reports with the Attorney General's Office. In the last fiscal year, approximately \$649,435 in registration-related 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 more than 11,250 charitable (soliciting) organizations, more than 2,850 charitable trusts, and 390 professional fundraisers. The charitable organizations and charitable trusts that the division regulates held more than \$429 billion in assets, and had \$214 billion in total revenue the prior year. The information from these files allows the donating public to review a charitable organization's financial information, allowing for greater transparency and more informed giving, 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 following are examples of investigations and suits brought or resolved by the Charities division:

- The Charities division sued Savers, a prominent retail thrift store chain, for allegedly deceptive solicitation practices and acting as an unregistered professional fundraiser. The lawsuit alleged that Savers failed to disclose to donors that most of their charitable contributions went to the for-profit Savers stores—not charity. The case settled when Savers agreed to pay \$1.8 million to its charitable partners, overhaul its solicitations practices, provide better disclosures to Minnesota donors, and register as a professional fundraiser.
- The Charities division sued the Minnesota-based professional fundraiser LoziLu Women's Mud Run over its deceptive practices in holding "mud runs" and other athletic events in the name of charity. The lawsuit alleged that LoziLu promoted its events to Minnesotans and others by claiming they helped to raise money for a charity benefiting those with leukemia. In reality, LoziLu had never remitted any of the money raised by these events to the charity. The lawsuit also alleged that LoziLu failed to register as a professional fundraiser despite acting as such, thereby avoiding regulatory oversight and providing transparency into its operations. The lawsuit remains pending in state court in Sherburne County.
- The Charities division sued a professional fundraiser, Associated Community Services, Inc. ("ACS"), for deceptive charitable solicitation practices. The lawsuit alleges that ACS called potential donors and passed itself off as the charity for which it was soliciting donations. Even when a call recipient refused to donate through ACS, ACS also allegedly sent the person a "pledge reminder" in the mail falsely claiming that they had agreed to donate and asking them to fulfill their nonexistent "pledge." ACS also allegedly failed to make certain disclosures required by Minnesota law intended to ensure donors know they are being solicited by a professional fundraiser. ACS is a prominent telemarketer for several charities that solicit in Minnesota. The lawsuit remains pending in state court in Hennepin County.
- The Charities division released a Compliance Report regarding Car Donation Foundation ("CDF"), the largest car donation charity in the nation. The report explained, among other things, how (1) the founders of CDF were paid at least \$36 million since 2011 through a for-profit company they own, National Fundraising Management, that acted as a professional fundraiser for CDF, (2) CDF spent approximately 80 percent of the gross proceeds from donated vehicles on fundraising, advertising, and overhead expenses, with only about 20 percent of the proceeds actually benefitting a charitable purpose, and (3) CDF's solicitation practices deceived donors into thinking they were donating to Make-a-Wish Minnesota when they were actually donating to CDF. Make-a-Wish Minnesota ceased its relationship with CDF as a result of the report.

- The Charities division investigated concerns about the governance and operations of the charity Keys4/4Kids, which is involved in refurbishing and donating pianos to local schools and others. The investigation revealed issues regarding Keys4/4Kids's governance, policies, and its purchasing of services from a for-profit entity owned by the charity's founder. Keys4/4Kids agreed to address these concerns without the need for an enforcement action. It entered into an Assurance of Discontinuance that was approved by the Ramsey County District Court and prohibits it from doing business with related, for-profit entities and requires it to overhaul its governance and policies to ensure proper oversight of charitable assets.

## CIVIL

The Civil division investigates violations of and enforces State laws. The division conducts investigations, serves investigative requests, and takes action where appropriate to stop and deter fraud in the marketplace. The following are examples of investigations and suits brought or resolved by the Civil division:

- The division investigated Volkswagen AG and its Audi and Porsche affiliated entities for installing illegal defeat devices in certain diesel vehicles it marketed, sold, and leased throughout the country, including in Minnesota. The defeat devices made it appear that the vehicles were compliant with federal and state emissions standards. Volkswagen also marketed the vehicles as having “clean diesel technology” as well as being “green,” and environmentally friendly. In reality, the vehicles emissions exceeded applicable standards by as much as 40 times. In settlement, Volkswagen agreed to fix or repurchase affected vehicles and provide a substantial monetary payment to the State in order to provide refunds to vehicle owners as well as mitigate the environmental harm caused by the unlawful diesel vehicles.
- The division sued Student Aid Center, Inc., a Florida “student loan assistance” company that used “bait and switch” tactics through which it promised borrowers that it would help get their student loans “forgiven” for a fee of as much as \$1,500. In fact, the only service Student Aid Center provided borrowers was to enroll them in a repayment plan or consolidation loan—something eligible borrowers could do themselves for free. In settlement, Student Aid Center was banned from conducting any further business in Minnesota and required to provide a substantial monetary payment to the State in order to provide refunds to borrowers.
- The division settled the lawsuit it had brought against Jeremy Umland and Terrill Jasicki, doing business as TJ Process Service. The lawsuit alleged that TJ Process Service falsely swore that individual Minnesotans were served with lawsuits, when in fact they had not actually been served with the lawsuit in accordance with Minnesota law. The lawsuit further alleged that these false certifications led to courts entering judgments against consumers who never received notice that they had been sued. Umland and Jasicki were banned from conducting any further business in Minnesota related to service of process or delivery of lawsuits. In addition, over 450 judgments against consumers were vacated because they never received proper notification that they had been sued.



- The division investigated Florida-based Fuson Solutions, Inc. and its owners for advertising and marketing locksmith services to Minnesota consumers in a manner that misled them to believe they were dealing with an established, local Minnesota small business. In reality, consumers were contacting Fuson's call center located in Florida. In settlement, Fuson and its owners agreed to provide refunds to consumers and to no longer conduct any business in Minnesota related to marketing, advertising, referring or providing locksmith services.
- The division sued United Auto Defense, LLC, a Missouri company that used deceptive and misleading business practices to sell expensive and unnecessary vehicle service contracts to consumers. The lawsuit alleges that United Auto Defense falsely posed as consumers' vehicle manufacturer or dealer in order to sell them vehicle service contracts for as much as \$4,750. The lawsuit further alleges that the company sold its warranties to consumers even when their vehicles were already covered by a manufacturer's warranty. The lawsuit is currently pending in Dakota County district court.
- The division sued Your Magazine Service and its owner for operating a deceptive telemarketing scheme to sign up consumers (many of them senior citizens) for magazine packages that cost almost \$1,000. The lawsuit alleges that Your Magazine Service falsely told consumers it was their current magazine provider and that it was calling to give them a \$150 credit on their existing account. In reality, Your Magazine Service was not their current magazine provider, the credit the company offered was fictitious, and the company used the false promise of the credit to sign consumers up for expensive new magazine subscription packages. The lawsuit is currently pending in Carver County district court.
- In its lawsuit against the for-profit college companies Minnesota School of Business ("MSB") and Globe University ("Globe"), the Court held that MSB and Globe falsely and misleadingly represented that their criminal justice program provided the required education to become a Minnesota police officer, probation officer, or federal law enforcement officer in violation of consumer protection laws. The Court found that the Schools' criminal justice program "served as a trap for the unwary" and entered an Order in favor of the State for a permanent injunction, civil penalties, costs and attorney fees.

## **RESIDENTIAL UTILITIES AND ANTITRUST**

The division advocates for consumers and 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 quality issues pursuant to statute.

The division also investigates potential violations of state and federal antitrust laws, and enforces these laws when it uncovers evidence of anticompetitive conduct. 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.

Specific examples of the division's work in FY 2016 include:

### ***Utilities***

- ***Northern States Power Company (Xcel) Electric Rate Case.*** Xcel Energy filed a rate case seeking a \$297.1 million rate increase to be phased in over three years. The division intervened in the rate case and filed testimony opposing the request, including the allowed return on equity for Xcel Energy's shareholders, the company's capital budget and travel and entertainment expenses, and the proportion of any increase that Xcel Energy was seeking to recover from residential ratepayers. Additionally, the division recommended reducing the monthly customer charges paid by residential and small business ratepayers. A contested case proceeding about Xcel Energy's request is scheduled for October, 2016, before the Office of Administrative Hearings.
- ***CenterPoint Energy Gas Rate Case.*** CenterPoint Energy filed a request for a \$54.1 million rate increase, \$50.5 million of which was to be recovered from residential and small business consumers. The division intervened and filed testimony on multiple issues, including advocating for apportioning less of the rate increase to residential ratepayers, a lower approved return on equity, a reduction to the monthly residential customer charge, and reductions to CenterPoint's executive compensation and travel and entertainment expenses. On May 5, 2016, the Public Utilities Commission approved many of the division's recommendations, resulting in a reduction of the rate increase for residential and small business customers of \$33.8 million.
- ***Minnesota Energy Resources Corporation (MERC) Gas Rate Case.*** MERC filed a rate case for a \$14.8 million increase in rates in 2016. The division intervened in the rate case and contested multiple aspects of the request, including the costs of upgrading its customer service operations, the study used to determine which customer classes contribute to the cost of providing utility service, application of a higher rate increase to residents and small businesses than to large business customers, the rate of inflation MERC assumed to justify its request, the amount of unpaid utility bills the company assumed in future years, and MERC's proposal to increase the customer charge for residential customers to \$11 per month from their current rates of either \$9.50 or \$5 per month. The parties have conducted a contested case proceeding before the Office of Administrative Hearings. The Public Utilities Commission is expected to make its final determination in October, 2016.
- ***Otter Tail Power Company Electric Rate Case.*** Otter Tail filed a request for a \$19.3 million rate increase. The division filed testimony on multiple issues, including opposing an increase to the monthly customer charge for residential customers, a reduction to the return on equity that Otter Tail is allowed to recover, and reductions in Otter Tail's travel and entertainment expenses. The Office of Administrative Hearings is expected to conduct a contested case proceeding in October, 2016.
- ***Xcel Energy's Gas Utility Infrastructure Rider.*** In November, 2015, Xcel Energy's gas utility filed a petition for rider recovery of approximately \$15.5 million of costs under the Gas Utility Infrastructure Cost rider statute. The division filed comments on the utility's allowed return on equity, and proposed safety and performance metrics, and caps to the size of the allowed recovery. The Public Utilities Commission subsequently approved

the rider, but at a lower return on equity than proposed by the utility and with a requirement for the utility to work with parties on safety and performance metrics.

- ***Great Plains Natural Gas Rate Case.*** In September, 2015, Great Plains Natural Gas filed a rate case requesting a \$1.5 million rate increase. In early 2016, the division made recommendations on the allowable expenses, rate base, return on equity, the class cost of service study, and rate design. The Public Utilities Commission met to hear oral arguments and deliberate in August, 2016, and reduced the utility's revenue deficiency request by \$437,556. In addition, the Commission adopted the division's positions on flotation costs in the allowed return on equity and on future filing requirements for the class cost of service study.
- ***Evaluation of the Demand Side Management Financial Incentive.*** In July, 2015, the Department of Commerce submitted a report on the Demand Side Management financial incentive mechanism. The report showed that utilities are awarded an average of \$70 million a year in financial incentives for achievements made in energy efficiency programming required by law. The division performed an analysis of both the size of the incentives and on the mechanism itself, and made recommendations to modify both. The analysis showed that Minnesota awards, as a percentage of program budget, a higher financial incentive than any state in the country. This is especially true amongst other high-achieving states whose utilities perform energy efficiency functions without such a high payout. As a result of this finding, the division recommended cost caps on the financial incentive in addition to other changes to the mechanism. The Department of Commerce adopted the cost cap suggestion and other elements of the division's recommendations, although it recommended a higher cap. The Public Utilities Commission deliberated about this issue in May, 2016, and adopted the higher cost caps proposed by the Department. This decision could save ratepayers millions of dollars because the Department's originally-proposed mechanism did not feature a cost-based cap and would have resulted in financial incentives much higher than what was ultimately approved.

#### ***Antitrust***

- ***DRAM Multistate Antitrust Litigation.*** A California federal court approved a settlement between Minnesota and other states and various defendants who had allegedly conspired to fix the price of a common memory product used in computers and other devices, known as DRAM. The settlement called for, among other sanctions, payment of damages, including approximately \$300,000 directly to the State of Minnesota. Distribution of settlement funds to consumers began on July 8, 2016, and distribution of settlement funds to government purchasers is anticipated to begin by the end of 2016. The division continues to participate in the litigation and distribution of restitution.
- ***Provigil Multistate Antitrust Litigation.*** In August, 2016, following an investigation, Minnesota and other states filed a complaint in Pennsylvania federal court, along with a settlement with Cephalon, Inc., Teva Pharmaceuticals Industries Ltd., Teva Pharmaceuticals USA, Inc., and Barr Pharmaceuticals, who allegedly entered into legal settlements that kept generic competition to the branded drug Provigil from entering the market. If approved, the settlement calls for payment of approximately \$1 million to the

State of Minnesota. Minnesota consumers are also be eligible to submit direct claims for recovery of losses.

- ***Federal Trade Commission, et. al. v. Advocate Health Care Network et. al.*** On July 22, 2016, Minnesota and other states filed a brief with the Seventh Circuit Court of Appeals arguing that the district court erred by failing to apply the hypothetical monopolist test when analyzing a merger between competing health care providers. The case remains pending.
- ***Barclays Multi-State Settlement.*** On August 8, 2016, a multi-jurisdictional group of 43 state attorneys general and the District of Columbia announced a settlement with Barclays to address fraudulent and anti-competitive conduct in manipulating the LIBOR rate. The settlement allows for recovery for government entities and not-for-profit organizations that were harmed by Barclays' conduct. This settlement follows a multi-year investigation in which the division participated.

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2016				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<i>Partner Agencies</i>				
Administration--Risk Management		1,387.5		\$ 166,447.90
AURI		1.0		\$ 129.00
Corrections (3)	2,351.9	2,351.9	\$ 288,785.00	\$ 288,784.90
Education Department	1,380.0	2,705.5	\$ 178,071.00	\$ 345,268.50
Environmental Quality Board		127.2		\$ 16,408.80
Gambling Control Board		56.8		\$ 7,327.20
Health		4,791.4		\$ 606,241.20
Housing Finance Authority		1,280.4		\$ 165,171.60
Human Services	23,220.0	27,415.0	\$ 2,908,380.00	\$ 3,485,489.20
Iron Range Resources & Rehabilitation		52.8		\$ 5,523.60
Medical Practices Board	6,437.0	4,852.9	\$ 563,600.00	\$ 460,683.50
Minnesota Racing Commission		271.5		\$ 35,006.10
Minnesota State Retirement System		335.0		\$ 42,698.80
MnSCU		5,117.9		\$ 613,687.30
MNsure		14.5		\$ 1,737.10
Natural Resources		4,747.5		\$ 607,288.70
Petroleum Tank Release Compensation Board	500.0	307.2	\$ 64,500.00	\$ 39,628.80
Pollution Control	8,000.0	6,190.1	\$ 1,032,000.00	\$ 797,130.90
Public Employees Retirement Association		113.9		\$ 14,693.10
Public Safety (3)		6,220.7		\$ 656,078.30
Revenue (3)	4,500.0	4,500.0	\$ 580,500.00	\$ 580,500.00
Teachers Retirement Association		411.3		\$ 52,970.70
Transportation		11,361.1		\$ 1,458,047.70
<b>TOTAL PARTNER AGENCIES</b>	<b>46,388.9</b>	<b>84,613.1</b>	<b>\$ 5,615,836.00</b>	<b>\$ 10,446,942.90</b>
<i>Health Boards/Offices</i>				
Behavioral Health & Therapy Board		271.8		\$ 23,178.00
Chiropractic Board		1,359.1		\$ 127,299.90
Dentistry Board		1,801.4		\$ 193,636.60
Dietetics & Nutrition Practice Board		34.2		\$ 2,869.00
Emergency Medical Services Regulatory Board		344.6		\$ 44,453.40
Health Professionals Services Program		23.4		\$ 3,018.60
Licensed Drug & Alcohol Counselor Program		1,297.6		\$ 122,794.20
Marriage & Family Therapy Board		818.7		\$ 78,445.10
Nursing Board		5,984.8		\$ 661,914.60
Nursing Home Administrators Board		177.6		\$ 16,118.60
Optometry Board		61.2		\$ 7,123.40
Pharmacy Board		2,263.9		\$ 218,951.50
Physical Therapy Board		689.7		\$ 72,783.50
Podiatry Board		168.5		\$ 18,343.50
Psychology Board		2,555.4		\$ 254,194.40
Social Work Board		1,787.7		\$ 174,272.10
Veterinary Medicine Board		988.5		\$ 94,125.90
<b>SUBTOTAL</b>		<b>20,628.1</b>		<b>\$ 2,113,522.30</b>

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2016				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<i>Other State Agencies/Political Subdivisions</i>				
Accountancy Board		101.6		\$ 13,106.40
Administration Department		585.9		\$ 59,967.50
Administrative Hearings Office		64.8		\$ 8,359.20
Agriculture Department		559.1		\$ 71,572.90
Amateur Sports Commission		9.5		\$ 1,225.50
Animal Health Board		124.4		\$ 16,047.60
Architecture Board		119.3		\$ 15,389.70
Asian Pacific Minnesotans Council		3.5		\$ 451.50
Assessors Board		0.5		\$ 64.50
Barber Board		29.9		\$ 3,857.10
Campaign Finance Board		210.2		\$ 26,164.60
Capitol Area Architectural Planning Board		4.4		\$ 567.60
Center for Arts Education		129.8		\$ 14,638.80
Client Security Board		275.2		\$ 33,842.00
Commerce Department		11,546.7		\$ 1,468,267.30
Commission Serving Deaf and Hard of Hearing		2.9		\$ 374.10
Corrections Department (3)		4,721.1		\$ 589,290.30
Corrections Department/Community Notification		1,578.7		\$ 171,363.70
Cosmetology Examiners Board		79.8		\$ 10,294.20
Council for Minnesotans of African Heritage		503.3		\$ 59,978.30
Council on Latino Affairs		4.9		\$ 632.10
Crime Victims Reparations Board		100.2		\$ 11,707.80
Disability Council		15.4		\$ 1,986.60
Employment & Economic Development Department		2,477.5		\$ 226,176.90
Executive Council		7.9		\$ 1,019.10
Explore Minnesota Tourism		6.7		\$ 487.30
Faribault Academies		57.6		\$ 7,355.00
Firefighter Training & Education Board		8.0		\$ 1,032.00
Governor's Office		339.7		\$ 43,055.70
Higher Education Facilities Authority		2.1		\$ 270.90
Higher Education Services Office		155.7		\$ 19,482.10
Human Rights Department		1,268.2		\$ 153,134.60
Judiciary Courts		746.0		\$ 96,147.00
Labor and Industry Department		5,954.1		\$ 764,477.10
Land Exchange Board		3.3		\$ 425.70
Law Examiner's Board		46.2		\$ 5,959.80
Lawyers Professional Responsibility Board		96.2		\$ 12,409.80
Legislature		6.9		\$ 890.10
Mediation Services Bureau		84.6		\$ 10,913.40
Military Affairs Department		237.8		\$ 30,676.20
Minnesota Management & Budget		815.2		\$ 93,572.40
MN.IT Services Office		111.3		\$ 7,902.30
Ombudsman for Mental Health & Developmental Disabilities		19.5		\$ 2,515.50
Ombudsperson for Families		33.5		\$ 4,321.50
Pardon Board		18.0		\$ 2,322.00
Peace Officers Standards and Training Board		217.0		\$ 27,993.00
Public Defender, Local		35.8		\$ 4,461.60
Public Defender, State		51.4		\$ 6,549.40
Public Safety Department (3)		23,620.6		\$ 2,700,994.60
Public Utilities Commission		4,255.6		\$ 542,818.60
Revenue Department (3)		6,651.2		\$ 857,859.80
Rural Finance Authority		31.7		\$ 4,089.30
School Administrators Board		203.0		\$ 26,187.00
Secretary of State		1,250.4		\$ 158,245.00
Sentencing Guidelines Commission		36.2		\$ 4,669.80
State Arts Board		5.9		\$ 679.90
State Auditor		22.3		\$ 2,528.70
State Fair Board		1.2		\$ 154.80
State Historical Society		2.8		\$ 361.20
State Investment Board		500.6		\$ 63,498.60
State Lottery		766.5		\$ 90,045.10
Tax Court		3.8		\$ 490.20
Teaching Board		1,482.5		\$ 191,201.90
Veterans Affairs Department		41.1		\$ 4,652.30
Veterans Homes		846.2		\$ 106,776.00
Water & Soil Resources Board		609.1		\$ 78,539.10
Zoological Board		58.5		\$ 7,181.10
<b>SUBTOTAL</b>		<b>73,960.5</b>		<b>\$ 8,943,672.70</b>

**APPENDIX A: SERVICE HOURS**  
**By Agency or Political Subdivision for FY 2016**

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
<b>OTHER GOVERNMENT</b>				
Aitkin County Attorney		178.4		\$ 23,013.60
Anoka County Attorney		732.1		\$ 70,225.90
Becker County Attorney		399.6		\$ 48,677.40
Beltrami County Attorney		1,556.9		\$ 142,161.50
Benton County Attorney		88.3		\$ 11,303.70
Big Stone County Attorney		25.3		\$ 2,915.70
Blue Earth County Attorney		1,201.9		\$ 123,440.90
Brown County Attorney		574.6		\$ 50,563.80
Carlton County Attorney		225.4		\$ 22,841.60
Carver County Attorney		89.3		\$ 11,432.70
Cass County Attorney		289.4		\$ 33,243.60
Chippewa County Attorney		1,185.3		\$ 121,902.70
Chisago County Attorney		182.5		\$ 22,463.70
Clay County Attorney		85.7		\$ 8,706.30
Cook County Attorney		4.0		\$ 400.00
Cottonwood County Attorney		75.3		\$ 9,568.70
Crow Wing County Attorney		283.0		\$ 27,389.40
Dakota County Attorney		1,489.9		\$ 131,691.50
Dodge County Attorney		20.0		\$ 2,580.00
Douglas County Attorney		3.5		\$ 422.50
Faribault County Attorney		0.3		\$ 38.70
Fillmore County Attorney		99.0		\$ 12,771.00
Freeborn County Attorney		121.4		\$ 13,514.60
Goodhue County Attorney		151.1		\$ 19,375.90
Hennepin County Attorney		14,487.1		\$ 1,282,508.10
Houston County Attorney		15.6		\$ 2,012.40
Hubbard County Attorney		114.0		\$ 10,031.20
Isanti County Attorney		68.5		\$ 8,778.50
Itasca County Attorney		16.8		\$ 1,210.20
Jackson County Attorney		68.5		\$ 8,836.50
Kanabec County Attorney		94.6		\$ 12,203.40
Kandiyohi County Attorney		223.8		\$ 28,870.20
Koochiching County Attorney		8.6		\$ 1,109.40
Lac qui Parle County Attorney		295.8		\$ 32,920.80
Lake County Attorney		12.4		\$ 1,599.60
Le Sueur County Attorney		724.3		\$ 75,570.70
Lincoln County Attorney		29.6		\$ 3,818.40
Lyon County Attorney		821.3		\$ 86,546.70
Mahnomen County Attorney		168.5		\$ 16,539.70
Marshall County Attorney		110.1		\$ 14,086.90
Martin County Attorney		295.6		\$ 27,309.60
Meeker County Attorney		176.8		\$ 22,749.20
Mille Lacs County Attorney		877.7		\$ 88,660.30
Morrison County Attorney		112.5		\$ 13,752.70
Mower County Attorney		487.5		\$ 53,114.50
Nicollet County Attorney		328.0		\$ 34,905.40
Nobles County Attorney		1,893.3		\$ 208,252.50
Olmsted County Attorney		199.4		\$ 15,346.40
Otter Tail County Attorney		609.6		\$ 69,288.80
Pennington County Attorney		287.5		\$ 35,028.50
Pine County Attorney		33.6		\$ 4,073.40
Polk County Attorney		1,099.7		\$ 116,787.90
Pope County Attorney		44.9		\$ 5,792.10
Ramsey County Attorney		6,357.0		\$ 602,634.20
Redwood County Attorney		141.2		\$ 10,413.80
Renville County Attorney		826.0		\$ 78,986.60
Rice County Attorney		12.5		\$ 1,537.10
Rock County Attorney		62.3		\$ 7,804.70
Roseau County Attorney		2.1		\$ 270.90
Scott County Attorney		86.9		\$ 7,608.30
Sherburne County Attorney		493.3		\$ 49,889.70
St. Louis County Attorney		1,048.3		\$ 125,979.70
Stearns County Attorney		1,431.9		\$ 170,626.90
Steele County Attorney		654.9		\$ 72,835.70
Stevens County Attorney		199.8		\$ 16,239.00
Todd County Attorney		1,365.0		\$ 125,828.00
Wabasha County Attorney		194.7		\$ 23,393.70
Wadena County Attorney		41.2		\$ 4,589.80
Washington County Attorney		333.4		\$ 27,569.00
Wilkin County Attorney		94.6		\$ 11,826.40
Winona County Attorney		139.5		\$ 12,891.50
Wright County Attorney		660.9		\$ 74,009.90

APPENDIX A: SERVICE HOURS				
By Agency or Political Subdivision for FY 2016				
Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Yellow Medicine County Attorney		987.6		\$ 104,415.00
Association of County Attorneys		77.2		\$ 9,958.80
Various Local Governments		59.8		\$ 7,482.20
<b>SUBTOTAL</b>		<b>48,037.9</b>		<b>\$ 4,739,140.30</b>
<b>TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)</b>		<b>84,613.1</b>		<b>\$ 10,446,942.90</b>
<b>TOTAL NON-PARTNER AGENCIES SUBDIVISIONS</b>		<b>142,626.5</b>		<b>\$ 15,796,335.30</b>
<b>GRAND TOTAL HOURS/EXPENDITURES</b>		<b>227,239.6</b>		<b>\$ 26,243,278.20</b>
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 \$129.00 and Legal Assistant \$71.00				
(3) A number of agencies signed agreements for a portion of their legal services.				



APPENDIX B: SPECIAL ATTORNEY EXPENDITURES FOR FY 2016, BY AGENCY/POLITICAL SUBDIVISION	
AGENCY/POLITICAL SUBDIVISION	Amount
Administration	\$ 866,239.83
Labor and Industry	\$ 25,553.27
Minnesota Management & Budget	\$ 91,587.42
MnDOT	\$ 445.00
MNsure	\$ 478.50
Revenue	\$ 56,691.05
<b>TOTAL</b>	<b>\$ 1,040,995.07</b>

APPENDIX B: SPECIAL ATTORNEY EXPENDITURES	
BOND COUNSEL FOR FY 2016, BY AGENCY/POLITICAL SUBDIVISION	
AGENCY/POLITICAL SUBDIVISION	Amount
Commerce	\$ 34,978.09
Higher Education Facilities Authority	\$ 285,547.01
Higher Education, Office of	\$ 87,124.84
Housing Finance Agency	\$ 410,398.17
Minnesota Management & Budget	\$ 183,759.26
MnSCU	\$ 2,298.75
Public Facilities Authority	\$ 62,864.90
Rural Finance Authority	\$ 1,406.00
<b>TOTAL</b>	<b>\$ 1,068,377.02</b>
NOTE: Certain bond fund counsel are paid from proceeds.	



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

October 17, 2014

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

Thomas M. Canan  
Sr. Assistant Olmsted County Attorney  
151 4<sup>th</sup> Street SE  
Rochester, MN 55904-3710

Re: Application of Auctioneer Licensing Laws to Online Auctions

Dear Mr. Canan:

I thank you for your correspondence received on September 4, 2014 and speaking with me on October 7, 2014. You ask whether Minnesota law requires the issuance of an auctioneer's license by a county for the sale of property physically located within that county through an online auction website such as eBay.

## BACKGROUND

You state that the Vital Records Division of the Olmsted County Property Records and Licensing Department recently had an inquiry from an out-of-state auction company asking whether it must obtain an auctioneer's license before conducting an online auction of property located in the county. You ask whether sales on eBay or similar internet auction sites that conduct online time-limited auctions constitute "the business of an auctioneer," such that Minnesota's auctioneer-licensing requirement applies.

In an online time-limited auction, the sale is made to the bidder who submits the highest bid before the expiration of the specified time limit. The time limit for such auctions on eBay can range from one to ten days. In addition, eBay offers a "Buy it Now" feature that allows a purchaser to pay a fixed price in lieu of bidding on an item.

## LAW AND ANALYSIS

Minnesota's auctioneer-licensing laws are presently codified in Minnesota Statutes Chapter 330, but they have their origin in the territorial laws that existed prior to statehood. From its earliest days through the present, Minnesota law has consistently provided that only natural persons may be licensed auctioneers. *See* Minn. Stat. § 330.01, subd. 1(b) (2012) ("No copartnership, association or corporation may be licensed as an auctioneer."); *see also* Op. Atty. Gen. 16-B Apr. 10, 1940 (enclosed). Accordingly, corporate entities, like the out-of-state company referenced in your letter, are not subject to Minnesota's auctioneer-licensing requirements.

Chapter 330 does not define what specifically constitutes “the business of an auctioneer” that is subject to licensure. Prior opinions from this Office demonstrate an understanding that Minnesota’s auctioneer-licensing requirements apply to the traditional activities of an auctioneer, *e.g.*, publicly crying out prices and soliciting competitive bids until the highest bidder is found. *See* Op. Atty. Gen. 16-C, Mar. 26, 1920 (referring to “a license to cry sales as an auctioneer”) (enclosed); Op. Atty. Gen. 16-C, June 22, 1951 (discussing auctioneer’s authority to “cry sales”) (enclosed). These opinions involve interpretation of statutory language that includes the “business of an auctioneer” language that remains in Minn. Stat. § 330.01, subd. 1(a) (2012) today. Time-limited online auctions are conducted in a very different manner than conventional auctions; they do not involve crying sales and the bidding process concludes upon expiration of a predetermined time limit.

Other state Attorneys General who have examined similar auctioneering-licensing requirements have concluded that time-limited sales conducted through online auction sites such as eBay do not require an auctioneer license. For example, the North Dakota Attorney General issued an opinion concluding that eBay did not fit within that state’s definition of “auctioneer” as “a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation.” *See* N.D. Op. Atty. Gen. 2005-L-40, Nov. 4, 2005 (enclosed); N.D. Code § 51-05.1-04(1). The North Dakota Attorney General concluded that eBay does not sell or offer to sell property, but rather constitutes a marketplace for individual eBay members to provide items for sale. In addition, the North Dakota Attorney General noted that the eBay sales process does not fall within the traditional definition of auction as a sale closing by highest bid.

In 2006, the Tennessee Attorney General similarly concluded that transactions on eBay did not constitute “auctions” under that state’s auctioneer-licensing requirements. *Tenn. Op. Atty. Gen. 06-053*, Mar. 27, 2006 (enclosed). The Alabama Attorney General reached the same conclusion under that state’s auctioneer-licensing law, which limits the term “auctioneer” to an individual “who engages in bid calling or who sells at public outcry.” *Ala. Op. Atty. Gen. 2008-109*, July 16, 2008 (enclosed).<sup>1</sup>

## CONCLUSION

Based on the foregoing, including the reasoning of the various Attorney General Offices referenced above, time-limited online auction sales are not subject to the auctioneer-licensing requirements set forth in Minnesota Statutes Chapter 330.

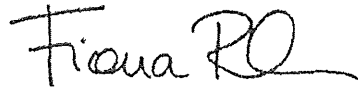
---

<sup>1</sup> I note that many states expressly exclude online auction sales from their auctioneer-licensing requirements. *See* Ark. Code Ann. § 17-17-104(a)(5); 225 Ill. Comp. Stat. 407/10-1(d); La. Rev. Stat. Ann. § 37:3103(4); N.D. Cent. Code. § 51-05.1-04(5); Ohio Rev. Code Ann. § 4707.02(B)(8); 63 Pa. Cons. Stat. § 734.2; Tenn. Code Ann. § 62-19-103(9).

Thomas M. Canan  
October 17, 2014  
Page 3

I thank you again for your correspondence.

Very truly yours,

A handwritten signature in black ink that reads "Fiona B. Ruthven". The signature is fluid and cursive, with the first name "Fiona" being more prominent and the last name "Ruthven" written in a more compact, connected style.

FIONA B. RUTHVEN  
Assistant Attorney General

(651) 757-1248 (Voice)  
(651) 297-1235 (Fax)

Enclosures: Op. Atty Gen. 16-B, Apr. 10, 1940  
Op. Atty Gen. 16-C, Mar. 26, 1920  
Op. Atty Gen. 16-C, June 22, 1951  
N.D. Op. Atty. Gen. 2005-L-40, Nov. 4, 2005  
Tenn. Op. Atty. Gen. 06-053, Mar. 27, 2006  
Ala. Op. Atty. Gen. 2008-109, July 16, 2008



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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

December 8, 2014

Mr. Roger N. Knutson  
Edina City Attorney  
Campbell Knutson, P.A.  
1380 Corporate Center Curve, Suite 317  
Eagan, MN 55121

Dear Mr. Knutson:

I am responding to your letter of October 26, 2014 regarding Minn. Laws 2002, ch. 393, § 85 (the "Law"). The Law states as follows:

Sec. 85. [DAN PATCH COMMUTER RAIL LINE; PROHIBITIONS.]

Subd. 1. [DEFINITION.] For purposes of this section, "Dan Patch commuter rail line" means the commuter rail line between Northfield and Minneapolis identified in the metropolitan council's transit 2020 master plan as the Dan Patch line.

Subd. 2. [METROPOLITAN COUNCIL; PROHIBITIONS.] The metropolitan council must not take any action or spend any money for study, planning, preliminary engineering, final design, or construction for the Dan Patch commuter rail line. The council must remove all references, other than references for historical purposes, to the Dan Patch commuter rail line from any future revisions to the council's transportation development guide and the council's regional transit master plan.

Subd. 3. [COMMISSIONER OF TRANSPORTATION.] The commissioner of transportation must not expend any money for study, planning, preliminary engineering, final design, or construction for the Dan Patch commuter rail line. The commissioner must remove all references, other than references for historical purposes, to the Dan Patch commuter rail line from any future revisions to the state transportation plan and the commissioner's commuter rail system plan.

Subd. 4. [REGIONAL RAIL AUTHORITIES.] No regional rail authority may expend any money for study, planning, preliminary engineering, final design, or construction for the Dan Patch commuter rail line.

Mr. Roger N. Knutson  
December 8, 2014  
Page 2

Your letter asks four general questions regarding what you refer to as the "meaning and scope" of the Law. No factual information or circumstances are provided for considering the context in which these issues have arisen or even may arise in the future.

For the reasons noted in Op. Atty. Gen. 629a, May 9, 1975 (enclosed), this Office does not typically render opinions based on hypothetical questions. However, I do note the following:

First, the "Dan Patch Commuter Rail Line" referred to in the Law is depicted on a map in the Metropolitan Council's "2020 Master Plan." I enclose a copy of page 36 of that document which identifies the "Dan Patch Line." See also Minn. Laws 2002, ch. 393, § 85, subd. 1.

Second, the Law clearly prohibits the Metropolitan Council, the Commissioner of Transportation and regional rail authorities from expending any money to construct the line, including the use of money to study, plan or design for that purpose. *Id.*, subds. 2-4. In fact, the Metropolitan Council is prohibited from taking "any action" regarding the line. *Id.*, subd. 2.

Third, as you may know, on March 17, 2014 Senator Kevin Dahle of Northfield introduced a bill removing some of the Law's prohibitions. That bill, Senate File 2763, was referred to the Senate Transportation and Public Safety but not enacted. The companion bill in the House, H.F. 3151, authored by Representative David Bly of Northfield, was referred to the House Committee on Transportation Policy. Enclosed are copies of the bills introduced in the Senate and House.

Fourth, your letter appears to inquire about the applicability of the Law if the Dan Patch Line, or a portion of it, is used for transportation other than commuter rail. If that is the purpose of your letter, I strongly encourage you to seek a clarifying amendment from the Legislature. Indeed, in light of the extensive prohibitory language in the law, and the significant public policy implicated by such projects, obtaining legislative clarification would be a prudent course of action.

If you seek a clarification of the Law, you may want to contact the chairs of the pertinent committees. The current chairs may be contacted as follows:

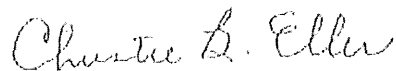
Sen. Scott Dibble  
Chair, Transportation &  
Public Safety Committee  
111 Capitol  
St. Paul, MN 55155-1606  
651-296-4191

Rep. Ron Erhardt  
Chair, Transportation Policy Committee  
543 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155  
651-296-4363

Mr. Roger N. Knutson  
December 8, 2014  
Page 3

Committee chairs are subject to change each session.

Very truly yours,



CHRISTIE B. ELLER  
Deputy Attorney General

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

Enclosures: Op. Atty. Gen. 629a, May 9, 1975  
P. 36 of Transit 2020 Master Plan  
S.F. 2763  
H.F. 3151





STATE OF MINNESOTA  
OFFICE OF THE ATTORNEY GENERAL

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

January 15, 2015

Daniel A. McIntosh  
Steele County Attorney  
303 South Cedar  
Owatonna, MN 55060

Dear Mr. McIntosh:

I thank you for your correspondence received December 22, 2014 inquiring whether a county attorney may contract to provide legal services to a combined local social services agency for additional compensation beyond his or her normal salary.

You explain that pursuant to Minn. Stat. §§ 393.01, subd. 7 and 471.59 (2014), Dodge, Steele and Waseca Counties (the "Member Counties") entered into a joint powers agreement to create a joint powers entity to provide social services to the residents of the Member Counties. The joint entity is known as the Minnesota Prairie County Alliance ("MN Prairie"). MN Prairie will administer the human services previously provided by each of the Member Counties on an individual county basis. The county attorney's office for each of the Member Counties will retain jurisdiction over human-services-related cases that are properly venued in that county. MN Prairie would like to hire separate in-house legal counsel to provide general legal services to the entity. MN Prairie and the Member Counties have discussed the possibility of appointing one of the county attorneys of the Member Counties as MN Prairie's legal counsel. You request an opinion from this Office as to whether the county attorney of one of the Member Counties may contract to serve as legal counsel to MN Prairie and receive additional compensation for providing legal services to MN Prairie without violating Minnesota law.

The Office of Attorney General has limited authority. For instance, while it is authorized to provide legal opinions in appropriate circumstances to units of local government on questions of public importance, *see* Minn. Stat. § 8.07 (2014), it is not generally authorized to provide legal advice or opinions to other persons or organizations. A multi-jurisdictional joint powers entity is not one of the units of local government that may request opinions under Minn. Stat. § 8.07 (2014). In addition, this Office does not undertake a general review of the legal validity of contracts entered into by local entities since the task of such review is the responsibility of local officials. Op. Atty. Gen. 629-a, May 9, 1975 at 4. Despite these limitations, I can, however, offer the following comments, which I hope you will find helpful.

First, under Minn. Stat. § 393.01, subd. 1 (2014), every county is directed to establish a "local social services agency." Counties, however, may agree to operate a combined local social services agency, such as MN Prairie, under Minn. Stat. § 393.01, subd. 7 (2014). In the event

that counties join together to operate a combined local social services agency, Minnesota law provides that the combined agency "shall have the same powers, duties and functions as an individual local social services agency." *Id.*

Second, Minn. Stat. § 388.051 (2014), sets forth the general duties of county attorneys in Minnesota. Under Minn. Stat. § 388.08 (2014), "[n]o county attorney or assistant county attorney shall receive or accept any fee or reward from, or which is paid or given on behalf of, any one for services rendered or to be rendered in the prosecution or conduct of any official duty or business." See also Minn. Stat. § 382.18 (2014) ("No county official, or deputy or clerk or employee of such official . . . shall be directly or indirectly interested in any contract, work, labor, or business to which the county is a party or in which it is or may be interested or in the furnishing of any article to, or the purchase or sale of any property, real or personal, by, the county, or of which the consideration, price, or expense is payable from the county treasury.").

It has long been the legal opinion of this Office that the provision of legal advice to a local social services agency falls within the statutory duties of the office of county attorney, such that a county attorney may not receive additional compensation for such services. See, e.g., Op. Atty. Gen. 122a-6, Dec. 16, 1976 at 2 ("It is our opinion that a county attorney is not generally authorized to collect compensation in addition to his salary for duties performed for the welfare board."); Op. Atty. Gen. 125a-64, Apr. 18, 1941 ("This office has previously held that the county attorney is the legal advisor to the county welfare board . . ."); Op. Atty. Gen. 125a-64, Sept. 30, 1940 at 1 ("We have always taken the view that it is the duty of the county attorney to act as legal advisor and perform necessary legal services for county welfare boards, this by virtue of Mason's Minnesota Statutes of 1927, Section 926.<sup>1</sup>"). The "county welfare boards" referenced in these prior opinions are the same as the "local social services agencies" presently governed by Minn. Stat. ch. 393 (2014). See 1994 Minn. Laws 1892 ("In the next and subsequent editions of Minnesota Statutes, the revisor shall change the terms 'county welfare board' and 'county welfare department' to 'local social services agency' wherever they appear.").


Finally, as you note, this Office has previously opined that county attorneys from two or more counties may enter into a joint agreement under Minn. Stat. § 471.59 "whereby certain legal services would be furnished by one county to another to assist the county attorney in carrying out the duties imposed upon him [or her] by law." Op. Atty. Gen. 121-A, June 2, 1970 at 3. Although a county attorney providing legal services to a local social services agency may not receive additional compensation beyond his or her salary, Minn. Stat. § 393.11, subd. 1 (2014) authorizes the agency to pay "a share of the salary, clerk hire, and expenses of the county attorney or both, such share to be proportionate to the expenses incurred on local social services agency matters."

<sup>1</sup> This is the predecessor statute of Minn. Stat. § 388.051 (2014)

Daniel A. McIntosh  
January 15, 2015  
Page 3

For your convenience, I enclose copies of the cited Attorney General Opinions for your review. I thank you again for your correspondence.

Very truly yours,

  
FIONA B. RUTHVEN  
Assistant Attorney General

(651) 757-1248 (Voice)  
(651) 297-1235 (Fax)

Enclosures: Op. Atty. Gen. 629-a, May 9, 1975  
Op. Atty. Gen. 122a-6, Dec. 16, 1976  
Op. Atty. Gen. 125a-64, Apr. 18, 1941  
Op. Atty. Gen. 125a-64, Sept. 30, 1940  
Op. Atty. Gen. 121-A, June 2, 1970



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

December 18, 2014

SUITE 1800  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2134  
TELEPHONE: (651) 297-2030

Scott M. Lepak, Esq.  
Barna, Guzy & Steffen, Ltd.  
200 Coon Rapids Boulevard Northwest, #400  
Coon Rapids, MN 55433-5894

**Re: Charitable Gambling Calculation Clarification for the City of St. Francis**

Dear Mr. Lepak:

I thank you for your correspondence received November 17, 2014 on behalf of the City of St. Francis (the "City").

You state that the City of St. Francis ("the City") has enacted a charitable gambling ordinance that permits charitable gambling in the City. The ordinance adopts by reference the language of Minnesota Statutes chapter 349 (2014), and allows charitable gambling pursuant to Minn. Stat. § 349.213, subd. 1, which states:

A statutory or home rule city or county has the authority to adopt more stringent regulation of lawful gambling within its jurisdiction, including the prohibition of lawful gambling.

Minn. Stat. § 349.213, subd. 1(a).

The statute further provides:

(d) The authority granted by this subdivision does not include the authority to require an organization to make specific expenditures of more than ten percent per year from its net profits derived from lawful gambling.

(e) For purposes of this subdivision, net profits are gross profits less amounts expended for allowable expenses and paid in taxes assessed on lawful gambling.<sup>1</sup>

Minn. Stat. § 349.213, subd. 1(d)(e).

<sup>1</sup> Chapter 349 generally defines "net profit" as "gross profit less reasonable sums actually expended for allowable expenses." Minn. Stat. § 349.12, subd. 27. Allowable expenses is "the percentage of the total cost incurred by the organization in the purchase of any good, service, or other item which corresponds to the promotion of the total actual use of the good, service, or other item that is directly related to conduct of lawful gambling." Minn. Stat. § 349.12, subd. 3a.

Scott M. Lepak, Esq.  
December 18, 2014  
Page 2

You indicate that, to determine the percentage of net profits due to the City by a licensed charitable gambling organization, the City uses amounts listed on Form G-1, the Lawful Gambling Monthly Tax Return form from the Minnesota Department of Revenue (the "Form"). The City subtracts Allowable Expenses (Line 22 of the Form) from Net Receipts (Line 10-C of the Form) to calculate a monthly net profit for the organization. The City then uses the monthly net profit figure to further determine the contribution percentage amount that the charitable organization is required to pay to the City.

You state that one of the local charitable organizations recently questioned the City's method of determining net profits. Specifically, the organization believes that the City does not calculate the net profit correctly because the City does not allow for a deduction of federal taxes paid to the Internal Revenue Service from the net profit calculation. The City raises the following question:

[D]oes the City have authority to exclude federal taxes [assessed on lawful gambling and paid by the charitable organization] as a deduction from the calculation of net profits?<sup>2</sup>

This Office generally does not make factual determinations, review the validity of local ordinances, or decide questions which are likely to arise in litigation. Ops. Atty. Gen. 629a, May 9, 1975 (copy enclosed). Notwithstanding these limitations, I can offer the following comments which I hope you will find helpful.

The goal when interpreting statutory provisions is to ascertain and effectuate the intention of the legislature. Minn. Stat. § 645.16 (2014) *accord Educ. Minn.-Chisholm v. Indep. Sch. Dist. No. 695*, 662 N.W.2d 139, 143 (Minn. 2003). Legislative intent is determined "primarily from the language of the statute itself." *Gleason v. Geary*, 214 Minn. 499, 516, 8 N.W.2d 808, 816 (1943). If the text of a statute is clear, "statutory construction is neither necessary nor permitted and [courts] apply the statute's plain meaning." *Am. Towers, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). Statutory language is to be construed according to its ordinary meaning and to give effect to its plain meaning. Minn. Stat. § 645.16 (2014); *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 681 (Minn. 2004) (applying the plain meaning of the words of the statute); *Owens v. Water Gremlin Co.*, 605 N.W.2d 733, 736 (Minn. 2000). Further, the legislature does not intend a result that is unreasonable and "intends the entire statute to be effective and certain." Minn. Stat. § 645.17. Plain language controls only if the text of the statute is unambiguous, that is, if the language is susceptible to only one reasonable meaning. *Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 21 (Minn. 2009). Statutes cannot be rewritten under the guise of statutory interpretation. *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 119 (Minn. 2001) (stating that the court may not add words to a statute).

<sup>2</sup> You reference federal tax form 730. Form 730 relates to monthly federal reporting of taxable wagers.

The plain language of Minn. Stat. § 349.213, subd. 1(e) states that amounts “paid in taxes assessed on lawful gambling” may be deducted to calculate net profits.<sup>3</sup> By its terms, the provision encompasses any tax assessed on a lawful gambling, whether it is a state or federal tax. There is nothing in the provision that limits the deduction to a particular type of tax. In reading the statute as a whole, when the legislature wanted to specify a certain type of tax, it did so in the plain language of the text. *See e.g.*, Minn. Stat. § 349.12, subs. 15, 15b and 15c (recognizing organizations exempt from federal taxes through 501(c) of the Internal Revenue Code); Minn. Stat. § 349.12, subd. 25(a)(9) (real estate taxes); Minn. Stat. § 349.155, subd. 3(a)(5) (sales and use tax) and Minn. Stat. § 349.16, subd. 2(b) (income taxes). Accordingly, it would be reasonable for a court to conclude that the statute allows for the deduction of all amounts paid in taxes, whether a state or a federal tax.

Further, the purpose of chapter 349 is to “regulate lawful gambling, to insure integrity of operations, and to provide for the use of net profits only for lawful purposes.” Minn. Stat. § 349.11. The statute defines an extensive list of what is a “lawful purpose” for which the gambling funds can be used. Minn. Stat. § 349.12, subd. 25. One lawful purpose is for the “payment of local taxes authorized under this chapter, taxes imposed by the United States on receipts from lawful gambling, the taxes imposed by section 297E.02, subdivisions 1, 5, and 6, and the tax imposed on unrelated business income by section 290.05, subd. 3.” *Id.* at (a)(8). The plain language of the statute states that payment of federal taxes is a lawful purpose. Therefore, it appears that Minn. Stat. § 349.213, subd. 1(e) would allow for the deduction of the amount paid in federal taxes when determining an organization’s net profit.

GCB, which administers chapter 349, has published a manual intended as a reference guide for the conduct of lawful gambling in Minnesota, *Lawful Gambling Manual 2014: Minnesota Gambling Control Board*. The *Lawful Gambling Manual* is available in its entirety on the GCB website at [www.mn.gov/gcb](http://www.mn.gov/gcb). Follow the links to the Lawful Gambling Manual Update. Chapter 13 of the GCB manual identifies numerous types of taxes assessed on lawful gambling as a lawful purpose expenditure, including state, local, and federal taxes. I enclose a copy of Chapter 13 for your review.

<sup>3</sup> This subdivision provides a more detailed definition of “net profits” for local authorities that is used to determine the ten percent allowance than the general definitions of chapter 349. Minn. Stat. § 349.213, subd. 1(e) states: “For the purposes of this subdivision, net profits are gross profits less amounts expended for allowable expenses and paid in taxes assessed on lawful gambling.” The phrase “paid in taxes assessed on lawful gambling” was added by the Legislature in 1994. *See also Charitable Gambling Licensing and Control*, House Research Department (December 2010) (copy enclosed). Prior to that time, “net profits” was defined as “profits less amounts expended for allowable expenses,” just as the general definition defines it today. *See* Minn. Stat. § 349.12, subd. 27.

Scott M. Lepak, Esq.  
December 18, 2014  
Page 4

Thank you again for your correspondence.

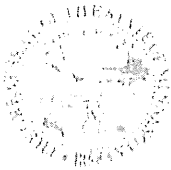
Sincerely,



KRISTI NIELSEN  
Assistant Attorney General

(651) 757-1284 (Voice)  
(651) 297-4077 (Fax)

Enclosures: Ops. Atty. Gen. 629a, May 9, 1975  
*Charitable Gambling Licensing and Control*, House Research Department  
(December 2010)  
*Lawful Gambling Manual 2014*, Chapter 13



STATE OF MINNESOTA  
OFFICE OF THE ATTORNEY GENERAL

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

August 26, 2015

Daniel A. McIntosh  
Steele County Attorney  
303 South Cedar  
Owatonna, MN 55060

Dear Mr. McIntosh:

I thank you for your correspondence received July 23, 2015, questioning whether a county commissioner may also be employed by a joint powers entity.

You state that South Country Health Alliance (SCHA) is a joint powers entity formed by eleven counties, including Steele County. You report that SCHIA occasionally has employment openings, and that a Steele County Commissioner is interested in applying for employment with SCHA. You ask this Office whether a county commissioner may hold employment with SCHA.

While opinions of the Attorney General do not make factual determinations, Op. Atty. Gen. 629a (May 9, 1975) (enclosed), and you do not include any details about SCHA or the position the commissioner may apply for, I can tell you the following, which you may consider in light of the specific facts of the situation:

For your reference, I enclose a copy of a previous letter this Office wrote to the St. Louis County Attorney addressing whether a county commissioner could hold employment with Arrowhead Regional Corrections, a joint powers entity formed to provide corrections services in a five-county region. In general, a county commissioner's employment may be prohibited (1) if the commissioner is employed by the county, (2) if the commissioner holds incompatible public offices, or (3) if the commissioner participates in a matter in which the commissioner derives a personal financial benefit.

First, as you note, Minnesota law prohibits a county commissioner from being "employed by the county," but that phrase is undefined. *See* Minn. Stat. § 375.09, subd. 1 (2014). Whether SCHA employees are considered to be employed by the county depends on the structure of the organization. Indeed, the legal nature of the entity created by a joint powers agreement varies. *In re Greater Morrison Sanitary Landfill, SW-15*, 435 N.W.2d 92, 96 (Minn. Ct. App. 1989).

Second, although your letter focused primarily on Minn. Stat. § 375.09, I note that common law prohibits holding incompatible public offices. Holding a public office is distinct from having public employment. Distinguishing an office from employment turns on "whether that person has independent authority under the law, either alone or with others of equal



Mr. Daniel A. McIntosh  
August 26, 2015  
Page 2

authority, to determine public policy or to make a final decision not subject to the supervisory approval or disapproval of another." *McCutcheon v. City of St. Paul*, 216 N.W.2d 137, 139 (Minn. 1974). For example, this Office has previously concluded that the incompatibility doctrine did not foreclose an employee of a city utility department from also serving on a city council, but the doctrine prohibited a city mayor from also serving on a city library board. See Letter to Paul Ihle, Thief River Falls City Attorney, dated April 9, 1998 (enclosed); Letter to Michael Kennedy, North Mankato City Attorney, dated April 12, 2007 (enclosed). When a person holds two public offices, the offices are incompatible when a person cannot perform the duties of one office while maintaining fidelity to his duties of the other office. *State ex rel. Hilton v. Sword*, 196 N.W. 467, 467 (Minn. 1923); *State ex rel. Young v. Hays*, 117 N.W.2d 615, 615-16 (Minn. 1908). In assessing incompatibility, relevant factors include whether one office is subordinate to the other and whether one office can interfere with or supervise the other. See, e.g., *Kenney v. Goergen*, 31 N.W.2d 210, 211 (Minn. 1986).

Finally, even in the context of public employment, conflicts may arise between the position and another public office. Op. Atty. Gen. 358a-5 (November 25, 1985) (enclosed). A public officer who has authority to sell, lease, or contract may not have a personal financial interest in any sale, lease, or contract that he or she makes. Minn. Stat. § 471.87 (2014). A commissioner therefore could not make decisions as a commissioner that would give him a personal financial benefit as an employee of a joint powers entity, and a commissioner may have to abstain from participating in certain decisions affecting a joint powers organization should a conflict of interest arise.

I thank you again for your correspondence.

Sincerely,

*Angela Behrens*  
*by Christie Elley*  
ANGELA BEHRENS  
Manager, State Agencies Division  
Assistant Attorney General

(651) 757-1204 (Voice)  
(651) 297-1235 (Fax)

Enclosures: Op. Atty. Gen. 629a (May 9, 1975)  
Letter to Dale Harris, St. Louis County Attorney, January 15, 2009  
Letter to Paul Ihle, Thief River Falls City Attorney, April 9, 1998  
Letter to Michael Kennedy, North Mankato City Attorney, April 12, 2007  
Op. Atty. Gen. 358a-5 (November 25, 1985)



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

October 19, 2015

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

Gerald J. Morris  
City Attorney, City of Silver Bay  
Costley & Morris, P.C.  
609 First Avenue  
P.O. Box 340  
Two Harbors, MN 55616

**Re: Request for opinion concerning Silver Bay City Council issue**

Dear Mr. Morris:

I thank you for your September 24, 2015 letter requesting an opinion from the Attorney General's Office regarding potential legal issues raised by the November 2014 election (Silver Bay City Council).

You state that, as the result of the November 2014 election, three of the five seats on the Silver Bay City Council are held by persons who are also members of the Silver Bay Volunteer Fire Department. You indicate that these three members constitute both a quorum and a majority of the Council.

You ask three questions in your letter:

1. Is it a violation of the Open Meeting Law for a quorum of the city council to be members of the city fire department when one or more attend meetings of the fire department without noticing the attendance as a city council meeting?
2. Does the exception stated in Minn. Stat. § 471.88, subd. 6, apply to contracts with a volunteer fire department that is a subdivision of the city?
3. Is there an incompatibility of office between being on the city council and being a member of the fire department at the same time?

For the reasons noted in Op. Atty. Gen. 629a (May 9, 1975) (enclosed), this Office does not generally render opinions upon hypothetical or fact-dependent questions. That having been said, I can provide you with the following information, which I hope you will find helpful.

## 1. Open Meeting Law

The Minnesota Open Meeting Law, Minnesota Statutes chapter 13D, requires that, except as otherwise expressly provided by statute, all meetings of the governing body of a "statutory or home rule charter city, town, or other public body" shall be open to the public. Minn. Stat. § 13D.01, subd. 1(b)(4)-(6) (2014). The Minnesota Supreme Court has held that:

"[M]eetings" subject to the requirements of the Open Meeting Law are those gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee, board, department, or commission thereof, at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body. Although chance or social gatherings are exempt from the requirements of the statute, a quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering.

*Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510, 518 (Minn. 1983) (internal quotation marks and citation omitted). I am enclosing a copy of the *Moberg* decision for your review.

You note that a quorum of the Silver Bay City Council are members of the local volunteer fire department and that, in that capacity, they attend department meetings. These meetings would not, for Open Meeting Law purposes, constitute meetings of the city council unless the three city council members attend and "discuss, decide, or receive information as a group on issues relating to the official business of" the city council. *See id.*

2. **Exception in Minn. Stat. § 471.88, subd. 6 for contract with Volunteer Fire Department**

Minnesota Statutes section 471.87 (Supp. 2015) provides:

Except as authorized in section 123B.195 or 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.

In turn, Minn. Stat. § 471.88 (2014) provides, in pertinent part:

Subdivision 1. **Coverage.** The governing body of any . . . city, by unanimous vote, may contract for goods or services with an interested officer of the governmental unit in any of the following cases.

Subd. 6. **Contract with volunteer fire department.** A contract with a volunteer fire department for the payment of compensation to its members or for the payment of retirement benefits to these members.

*See also id.* § 471.881 ("The exceptions provided in section 471.88 shall apply notwithstanding the provisions of any other statute or city charter.").

Past opinions of this Office provide that the above provisions of section 471.88 apply to members of municipal governing bodies who are also members of local volunteer fire

Gerald J. Morris  
October 19, 2015  
Page 3

departments. See Op. Atty. Gen. 358-E-4 (Jan. 19, 1965) (concluding exception in Minn. Stat. § 471.88, subd. 6, applies to member of volunteer fire department elected as village trustee); Op. Atty. Gen. 90-E (Apr. 17, 1978) (concluding exception in Minn. Stat. § 471.88, subd. 6, applies to member of volunteer fire department elected city council alderman). I am enclosing copies of these opinions for your review.

### 3. Incompatible offices

The Minnesota Supreme Court has held that “[p]ublic offices are incompatible when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both.” *State ex rel. Hilton v. Sword*, 157 Minn. 263, 264, 196 N.W. 467, 467 (1923).

In a 1971 opinion, this Office concluded that the offices of city council member and *chief* of the volunteer fire department are incompatible. Op. Atty. Gen. 358-E-9 (Apr. 5, 1971) (copy enclosed) (“Since the Village Council supervises the discharge of the Fire Chief’s duties, one man serving in both capacities would encounter a conflict of public duties. This conflict requires the conclusion that the two offices are incompatible.”). You do not mention, however, whether any city council member is the chief of the local volunteer fire department or otherwise occupies another position directly supervised by the city council. Their position may be significant because as noted above, this Office has previously opined that no conflict existed when a member of a volunteer fire department was also a member of a municipal governing body. See Op. Atty. Gen. 358-E-4 (Jan. 19, 1965) (no conflict involved in member of volunteer fire department being elected as village trustee); Op. Atty. Gen. 90-E (Apr. 17, 1978) (no conflict involved in member of volunteer fire department being elected as city council alderman).

I thank you again for your correspondence.

Very truly yours,



NATHAN J. HARTSHORN  
Assistant Attorney General

(651) 757-1252 (Voice)  
(651) 297-1235 (Fax)

Enclosures: Op. Atty. Gen. 629a (May 9, 1975)  
*Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983)  
Ops. Atty. Gen. 358-E-4 (Jan. 19, 1965); 358-E-9 (Apr. 5, 1971);  
90-E (Apr. 17, 1978)



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

January 6, 2016

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

Donald F. Ryan, County Attorney  
Crow Wing County Attorney's Office  
213 Laurel Street, Suite 31  
Brainerd, MN 56401

Re: Request For Opinion Concerning County Warrant Issue

Dear Mr. Ryan:

I thank you for your December 16, 2015 letter requesting an opinion from the Attorney General's Office regarding potential legal issues pertaining to signatures on Crow Wing County warrants.

You state that the County annually pays to re-program the electronic equipment that produces county warrants to reflect the signature of the newly-installed chair of the county board. You indicate that the County's auditor-treasurer's signature appears on every county warrant along with the board chair's signature. You note that payment of all warrant expenditures is authorized by the Board at a duly constituted meeting, before a warrant is issued. You ask whether the board chair's signature is required to be on warrants approved by the board, or whether the signature of the auditor-treasurer is sufficient.

For the reasons noted in Op. Atty. Gen. 629a (May 9, 1975), this Office does not generally render opinions upon hypothetical or fact-dependent questions. (I am enclosing a copy of Op. Atty. Gen. 629a, along with the other Attorney General's Office Opinions cited below, with this letter for your review.) That having been said, I can provide you with the following information, which I hope you will find helpful.

Minnesota law provides that, in general, no claims against a Minnesota county "shall be paid otherwise than upon allowance of the county board, upon the warrant of the chair thereof, attested by the county auditor[.]" Minn. Stat. § 384.13 (2014). The same statute provides that "[n]o money shall be disbursed by [a] county board, or any member thereof, but only by the county treasurer upon the warrant of the chair of the county board, attested by the auditor, specifying" various information pertaining to the warrant. *Id.* As a result, the general rule in Minnesota is that county warrants must be signed by both the chair of the county board and the county auditor.

State law does contain an exception to this requirement in certain circumstances. "[I]n those cases in which the precise amount [of the claim against the county] is fixed by law, or is authorized to be fixed by some other person, officer, or tribunal, . . . the [amount] shall be paid upon the warrant of the auditor, upon the proper certificate of the person, officer, or tribunal allowing the same." *Id.* Both the general requirement and this exception have remained

Donald F. Ryan  
January 6, 2016  
Page 2

essentially unchanged in state law since at least 1905. *See* Minn. Stat. § 491 (1905) (copy enclosed).

Several Opinions of the Attorney General's Office have applied Minn. Stat. § 384.13 and have found that a county warrant may issue with the auditor's signature, and without the board chair's, only in circumstances in which state law either (1) directly fixes the precise amount of the claim against the county or (2) authorizes "some other person, officer, or tribunal" to fix that precise amount. *See, e.g.*, Ops. Atty. Gen. 43 (March 18, 1924) (court fees for entering real estate tax judgments must be presented to county board), 107b4 (August 28, 1950) (statutory support payment to persons committed to public institutions could be issued via warrant of auditor without presentment to county board); 285b (December 22, 1966) (disbursements for county library expenses were to be made, per statute, upon submission to county auditor of itemized vouchers approved by county library board, without participation of county board).

Moreover, in 1951 Meeker County asked this Office whether the county board of commissioners could authorize the county's hospital board, together with the county auditor, to pay bills of less than \$1,000 without the approval of the county board of commissioners. Op. Atty. Gen. 1001b (July 25, 1951). Meeker County indicated that "it [was] considered impractical by both the County Board and Hospital Board that said bills under \$1,000.00 be made subject to approval by the County Board." *Id.* This Office answered that Minn. Stat. § 384.13 did not permit Meeker County to issue warrants in this manner, because no state law authorized hospital boards to fix the precise amount of any claim against the county. *Id.*

The same appears to be true in this case. The facts that you have provided do not suggest that any state law either (1) fixes the precise amount of the relevant claims—that is, *all* claims—made against Crow Wing County or (2) authorizes a particular entity to fix the precise amount of those claims. If that is correct, the general rule of section 384.13 applies: county warrants must be signed by both the chair of the county board and the county auditor.

I thank you again for your correspondence.

Very truly yours,



NATHAN J. HARTSHORN  
Assistant Attorney General

(651) 757-1252 (Voice)  
(651) 297-1235 (Fax)

Enclosures: Ops. Atty. Gen. 43 (March 18, 1924), 107b4 (August 28, 1950), 1001b (July 25, 1951), 285b (December 22, 1966), 629a (May 9, 1975) Minn. Stat. § 491 (1905)