



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity, safety, and respect • www.ag.state.mn.us

October 1, 2024

Via Email Only

Governor Tim Walz
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St. Paul, MN 55155
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Senator John Marty, Chair
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Minnesota Senate
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Representative Liz Olson, Chair
House Ways and Means Committee
Minnesota House of Representatives
479 State Office Building
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Dear Governor Walz, Chair Marty, and Chair Olson:

I submit to you the annual expenditure report of the Office of the Attorney General for FY 2024, as required under Minnesota Statutes §§ 8.15, subd. 4, and 8.08.

Role of the Office of the Attorney General

The Attorney General is a statewide elected position created by Article V of the Minnesota Constitution. The role of the Office of the Attorney General is to:

- 1) Defend the duly enacted laws of the State of Minnesota;
- 2) Represent nearly all the State's agencies, boards, and commissions — more than 100 in total — in legal matters;
- 3) Assist Minnesota's county attorneys in criminal cases and appeals, and lead criminal prosecution of Medicaid Fraud; and
- 4) Protect Minnesotans from fraud and abuse, as authorized by many State statutes, most notably Minn. Stat. § 8.31: "The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade."

Governor Tim Walz
Representative Liz Olson, Chair, House Ways and Means Committee
Senator John Marty, Chair, Senate Finance Committee
October 1, 2024
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This report contains many representative examples of the work the Office has done in FY 2024 and continues to do on major current and future legal issues to fulfill each of the roles above. Some are already well known to the Legislature and the public, but many are not. All of them meet the constitutional, statutory, and regulatory duties of the Office, as well as its obligation to protect Minnesotans.

Organization of the Office of the Attorney General

The Office of the Attorney General helps the people of Minnesota afford their lives and live with dignity, safety, and respect. The Office consists of four large legal sections, each led by one of our Deputy Attorneys General or the Solicitor General. Within each Section are smaller Divisions organized around subject matter and client agencies, boards, or commissions.

The Deputy Attorneys General and Solicitor General report to the Chief Deputy Attorney General and Attorney General. The Attorney General is the Chief Legal Officer of the State of Minnesota and reports to the people of Minnesota.

About this report

It would be nearly impossible to list in this report every area of work and every accomplishment of the Office of the Attorney General in FY 2024. For this reason, in this report we provide representative examples of our work rather than a long list of case names. If you do not see directly reflected in this report any cases or bodies of work that interest you, please let me know and I will be happy to brief you.

It continues to be my honor to serve the people of Minnesota as your Attorney General. During my tenure, I have valued open communication and transparency with all members of the Legislature. My door continues to be open to you and the members of your committees and the houses in which you serve.

Sincerely,



KEITH ELLISON
Attorney General

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

ANNUAL REPORT REQUIRED BY

**Minnesota Statutes sections 8.15
subdivision 4 and 8.08 (2023)**

Fiscal Year 2024

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CONSUMER PROTECTION SECTION

CHARITIES DIVISION

The Charities Division serves a number of functions. First, it maintains a public registry of charities, charitable trusts, and professional fundraisers that operate in the State. Second, it oversees and regulates charities, charitable trusts, and nonprofits active in Minnesota. Third, it enforces state charitable solicitation, charitable trust, and nonprofit laws. The Division's enforcement authority is civil, not criminal.

With respect to the Division's registration function, Minnesota law requires charitable trusts, charitable organizations, and professional fundraisers to register and file annual reports with the Attorney General's Office ("AGO"). In the last fiscal year, the Division deposited \$825,746 in registration-related fees into the State's general fund. The Division currently has more than 13,000 soliciting charitable organizations, more than 2,600 charitable trusts, and more than 300 professional fundraisers registered, which include both Minnesota and out-of-state entities. These entities collectively held more than \$956 billion in assets and had more than \$400 billion in total revenue in the past year. Registration information on the Attorney General's website permits the donating public to review a charitable organization's financial information. The Charities Division continues to develop a new online registration and reporting system that will enable even greater transparency and more informed giving.

With respect to its oversight role, the Charities Division reviews for compliance multiple filings and notices concerning charities, charitable trusts, and nonprofits. For charitable trusts, the Division receives notice of certain trust and estate actions so it can act to protect charitable beneficiaries that might otherwise be unable to represent themselves. The Division received notice of dozens of such matters in FY 2024. For nonprofits, the Division receives statutory notice when a corporation seeks to dissolve, merge, or otherwise change its status, so it can ensure that assets are used for nonprofit purposes. The Division received and reviewed 249 such notices last fiscal year. The Charities Division also assists with the review of notices sent to the Office pursuant to the new Health Care Entity Transactions Law, Minn. Stat. ch. 145D. Since the law went into effect in May 2023, the AGO has received 11 notices of transactions and completed review of eight of those transactions. For charities and professional fundraisers, the Division reviews numerous tax returns, financial statements, and other registration documents for financial misuse, solicitation fraud, and other violations.

For its enforcement role, the Charities Division conducts informal and formal civil investigations into complaints and other allegations of fraud, misuse of funds, breaches of fiduciary duties, and other wrongdoing by regulated entities. Depending on the circumstances, investigations are resolved through a spectrum of remedies, from formal enforcement actions to voluntary education and compliance efforts. 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. At the same

time, the Division works proactively with donors, charities, state agencies, and nonprofit boards to provide education, outreach, technical assistance, and other support to strengthen the charitable-giving sector and help prevent future violations.

Based in part upon the legislature's increase in funding for the Charities Division's enforcement efforts, the Division hired and onboarded three investigators, one regulatory analyst, and six assistant attorneys general for the Division in the past fiscal year. The increased capacity has enabled an increase in the number and complexity of investigations the Division has been able to initiate and resolve. With the hiring of the regulatory analyst and other resources, the Division has also undertaken a series of initiatives to prioritize the affirmative review of filings and other sources to proactively identify more potential violations.

Below is a *representative sample of some but not all* legal work performed, including investigations and lawsuits brought or resolved, by the Charities Division in FY 2024.

- ***Dissolution of dozens of entities involved in federal child nutrition fraud scheme.*** The Minnesota Attorney General sued 23 charities involved in defrauding the federal child nutrition program for breaches of fiduciary duties and governance violations after the Department of Justice revealed the widespread scheme in 2022. The complaints alleged that the directors and officers of the nonprofits created or revived sham entities that were used to fraudulently claim federal reimbursements for meals that were not actually provided to children in need under the program. After the lawsuits against six entities were resolved voluntarily, the Minnesota Attorney General successfully secured court orders dissolving the remaining charities in May 2024.
- ***In the Matter of Eagles Healing Nest.*** The Minnesota Attorney General investigated Eagles Healing Nest, a nonprofit providing veterans and their families with housing and services, after reports that the founder was misusing nonprofit funds. The investigation uncovered evidence that the founder was running the nonprofit without board supervision and was mismanaging the nonprofit's finances, including using nonprofit funds for personal expenses. The nonprofit had also failed to maintain its registration with the Minnesota Attorney General's Office as required by law. After the organization formed a new board and hired experienced nonprofit counsel to improve compliance, the Minnesota Attorney General's Office entered into an assurance of discontinuance with the nonprofit and founder in March 2024 requiring the founder's termination, continued compliance efforts including reinstating its registration to solicit donations, and the founder's repayment of \$10,000 to the nonprofit over three years.
- ***In the Matter of Action for East African People.*** In March 2024, the Minnesota Attorney General's Office filed an Assurance of Discontinuance requiring Action for East African People ("AFEAP"), a Minnesota nonprofit corporation, to separate from its founder and director Ayan Abukar, who the Attorney General found had diverted millions of dollars in charitable assets to herself and family members. AFEAP operates a dental clinic that serves low-income patients and others in need, including those from Minnesota's Somali community and other uninsured and underinsured immigrant communities. The AGO alleged that AFEAP made improper payments for Abukar's personal benefit, including

payments to herself, her companies, and her family members. Separately, a federal indictment alleged that Abukar used AFEAP as a conduit to allegedly steal millions of dollars in federal child-nutrition funds. In the assurance, AFEAP agreed to enact governance reforms, including removing Abukar and her daughter from the organization.

- ***In the Matter of Kid’s Wish Network.*** In December 2023, the Minnesota Attorney General investigated Florida-based charity Kids Wish Network, Inc. for deceptively soliciting donations from Minnesotans by giving the impression that funds would be used to grant lavish wishes to area children with serious medical diagnoses, when in reality the vast majority of the funds it raises go to sending mailings rather than helping kids. Kids Wish entered into an Assurance of Discontinuance with the Attorney General in which it agreed to refrain from soliciting contributions in Minnesota for five years.
- ***In the Matter of the Otto Bremer Trust.*** In February 2024, the Minnesota Attorney General prevailed in an opinion of the Minnesota Supreme Court that upheld decisions of lower courts supporting the removal of former Otto Bremer Trust trustee Brian Lipschultz. The Minnesota Supreme Court affirmed that Lipschultz “failed to meet [the] standard” expected “of a trustee of a well-respected charitable trust” because, among other things, he used “his position of power to intimidate a grantee on matters unrelated to any charitable purpose,” “affirmatively lied” to the Attorney General “about having a named successor” trustee, and “repeatedly placed his own priorities before those of the Trust” by using trust property for his own benefit and furthering his own interests when selling the Trust’s shares in Bremer Financial Corporation. The Court also affirmed that the Attorney General is “the representative of the community” that benefits from charitable trusts and is “empowered” to litigate on the community’s behalf to ensure the trust’s purposes are accomplished.

CONSUMER ACTION DIVISION

The Consumer Action Division serves two primary functions. First, it answers calls, correspondence, and on-line complaints from people, businesses, and other organizations who contact the consumer assistance division. Division staff are often able to answer questions and provide information over the phone, talk through consumer-related problems, and assist people in locating other government agencies that may be able to help address their concerns. On January 4, 2024, the Division began to use a new phone system that allows for better constituent services and tracking of data. Since the implementation of the new phone system through June 30, 2024, the Division handled more than 38,000 calls from the public. Some of the consumer topics people most commonly call about include health care (1,255 calls on medical billing), housing (1,686 calls on home rentals, 205 calls about condominiums and townhomes, and 70 calls from individuals facing foreclosure), credit reports and debt collection (817 calls on consumer debt and garnishment), utilities (540 calls on utilities and utility shutoffs), and transportation (1,176 calls about auto purchasing or leasing). The Division also answered calls on high-profile state, national, and international issues, and took multiple calls about different scams (936 calls).

Second, the Consumer Action Division helps Minnesota residents informally mediate and resolve thousands of complaints with businesses and other organizations each year. The Division

handled more than 18,000 files, up 20% from last fiscal year, and arrived at settlements of more than \$14 million for Minnesota consumers, up more than 50% from last year. The Division also assisted the Office's Wage Theft Division with cases involving Spanish speakers, assisted with investigations into solar providers, reviewed thousands of documents related to housing lawsuits, and participated in multiple consumer protection lawsuits by taking affidavits and doing other legal assistance work. Through its efforts to assist Minnesotans in these matters, the Division regularly eliminated the need for costly and time-consuming litigation for all parties.

Below is a *representative sample of some but not all* work performed by the Consumer Action Division in FY 2024.

- An individual contacted the Office regarding a second mortgage on their home, the loan was discharged in bankruptcy in 2010, and no organizations made any attempt to collect since that time. In late 2023, the homeowner received a notice of pending foreclosure for the entire amount of the second mortgage, plus 13 years of interest. After negotiations with the attorneys collecting the debt, the Division was able to reduce the amount owed by more than \$100,000, allowing the homeowner to settle the debt and stay in their home.
- A widow recovering from cancer contacted the Office regarding medical bills totaling more than \$500,000. She had multiple insurance policies, and each policy claimed that payment for the claims was the responsibility of the other insurance company. After months of contact with different insurance agencies and dozens of different providers, we were able to secure full payment from the different insurance companies.
- An individual contacted us regarding a utility shutoff. There was an individual living in the home who had an oxygen tank which requires electricity to operate. The shutoff of electricity could have resulted in a serious medical emergency if the utility provider went through with it. The individual had previously contacted the utility provider, who was not willing to work with them, and told them they should go to a hospital if there were complications. The Division contacted the utility and explained the law, which resulted in the utility reversing its decision.
- A mother contacted the Office on behalf of her minor son, who started to have prescriptions denied by health insurance for no apparent reason. They repeatedly contacted their insurance carrier but were left with large out of pocket expenses paying for the prescribed medication without coverage. The Division contacted the insurance carrier and resolved the issue. The mother indicated they had worked on the issue for more than a year prior to contacting the Office. The payments to the family went back for the entire duration that she had paid out of pocket, amounting to thousands of dollars back to the consumer, and an assurance that the issue would not recur.
- A retired police officer, permanently disabled in the line of duty, contacted this Office because their health insurance had been discontinued with no warning. They have severe health issues due to their disability, and their only income is disability through Social Security and their officer pension. If they did not have insurance coverage, they would

almost immediately be forced to declare bankruptcy. The Office immediately contacted their insurance company and former employer, and coverage was restored in just four days.

CONSUMER PROTECTION DIVISION

The Consumer Protection Division enforces Minnesota’s laws prohibiting consumer fraud, deceptive trade practices, false advertising, and other unlawful practices in business, commerce, or trade.

The Division conducts investigations and acts where appropriate to stop and deter fraud and other unlawful business practices to protect consumers. The Division also participates in numerous coordinated investigations of potential fraudulent or unlawful conduct by multiple state and federal enforcers of consumer protection, including other state attorneys general, the Federal Trade Commission (“FTC”), and the Consumer Financial Protection Bureau (“CFPB”).

2024 LEGISLATIVE SESSION UPDATE

As a result of the 2024 Legislative session, the Division will be focused on enforcing new consumer protection laws enacted by the Legislature, including the Debt Fairness Act, which the Division helped to author. The Act makes numerous important medical debt, judgment collection, and bankruptcy reforms, including banning medical debt from being reported to credit bureaus and prohibiting providers from withholding medically necessary care due to unpaid debt. A complete summary of the consumer protections provided by the Debt Fairness Act can be found [here](#). The Division is also focused on educating and preparing to enforce new laws related to price transparency and junk fees (2024 Minn. Laws ch. 111); deceptive vaping products designed to appeal to minors (2024 Minn. Laws ch. 114, Art. III, sec. 50-51); and consumer data privacy rights (2024 Minn. Laws ch. 121, Art. 5).

Additionally, at the direction of the Legislature, the Office produced an award-winning Report on Emerging Technology and its Effects on Youth Well-Being, to help the lawmakers and the public better understand the ways emerging technologies, like social media, harm the well-being of young people. The report offered policy recommendations for legislation to create a more positive online environment for young people in Minnesota, which led to the Legislature’s passage of the Prohibiting Social Media Manipulation Act (2024 Minn. Laws ch. 114, Art. 3, sec. 63-66). This Act requires social media platforms to disclose important information about how their algorithms work, how they limit excessive account interactions, the amount of notifications users are bombarded with, and the product experiments they conduct as well the outcomes of such experiments.

Below is a *representative sample of some but not all* investigations and suits brought or resolved by the Consumer Protection Division in FY 2024.

PROTECTING PUBLIC SAFETY THROUGH ENFORCEMENT OF CIVIL CONSUMER PROTECTION LAWS

The Office continues to utilize its civil enforcement authority of consumer protection laws in areas that intersect with criminal matters, as well as to further protect the public health and safety of Minnesotans:

- ***State v. Sanofi, et al.*** In February 2024, the Office entered into a settlement with Eli Lilly following five years of litigation regarding the manufacturer's pricing of insulin. For five years, the settlement guarantees Minnesotans (both insured and uninsured) access to a one-month supply of Eli Lilly insulin for no more than \$35. The agreement also requires Eli Lilly to donate free insulin through charitable programs to up to 15 clinic locations throughout the state, and to use a text-based alert system to inform consumers of the availability of \$35 insulin at pharmacies throughout the state. In July 2023, the Office entered into a similar settlement with insulin manufacturer Sanofi. This settlement guarantees \$35 monthly insulin to Minnesota consumers for five years, text alerts to consumers at pharmacy counters, and charitable donations directly from Sanofi. The Sanofi settlement agreement is pending approval from the court. Litigation continues against the third defendant insulin manufacturer named in the state's lawsuit, Novo Nordisk.
- ***State v. Fleet Farm LLC, et al.*** In October 2022, the Office filed suit against Fleet Farm for negligently selling firearms to straw purchasers—individuals who buy firearms for other people who are ineligible to buy or possess guns. The suit alleges that Fleet Farm sold at least 37 guns to two straw purchasers, including one of the guns used in the Truck Park bar shooting in St. Paul in 2021. In the lawsuit, the Office asks for injunctive relief, including strengthened oversight of Fleet Farm's operations and increased training to prevent sales of guns to straw purchasers, as well as monetary relief, including disgorgement of Fleet Farm's profits from sales to straw purchasers. The court denied Fleet Farm's motion to dismiss the case. The Office has since added a claim against Fleet Farm for violating the Minnesota Gun Control Act and won two motions to compel Fleet Farm to produce additional documents. Litigation is ongoing with trial currently set for July 2025.
- ***States v. Meta Platforms.*** In October 2023, the Office filed suit against Meta Platforms (which owns Facebook and Instagram) for intentionally creating addictive design features that manipulate children and teens into spending as much time as possible on their platforms, despite the defendants' knowledge that this often causes children serious physical and mental harm. The lawsuit further alleges that Meta falsely assured the public that its features were safe and suitable for young users. The lawsuit asserts violations of Minnesota's consumer protection laws and the federal Children's Online Privacy Protection Act and was undertaken alongside a bipartisan group of 33 state attorneys general. Litigation is ongoing.

- **Investigation of Kia and Hyundai’s Sale of Vehicles that Lack Industry-Standard, Anti-Theft Technology.** In March 2023, the Office launched an investigation into Kia and Hyundai’s sale of vehicles to Minnesota consumers that lacked industry-standard, anti-theft “engine immobilizer” technology. Kia and Hyundai’s failure to equip their vehicles with this anti-theft technology has made their vehicles sitting ducks for car thieves, with reported thefts of Kia and Hyundai vehicles increasing by 836% in Minneapolis and 611% in St. Paul in 2022, as compared to 2021. Thefts of Kia and Hyundai vehicles continued to surge in 2023, with six of the ten most stolen vehicles being manufactured by Kia or Hyundai according to the National Insurance Crime Bureau. The Office is investigating whether Kia and Hyundai’s conduct violates Minnesota’s consumer protection and public nuisance laws, and the investigation is ongoing.
- ***State of Minnesota v. Schierholz and Associates, Inc. d/b/a Broadmoor Valley.*** In April 2022, the Office filed an Amended Complaint alleging that Schierholz and Associates, Inc. (“S&A”) and its owner, Paul Schierholz, failed to maintain the Broadmoor Valley manufactured home park in Marshall and its roads to the standards required by Minnesota law. The complaint also alleges that S&A inserted misleading and deceptive provisions in its leases, residents were charged late fees above the legal limit and other fees prohibited by law, that S&A unlawfully handled residents’ security deposits, and S&A retaliated against residents and interfered with the resident association’s protected right to freedom of expression within the park. As part of the lawsuit, the Office is seeking, among other things, to permanently stop the defendants’ deceptive conduct, illegal fees, and retaliatory acts, obtain monetary relief for residents who were charged illegal fees, and to abate the substandard conditions of the park and its roads. Litigation is ongoing with trial scheduled to begin in early 2025.

FRAUDULENT MARKETING PRACTICES OF OPIOID MANUFACTURERS AND DISTRIBUTORS

The national opioid epidemic continues to ravage the nation, including in Minnesota where 1,002 Minnesotans died from opioid-related overdoses in 2022, and more than 6,000 Minnesotans have died since 2010. The actions the Office has taken against companies that caused this harm include:

- **Publicis Health Settlement.** In February 2024, the Office finalized a multistate settlement with global marketing and communications firm Publicis Health, related to the firm’s role in helping opioid manufacturers, including Purdue Pharma, market and sell opioid products. Publicis has paid the state \$4.45 million from the settlement. The entirety of this settlement payment will be put into Minnesota’s opioid abatement fund to be overseen by the Opioid Epidemic Response Advisory Council.
- **Teva and Allergan Settlements.** In April 2024, the Office finalized settlements with major opioid manufacturers Teva Pharmaceuticals and Allergan related to their distribution, marketing, and sale of opioids. Together, the settlements will result in \$79 million flowing into the state over the next 13 years. Minnesota received \$15.6 million from the two companies in 2024. Pursuant to an agreement with cities and counties on allocation and

distribution of the settlement funds, called the Minnesota Opioids State-Subdivision Memorandum of Agreement (“MOA”), 75% of these settlement payments will go directly to local units of government, and 25% will be put into Minnesota’s opioid abatement fund to be overseen by the Opioid Epidemic Response Advisory Council.

- **Pharmacy Settlements.** In June 2024, the Office finalized settlements with the three largest pharmacy chains in the United States—CVS, Walgreens, and Walmart—related to their conduct in handling opioid prescriptions. Together, the settlements will result in \$164 million flowing into the state over the next 15 years. Minnesota received \$51.7 million from the three pharmacy companies in 2024. Pursuant to the MOA, 75% of these settlement payments will go directly to local units of government, and 25% will be put into Minnesota’s opioid abatement fund to be overseen by the Opioid Epidemic Response Advisory Council.
- ***State of Minnesota v. Purdue Pharma L.P., et al.*** In July 2018, the Office filed suit against OxyContin manufacturer Purdue Pharma, alleging that Purdue misrepresented the risks of opioid addiction and the benefits of long-term opioid use. In August 2019, the Office filed an amended complaint adding members of the Sackler family, the owners of Purdue Pharma, as co-defendants. Purdue filed for bankruptcy in September 2019, which eventually led to a negotiated bankruptcy plan with Purdue and the Sackler family for payments of up to \$6 billion over 10 years. The bankruptcy plan was appealed, however, and in June 2024, the U.S. Supreme Court invalidated the bankruptcy plan. The Office is currently participating in court-authorized mediation with Purdue and the Sackler family; if mediation fails and no settlement is reached, litigation will resume.
- **Distributors and Johnson & Johnson Settlements.** In July 2022, the Office finalized settlement agreements with pharmaceutical distributors McKesson, Cardinal Health, and Amerisource Bergen, and opioid manufacturer Johnson & Johnson, which will result in over \$300 million flowing into the state over the next 17 years. The first payments from these settlements were distributed in the fall of 2022. Minnesota received \$19.9 million from these companies in 2024. Pursuant to the MOA, 75% of the settlement payments will go directly to local units of government, and 25% will be put into Minnesota’s opioid abatement fund to be overseen by the Opioid Epidemic Response Advisory Council.

PROTECTING THE RIGHTS OF BORROWERS AND DEBTORS FROM DECEPTIVE LENDING AND UNLAWFUL COLLECTION PRACTICES

The Office continues investigating violations of the consumer-protection laws in the residential rental marketplace and with respect to higher education and student loans.

- ***State v. GoodLeap LLC, et al.*** In March 2024, the Office filed suit against four market-leading solar-lending companies (GoodLeap LLC, Sunlight Financial LLC, Solar Mosaic LLC, and Dividend Solar Finance LLC). The lawsuit alleged that the lenders deceived Minnesota consumers into taking out loans based on false promises of low interest and disguised hidden fees on more than 5,000 solar-panel purchases in Minnesota. Most of the hidden fees increased the costs that borrowers incurred by between 15% and 30%,

for a total of \$35 million. The fees, which the lenders pocketed, often canceled out the benefit of federal tax credits designed to reduce the cost of and incentivize solar-panel purchases for Minnesota consumers. In the lawsuit, the Office alleges the lenders violated Minnesota state laws against deceptive trade practices, deceptive lending, and illegally high rates of interest. The defendants removed the case to federal court in April 2024; the federal court is currently considering the Attorney General’s motion to remand the action back to state court.

- ***State v. Azure, et al.*** In October 2023, the Office filed a lawsuit in federal court against online lenders Bright Lending, Green Trust Cash, and Target Cash Now for usurious lending and consumer fraud. The lenders, operating jointly under control of a single entity called the Island Mountain Development Group, issued thousands of loans to consumers in Minnesota that charged between 400 and 800 percent annual interest, in violation of Minnesota’s usury laws and other federal laws. The action was limited to securing injunctive relief because of the tribal status of the lenders’ owner. The Office settled with the online lenders in February 2024. As part of the settlement, the online lenders agreed to stop collection on loans made to Minnesota consumers except to allow collection of the original principal balance. They also agreed to cease lending in Minnesota unless and until they comply with Minnesota’s interest-rate caps. The Attorney General’s Office believes that outstanding balances affected by the settlement total in the millions of dollars.
- ***CFPB v. Strategic Financial Solutions, LLC, et al.*** In January 2024, the Office—alongside the Consumer Financial Protection Bureau and six other states—took action against a series of interrelated companies and their owners operating a debt settlement scheme that scammed consumers nationwide out of more than \$1.1 billion in illegal fees. The lawsuit—filed in federal court in the Western District of New York—alleges that the companies represented to consumers—including thousands of Minnesotans—that a law firm would negotiate settlements of their debts. In reality, the law firms were a façade used to evade consumer protection laws. Instead of getting their debts settled consumers were left worse off, often paying tens of thousands of dollars in fees for no relief, and even facing lawsuits from their creditors. The Office obtained a preliminary injunction order from the Court, prohibiting Defendants from collecting any additional fees until the lawsuit is over.
- **Student Loan Litigation and Settlements.** The Office has secured substantial relief for students. For example, in November 2023, the Office, along with the Consumer Financial Protection Bureau (“CFPB”) and 10 other state attorneys general, resolved its lawsuit against for-profit educational provider Prehired for its deceptive marketing and lending practices. The settlement required Prehired to cease all operations, void all outstanding income-share loans (valued at nearly \$27 million) and provide \$4.2 million in refunds to student borrowers. The Office also shut down and secured refunds for Minnesota student -borrowers who fell victims to several student debt relief scams, including the following: \$17,825 in October 2023, \$59,909 in November 2023, \$179,067 also in November 2023, \$14,308 in December 2023, \$41,941 also in December 2023. Additionally, in July 2023, the Office—alongside the CFPB and two other states—secured a judgment against a fraudulent student debt relief scammer for \$95 million in refunds for borrowers nationwide, as well as a \$148 million civil penalty.

PROTECTING CONSUMERS FROM FRAUDULENT AND DECEPTIVE MARKETING AND SALES PRACTICES

The Division has and continues to investigate and take action against companies engaged in deceptive marketing practices and unlawful or deceptive practices.

- ***State v. Midwest Car Search, LLC and Scott Spiczka.*** In April 2024, the Office filed suit against used car dealer Midwest Car Search and its owner, Scott Spiczka, alleging that they: (1) falsely advertise and misrepresent that Midwest Car Search’s used cars are certified; (2) misrepresent the cost, availability, and optional nature of expensive vehicle service contracts; (3) misrepresent and fail to honor the warranty coverage consumers are entitled to under Minnesota law; (4) fail to follow “Buyer’s Guide” disclosure requirements; and (5) conduct business under an unregistered assumed name that targets Spanish-speaking consumers. In July 2024, the Office obtained a comprehensive temporary injunction enjoining each practice that the Office alleges violates Minnesota law, which Defendants have appealed. Through the lawsuit, the Office seeks an order for permanent injunctive relief, refunds and restitution for consumers, civil penalties, and the Office’s costs of investigation and attorney’s fees. Litigation is ongoing.
- ***State v. Wall & Associates et al.*** The Office filed a lawsuit against a tax debt settlement company named Wall & Associates, as well as its owner and founder, E. Kenneth Wall, and the Chief Executive Officer and President, P. Mark Yates. The lawsuit alleged that defendants misled and deceived Minnesota consumers by advertising that the company’s average client obtained a 90% reduction in their tax debt, that the company employed attorneys, was a local company, and assisted with unfiled tax returns—none of which is true. The Office brought the matter to trial in January 2024, and a final judgment is expected in September 2024.
- **Upright Cane Settlement.** In June 2024, the Office settled its investigation into the advertising and fraudulent business practices of the Wireless Shop, LLC d/b/a Upright Cane and its owner, Caelan Nwokeuku. The Office alleged that Upright Cane took online orders and collected upfront payments for scooters and walkers—primarily from elderly and disabled Minnesota consumers—but never delivered the ordered products. Upright Cane paid \$50,000 to the Office, fully restituting Minnesota consumers. The company and its owner are also banned from selling goods or services in Minnesota for ten years.
- **Republic Services Settlement.** In June 2024, the Office settled its investigation of waste removal company, Allied Waste Services of North America, LLC d/b/a Republic Services, for its alleged failure to disclose waste-container removal fees to certain consumers who canceled the company’s services. The settlement requires Republic Services to clearly and conspicuously disclose all of the fees it charges (including waste-container removal fees, as well as pay more than \$128,000 in refunds to consumers that were charged the undisclosed waste-container removal fee.
- **Residential Solar Panel Installer and Advertiser Settlements.** In addition to its litigation regarding solar installers and lenders, the Office has reached eight settlements

with diverse actors in the solar industry. The Office obtained two settlements against owners of a bankrupt installer which allegedly defrauded consumers, prohibiting the owners from engaging in any further business in Minnesota. The Office also obtained four Assurances against community solar gardens and returned \$85,000 to Minnesota consumers for collection of allegedly unlawful early termination fees. Finally, the Office has obtained two settlements against solar lead generators for allegedly publishing false and deceptive advertising targeting Minnesotans regarding solar programs in the state, resulting in injunctive relief prohibiting further deceptive advertising and stayed civil penalties to deter future violations.

WAGE THEFT DIVISION

The Minnesota Attorney General’s Office Wage Theft Unit was created in June 2019. The Wage Theft Unit’s goal is to protect and advance the economic rights of all Minnesotans by investigating and litigating cases involving unlawful patterns and practices affecting economic rights, and other persistent issues that cause workers in Minnesota not to receive the wages they have earned.

NEW FOR 2024

As a result of the 2023 legislative session, the Office received funding to expand the Wage Theft Unit into the full-fledged Wage Theft Division, now comprised of five attorneys and two investigators. This has allowed the Office to undertake more investigations and enforcement actions. Such investigations and enforcement actions will continue to be focused on protecting low-wage Minnesota workers in numerous industries from unlawful labor and wage practices.

The Division also monitors emerging labor and employment issues and engages in dialogue with other governmental entities, community groups, labor, and the business community to increase awareness of economic-rights issues and to identify unlawful practices. The Division is deepening partnerships with local, state, and federal agencies to strategically enforce the law to achieve maximum compliance. In doing so, the Division benefits both workers whose rights have been violated and employers who respect workers and follow the law. The Division is engaged in numerous non-public investigations related to violations of Minnesota’s wage and hour laws. These nonpublic investigations include issues related to worker misclassification, nonpayment of overtime, and failure to pay the applicable state and local minimum wage. The Division’s work also includes the following public matters:

- ***State by Ellison v. Shipt, Inc.*** In October 2022, the Unit filed suit against Shipt, Inc., alleging that Shipt misclassified its workers as independent contractors and failed to pay them the appropriate wages and benefits that are owed employees under Minnesota and local laws. The lawsuit alleges that by misclassifying its workers—known as “Shoppers”—Shipt has deprived thousands of Shoppers in Minnesota of state and local minimum-wage protections, local sick- and safe-time protections, overtime protections, and state law protections that guarantee employees know with certainty what they will be paid for the work they perform. Shipt’s worker misclassification also prevents misclassified employees

from accessing state unemployment insurance and workers' compensation benefits. The lawsuit asks the Court to order Shipt to cease misclassifying its workers. The State is also demanding significant monetary relief from Shipt, including restitution and civil penalties. Litigation in this matter is ongoing.

- ***State v. Evergreen Acres Dairy LLC (Nonpayment of Wages, Nonpayment of Overtime, Unauthorized Deductions, Landlord-Tenant Related Issues)*** In January 2024, the Division filed a lawsuit against Evergreen Acres Dairy, Evergreen Estates, Morgan Feedlots, and the dairy operations' owners alleging that Evergreen has systematically deprived its vulnerable, low-wage dairy employees of millions of dollars in wages. The lawsuit alleges that this was accomplished by shaving both regular and overtime hours from workers' paychecks, not paying wages owed at the beginning and end of workers' employment, and by unlawfully deducting rent for substandard onsite housing that fails to meet standards of habitability under Minnesota law. Since this lawsuit was filed, the State has obtained a temporary injunction to obtain immediate protections for the dairy-farm workers. Litigation in this matter is ongoing.
- ***In the Matter of Madison Equities et al.*** After receiving reports of failure to pay overtime from numerous security guard hourly workers, the Division launched an investigation into Madison Equities, a property management company that has significant property holdings in St. Paul through a number of subsidiaries. Madison Equities refused to produce responsive information, and the Division moved to compel compliance in district court. After lengthy litigation, the Division prevailed before the Minnesota Supreme Court and secured an opinion reaffirming the Attorney General's broad investigative authority. Subsequently, Madison Equities produced relevant information about its overtime payment practices. After completing its investigation, in June 2023, the Division filed a lawsuit against Madison Equities alleging that the company used its subsidiaries to avoid paying workers the overtime wages they are owed. In November 2023 the Court granted Madison Equities' motion to dismiss the complaint on the basis that the overtime claims were barred by the statute of limitations and the retaliation statute did not apply to former employees. We filed our appellate brief in March 2024 and presented our arguments to the Court of Appeals in July 2024. We are awaiting the Court's decision.

OUTREACH

The Division's work also includes educational outreach to Minnesotans around the state and collaboration with stakeholders on important public policy issues. For example, the Division has played a significant role in the Attorney General's Advisory Task Force on Worker Misclassification, and the Misclassification Enforcement and Education Partnership, both of which bring together multiple state agencies to tackle the pervasive problem of employee misclassification. The Division has also contributed to the Labor Advisory Council to raise awareness of and improve the use of the criminal wage theft statute by criminal law enforcement agencies.

In addition to partnering with government partners, the Division continues to perform outreach with various communities throughout Minnesota to educate them on their employment rights.

These outreach meetings have often been in conjunction with grassroots nonprofit organizations with whom the Division has developed relationships. The Division has also educated employer stakeholders on wage issues, to ensure that workers have access to as much information as possible to be in compliance with the law.

ANTITRUST DIVISION

2023 LEGISLATIVE CHANGE UPDATE

As a result of the 2023 Legislative session, the Office received funding to add two additional antitrust assistant attorneys general, increasing the size of the Office's antitrust enforcement team from four attorneys to six. All positions have been filled and the Office created a separate Antitrust Division allowing the antitrust enforcement team to undertake more investigations and enforcement actions. Such investigations and enforcement actions continue to be focused on enforcement in industries important to Minnesota, including agriculture, healthcare, and technology, among others, and include enforcement of the 2023 law requiring pre-merger notification of certain healthcare transactions and the Digital Fair Repair Act.

Below is a *representative sample of some but not all* legal work performed by the Antitrust Division in FY2024.

- **Agri Stats Lawsuit.** On November 6, 2023, Minnesota joined the U.S. Department of Justice and six other state Attorneys General in a lawsuit filed in the District of Minnesota against Agri Stats, a company that collects information from meat processors (broiler chicken, pork, and turkey) and creates and distributes comprehensive reports detailing competing processors' pricing, margins, inventories, and operations. The lawsuit alleges Agri Stats violated Section 1 of the Sherman Act through these anticompetitive information exchanges of competitively sensitive information among competing meat processors. Specifically, Agri Stats enables and encourages processors to use the information exchanges to weaken competition, curb production, and increase prices for purchasers. This harms customers, including grocery stores, and American families as they face higher prices that are not based on legitimate competition. Motions by Agri Stats to transfer venue and dismiss the complaint were denied on May 28, 2024. The parties are now in the discovery phase of the case with the Court ordering a trial-ready date of October 2, 2025.
- **Health Care Entity Transaction Law.** On May 26, 2023, Governor Walz signed into law specific reporting requirements for certain health care entity transactions. These requirements took effect immediately. The Antitrust Division is responsible for oversight of for-profit health care transactions and has joint responsibility for oversight of non-profit health care transactions with the Charities Division, all in consultation with the Minnesota Department of Health. Proposed health care transactions that meet the threshold requirements must submit certain information to the Attorney General's Office at least 60 days before the transaction closes. If the Attorney General finds that the proposed transaction does not comply with the charities, antitrust, or public interest standards outlined in the law, the Attorney General may bring a lawsuit to seek to stop the transaction.

Since the new law went into effect, the AGO has received 11 notices of transactions and completed review of eight of those transactions. As one example, the AGO reached a five-year oversight agreement with Wisconsin-based Aspirus Health and St. Luke's Hospital of Duluth, following review of the proposed acquisition of St. Luke's by Aspirus. The agreement requires Aspirus to provide to the Attorney General annual reports on the commitments the systems have made in their merger. These reports will help establish whether Aspirus is following through on its commitments to St. Luke's and help the Attorney General's Office determine whether the transaction continues to be compliant with charities and antitrust laws and is in the public interest.

- **Pesticides Lawsuit.** On September 29, 2022, Minnesota joined the FTC and nine other states in bringing an antitrust lawsuit against Syngenta and Corteva in the United States District Court for the Middle District of North Carolina. The lawsuit alleges that Syngenta and Corteva used “loyalty programs” for their branded pesticide products in order to suppress competition from generic pesticide manufacturers. Minnesota seeks injunctive and monetary equitable relief, including disgorgement of defendants’ ill-gotten profits on behalf of Minnesota farmers. On January 12, 2024, the Court denied Defendants’ motions to dismiss. The parties are engaged in discovery. The Plaintiffs moved to compel discovery from Defendant Corteva and the motion was heard by the Court on August 15, 2024. The motion is pending.
- **Generic Drug Price Manufacturers Lawsuit.** Minnesota and a coalition of states and territories brought three complaints in federal court against numerous generic-drug manufacturers and executives. The first complaint is against 18 pharmaceutical companies and two individuals. Two former executives from Heritage Pharmaceuticals entered into settlement agreements and are cooperating with the attorneys general in that case. The second complaint is against 20 pharmaceutical companies and 15 individuals. The third complaint was brought in June 2020 and is against 26 pharmaceutical companies and 10 individuals. All three complaints allege that the defendants violated state and federal antitrust laws by conspiring to fix prices and allocate markets for more than 180 generic drugs. The lawsuits seek injunctive relief, civil penalties, damages, and disgorgement. As part of this relief, the Office is seeking damages on behalf of four state agencies that paid higher prices as a result of the conspiracy. Following conclusion of most of the states’ bellwether fact discovery in 2023, the case was remanded back to the District of Connecticut in early 2024 pursuant to the State Antitrust Venue Act. The parties are conducting expert discovery and anticipate summary judgment briefing in 2025.
- **Apple Lawsuit.** On March 21, 2024, Minnesota joined the U.S. Department of Justice (“DOJ”) and 11 other states in a lawsuit filed in federal court in New Jersey against Apple, alleging that Apple has engaged in attempted monopolization and monopoly maintenance in the U.S. “premium smartphone” market (all iPhones are “premium smartphones”) by restricting or blocking the functionality of third-party apps on Apple’s operating system, iOS, deliberately making messaging between iPhone and Androids worse, and suppressing development of potentially popular third-party apps. Apple filed a motion to dismiss the complaint, and the DOJ and States responded.

- **Google Lawsuits.** Minnesota is participating with a large coalition of states from across the country in three separate lawsuits against Google. The first lawsuit involving Google controlling in-app purchases through its Play Store, the only practical way to acquire new apps on Android powered mobile devices, settled in December 2023. Google agreed to pay \$700M with \$630M going to consumers who made purchases on the Google Play store between August 2016 and September 2023. The second lawsuit alleges anticompetitive conduct to maintain Google’s monopolies in web search and related advertising. After a multiweek bench trial to determine liability in the District of Columbia, on August 5, 2024, the Court ordered that Google was a monopolist violating antitrust laws in the search engine market. The case moves onto the remedies stage to determine what remedies the Court may order to stop and prevent future antitrust violations. The third lawsuit, filed in the Eastern District of Virginia in January 2024, challenges Google’s conduct with respect to a set of ad tech tools and exchanges that connect advertisers to websites where they want to display their ads. Trial was schedule to begin on September 9, 2024.
- **Amazon Lawsuit.** In September 2023, Minnesota, along with the Federal Trade Commission and a coalition of 16 other states, filed a complaint challenging various Amazon practices that maintain its customer-facing online superstore monopoly and its monopoly in the online marketplace services that it provides to third-party sellers. The lawsuit alleges that Amazon’s actions allow it to stifle innovation and competition, degrade quality for shoppers, overcharge sellers, and prevent rivals from fairly competing against Amazon. Amazon filed a motion to dismiss the complaint on December 8, 2023. The FTC and states opposed the motion February 2024. Limited discovery has commenced. A bench trial is scheduled to begin October 13, 2026.
- **NCAA Transfer Rule Lawsuit.** On January 18, 2024, Minnesota joined 11 states and the U.S. Department of Justice in suing the NCAA under federal antitrust law to enjoin the NCAA from enforcing its bylaw requiring student-athletes who transfer a second time to sit out of competition for a year after the second transfer. A settlement was reached and filed with the court on May 30, 2024, that ensures a permanent ease of restrictions on Division I college athletes who transfer schools multiple times and otherwise enhances their rights and opportunities.
- **Live Nation/Ticketmaster Lawsuit.** On May 23, 2024, DOJ and a bipartisan coalition of more than 30 states sued alleging Live Nation, owner of Ticketmaster, has illegally monopolized the live-entertainment industry in violation of federal and state antitrust laws. The lawsuit alleges that consumers pay more for live entertainment because of Live Nation’s misconduct and the lawsuit seeks a ban on anticompetitive practices, divestment of Ticketmaster, and monetary remedies. Limited discovery has commenced. Trial is anticipated March 2026.
- **RealPage Lawsuit.** On August 23, 2024, Minnesota joined DOJ and seven states in suing RealPage alleging the company’s pricing algorithm violates antitrust laws. The lawsuit alleges that RealPage facilitates anticompetitive information exchanges of nonpublic, competitively sensitive information about rental rates and other lease terms to train and run RealPage’s algorithmic pricing software which competing landlords then use in apartment

pricing. The lawsuit also alleges RealPage monopolizes the market for commercial revenue-management software that landlords use to price apartments.

- **Agricultural and Food Industry Practices and Pricing.** The Division continues to focus its resources on issues of particular importance to farmers, the agricultural and food sectors, and rural Minnesotans. Although details of many of the Division’s investigations remain confidential and non-public, the matters involve important aspects of the livestock and other protein production, food supply chain, and other agricultural and food products of importance in Minnesota. The Division has also led multistate and bipartisan advocacy to the USDA supporting rules that would improve competition in Minnesota’s agricultural and food industries. For example, Minnesota is part of a small group of state attorneys general leading participation in the new USDA Agriculture Antitrust Competition Partnership providing \$12 million in funds administered by The State Center to support state attorneys general initiatives such as investigations, research, and studies. Minnesota sponsored two funding requests coordinating with the University of Minnesota Rural Extension to conduct surveys of independent meat processors across the state and host the Rural Grocers Summit in Minnesota in 2026.
- **Labor Practices and Protections.** The Division continues to focus its resources on issues of particular importance to workers. Although details of many of the Division’s investigations remain confidential and non-public, the matters involve important aspects of ensuring competition for wages, benefits, and opportunities. The Division also monitors compliance with Minnesota’s ban on certain non-competes effective since July 1, 2023.

OUTREACH

The Division has been engaged in outreach to state and federal agencies and other constituents about antitrust issues and concerns. For example, on November 27, 2023, the Division led a virtual panel discussion hosted by the Minnesota Attorney General’s Office “How is Private Equity Impacting Grocery Retail Markets?” that included participation from the Department of Justice and Open Markets Institute, and on April 17, 2024 hosted “Antitrust Solutions to Rural Healthcare Problems” that included participation from a physical therapist providing care in rural Minnesota alongside national antitrust practitioners. Attorneys in the Division have also conducted the following outreach:

- Presented a seminar on compliance with the new health care entity transaction law at a MSBA CLE hosted by the Antitrust and Health Law Sections;
- Presented on panels discussing state health care entity transaction compliance at American Bar Association and American Health Law Association conferences; presented to a meeting of 200 health care leaders organized by the Minnesota Rural Health Cooperative and the Healthcare Leaders Association of MinnesotaCare about the Change Healthcare cyberattack;
- Presented at a medical education session organized by the Minnesota Medical Association on the current state of private equity and health care consolidation regulation in Minnesota;

- Appeared on panels at the Mitchell-Hamline Antitrust Symposium; presented at the Federal Trade Commission and Department of Justice Antitrust Enforcers Summit in Washington D.C. on the topic of antitrust enforcement in markets related to the food supply chain; and
- Presented a CLE training to the Minnesota County Attorneys Association on criminal antitrust enforcement.

CIVIL RIGHTS DIVISION

In the Civil Rights Division’s first fully staffed year it either brought or resolved several actions to protect tenants, home-purchasers, and other consumers in the marketplace that were targeted—or disproportionately harmed—by discrimination and fraud on the basis of race, religion, age, and other protected statuses. The Civil Rights Division was launched in 2023 with funding from the Minnesota Legislature and Governor Tim Walz in the 2023–25 biennial budget.

Below is a *representative sample of some, but not all, (non-confidential)* work performed by the Division in FY 2024.

- ***State of Minnesota v. HavenBrook Partners, LLC, Pretium Partners, LLC, et al.*** In March 2024, the Office obtained landmark settlement terms in its lawsuit against landlords HavenBrook Homes, Progress Residential, and Pretium Partners. The settlement resolved the Office’s tenant-protection case against the vertically integrated companies who rented out over 600 single-family homes to Minnesota families and who systematically misrepresented their property-repair practices and failed to maintain habitable housing for their tenants. The settlement required the companies to cease their unlawful practices, provide \$2,200,000 in cash restitution to their tenants, provide \$2,000,000 in debt forgiveness for past tenants, and created a path for the sale of the entire rental portfolio to affordable-housing entities.
- ***State of Minnesota v. Investment Property Group, UT, Inc., et al.*** In October 2023, the Office filed a tenant-protection lawsuit and emergency injunction motion against Investment Property Group and its 13 apartment complexes seeking to stop them from charging their tenants illegal gas utility fees and evicting tenants on the basis of the unlawful fees. The companies temporarily agreed to cease charging tenants the fees and evicting them for past fees for the duration of the litigation. The litigation continues and is currently in discovery after the Office prevailed against defendants’ motion to dismiss the case.
- ***State of Minnesota v. Banken Holdings, LLC, and Chadwick Banken.*** In June 2024, the Office filed a lawsuit against contract-for-deed home seller Chadwick Banken and his company, alleging they sold homes in violation of state and federal lending laws and alleging that they also illegally targeted East African-immigrant families by advertising that the loans did not include interest and were compliant with Islamic cultural practices

when in fact they have a high interest rate and the families will lose their homes at the end of their contract, as the terms are more expensive than was disclosed to them.

RESIDENTIAL UTILITIES DIVISION

The Residential Utilities Division (“RUD”) represents the interests of residential and small-business utility consumers in the complex and changing electric, natural gas, and telecommunications industries, particularly with regard to utility rates, reliability of service, and service-quality issues. The division’s work supports Minnesota’s economy and quality of life by making sure that utilities’ rates are reasonable, their expenses are prudent, and that customers receive high-quality service. This is essential to ensure that the state’s citizens and small businesses are not burdened by excessive costs or poor reliability for these necessary services.

Below is a *representative sample of some but not all* legal work performed by the division in FY 2024.

- **Utility Rate Cases.** Utility rate cases are the primary means for the Public Utilities Commission (“PUC”) to establish the amount that utility customers pay. The PUC decides how much utilities should recover for providing electric or natural gas service, the amount that different ratepayer groups pay (i.e. residential customers, industrial customers, commercial customers etc.), and how much of these costs will be “fixed” or vary with the amount of energy consumed. This past year, RUD participated in several rate cases by challenging the overall rates the utilities sought to impose on customers, as well as the portion of those increases that would be borne by residential and small business ratepayers and the fixed charges that residential customers must pay to simply access utility service. These cases impacted customers throughout the state. RUD advocated to reduce the requested increase Minnesota Power’s most recent electric rate increase and Xcel’s most recent gas rate increase requests, including by limiting the amount of executive compensation and board of directors’ expenses recovered from ratepayers. RUD also advocated that residential customers receive a smaller share of the rate increase than larger commercial and industrial customers. RUD entered into all-party settlements in both cases. One settlement reduced Minnesota Power’s requested increase for the residential class from 17.7% to 4.86%. Another settlement reduced Xcel’s requested rate increase for natural gas from the requested 10.3% to 6.28%. RUD also joined the PUC as a co-respondent in two pending appeals defending recent decisions in rate cases on important principles of public utilities regulation and administrative law.
- **Rural Telecom Advocacy.** With fewer carriers and uneven buildout of telecommunications infrastructure, there are many barriers to rural Minnesotans having access to reliable telephone and broadband internet service. RUD is focused on ensuring Minnesotans have reliable services regardless of where they live. Since 2020, RUD has participated in PUC proceedings and a contested case hearing to determine whether CenturyLink was in breach of a variety of service quality standards set forth in Minnesota Rules Chapter 7810. RUD advocated, among other things, that CenturyLink failed to maintain its equipment consistent with safety and adequate service performance. The PUC

determined that CenturyLink violated several service quality standards and ordered remedies. RUD also participated in a contentious docket to revoke LTD Broadband LLC's expanded Eligible Telecommunications Carrier ("ETC") designation. RUD contended that LTD is not providing services as promised and would not be able to provide rural broadband expansion as needed in greater Minnesota. The PUC suspended LTD's expanded ETC designation during the pendency of the proceeding, and LTD ultimately relinquished its expanded ETC designation.

- **Community Solar Gardens** – For the past decade, Xcel Energy has been required to operate a community solar-garden program under which its retail customers may pay a third-party solar developer a subscription fee and, in return, receive a credit on their electric bill for the solar energy generated by their subscription. By 2023, solar-garden energy had come to comprise a very large share of Xcel's purchased-power costs, such that the program threatened significant economic harm to nonparticipating ratepayers, particularly Xcel's most energy-burdened residential customers. Some residential and small-business ratepayers, however, also are solar-garden subscribers. RUD advocated for reducing solar-garden costs while protecting residential and small-business solar garden subscribers from sudden reductions to their bill credits. The PUC reduced the legacy solar-garden costs while protecting residential and small-business solar-garden subscribers.

LITIGATION SUPPORT SERVICES & RECORDS MANAGEMENT DIVISION

The Litigation Support Services & Records Management Division is a specialized team dedicated to streamlining and optimizing the legal process through expert handling of eDiscovery, legal research, and records management. This Division plays a pivotal role in supporting legal teams by providing crucial services and using technology to enhance the efficiency and effectiveness of litigation.

eDiscovery is a core function of the Division, involving the identification, collection, analysis, and presentation of electronic data relevant to legal cases. The Division employs advanced tools and techniques to manage vast amounts of digital information, ensuring that all pertinent evidence is accurately preserved and readily accessible. This process is critical for ensuring that all relevant information is gathered and preserved, facilitating a more streamlined and effective legal strategy. As electronic data continue to grow across state government, the volume of electronic data that must be collected, reviewed, and produced in each case is increasing rapidly. The team manages terabytes of data, consisting of tens of millions of documents, and processes several hundred document productions each year.

Legal research services are another critical area of focus, where the Division provides support in gathering and analyzing case law, statutes, and legal precedents. By delivering in-depth research and insights, the Division empowers legal teams with the knowledge needed to build robust cases, develop effective strategies, and make informed decisions. The AGO law library also provides a robust suite of tools to aid with legal research, citation checking, and drafting legal documents.

In addition to litigation support, the Division oversees records management, focusing on the systematic organization, storage, and retrieval of records across the organization. This includes implementing records retention policies and employing technology for efficient data management. This team also responds to data requests under the Minnesota Government Data Practices Act.

CONSUMER LITIGATION FUND

The Consumer Litigation Fund ("CLF") was established as a special revenue fund in the state treasury effective July 1, 2023. Minn. Stat. § 8.315 (2023). Subdivision 3 of the law requires a report annually by October 15 on activities funded through money disbursed from the CLF account during the prior fiscal year. *Id.* The tables below provide information on expenditures approved for disbursement from the CLF in FY 2024.

Table 1: CLF Balance Summary

	FY 2024
Fund starting balance	\$1,000,000.00
Fund ending balance	\$911,169.03

Table 2: Expenditure Summary

Category	Amount
Printing services	\$261.30
Expert contract payments	\$43,374.00
Multistate cost share contract payments	\$9,908.82
Mediation costs	\$6,500.00
Court reporting and transcription contract payments	\$24,658.03
Travel expenses of trial witnesses	\$3,571.32
Supplies	\$437.50
Translation services	\$120.00
Total	\$88,830.97

SOLICITOR GENERAL SECTION

EMPLOYMENT, TORTS, AND PUBLIC UTILITIES COMMISSION DIVISION

The Employment, Torts, and Public Utilities Commission Division (“ETP”) defends the duly enacted laws of the State of Minnesota; represents the State in employment and tort claims brought against the State; and provides legal representation to the Public Utilities Commission (“PUC”).

In each of these three areas, a *representative sample of some but not all* the major current and future legal issues that the Division has addressed in FY 2024 include:

EMPLOYMENT AND TORT CLAIMS

Employment litigation often includes claims against the State 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 Division 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.

- ***Anick v. Bonsante***. Plaintiff, a former state employee, brought a defamation claim arising out of her supervisor’s request for documentation of inappropriate workplace conduct. The Division prevailed at trial.
- ***Jackson v. Minnesota Department of Human Services***. An employment investigation concluded that Plaintiff, a long-time DHS employee, incurred data overages totaling \$7,786.88 on her DHS-issued cell phone; the amount of data overages was higher than the investigator had ever seen. As a result, she received a February 2019 letter of expectations, DHS took back her work-issued cell phone, and DHS revoked her telework privileges. Plaintiff also had other discipline in her employment file. Later in 2019, Plaintiff applied for a director-level position at DHS. She was selected to be interviewed, and progressed to a second interview, but she was not hired for the position. She alleged in her lawsuit that the reason she was not hired was because of race discrimination. She also alleged several other claims that were dismissed in DHS’s favor at summary judgment. On the remaining failure-to-hire claim, DHS prevailed at trial. The district court concluded that the reason DHS did not hire Plaintiff for the position was not discriminatory—specifically issues flagged in Plaintiff’s personnel file, especially the cellphone bill dispute. The district court concluded Plaintiff has not proven that the reason was pretext for discrimination. Plaintiff has appealed.

- ***Norgren v. Minnesota Department of Human Services.*** Joseph Norgren and his son Aaron Norgren brought Title VII discrimination and retaliation claims against the Minnesota Department of Human Services (“DHS”), their employer, and First Amendment retaliation and compelled-speech claims against DHS Commissioner Jodi Harpstead. Their suits stem from the denial of their religious exemption requests to workplace trainings on racism and gender identity. The district court granted Defendant’s motion to dismiss. On appeal, the Eighth Circuit reinstated Aaron Norgren’s Title VII claim that he was denied a promotion due to his protected activities and concluded he plausibly alleged he was denied the promotion due to religious discrimination. The Eighth Circuit affirmed in all other respects, including by rejecting Plaintiffs’ compelled-speech claim. The Court noted, “while the pleadings alleged that the trainings advanced expressive messages that the Norgrens objected to, the Norgrens failed to plausibly allege that Commissioner Harpstead compelled them to adopt those messages as their own speech. There was no allegation that the Norgrens were forced to affirmatively agree with any of the statements in the trainings.”
- ***McNitt v. Minnesota IT Services.*** In January 2022, Plaintiff unsuccessfully applied for a position as a web application developer with the Minnesota Department of Education (DOE) through MNIT. MNIT made a conditional offer of employment to Plaintiff, subject to a background check. After his background check indicated a conviction for possession of child pornography pursuant to Minn. Stat. 617.247, subd. 4(a), MNIT determined that the conviction directly related to the DOE position, and the agency requested information in support of rehabilitation as required by section 364.03, subdivision 3 of the Criminal Offenders Rehabilitation Act. MNIT determined that Plaintiff was not sufficiently rehabilitated and presently fit to perform the duties of the DOE position and disqualified him from the position. After a contested case proceeding, McNitt sought review via certiorari to the Minnesota Court of Appeals. Oral argument took place on July 31, 2024.

PUBLIC UTILITIES COMMISSION

The Division provides counsel to and defends the PUC when its decisions are challenged in the courts.

- **Electric Rate Cases.** Minnesota’s two largest utilities – Xcel Energy and Minnesota Power – appealed PUC decisions to the Minnesota Court of Appeals related to the rates the PUC authorized the utilities to charge ratepayers. Xcel Energy initially sought a 21.2% increase; the Commission approved a rate increase of 9.6%; Minnesota Power sought a 17.58% increase in rates; the Commission approved a 9% increase. Attorneys in the division defended PUC’s decisions in the appeals and await a decision from the court.
- **Planning Requirements for Gas Utilities.** Attorneys in the division advised the Commission on formally establishing planning requirements for three of Minnesota’s largest natural gas utilities—Xcel Energy, CenterPoint Energy, and Minnesota Energy Resources Corporation. The planning requirements obligate the utilities to identify resources needed to meet future demand and arose out of issues surrounding commodity price volatility identified following the 2021 gas price spike from Winter Storm Uri. In adopting planning requirements, the Commission established the key pieces of gas resource

plans and the process to ensure public participation, consideration of costs, infrastructure, and state decarbonization goals.

DEFENDING THE DULY ENACTED LAWS OF THE STATE

- ***MN Chamber of Commerce v. Choi et al.*** The Minnesota Chamber of Commerce sued to enjoin enforcement of a newly enacted statute that limits certain campaign contributions and expenditures by foreign-influenced corporations. The district court granted Plaintiff’s motion for a preliminary injunction. The parties filed cross-motions for summary judgment.
- ***Demars v. St. Louis County & Sporleder v. State, et al.*** These are putative class actions arising out of *Tyler v. Hennepin*, the United States Supreme Court case that held that when a public entity sells property to collect a debt, retaining excess value of the property above the owner’s tax debt violates the Takings Clause of the United States Constitution. The parties negotiated a settlement, which the Legislature approved.
- ***Republican Party v. Miller.*** During the 2022 election, candidate Nathan Miller posted a flyer that falsely implied he had been endorsed by the Republican Party in Minnesota. The party successfully prosecuted Miller for falsely implying they had endorsed his campaign, in violation of Minnesota Statutes Section 211B.02; Miller was fined \$250. Miller appealed, arguing in part that Section 211B.02 is unconstitutional as applied to him. The Attorney General intervened to defend the constitutionality of the statute. The Minnesota Court of Appeals concluded that Section 211B.02 is constitutional as applied to Miller, and the Minnesota Supreme Court denied review. Miller filed a petition for a writ of certiorari seeking review by the United States Supreme Court. The Attorney General and Republican Party of Minnesota filed briefs opposing Miller’s request and the United States Supreme Court has not yet decided whether to hear the case.

ENVIRONMENTAL & NATURAL RESOURCES DIVISION

The Environmental & Natural Resources Division (“ENR”) houses fifteen attorneys, consisting of nine litigators and six transactional attorneys.

LITIGATION WORK

ENR litigators represent state environmental agencies, but also bring actions in the name of the State on matters of environmental concern. The affirmative agency litigation work typically arises out of the enforcement and permitting programs of the State’s primary environmental regulators – including the Pollution Control Agency (“MPCA”), Department of Natural Resources (“DNR”), Department of Agriculture (“MDA”), Environmental Quality Board (“EQB”), Board of Water and Soil Resources (“BWSR”), and the Board of Animal Health (“BAH”). ENR attorneys also defend these agencies in state and federal district court, appellate, and administrative matters when parties bring actions challenging their programs or actions.

The Division also provides litigation representation for several agencies that are not environmental regulators, but whose work is housed in ENR because of the heavy transactional focus of the agencies' legal needs. This includes the Department of Administration ("Admin."), Minnesota Management and Budget ("MMB"), and the Minnesota Housing Finance Agency ("MHFA").

Below is a *representative sample of some but not all* legal work performed by ENR for the agencies and boards during FY 2024:

- ***State of Minnesota v. API et al.*** The Office brought suit against various petroleum industry participants that misrepresented the risks of climate change caused by their products. After the defendants attempted to remove the action to federal court, the Office obtained an order to remand the suit to state court. Defendants appealed to the 8th Circuit and the 8th Circuit upheld the district court's order on appeal. The action is proceeding in state district court.
- **Cannabis Issues.** The Office is active on many cannabis issues, including defending legal challenges brought to Office of Cannabis Management's ("OCM") licensing processes, and defending a challenge brought to MDA's regulation of pesticides used in cannabis production.
- **Chronic Wasting Disease ("CWD") Issues.** The Office successfully represented the DNR and BAH in work to prevent the spread of chronic wasting disease in deer. This included advising the DNR and BAH in enforcement matters, pursuing cost-recovery actions against individuals who violate the State's laws to contain the spread of CWD, and defending a constitutional challenge brought to statutes passed in 2023 imposing important new restrictions on cervid farms to prevent the spread of CWD.
- **Per-and Polyfluoroalkyl Substances ("PFAS").** The Office continues to represent state agencies in a wide variety of enforcement and remediation actions brought as a result of PFAS contamination of soils and groundwater. These efforts have focused on preventing additional releases and ensuring the parties responsible for existing contamination pay for the costs of clean-up, rather than State taxpayers. The Office represented the interests of the State and other stakeholders in opposing elements of a proposed national settlement of PFAS contamination in municipal water systems.
- ***State v. Reynolds et al.*** The Office brought an action in the name of the State against companies manufacturing and selling transparent blue trash bags for misrepresenting that the bags were appropriate for use in recycling. While blue bags were once used for recycling, the current practice is to leave recyclables unbagged. The continued sale of blue bags deceived consumers into buying bags that were unnecessary and made the work of recyclers more difficult because bagged recyclables are harder to process and the bags themselves can jam machinery. The matter was resolved with a settlement that precludes the sale of the bags by the named defendants in Minnesota and disgorges profits from the misrepresentation.

- ***Northern Iron v. MPCA***. After modeling showed a St. Paul foundry was not complying with air emissions standards, MPCA placed restrictions on the foundry to protect residents. The foundry has challenged those restrictions in court, and the Office is defending that challenge.
- **Mining Issues**. The Office is defending the DNR in multiple lawsuits over actions DNR has taken to regulate the mining industry. This includes both lawsuits brought both by regulated mining companies challenging DNR actions as too restrictive, and lawsuits by environmental advocates seeking to impose tighter restrictions on mining activities.

TRANSACTIONAL WORK

Since FY 2022, the Division has housed a growing team of lawyers that assist state agencies by representing them in transactional matters. This work was consolidated into ENR in order to bring transactional attorneys who were formerly spread across many divisions into a common division. The transactional attorneys handle a variety of work such as contract negotiation, intellectual property reviews, bond issuance, grant administration, federal program compliance, real-estate acquisition, title, and land-use matters, 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, 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. The Division’s transactional attorneys have also taken the lead in advising several boards and agencies created in the last biennium, such as the Minnesota Climate Innovation Finance Agency. The establishment of new boards and agencies creates significant legal needs, particularly as these new agencies and boards often lack a general counsel.

In FY 2024, the ENR division also became the primary division advising on cannabis-related matters with the consolidation of the regulatory authority of several state agencies into the OCM. The Division represented MDA in its regulation of cannabis prior to the creation of OCM. The Division advises OCM in litigation, transactional matters, and rulemaking. The Division is also advising the State in the negotiation of Tribal cannabis compacts. The Division expects cannabis regulation to be an area of significant legal representation over the next biennium.

TAX LITIGATION DIVISION

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 district courts and federal bankruptcy courts. The Division handles all tax types, including multimillion-dollar corporate franchise-tax claims, a high volume of complex sales-and use-tax cases, and complex utility valuation cases. The Division also provides legal representation and assistance to DOR and other state agencies filing claims in bankruptcy court. Lawyers in the Division also review and respond to dozens of foreclosure proceedings, quiet title actions, and other cases involving State interests.

Below is a *representative sample of some but not all* legal work performed by the Tax Litigation Division in FY 2024.

CASES RELATED TO CORPORATE FRANCHISE TAX

- ***E. I. du Pont de Nemours and Company & Subsidiaries v. Commissioner of Revenue.*** This case involves a corporate franchise tax assessment of the DuPont chemical company in the amount of approximately \$10 million. At issue is the treatment of forward exchange contracts (“FECs”) involved in currency trading, as well as the treatment of gains from the sale of a business and certain asserted royalty income when determining the amount of DuPont’s income apportionable to Minnesota. The case went to trial on December 6 and 7, 2023. The Tax Court found in the Commissioner’s favor and imposed taxes due as follows: (1) for the 2013 tax year, additional corporate franchise tax due in the amount of \$3,438,084.00; (2) for the 2014 tax year, additional corporate franchise tax due in the amount of \$3,293,816.00; and (3) for the 2015 tax year, additional corporate franchise tax due in the amount of \$2,241,811.00.
- ***Uline Inc. v. Commissioner of Revenue.*** This is a tax nexus case stemming from an assessment against a multistate packaging company. Uline moved its warehousing operations from Minnesota to Wisconsin in 2013 and asserts that this was a sufficient measure to avoid taxation (on behalf of its shareholders) in Minnesota under P.L. 86-2702 during the years in question (2014-2015). The parties brought cross-motions for summary judgment. In an order dated June 23, 2023, the Tax Court denied Uline’s motion for summary judgment and granted the Commissioner’s motion for partial summary judgment. Uline appealed to the Minnesota Supreme Court, and the Court ruled in the Commissioner’s favor on August 7, 2024.
- ***Cities Management, Inc. v. Commissioner of Revenue.*** This matter involves non-resident withholding tax for the 2015 tax year. At issue is the Commissioner’s treatment of gain from the sale of corporate assets as apportionable business income. The Tax Court granted the Commissioner’s Motion for Summary Judgment and Appellant appealed to the Minnesota Supreme Court. Oral argument was held on June 8, 2023, and the Court ruled in the Commissioner’s favor.

CASES RELATED TO WHOLESALE DRUG DISTRIBUTOR TAX

- ***Dakota Drug v. Commissioner of Revenue.*** The Commissioner audited Dakota Drug’s wholesale drug distributor tax returns and assessed additional tax based on an adjustment that increased Dakota Drug’s gross revenues. The adjustment is based on the Commissioner’s conclusion that Dakota Drug’s gross revenues should not be reduced by rebates or account credits Dakota Drug provides to pharmacies through its rebate program. The Tax Court ruled in Dakota Drug’s favor and the Commissioner appealed to the Minnesota Supreme Court. The Court heard argument on June 3, 2024, and we await decision.

EDUCATION DIVISION

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 37 separate colleges and universities. 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 three public pension boards.

Below is a *representative sample of some but not all* legal work performed by the Education Division in FY 2024.

- ***Alejandro Cruz-Guzman, et al. v. State of Minnesota, et al. and Higher Ground Academy, et al.*** This is a class-action lawsuit brought in November 2015 against the State, the Minnesota Senate, the Minnesota House of Representatives, the Minnesota Department of Education, and its Commissioner alleging that the education that the school children in the Minneapolis and Saint Paul Public Schools receive is inadequate and discriminatory on the basis of race and socioeconomic status (poverty and free lunch). Certain charter schools have intervened as defendants. Plaintiffs sought partial summary judgment, and the court of appeals determined a racially imbalanced school system caused by de facto segregation by itself is not enough to demonstrate an Education Clause violation, even if state action contributed to the racial imbalance. The Plaintiffs appealed that decision to the Minnesota Supreme Court and in December 2023, the Court rejected the Plaintiff's theory. The case has now returned to the district court where Plaintiffs must prove that racial segregation causes an inadequate education.
- ***Loe, et al, v. Walz, et al.*** Two evangelical colleges (Crown College and University of Northwestern-St. Paul) and two families commenced a federal lawsuit against Commissioner Jett and the Minnesota Department of Education ("MDE") in May 2023. The suit challenges a 2023 law that prohibits eligible institutions in Postsecondary Enrollment Options ("PSEO") from requiring high school students to sign a faith statement and prohibits institutions from discriminating against students on the basis of religion, sexual orientation, gender identity, or other protected categories. MDE brought counterclaims against the schools alleging Constitutional and statutory violations related to the schools' policies, which the Plaintiffs moved to dismiss. The district court denied the motion to dismiss, and discovery is now complete. Both parties are now moving for summary judgment.
- ***Portz, et al. v. St. Cloud State University/Minnesota State.*** Five members of the women's tennis team filed a class-action complaint in federal court alleging Title IX and Equal Protection violations in the wake of the University's decision to eliminate six sports teams (four men's and two women's). Subsequently, a second women's team (Nordic skiing) joined the lawsuit. Following a trial, the federal district court found St. Cloud State in violation of Title IX, entered a permanent injunction, and awarded attorneys' fees. St. Cloud State appealed the decision, and the Eighth Circuit affirmed in part and reversed

in part the federal district court's decision. On remand, and in response to the parties' motions, the federal district court found St. Cloud State is in nearly full compliance with Title IX and the earlier injunction. After St. Cloud State established its full compliance with Title IX, the district court dissolved the injunction on August 14, 2024.

- ***K.O., et al. v. Willie Jett, Commissioner of Education.*** On behalf of its client, the Disability Law Center sued in federal court contending that Minnesota's statute that caps the age to receive special education services to July 1 of the year that the student turns 21 conflicts with federal law requiring states to provide special education services "through the age of 21." A class of plaintiffs has been certified. The Legislature amended the law to moot future injunctive relief. The parties moved for cross motions for summary judgment, and in August 2023, the district court ruled that the Minnesota statute violated federal law. Following the Court ruling, Plaintiffs and MDE entered into a settlement agreement to get compensatory services to impacted students as quickly as possible.
- ***In re: Appeal of Audit of Minnesota Internship Center, Administrative Appeal.*** In this case, Minnesota Internship Center ("MNIC"), a charter school, challenged the result of MDE's audit of its attendance records. There was an administrative hearing to an appeal panel on July 27, 2022. The appeal panel affirmed the audit team's findings. MNIC appealed to the court of appeals, which affirmed MDE's decision. The Minnesota Supreme Court granted review on whether the statute gave MDE the authority to audit MNIC. On August 7, 2024, the Minnesota Supreme Court affirmed the Commissioner, allowing for the recovery of millions of dollars of improperly paid funding.

GOVERNMENT SUPPORT SECTION

COMMERCE, ELECTIONS, AND TRADES DIVISION

The Commerce, Elections, and Trades Division primarily provides legal representation to the Department of Commerce, the Secretary of State, the Department of Labor and Industry (“DLI”), and many other boards, agencies, councils, and commissions. The Division appears in state and federal district and appellate courts and in administrative proceedings.

Below is a *representative sample of some, but not all*, legal work performed by the Division in FY 2024.

LITIGATION.

- Division staff continued defending a lawsuit challenging the constitutionality of the Alec Smith Insulin Affordability Act. Since taking effect in 2020, the law has allowed more than 1,300 Minnesotans to receive life-saving insulin. The case is back before the district court after the Eighth Circuit reversed the district court’s dismissal.
- Division staff successfully defended the Secretary of State in multiple cases challenging election-related matters. For example, Division staff successfully defended the Restore the Vote Act, statutes defining major political parties, and statutes determining access to the primary ballot. In ongoing litigation, Division staff continue to defend the state’s laws prohibiting election misinformation, laws limiting access to voter-registration data, laws requiring a witness when voting absentee, and laws permitting the state’s participation in a multistate organization that assists in maintaining updated voter-registration data.
- Division staff led a bipartisan coalition of 32 attorneys general in an amicus brief to the U.S. Supreme Court to support states’ authority to regulate pharmacy benefit managers.

COMMERCE AND LABOR ENFORCEMENT.

The Division represents the Department of Commerce and DLI in numerous enforcement actions against individuals and businesses that act in regulated industries and violate state laws. For example, Division staff represented Commerce in an enforcement action against a mortgage loan originator, title agent, and title agency based on a scheme to charge fraudulent closing fees on residential mortgage loans. Through a settlement, Commerce retroactively suspended or revoked their various licenses and imposed a \$300,000 civil penalty. Division staff also represented Commerce in an enforcement action against an insurance company that charged consumers excessive rates for collateral-protection insurance that took effect when their automobile-insurance policies lapsed. The company ultimately agreed to exit the Minnesota collateral-protection insurance market and pay a \$250,000 civil penalty.

ENERGY AND TELECOM.

The Division represents the Department of Commerce in proceedings before the Public Utilities Commission and in related court cases. Through this representation, Division staff help secure safe, reliable, and affordable electric, gas, and telephone service.

- In a case that remains pending before the Commission, the Division obtained a favorable recommendation from an administrative law judge (“ALJ”), finding that Xcel Energy failed to prudently operate and maintain its Sherco coal-fired power plant, which resulted in the plant’s catastrophic failure and an extended outage. The ALJ further recommended that the Commission require Xcel to refund ratepayers the costs of replacement power that Xcel incurred while Sherco was out of service. In a natural gas matter, the Division helped secure a settlement that reduced Minnesota Energy Resource Corp.’s proposed rate increase by approximately \$11 million.
- In a telecom proceeding, the Division helped obtain a Commission order requiring CenturyLink to restore adequate landline telephone service to approximately 5,000 consumers. Most of these consumers are in rural areas and lack alternative service providers. In a separate telecom matter, the Division helped secure a Commission order revoking LTD Broadband’s Eligible Telecommunications Carrier status in areas where it was unable to deploy broadband service. The relinquishment allows these areas to become eligible for federal and state grant funding for broadband expansion.

LICENSING BOARDS.

The Division represents numerous non-health-related licensing boards, routinely giving advice to boards and separately assisting complaint and ethics committees in reviewing complaints against licensees and pursuing administrative action against licensees who violate applicable laws and rules. For example, the Division represented the Board of Accountancy in temporarily suspending and then revoking the CPA firm permit of an accounting firm that failed to follow professional standards when auditing the non-profit Feeding Our Future, which was ultimately discovered to have defrauded the government of more than \$250 million. The Division represented the Peace Officer Standards and Training Board’s complaint committee in an action that ultimately resulted in the board revoking a peace officer’s license for using deadly force without authorization by unnecessarily ramming a vehicle to stop a high-speed pursuit. The Division represented the Board of Cosmetologist Examiners in revoking the licenses of a licensee who exposed himself to a client while performing cosmetology services. And Division staff represented the Board of Private Detective and Protective Agent Services in obtaining a settlement for a \$100,000 civil penalty and an agreement for quarterly audits with a corporate protective agent that had failed to train and conduct criminal background checks on its employees.

HUMAN SERVICES DIVISION

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. The division will also represent the Department of Children, Youth, and Families, and the Department of Direct Care and Treatment as those agencies begin operating.

Below is a *representative sample of some but not all legal* work performed by the Division in FY 2024.

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 over one million Minnesotans. The Division also represents DHS in connection with lawsuits against several county-based-purchasers over its Medical Assistance procurement and a statutory amendment prohibiting DHS from contracting with for-profit companies for provision of Medical Assistance.

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, and the Federal Supplemental Nutrition Assistance Program (“SNAP,” formerly called Food Stamps). Division attorneys represented the agency in appeals from agency actions related to public-assistance programs, and represented the agency regarding its role in child protection matters in *Nordgren v. Harpstead*.

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 Forensic Mental Health Program (“FMHP”), and the Minnesota Sex Offender Program (“MSOP”). Division attorneys represent DHS’s interests in a broad spectrum of litigation. Division attorneys continue to represent DHS in *McDeid v. Johnston* and the putative class action *Rud v. Harpstead*, which relate to admissions to Community Preparation Services, MSOP’s less restrictive facility. Division attorneys also continue to defend DHS in connection with admissions to DHS facilities in Rule 20 matters, including *Dalen v. Harpstead*, *Doe v. Harpstead*, and six state court cases relating to the priority admissions law.

INSPECTOR GENERAL.

Division attorneys provide legal representation to the DHS Office of the Inspector General in various case types, including maltreatment cases (abuse, neglect, and financial exploitation) and Medicaid overpayment recovery. The Minnesota Supreme Court heard two cases this year involving Medicaid overpayment recovery. It also took a third case that will be argued in September involving what it means for a vendor to be improperly paid under statute.

STATE AGENCIES DIVISION

The State Agencies 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.

Below is a *representative sample of some but not all* legal work performed by the State Agencies Division in FY 2024.

ADMINISTRATIVE ENFORCEMENT PROCEEDINGS.

The Division represents state agencies that bring enforcement proceedings to protect the health and safety of Minnesotans. For instance, the Division represents the Department of Labor and Industry (“DLI”) in proceedings to enforce occupational safety and health (“OSHA”) standards in workplaces. In FY2024, some cases involved the death or serious injury of workers, where employers paid substantial penalties, such as where a scuba diver drowned while working to clear weeds from a lake, or where an employee died from injuries sustained by pressurized heat while cleaning cooking drums. The Division also represents DLI when employers challenge DLI’s determination that employers wrongfully fired employees for reporting violations of the OSHA law. In FY2024, the Division continued to represent DLI in labor standards matters, including matters involving wage theft and illegal child labor. For instance, the Division represents DLI in an enforcement proceeding seeking back wages from employers on a large construction project. The Division also represented DLI in obtaining a settlement agreement against a meatpacking company that included a comprehensive compliance program and continuing court supervision to prevent further child labor violations.

Minnesota’s Assisted Living Licensure Law went into effect in 2021 and established regulatory standards to protect the health, safety, and well-being of residents in thousands of Minnesota facilities. In FY2024, the Division represented the Minnesota Department of Health (“MDH”) in many enforcement proceedings at OAH to bring facilities into compliance with the law, often involving expedited evidentiary hearings. For example, MDH determined that a facility in Hennepin County failed to update a vulnerable resident’s care plan to address her risk of falling, even after the resident had repeatedly fallen and sustained injuries—with a final fall leading to her death. The Division successfully represented MDH at an evidentiary hearing and on appeal, where MDH’s decision and fines were upheld. This resulted in a precedential decision at the Minnesota Court of Appeals establishing that an assisted living facility is not relieved of its legal obligations to residents after a hospice provider also begins to provide services to the resident. *See In the*

Matter of the Correction Orders Issued to Wealshire of Bloomington, 3 N.W.3d 284 (Minn. Ct. App. 2024). The Division also represents MDH when individuals or health care facilities have violated the Vulnerable Adults Act by neglecting, abusing, or financially exploiting vulnerable adults.

DISTRICT COURT LITIGATION/OBTAINING INJUNCTIVE RELIEF TO PROTECT THE PUBLIC.

The Division supported the efforts of the Minnesota Department of Corrections (“DOC”) in addressing conditions in county jails. In one such matter, the DOC determined that a county failed to meet minimum standards after a detainee was not given food or a shower for two days. The DOC placed limits on the license of a county jail, including restricting the time a detainee could spend in the jail to 72 hours. The county sued the DOC and sought a court injunction, asking the court to overturn the DOC’s decision. The Division successfully defended the DOC’s licensing determination and obtained a quick dismissal of the lawsuit.

The Division also continued to handle lawsuits to obtain MDH’s appointment as a court-appointed receiver of nursing homes—allowing MDH to assume control over poorly-functioning facilities and ensure residents’ safety. These cases allow MDH to stabilize operations where financial mismanagement and operational deficiencies had created emergencies threatening ongoing staffing and operation of facilities.

APPELLATE ADVOCACY.

The Attorney General intervened in litigation to support the constitutionality of the Minnesota Indian Family Preservation Act (“MIFPA”). The Minnesota Court of Appeals held that child custody placements that favor Indian persons and placements approved by Indian tribes do not violate the Equal Protection Clause. *See In the Matter of the Welfare of the Children of L.K.*, 9 N.W.3d 174 (Minn. Ct. App. 2024). The Minnesota Supreme Court accepted review, and we filed another brief in support of MIFPA in that court. The Division also advocated in appellate courts to explain agencies’ interpretations of the statutes they enforce. For instance, the Division filed an amicus brief on behalf of the Minnesota Department of Human Rights at the Court of Appeals that successfully advocated for a precedential appellate decision establishing that a pharmacist engaged in sex-based business discrimination under the Minnesota Human Rights Act when the pharmacist refused to dispense a valid prescription for contraception. *See Anderson v. Aitken Pharmacy Services*, 5 N.W.3d 123 (Minn. Ct. App. 2024).

DEFENSE OF STATE EMPLOYEES AND PROGRAMS.

The Division continued to provide legal representation to defend State officials in a variety of state and federal lawsuits. Most cases were resolved through successful, early motions to dismiss the case. In FY2024, much of this work involved cases incarcerated persons brought against the DOC and its officials in lawsuits involving constitutional issues. Examples include challenges to policies and conditions of confinement in correctional facilities; challenges to restrictions on religious practice under the First Amendment and the federal Religious Land Use and Institutionalized Persons Act; and claims alleging excessive force and wrongful incarceration. The

Division also successfully defended the Department of Employment and Economic Development in lawsuits involving benefit determinations related to COVID-19.

HEALTH AND TEACHER LICENSING DIVISION

The Health and Teacher Licensing Division represents Minnesota's health-related licensing boards, the Emergency Medical Services Regulatory Board, the Health Professionals Services Program, and the Professional Educator Licensing and Standards Board in litigation and administrative actions related to their licensure and regulatory oversight of healthcare providers and educators. The Division also investigates complaints received by the boards alleging licensee misconduct and provides legal advice to the boards.

Below is a *representative sample of some but not all* legal work performed by the Health and Teacher Licensing Division in FY 2024.

UNPROFESSIONAL CONDUCT

The Health and Teacher Licensing Division investigated and took action on complaints received by the boards against healthcare providers and educators who engaged in unprofessional conduct. The misconduct at issue in these cases involved healthcare providers or educators who violated professional boundaries, engaged in financial exploitation, used unreasonable discipline, and engaged in substandard practice. These cases resulted in board orders for discipline under rules and statutes that govern licensees, which are enforced by the Division and its clients to protect the public.

In one case, for example, the Division represented the Board of Nursing in an investigation and a contested case at the Office of Administrative Hearings involving Michelle Skroch, the director of nursing for MEnD Correctional Care who failed to provide care to Hardel Sherrell who died while in custody at the Beltrami County Jail. The Board issued an order revoking her nursing license. In another case, the Division represented the Board of Dentistry in an investigation and contested case at the Office of Administrative Hearings involving a dentist who engaged in a pattern of substandard practice that resulted in poor patient outcomes. The Board issued an order suspending the dentist's license.

And in another matter, the Division represented the Board of Chiropractic Examiners in a contested case at the Office of Administrative Hearings involving a chiropractor who engaged in forgery and theft of Medicaid funds. The Board issued an order revoking the chiropractor's license.

The Division also represented the Professional Educator Licensing and Standards Board in successfully defending, on appeal, a Board order denying an application for a substitute teaching license submitted by former peace officer Jeronimo Yanez who, after a contested case hearing at the Office of Administrative Hearings, was found to have engaged in immoral conduct in connection with the Code of Ethics for Minnesota Teachers through his racial profiling and unreasonable use of deadly force during a traffic stop of Philando Castile.

SEXUAL MISCONDUCT

The Health and Teacher Licensing Division investigated and took action on complaints received by the boards against healthcare providers and educators who engaged in sexual misconduct. The misconduct at issue in these cases involved healthcare providers or educators who abused their position of authority to engage in inappropriate sexual relationships with patients or students.

In one case, for example, the Division represented the Board of Social Work in an investigation and a contested case at the Office of Administrative Hearings involving a social worker who failed to maintain professional boundaries and engaged in sexual misconduct with a client. The Board issued an order for surrender of the social worker's license.

In another case, the Division represented the Board of Medical Practice in an investigation and action involving a physician who engaged in sexual misconduct with multiple patients over several years. The Board issued an order revoking the physician's license.

And in another case, the Division represented the Professional Educator Licensing and Standards Board in an action involving a teacher who engaged in sexual misconduct with a student. The Board issued an order revoking the teacher's license.

UNAUTHORIZED PRACTICE AND GENERAL LITIGATION

The Health and Teacher Licensing Division investigated and took action on complaints received by the health-related licensing boards involving the unauthorized practice of healthcare and violation of other laws governing public health and safety. The misconduct at issue in these cases involved individuals who failed to comply with laws governing their practice, practiced outside of the scope of their licensure, engaged in the unlicensed practice of healthcare, or violated laws protecting public health and safety.

In one case, for example, the Division represented the Boards of Psychology, Social Work, Marriage and Family Therapy, and Behavioral Health and Therapy in an investigation and litigation involving an individual who engaged in the unlicensed practice of therapy by providing diagnostic testing and treatment to patients. The Board obtained a court order enjoining the individual from further unlicensed practice.

In another case, the Division represented the Board of Nursing in an investigation and a contested case at the Office of Administrative Hearings against an individual who purchased a fraudulent nursing degree which she used to obtain a nursing license. The Board issued an order for the surrender of the fraudulently obtained license.

The Division also defended the health-related licensing boards in lawsuits, including challenges to the statutory complaint-resolution process through which the boards receive and resolve complaints about licensees.

In one case, for example, the Division defended the Board of Medical Practice and obtained an order for dismissal of a federal lawsuit brought against the Board by licensee and former candidate for statewide political office Dr. Scott Jensen, who alleged that his Constitutional rights were violated when he was the subject of complaints that were filed with, investigated, and ultimately dismissed by the Board about his conduct during the COVID-19 pandemic. The court dismissed the lawsuit for lack of standing, recognizing the Board's statutory duty to receive and resolve complaints as part of its regulation of the medical profession to safeguard the public health and welfare.

HEALTH AND SAFETY SECTION

MEDICAID FRAUD DIVISION

The Medicaid Fraud Division is a federally certified Medicaid Fraud Control Unit (“MFCU”) that investigates and prosecutes health care providers who commit fraud in the delivery of services in the Medical Assistance (“Medicaid”) program. Upon referral from a Minnesota county attorney, the Division also has authority to investigate and prosecute abuse, neglect, and financial-exploitation cases that occur in certain Medicaid-funded facilities, or against certain Medicaid recipients.

The Minnesota Department of Human Services (“DHS”) administers the Medicaid program in Minnesota. DHS’s Medicaid Provider Fraud and Audits Division (“MPAI”) is responsible for investigating fraud in the Medicaid program. After completing its administrative investigation, MPAI may refer cases to the Division for criminal investigation and prosecution. The Division also receives referrals from other sources, including but not limited to managed-care organizations, other state agencies, and other federal, state, and local law enforcement entities.

Most of the Division’s work involves investigating and prosecuting health-care providers who participate in the State’s Medicaid program and submit false claims for reimbursement. Typical fraud schemes include billing for services not provided, billing for authorized units rather than actual units of care provided, providing group care but billing as if one-on-one care is provided, and billing for services provided by individuals who are not qualified due to a prior conviction, a lack of credentials, or failure to pass background checks. Some fraud cases have a criminal neglect component because the recipient’s condition is compromised due to lack of care.

Below is a *representative sample of some but not all* cases prosecuted by the Medicaid Fraud Division in FY 2024.

- ***State of Minnesota v. Abdirashid Said, et al.*** In FY2024, the Division charged a network of individuals with nearly \$11 million in provider billing fraud. The network was operated by Abdirashid Said, an individual previously prosecuted by the MFCU and federally excluded from operating as a provider for any federally funded health care program, including Medicaid. Said, with the help of his co-conspirators, concealed his involvement in the operation of his agencies. The agencies unlawfully billed for home and community-based (waivered) services not provided at all, for services not provided in compliance with State law, and for services provided by an agency managed or controlled by Said. Thus far, 15 people have been charged, with further investigation ongoing and additional charges expected.

Said’s next Court appearance is in Hennepin County district court in October 2024.

- ***State of Minnesota v. Jordan Borders.*** In FY2024, the Division accepted a referral, pursuant to Minn. Stat. § 8.01, from the Crow Wing County Attorney’s Office to prosecute Borders for a litany of child abuse and Medicaid fraud offenses. Borders is accused of torturing and abusing her three minor children while simultaneously defrauding the Medicaid program through her work as a personal care assistant for one of the children. The case is presently set for a review hearing September 2024 in Crow Wing County district court.
- ***State of Minnesota v. Nasro Takhal, et al.*** In FY2024, the division charged 8 individuals as part of a complex network of medical providers, interpreters, and non-emergency transportation drivers who conspired to steal the identities of Medicaid beneficiaries and defraud the Medicaid program by billing for services not provided, overbilling services, and using the stolen identities of individuals to bill for services they did not receive. The victims include minor children as young as one year old. The investigation, known as PITSTOP66, has resulted in charges against 21 individuals through June 30, 2024, with charges most recently filed against the former owner and former biller of a non-emergency medical transportation company.

The defendants have upcoming omnibus hearings in Rice County and Hennepin County.

The Division also successfully resolved prior significant cases in FY2024. This included obtaining guilty pleas and sentences from:

- An acupuncturist who overbilled more than \$1.6 million in acupuncture services and aided and abetted the overbilling of interpreter services at her clinic;
- Two former state employees who conspired to defraud MNSure by receiving compensation for Navigator services they did not actually perform;
- A mental health therapist who, along with her daughter, bilked the Medicaid program out of over \$192,000 by billing for services not provided at all, services ineligible for payment because the therapist lost her license to practice, services not eligible for payment because the therapist overbilled for them, and services ineligible for payment because the therapist was not approved to provide them.

Finally, the Division recovered over \$138,000 for the State through its civil false claims act litigation.

PUBLIC SAFETY DIVISION

The Public Safety Division (“Division”) provides legal services to the Minnesota Department of Public Safety (“DPS”) and its various divisions, including the Driver and Vehicle Services Division, the Minnesota Bureau of Criminal Apprehension, the Minnesota State Patrol, the Alcohol and Gambling Enforcement Division, and the Fire Marshal.

The Division represents DPS at implied consent hearings where drivers contest the revocation of their driver's license for an arrest for driving while impaired by alcohol or controlled substances. Division attorneys handled nearly 3,500 district court proceedings and associated appeals challenging the revocation, cancellation, withdrawal, and disqualification of driving privileges under various provisions of Minnesota law. Attorneys also represented the Driver and Vehicle Services Division in title matters and the Minnesota State Patrol in forfeiture proceedings in the district courts.

The Division also provides legal representation to state boards and commissions, including the Gambling Control Board and the Minnesota Racing Commission. These entities issue thousands of licenses and conduct numerous investigations each year. The Division provides legal representation to the Minnesota Racing Commission in appeals from commission licensing decisions and disciplinary action taken against horse owners, trainers, and jockeys, and has also provided legal representation to the commission at the Minnesota Court of Appeals. The Division also provides legal representation to the Gambling Control Board in appeals from the board's licensing decisions and disciplinary actions. New this year, the Division is providing advice and representation to the Office of the Foster Youth Ombudsperson as it establishes itself.

Below is a *representative sample of some but not all* legal work performed by the Public Safety Division in FY 2024.

- ***Brian Matthew Nash v. Commissioner of Public Safety.*** In this case, a trooper obtained a warrant for a blood or urine test. The trooper asked Mr. Nash if he would take a blood test and informed him that refusal to take a test is a crime. Mr. Nash consented to a blood test. Minnesota Statutes Section 171.177 requires that a "person must be informed that refusal to submit to a blood or urine test is a crime." The Court of Appeals found that the advisory did not accurately inform Appellant of the consequences of test refusal as the advisory did not contain any information about the option to take a urine test. Believing that the advisory suggested by the Court of Appeals was contrary to the requirements of the law and would create more confusion for the public and for law enforcement, the Office successfully petitioned the Minnesota Supreme Court for further review. The Minnesota Supreme Court determined the Court of Appeals misinterpreted Minnesota Statutes section 171.117, subd. 1, and clarified that officers must inform citizens that refusal to take a test pursuant to a warrant is a crime but need not use any specific language or provide greater detail about the process. This outcome ensures that law enforcement is clearly, consistently, and appropriately informing citizens of the serious consequences of not complying with the driving while impaired laws and can make informed choices regarding compliance.
- ***Stacy Osmundson v. Minnesota Commissioner of Public Safety.*** Mr. Osmundson holds a commercial driver's license ("CDL"). Mr. Osmundson pled guilty in a criminal case to leaving the scene of a collision with an unattended vehicle. The court reported the criminal conviction to the Department of Public Safety resulting in the statutorily required disqualification of Mr. Osmundson's commercial driving privileges. Mr. Osmundson sought to and was permitted to withdraw his guilty plea and instead plead guilty to an offense that he believed would not impact his CDL.

In a separate civil case, Mr. Osmundson petitioned for reinstatement of his commercial driving privileges under Minnesota Statutes section 171.19. The district court sustained the disqualification of Mr. Osmundson's commercial driving privileges, finding that Mr. Osmundson's behavior required disqualification of his commercial driving privileges under the Federal Motor Carrier Safety Administration regulations. Minnesota law expressly incorporates the requirements of the federal motor carrier safety regulations, including definitions specific to the regulations and a requirement that state actors not take any action that would prevent information fitting those definitions from appearing on the driving record of an individual with commercial driving privileges. Violation of these regulations can result in federal penalties including the withholding of highway funds. Mr. Osmundson appealed the district court's order, and the AGO is defending the district court's order at the Court of Appeals. Oral argument will occur in September 2024.

TRANSPORTATION DIVISION

The Transportation Division provides legal representation to its primary client, the Minnesota Department of Transportation (MnDOT). A large part of the Division's work involves eminent domain litigation. In addition, Division attorneys provide legal advice to MnDOT, other state agencies, and the National Guard, when they are involved in construction projects and provide legal representation to those entities when contractors, subcontractors, or third parties sue the state on construction-related matters. The Division also protects taxpayers by filing claims on behalf of MnDOT and other state agencies against entities that make false claims, 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 help agencies resolve claims before litigation arises. The Division advocates in the appellate courts and at the Office of Administrative Hearings on behalf of its client agencies. The Division also assists in the representation of other state agencies in conflict cases and cases where its subject matter expertise is sought.

Below is a *representative sample of some but not all* legal work performed by the Transportation Division in FY 2024.

- ***Eminent Domain/Land Acquisition Matters on behalf of the Department of Transportation.*** The Division is representing MnDOT in the acquisition of hundreds of parcels that are necessary for the construction of infrastructure improvements to Minnesota's Trunk Highway System. Division attorneys protect the public interest in these eminent domain proceedings by ensuring that MnDOT acquires the necessary right-of-way to improve and build new roads and bridges throughout the entire state, including for example, continuing improvements to the I-494 corridor from the Minneapolis–Saint Paul Airport to Trunk Highway 169, the Highway 23 four-lane expansion project in central Minnesota, and many other State Trunk Highway construction projects being worked on

during the 2024 construction season. Trunk Highway right-of-way acquired by this work is also used to facilitate and support construction of vital municipal utility improvement projects, such as upgrading outdated sewer and water infrastructure, in communities throughout the state. The Division's successful agency representation in these cases is critical to the timely completion of these construction projects, makes Minnesota's highway system safer and more efficient, and implicates the powers and protections of the Minnesota and U.S. Constitutions. Division attorneys work to carry out these constitutional provisions to ensure the compensation paid for land necessary for these vital improvements is just to both the affected landowners and the public that funds the projects.

- ***Central Specialties, Inc. v. Minnesota Department of Transportation.*** Division attorneys defended MnDOT in a lawsuit brought by a highway contractor alleging that MnDOT breached the implied covenant of good faith and fair dealing when it did not approve contractor-requested haul roads on a highway project. Following a jury trial, MnDOT appealed the jury verdict against MnDOT to the Minnesota Court of Appeals. The case involved a complex legal argument interpreting and applying the implied covenant doctrine to MnDOT's contract specifications, Division attorneys successfully argued for reversal of the jury verdict. In a precedential opinion, the Court of Appeals clarified the law relating to the implied covenant of good faith and fair dealing in Minnesota and noted that MnDOT was "transparent" in its actions and that the evidence in the case did not establish that MnDOT acted in bad faith or with an ulterior motive.
- ***Rail and Pipeline Safety Account Litigation.*** The Division is leading a coordinated effort with attorneys from other AGO Divisions to defend Minnesota Statutes that require annual assessments to railroad and pipeline companies to fund the Rail and Pipeline Safety Account. This important safety account was created to ensure adequate funding for resources and training to respond to emergencies involving the release of hazardous materials, including train derailments. The federal lawsuit, brought by the Association of American Railroads against State agency Commissioners, alleges federal preemption of the relevant Minnesota Statutes as they pertain to the railroad industry.

CRIMINAL DIVISION

The Criminal Division provides prosecutorial assistance to county attorneys and local law enforcement agencies with the prosecution of serious crimes. The Division assists counties in the prosecution of serious crimes in trial courts throughout Minnesota under Minnesota Statutes section 8.01. Division attorneys also provide assistance in civil commitment proceedings involving dangerous sex offenders, upon request of the county attorney.

Additionally, Division attorneys assist the Department of Corrections in 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. The Division also advises the Bureau of Criminal Apprehension ("BCA") in registration and DNA collection issues, advises the Department of Corrections on

community -notification issues, and provides legal assistance to the Advisory Committee on the Rules of Criminal Procedure.

Below is a *representative sample of some but not all* cases prosecuted by the Criminal Division in FY 2024.

- ***State v. Ronald Bzdok*** (Aitkin County). On July 23, 2022, Ronald Bzdok shot his father in the back of the head at a cabin in Aitkin County. His father's body was discovered approximately five days later. Bzdok pled guilty to second-degree murder on September 1, 2023. On October 13, 2023, the district court sentenced Bzdok to 306 months' imprisonment.
- ***State v. Michael Croud*** (Becker County). Michael Croud shot and killed his cousin and shot at another person in Becker County on June 25, 2023. Croud fled the area and was arrested in California about three weeks later. On March 18, 2024, Croud pled guilty to second-degree murder and second-degree assault. On April 17, 2024, Croud received consecutive prison sentences of 480 months and 60 months, for a total of 540 months' imprisonment.
- ***State v. Erick Haynes; Foday Kevin Kamara; Eriana Haynes; Tavion James*** (Hennepin County). At the direction of Erick Haynes, Foday Kamara and his brother forcefully entered the home of Zaria McKeever's new boyfriend on November 8, 2022. Kamara shot Ms. McKeever five times, including once in the head. Kamara also shot his brother in the leg with a stray bullet. Kamara and his brother then fled the scene with Erick Haynes, who drove the brothers to a local hotel, where they met Eriana Haynes and Tavion James. Eriana Haynes and Tavion James drove Kamara's brother to the hospital, where they lied to police about the circumstances of the injury. On April 1, 2024, Erick Haynes pled guilty to first-degree felony murder. He was sentenced to life in prison. Kamara was certified as an adult and pled guilty to second-degree intentional murder. He was sentenced to 130 months' imprisonment. Eriana Haynes and Tavion James each pled guilty to aiding an offender. Eriana Haynes was sentenced to 41 months in prison. Tavion James received a stayed prison sentence of 42 months, with 364 days at the Hennepin County Workhouse.
- ***State v. Troy Hill*** (Kanabec County). On November 27, 2022, Troy Hill followed a GPS tracker he had placed in his ex-girlfriend's purse to her new boyfriend's parents' house in Kanabec County. Hill broke into the home and repeatedly struck the two residents in the head with a three-pound mallet. The victims barely survived. Hill pled guilty to burglary and two counts of attempted second-degree murder on July 14, 2023. On September 18, 2023, Hill received consecutive sentences on each count of attempted second-degree murder, for a total of 367 months' imprisonment.
- ***State v. Samuel Long; Teresa Massey*** (Pope County). Samuel Long coordinated a drug transaction on February 20, 2021, which led to a fatal overdose involving fentanyl and methamphetamine. The same day, Teresa Massey drove her boyfriend to Glenwood to deliver the drugs used in the fatal overdose. On January 18, 2024, a jury found Massey

guilty of aiding and abetting a third-degree controlled substance crime. The district court placed Massey on probation for 5 years and stayed imposition of her sentence. On May 13, 2024, another jury found Long guilty of aiding and abetting third-degree murder and two related drug charges. Long ultimately received a stayed prison sentence of 100 months. The court placed Long on probation for 20 years and imposed 360 days' jail time.

- ***State v. Ben Moreno*** (Freeborn County). On August 9, 2022, Ben Moreno shot at a vehicle carrying a rival drug dealer and another person, and then shot and killed the rival drug dealer after he exited the vehicle. On March 12, 2024, a jury found Moreno guilty of second-degree murder and attempted second-degree murder, among other charges. On May 30, 2024, Moreno received consecutive sentences of 306 months and 173 months, for a total of 479 months' imprisonment.
- ***State v. Deja Padilla*** (Renville County). Deja Padilla sold drugs to her cousin in November 2021, who overdosed and subsequently died. On September 12, 2023, Padilla pled guilty to third-degree murder. The district court imposed an 84-month prison sentence the same day.
- ***State v. Dustin Tinklenberg*** (Kanabec County). On September 12, 2022, Dustin Tinklenberg beat his 93-year-old grandmother to death in her home with an ax. She was found dead on her couch. Tinklenberg pled guilty to second-degree intentional murder on August 14, 2023. On November 13, 2023, the district court sentenced Tinklenberg to 312 months in prison.

CRIMINAL APPELLATE DIVISION

The Criminal Appellate Division was previously part of the Office's Criminal Division. It became its own division due to the growth provided by the Legislature to the Attorney General's Office support of county attorneys in the 2023 legislative session. The Criminal Appellate Division provides assistance to county attorneys in felony appeals. The cases handled in FY 2024 involved, among other crimes, murder, sexual assault, drug distribution and manufacturing, child sexual abuse, arson, and distribution of child pornography.

Below is a *representative sample of some but not all* cases prosecuted by the Criminal Appellate Division in FY 2024.

- ***State v. Colgrove*** (Clearwater County). A jury found Mr. Colgrove guilty of offenses including first-degree felony murder while committing a burglary, and he received a life sentence with the possibility of release after 30 years. On appeal, he argued he was unable to form the required specific intent because he was intoxicated on methamphetamine, and he intended only to assault the victim. The Supreme Court affirmed.

- ***State v. Ulrich*** (Wright County). A jury found Mr. Ulrich – the Buffalo clinic shooter/bomber – guilty of first-degree murder, four counts of attempted first-degree murder, and discharging an explosive device. On appeal, he argued that a juror should have been removed for bias, the venue should have been changed due to publicity, and the evidence was insufficient to prove premeditation and intent to kill. The Supreme Court affirmed.
- ***State v. Thompson*** (Carlton County). In a case prosecuted by this Office, a jury found Mr. Thompson guilty of six counts of first-degree murder arising from the brutal murders of his pregnant girlfriend and his girlfriend’s infant son. On appeal, he argued multiple claims of prosecutorial misconduct in the state’s closing argument. The Supreme Court affirmed.
- ***State v. Weiland*** (Freeborn County). In a case prosecuted by this Office, a jury found Mr. Weiland – who spent all night shooting at local police officers and residents from his apartment unit – guilty of two counts of attempted premeditated murder and one count of attempted intentional murder. On appeal, he argued that the evidence was insufficient to prove intent to kill and premeditation. The Court of Appeals affirmed.

POST-CONVICTION JUSTICE DIVISION

The Post-Conviction Justice Division (“the Division”) was created to carry out two important initiatives to seek justice for persons who have been convicted of crimes in the past. First, the Division’s Conviction Review Unit (“CRU”) seeks to identify cases in which a wrongful conviction may have occurred. Second, the Division also seeks to mitigate the collateral consequences of past criminal convictions for persons who have served their sentences and rehabilitated themselves through the Attorney General’s Office Statewide Expungement Program (“SWEP”).

BACKGROUND

The Division houses Minnesota’s first-ever CRU, which is an independent unit in the Attorney General’s Office with a mission to identify, remedy, and prevent wrongful convictions. Most CRUs throughout the country are housed in the office of a single-jurisdiction prosecutor, like a district attorney or a county attorney. Minnesota is one of several states that has developed a statewide CRU, providing applicants from any county in the state an opportunity for case review.

The CRU has an application process to allow persons with a credible claim of actual innocence to request review of a conviction. For cases accepted for review, the CRU will conduct a comprehensive and non-adversarial review of the evidence in the case, in cooperation with both the applicant’s counsel and the prosecuting attorney. The CRU review is an extrajudicial process, meaning it occurs outside of the court system. The CRU operates independently from the prosecutors that obtained the conviction in the first place, and from the other prosecutors in the Criminal Division within this Office.

Since its inception, the CRU has received over 1,100 applications for assistance. With the assistance of volunteer attorneys and law-school externs from numerous law schools, the CRU screens all applications to determine whether there are plausible claims of a wrongful conviction. The CRU has prioritized case reviews and has closed 850 of the applications without recommending relief to the applicant. The vast majority of the remaining applications are pending further review. Upon that review, the CRU may commence a more in-depth investigation to thoroughly explore the applicant's claim, or it may close the case.

In cases where the CRU concludes there was a wrongful conviction, the CRU will work cooperatively to seek remedial measures necessary to correct injustices uncovered. The CRU will also study and collect data on the causes of wrongful convictions in order to shape policies and procedures to prevent them from occurring in the future.

ADDITIONAL FUNDING FOR STAFFING RESOURCES HELPS HUNDREDS

Because of additional funding in FY2023, the Division hired additional staff. These new resources allowed the Division to hasten its review of applications in both the CRU and SWEP. The additional staff also allowed the Division to increase the number of investigations of innocence claims as well as the number of local prosecutors it assisted in obtaining expungement orders as summarized below.

CONVICTION REVIEW UNIT

In June 2024, the CRU recommended that the 2001 conviction in Aitkin County of Brian Pippitt for first-degree murder be vacated. The recommendation follows an extensive investigation that the CRU conducted, which culminated in a 181-page report. This marks the first time the CRU has recommended the full exoneration of an incarcerated person, and the second time it has recommended relief based on a wrongful conviction. The CRU initiated its review of Mr. Pippitt's conviction after his application to the CRU for review. On February 2, 2001, Brian Pippitt was found guilty of first-degree premeditated murder; accused of murdering a beloved 84-year-old storekeeper in Aitkin County. The State presented a theory that Mr. Pippitt, along with four other men, burglarized the store for beer and cigarettes and killed the storekeeper in the process. Two unreliable witnesses provided testimony that directly linked Mr. Pippitt to the crime. Both witnesses provided incentivized testimony and have since recanted. During the CRU's investigation into the credibility of the key witnesses' recantations, the CRU discovered that the prosecutor's theory of the case, including how the defendants allegedly entered and exited the building, was implausible and that key evidence tending to exonerate Mr. Pippitt was overlooked. After an extensive investigation into these factors and more, the CRU found insurmountable reasonable doubt about Mr. Pippitt's conviction and recommended that Mr. Pippitt's conviction be vacated. The Attorney General agreed and accepted the recommendation. Upon release of the report, Mr. Pippitt filed a motion to vacate his conviction and dismiss the charges against him. The Aitkin County Attorney is opposing any form of postconviction relief, including an evidentiary hearing. The case awaits a decision from the district court judge assigned to the case.

In August, the CRU recommended that the 2009 conviction in Hennepin County of Edgar Barrientos for murder be vacated. The recommendation follows a three-year investigation,

culminating in a 180-page report compiled by the CRU. Mr. Barrientos was convicted of murder on May 28, 2009, and sentenced to life without the opportunity for parole. The crime occurred on Saturday, October 11, 2008, when an 18-year-old high school student, was tragically killed in a drive-by in a drive-by shooting. Mr. Barrientos' attorneys unsuccessfully presented a defense of mistaken identification. The jury deliberated for three days: at one point, it was split, with three members strongly favoring a verdict of not guilty. Ultimately, the jury found Mr. Barrientos guilty of first-degree premeditated murder for the benefit of a gang. During its lengthy investigation, the CRU found exculpatory evidence that the jury never heard. This evidence supported Mr. Barrientos' claim of innocence. The CRU's report details the facts it uncovered and concludes there is ample evidence to substantiate Mr. Barrientos' claim of innocence. As a result, the Attorney General has recommended that Mr. Barrientos' conviction be vacated and the charges against him dismissed. Mr. Barrientos's attorney has filed a postconviction petition asking the judge to vacate his conviction. The Hennepin County Attorney has not yet formally responded to the petition.

STATEWIDE EXPUNGEMENT PROGRAM

The Division's Statewide Expungement Program was implemented to assist local prosecutors who apply to the district court for expungement of certain criminal records of eligible applicants who have satisfied the conditions of the Minnesota Expungement law set forth in Chapter 609A. The SWEP recognized early on that for many people who have been convicted of crimes, criminal records can hamper their efforts to improve their prospects for jobs, housing, and education long after they have completed the sentence for their crimes. To mitigate collateral consequences of convictions for people who have rehabilitated themselves, the Division created a website in 2020 ([Helpsealmyrecords.org](https://www.helpsealmyrecords.org)), where qualifying individuals can complete and submit an online application to request that their records be sealed so they might no longer appear on background checks.

Because of the Division's success in reaching and helping applicants, and due to numerous high-profile changes in the State's expungement laws, demand for expungement assistance has skyrocketed since SWEP's inception. To date, the Division has received over 9,000 applications, both through the SWEP website and from folks who come to expungement outreach clinics held around the State

In fact, since early 2023, Division staff have hosted and participated in nearly a dozen expungement clinics held in counties around the State and helped nearly 1,000 people, who may not have had the resources to submit an on-line application, complete and submit their application in person. Division staff review applications for sealing records, determine eligibility under state law, and for those that qualify, work cooperatively with interested prosecutors across the state to prepare court filings. Under the SWEP, because requests to seal records are filed by prosecutors who have decided to ask the district court for an expungement order rather than the applicants, applicants avoid expensive court filing fees and confusing forms that are difficult to navigate for non-lawyers. To date, the Division has helped local prosecutors obtain expungement orders in approximately 900 cases.

APPENDIX A: SERVICE HOURS

By Agency or Political Subdivision for FY 2024

Agency/Political Subdivision	Estimated Service Hours (1)	Actual Service Hours	Estimated Expenditures	Actual Expenditures (2)
Partner Agencies				
Administration--Risk Management		370.1		\$ 57,200.30
AURI		0.0		\$ -
Corrections (3)		4,876.0	\$ 791,208.00	\$ 791,208.00
Education Department		4,536.9		\$ 729,926.70
Environmental Quality Board		77.4		\$ 12,616.20
Gambling Control Board		119.7		\$ 19,511.10
Health		3,530.6		\$ 575,301.80
Housing Finance Authority		1,306.3		\$ 212,308.90
Human Services		26,953.2		\$ 4,251,507.60
Iron Range Resources & Rehabilitation		21.7		\$ 3,537.10
Labor and Industry Department (3)		2,824.9		\$ 457,818.70
Lottery		42.2		\$ 6,746.60
Medical Practice Board		2,957.6	\$ 1,000,000.00	\$ 419,406.80
Metropolitan Council		1,053.4		\$ 165,404.20
Minnesota Climate Innovation Finance Authority (4)		64.6		\$ 10,529.80
Minnesota Racing Commission		323.3		\$ 52,607.90
Minnesota State Retirement System		157.0		\$ 25,591.00
Minnesota State		6,932.1		\$ 1,084,824.30
MNsure		2.2		\$ 358.60
Natural Resources		3,031.6		\$ 492,168.10
Office of Cannabis Management (4)		30.3		\$ 4,938.90
Petroleum Tank Release Compensation Board		11.6		\$ 1,890.80
Pollution Control		4,605.4		\$ 678,445.60
Public Employees Retirement Association		609.6		\$ 99,310.80
Public Safety (3)		9,932.9		\$ 1,390,732.70
Revenue (3)		2,291.8		\$ 372,337.25
Teachers Retirement Association		99.5		\$ 16,218.50
Transportation		8,048.6		\$ 1,290,928.10
TOTAL PARTNER AGENCIES	0.0	84,810.4	\$ 1,791,208.00	\$ 13,223,376.35
Health Boards/Offices				
Behavioral Health & Therapy Board		1,412.0		\$ 186,218.00
Board of Executives for Long Term Services & Supports		346.8		\$ 53,918.40
Chiropractic Board		1,300.9		\$ 174,720.70
Dentistry Board		810.2		\$ 121,478.60
Dietetics & Nutrition Practice Board		5.7		\$ 929.10
Emergency Medical Services Regulatory Board		433.5		\$ 69,574.50
Health Professionals Services Program		9.2		\$ 1,499.60
Licensed Drug & Alcohol Counselor Program		2,525.9		\$ 299,899.70
Marriage & Family Therapy Board		745.4		\$ 91,608.20
Nursing Board		7,078.5		\$ 945,859.50
Occupational Therapy Board		148.6		\$ 19,949.80
Optometry Board		85.5		\$ 10,666.50
Pharmacy Board		2,416.7		\$ 373,312.10
Physical Therapy Board		410.4		\$ 53,263.20
Podiatry Board		24.7		\$ 4,026.10
Psychology Board		818.2		\$ 113,368.60
Social Work Board		1,624.4		\$ 235,851.20
Veterinary Medicine Board		513.8		\$ 79,123.40
SUBTOTAL		20,710.4		\$ 2,835,267.20

Other State Agencies/Political Subdivisions			
Accountancy Board		333.6	\$ 54,376.80
Administration Department		732.2	\$ 119,348.60
Administrative Hearings Office		23.2	\$ 3,781.60
Agriculture Department		635.3	\$ 103,553.90
Agriculture Chemical Response Compensation Board		10.6	\$ 1,727.80
Amateur Sports Commission		12.1	\$ 1,972.30
Animal Health Board		173.7	\$ 28,133.10
Architecture Board		278.2	\$ 45,346.60
Asian Pacific Minnesotans Council		2.9	\$ 472.70
Barber Board		91.8	\$ 14,963.40
Board on Aging		2.2	\$ 358.60
Campaign Finance Board		1,086.3	\$ 164,820.90
Cannabis Expungement Board		104.5	\$ 14,243.50
Capitol Area Architectural Planning Board		22.0	\$ 3,586.00
Center for Arts Education		33.1	\$ 5,395.30
Client Security Board		66.7	\$ 10,602.10
Commerce Department		5,273.3	\$ 854,627.90
Commission Serving Deaf and Hard of Hearing		16.8	\$ 2,738.40
Corrections Department (3)		245.5	\$ 25,290.50
Corrections Department/Community Notification		1,601.3	\$ 226,721.90
Cosmetology Examiners Board		307.2	\$ 50,073.60
Council on Latino Affairs		3.0	\$ 489.00
Council for Minnesotans of African Heritage		1.5	\$ 244.50
Crime Victims Reparations Board		269.6	\$ 40,158.80
Disability Council		3.1	\$ 505.30
Employment & Economic Development Department		513.2	\$ 83,591.60
Explore Minnesota Tourism		22.9	\$ 3,732.70
Firefighter Training & Education Board		0.7	\$ 114.10
Governor's Office		612.8	\$ 98,770.40
Higher Education Facilities Authority		0.5	\$ 81.50
Human Rights Department		946.6	\$ 153,281.80
Indian Affairs Council		59.1	\$ 9,633.30
Judiciary Courts		919.0	\$ 145,207.00
Labor and Industry Department (3)		2,385.8	\$ 382,789.40
Law Examiner's Board		151.4	\$ 24,510.20
Lawyers Professional Responsibility Board		16.1	\$ 2,624.30
Legislature		72.2	\$ 11,702.60
Legislature Auditor's Office		0.5	\$ 81.50
Mediation Services Bureau		303.3	\$ 49,437.90
Military Affairs Department		17.9	\$ 2,917.70
Minnesota Management & Budget		275.2	\$ 43,603.60
Minnesota Rare Disease Advisory Council		11.6	\$ 1,890.80
Minnesota State Academies		93.8	\$ 15,241.40
MN.IT Services Office		555.0	\$ 89,337.00
Office of Higher Education		700.9	\$ 113,952.70
Ombudsman for Long Term Care		11.9	\$ 1,939.70
Ombudsman for Mental Health & Developmental Disabilities		85.4	\$ 13,920.20
Ombudsperson for Corrections		2.6	\$ 423.80
Ombudsperson for Family Child Care Providers		0.9	\$ 146.70
Ombudsperson for Foster Youth		3.0	\$ 489.00
Peace Officers Standards and Training Board		907.9	\$ 147,927.70
Private Detective Board		666.0	\$ 107,058.00
Professional Educator Licensing & Standards Board		1,688.1	\$ 274,230.30
Public Defender, Local		249.9	\$ 36,347.70
Public Defender, State		12.1	\$ 1,972.30
Public Facilities Authority		64.3	\$ 10,480.90
Public Safety Department (3)		21,627.5	\$ 3,146,784.50
Public Utilities Commission		3,198.5	\$ 520,917.50

Revenue Department (3)		2,291.8	\$ 372,337.25
Rural Finance Authority		126.2	\$ 20,570.60
School Administrators Board		92.0	\$ 14,996.00
Secretary of State		2,950.6	\$ 474,695.80
State Advisory Council on Mental Health		5.0	\$ 815.00
State Arts Board		9.0	\$ 1,467.00
State Auditor		2.7	\$ 440.10
State Guardian Ad Litem Board		328.3	\$ 52,204.90
State Historical Society		0.5	\$ 81.50
State Investment Board		100.6	\$ 16,241.80
Veterans Affairs Department		301.6	\$ 47,432.80
Veterans Homes		596.7	\$ 97,198.60
Water & Soil Resources Board		305.2	\$ 48,913.40
Zoological Board		2.8	\$ 456.40
SUBTOTAL		54,619.3	\$ 8,416,524.05
Medicaid Fraud Control Unit Investigations and Prosecutions			
Aitkin County Attorney		465.6	\$ 58,888.80
Anoka County Attorney		601.3	\$ 72,307.90
Carlton County Attorney		247.4	\$ 36,150.20
Carver County Attorney		108.5	\$ 11,865.50
Chisago County Attorney		91.4	\$ 14,322.20
Crow Wing County Attorney		543.8	\$ 70,951.40
Dakota County Attorney		271.8	\$ 31,913.40
Goodhue County Attorney		247.6	\$ 26,168.80
Hennepin County Attorney		19,236.6	\$ 2,279,011.80
Isanti County Attorney		322.0	\$ 43,972.00
Kandiyohi County Attorney		126.1	\$ 14,242.30
McLeod County Attorney		130.4	\$ 15,375.20
Nobles County Attorney		18.7	\$ 3,048.10
Olmsted County Attorney		251.0	\$ 28,007.00
Otter Tail County Attorney		393.3	\$ 44,031.90
Polk County Attorney		107.6	\$ 14,202.80
Ramsey County Attorney		6,125.6	\$ 697,854.80
Rice County Attorney		2,598.6	\$ 298,561.80
Sherburne County Attorney		335.7	\$ 38,897.10
St. Louis County Attorney		16.9	\$ 1,854.70
Stearns County Attorney		218.6	\$ 23,301.80
Steele County Attorney		44.5	\$ 5,579.50
Washington County Attorney		356.8	\$ 41,652.40
Winona County Attorney		52.8	\$ 7,730.40
SUBTOTAL		32,912.6	\$ 3,879,891.80
Other Local Government Assistance			
Aitkin County Attorney		453.5	\$ 62,220.50
Becker County Attorney		1,154.4	\$ 171,613.20
Beltrami County Attorney		1,634.4	\$ 250,777.20
Benton County Attorney		1,481.4	\$ 199,216.20
Big Stone County Attorney		427.3	\$ 64,087.90
Blue Earth County Attorney		496.8	\$ 78,212.40
Brown County Attorney		438.0	\$ 61,374.00
Carlton County Attorney		92.7	\$ 15,050.10
Carver County Attorney		108.7	\$ 14,808.10
Cass County Attorney		296.3	\$ 39,986.90
Chippewa County Attorney		909.1	\$ 121,513.30
Chisago County Attorney		254.0	\$ 36,602.00
Clearwater County Attorney		88.3	\$ 14,188.90
Cook County Attorney		837.1	\$ 121,027.30
Cottonwood County Attorney		320.0	\$ 51,350.00

Crow Wing County Attorney		357.1	\$ 46,147.30
Dodge County Attorney		173.1	\$ 26,655.30
Douglas County Attorney		4.6	\$ 749.80
Faribault County Attorney		738.7	\$ 105,108.10
Fillmore County Attorney		16.1	\$ 1,784.30
Freeborn County Attorney		1,614.7	\$ 221,514.10
Grant County Attorney		213.3	\$ 28,065.90
Hennepin County Attorney		1,969.5	\$ 279,070.50
Hubbard County Attorney		286.2	\$ 45,558.60
Isanti County Attorney		437.9	\$ 62,581.70
Itasca County Attorney		539.7	\$ 82,955.10
Jackson County Attorney		234.7	\$ 33,330.10
Kanabec County Attorney		305.4	\$ 47,116.20
Kandiyohi County Attorney		204.5	\$ 33,153.50
Koochiching County Attorney		609.5	\$ 89,880.50
Lac Qui Parle County Attorney		131.9	\$ 21,307.70
Lake County Attorney		39.7	\$ 6,471.10
Lyon County Attorney		194.6	\$ 29,895.80
Marshall County Attorney		31.0	\$ 3,193.00
Martin County Attorney		182.0	\$ 22,886.00
McLeod County Attorney		480.4	\$ 63,011.20
Meeker County Attorney		213.8	\$ 34,489.40
Mille Lacs County Attorney		302.4	\$ 46,411.20
Morrison County Attorney		987.4	\$ 132,518.20
Mower County Attorney		2,408.2	\$ 337,300.60
Nicollet County Attorney		84.4	\$ 13,577.20
Nobles County Attorney		9.0	\$ 1,467.00
Otter Tail County Attorney		507.0	\$ 81,465.00
Pennington County Attorney		464.1	\$ 67,140.30
Pine County Attorney		181.6	\$ 29,510.80
Pipestone County Attorney		406.9	\$ 56,616.70
Pope County Attorney		906.8	\$ 120,868.40
Ramsey County Attorney		421.5	\$ 59,842.50
Redwood County Attorney		2.2	\$ 238.60
Renville County Attorney		132.2	\$ 20,738.60
Rice County Attorney		526.0	\$ 71,788.00
Roseau County Attorney		184.6	\$ 24,947.80
Scott County Attorney		7.0	\$ 721.00
Sherburne County Attorney		5.0	\$ 815.00
St. Louis County Attorney		1,337.4	\$ 215,302.20
Stearns County Attorney		986.1	\$ 157,902.30
Steele County Attorney		822.7	\$ 117,096.10
Stevens County Attorney		390.9	\$ 58,826.70
Swift County Attorney		40.3	\$ 6,568.90
Todd County Attorney		458.4	\$ 66,637.20
Traverse County Attorney		16.0	\$ 1,858.00
Wabasha County Attorney		75.6	\$ 8,056.80
Wadena County Attorney		585.5	\$ 79,668.50
Waseca County Attorney		1.0	\$ 163.00
Watsonwan County Attorney		36.1	\$ 5,824.30
Wilkin County Attorney		194.4	\$ 31,501.20
Winona County Attorney		228.5	\$ 31,935.50
Wright County Attorney		520.4	\$ 84,579.20
Yellow Medicine County Attorney		133.2	\$ 21,201.60
Association of County Attorneys		55.3	\$ 9,013.90
Various Local Governments		562.1	\$ 89,384.30
SUBTOTAL		31,950.6	\$ 4,638,439.80
TOTAL PARTNER/SEMI-PARTNER AGENCIES (from page A-1)		84,810.4	\$ 13,223,376.35

TOTAL NON-PARTNER AGENCIES SUBDIVISIONS		140,192.9		\$ 19,770,122.85
GRAND TOTAL HOURS/EXPENDITURES		225,003.3		\$ 32,993,499.20
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 \$163.00, Attorney Fellowship \$72.00, and Legal Assistant \$103.00.				
(3) A number of agencies signed agreements for a portion of their legal services.				
(4) MnCIFA and Office of Cannabis Management signed an agreement starting in FY24 for their legal services.				

APPENDIX B: SPECIAL ATTORNEY EXPENDITURES FOR FY 2024, BY AGENCY/POLITICAL SUBDIVISION	
AGENCY/POLITICAL SUBDIVISION	Amount
Administration	\$ 1,130,200.61
Attorney General	\$ 10,100,917.41
Depart of Education	\$ 4,400.00
Depart of Human Services	\$ 4,226.27
Department of Iron Range Resources & Rehabilitation	\$ 38,887.18
Department of Revenue	\$ 37,662.50
Higher Education Facilities Authority	\$ 365,828.85
Minnesota Department of Education	\$ 36,871.00
Minnesota Management & Budget	\$ 114,614.00
Minnesota Office of Higher Education	\$ 12,591.90
Minnesota Public Facilities Authority	\$ 175,176.61
Minnesota State Lottery	\$ 1,395.00
Minnesota Teachers Retirement Association	\$ 13,378.50
MN State Retirement System	\$ 3,564.00
MnSCU	\$ -
Public Employees Retirement Association	\$ 50,206.50
TOTAL	\$ 12,089,920.33

APPENDIX B: SPECIAL ATTORNEY EXPENDITURES	
BOND COUNSEL FOR FY 2024, BY AGENCY/POLITICAL SUBDIVISION	
AGENCY/POLITICAL SUBDIVISION	Amount
Higher Education Facilities Authority	\$ 56,202.64
Minnesota Management & Budget	\$ 125,702.70
Minnesota Office of Higher Education	\$ 114,841.63
MnSCU	\$ 292.50
Housing Finance Agency	\$ 246,949.20
TOTAL	\$ 543,988.67
NOTE: Certain bond fund counsel are paid from proceeds.	

APPENDIX C: ATTORNEY GENERAL OPINIONS OF INTEREST

SCHOOL PUPILS: DISCIPLINE: Laws of Minnesota 2023 ch. 55, art. 2, § 36 and art. 12, § 4 do not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death or to carry out lawful duties as set forth in Minnesota Statutes section 609.06, subd. 1(1). Minn. Stat. §§ 121A.58; 121A.582. Op. Atty. Gen. 169f (August 22, 2023) supplemented.

169f



September 20, 2023

Willie L. Jett, II
Commissioner
Minnesota Department of Education
400 NE Stinson Boulevard
Minneapolis, Minnesota 55413

Re: Recent Amendments to Student Discipline Laws

Dear Commissioner Jett:

Thank you for your letter of August 18, 2023, which seeks clarity regarding recent amendments to student discipline laws, Minnesota Statutes sections 121A.58 and 121A.582. *See* Act of May 24, 2023, ch. 55, art. 2, § 36; art. 12, § 4 (hereinafter, the Amendment). Pursuant to Minnesota Statutes section 8.07, I issued an opinion on August 22, 2023, with binding guidance on the issue you raised. Since that date I have met with many stakeholders, including the Minnesota Chiefs of Police Association, Minnesota Sheriffs' Association, Minnesota Police and Peace Officers Association, individual police chiefs, legislators, city elected officials, and county attorneys, who brought forward valid questions about the application of the new law. As a result, I supplement that opinion today. By operation of section 8.07, this opinion is “decisive until the question involved shall be decided otherwise by a court,” and therefore it may be relied upon.¹

¹ Minnesota Statutes section 8.07 provides that “on all school matters” attorney general opinions like this one are “decisive.” The Minnesota Supreme Court has confirmed the opinions are “binding” until overruled by courts. *Eelkema v. Bd. of Ed. of Duluth*, 11 N.W.2d 76, 78 (Minn. 1943). “School matters” have been construed broadly, including the interpretation of how general statutes apply in an education context. *E.g.*, *Village of Blaine v. Indep. Sch. Dist. No. 12*, 138 N.W.2d 32, 39-40 (Minn. 1965) (noting attorney general opinion had properly construed statute regarding municipal utilities in applying it to school district); *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944) (noting reliance on attorney general opinion interpreting statutory language regarding teacher retirement funds); *Eelkema*, 11 N.W.2d at 78 (adopting attorney general analysis and noting that attorney general opinion regarding “tenure act”’s application to superintendent had been binding until any contrary court opinion was issued); *Lindquist v. Abbott*, 265 N.W. 54, 55 (Minn. 1936) (noting attorney general opinion regarding whether school district could enter into year-long contract with attorney was “followed ever since” it was issued).

BACKGROUND

Relevant to your inquiry, the Amendment revises Minnesota Statutes section 121A.58 to include a definition of “prone restraint” and to specify that school employees and agents generally: (1) “shall not use prone restraint” on pupils; and (2) “shall not inflict any form of physical holding that restricts or impairs a pupil’s ability to breathe; restricts or impairs a pupil’s ability to communicate distress; places pressure or weight on a pupil’s head, throat, neck, chest, lungs, sternum, diaphragm, back or abdomen; or results in straddling a pupil’s torso” (i.e., compressive restraint techniques). *Id.* at art. 2, § 36.

The Amendment also revises Minnesota Statutes section 121A.582 to provide that: (1) teachers and principals may use reasonable force “to correct or restrain a student to prevent imminent bodily harm or death to the student or another”; and (2) other school employees, agents², and bus drivers may use reasonable force “to restrain a student to prevent bodily harm or death to the student or another.” *Id.* at art. 12, § 4.

QUESTION PRESENTED

You have expressed uncertainty regarding whether the Amendment categorically prohibits prone restraint and compressive restraint techniques in all scenarios. In particular, you ask: “whether the new language in Minnesota Statutes, section 121A.58, subdivision 3 and its reference to Minnesota Statutes, section 121A.582, acts as an exception to the general prohibition on prone restraints and other types of physical holds, thereby allowing the use of these practices when doing so would ‘prevent imminent bodily harm or death to the student or to another.’”

SUMMARY OF CONCLUSIONS

The Amendment does not limit the types of reasonable force that may be used by school staff and agents to prevent bodily harm or death.³ It also does not limit the types of reasonable force that may be used by public officers to carry out their lawful duties, as described in Minnesota Statutes section 609.06, subdivision 1(1). The test for reasonable force remains unchanged, and is highly fact-specific.

² Neither the relevant statutes nor the Amendment defines “agents” of the school district. In the absence of a definition provided by the Legislature, Minnesota courts would likely apply “its ordinary legal meaning, which is one who has the authority to act on another’s behalf.” *Hogan v. Brass*, 957 N.W.2d 106, 109 (Minn. Ct. App. 2021) (using that definition of “agent” to interpret chapter 317 of Minnesota law). Whether an individual has authority to act on behalf of the school district depends on facts specific to each circumstance.

³ Teachers and principals may use these restraints only when a threat of bodily harm or death is *imminent*. See Act of May 24, 2023, ch. 55, art. 2, § 36. However, the word “imminent” is not included in subdivision 1(b), which relates to a broader set of individuals, including school employees, bus drivers, and other “agent(s) of the district.”

ANALYSIS

Three things support these conclusions. First, the Amendment adds a new sentence to Minnesota Statutes section 121A.58, subdivision 3: “Nothing in this section or section 125A.0941 precludes the use of reasonable force under section 121A.582.” *Id.* at art. 2, § 36.⁴ By this language, the Legislature expressed its clear intent to not limit the use of reasonable force when faced with the threat of bodily harm or death. *See, e.g., Houck v. Houck*, 979 N.W.2d 907, 911 (Minn. Ct. App. 2022) (interpreting a “nothing in this section” provision as unambiguous and “susceptible to only one reasonable interpretation”).

Second, Minnesota Statutes section 121A.582 states that: “Any right or defense under this section is supplementary to those specified in section 121A.58[.]” Minn. Stat. § 121A.582, subd. 4. This further evinces the Legislature’s view that the use of reasonable force authorized in Minnesota Statutes section 121A.582 is separate and distinct from the conduct prohibited by Minnesota Statutes section 121A.58. *See, e.g., Christensen v. State Dep’t of Conservation, Game and Fish*, 175 N.W.2d 433, 434 (Minn. 1970) (noting that provisions of an act that are supplementary to each other are construed together so as not to defeat rights); *Merriam Webster’s Collegiate Dictionary* (11th ed.) (defining “supplementary” to mean “additional”).

Similarly, because chapter 609 is referenced in section 121A.58, subdivision 3, as well as in section 121A.582, subdivisions 3 and 4, the restrictions on prone and compressive restraints do not apply under the circumstances enumerated in section 609.06, subdivision 1(1). Therefore, all peace officers, including those who are “school resource officers” or otherwise agents of a school district, may use force as reasonably necessary to carry out official duties, including, but not limited to, making arrests and enforcing orders of the court. *See* Minn. Stat. § 609.06.

Third, and relatedly, even without those clear indications of intent from the Legislature, the usual canons of statutory construction support the same result. Section 121A.582 specifically governs responses to threats of violence, and therefore controls over the more general statute about acceptable punishments. *See* Minn. Stat. § 645.26, subd. 1 (stating that when a conflict exists between two statutory provisions, the specific provision “shall prevail and shall be construed as an exception to the general provision”); *accord Connexus Energy v. Commissioner of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015). Furthermore, had the Legislature intended to exclude prone restraint and compressive restraint techniques from the reasonable force permitted under Minnesota Statutes section 121A.582, it would have clearly said so. *See In re E.M.B.*, 987 N.W.2d 597, 601 (Minn. Ct. App. 2023) (reiterating that courts cannot add words or meaning to a statute that the Legislature intentionally or inadvertently omitted).

Accordingly, the Legislature did not change the types of reasonable force that school staff and agents are authorized to use in responding to a situation involving a threat of bodily harm or death. Of course, what force is “reasonable” is not defined in law and is determined on a case-by-

⁴ Minnesota Statutes sections 125A.0941-.0942 restrict the actions that may be taken toward students with disabilities. It explicitly allows the use of reasonable force under section 121A.582. Minn. Stat. § 125A.0942, subd. 6(b).

Commissioner Willie L. Jett, II
September 20, 2023
Page 4

case basis. *See Moses v. Minneapolis Pub. Schs.*, No. C4-98-1073, 1998 WL 846546, at *3 (Minn. Ct. App. Dec. 8, 1998) (“[T]he question of whether the school employees’ acts were a reasonable use of force is a fact issue to be answered by the jury.”); *cf. Bond by and through Bond v. Indep. Sch. Dist. #191*, No. A21-0688, 2022 WL 92661, at *5 (Minn. Ct. App. Jan. 10, 2022) (declining to apply official immunity where school dean used force explicitly defined as prohibited in school restraint training). In addition, the level of threat posed by a particular student or situation can change rapidly, and any assessment of what use of force is reasonable must take that into account.

In recent meetings with representatives of your staff, the Minnesota Chiefs of Police Association, the League of Minnesota Cities, the Minnesota Sheriffs’ Association, and the Minnesota Police and Peace Officers Association, participants raised other important questions. Those questions demonstrate that coordinated training and guidance from trusted law enforcement leaders could be very beneficial in this area and there may be room for additional clarification from the Legislature.

Sincerely,



KEITH ELLISON
Attorney General

Cc: Jeff Potts, Executive Director
Minnesota Chiefs of Police Association
Imran Ali, counsel for MPPOA
Patricia Beety, General Counsel
League of Minnesota Cities

October 17, 2023

Brad Johnson
Anoka County Attorney
Government Center
2100 3rd Avenue, Suite 720
Anoka, MN 55303-5025

Re: Request for Opinion

Dear Mr. Johnson:

Thank you for your letter of September 12, 2023, which requests an opinion from this Office on whether two public offices – county commissioner and city administrator for a city within the county but outside the county commissioner’s district – are incompatible.

BACKGROUND

Your letter indicates an Anoka County commissioner is considering employment as a city administrator in a statutory “Plan A” city¹ located within the county but outside the district represented by the county commissioner. Your letter indicates you find no statutory bar to holding both positions and presents the duties of each position for analysis of a potential conflict.

- The letter describes duties of a county commissioner as overseeing the county’s management and administration, including managing the county budget and finances.
- The duties of the city administrator are described in the city’s code of ordinances. A partial list of duties of city administrator as presented in your letter is as follows:
 - Directing the administration of city affairs;
 - Enforcing state laws, all city ordinances, and resolutions;
 - Supervising the activities of all city department heads and personnel;

¹ Your letter requests that the city not be identified.

- Attending and participating in all meetings of the city council;
- Being responsible for the preparation of the city council agenda and recommending to the city council measures as may be deemed necessary [for] the efficient administration of the city;
- Overseeing the preparation of an annual budget and capital improvement plan;
- Overseeing all personnel matters of the city in conjunction with policies established by the city council and negotiating terms/conditions of employee labor contracts;
- Overseeing purchasing activities for the city;
- Coordinating city programs as directed by the city council . . . including coordinating the activities of the city attorney and city engineer;
- Informing the city council on matters dealing with the administration of the city;
- Preparing and submitting to the city council for adoption an administrative code of administrative procedure within the city; and
- Being bonded, at city expense, through a position or faithful performance bond which will indemnify the city.

These and other provisions of the city code place some limits on the authority of the city administrator. The purchasing authority listed above is limited to routine services, equipment and supplies if the cost does not exceed \$5,000. The city administrator position is responsible for negotiating terms and conditions of labor contracts “for presentation to the city council.”

Your letter also describes situations in which decisions of the person holding both positions may favor one jurisdiction over the other, such as equalized tax assessments made at the county level, adversarial positions in litigation, and situations where the city is dependent on county resources, such as for law enforcement.

QUESTIONS PRESENTED

1. Whether the position of city administrator is a “public office” such that holding dual offices as both an elected county commissioner and appointed city administrator for a city within the same county would result in inherent incompatibility.
2. If the answer to question 1 is “yes,” whether acceptance of an offer of employment and appointment as a city administrator by an elected and seated county commissioner would result in a vacancy in the office of county commissioner pursuant to Minn. Stat. § 375.101, subd. 3, or other applicable law, and, if so, when such vacancy would be deemed to be effective.
3. If the answer to question 1 is “no,” whether potential conflicts of interest make the positions inherently incompatible by the nature of the structure and duties involved in each role and foreseeable conflicts regardless of whether the role is

achieved by an appointed position or by elected office, and further whether a vacancy would nevertheless result as described in No. 2 above.

SUMMARY OF CONCLUSION

Applying the criteria from *McCutcheon v. City of St. Paul*, 216 N.W.2d 137, 139 (Minn. 1974), it does not appear that the city administrator position as defined in the city code is a “public office” subject to incompatibility with another public office. Anticipated conflicts of interest do not necessarily disqualify the person from holding both offices, but must be evaluated on a case-by-case basis and are more appropriate for determination at the county and local level.

ANALYSIS

Question 1. First, we agree that no statute appears to prohibit a county commissioner from also serving as a city administrator.²

The first question asks whether the two positions are inherently incompatible. We apply the controlling common law authority, which remains *State ex rel. Hilton v. Sword*, 196 N.W. 467 (Minn. 1923). In that case the court held that public offices are incompatible when performance of the essential functions results in “antagonism and a conflict of duty” such that one person cannot discharge “with fidelity and propriety” the duties of both positions. *Id.* Accordingly, our opinions going back over 100 years consider the compatibility of offices by examining the duties of each office imposed by law.

These decisions include several findings that the county commissioner position is incompatible with another position within county or city government. *See, e.g.*, Ops. Atty. Gen. 358a3 (Dec. 26, 1972; director regional hospital district); 358e-9 (Sept. 12, 1973; soil and water conservation district board); 358a3 (Nov. 29, 1976; housing and redevelopment authority board); (Jul. 15, 1954; city council) 358e2 (Jul. 7, 1939; city assessor). In contrast, we found the positions of town clerk and city utilities commissioner to be compatible with the position of county commissioner. Ops. Atty. Gen. 358a3 (Apr. 25, 1967; utilities commissioner); 358e-6 (Sept. 16, 1944; town clerk).

However, in more recent decisions this office has not applied the incompatibility analysis from *Hilton* when the person is acting as an employee or independent contractor rather than holding a public office, the duties of which are set out in statute or ordinance. *See, e.g.*, Letter to John Muhar, Itasca County Attorney (Oct. 30, 2003) (citing Ops. Atty. Gen. 358e-3 (Aug. 18, 1982); 358e3 (July 29, 1997); copy enclosed). In other words, for two positions to be considered inherently incompatible, each must be a public office as opposed to mere employment. The Minnesota Supreme Court explained the appropriate test for the distinction is whether the position reflects “independent authority under the law, either alone or with others of equal authority, to

² Compare Minn. Stat. § 375.09, subd. 1 (county commissioner may not hold other elected office).

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).

The duties of a county commission are set out in Chapter 375 of Minnesota statutes, which authorize the commission to make final decisions regarding issues of public policy. *See, e.g.*, Minn. Stat. § 375.18, subds. 1, 2 (authorizing county board to examine and settle accounts, demands and causes of action, issue orders, and manage property and funds). The position of county commissioner, which requires making such decisions with others of equal authority, is therefore a public office.

As to the position of city administrator, the city at issue herein has established it by ordinance as the chief administrative officer of the city, responsible to and selected by the city council. Notably, the city code requires that the position be bonded, which reflects a level of financial authority and responsibility. *See Op. Atty. Gen. 358g* (Sept. 18, 1945) (noting that if the city attorney is not put under bond and does not take oath of office the position is not incompatible with legislative office).

However, the ordinance establishes limits on the city administrator’s spending authority and requires oversight of many city administrator duties by the city council. For example, the city administrator *recommends* employment or removal of city department heads and personnel and measures necessary for the efficient administration of the city. The city administrator maintains financial policies within the scope of an approved budget and capital program and oversees personnel matters in conjunction with policies established by the city council.

The position of city administrator as set forth in the municipal code does not appear to meet the criteria of *McCutcheon v. City of St. Paul*, of exercising independent and final decision-making authority. *See also, Jewell Belting Co. v. Village of Bertha*, 97 N.W. 424, 425 (Minn. 1903) (holding merely ministerial functions may be delegated to an officer, but exercise of judgment and discretion must be performed by the village council); *Op. Atty. Gen. 471f* (Oct. 24, 1961) (holding village council lacks power to delegate authority to village administrative officer). Accordingly, we conclude that the city administrator does not hold a public office that would be inherently incompatible with service as a county commissioner.

Question 2. Because the answer to question 1 is not yes, we do not answer the question regarding whether acceptance of an offer of employment for city administrator results in a vacancy in the office of county commissioner.

Question 3. Your letter requests further consideration of whether potential conflicts of interest serve to make the two positions incompatible. As reflected in our pre-*McCutcheon* opinions noted above, there is clearly the potential for conflict between the interests of individuals employed by or appointed to positions in cities with service as county commissioner.

However, as we have noted previously, we are not aware of any controlling authority providing that the existence of a conflict or potential conflict of interest disqualifies a person from taking or holding an office. *See* Letter to Mary D. Tietjen, Dec. 13, 2006 (considering incompatibility of superintendent of public works and position on city council; copy enclosed). Instead, a county commissioner employed as city administrator may be disqualified from participation in specific matters in which they are personally interested based on that employment. As we have cited in many prior opinions, conflicts of this nature are determined on a case-by-case basis applying the factors from *Lenz v. Coon Creek Watershed District*, 153 N.W.2d 209 (1967). In that case the court stated:

The purpose behind the creation of a rule which would disqualify public officials from participating in proceedings in a decision-making capacity when they have a direct interest in its outcome is to insure that their decision will not be an arbitrary reflection of their own selfish interests. There is no settled general rule as to whether such an interest will disqualify an official. Each case must be decided on the basis of the particular facts present. Among the relevant factors that should be considered in making this determination are: (1) the nature of the decision being made; (2) the nature of the pecuniary interest; (3) the number of officials making the decision who are interested; (4) the need, if any, to have interested persons make the decision; and (5) the other means available, if any, such as the opportunity for review, that serve to insure that the officials will not act arbitrarily to further their selfish interests.

Id. at 219 (footnote omitted); *see also*, Minn. Stat. § 382.18 (prohibiting county officials from having direct or indirect interest in any contract or business to which the county is a party).

We expect that potential conflicts are matters the city and city administrator will contemplate and discuss as part of the hiring process. It may be that, although the positions are not legally incompatible, it is not practically possible for one person to perform both without actual conflict of interest, including on matters of significance. However, because conflicts must be evaluated based on individual facts and circumstances, and local government units are best positioned to assess actual and potential conflicts under their personnel rules and policies, whether an official has a personal financial interest in a particular matter before the county is beyond the scope of this Office's opinion-rendering authority. *See, e.g.*, Op. Atty. Gen. 90e-5 (May 25, 1966).

Thank you again for your inquiry, and I hope this opinion is helpful to you.

Sincerely,



KEITH ELLISON
Attorney General

Encl.: Op. Atty Gen. 90e (May 25, 1966)
Op. Atty Gen. 471f (Oct. 24, 1961)
Op. Atty Gen. 358g (Sept. 19, 1945)
Ltr – 2003 Itasca County (John Muhar)
Ltr – 2006 City of Mound (Mary Tietjen)

MUNICIPALITIES - CITIES - PUBLIC OFFICERS - HOSPITAL BOARD MEMBERS.
A member of a municipal hospital board is a public officer prohibited from having any financial interest in contracts or purchases of the board under M.S. § 471.87. Question whether such financial interest exists is one of fact in the particular case -- relationship of husband and wife does not necessarily result in a finding of financial interest.

May 25, 1966

FC
MRJ

Honorable Carl A. Jensen
City Attorney
127 East Main Street
Sleepy Eye, Minnesota

Dear Mr. Jensen:

In your letter to Attorney General Robert W. Mattson you present the following

FACTS

"The wife of a partner in a local electric business has been appointed to the Hospital Board. Our Hospital Board manages the Hospital as provided in Chapter 2 of our ordinance book referred to as the City code of the City of Sleepy Eye of which you have a copy. This ordinance gives the Hospital Board the power to purchase goods and services. In the past, this electric firm has been engaged to provide some electrical goods and services, probably not exceeding \$1,000 in any one year."

You make these

COMMENTS

"Minnesota Statutes 471.88 makes certain provisions relative to the governing body of certain governmental units to contract for goods and services with an interested officer of the governmental unit. Subd. 8 allows such interested officers to provide goods and services which do not exceed \$1,000 in any year in a governmental unit having a population of less than 5,000."

You ask the following

QUESTIONS

"1. Would Minnesota Statutes 471.88 be applicable to a member of a Hospital Board appointed by the Council?"

May 25, 1966

"2. If this statute does not apply to such a situation, is there any prohibition relative to such a Hospital Board obtaining goods and services from a firm in which one of the Hospital Board members has a financial interest?

"3. Where the official is the wife of a partner in a firm which does business with the Board or government unit and where the wife has no interest in the firm except for the fact that she is a wife of a partner, is there any prohibition relative to the Board doing business with the firm?"

OPINION

1. M.S. § 471.88 provides in part as follows:

"Subdivision 1. The governing body of any port authority, seaway port authority, town, school district, village, or 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. 8. Contracts for goods or services when the consideration does not exceed \$1,000 in any year and the contracting governmental unit has a population of less than 5,000;" (Emphasis supplied)

The provisions of M.S. § 471.88, supra, are applicable to "[t]he governing body of any * * * city". The statute is not applicable to contracts or purchases made by the hospital board of such city.

Your first question is therefore answered in the negative.

2. M.S. § 471.87 provides as follows:

"Except as authorized in section 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in his 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." (Emphasis supplied)

Honorable Carl A. Jensen -- 3

May 25, 1966

A member of a municipal hospital board is a public officer who is prohibited from having any personal financial interest in any contract of the board under M.S. § 471.87, supra. Op. Atty. Gen. 90a, July 11, 1957. See also Charter of City of Sleepy Eye, as adopted February 9, 1960, § 12.03. The rule prohibiting such conflict of interest existed at common law. See Stone v. Bevans, 88 Minn. 127, 129, 92 N.W. 520; 13 Dun. Dig. "Municipal Corporations" § 6712, and cases cited therein.

In our opinion a hospital board may not purchase goods and services from a firm in which a board member is financially interested. We therefore answer your second question in the affirmative.

3. The question whether a disqualifying interest exists in a particular case is one of fact which may not be determined by this office. The relationship of husband and wife does not in and of itself result in a finding of the prohibited financial interest.

The subject has been considered by previous opinions of the Attorney General as follows: Ops. Atty. Gen. 90e-5, September 16, 1954; 172a, March 22, 1952; and 90c-2, September 17, 1953.

Copies of opinions cited are enclosed.

Very truly yours,

ROBERT W. MATTSON
Attorney General

WOOD W. REMINGTON
Special Assistant
Attorney General

WWR:jk
Encs.

O.S.C.
10/24/61

VILLAGES. Claims, allowance of. Village Employees, employment and discharge. Authority of village council to delegate authority ~~of village council to delegate~~ auditing and allowance of claims against village, and appointment and discharge of village employees to "administrative officer" discussed.

October 24, 1961

Lindquist, Fraser & Magnuson
Attorneys for Village of Brooklyn Center
Midland Bank Building
Minneapolis 1, Minnesota

471 J

Gentlemen:

In your letter to Attorney General Walter F. Mondale you submit the following

FACTS:

"The Village of Brooklyn Center is a village operating under the standard plan of village government. The Village Council has appointed a village administrator whose duties, in general, are supervising the village office and supervising the administration of the various departments in the village; namely, the health, building, water, sewer, police, and engineering departments, and the liquor stores.

"In the resolution establishing the duties of the administrator, the Council provided:

"3. The Administrative Officer is empowered to make the necessary purchases and supplies for all departments of the village, no expenditure, however, to exceed the sum of \$500.00, and all expenditures and payments to be subject to the approval of the village council and to be within the limits established by the budget and any other direction by the village council."

"The Council is presently considering increasing the authority granted under this provision to \$1,000.

4/7/62

"In actual practice, many orders are placed and purchases made by the various department heads in the village. The liquor store manager, for example, does all of the ordering of liquor and beer for the store. All of the department heads, however, are responsible to the administrator and the orders and purchases are subject to his approval.

October 24, 1961

"The actual disbursement of funds in payment for the purchases made pursuant to the authority delegated to the administrator is by the Council in accordance with N.S.A. Sec. 412.271. The Council members are given the bill received from the claimant together with the voucher, which each trustee initials upon approving the disbursement."

QUESTION 1

"May the administrator perform purchasing agent functions as above described?"

OPINION

1. A governing body of a municipality cannot delegate its legislative power or its administrative power, calling for judgment and discretion to a committee or otherwise. 13 Dummell's Digest, 3d Ed., § 6576; 62 C.J.S., "Municipal Corporations" 316, § 154b. This rule has no application to the delegation of ministerial functions. Where the performance of the duty involves no discretion or policy making and the governing body reserves all discretionary powers, the delegation is one of ministerial power. State ex rel. Miami v. Thomas, 223 Minn. 435, 439, 27 N.W. 2d 155. As pointed out in Rhynes, "Municipal Law" 74, § 4-10, a municipal governing body may delegate to its subordinate officers powers and functions which are ministerial or administrative, where there is a fixed and certain standard or rule which leaves nothing to the judgment or discretion of the subordinate or at most vests him with some reasonable discretion in administering the standard or rule.

In the auditing and allowing of claims against the village the council acts in a quasi-judicial capacity. 13 Dummell's Digest, 3d Ed., § 674b. Its power and duties in that regard are nondelegable.

October 24, 1961

In the making of purchases for the village, the resolution attempts to vest in the administrative officer authority comparable to that conferred upon a village manager under Optional Plan B, by M.S. 412.691. Some of the language of the resolution appears to have been borrowed from this section. The difficulty with the resolution, however, is that it does not fix standards or give directions pursuant to which the administrator must act. Limitations as to his authority such as the provision relating to expenditures in excess of \$500, and the reference to "necessary purchases" are not rules or standards conforming to the above rules of law. The provision for subsequent approval of all expenditures and payments by the village council and the additional limitations contained in the resolution, although they may furnish adequate safeguards, cannot be substituted for fixed standards and rules. Because the resolution lacks fixed rules or standards pursuant to which the administrative officer must act, we answer this question in the negative.

FACTS:

"The Village Council has also enacted a personnel ordinance delegating to the administrator the authority to appoint and discharge village employees in all positions except those of village engineer, liquor store manager, village attorney, and fire department members. The following standards are outlined in the ordinance to govern the administrator in his hiring policies:

"Section 17-104. APPOINTMENT PROCEDURE. All appointments in the municipal service shall be made according to merit and fitness.

"A. By Examination. When required by law or the appointing authority, merit and fitness shall be ascertained by written, oral or other examinations and shall relate to those matters which will test fairly the capacity and fitness of the candidate

October 24, 1961

to discharge efficiently the duties of the position for which such examinations are held.

***B. Without Examination.** In case of appointment to positions for which examinations are not required, the appointing authority may appoint any person who appears to meet the requirements listed in the class specifications and whom the appointing authority deems qualified to perform the duties of the position.

***C. Relationship to Other Village Personnel and Residence.** Whenever possible, and with due regard for merit and fitness, the appointing authority shall avoid the appointment of any person when such person is related to any elected or appointed officer or employee of the Village.

A person shall be regarded as "related" as used in this paragraph, if such person is a brother, sister, spouse, the lineal ancestor or descendant of the prospective employee, or the husband or wife of any such brother, sister, ancestor or descendant, or the first cousin, or the spouse of the first cousin of the prospective employee.

'Any employee of the Police or Fire Department shall become a resident of the Village within one year after his original appointment and shall remain a resident of this Village thereafter during such employment.'

"Dismissal is governed by the following principles:

***Section 17-127. DISMISSAL.** Any officer or employee subject to the provisions of this ordinance may be dismissed from the municipal service by the Village Administrative officer. Evidence of the following shall be sufficient cause for dismissal:

- '1. Incompetence or inefficiency in the performance of his duties.
- '2. Conviction of a criminal offense or a misdemeanor involving moral turpitude.
- '3. Violation of any lawful or official regulation or order or failure to obey any lawful direction made and given by his superior officer where such violation or failure to obey amounts to an act of insubordination or a breach of proper discipline or has resulted or has resulted or reasonably might be expected to result

October 24, 1961

in loss or injury to the municipality or to the public.

'4. Intoxication on duty.

'5. Contraction of an infectious disease.

'6. Physical or mental defect which in the judgment of the appointing authority incapacitates the employee for the proper performance of the duties of his position. An examination by a licensed medical doctor may be required.

'7. Wanton use of offensive conduct or language toward the public or municipal officers or employees.

'8. Failure to pay or make reasonable provisions for future payment of just debts due or owing by him causing thereby annoyance to officers and employees of the municipality.

'9. Carelessness and negligence in the handling or control of municipal property.

'10. Inducing or attempting to induce an officer or employee of the municipality to commit an unlawful act or to act in violation of any lawful and reasonable official regulation or order.

'11. Taking any fee, gift or other valuable thing in the course of his work or in connection with it from any citizen for his personal use, when such gift, fee or other thing, is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens.

'12. Conduct in private life which brings discredit upon the municipal service.

'13. Proven dishonesty in the performance of his duties.

'14. Violations of the provisions of this ordinance."

QUESTION 2.

"May the Council delegate the authority to hire and fire under the above-described condition?"

OPINION

"2. Authority to hire and remove village officers, employees and agents is vested in the village council. M.S. 412.111. As pointed out in Op. Atty. Gen. 358e-9, printed in the 1954 Report as No. 126, the authority conferred by this section is nondelegable. See also Op. September 20, 1956, 785a (1956 Report No. 127). Copies of these opinions are enclosed.

Lindquist, Fraser & Magnuson -- 6.

October 24, 1961

The council therefore lacks the power to delegate to the administrator authority to hire and discharge village employees, and the provisions of the so-called personnel ordinance which delegate such authority to the administrator are ineffective for that purpose. Consistent with the above rules, however, the council may adopt rules and standards for the guidance of the administrator in carrying out all ministerial and administrative functions, including the holding of examinations to determine merit and fitness for appointment and the obtaining and submission of particular evidence in connection with the selection and dismissal of village employees. But, the ultimate question as to appointment and dismissal are matters for the determination of the village council on the basis stated in N.S. 412.111.

Very truly yours

WALTER F. MONDAL
Attorney General

HARLEY G. SWENSON
Assistant Attorney General

WFS-sm
Enc.

MUNICIPALITIES -- CITY ATTORNEY -- MEMBER OF LEGISLATURE --
MAY NOT BE AN OFFICER BUT MAY BE AN EMPLOYEE.

358-9

10

September 18, 1945

H 280 H

230-H

Mr. Gordon C. Peterson
Attorney for City of Columbia Heights
3856 Central Avenue
Minneapolis 15, Minnesota

Dear Sir:

A member of the legislature has no right to act as the official city attorney. He has the right to accept employment by the city as attorney so long as he does not become an officer of the city. You can act as attorney for the city if you are not put under bond and if you do not take the oath of office. You may act as an employee of the city but not as an officer of the city.

I enclose herewith copy of opinion dated August 15, 1940 pertaining to this subject.

Yours very truly

J. A. A. BURNQUIST
Attorney General

RALPH A. STONE
Assistant Attorney General

4-4

RAS:MS
Enclosure



MIKE HATCH
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

October 31, 2003

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

John J. Muhar
County Attorney
Itasca County Attorney's Office
123 N.E. 4th Street
Grand Rapids, MN 55744

Dear Mr. Muhar:

Thank you for your correspondence of September 17, 2003.

Your letter and accompanying materials indicate that John Dimich was elected to the Itasca County Board of Commissioners in 2002 and took office on January 2, 2003. In January 2003, the City of Grand Rapids solicited proposals for supplying legal services to the City in three areas: civil representation, criminal prosecution, and labor and employment. Law firms were invited to submit proposals for work in any one or more of those areas.

In July of 2003, Mr. Dimich's firm entered into a contract with the City to provide legal services in the areas of civil representation and criminal prosecution on an "independent contractor" basis. You indicate that it is contemplated that one of Mr. Dimich's partners will be primarily responsible for providing services under the contract, but that Mr. Dimich would also perform some services as needed.

You indicate that there are a number of points of conflict between the county and City, including airport, library and certain zoning matters. The City's agreement with Mr. Dimich's firm provides that conflicts-of-interest will be addressed on a case-by-case basis by the parties.

Based upon this information, you have asked for an opinion as to whether the law firm's relationship with Grand Rapids is incompatible with the Office of County Commissioner such that Mr. Dimich must be deemed to have vacated his Commissioner position. While we are not in a position to provide a definite answer to your question, I can offer the following comments, which I hope you will find helpful.

First, I am not aware of any statutory prohibition against a county commissioner or his/her law firm performing city attorney work. *But, see*, Minn. Stat. § 375.09, subd. 1 (2002) (County commissioner may not hold other *elected office*).

Second, under the common law, one person may not hold two public offices if they are found to be incompatible. In such cases, acceptance of the second office works a vacation of the first. *See State ex rel. Hilton v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923). In *Hilton*, the court stated that public offices will be considered incompatible when the performance of their essential functions results in antagonism and a conflict of duty such that the incumbent of one cannot discharge with fidelity and propriety the full duties of both. Thus, determination of whether two public offices are incompatible requires analysis of the scope of duties imposed by law upon holders of each position.

Third, as noted in the materials submitted with your request, the potential for conflict between the interests of cities and counties generally has led to attorney general's opinions that a number of city offices are incompatible with the office of county commissioner. *See, e.g.*, Op. Atty. Gen. 358-a-3, July 7, 1939 (city assessor); February 8, 1937 (village president). I am not aware of any opinions involving the offices of county commissioner and city attorney. However, a number of prior opinions have determined that the office of county *attorney* is incompatible with the office of city attorney. *See, e.g.*, Op. Atty. Gen. 121A, June 2, 1970, 358-a-1, July 27, 1939.

Fourth, this Office has not, however, generally applied incompatible office prohibitions to instances where a person is acting as an employee or independent contractor rather than holding a formal public office. In particular, prior opinions have stated that, where an attorney has not been formally appointed to an "office" created by law, but performs selective legal services for a city or county on a contracted, hourly-rate basis, the incompatible office doctrine does not apply. *See, e.g.*, Ops. Atty. Gen. 358 e-3, August 18, 1982 and July 29, 1987.

Finally, opinions involving legal services to both cities and counties have noted, however, that the attorneys must be alert to ethical issues that may arise in specific instances.¹ In that regard, Minnesota Rules of Ethical Conduct apply. The rules are under the exclusive jurisdiction of the Minnesota Supreme Court and administered by the Office of Lawyers Professional Responsibility. That office, among other duties, provides advisory opinions on matters pertaining to the Rules of Professional Conduct. *See* Rule 4(c) Minn. RLPR. This Office does not, therefore, undertake to render opinions on application of those Rules. *See, e.g.*, Op. Atty. Gen. 358 e-3, July 27, 1997.

Statutes relating to statutory cities such as those represented by the Dimich firm do not create an "office" of city attorney, as such. Nor does it appear that any of those cities have formally created such an office. Consequently, it does not appear that Mr. Dimich would be

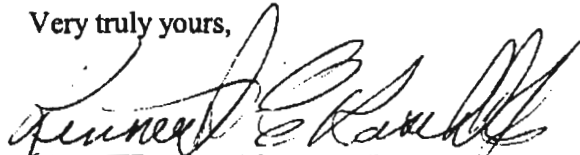
¹ In addition, County commissioners along with all public officials need to take care to avoid inappropriate conflicts between personal interests and public responsibilities. *See, e.g.*, Minn. Stat. §§ 382.18, 471-87; *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967).

John J. Muhar
October 30, 2003
Page 3

deemed to have vacated his office as county commissioner as a result of his law partner providing legal services to cities within the county or due to his own legal work as an independent contractor for cities within the county.

I hope this analysis is helpful to you.

Very truly yours,



KENNETH E. RASCHKE, JR.
Assistant Attorney General

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AG: #931178-v1



MIKE HATCH
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

December 13, 2006

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

Mary D. Tietjen
Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

Dear Ms. Tietjen:

You indicate that you are the City Attorney for the City of Mound, Minnesota, and you request an opinion of the Attorney General with respect to the matter discussed below.

You state that at the 2006 city election, Greg Skinner was elected to the City Council of Mound, which is a Plan B statutory city. You further state that Mr. Skinner is currently employed as superintendent of public works ("superintendent") for the City of Mound, and in that capacity, he reports to the Public Works Director and the City Manager. You also state that the superintendent is a full-time, salaried, non-union city employee. The superintendent supervises and directs the day-to-day maintenance activities of 11 employees. In your letter requesting the opinion, you state that the superintendent has no authority over the employees beyond the supervision of daily tasks, nor does the superintendent negotiate wages or salaries for the employees that he supervises.

You indicate that the superintendent position is not appointed or otherwise supervised by the city council. You state that as part of the city budgeting process, the City Manager obtains input from the superintendent regarding items for the proposed budget for the Mound Public Works Department. The Public Works Director and the City Manager are responsible for reviewing and approving all proposed items. You state that the City Manager prepares the final annual budget estimates from each department of the City, subject to the approval of and adoption by the Mound City Council. The City Manager is responsible for presenting the budget to the City Council, although in the past, she has requested that the superintendent participate in that presentation.

You state that the Public Works Director, who is a department head, and the City Manager make and implement policy decisions for the City and the Public Works Department. You further state that the superintendent does not set or implement policy for the City or the Public Works Department. In a follow-up telephone conversation, you were asked whether a written position description for the superintendent's position is available, and you indicated that none exists.



In your letter, you also provided information regarding compensation of city employees. You state that as with all non-union employees, the superintendent's salary and benefits are governed by the City's administrative code. You further state that with respect to salary, the administrative code provides: 1) the City Manager is directly responsible to the City Council for the coordination and administration of the salary program; 2) all salary adjustments for employees are based upon the City's pay equity plan accepted by the City Council in 1988; and 3) annual cost of living adjustments for all non-union employees shall be equal to the highest percentage given to union contract personnel each year. The union contract is subject to approval by the City Council. You state that in addition, the administrative code may be amended from time to time by the City Council. Further, salary and cost of living adjustments are applied to employee classifications, not individuals, and employees do not receive merit increases. Under the administrative code, an employee's eligibility for other benefits such as sick time, vacation leave and severance pay is based on objective criteria such as years of service.

Based on these facts, you then asked three questions. Your first question is whether the public works superintendent position is an "office" to which the incompatible offices doctrine applies.

First, as you point out, the City of Mound is a statutory, Plan B city. *See* Minn. Stat. §§ 412.601–412.751 (2006). Under this form of government, known as the "council–manager plan," the council exercises the legislative power of the city and determines all matters of policy. *See* Minn. Stat. § 412.611 (2006) The city manager alone has the authority to hire and fire city employees. *See* Minn. Stat. § 412.651, subd. 3 (2006). ("[t]he city manager shall appoint upon the basis of merit and fitness...all heads of departments, and all subordinate officers and employees...") Thus, the city manager is the head of the administrative branch of government and is responsible to the council for the proper administration of all affairs relating to the city. Minn. Stat. § 412.661(2006). As you state, in a plan B city, the law strictly limits the authority of the city council in administrative matters:

Neither the council nor any of its members shall dictate the appointment of any person to office or employment by the manager, or in any manner interfere with the manager or prevent the manager from exercising judgment in the appointment of officers and employees....Except for the purpose of inquiry, the council and its members shall deal with and control the administrative service solely through the manager, and neither the council nor any of its members shall give orders to any subordinate of the manager, either publicly or privately.

Minn. Stat. § 412.661 (2006).

Under the council-manager plan, the city council is empowered to "create such departments, divisions and bureaus for the administration of the affairs of the city as may seem necessary, and from time to time may alter their powers and organization." Minn. Stat. § 412.671 (2006). The Mound City Council has established the Public Works Department as a

department of the City and designated the Director of Public Works as the head of the Department. Mound City Code, Chapter II, section 205.05. The City Council has further provided that “the Director of Public Works is responsible to the manager for the organization, planning, administration and coordination of public works of the city. The Director of Public Works shall perform the duties described in the job description for that position and any additional duties assigned by the manager.” Mound City Code, Chapter II, section 205.20. The council has not created by ordinance any other positions subordinate to the Director of Public Works.

Second, at common law, public offices are considered to be incompatible, and may not be held by the same person, when the functions of the two are inconsistent such that antagonism would result if the person attempted to perform the duties of both. The determination focuses on whether there is an inherent inconsistency in the duties themselves. *See, e.g., State ex rel. Hilton v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923); *State ex rel. Young v. Hays*, 105 Minn. 399, 117 N.W. 615 (1908); Op. Atty. Gen. 358-E-9, April 5, 1971. Some prior cases and opinions have stated that public positions are incompatible if one is subordinate to the other. *See, e.g., Young v. Hays, Kenney v. Georgen*, 36 Minn. 190, 31 N.W. 210 (1886); Atty. Gen. 358-E-9, April 5, 1971 (council member may not serve as fire chief). However, more recent decisions indicate that, in order for two positions to be considered incompatible offices for the purposes of applying the *Hilton v. Sword* principles, each must be a public office as opposed to mere employment. The distinction was explained by the Minnesota Supreme Court in *McCutcheon v. City of St. Paul*, 298 Minn. 443, 216 N.W.2d 137 (1974):

There is a distinction between a public official and a public employee which is frequently difficult to trace. The majority of decisions hold that a position is a public office when it is created by law, with duties . . . which involve the exercise of some position of the sovereign power . . . Whether a person holds a disqualifying public office is not to be determined merely by the title of his position.

A more appropriate test . . . is whether that person has independent authority under the law, either alone or with others of equal authority, to determine public policy or to make a final decision not subject to the supervisory approval or disapproval of another.

Id. 216 N.W.2d at 139. Thus, we have previously concluded that an employee in a city utility department was not foreclosed by the incompatibility doctrine from serving on the city council. *See* Letter to Paul Ihle, Thief River Falls City Attorney, dated April 9, 1998.

Third, while the powers and duties of council members in a statutory city are prescribed by statutes, the particular responsibilities of a “superintendent of public works” are not defined in

state law or city ordinance, but are presumably defined by the council or the city manager.¹ Thus, it does not appear that the office of city council member and positions of superintendent of public works are necessarily or inherently incompatible. Rather, the issue turns largely upon fact determinations concerning the duties of the respective positions in question. Consequently, local officials, and not the Attorney General, are in the best position to evaluate whether the position would constitute a public office under the above definitions.

Next, you ask whether the office of superintendent is incompatible with the position of council member in a statutory plan B city if the answer to the first question is “yes.”

Since we are not able to answer your first question above, we cannot answer your second question. Because it is not clear whether the position of superintendent of public works, as you have described it, is a “public office” for purposes of the incompatibility doctrine, it necessarily follows that we cannot determine whether the position of superintendent of public works is incompatible with the office of city council member. We believe that the principles regarding the incompatible offices doctrine set forth in the precedents and authorities set forth above will assist you in resolving that question.

Finally, you ask whether apart from the incompatibility doctrine, there a conflict of interest under 471.87 – .89 or 412.311 that would prohibit the public works superintendent from holding the office of council member?

First, while the incompatible office doctrine addresses conflicting public duties, other legal principles deal with conflicts between public responsibilities and the personal interests of public officials. For example, Minnesota Statutes §§ 412.311 and 471.87 (2006) prohibit statutory city council members from having a personal financial interest in contracts of the council. A violation of section 471.87 is a gross misdemeanor. This prohibition has been construed to include contracts of employment. *See, e.g., Op. Atty. Gen. 469a-2, Jan. 13, 1961.* If the official has a prohibited personal financial interest under these sections, the existence of a violation is not dependent upon whether the official actually participates in approval of a contract. *See, e.g., Op. Atty. Gen. 90-E-5, November 13, 1969.* Whether an official actually has a personal financial interest in a particular contract is often a factual issue, however, which is beyond the scope of this Office’s opinion-rendering authority. *See, e.g., Op. Atty. Gen. 90e-5, May 25, 1966.* Where a person has a personal interest in a contract that was approved before becoming a council member, continuation of the contract has not been considered a violation. *See, e.g., Op. Atty. Gen. 90-a-1, March 30, 1961.*

Second, to the extent that the union contract, pay equity policy, city administrative code and any other items affecting the terms and conditions of the superintendent’s employment were in place prior to his taking office as council member, there was no statutory conflict at the time they were adopted, and the council member could continue to be employed by the city without a

¹ *See, e.g., Minn. Stat. §§ 412.191, 412.221 and 412.241-412.311(2006).*

conflict until the expiration, renewal or amendment of any relevant contracts, codes or policies. However, at such time as the contract is renewed or extended, or the city's pay equity policy or compensation-related provisions of the administrative code are readopted or amended, the council member would be in violation of sections 412.311 and 471.87 unless one of the exceptions contained in section 471.88 applies.

Third, Minn. Stat. § 471.88 (2006) provides for a number of exceptions to this general prohibition whereby a governing body may, by unanimous vote, approve a contract with an interested official. These include "a contract for which competitive bids are not required by law." *Id.*, subd. 5. Generally, cities are not required to seek competitive bids for employment contracts; Minn. Stat. § 471.345 (2006), the Uniform Municipal Contracting Law, does not generally apply to employment contracts. Furthermore, the procedures for negotiating collective bargaining agreements as set forth in the Public Employment Labor Relations Act (Minn. Stat. ch. 179A (2006)) does not involve the concept of public bidding. Therefore, it appears that the exception contained in section 471.88, subd. 5 may be utilized in renewing the relevant employment agreement to avoid a violation of section 412.311 or section 471.87.

Of course, the city's pay equity policy and administrative code are not, strictly speaking, "contracts." However, to the extent that their terms may affect the superintendent's compensation, a cautious approach would be to treat them as contracts with an interested official for purposes of sections 412.311 and 471.87.

Fourth is important to note that a governing body that contracts with an interested member must still comply with several procedural requirements, despite the fact that an exemption exists. *See* Minn. Stat. § 471.88, subd. 1 (requiring a unanimous vote approving the contract); Minn. Stat. § 479.89 (2006) (requiring adoption of a special resolution and the filing of affidavits).

Fifth, in circumstances not specifically addressed by statute, courts have not applied a bright-line rule prohibiting public officials from participating in matters where they have a personal interest. Rather, courts consider such situations on a case-by-case basis, evaluating the circumstances in light of several factors. In *Lenz v. Coon Creek Watershed Dist.*, 278 Minn. 1, 153 N.W.2d 209 (1967), the Court said:

The purpose behind the creation of a rule which would disqualify public officials from participating in proceedings in a decision-making capacity when they have a direct interest in its outcome is to insure that their decision will not be an arbitrary reflection of their own selfish interests. There is no settled general rule as to whether such an interest will disqualify an official. Each case must be decided on the basis of the particular facts present. Among the relevant factors that should be considered in making this determination are: (1) The nature of the decision being made; (2) the nature of the pecuniary interest; (3) the number of officials making the decision who are interested; (4) the need, if any, to have interested persons make the decision; and (5) the other means available, if any, such as the

opportunity for review, that serve to insure that the officials will not act arbitrarily to further their selfish interests.

Id. at 15, 153 N.W.2d at 219 (footnote omitted). See also *E.T.O., Inc. v. Town of Marion*, 375 N.W.2d 815 (Minn. 1985).

Sixth, we are not aware of any controlling authority providing that the existence of a conflict or potential conflict of interest categorically excludes a person from taking an office. Instead, when such a conflict arises, the conflicted person should take appropriate corrective action. Applying the five factors set forth in the *Lenz* decision, there may well be circumstances in which the council member will be disqualified from participating in council meetings. Each occasion will need to be separately evaluated as it arises. Cf. *1989 Street Improvement Program v. Denmark Twp.*, 483 N.W.2d 508 (Minn. App. 1992); *Rowell v. Board of Adjustment*, 446 N.W.2d 917 (Minn. App. 1989), *review denied* Dec. 15, 1989; *E.T.O., Inc. v. Town of Marian*, 375 N.W.2d 815 (Minn. 1985).

Finally, apart from the conflict of interest question addressed above, for a Plan B city such as Mound, there is the statutory prohibition contained in Minn. Stat. § 412.661 (2006), which states as follows:

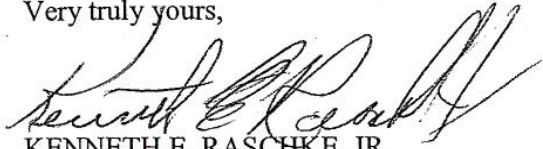
Except for the purpose of inquiry, the council and its members shall deal with and control the administrative service solely through the manager, and neither the council nor any of its members shall give orders to any subordinate of the manager, either publicly or privately.

We are not aware of any previous cases or opinions that address the scope of this prohibition. It could be argued that, to the extent the duties of the Superintendent of Public Works include directing other city employees, such actions would be contrary to law if performed by a member of the council. However, it could also be argued that the purpose of the statutory prohibition is to prevent the council or its members from circumventing the authority of the city manager and attempting directly to control the work of city employees. Thus, the prohibition might not be violated if the person directed that actions of city employees not as a council member, but as a subordinate of the city manager implementing the manager's policies and directives. Since the manager has ultimate supervisory authority over all city employees including the superintendent, she is presumably well situated to assure that her authority is not compromised.

Mary D. Tietjen
December 13, 2006
Page 7

We hope the foregoing analysis is responsive to your questions. For your convenience, we have enclosed copies of the cited cases and opinions.

Very truly yours,



KENNETH E. RASCHKE, JR.
GREGORY P. HUWE
Assistant Attorneys General

(651) 297-1223 (Voice)
(651) 297-1235 (Fax)

Enclosures

cc: Mayor-elect Mark Hanus

AG: #1711020-v1

November 13, 2023

Christian R. Shafer
Ratwik, Roszak & Maloney, P.A.
444 Cedar Street, Suite 2100
St. Paul, MN 55101

Re: Request for Opinion

Dear Mr. Shafer:

Thank you for your letter of September 21, 2023, which requests an opinion from this Office on whether an education district may purchase a property subject to private commercial leases. You represent the Hiawatha Valley Education District (HVED), an education district created under Minn. Stat. § 123A.15, and request this opinion pursuant to Minn. Stat. § 8.07.

BACKGROUND

The facts as you present them are that HVED is comprised of twelve-member school districts and two charter schools. HVED provides special education, out-of-school placement options, alternative education programs, and other education-related programs and services to children, particularly children with disabilities.

HVED currently houses its operations at five sites and seeks to consolidate its facilities. The district is in discussion with a mall property at a central location that would be substantially renovated to meet the district's needs. Your letter indicates the mall has sufficient space (approximately 83,000 square feet) and flexibility for current programming and anticipated future expansion opportunities. Having all HVED staff at one location will enhance the safety and security of students given the increased total number of staff near a student at any given time.

HVED will be using at least ninety percent of the property under consideration to house its educational programs. The remaining ten percent of the property is subject to commercial tenant leases of varying duration and terms. At least one lease extends to 2032 but allows either the

tenant or landlord to terminate for any reason based on six-months' notice. The HVED Board of Directors is prepared to adopt a resolution stating the areas of the mall occupied by tenants are not currently needed for school purposes, and tenant operations will not interfere with the district's educational programs. The resolution will also state that the Board may renew a lease only if the lease and tenant occupancy does not interfere with HVED educational programs and the space is not necessary for the same.

QUESTIONS PRESENTED

1. Is an education district authorized to purchase a mall property subject to private tenant leases if the primary purpose of the purchase is to house educational programs, and if the leased spaces are not necessary for, and the lease does not interfere with, the educational programs taking place on the mall property?
2. Would the purchase of a property subject to existing leases qualify as a purchase for a valid public purpose?

SUMMARY OF CONCLUSION

Where the education district will use ninety percent of the purchased property for its current and anticipated educational programs and leases for the remaining ten percent are for commercial operations that do not interfere with district educational programs, the existing leases do not disqualify the purchase of the property. Under these facts, purchasing the property subject to existing commercial leases is a purchase for a valid public purpose if the terms of the leases are determined to be in the best interests of the district.

ANALYSIS

Authority to Purchase Property Subject to Leases. Your letter acknowledges that school boards are statutorily authorized to purchase property and lease out property, but it is not readily apparent whether school districts can purchase property subject to an existing lease. You argue that such authority can be implied based on various principles of statutory construction.

First, however, as you note the board of an education district formed under section 123A.15 is governed by laws applicable to independent school districts unless specifically provided otherwise. Minn. Stat. § 123A.17, subd. 4. General powers of independent school districts include both specific powers granted by the Legislature and implied powers. Minn. Stat. § 123B.02, subd. 1.

School boards of independent school districts are authorized to purchase property necessary for school purposes. Minn. Stat. § 123B.51, subd. 1. Recognizing that there may not be an exact match of purchased and necessary space, the Legislature also authorized school districts to:

lease to any person, business, or organization real property that is not needed for school purposes . . . if the board determines that leasing part of the property does not interfere with the educational programs taking place on the property. The board may charge and collect reasonable consideration for the lease and may determine the terms and conditions of the lease.

Minn. Stat. § 123B.51, subd. 4(a).¹ We are not aware of any specific provision of law otherwise providing for real property purchases or leases by education districts, so conclude that Minn. Stat. § 123B.51 applies to HVED as an education district. *See* Minn. Stat. § 123A.17, subd. 4 (education district governed by laws applicable to independent districts unless specifically provided otherwise).

You argue that the power to purchase real property subject to a lease must be implied to give effect to both the purchase authority and lease out authority of section 123B.51, and to conclude otherwise would lead to an absurd result. *See* Minn. Stat. § 645.17(1) and (2).

We agree that the authority to purchase subject to an existing lease may be fairly implied from subdivisions 1 and 4 of Minn. Stat. § 123B.51. The Legislature clearly authorizes a purchase of property by a school district and separately authorizes the district to lease to a business. The power to purchase subject to a lease is fairly implied from those two express authorizations. *Cf. In re Hubbard*, 778 N.W.2d 313, 321 (Minn. 2010) (holding that while court is reluctant to find implied statutory authority of an administrative agency, agency's authority need not be given a "cramped reading" and enlargement of powers by implication must be "fairly drawn and fairly evident from the agency's objectives and powers expressly given by the legislature." *quoting In re N. States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987) and *Peoples Natural Gas v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985)); *Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984) (implied powers of municipality must be in aid of those powers expressly conferred). Consistent with a finding of implied authority here, we previously determined that a school district could take title to property subject to a reversionary interest in favor of a prior grantee. *Op. Atty. Gen.* 469-a-15 (Nov. 20, 1969).

To effectuate the legislative intent in subdivision 4 that the board "may determine terms and conditions of the lease," the school district must examine the terms of the existing leases to ensure not only the absence of a conflict with the district's educational uses of the building, but that the terms of the leases are reasonable and that assuming them is in the district's best interests. *See Op. Atty. Gen.* 622a6 (Sept. 25, 1946) (in opinion predating section 123B.51, holding school district may lease property to private corporation upon such terms as board reasonably deems to be for the best interests of the school district). This should be part of the district's due diligence in examining any encumbrance on title before the purchase. After the purchase, in addition to not renewing any lease if the space is needed for educational purposes, HVED should also be prepared

¹ A previous version of this statute allowed leases out only to "persons or organizations." Minn. Stat. § 123.36, subd. 10(a)(1988). A 1990 amendment added "business" to the list of permissible lessees. 1990 Minn. Laws ch. 562, art. 8, § 23.

to exercise rights of termination in the existing leases if doing so is in the best interest of the district.

Public Purpose. You also ask us to opine whether the described purchase would qualify as one for a valid public purpose. The Minnesota Supreme Court has construed “public purpose” to mean “such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.” *City of Pipestone v. Madsen*, 178 N.W.2d 594, 599 (1970). As noted in your letter, the applicable caselaw holds that an “incidental” private benefit does not disqualify a transaction as being fundamentally for a valid public purpose. *See Visina v. Freeman*, 89 N.W.2d 635, 643 (Minn. 1958). We agree that the benefit accruing to private commercial lessees who occupy approximately ten percent of school property that is not necessary to the district does not necessarily negate the public purpose.

This office analyzed the public purpose question in an opinion regarding whether a municipal liquor store could extend credit to business customers. Op. Atty. Gen 218-R (Sept. 26, 1978). That was a somewhat analogous situation in that the authority to extend credit was not express in statute. After determining that this authority could be fairly implied from the authority to operate the liquor store, we concluded that credit liquor sales could serve a public purpose because the Legislature had determined that operation of municipal liquor stores serves the public good. However, our opinion cautioned that business practices must comply fully with applicable statutes, and credit could not be extended indiscriminately.

Similarly, the Legislature has determined that leasing out property not needed by school districts is a valid function of a district and serves the public good. *See* Minn. Stat. § 123B.51, subd. 4. Also similar to the extension of credit, leases must not be entered into indiscriminately, however. The terms of each lease must be evaluated carefully to ensure the terms (including duration, rent, allocation of risk, nature of the lessee’s use of the property, etc.) are in the district’s best interests. Only if that is the case will the leases “serve as a benefit to the community.” *Madsen*, 178 N.W.2d at 599. That question is for the district to decide.

Thank you again for your inquiry, and we hope this opinion is helpful to you.

Sincerely,



KEITH ELLISON
Attorney General

Encl: Op. Atty. Gen. 469-a-15 (Nov. 20, 1969)
Op. Atty. Gen. 622a6 (Sept. 25, 1946)
Op. Atty. Gen. 218R (Sept. 26, 1978)

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