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OFFICE OF THE ATTORNEY GENERAL

1981-1982  
BIENNIAL REPORT

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## INTRODUCTION

The Attorney General is the chief legal officer for the state of Minnesota. As such, he and his assistants represent not only the agencies, boards, commissions and departments of the state, but the citizens of Minnesota as well.

In that effort, our staff attorneys pursue a wide range of legal matters from litigating constitutional challenges, human rights, criminal, consumer protection and anti-trust cases to providing a variety of legal services to state agencies in the areas of commerce, the environment, energy, natural resources, health, education and many other areas of state concern.

Approximately 1,325 new civil cases were opened between July 1, 1981, and June 30, 1982. As this report is written there are approximately 2,500 civil cases open on the Office's central docket.

Throughout these last two years of Attorney General Warren Spannaus' administration, the major emphasis of the Office's affirmative litigation program continued to be on consumer protection. The Consumer Division, a primary vehicle for carrying out that philosophy, continues to work hard to shut down those illegal enterprises which once suppressed, seem constantly to find new life: bait-and-switch operations, fraud in automobile sales and repairs, phoney home repair operations and fraudulent business opportunity schemes. During the biennium, the division sought to improve its efficiency by establishing a mail order clearinghouse with the Better Business Bureau - a move which should improve its

ability to resolve mail order complaints. The division closed-out the biennium with the largest litigated civil penalty - \$25,000 - under the consumer fraud laws.

New milestones were reached by other divisions involved in affirmative litigation as well. Over the biennium, the Antitrust Division collected or distributed over \$1 million in damages and costs. The division also collected over \$100,000 in fines during this time.

In the criminal area, the Office, among other achievements prosecuted more than 180 cases at the request of county attorneys. Over 170 of them ended in either guilty pleas or criminal convictions.

The Criminal division also launched a sweeping and highly successful crackdown on automobile odometer tampering, resulting in the criminal convictions of 23 individuals. More convictions are expected.

In the area of human rights, we resolved over 100 cases resulting in payments of over \$1 million in damages to persons filing charges of discrimination.

In the environmental area, the Office took a strong stand against acid rain. We were actively involved in cases challenging EPA relaxations of federal SO<sub>2</sub> emission standards. SO<sub>2</sub> is a chemical precursor to acid rain.

As counsel for the Minnesota Pollution Control Agency, we continued to advise the Agency in its efforts to find a hazardous waste dumping site mandated by the Minnesota Legislature. In

addition, the division has been involved in numerous other legal matters in the environmental area, among them: prosecuting oil spill cases and other land contamination cases and assisting in the investigation of a number of illegal hazardous waste dump sites. The division also participated in several federal and state judicial proceedings.

In addition to these activities, the Attorney General was involved in a host of other legal matters providing legal counsel to all state political subdivisions, interpreting statutes, issuing opinions, defending agencies, drafting legislation, collecting taxes and arguing state positions at all judicial levels from the county court to the U.S. Supreme Court.

We worked hard for Minnesota's citizens over the last biennium. The following presents in greater detail just what that has meant.

## OFFICE ACTIVITIES

### CONSUMER

The Consumer Division protects and assists the public, both consumers and businesses, through its trade regulation activity. Our functions fall into three primary areas:

1. Public assistance and information. We answer inquiries and requests for information and assistance from both consumers and businesses.
2. Conciliation. We assist with the resolution of consumer complaints by facilitating communication and encouraging voluntary resolution by the parties.
3. Investigation and law enforcement. We investigate potential violations of trade regulation laws. Where necessary, the Division initiates legal action to enforce trade regulation laws through declaratory and injunctive relief, civil penalties, and in appropriate circumstances, restitution for injured consumers.

We continue to respond to a large number and wide variety of requests from the general public for information, assistance and complaint resolution. We are currently receiving around 150 telephone calls per day (annual rate exceeding 39,000) and approximately 20 written requests or complaints per day (annual rate approximately 5,000). In many instances we are able to assist in voluntary resolution of complaints by providing information, facilitating communication and mediation.

The Division continues to prepare and to distribute, on request, the following informational pamphlets: Protect Yourself, The Garnishment Process, Conciliation Court, Truth in Repairs Law, Tenant Rights and Landlord Responsibilities, and Mobile Home Park Tenant Rights and Responsibilities. Additionally, the Division prepares a weekly column, entitled Protecting Your Dollar, which is distributed to newspapers throughout the state for publication.

During this biennium, we have increased our efforts to stretch resources through cooperation and coordination with other private and governmental agencies. In addition to our joint effort with the Better Business Bureau to monitor advertising practices, we have also established a mail order clearinghouse wherein the BBB accepts referral of mail order complaints for follow-up. This reduces the time which this Division must spend on mail order problems and consolidates information. This enables us to recognize developing problems earlier. In an effort to increase communication and reduce duplication among governmental agencies, members of this Division were responsible for the organization of a National Investigators Conference held in St. Paul in August, 1982. As a result of that Conference, a National Association of Consumer Protection Investigators was formed with members of our Consumer Division investigative staff being elected to the first presidency and vice-presidency. We also continue to participate in a local inter-agency program for exchange of information.



During this biennium, we have continued to pursue expedited remedies and injunctions. We obtained court-ordered preliminary injunctions to stop participation in a pyramid scheme known as "The Money Game" and to stop advance ticket sales by a failing night club operation. In other cases, we have obtained stipulated temporary injunctions, for example, to prohibit continuing fraud in a diamond investment scheme and to prohibit the sale through a local auto auction of automobiles with altered odometers. We have also made very successful use of the extreme remedy of a Writ of Attachment to halt home repair fraud by itinerant merchants and to obtain agreement for consumer reimbursement.

During this biennium, the Consumer Division has reached some milestones in the area of civil penalties and monetary relief. In June, 1982, the largest litigated civil penalty under the consumer fraud statutes, \$25,000 was awarded in State v. Leslie Grove, et al. In a negotiated settlement, a major national retailer agreed to pay a \$20,000 civil penalty as the result of an advertising investigation. Two actions have been initiated for appointment of receivers to administer the proceeds of bonds. One case involves mobile home fraud and the bond of a mobile home dealer; another case involves a health club which discontinued business.

The Division continues to lay a net of public protection over a very diverse range of problems. For example:

- o Hearing aid sales practices;

- o Sales claims for water purification systems;
- o Odometer spinning and the sale of automobiles with altered odometers;
- o Advertising claims in the household furniture industry;
- o Failure to deliver merchandise or refund a deposit made on prepaid merchandise or mail order sales;
- o False claims in the recruitment of personnel for door-to-door sales of magazines and candy;
- o Problems related to the operations and business practices of public cemetery associations;
- o Requirements of the Club Contract Law and administration of the bonding requirement.

In this biennium, the Division was delegated new responsibilities under the Minnesota Plain Language Contract Act. We are exercising the Attorney General's authority to review and certify consumer contracts submitted in accordance with that statute. After considerable study, and discussion with the business and legal communities and with a consultant from the University of Minnesota, the Division has established standards and procedures for review. We have also reviewed numerous contracts and undertaken general public education efforts regarding the requirements of the Act.

At this writing, we have approximately 40 open investigation files and 20 cases in active litigation.

## CRIME

The Criminal Division has continued to expand its efforts to provide prosecutorial assistance at the trial and appellate court levels to the state's 87 county attorneys. We have also continued to provide concomitant investigative assistance and we provide a complete line of legal services to those state agencies most involved in the criminal justice system. The Criminal Division also has continued to represent the state before the Supreme Court in virtually all criminal appeals coming from the non-metropolitan counties. This accounts for 35 to 50 percent of all criminal appeals decided by the Court.

Trial and investigative assistance in criminal cases were most frequently provided in three categories of cases:

1. Cases in which the county attorney had a conflict of interest.
2. Cases involving complex issue, often of an economic nature, which prompted the county attorney to utilize the resources and expertise of the Criminal Division.
3. Cases where the investigating or complaining party was a state agency, a situation which necessarily places the state interest in pursuing prosecution above that of any local interest. Criminal appellate assistance was provided for most appeals stemming from convictions in the non-metropolitan counties.

Services provided for state agencies involved in the criminal justice system included trial representation in state and federal courts, administrative litigation, legislative and rule making assistance, routine legal advice and training for public employees on criminal law and related subjects.

During the biennium the Criminal Division prosecuted approximately 185 cases at the request of county attorneys. These prosecutions resulted in 139 guilty pleas, 34 felony trial convictions, and 12 acquittals. During this same period the Criminal Division was successful in enforcing the state's forfeiture statute which resulted in the recovery of almost \$57,000 in cash and 35 motor vehicles.

Principal state clients of the Criminal Division have been the Bureau of Criminal Apprehension, the Crime Control Planning Board, the Sentencing Guidelines Commission, the Board of Peace Officers Standards and Training, and the Board of Private Detective and Protective Agent Services. The Criminal Division also provided advice on questions of criminal law for such regulatory and enforcement agencies as the Department of Commerce, the Department of Revenue, the Department of Public Welfare, and the Minnesota State Patrol.

## PUBLIC SAFETY

The major activity of the Public Safety Division is the processing and prosecution of cases arising under the Implied Consent statute, Minn. Stat. § 169.123. This section provides for license revocations of both those who refuse to submit to testing to determine the presence of alcohol and those who submit to testing which discloses the presence of a blood alcohol concentration of .10 or more.

During the biennium the case load continually increased. In the first year (1980-1981) 8,911 new cases were filed. In the second year 11,364 new cases were filed.

During the same period, case closings also substantially increased. In the first year of the biennium 8,241 cases were closed. In the second year that figure jumped to 11,105. As of July 1, 1982, our docket showed approximately 4,000 pending Implied Consent cases.

The Public Safety Division also represented the Department of Public Safety in driver license petitions for reinstatement in both the District Court and Supreme Court. In addition, representation was provided for a variety of administrative proceedings, rulemaking and personnel hearings. We also provided advice to the various divisions of the Department of Public Safety concerning application of their statutory responsibilities.

## ANTITRUST

The Antitrust Division exists to promote free and open competition in the State of Minnesota. The Division's primary role is to investigate and prosecute antitrust violations under state law, seeking injunctive relief, damages and both civil and criminal penalties. The Division also represents the State and local governmental subdivisions in federal court actions to recover damages under federal law where the state and local governmental entities have been injured by reason of an antitrust violation in their capacity as purchasers of goods and services. As the advocate for competition in the State, the Division also intervenes in rule-making proceedings of state boards and other government agencies where proposed regulations may have an adverse affect on competition. The Division also responds to numerous inquiries from governmental units, businesses and individuals regarding antitrust law requirements.

In 1981-82, the attorneys and investigators in the Antitrust Division worked on antitrust cases involving coal, paper products, petroleum products, sugar, ampicillin, public bid rigging, trash hauling, mobile homes, school art supplies, wild rice, milk, and land surveying services.

During this biennial period, the Division collected or distributed over \$1,105,000 in antitrust damages and costs to the State, universities, counties, cities, hospitals and school districts. In addition, a total of \$139,000 in fines were also collected during this period.

The Division is continuing to prepare for trial in antitrust cases pertaining to price fixing allegations against cement producers, art material manufacturers, petroleum producers, and trash haulers.

Under the state antitrust act, the Division has filed a number of enforcement actions, primarily in the price fixing area. Those cases involve retail gasoline sales, trash hauling services, land surveying services, wild rice, and fluid milk products. The Division also obtained injunctive relief in the form of assurance of discontinuances from certain mobile home dealers and insurance agents.

Efforts by the Division to recover damages incurred by the state and its political subdivisions have been hampered by a U.S. Supreme Court decision, Illinois v. Illinois Brick Co., 431 U.S. 720 (1977), where the court ruled that plaintiffs must purchase directly from price fixers in order to recover damages for any antitrust violations under federal law. Since the state and most political subdivisions purchase many commodities and services indirectly through middlemen, a number of pending and potential antitrust actions have been jeopardized. The Division has worked to seek corrective legislation from Congress, and has also placed in state procurement contracts language which would assign to the state any antitrust damage claims of distributors for those goods that the State has purchased.

The Antitrust Division also continues to appear before administrative agencies to promote competition in the sale of products and services to Minnesota consumers. Our lawyers and investigators are presently engaged in active investigations in a number of areas of commerce.



## CHARITIES

The Charities Division is responsible for the enforcement of all non-tax laws related to the donation of property for charitable purposes and the management of that property for the use of the ultimate charitable beneficiaries. The division is currently staffed by one attorney and two legal assistants, one of whom is a certified public accountant.

The most significant litigation in 1981 and 1982 was a challenge by the Unification Church to the statute requiring religious organizations which solicit over half of their contributions from non-members to register with the state and file an annual financial report. This portion of the statute was declared unconstitutional by the United States Supreme Court. Some issues, including the attorneys fees payable to the plaintiffs, have not been resolved.

Other litigation included proposed sale of a scout camp and the use of proceeds from the sale; halting the production of a holiday show which misrepresented its charitable purpose; and potential escheats to the state. The division also represents charitable beneficiaries in probate proceedings to insure the distribution of bequests to the proper beneficiaries of the testator's largess.

A number of investigations were conducted which led to the dissolution of organizations or voluntary compliance with the law without the necessity of litigation. Education and cooperation continue to resolve many potential enforcement problems.

Effective August 1, 1981, the responsibility for supervision of charitable trusts was transferred to the Attorney General's Office. The division has systematically recorded each such trust in a manner which allows for regular review to determine that the trusts' annual reports are filed on time. The division also monitors court proceedings involving such trusts, and has begun to review the annual reports to the extent that staff time allows.

Additionally, the charities division staff periodically addresses groups and individuals who have questions about charitable solicitations, charitable trusts or bequests, and probate, and handles a high volume of such inquiries.

## CIVIL LITIGATION

The Attorney General's Civil Litigation Division has the primary responsibility for civil litigation involving the state.

Its attorneys directly handled more than 290 cases and special projects and coordinated and assisted other attorneys on the staff of the Attorney General in litigation. Approximately 1,325 new civil cases were opened between July 1, 1981, and June 30, 1982, for the entire Attorney General's Office. There are approximately 2,500 civil cases open on the central docket of the Attorney General at this writing.

In addition to litigation duties, the Civil Litigation Division is responsible for providing legal counsel to a number of state agencies, such as the Ethical Practices Board, Public Employment Relations Board, the Bureau of Mediation Services, the State Zoo Board and the Minnesota State Agricultural Society (State Fair). Such state agency assistance includes litigation, contract review, handling real estate transactions, drafting opinions, representation at administrative hearings, etc.

Most of the Division's litigation function fell within four main categories: (1) Handling lawsuits challenging the constitutionality or legal validity of state statutes or actions of state officials; (2) Working with attorneys from other divisions in representing large state departments and their officers in complex cases; (3) Representing judges of the Supreme Court, District and County Courts who are parties in lawsuits concerning their official

responsibilities; and (4) Handling a variety of cases brought under the Federal Civil Rights Act.

In addition, the director of the Civil Litigation Division serves as the coordinator for all civil cases handled by the Attorney General's office. This responsibility includes serving as a permanent member of the office Civil Case Support Committee, monitoring the service of all civil complaints against the State and reviewing the pleadings and briefs drafted by office attorneys.

Examples of some of the significant cases handled by Civil Litigation Division attorneys during this report period include:

1. Litigation in federal district court concerning the constitutionality of the state Public Employees Labor Relations Act as it applies to community college faculty members.

2. Litigation in federal district court concerning the validity of certain provisions of the Minnesota Fair Campaign Practices Act. This action was brought by the Minnesota Association of Commerce and Industry and was scheduled for trial in the fall of 1982. The case centers on the constitutionality of restrictions on contributions by corporations to political campaigns in Minnesota.

3. Defending a Minnesota statute which authorizes state income tax deductions to parents who incur certain tuition and other related expenses in sending children to public and private schools. That lawsuit originated in federal district court, was defended successfully before the Eighth Circuit Court of Appeals and has now been accepted for appellate review by the United States Supreme Court.

4. A federal district court challenge to the constitutionality of a 1981 Minnesota statute which establishes procedures requiring notification to parents of daughters who are seeking abortions. That lawsuit probably will not be ready for trial until mid or late 1983 and perhaps will be affected by the United States Supreme Court's decisions on cases now pending there.

5. Representing the state and the State Zoological Society in state and federal court actions seeking to compel the state to pay several millions of dollars allegedly owed to investors of the monorail ride at the Minnesota State Zoo. Our office successfully defended the state court lawsuit and prevailed in the Minnesota Supreme Court. The federal court action is based on a securities fraud theory and is still pending in that court. Trial is expected in late 1982.

6. Successfully defending the constitutionality of a Minnesota State Fair rule which requires all persons who sell or distribute items or solicit money at the annual State Fair to do so only from a booth or similar fixed location. Members of a religious sect had claimed that rule violated their rights of free speech and freedom of religion under the federal first amendment. The case ultimately was decided by the United States Supreme Court, which ruled in favor of the rule.

7. Representing former Governor Perpich and several state officials during his administration in a lawsuit brought by a disgruntled former employee of the Governor's Manpower Office. The former employee commenced the action in Ramsey County District

Court, claiming that he was unfairly discharged from his job because he had complained to state legislators about political cronyism in the appointments of certain people in his office. That case was submitted in a jury trial during the summer of 1982 and resulted in a verdict against the state for about \$8,000. Post-trial motions are still pending in that case.

8. Defending all of the judges of the First Judicial District, who are being sued by a former clerk of court for the Scott County District Court. The former clerk brought the action in local federal district court and claims that his discharge was in violation of certain constitutional rights. The federal court granted partial summary judgment to the judges several months ago, and the balance of the case is now being prepared for trial in early 1983.

9. Handling a very complicated federal court action brought by an association of Minnesota nursing homes challenging so-called Rule 49 reimbursement rates established by the state Department of Public Welfare. The case resulted in a month-long court trial, and a decision is expected from the court before the end of 1982.

10. Commencing a lawsuit on behalf of the State of Minnesota against the federal Department of Energy and Standard Oil Company seeking to obtain a proportionate share of reimbursements on gasoline overcharges for a two or three year period. The local federal court dismissed the action against the federal Department of Energy, but the lawsuit against Standard Oil Company is still active and is undergoing extensive pre-trial discovery. Several million dollars in overcharges are at stake.

## POLLUTION CONTROL/WASTE MANAGEMENT

Attorneys representing the Minnesota Pollution Control Agency (MPCA) and Waste Management Board (WMB) provide a variety of legal services. These services primarily involve representing the MPCA and WMB in rulemaking and contested case administrative proceedings and in litigation before the courts. Our office also provides general legal advice and counsel, including drafting, negotiating and reviewing stipulation agreements and contracts on behalf of the agencies.

The statutory authority of the MPCA and the WMB covers a wide range of environmental regulatory duties and responsibilities. Discharges into the waters of the state, emissions into the air, solid wastes, hazardous wastes, and noise pollution are among those matters subject to regulatory control of the MPCA. Selecting appropriate sites for the disposal, storage or processing of hazardous wastes is the primary responsibility of the WMB. The following is a summary of the significant activities that have occurred during the 1981-1982 biennium.

Attorneys for the MPCA have been involved in a number of water quality issues related to the operation of the Metro sewage treatment plant (largest in Minnesota) operated by the Metropolitan Waste Control Commission. We have successfully defended the State in a lawsuit in federal court brought by the State of Wisconsin over the operation of the Metro plant, and we have participated in the negotiation of a consent decree covering the Metro plant in a

lawsuit brought by the U.S. Environmental Protection Agency. We have also represented the MPCA in a contested case hearing regarding the issuance of a discharge permit for the plant.

In other water quality related issues, we represented the MPCA in a lawsuit to recover the State's expenses and attorneys fees in an oil spill case entitled State v. Madsen. The suit resulted in the State recovering \$30,000. Another case (State v. Knudsen) involved a spill of linseed oil. The matter was settled to the satisfaction of the MPCA by the payment to the State of \$11,000.

Our major air quality activity has involved representing the MPCA throughout the rulemaking process on Minn. Rule APC-1. This rule establishes state-wide ambient air quality standards for sulfur dioxide and ozone. The rulemaking process for this rule evolved over a two-year period of time with a significant demand on attorney time and effort. Sixty-two days of hearing were held, over 1,300 exhibits were received and thousands of pages of testimony were transcribed. Difficult and controversial factual and policy issues concerning public health and the environment were part of the process. The rule was published in the State Register on November 8, 1982.

Our office has also assisted the MPCA in developing rules to meet requirements of the federal Clean Air Act for construction of new sources in areas not meeting air quality standards. (Before new sources can locate within such an area, they must find a means of offsetting the additional emissions with a comparable reduction in existing emissions.) Our work has involved negotiations with



various industry representatives, meetings with staff of the Environmental Protection Agency, and rulemaking assistance. Since the EPA's rules on this subject were struck down by the courts soon after the MPCA's rule was submitted to the EPA, it is likely further assistance will be required in the near future.

In addition, we represented the MPCA and the State (through the Office of the Attorney General) in several forums in which acid deposition problems and remedies were discussed. Acid deposition is potentially a very critical problem for Minnesota lakes and other biological resources. This is also likely to be an ongoing matter.

In the solid and hazardous waste area, we have represented the MPCA in rulemaking proceedings on sewage sludge disposal, waste management grants and hazardous waste management and are presently representing the MPCA in major amendments to the hazardous waste rules. We have also been assisting the MPCA in its effort to obtain authorization to carry out the federal hazardous waste management program under the federal Resource Conservation and Recovery Act.

The Waste Management Act of 1980 directed the MPCA to review and certify the intrinsic suitability of sites proposed for metropolitan area solid waste facilities, MWCC sewage sludge and ash disposal facilities and hazardous wastes land disposal facilities. We have represented the MPCA in hearings involving 65 proposed sites.

We have also assisted the Agency in its investigation of several illegal hazardous waste disposal sites. This activity has involved negotiations resulting in the study and/or clean up of

several sites including Ironwood Landfill and sites in Isanti County and the City of Oakdale. We have also initiated or participated in litigation involving the Boise/Onan/Medtronics site in Fridley and the Ironwood site in Spring Valley.

The most significant environmental litigation in which we are representing the MPCA is entitled United States, State of Minnesota, et al. v. Reilly Tar and Chemical Corporation. This case involves hazardous waste materials in the form of coal tars and their derivatives that were allowed to accumulate on the site which the company operated in St. Louis Park, Minnesota. These pollutants have contaminated both soil and ground water over an extremely large area and have recently been found at depths of 600 to 800 feet in a well formerly used in company operations. The ground water pollution has reached major aquifers which serve as public water supplies for a significant portion of the Twin City area. The waste materials involved are highly toxic, containing numerous substances including polyaromatic hydrocarbons (PAH) which are carcinogenic in nature. The case is the most important environmental case in Minnesota and is one of the major cases currently under litigation in the United States.

Representation of the WMB has involved a great deal of time and advice related to program development. Following the passage of the Waste Management Act in May of 1980, a large number of legal questions arose as the Board was formed and the siting processes were initiated. In addition, five sets of rules governing various programs administered by the Board were reviewed by our office.

Legal advice was also provided with respect to several proposed changes in the Waste Management Act.

Our office's work in the hazardous waste siting effort has included representing the Board at 13 processing facility public hearings involving 14 hearing days and 8 disposal facility public hearings involving 20 hearing days. One preliminary injunction action was filed to obtain access to a disposal facility site in order to conduct test drillings.

## COMMERCE

The Attorney General provides legal representation to the Minnesota Department of Commerce, including its four major divisions -- Banking, Insurance, Securities and Office of Consumer Services -- as well as various occupational licensing boards (e.g., Accountancy, Architects and Engineers, Cosmetologists and Electricity).

Banking. Lawyers representing the Banking Division routinely provide day-to-day legal advice to that agency on a broad range of subjects, in addition to handling all litigation involving the division before the Office of Administrative Hearings, as well as state and federal courts. During the last two years, legal representation was provided in approximately 17 cases involving suspensions or cease-and-desist actions against banks, credit unions and savings and loan associations. In addition, at the request of the Commissioner of Banks, lawyers drafted and reviewed numerous specialized orders directing various types of financial institutions to undertake certain remedial actions. Division attorneys also drafted and reviewed various orders of the Commerce Commission and proposed legislation relating to financial institutions. And lawyers participated in drafting all administrative rules promulgated by the Commissioner of Banks, and reviewed and approved those regulations as to form and legality.

There were a number of major actions instituted on behalf of the Commissioner of Banks by the attorneys assigned to the Banking Division. For example, a lawsuit was instituted and is presently pending in federal district court wherein the Attorney General and the Commissioner of Banks sued nine securities broker-dealers for various alleged violations of state and federal banking laws involving the "sale" of All-Savers Certificates. Further, three bank charter decisions were litigated and won before the Minnesota Supreme Court on behalf of the Banking Division. One of them - the Renville case - was a landmark decision in the area of bank charter litigation and established a new standard for appellate review of administrative decisions by the Commerce Commission. A fourth banking case was argued in the Minnesota Supreme Court against the Rose Creek State Bank which interpreted Minnesota's detached facility statute.

There were a number of financial institutions which experienced severe financial difficulties these past two years. Attorneys for the Banking Division placed three credit unions (Willmar, Tenant Company and Zinsmaster) into receivership and did all the legal work necessary to have the National Credit Union Administrator appointed to liquidate those institutions. The Home Savings and Loan Association was put into a conservatorship and thereafter merged into First Federal Savings and Loan Association. Finally, the Farmer and Mechanics Savings Bank was merged into the Marquette National Bank in a landmark situation. In that case, attorneys for the Banking Division provided all of the legal research, document

drafting and representation required by the State of Minnesota as the primary regulator to achieve the merger. This included instituting a court action, drafting the assistance agreement and related documents, as well as coordinating efforts with the FDIC, Federal Reserve Board, Comptroller of Currency, approximately 80 potential bidders, and ultimately with the successful acquirer, Marquette National Bank, its attorneys and accountants.

Securities and Real Estate. Lawyers representing the Securities and Real Estate Division provided daily legal advice to that division and handled both administrative proceedings and civil litigation under the securities, franchise, real estate, subdivided land and collection agency statutes.

In administrative proceedings, the lawyers processed over 250 files involving cease-and-desist orders, orders to show cause and other similar orders of the Commissioner of Securities and Real Estate. Those files involved disciplinary actions as real estate brokers and salespersons. Such actions resulted in license revocation, suspension or other disciplinary measures by the Commissioner. We also conducted proceedings which prohibited the offer and sale of unregistered securities, as well as unregistered franchises and interests in unregistered subdivided lands. Lawyers assigned to this division were involved in numerous lawsuits, including those seeking declaratory judgments against the state with regard to the application of the Minnesota Franchise Act, and actions to enjoin administrative proceedings commenced by the Commissioner. In addition, we provided expertise in securities law

in criminal prosecutions against persons who fraudulently offered for sale investments and who misappropriated customers' funds. Lawyers for the Division also handled claims proceedings under the Minnesota Real Estate Education, Research and Recovery Fund involving hundreds of thousands of dollars. We also defended numerous court appeals from administrative orders of the division issued in disciplinary actions against professional licensees, and we commenced court actions to enforce administrative subpoenas.

Finally, representation and legal advice has constantly been provided the Securities and Real Estate Division in rule-making proceedings.

Insurance. Legal activities on behalf of the Insurance Division included:

1. Advising the division on the propriety of initiating actions to discipline insurance agents and handling the ensuing administration proceedings. Approximately 40 orders were obtained revoking or suspending agents' licenses, imposing civil penalties, or ordering agents to cease and desist certain prohibited practices. Additionally, several other files were reviewed and referred to the appropriate authorities for criminal prosecution.

2. Handling a major investigation of abuses in the solicitation and sale of Medicare supplement insurance to senior citizens in the state. In that investigation and the ensuing prosecutions, we have focused on 12 insurance companies, approximately 15 agencies, and over 75 individual agents.

3. Advising the division on the proper action to take against several companies which were in violation of the Minnesota Unfair Trade Practices Act and reporting requirements.

4. Assisting the division in drafting legislation relating to the regulation of workers' compensation insurance rates and rating procedures. As an outgrowth of the enacted legislation, we represented the division staff's intervention in a major workers' compensation rate hearing.

5. Representing the division in its efforts to promulgate temporary and permanent rules by providing legal advice and counsel during the drafting process and the formal rule-making hearings.

6. Advising the division on the proper procedure for implementing new insurance laws and providing day-to-day legal advice on legal matters.

7. Advising the division on applications for approval of the purchase of insurance companies, two of which involved initiating contested case proceedings.

8. Representing the division and the Commissioner of Insurance in approximately 15 lawsuits challenging certain provisions of the Minnesota Comprehensive Health Insurance Act, the Minnesota No-Fault Insurance Act and assorted other statutes, as well as judicial appeals of various agency decisions and orders, or challenges to the agency's authority.

Consumer Services. Representation is provided to the Office of Consumer Services (OCS), including the residential utility unit, the complaint mediation unit and, since 1981, the cosmetology unit.



During the past two years, lawyers have represented the OCS as a party-intervenor in approximately 25 cases before the Public Utilities Commission. Such cases have involved complex telephone, electric and gas rate-setting proceedings. In addition, lawyers have appeared in district court and the Minnesota Supreme Court in nine cases where judicial review was sought. Lawyers have also provided advice to the OCS regarding ancillary proceedings pending before the Federal Energy Regulatory Commission and have helped to coordinate the representation of OCS and its clientele, Minnesota's residential utility users, before that agency in Washington, D.C.

Lawyers provided daily advice to the OCS investigative staff regarding ongoing consumer complaints, and have negotiated and secured several assurances of discontinuance, as well as injunctions, against domestic and foreign companies doing business in Minnesota. Legal assistance has also been provided with respect to the interpretation and enforcement of OCS rules. Since July, 1981, lawyers have also provided day-to-day legal representation of the OCS in cosmetology related matters.

Licensing Boards. Legal representation and investigative services are provided to the following occupational licensing Boards: Abstracters, Accountancy, Architecture and Engineering, Barbers, Electricity and Watchmaking. In addition to responding to routine requests for legal advice, lawyers representing each of these Boards coordinate the investigation and ultimately handle contested cases involving disciplinary

## HEALTH

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

The number of complaints pending at the beginning of the FY '81 was 188. During the biennium, 433 additional complaints have been referred to the Division by the licensing boards. Two hundred twenty-five of those new complaints required investigation. After a complaint has been verified by investigation, the licensee is often summoned to appear at a disciplinary conference. A total of 187

disciplinary conferences were held during the biennium, a substantial increase from the total number of disciplinary conferences held during the previous biennium. The types of discipline that can result from these conferences range from a reprimand to a revocation of a professional's license.

The Division was involved in a total of 80 new contested cases during the past biennium. These contested cases involved appeals of assessments issued by the Department of Health against health care facilities for violations of Department rules and disciplinary actions against persons or facilities licensed by the Department or the licensing boards.

Seventeen new lawsuits were handled by the Division. The Division's attorneys also represented the State's health agencies in 20 rulemaking proceedings.

In addition, the Division assisted its clients in its day-to-day activities by providing legal advice and opinions, reviewing contracts, assisting with citizen correspondence and inquiries, investigating and engaging in contested personnel matters, and providing many other services related to the legal needs of the clients.

## EMPLOYEE RELATIONS

The Department of Employee Relations is the central personnel office for state government. It has two major divisions. The Personnel Division of the Department develops and carries out personnel policies, is responsible for recruiting and testing applicants for positions in the state service; for developing classification and compensation plans; for developing and carrying out state-wide equal opportunity plans; for providing services in the area of employee training and performance appraisal; and for selection and administration of state employee insurance benefits plans. It also administers the Inter-governmental Personnel Act program for the state of Minnesota; federal social security coverage for all state and local government employees; provides testing services for local governments; and certifies the bi-weekly state payroll period.

The other major division, the Division of Labor Relations, is headed by the State Labor Negotiator. This division represents the state as the employer of state employees for purposes of the Public Employment Labor Relations Act. It is responsible for representing the state in collective bargaining with all state employee unions including negotiations, coordinating administration of employee grievances, representing the state in all grievance arbitrations, and collective bargaining contract interpretation and administration. All collective bargaining agreements must be approved by the legislature.

In 1981 and 1982, the legislature repealed Minnesota Statutes Chapter 43 and replaced it with a new revised Chapter 43A.

The equivalent of two full-time attorneys has represented the Department of Employee Relations. During the past biennium, these attorneys have handled or assisted in approximately 25 district court cases, and were involved in extensive litigation during the three-week 1981 AFSCME strike. They have approved numerous contracts for form and execution, advised the Department regarding a wide variety of legal problems arising in and out of the collective bargaining process. They have also assisted the Department in drafting legislation; worked on three administrative rules promulgation proceedings, approximately 20 Human Rights Department charges, and several contested cases. In addition, they consulted with and advised, on an almost daily basis, other attorneys on the Attorney General's staff regarding personnel-related problems, drafted and assisted in formulating Attorney General's opinions in the subject area; and conducted arbitrations for the Department.

## OCCUPATIONAL SAFETY AND HEALTH

District Court. We commenced 20 actions to collect occupational safety and health penalties levied in amounts over \$100. It was necessary to obtain judgments in some cases. Five cases were brought to the district court under the Minnesota Administrative Procedures Act.

Administrative Hearings. Two hundred and ninety-eight administrative appeals were taken by Minnesota employers and employees from occupational safety and health citations and civil penalty assessments were handled by our attorneys. In addition, our attorneys represented OSHA in 13 appeals from hearing examiner decisions to the Occupational Safety and Health Review Board.

Search Warrants. We filed district court applications for 23 administrative search warrants.

## LABOR AND INDUSTRY

The Attorney General's main task is to give day-to-day legal advice to the Commissioner and to the various divisions of that department: Labor Standards, Fee Employment Agency Licenses, Boiler Inspection, Apprenticeship, and the newly legislated Rehabilitation Division, which includes a review panel appointed by the governor (Minn. Stat. § 176.102).

Attorney General's opinions were written as problems arose.

## SPECIAL COMPENSATION FUND

The legal problems of the Special Compensation Fund are handled by the Attorney General. Three attorneys are occupied entirely with Fund problems, and one is occupied half-time. The Fund has three tasks:

- (1) To encourage employers to hire persons with physical impairments. (Minn. Stat. § 176.131)
- (2) To provide workers' compensation benefits to employees of uninsured employers, and to pursue subrogation claims against those employers. (Minn. Stat. § 176.183)
- (3) To pay supplemental benefits to those long-time disabled employees being paid the low rates of years past. (Minn. Stat. § 176.132)

The Fund disburses about \$40 million per year.

In the 1981-82 biennium, the Fund attorneys were involved in about 1,200 claims, and the consequent settlements, pre-trials and hearings. The Fund was involved in about 70 appeals to the Workers' Compensation Court of Appeals. The Fund was a party in six Supreme Court appeals.



## ADMINISTRATIVE AGENCIES

Our attorneys in this office unit provide all legal services to the Departments of Administration, Finance, Military Affairs, the State Treasurer, Armory Building Commission, Capitol Area Architectural and Planning Board, Council on Black Minnesotans, Designer Selection Board, Executive Council, Intergovernmental Information Systems Advisory Council, Office of Administrative Hearings, Spanish Speaking Affairs Council and the State Board of Investment. Additionally, our attorneys review administrative rules as to form and legality, provide legal assistance on all state computer purchases, review contracts prepared by and render advice to the Governor, State Auditor and Minnesota Supreme Court and respond to numerous citizen inquiries in various legal areas.

Our work included:

Litigation. We:

- o Participated in and ultimately settled one case before the United States Supreme Court.

- o Won one case before the 8th Circuit Court of Appeals and filed an amicus brief in an action before the 9th Circuit Court of Appeals.

- o Settled one Federal District Court case and became involved in two pending Federal District Court matters.

- o Participated in 13 State District Court cases, prevailing in six, settling two, with five suits still pending.

o Handled six contested cases, winning two, settling three, with one case pending.

Citizen advice. We:

o Responded to approximately 2,300 citizen inquiries, primarily in the areas of public purchasing, administrative law, data practices and real estate.

Client advice. We:

o Responded to approximately 19,000 requests for advice from our various clients.

State acquisition of electronic data processing devices. We:

o Assisted our clients with innovative contracting and financing plans which have saved the State approximately \$1 million in the past two years.

Document preparation and approval. We:

o Drafted approximately 800 legal instruments.

o Reviewed more than 7,000 contracts as to form and execution.

Administrative rule activities. We:

o Participated in ten rulemaking proceedings.

o Reviewed approximately 200 sets of administrative rules as to form and legality.

## LEGISLATION

Over the last biennium, the legislature acted favorably on a number of proposals which we drafted and pushed. Among these bills was a measure designed to get drinking drivers off the road faster. Another bill raises the degrees for murder from second to first and from third to second for many homicides. The bill also increases mandatory prison sentences for crimes committed with firearms. Still another new law requires all consumer contracts to be written in plain language so they can be better understood.

DEPARTMENT OF REVENUE

Legal services for the Department of Revenue included:

Minnesota Supreme Court: 21 cases won, 3 lost and 24 pending.

Minnesota Tax Court: 85 cases won, 30 lost, 308 cases settled and 435 pending.

District Court: 5 cases won, 3 lost, 283 cases settled and 442 pending.

Probate Court: 1 case settled and 6 pending.

A total of \$2,711,611.29 was collected in taxes. Remaining to be collected are 4,743 accounts.

## ECONOMIC SECURITY

We represented the Department of Economic Security as follows:

Collection Activities to recover taxes, interest and penalties under the Minnesota Employment Services Law. This included 1431 suits in the district courts, and participation in probate and bankruptcy matters. This activity yielded \$1,164,087 in recovered taxes.

Other activities. The Department was represented in 197 cases before the Minnesota Supreme Court in matters involving unemployment compensation.

Approximately 1800 grants and contracts were approved by us as to form and execution for the Department.

## RETIREMENT AND VETERANS

Attorneys in this specialized area provide legal services to the Department of Veterans' Affairs, the State Historical Society, and the Retirement Funds--MSRS, TRA, PERA.

This service is primarily involved with providing day-to-day legal advice. However, we also handled twelve lawsuits of which seven were still open at the end of the biennium.

## REAL ESTATE

The Real Estate Division is responsible for litigation of eminent domain actions and real estate lawsuits involving the state and its agencies. We provide land title examinations services for real property acquisitions by the state.

Over the last biennium we completed 382 title requests and processed 2,607 title requests completed by the Department of Transportation. We completed 751 Direct Purchase transactions. We reviewed and approved 278 state 'H' leases (state owned land leased to others), 62 regular leases (private lands leased by the state for public purposes), and prepared 26 petitions, notices of hearings and orders concerning county and joint county ditches. We also took two watershed district appeals.

Other facets of our work involve condemnation proceedings. Legal action generated by that activity may be broken down as follows:

Petitions:	
Hearings	80
Number of Parcels	419
Stipulations amending petitions	24
Partial dismissals modifying Petitions	6
Dismissal of parcels from proceedings	160
Commissioners Hearings & Viewings	637
Reports of Commissioners:	
Filed	164
Number of Parcels	476
Appeals taken by State from awards	83
Settlements	92

Settlement stipulations	69
Trials	19
Stipulations in lieu of judgment	10
Final Certificates Processed	85
Supreme Court Appeals:	
Appeals taken during period	11
Appeals decided	8
Appeals pending for period	7



## WELFARE

The legal representation of the Department of Public Welfare falls into several general categories: legal advice, affirmative litigation, public assistance cases, other miscellaneous major lawsuits.

The State Welfare Department annually publishes approximately 100 Instructional Bulletins and 84 Policy Bulletins to county welfare departments, state nursing homes and hospitals, community mental health centers, and other entities for whom it has responsibility or concern. We review many of these Bulletins prior to their publication. Each year the Department enters into approximately 200 contracts. Each of these contracts is approved as to form and legality by legal staff. The Department requires a great deal of legal advice in its dealings with the Legislature, in answering inquiries from local welfare departments and mental health facilities, in addressing issues arising at state hospitals under the Minnesota Commitment Act, and in responding to its many constituents.

The Department initiates a great deal of affirmative litigation. At the end of FY 1982 the Department had approximately the following number of cases pending:

670 nursing home rate appeals (including facilities for retarded persons).

150 Workers' Compensation Interventions (to recover from insurers the expenses paid by Medicaid).

66 hospital collections cases (enforcing the obligation of persons to pay for their treatment in state hospitals according to their ability to pay).

10 vendor fraud cases (to recover from doctors, dentists and other Medicaid vendors monies paid due to administrative error, fraud, or abuse).

In most of the Department's litigation it appears as the defendant. At the end of FY 1982 the Department had pending approximately 200 public assistance appeals in which individuals contested the reduction, termination or denial of welfare benefits. While we defer to the county attorneys to defend most of these cases, we monitor all of them and participate in those which may have statewide import.

In the past fiscal year several major lawsuits have demanded a considerable amount of attorney time. In the fall of 1981, the Congress enacted the Omnibus Budget Reconciliation Act which made numerous, substantial changes in several welfare programs. Many of these resulted in reduced payments to low income people and much litigation resulted. In addition, the federal government has significantly increased actions in which it has refused to contribute its "federal matching share" for certain Medicaid expenditures made by the Department. In an effort to force the federal government to make its contribution, the Department has had to initiate several federal lawsuits. Both the Reconciliation Act cases and the Medicaid funding cases involve millions of dollars apiece.

Two other federal lawsuits have continued to linger and demand considerable time. One concerns the level of care provided by the Department to mentally retarded persons in state hospitals and the other concerns the formula by which the Department sets the reimbursement rate for nursing homes under the Medicaid program.

Another frequent type of litigation has stemmed from the Department's occasional failure to promulgate its policies in the form of rules. Half a dozen cases in the last year have been brought in state court challenging the Department's failure to promulgate rules.

## TRANSPORTATION

This division provides all legal services required by the Department of Transportation (Mn/DOT) including trial litigation, except for right of way matters and the defense of tort cases. The services performed by the division include contract drafting and the review and approval of all contracts entered into by Mn/DOT; the investigation, negotiation and resolution of contract disputes, the conduct of all contested cases, their appeals and rule making hearings; assisting Mn/DOT in securing permits from other state and federal agencies; and the collection of property damage claims. Outside of Mn/DOT, the division provided some of the legal services required by the Department of Energy, Planning and Development, and assisted, as necessary, the Small Business Finance Agency. The division also aided other divisions and state agencies with respect to building construction claims and lawsuits and defended some transportation related tort cases. Since April of 1982, the division has assisted the Department of Public Safety in collecting civil penalties which are imposed on truckers and shippers who violate the maximum weight law. The following helps to summarize this division's work over the past two years:

1. It had 29 highway construction contract cases pending at the outset of the biennium (July 1, 1980). Fourteen new contract cases were filed and 20 were resolved during the biennium.

2. It had one highway environmental case pending at the onset of the biennium. Three cases were filed and two were resolved.
3. It filed one and closed one civil rights case.
4. It had two railroad cases pending at the onset of the biennium, two cases were filed and one was closed.
5. It had 15 property damage collection cases pending at the beginning of the biennium. Subsequently 85 more were filed and 77 were resolved. Property damage collections for Mn/DOT amounted to \$139,661 in the biennium.
6. It assisted the Department of Public Safety in collecting \$77,135 (April 1 - June 30) in civil weight penalties.

In addition to this activity, members of the division represented the State in seven contested case hearings and five rule hearings, assisted in eight legislative claims and, from Department of Administration statistics, reviewed and approved 3856 contracts.

## OPINIONS

Several opinions rendered during the biennium warrant mention:

### Building Code

A city adopting the State Building Code may enforce the code in newly annexed territory.

Op. Atty. Gen.  
59a-9  
January 14, 1981

### Education

Minimal due process including an opportunity to be heard is required prior to exclusion of a child from school for non-compliance with vaccination requirements.

Op. Atty. Gen.  
169W  
July 23, 1980

School districts must provide transportation to nonpublic school students during closure of public schools due to a strike.

Op. Atty. Gen.  
166a-7  
September 14, 1981

A school district is responsible for the costs of special education and transportation despite the fact that a placement is made by county welfare. Whether the school district is also responsible for board and lodging costs associated with the placement depends upon the purpose of the placement. A school district is primarily responsible for providing an appropriate program for a handicapped child so placed, but need not directly provide the special education services itself to fulfill the responsibility.

Op. Atty. Gen.  
169-d  
July 24, 1981

#### Elections

Redistricted counties are required to tally all persons transferred into and out of each commissioner district to determine whether the resulting changes are significantly minor to exempt the district from mandatory post-redistricting elections.

Op. Atty. Gen.  
789-d  
October 17, 1981

#### Holidays

Local units of government may designate Columbus Day or the Friday after Thanksgiving or neither or both as holidays. Public business can't be transacted on holidays, but employees may be allowed paid absence on non-holidays.

Op. Atty. Gen.  
276  
September 29, 1980

### Home Rule Charters

A city may not limit by charter the number of terms which a person may serve in elective city office.

Op. Atty. Gen.  
59a-29  
April 14, 1981

### Liquor

Cities are required to hold a referendum on continued operation of a municipal store when its population first exceeds 10,000 regardless of when the store was established.

Op. Atty. Gen.  
218 R  
October 13, 1980

City may limit hours and days of liquor sale otherwise permitted under Sunday on sale licenses.

Op. Atty. Gen.  
218-g-19  
January 9, 1981

### Public Officers and Employees

A county is not authorized to reimburse a deputy sheriff for costs of defense against a criminal charge.

Op. Atty. Gen.  
125-1-25  
July 28, 1980

### Utilities

Late-payment charges made pursuant to tariffs approved by Public Utilities Commission are not governed by usury limits.

Op. Atty. Gen.  
624-c-4  
October 13, 1980



## Zoning

A balancing of interests test is to be used in determining the extent to which property owned by a school district is subject to local zoning control.

Op. Atty. Gen.  
59a-32  
October 24, 1980

Minn. Stat. §§ 245.781-.812, 252.28, and 462.357, subd. 7, preclude a local zoning authority from: (1) prohibiting the operation of foster care facilities based upon the age of their residents, (2) requiring foster care facilities serving from 4 to 6 residents from obtaining a conditional use permit, (3) prohibiting day care homes serving 6 to 10 children from operating in a single-family residential zone, and (4) requiring day care facilities serving 5 or fewer children in a single-family residential district from first obtaining a conditional use permit.

Op. Atty. Gen.  
477b-34  
April 26, 1982

## MINNESOTA HOUSING FINANCE AGENCY

In addition to the services of bond counsel appointed by the Attorney General, we provide legal advice to the Board of the Minnesota Housing Finance Agency. This includes matters relating to bond and note sales not within the purview of bond counsel's opinions. We provide all legal documentation and advice relating to legislative matters and to the commitment, disbursement, and security of loans and grants made by the Agency.

During the fiscal years ending June 30, 1981 and June 30, 1982, we provided legal advice relating to four revenue bond sales totaling \$105,480,000.

Our attorneys handled 45 multi-family initial loan closings for a total principal amount of \$64,823,252. We also handled the final loan closings for 87 multi-family developments.

In addition, we closed 12 multi-family construction loan participations with private lenders in the total amount of \$26,223,320; together with an innovative energy efficient loan for a total principal amount of \$626,000 and a turnkey loan for a total principal amount of \$4,545,000.

We also handled the closing for 20 home construction projects for the developmentally disabled, which were for a principal amount of \$3,965,214.

We have provided legal advice on an ongoing basis concerning the acquisition, servicing, and disposition of the loans in the Agency's portfolio.

We have assisted the Agency in drafting its legislative programs; and have provided all legal services relative to the drafting of the instruments for the making or acquisition of the loans funded with the proceeds of the bond sales referred to above, and the instruments relating to grant programs administered by the Agency.

## HUMAN RIGHTS/CORRECTIONS

The bulk of the work we performed for the Department of Human Rights was representation of the Department before administrative hearing examiners (complaints of discrimination are first heard here) and in the state district and supreme courts, which function as appellate courts in human rights cases. In addition, prior to issuing a complaint and sending a matter on for hearing before a hearing examiner, we attempt to resolve contested cases by settlement.

In the past biennium, we resolved 111 cases of discrimination through the above process. Those resolutions included the payment of \$253,918 in damages to persons filing charges of discrimination. In addition, pregnancy disability benefits for women in State v. 3M amounted to \$926,000. Finally we resolved a number of disputes over employment, reemployment and promotion as well as obtaining restoration of seniority and other fringe benefits. These agreements also contain promises to cease and desist from such discriminatory practices as refusal to grant maternity leave and disability pay; and failure to provide equal medical insurance benefits on the basis of sex.

The majority of the services which we provide to the Department of Corrections falls generally into two categories. The first consists of daily legal advice in written or oral form as to the legal consequences of actions or proposed actions. The second consists of providing representation in lawsuits brought in state

and federal court concerning the actions of the Department of Corrections and the activities of its personnel. During fiscal years 1981-82 we represented the Department of Corrections in 158 legal actions. Of these matters, 115 were closed during that period. In addition, we represented the Department of Corrections with respect to claims made before the Legislative Claims Committee. One hundred thirty-nine such matters were opened, 96 of which were closed. Finally, a department attorney serves as the executive secretary for the Pardon Board. In this capacity, he handled 76 applications for pardons/commutation.

## EDUCATION

Our lawyers represent the Community College Board, Department of Education, State University Board, Board of Teaching, Higher Education Coordinating Board, and Higher Education Facilities Authority.

While a majority of our efforts were expended in rendering advice on legal problems related to the operation of our clients' programs, we also were involved in providing a significant amount of advice to local governmental units. We issued four formal opinions and 15 informal letter opinions and responded to approximately 605 letters and calls from people in local government. In addition, we responded to approximately 1,100 citizen calls.

Some of our other responsibilities included 20 rule making hearings, investigated 40 complaints against teachers, 24 contested cases and 12 separate discrimination claims filed with various state and federal agencies.

Some of our most significant work involved litigation. We were involved in 61 lawsuits, of which 28 are pending.

ENVIRONMENTAL QUALITY BOARD  
& STATE PLANNING AGENCY

The Environmental Planning unit represented the Minnesota Environmental Quality Board, and the State Planning Agency which included the State Demographer, Office of Local and Urban Affairs, Human Resources Planning, Developmental Disabilities, and the Governor's Council on Rural Development. In addition to providing day-to-day legal advice and representing these clients in all legal proceedings, the unit assists the clients by: drafting model ordinances on the subject of environmental review processes, reviewing local governmental ordinances concerning environmental review processes which include Environmental Assessment Worksheets (EAW's) and Environmental Impact Statements, (EIS's); participating in the hearing mechanisms established for power plant and power line siting; assisting in the monitoring of the critical areas program; drafting and reviewing proposed legislation, rules and contracts for the clients.

During the last biennium, this unit was involved in 21 lawsuits of which fourteen are closed. It was involved in six rule-making proceedings. It participated in two major electrical transmission line hearings. It was also involved in 26 Environmental Impact Statement (EIS) proceedings.

## UTILITIES/ENERGY/AGRICULTURE

We appeared in 14 lawsuits on behalf of the Public Utilities Commission, three lawsuits on behalf of the Energy Agency, and eight lawsuits on behalf of the Department of Agriculture.

Most of the Public Utilities Commission appeals involved the defense of Public Utilities Commission orders. Of this number, three were from bus and truck orders concerning the regulation of trucking authority, four concerned telephone matters, seven gas and electric rates and other issues.

We were before the Minnesota Supreme Court twice for the Commission and once for the Department.

We have represented the Department of Public Service in 29 rate cases in which the role of the Department is to represent the public interests as an intervenor in the proceedings. Attorneys from our office have also advised the Commission in all of the rate cases and other matters that have been presented to the Commission. We have assisted the Commission in two rulemaking proceedings and in two proceedings before the Federal Energy Regulatory Commission.

On behalf of the Energy Agency, we have actively participated in eight contested cases, 13 rulemaking proceedings, and have represented the Agency in two state court and one federal court matters.

We have represented the Department of Agriculture in four contested case and have given general assistance to the Department of Agriculture, Board of Animal Health, Humane Society and the Public Employees Retirement Association.



## TORT CLAIMS

The Tort Claims Division was first established in 1976 in response to abolition of state tort immunity by the Minnesota Supreme Court. Since that year, claims have been growing in seriousness and the dollar amount paid out by the Stte has been showing a consistent escalation. In 1982, the State, for the first time, paid out more than \$1 million in tort claims in a single calendar year.

The Division continues to process around 475 claims a year and is currently defending the state or its officers in some 175 tort cases. These cases are in every part of the state and in every court of the state, as well as in federal courts.

## NATURAL RESOURCES

Our attorneys representing the Department of Natural Resources are responsible for enforcing all state laws concerning the use and protection of Minnesota's natural resources including the state park system, hunting and fishing restrictions, Indian tribal and reservation matters, the Minnesota Wild and Scenic Rivers Act, as well as timber and resource development.

Over the last biennium, our work can be summarized as follows:

We litigated a good number of District Court cases which are categorized below:

Condemnation	1	Pending
	<u>4</u>	Closed
Total	5	
Car Confiscation	2	Pending
	<u>9</u>	Closed
Total	11	
Quiet Title Action	1	Pending
	<u>1</u>	Closed
Total	2	
Title Registration Actions	11	Pending
	<u>75</u>	Closed
Total	86	
Other Federal, Supreme, District, and Municipal Court Matters	79	Pending
	<u>49</u>	Closed
Total	128	

In addition:

We participated in 122 public hearings before the Commissioner of Natural Resources.

We prepared 82 orders for the department, the greatest number concerning game and fish and appointment and delegation.

We pursued 83 delinquent timber accounts and collected \$54,617.46.

We participated in 62 land exchange actions.

We drafted 45 bills for the DNR and other agencies served by the staff.

We processed 10 legislative claims, and wrote 14 formal opinions.

We collected in fish and wildlife kills \$47,672.26.

We approved 5,255 contracts for form and execution.

We examined abstracts, wrote title opinions and prepared deeds for tracts of land acquired by the state.