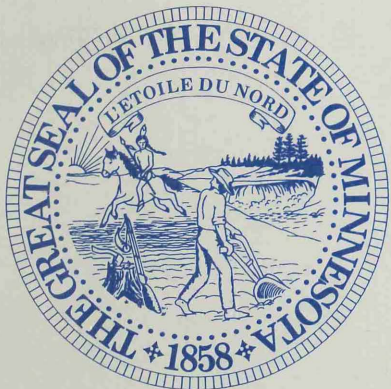




3 0307 00006 2086

~~2 copies~~  
4 copies

861647



STATE OF MINNESOTA

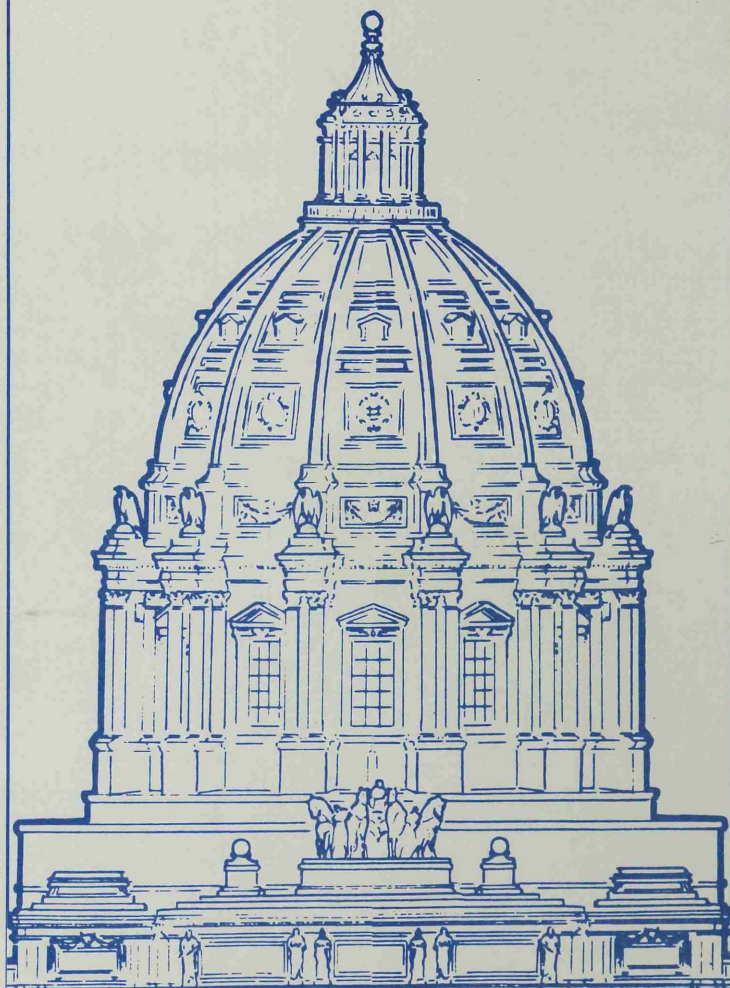
HUBERT H. HUMPHREY III  
ATTORNEY GENERAL

# BIENNIAL REPORT

---

---

OFFICE OF THE  
ATTORNEY GENERAL



LEGISLATIVE REFERENCE LIBRARY  
645 State Office Building  
Saint Paul, Minnesota 55155

KFM  
5827.5  
.A8  
A133ax  
1985/86

Pursuant to Mn Stat 8.08



HUBERT H. HUMPHREY, III  
ATTORNEY GENERAL

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

**ST. PAUL 55155**

ADDRESS REPLY TO:  
102 CAPITOL BUILDING  
ST. PAUL, MN 55155  
TELEPHONE: (612) 296-6196

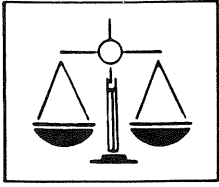
The Honorable Rudy Perpich  
Governor of the State of Minnesota  
State Capitol  
St. Paul, Minnesota

Pursuant to Minn. Stat. § 8.08, this report is respectfully submitted, highlighting the legal activities of the Office of the Attorney General on behalf of the state and its citizens for the 1985-86 Biennium.

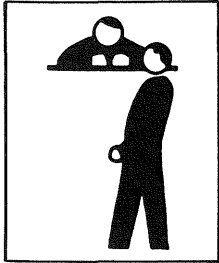
Best regards,

  
HUBERT H. HUMPHREY III  
Attorney General

# TABLE OF CONTENTS

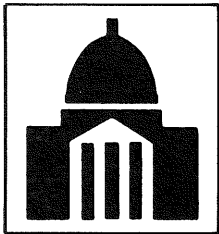


## **I. RESPONSIBILITIES OF THE ATTORNEY GENERAL'S OFFICE ..... i**



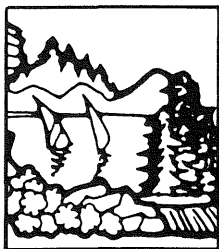
## **II. PUBLIC PROTECTION ..... 1**

- A. Criminal Investigations and Prosecutions ..... 1
- B. Crime Victims' Rights ..... 3
- C. Consumer Protection ..... 3
- D. Antitrust Enforcement ..... 6
- E. Medicaid Fraud Prosecution ..... 7
- F. Regulation of Charities and Trusts ..... 8
- G. Highway Safety ..... 9
- H. Business Regulation ..... 10



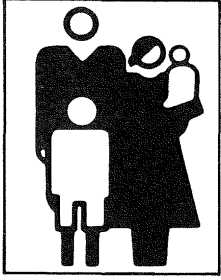
## **III. PUBLIC ADMINISTRATION ..... 13**

- A. Tort Claims Defense ..... 13
- B. Tax Litigation ..... 14
- C. Administrative Agencies ..... 15
- D. State Employee Relations ..... 17
- E. Protection of Workers ..... 18
- F. Public Utility Users ..... 19

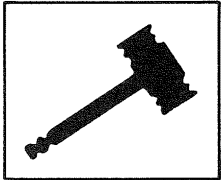


## **IV. PUBLIC RESOURCES ..... 22**

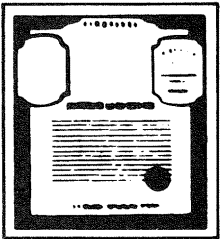
- A. Environmental Protection ..... 22
- B. Natural Resources Management ..... 23
- C. Farm Initiatives ..... 25
- D. Agricultural Regulation and Protection ..... 26
- E. Transportation ..... 27
- F. Utility Regulation ..... 29



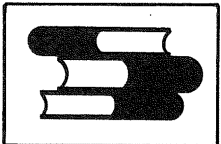
<b>V. PUBLIC ASSISTANCE</b>	31
A. Human Services	31
B. Human Rights	32
C. Health	33
D. Education	34
E. Housing	35
F. Unemployment	35
G. Residential Utility Users	36
H. Economic Development	37



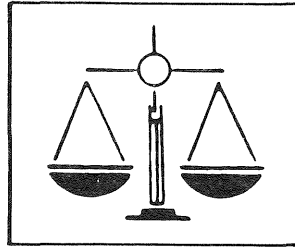
<b>VI. SOLICITOR GENERAL'S OFFICE</b>	38
---------------------------------------	----



<b>VII. LEGISLATION</b>	39
-------------------------	----



<b>VIII. OPINIONS</b>	40
-----------------------	----



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

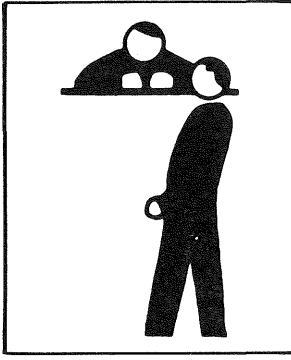
The Attorney General is the chief legal officer of the State of Minnesota. His duties stem from the Constitution, state statutes, and common law. He is the attorney for all state officers, departments, boards and commissions. He represents them in all matters pertaining to their official duties. He interprets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

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

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

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

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



# PUBLIC PROTECTION

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

## CRIMINAL INVESTIGATIONS AND PROSECUTIONS

The Attorney General's Office provides prosecutorial assistance on both the trial and appellate levels to the State's eighty-seven county attorneys. The assistance is concentrated especially on handling criminal appeals before the Minnesota Court of Appeals and in the State Supreme Court. However, upon request of a county attorney, the Attorney General also handles prosecution of many types of complex crime, ranging from brutal murders, to child sexual abuse, to odometer spinning, to sophisticated white collar schemes. During the past biennium, increasing emphasis has been placed by the Attorney General on prosecution of hazardous waste law violators and state tax law violators — two areas of law enforcement which have received little attention in the past.

The Attorney General's Office handles the criminal appeals for Minnesota's eighty-seven counties, except the five largest; assists in police training through lectures and classes; and contracts for training for prosecutors statewide. The office also provides full legal services to the Bureau of Criminal Apprehension, the Governor's Extradition Staff, and the Minnesota Sentencing Guidelines Commission.

In the past biennium the Attorney General has assisted in the investigation of, and prosecuted, numerous criminal matters throughout the state. Among the many cases handled in the July 1, 1984 — June 30, 1986, biennium are:

1. **The Scott County Investigations.** In Fall, 1984, at the request of the Scott County Attorney, the Attorney General assumed prosecution responsibility for any charges which may have arisen out of a then ongoing joint FBI/BCA criminal investigation into numerous allegations of homicide and child sexual abuse in Scott County. The investigation revealed that it was not possible to bring any new charges. However, the Attorney General did issue a comprehensive report on the Scott County investigation on February 12, 1985. That report answered many of the questions in the case and, furthermore, initiated an ongoing re-evaluation of how child sexual abuse cases are handled in Minnesota.

2. **State v. Iverson (Mower County).** A homicide case in which the defendant, a member of a southern Minnesota motorcycle gang, was convicted in the death of a local drug dealer who was killed and robbed during an illegal drug transaction.

3. **State v. Orville Spicer (Rice County).** A grand juror in the Iverson case (above), pled guilty to attempting to swindle money from one of the grand jury witnesses.

## Public Protection

4. **State v. Edwin Johnson et. al.** (Polk County). Defendants pled guilty to a theft by swindle scheme in which they stole almost \$7,000 from the Minnesota Emergency Employment and Development program.

5. **State v. William and Patricia Fields** (Mille Lacs County). A county commissioner and his wife were convicted for committing food stamp fraud.

6. **State v. Torkelson** (Swift County). A homicide prosecution for the death of a newborn infant at the hands of its young unwed mother, resulted in a conviction for second degree manslaughter.

7. **State v. Myron Kruse** (Rock County). The former president of the Beaver Creek State Bank was prosecuted and convicted for the theft of approximately \$400,000 in bank deposits from State Retirement funds.

8. **State v. Simon Scotting** (Murray County). A double homicide case resulted in guilty pleas to two counts of intentional murder by a Murray County farmer, for the deaths of his wife and an elderly friend.

9. **State v. Fulton** (Anoka County). Defendant was found guilty of odometer spinning and theft in June, 1985.

10. **State v. Theron Nelson** (Douglas and Anoka Counties). A multi-million dollar securities fraud case charged theft by swindle against an out-of-state operator. Defendant pled guilty in January, 1986.

11. **State v. William Jordan** (Stearns County). In a securities fraud and theft by false representation prosecution, the defendant pled guilty on the day of trial.

12. **State v. De Lare** (Stearns County). Defendant conducted a phony investment scheme involving numerous victims for which he was charged with several counts of theft by swindle. He pled guilty and on June 16, 1986, was sentenced to 41 months imprisonment.

13. **State v. Lagerquist** (Wabasha County). This was a sales tax evasion case in which defendant filed false sales and use tax returns. On September 11, 1985, defendant pleaded guilty.

14. **State v. Gilberg** and **State v. Schrupp** (Kandiyohi County). This was a case of theft by false representation committed by two defendants who stole more than \$56,000 from a retired 83-year-old man through a series of elaborate lies. Defendants pleaded guilty and were sentenced to prison terms in Summer, 1985.

15. **State v. Paul Ray** (Norman County). This was a theft by false representation and cattle rustling case against a suspended attorney. Defendant was convicted of all counts after a trial held in Spring, 1985, and sentenced to a jail term.

16. **State v. Emmanuel Serstock** (Hennepin County). The former chief prosecutor of Minneapolis was indicted for a broad pattern of illegal ticket fixing. The case has been tied up in pre-trial appeals since last January.



### CRIME VICTIMS' RIGHTS

In 1984, 1985, and 1986, the Attorney General played an instrumental and central role in developing crime victims' rights legislation. In 1984, Attorney General Humphrey established a Crime Victims and Witness Task Force to study the role of victims and witnesses in the criminal justice system. The Task Force proposed several statutory changes. With the Attorney General's support, the recommended changes were enacted into law by the state legislature in 1985. This legislation created the Crime Victims and Witness Advisory Counsel and a Crime Victims Ombudsman. The Attorney General has played a leading role in granting crime victims and witnesses participation in the criminal justice system and in shaping the criminal justice system's treatment and perception of victims and witnesses.

The Attorney General represented the Crime Victims Reparations Board in over 80 contested case hearings in 1984. Although the number of contested cases dropped markedly in 1985, the Attorney General continues to defend the board's actions in these proceedings before the Office of Administrative Hearings. The Attorney General has also played an important role in recommending changes to the Crime Victims Reparations Act. Many of these recommended changes were adopted by the board and enacted during the 1986 legislative session.

### CONSUMER PROTECTION

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

The Attorney General's consumer protection activities are divided into two separate but coordinated units — the Enforcement Unit and the Consumer Services Unit. This structure was designed when the Office of Consumer Services was merged by legislative action into the Attorney General's Office in July of 1983. Before July, 1983, the Office of Consumer Services was part of the Minnesota Department of Commerce.

Our Consumer Services Unit is composed of professional mediators, complaint analysts and support staff. They handle inquiries and complaints from consumers and attempt to mediate voluntary settlements of disputes between individual consumers and companies. Their efforts recover approximately \$750,000 annually in direct monetary compensation to consumers. In addition, they operate a telephone consumer "Complaint Line" which assists more than 60,000 consumers annually. The Attorney General's Office has continued and expanded the "Circuit Rider" program. Complaint Mediators travel regularly to 19 cities throughout the state to assist consumers more directly with their problems. In addition, we continue to maintain an office in Duluth to provide more immediate assistance to the residents of northeastern Minnesota. We also prepare and distribute a wide range of educational brochures and informational materials as well as providing public speakers for various groups.

Another service provided by the Consumer Services Unit is the Farm Home Preservation Hotline. The Hotline is a clearinghouse and resource for homeowners and farmers faced with the threat of mortgage foreclosure. Since its inception in June, 1983, this program has assisted approximately 7,000 Minnesotans. In assisting farmers and homeowners that face mortgage problems, our office does provide informational material on their legal rights.



## Public Protection

The Enforcement Unit is composed of attorneys, investigators and support staff. During the biennium, we have conducted over 150 investigations and have initiated approximately 37 formal consumer protection legal actions. Our actions have resulted in approximately \$100,000 in civil fines and legal costs against defendants and several million dollars in refunds to consumers.

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

1. A formal legal settlement obtained in cooperation with the Commissioner of Commerce, requiring ITT Consumer Financial Corporation, one of the nation's largest loan and thrift companies, to offer \$6,700,000 in refunds to more than 40,000 Minnesotans, in settlement of allegations that insurance policies were added fraudulently to consumers' loans.

2. Ongoing investigation of a number of retailers for deceptive pricing policies. In a formal legal action, Berman's Inc., the nation's largest leather retailer, paid a civil penalty of \$40,000 and became bound by a permanent injunction, nationwide in effect, in settlement of allegations that it had systematically mismarked its price tags with false "regular" prices. In a similar action, Lyndale Garden Center of Minneapolis paid \$15,000 in civil penalties and was permanently enjoined from using deceptive pricing claims or phony price markdowns.

3. Vigorous enforcement of Minnesota's Club Contracts law to protect members of health clubs against deceptive practices and financial loss. In addition to administration of the law's surety bonding requirement, the Consumer Division brought two significant legal actions:

- a. **State v. Brookpark Tennis and Racquet Club, et al.**, was a legal action brought within days after the arrival in Minnesota of an operator who had closed numerous health clubs elsewhere, leaving thousands of members in other states unable to obtain their prepaid membership services. Swift action in this case resulted in a permanent injunction and the posting of a \$150,000 bond, the largest such bond ever posted in Minnesota, and prevented any losses for Minnesotans.

- b. **State v. Ri-Mel, et al.**, is the largest and most complex health club litigation in state history. As the result of more than 200 consumer complaints of deceptive practices, the owners' refusal to post the consumer protection bonds required by law, and the sudden closure of some of the clubs, this ongoing action was commenced against the "Spa Petite" and "European Health Spa" chains, on behalf of their 18,000 members. Both chains have sought protection under the Bankruptcy Code, and the action continues against the corporate owners.

## Public Protection

4. Increased attention to problems in the travel industry, many of which are due to deregulation of airline travel. Activities in this area included:

a. A formal legal settlement with **Regent Airlines**, an airline without legal authority to fly, which collected large sums from the public in advance payment for flights to Hawaii, with little likelihood of ever honoring the tickets. Quick action avoided any losses for Minnesotans and resulted in \$450,000 in refunds.

b. A second lawsuit against **Hawaiian Pacific Airlines**, which in 1985 solicited payments from would-be flight attendants who were promised employment on this "no-airplane airline," which had been grounded by this office in 1984 when it sold tickets on non-existent flights to Hawaii. The 1985 suit has resulted in a contempt judgment, and has spurred a federal criminal contempt action.

c. Investigations of several travel agency failures and assorted "too-good-to-be-true" travel offers.

5. Increased attention to farm-related frauds, including:

a. **State v. Rebel Industries, et al.**, an action which halted a million-dollar nationwide scheme to defraud mail-order purchasers of farm machinery.

b. Following a 1983 legal settlement with the operators of an allegedly fraudulent scheme to market Jerusalem artichokes, **In the Matter of A.E.F.S., Inc.**, the company is being liquidated in bankruptcy and its principal officers faced criminal charges of theft by swindle. In 1986, the Consumer Division succeeded in recovering \$650,000 for distribution to 480 growers nationwide, in partial restitution for their losses.

c. Successful actions against the operators of several fraudulent schemes to swindle farmers by promising to secure farm loans from non-existent sources.

6. A settlement with **Quadna Mountain Resort, Inc.**, involving the resort's alleged failure to deliver "prizes" promised to recipients of its direct-mail advertisements. As a result, the resort was enjoined from the use of deceptive practices, and delivered over \$150,000 in premiums to some 1,600 customers.

7. Development of legislation, enacted in 1985, to regulate the deceptive advertising of phony "going out of business" sales, followed by legal actions against two operators of such sales and the ongoing investigations of more than a dozen additional sales.

8. Modification of the Lemon Law, which protects new car owners, to insure greater fairness in privately-sponsored arbitration hearings, and to insure that arbitrators consider consumers' legal rights under the Lemon Law.

9. Ongoing oversight of auto dealer advertising, in a voluntary program operated jointly with the auto dealers' associations and the Better Business Bureau, and legal settlements with three dealers for allegedly deceptive advertising and sales practices.

## **Public Protection**

10. Enforcement of the Invention Services Act to protect inventors against exploitation by unscrupulous invention development companies. Our successful efforts on behalf of dissatisfied Minnesota clients of one such company resulted in consumer refunds of \$92,000 in 1986.

11. Actions against a number of out-of-state mail order companies for large-scale violations of Minnesota's laws against the sale of fireworks.

12. Continued investigation of various illegal pyramid schemes, including successful efforts to halt two schemes for the sale of long-distance telephone services through endless-chain marketing scams.

## **ANTITRUST ENFORCEMENT**

The Attorney General's Office enjoyed one of its most productive antitrust periods ever during the past biennium. The primary focus was on price fixing in the road construction industry. The "bid rigging" investigations, aided by computerized bid analysis, resulted in the convening of two multi-county grand juries in southern Minnesota.

### **Southwestern Minnesota Grand Jury**

Convened on June 7, 1984, this multi-county grand jury found evidence that road construction projects were rigged in nine Minnesota counties. With our assistance and that of the Cottonwood County Attorney, the grand jury returned 53 indictments against 27 defendants, nine road construction companies and 18 individuals. Convictions were obtained against 23 defendants who, as part of their sentences, paid a total of \$295,000 in fines. We also filed criminal complaints against six defendants — four of whom had already been indicted — for newly-discovered bid rigging violations. Three of the defendants charged have pleaded guilty and paid fines totaling \$57,000. Cases against one corporate defendant and two officials are due to be tried in the latter half of 1986.

### **Southeastern Minnesota Grand Jury**

The Third District Grand Jury met in Rochester between January, 1985, and January, 1986. The grand jury returned 19 bid rigging indictments against four construction companies and six individuals. One company and two of the individuals pleaded guilty. Five other cases await trial. In addition to serving jail time and performing other requirements of their sentences, Third District defendants paid \$23,500 in fines for their bid rigging activities.

While criminal prosecution of bid riggers was a top priority, we also pursued civil actions to recover damages suffered by the counties where price fixing occurred. Civil damage claims against nine road construction companies generated \$1,216,124 in damages during the biennium. One civil damage action remains pending. We are currently working with local officials and the Department of Transportation to develop a plan for distribution of the money to Minnesota counties.

## Public Protection

Our investigation into bid rigging spawned other significant cases as well. Acting to protect the integrity of the grand jury process, we successfully prosecuted a contractor for perjury. In addition, in *State v. Dewitt* and *State v. Rochester & Gravel, Inc.*, we also won a significant victory in the Minnesota Supreme Court. In those cases the Court ruled that criminal antitrust actions are subject to the four-year statute of limitations contained in the Minnesota Antitrust Act, not the three-year statute of limitations which governs most criminal prosecutions. The Court's ruling permits more meaningful action against price fixing conspiracies, which often go undetected for several years.

We were also active in areas of antitrust enforcement other than bid rigging. Major developments during the 1985-1986 biennium included:

**Cement Antitrust Litigation.** The state's case, filed in federal court in June, 1979, was consolidated for trial with similar lawsuits in the District of Arizona. We took a lead role in the litigation and to date have received settlements of \$140,000 from the defendant cement companies along with nearly \$60,000 in attorneys' fees and costs. We have submitted a claim on behalf of the state and the City of Minneapolis for a portion of the \$50 million class action settlements. The plan for distribution of this money is currently on appeal to the Ninth Circuit Court of Appeals.

**Art Materials Antitrust Litigation.** We filed a federal damage action in June, 1980, against manufacturers of school art supplies, charging them with fixing prices of crayons, tempera and finger paints, chalk, and modeling clay. In July, 1985, the action was dismissed on the grounds that the Minnesota purchasers were not direct purchasers of the goods under the United States Supreme Court's still troubling decision in *Illinois Brick v. Illinois*, 431 U.S. 720 (1977). We filed a state court action in December, 1985, and have negotiated a settlement expected to return \$60,000 to state and local government subdivisions in addition to the \$45,000 previously received from a parallel Federal Trade Commission suit.

Our antitrust role is not limited to enforcing the antitrust laws. We also continued to advocate competition by monitoring state agency rulemaking proceedings and proposed legislation and commenting on provisions which might have a negative effect on competition. We also serve as a resource for state agencies and local government bodies concerned about antitrust law issues and have issued several opinions to local government bodies.

## MEDICAID FRAUD PROSECUTION

This was the first full biennium for Medicaid fraud prosecutions by the Medicaid Fraud Strike Force which was established by Attorney General Humphrey. Our activities are directed at investigation and prosecution of Medicaid vendor fraud. Doctors, dentists, pharmacists, nursing homes, and other providers of health care who render services paid for by the Medicaid program (Minnesota Medical Assistance) are subject to review. This effort is funded 90 percent by the federal government with the state paying a 10 percent match.

## Public Protection

In the past biennium we successfully prosecuted 14 cases. All the defendants were convicted, with seven receiving jail or prison sentences. In addition, courts ordered the defendants to pay fines and restitution of \$316,095.54. The defendants included pharmacists, dentists, a psychologist, a chiropractor, and a state hospital employee.

The Attorney General's Medicaid prosecutions this biennium have included:

1. **State v. Audrey Hagedorn.** Defendant, a nurse, operated a home health care service. An analysis of her records indicated that she defrauded a parent company, an insurance company, the Minnesota State Retirement System, an 89-year-old woman for whom she had been appointed guardian, as well as the Medicaid program. The amounts allegedly stolen exceeded \$71,000. Defendant pled guilty to six counts of theft and to filing a false document with the Ramsey County Probate Court. She was sentenced to three years in prison.

2. **State v. Joanne Evans Coleman.** Defendant, a speech therapist, pled guilty to stealing more than \$170,000 from Medicaid. She billed for services not rendered. She also obtained reimbursement at a higher rate than she was entitled to by representing that she had performed therapy in her office when, in fact, it had been provided in a group home for mentally retarded persons. She also submitted to the Minnesota Department of Human Services a forged certificate of clinical competence purportedly from the American Speech-Language-Hearing Association. Such a certificate is prerequisite to defendant receiving any funds from Medicaid. Defendant was sentenced to 25 months in prison and ordered to make full restitution.

In the course of our investigations, we have learned of numerous abuses of the Medicaid program by health care providers. In February, 1986, Attorney General Humphrey issued a report to the state legislature which highlighted five "loopholes" in the Medicaid program and recommended legislative solutions. As a result, the number of state auditors reviewing the financial records of nursing homes has been greatly increased.

## REGULATION OF CHARITIES AND TRUSTS

The Attorney General has supervisory and enforcement authority for over 2,600 currently registered charitable organizations and trusts with assets valued at approximately \$6 billion and annual contributions of over \$2 billion. This authority includes monitoring registration laws applicable to charities and trusts; enforcing charitable solicitation laws, particularly the practices of professional fund raisers; participating as a party in court proceedings involving charities or charitable trusts; conducting investigations necessary to determine whether property held for charitable purposes is properly administered; participating in estate proceedings involving charitable interests; and representing the state in those probate matters in which a person dies without a will and leaves no heirs so that the estate escheats to the state.

During the biennium, the Attorney General investigated numerous telemarketing campaigns of professional fund raisers and charitable organizations. As a result of these investigations, the improper practices of at least three fund raisers were stopped by issuance of cease and desist orders by the Commissioner of Commerce. One case, **Heritage v. Fishman**, resulted in a lawsuit in which the constitutionality of the statutes which authorize the state to investigate and take action was challenged. The state's authority to do so was upheld by the federal district court.

## Public Protection

Improper soliciting by charitable organizations was also halted by the Attorney General's investigations. Organizations such as World Mercy Fund, American Cancer Research Foundation, Minnesota Association for Needy Children, and Advocates for Missing and Exploited Children are not soliciting in this state as a result of the Attorney General's efforts.

The Attorney General investigated several organizations to assure that charitable funds were properly administered. Included among the investigated organizations are the Hormel Foundation and the Minnesota Vikings Children's Fund, Inc.

The Attorney General monitors hundreds of legal matters in the probate and trust area. An example of the monitoring function is the review of final accounts. In the course of this review, the Attorney General challenged questionable trustee or attorney's fees in numerous files. As a result of these fee challenges, an additional sum of approximately \$140,000 went for charitable purposes.

In probate matters in which the person died without a will and leaving no spouse nor kindred, the Attorney General represented the State of Minnesota's interest in the funds. In these cases, \$192,587.41 escheated to the State of Minnesota during the biennium.

## HIGHWAY SAFETY

The Attorney General represents the Department of Public Safety in a wide variety of matters related to public protection. Enforcement of laws relating to highway safety is one of the Attorney General's primary duties in this regard. However, the Attorney General also advises and represents the numerous boards and divisions contained within the Department. Divisions of the Department include: The Bureau of Criminal Apprehension, Driver and Vehicle Services, Emergency Services, the State Fire Marshal, and the State Patrol. Among the boards contained within the Department of Public Safety are the Crime Victims Reparations Board and the Private Detective Board. The legal work has included representation in civil suits filed against the Department and its subdivisions, representation at contested case hearings, appearances at legal proceedings involving the boards and divisions within the Department, and the day-to-day advice that helps the Department and its boards avoid formal legal proceedings. The following is a summary of some of the major areas in which the Attorney General has been involved during the past biennium.

1. The Attorney General plays an important role in enforcement of the state's drunk driving laws. In both 1984 and 1985 the Attorney General represented the Commissioner of Public Safety in over 2,000 Implied Consent proceedings, which involve the revocation of a driver license due to driving while under the influence of alcohol or other drug. In 1985, over 1,700 of the Implied Consent proceedings actually went to hearing. The Attorney General appeared at these Implied Consent hearings in municipal, county, and district courts throughout Minnesota's 87 counties. In 1985 less than one percent of drivers whose licenses were revoked under the Implied Consent laws successfully challenged the revocation in court.

## **Public Protection**

The huge Implied Consent caseload has given rise to numerous appeals. In 1985 the Attorney General represented the Commissioner of Public Safety in over 100 appellate court cases. Favorable decisions arising from Implied Consent appeals have played a major role in strengthening Minnesota's drunk driving laws. For instance, in *Nyflot v. Commissioner of Public Safety*, the Attorney General urged the appellate courts of Minnesota to give effect to the 1984 amendments to the Implied Consent law which required a driver to decide whether or not to submit to testing before contacting an attorney. The Minnesota Supreme Court agreed that a driver arrested for DWI does not have a statutory or constitutional right to consult with an attorney prior to chemical testing, thereby giving effect to the 1984 amendments to the Implied Consent law.

In order to provide certainty and consistency to the procedures surrounding revocation of driving privileges, the Attorney General assisted the Department in the successful promulgation of rules for the revocation of drivers' licenses for alcohol-related offenses. The rules will promote safe highways for all Minnesota citizens.

2. The Attorney General has also assisted the State Patrol in enforcing the state's overweight truck laws. Since 1982 the state has recovered civil penalties from those charged with operating overweight vehicles on the state's roadways and bridges. As a result of this program, there appears to be a marked decrease in the number of overweight violations. Not only does this effort help the state to protect its enormous investment in its roadways by making them last longer, it also assures citizens of this state that the streets and highways will be rid of the unnecessary safety risk posed by vehicles that are dangerously overweight.

## **BUSINESS REGULATION**

The Attorney General represents the Minnesota Department of Commerce, an agency which serves an important public protection function for the citizens of the State of Minnesota. The Commerce Department regulates companies and individuals who sell a wide variety of financial products and services to the public. For example, Commerce licenses the real estate brokers and salespeople who sell people their homes, it charters and examines the state banks or credit unions where people deposit their savings, it registers the securities in which people invest their money, and it licenses the insurance companies and agents that sell the health insurance on which people depend for payment of their medical bills and the life insurance which provides financial security to their dependents. In addition, the Department's functions also include the licensing of securities broker dealers and the registration of franchises, subdivided land, and time share programs. Purchasers of these complex and oftentimes expensive products and services are often vulnerable. Not being real estate, banking, securities or insurance experts, they must necessarily rely on the seller for accurate information and advice. Unfortunately, in some cases unscrupulous persons abuse their customers' and clients' trust by engaging in misrepresentation, fraud, conversion, and other forms of illegal conduct.



## Public Protection

To protect the public, the Commerce Department is authorized to take disciplinary action to suspend or revoke the licenses or registrations of companies or individuals who violate state law. In addition, the Department is empowered to issue administrative "cease and desist" orders which prohibit persons from engaging in illegal conduct in connection with the offer or sale of products or services subject to its jurisdiction. Through its disciplinary actions the Department protects the public by temporarily or permanently preventing the violator from continuing to do business in the licensed profession. By issuing administrative cease and desist orders, the Department can force companies and individuals to discontinue illegal conduct. If violators persist in the conduct after the issuance of the cease and desist orders, they face criminal prosecution.

The Attorney General's Office represents the Department of Commerce in all of its administrative proceedings. The number of these administrative actions has increased dramatically in the last two fiscal years. There were 716 administrative actions in the past biennium — 322 actions in Fiscal Year 1985 and 394 in Fiscal Year 1986. That total was nearly twice the number of administrative actions brought in the previous biennium.

Examples of some of the more noteworthy administrative cases during the last biennium include:

1. An insurance agent's license was revoked because the agent illegally converted clients' money for his own use, misrepresented the terms of insurance policies and engineered a scheme to illegally conceal and collect a fee of over \$50,000 from his insurance clients.

2. A securities agent's license was revoked because the securities agent converted over \$13,000 of his clients' money to his own use.

3. A real estate broker's license was revoked because he was involved in "equity skimming" — a scheme in which the broker purchased real estate from people, promising to assume the responsibility for paying off their mortgages. The broker had no intention of actually making the payments. Instead, the broker collected and converted to his own use rental income on the property until foreclosure proceedings were commenced by the mortgage holder.

4. The promoters of a fraudulent investment program were ordered to cease and desist from selling the program. As a result, Minnesota investors were protected from a scheme which ultimately cost investors in other states over \$80 million before the scheme finally collapsed and the promoters were indicted for mail fraud.

The Attorney General's Office also represents the Commerce Department in conducting its civil litigation. Noteworthy civil cases during the last biennium included:

1. **State v. Minnesota Life and Health Insurance Guaranty Association.** This was a state court action which resulted in a settlement agreement by which the defendant, Guaranty Association, agreed to guarantee to over 2,700 Minnesota residents the repayment of more than \$50 million worth of annuities which they had purchased from two insurance subsidiaries of the bankrupt Baldwin-United Corporation.

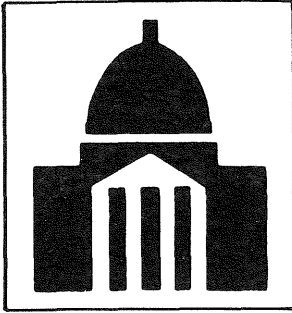
## **Public Protection**

2. **Cardiff Acquisitions, Inc. v. Hatch.** This was a federal court action in which the Attorney General successfully defended the constitutionality of Minn. Stat. Ch. 80B, the Minnesota statute which regulates corporate takeovers. A number of previous federal circuit court decisions had struck down other states' corporate takeover laws. However, in this 1984 decision the 8th Circuit Court of Appeals found the Minnesota statute to be constitutional. This was the first federal circuit court of appeals decision upholding a state corporate takeover law.

3. **Oil Overcharge Cases.** During the 1985-1986 biennium the Attorney General also represented the state in connection with several oil overcharge cases. These were cases involving the distribution of funds collected from oil companies that had violated federal price controls in effect between 1973 and 1981. Due to the concerted legal action by a few states, including the Minnesota Attorney General's Office, billions of dollars of oil overcharge funds will be returned to the states to pay for a variety of projects, including energy conservation programs. As a result of these overcharge cases, the State of Minnesota received approximately \$2 million in Fiscal Year 1985 and over \$35 million in Fiscal Year 1986. In addition, current projections indicate that Minnesota will receive over \$11 million in Fiscal Year 1987 and an additional sum which is expected to exceed \$17 million in future years.

4. **In the Matter of ITT Consumer Financial Corp. and Thorp Loan and Thrift Company.** During the biennium, our staff conducted a joint investigation with the Department of Commerce concerning the sale of life and property insurance to loan customers by this major industrial loan and thrift company. The investigation showed that deceptive practices were used to add expensive insurance policies to many customers' loans without the customers' knowledge or consent. In an Assurance of Discontinuance filed in Ramsey County District Court, the company agreed to offer refunds to over 25,000 Minnesota residents. Over 13,000 Minnesota residents accepted the offer and received refunds totaling over \$2.5 million.

During the biennium, we also provided legal services to several state boards — the Board of Accountancy; Board of Electricity; Board of Architecture, Engineering, Land Surveying and Landscape Architecture; Board of Barber Examiners; the Abstractor's Board; the Board of Assessors; and Board on Judicial Standards. In addition, our staff represented the World Trade Center.



# PUBLIC ADMINISTRATION

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

## TORT CLAIMS DEFENSE

The Attorney General is responsible for defending the state against claims for personal injury and property damage alleged to have been caused by the state. Sovereign immunity was abolished ten years ago. The state tort claim limits are \$200,000 per person and \$600,000 per occurrence. Sixty-seven state agencies have tort claim officers. The Departments of Transportation, Natural Resources, Public Safety, Human Services, and Corrections are the most frequent defendants in tort claim actions.

During calendar years 1984, 1985, and the first six months of 1986, the Attorney General's Tort Claims Division handled and closed 134 lawsuits and 743 claims. The estimated value of these cases was \$6,700,053. The total amount paid on these cases as a result of verdicts and settlements was \$1,747,866.20. Thus, through negotiation and litigation, \$4,952,186.80 was saved. In addition, the tort claims division affirmatively recovered \$30,518.15 for the state during this time period.

The following are examples of successful defenses made against allegations that state employees had been negligent.

1. **Hammer v. LaDoucer and Garnet Erickson v. Curtis Investment Co.** The State Corrections Department was found not negligent and not liable for injuries allegedly inflicted by men on parole and probation from a state correctional facility.

2. **Lyons v. State.** An inmate sued for injuries received when he was stabbed with a laundry pin of the type distributed to all inmates. The Court of Appeals ruled that the distribution of the laundry pins was discretionary and that the state should not be held liable.

## Public Administration

3. **Randy Erickson v. Bartz.** A seven-year-old boy, riding in a car with his mother, became severely and permanently disabled as a result of an accident. The court ruled that the state should pay no damages because the decision whether to widen the road was discretionary and because the state was protected by the “snow and ice” exception in the Tort Claims Act. Subsequently, other defendants paid damages of \$1.2 million.

4. **Wagener v. McDonald.** A widow brought a wrongful death action against the Department of Transportation alleging defective highway design. Her husband was killed when another driver careened off a guardrail and crossed into oncoming traffic. After a two-week trial, a jury returned a verdict in favor of the state.

5. **Diedrich v. State.** The Department of Human Services was sued after a patient fell to the ground from a second story window at Fergus Falls State Hospital. The state was held not liable on the ground that treatment of the patient was discretionary. The case is being appealed.

6. **Sevcik v. City of Bemidji.** Plaintiff ran off a private dock and dove head first into Lake Bemidji, fracturing his neck and paralyzing himself. The Department of Natural Resources was held not liable by the court.

The Minnesota Legislature recently enacted the Tort Reform Act of 1986. Although no major changes were made to the State Tort Claims Act, changes made to laws governing municipal tort liability are expected to place greater responsibility on the state for defending certain tort claims. For example, the new act requires the state to indemnify local governments for the negligent acts of their employees who are performing state-mandated licensing inspections of day care centers.

Such legislative changes and the well-publicized growth in personal injury litigation contribute to the adverse climate in which the Attorney General’s Office defends against tort claims.

## TAX LITIGATION

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

The interpretation and administration of the tax laws give rise to a great amount of litigation in which the Attorney General’s Office represents the Department of Revenue. At the present time there are almost 900 cases pending involving litigation of the tax laws. In FY 1985 and FY 1986 litigation activity included:

## Public Administration

**United States Supreme Court:** 1 case won, 0 lost.

**Minnesota Supreme Court/Court of Appeals:** 18 cases won, 1 lost, and 31 pending.

**Minnesota Tax Court:** 96 cases won, 19 lost, 311 settled, and 514 pending.

**District Court (state and federal):** 8 cases won, 3 lost, 167 cases settled, and 299 pending.

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

1. In the **Soo Line** case, Attorney General personnel successfully defended in the Minnesota Supreme Court the constitutionality of applying both the railroad gross earnings tax (now repealed) and the corporate franchise tax to railroads. At issue was approximately \$450,000 in franchise taxes and interest.

2. In the **Miller** sales/use tax case, the constitutionality of the computation provisions of Minnesota's use tax were successfully defended in both the Minnesota Supreme Court and the United States Supreme Court. The use tax is a tax on items bought outside of Minnesota for use within Minnesota. It is a corollary to the sales tax since its purpose is to prevent evasion of the sales tax by means of out-of-state purchases.

3. In the **City of Springfield** case, Attorney General personnel successfully defended denial of the public property and public hospital exemptions from the property tax to a medical clinic which, although owned by a city and supported administratively through the city's local hospital, was used by physicians for their private medical practice.

4. In the **Little Earth** case, we successfully defended denial of the public property exemption to a federally subsidized housing project. The taxpayer had contended that notwithstanding that the Legislature had reduced its taxes by causing its assessment rate to be reduced that it was entitled by the Equal Protection and Supremacy Clause of the federal constitution to a complete exemption.

5. In the **Northwest Territories** case, we successfully obtained judgment for sales tax against a dealer in gold and silver coins and bullion who had failed to collect sales tax from its customers as required by law. The dealer had contended that it possessed "resale exemption certificates" from customers on which they claimed that they were buying for resale and the sales were thus exempted by virtue of the sale for resale exemption.

## ADMINISTRATIVE AGENCIES

The Attorney General's day-to-day representation of state agencies often requires heavy emphasis on preventative law as we provide prompt response to requests for advice on how to avoid or resolve problems before they ripen into formal disputes. Over the past two years this low-visibility but crucial role has involved our office in responding to daily client requests for advice, drafting hundreds of legal documents, and reviewing thousands of contracts for form and execution.

## Public Administration

The Attorney General's expertise in public law also enables the office to serve the general public. During the biennium we responded to thousands of citizen inquiries about government data practices, public purchasing, public financing, incorporation by businesses, garnishments, employee and management rights, administrative rulemaking, and the building code.

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

1. The **Rural Financial Administration (RFA)** was created by the 1985 Legislature to restructure farm loans to aid financially troubled Minnesota farmers. The Attorney General assisted in RFA's preliminary organization, which required preparing sophisticated program rules, negotiating with major farm lenders, and structuring financing packages through which the RFA will issue up to \$150 million in revenue bonds. The bond program is perhaps the most unique and complex financing the state has ever attempted.

2. The Attorney General advised the Department of Finance to institute a master lease program for the acquisition of state goods and then assisted it in implementing the program. It is estimated that the program's form of financing will save the state \$2 million each year. The Attorney General has also assisted the Department of Finance in selecting financial consultants and issuing several hundred million dollars of general obligation bonds.

3. The Attorney General assisted the State Board of Investment in formulating a resolution calling for divestment of state holdings in companies doing business in South Africa or otherwise supporting apartheid. Pursuant to the resolution, divestment must be consistent with the Board's fiduciary duty. As a result of the resolution, 13 of the 20 companies impacted have signed the Sullivan Principles, two have sold their corporate interests in South Africa, and one has demonstrated policies comparable to the Sullivan Principles. Our office also successfully represented the Board before the Securities Exchange Commission regarding a challenge to a Sullivan Principles shareholder resolution co-sponsored by the Board.

4. Our office represented the Department of Administration, Telecommunications Division, in numerous telephone ratemaking proceedings before the Public Utilities Commission. The Department of Administration is one of the largest non-residential telephone users in Minnesota and intervenes in proceedings before the Public Utilities Commission to preserve services which it purchases and to reduce or stabilize the rates for those services. For example, the State of Minnesota is one of a few states which have successfully retained TELPAK private line services. These services save the Department of Administration approximately \$1.8 million a year. Another important service is CENTREX. Recent rate reductions for that service permitted savings of approximately \$318,000 a year. Currently, Attorney General staff is actively representing the Department of Administration's interests in a special access rate proceeding and in efforts to ensure that WATS rates are substantially reduced as a result of changes in switched access charges.

## **Public Administration**

5. In the past two years, the Attorney General has assisted the Ethical Practices Board in enforcing the Ethics in Government Act in more than 40 cases. The Act requires registration and disclosure of certain financial information by lobbyists, public officials, and candidates seeking election to state executive, legislative, and judicial offices. The bulk of the litigation has involved securing the filing of the disclosure reports and enforcing penalties imposed because the filed reports were delinquent or ascertaining whether the organization was "influencing the nomination or election of a candidate" and thus required to register and disclose its financial resources and expenditures.

6. Our office represented the Department of Administration, Real Estate Division, in complicated and lengthy negotiations for the acquisition of the Miller Hospital site where the new Minnesota History Center will be constructed.

7. The Attorney General aided the Department of Administration, Division of Building Construction, in dozens of construction contract matters ranging from small disputes to lawsuits involving many hundreds of thousands of dollars. Settlements and arbitrations in these matters resulted in payments and savings to the state of over \$700,000 during the last two years.

8. The Minnesota Racing Commission was assisted with a significant amount of rulemaking and was successfully represented at various disciplinary matters at the Office of Administrative hearings. This assistance has helped to protect the integrity of one of Minnesota's newest industries and has contributed substantially to Minnesota's reputation as having a nearly crime-free racing industry.

The Minnesota Charitable Gambling Control Board was substantially assisted in its initial organization, rulemaking, and legislation. This assistance contributed to the orderly change from local to state regulation of the gambling industry which will result in a more uniform control of the gambling industry in Minnesota.

## **STATE EMPLOYEE RELATIONS**

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

1. Successfully securing the dismissal of a class action lawsuit brought by a class of individuals seeking millions of dollars in damages from the state for alleged improper withholding of social security taxes.

2. Advising and assisting the state in getting its compensation plans into compliance with the Federal Fair Labor Standards Act (FLSA) after the Supreme Court's 1985 Garcia decision.

3. Defending against a number of constitutional challenges to the procedures available to disciplined employees in light of the Supreme Court's 1985 *Loudermill* decision.



## Public Administration

4. Advising and assisting the Labor Relations Division of the Department of Employee Relations in preparing management bargaining positions for the 1985-86 collective bargaining agreements and handling grievances arising from those agreements.

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

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

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

8. Advising and assisting the Department of Employee Relations in the development of data practices policies, the implementation of the state's comparable work laws, the revision of the state's mandatory retirement rules, and other significant policy decisions affecting 30,000 state employees.

## PROTECTION OF WORKERS

The Minnesota Legislature continued to enact, in 1985 and 1986, major changes to the Minnesota Workers' Compensation Act. These further changes have significantly increased the amount of legal services the Attorney General provides in this area.

During the biennium, the Attorney General's Office represented the Department of Labor and Industry in the following significant litigation related to Workers' Compensation:

1. **Metropolitan Rehabilitation Services, Inc. v. Westberg.** The Attorney General successfully represented the Commissioner in a constitutional challenge to certain rules and statutes administered by the Commissioner and promulgated and enacted after 1979 as part of the reform of the Workers' Compensation system. The Supreme Court accepted the arguments that a rehabilitation consultant could not serve simultaneously in that capacity and act as a rehabilitation vendor. The Court upheld the position of the Commissioner and, in doing so, increased the ability of the Workers' Compensation Act to control costs of services rendered to injured workers.

2. **Sharon Sherman v. Whirlpool Corporation.** The Attorney General's Office successfully represented the Commissioner in upholding the Commissioner's position that rehabilitation services should be rendered to employees who were injured prior to October 1, 1979. With legislative changes made in 1979, the legislature appeared to pass a statute which required that employers provide rehabilitation services to injured employees who are off of work for a certain number of days. The statutory purpose of rehabilitation is, of course, to return the employee to work as quickly as possible to a job that has the same economic status as the job that the employee had before the injury. A 1984 amendment in effect states that these services should be provided to employees regardless of the date of injury. An employer had objected to the Department's statutory construction, alleging that the amendment was unconstitutional as it impaired a vested property right of the employer. The

## Public Administration

Minnesota Supreme Court adopted the Commissioner's position advanced by the Attorney General's office and today rehabilitation benefits can be provided to employees regardless of the date of injury.

3. **Dorman v. Jennie-O-Foods.** The Attorney General's Office, in representing the Special Compensation Fund of the Workers' Compensation Act, was able to obtain a reduction in the liability of the Special Compensation Fund's obligations to reimburse employers for employees' second injuries as a result of successfully advancing the argument that the statutory time requirement for post-second injury registration was mandatory and, therefore, jurisdictional.

4. Further efforts have been made to recover workers' compensation benefits paid to recipients who are later awarded damages in personal injury lawsuits. The Attorney General's Office has coordinated litigation and intervened directly in numerous personal injury lawsuits in an effort to obtain reimbursement for benefits paid by the Special Compensation Fund or State Claims management. These actions have resulted in the return to the state of monies paid out to employees injured by third parties.

The State of Minnesota continues to enforce the worker safety and health laws for Minnesotans. This enforcement of the OSHA law was undertaken by the Attorney General's Office as part of the office's overall law enforcement effort. The following actions have been involved in this work:

1. Representing the OSHA Division in 412 contested cases and two appeals to the state appellate courts.
2. Obtaining 18 orders for inspection enabling state safety and health investigators to gain access to workplaces after it had been denied by employers.
3. Assisted the OSHA Division in the development of rules and standards for the farming operations training plan, represented the Division in its rules adoption hearing, and aided in the revision of Minnesota's own safety and health rules.

The Attorney General has assisted the Department of Labor and Industry, Labor Standards Division, in developing significant legislative amendments to the Department's authority to order employers to comply with Minnesota's minimum wage and overtime laws. The Attorney General's Office has initiated 15 contested case hearings against employers who have violated the Fair Labor Standards Act and have brought six complaints in district court to enforce Orders of the Commissioner to comply with the terms of the law. As a result of these enforcement activities, the Attorney General's Office has successfully collected approximately \$60,000 in back wages and has established approximately \$1,950 in penalties against employers who have violated the law. These actions by the Attorney General's Office have resulted in increased protection for workers' wages.

## PUBLIC UTILITY USERS

The Attorney General represents, advises, and provides legal services to the Department of Public Service (Department) and its two divisions: the Energy Issues Intervention Office (EIIO) and the Weights and Measures Division. We represent the Depart-

## Public Administration

ment's position in complex state utility rate matters, which are primarily contested case proceedings before the Minnesota Public Utilities Commission (Commission). In addition, legal services are provided to the EIIO which represents the interests of Minnesota consumers, businesses, and governments before bodies that make and implement national energy policy. The Attorney General also advises the Weights and Measures Division which regulates weighing and measuring devices used in commercial trade.

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

**Rulemaking.** The Attorney General assisted the Department in preparing and submitting to the Commission major rulemaking proposals regarding telephone filing requirements, telecommunication policy recommendations, ex parte communications, and general rules of practice and procedure. These proposals, coupled with the rulemaking efforts of the Commission, should ultimately provide significant clarity and guidance to the regulated telephone industry which is in transition.

**Investigation.** The Attorney General advised and assisted the Department in its investigation and preparation of a report to the Commission regarding improper contacts between commissioners and the utilities they regulate. The report recommended that several past Commission decisions require further administrative review due to job negotiations or employment arrangements between regulated utilities and former sitting commissioners.

**Northern States Power Company.** During its 1985 natural gas rate case, Northern States Power engaged in negotiations and offered a job to a sitting commissioner of the Minnesota Public Utilities Commission. We successfully represented the public interest by moving to have this tainted proceeding, which had awarded the company \$17 million, dismissed. We continue to represent the Department in the Company's appeal of this matter to the Minnesota Supreme Court.

**Peoples Natural Gas Company.** During its 1985 natural gas rate case, Peoples was purchased by Utilicorp United, Inc. This purchase made an analysis of the Company's proposed rate increase of \$3 million impossible. We successfully represented the Department in dismissing this matter.

**Louisiana Public Service Commission v. Federal Communications Commission, et al.** We successfully represented the Department in this U.S. Supreme Court case which held that the Federal Communications Commission could not pre-empt the states in their determination of appropriate depreciation rates for intra-state telephone company assets.

**New Ulm Toll Network.** We successfully represented the Department in this case in which the New Ulm Toll group of telephone companies was granted a certificate of convenience and necessity to provide toll service in competition with Northwestern Bell Telephone Company in southern Minnesota.

**Northern States Power Company.** We successfully represented the Department in this case in which a major electric service provider of this state sought a \$138.8 million increase in rates; only a \$36.95 million hike was approved.

**Energy Issues Intervention Office (EIIO).** A major effort of the Attorney General during the past biennium continued to be providing of legal services to the state's EIIO.

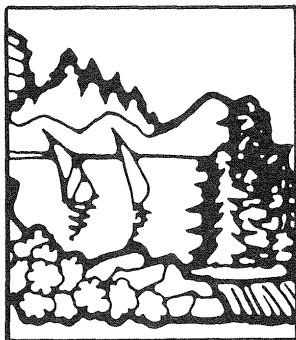
## Public Administration

As part of that effort, we represented the EIIO in several major cases at the Federal Energy Regulatory Commission (FERC) involving Northern Natural Gas Company, the interstate pipeline that supplies most of Minnesota's natural gas. Northern filed a general rate case with the FERC in 1985, and the EIIO was a lead party in extensive settlement negotiations. If the settlement proposal is accepted by the FERC, Northern's rates would decrease by almost \$60 million, and Northern would, for the first time, open its pipeline system to third party gas transportation. We also represented the EIIO in Northern filings dealing with discount rates, special transportation arrangements, and curtailment of customers in times of natural gas shortages.

We also assisted the EIIO's participation in several major FERC rulemakings. In Docket No. RM85-1, the EIIO supported rules which allow pipelines to become transporters of gas as well as wholesalers. In Docket No. RM86-3, we represented the EIIO in its efforts to alter proposed rules which would raise the price of "old," relatively inexpensive natural gas and cost Minnesota gas users millions of dollars.

The Attorney General also represented the EIIO in Kansas where the EIIO opposed efforts of natural gas producers to raise the price of "old" gas through changes in the categorization of new wells.

**Weights and Measures Division.** The Weights and Measures Division of the Department of Public Service is one of the oldest regulatory arms of the State of Minnesota. This division of the Department is responsible for the regulation of weighing and measures devices used in commercial transactions. The Attorney General advises, represents, and provides legal services to this Division.



# PUBLIC RESOURCES

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

## ENVIRONMENTAL PROTECTION

The decade of the eighties continues to be one fraught with environmental concerns. The nature of today's environmental problems are technically and legally very complex and potentially pose a most serious threat to public health and the environment. Foremost concerns are the management and cleanup of hazardous waste, control of acid deposition, and the disposal of nuclear waste. The Attorney General has been actively involved in all of these areas.

The Attorney General has provided key legal resources for the Minnesota Pollution Control Agency's (MPCA) hazardous waste cleanup program known as "Superfund." This biennium saw the successful conclusion of a protracted lawsuit over groundwater contamination by coal tar chemicals which had caused the closing of seven municipal supply wells in St. Louis Park and Hopkins and had threatened additional wells in the principal aquifer utilized in the Twin Cities metropolitan area. The **Reilly Tar settlement, U.S., State of Minnesota, et al. v. Reilly Tar and Chemical Corporation**, requires the company to conduct a comprehensive remedial program addressing all contaminated groundwaters and assuring provision of adequate, safe drinking water. In addition, the company will pay \$1 million to the state in reimbursement of investigative and legal costs. The Reilly settlement was one of 31 hazardous waste site consent orders negotiated by the Attorney General and the MPCA during the biennium. The remedial work required under these orders has an estimated value of approximately \$74 million.

The Attorney General has attempted to recover state funds expended on environmental cleanups. The Attorney General recovered and returned to the state treasury \$325,000 spent by the state cleaning up after a fire at the Howe Chemical Company pesticide warehouse in Brooklyn Center in 1979. The Attorney General has assisted the MPCA during the biennium in obtaining reimbursement of state cleanup costs totaling \$1.1 million. In other environmental enforcement actions the Attorney General has assisted the MPCA in collecting a total of \$2.3 million in civil penalties for the biennium.

During fiscal year 1986 the Attorney General represented the Pollution Control Agency through 35 days of hearings on a proposed acid deposition standard. The hearing culminated in the adoption of the most stringent acid deposition standard in the nation and a control plan to reduce emissions from two of Minnesota's large power plants and establish an emission cap on sulfur dioxide emissions in Minnesota. Ultimately, the acid deposition problem must be addressed at the federal level. Consequently, the Attorney General also is representing the State of Minnesota in several federal cases that are attempting to establish that the U.S. Environmental Protection Agency must more actively and directly take action to abate emissions of sulfur dioxide that are causing acid rain.

## Public Resources

The disposal of high-level radioactive waste is a national problem of intense public concern which has affected Minnesota during the past biennium. Since the passage of the Nuclear Waste Policy Act of 1982, Minnesota has been under scrutiny as one of the potential sites for the nation's second nuclear waste repository. The Attorney General has carefully monitored the activities of the federal government, paying attention not only to the activities that affect Minnesota, but also to the overall approach in implementing the Act. The Attorney General has brought two lawsuits challenging the validity of the federal regulations under which the nation's nuclear waste repositories will be sited: (1) the siting guidelines adopted by the U.S. Department of Energy (DOE); and, (2) the groundwater standards adopted by the U.S. Environmental Protection Agency. In addition, the Attorney General has moved to intervene in a lawsuit brought by the State of Washington. Washington has challenged the May 28, 1986, action of the DOE suspending indefinitely the search for a second repository in crystalline rock. The Attorney General, on behalf of Minnesota, whose potential repository sites are located in crystalline rock, supports the elimination of Minnesota from the repository siting program.

## NATURAL RESOURCES MANAGEMENT

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

The following examples illustrate some of the kinds of work done by the Attorney General's staff in the area of natural resources over the past two years.

**1. Direct Reduction of Iron Ore.** We provided legal assistance to the Department of Natural Resources (DNR) in its efforts to establish facilities for the direct reduction of iron ore to metal in Minnesota. The efforts first centered on assistance to the DNR in its contractual arrangements with Korf Engineering of Germany and with others in experiments with Minnesota ore. Upon successful completion of these experiments, legal assistance was provided to the Department in the preparation of applications to the U.S. Department of Energy for over \$50 million in financial assistance under the Federal Clean Coal Act for the purpose of constructing and operating a direct iron reduction demonstration plant in northern Minnesota.

**2. Mineral Leasing.** The Attorney General staff provided legal services to the DNR in relation to the 1985 lease auction of state-owned land for mineral exploration and development. Seventeen corporate and individual bidders submitted 238 bids for exploration leases. Eventually, 179 leases were issued covering over 70,000 acres of land. The leases are intended to stimulate the development of nonferrous mining in Minnesota and they generate significant exploration expenditures in areas of the state depressed by reduced iron ore and taconite mining.

## Public Resources

3. **Stony Ridge and Carlos View Terrace Ass'n. v. Department of Natural Resources.** In this case, the plaintiff sought to enjoin the state's development of a parcel of land for a public water access site to Lake Carlos in Douglas County. Our lawyers successfully defended the DNR's right to develop the public access site.

4. **City of Minnetrista v. Department of Natural Resources.** In this case, currently pending, the plaintiff seeks to prevent the state's development of a public water access at King's Point on Lake Minnetonka. Attorney General lawyers are defending in district court the DNR's decision to develop an access at that site on the lake.

5. **Grand Portage Band of Chippewa Indians v. State of Minnesota.** The Attorney General is representing the state and DNR in this pending lawsuit in which the Grand Portage Band is seeking a judicial declaration that state hunting and fishing laws do not apply to Band members anywhere within the Arrowhead region of the state (land ceded pursuant to a treaty signed in 1854).

6. **White Earth Indian Land Claims.** Our lawyers coordinated efforts to obtain a congressional settlement of a land claim controversy on the White Earth Reservation that had put clouds on the titles of over 100,000 acres of public and private land. During the past year, settlement legislation was passed by Congress and legislation providing for a state contribution to settlement was passed by the state legislature. Implementation of the settlement is currently in progress with certain settlement condition still being worked on. We are assisting in the implementation of the settlement act and a representative of the Attorney General has been appointed to sit on the U.S. Department of Interior Steering Committee established to oversee the settlement.

7. **Heartland Trail Land Claims.** Our office represented the DNR in defending state title to 13 miles of Heartland Trail against land claims on behalf of Minnesota Chippewa Indians. After several years of litigation and settlement talks, the claims were resolved by a settlement agreement. The agreement clears title to a valuable portion of the state trail system and saves the state the expense and uncertainty of more years of litigation.

8. **Waterfowl Season Controversy.** The Attorney General provided legal assistance to the DNR in its successful effort to persuade the U.S. Fish and Wildlife Service to alter the federal framework for the 1985 waterfowl seasons. As originally announced by federal authorities, the outside framework dates for these seasons would have discriminated against the northern states, contrary to treaty and federal statutory standards.

9. **DNR Leases and Contracts.** Our lawyers assisted the DNR with hundreds of leases for state land, advising on issues such as liability, insurance, cancellation, and trespass, and reviewing completed leases for form and execution. Similarly, we assisted with the drafting and review of hundreds of contracts for goods and services. Our staff also worked with the DNR when problems arose in the performance of contracts. The office was involved in enforcing contract provisions regarding payment of claims, contract default, and liquidated damages in addition to actual performance of required work. Cases during the past two years have included problems arising in Itasca State Park, Gooseberry Falls State Park, Afton State Park, and St. Croix State Park.



## Public Resources

10. **Acid Deposition Rules Hearings.** Our lawyers represented the DNR during the MPCA rules hearings regarding acid rain and acid deposition. In the course of 35 days of hearings, the parties generated perhaps the most extensive scientific record in connection with specific proposed standards that has ever been compiled.

11. **Peat Mining and Reclamation Rules.** Our lawyers assisted DNR in the drafting and promulgating of administrative rules to insure environmentally sound procedures for the mining of peat and the reclamation of lands where peat mining has been conducted.

## FARM INITIATIVES

In response to the many needs created by the crisis in the farm economy, the Attorney General has been actively addressing issues of concern and relevance to rural Minnesota. In the Fall of 1984, Attorney General Humphrey formed within the office a rural issues group which is coordinated by the Solicitor General's Division but includes individuals from other divisions also. The following is a summary of the more significant actions during the biennium.

1. Attorney General Humphrey proposed legislation to establish voluntary and mandatory mediation between farmers and lenders prior to debt collection. A version of this was enacted by the 1986 Minnesota Legislature as the Farmer-Lender Mediation Act.

In *Laue v. Production Credit Association*, we supported the application of the Farmer-Lender Mediation Act to debt collection proceedings begun but not completed before the Act's effective date. The Minnesota Court of Appeals held that such application was both proper and constitutional.

2. We proposed to Congress strengthening the rights of Farm Credit System borrowers with regard to disclosure of loan terms, access to documents and information, right of review, and forbearance. The proposals were substantially enacted by Congress in the Farm Credit Act Amendments of 1985. We were joined in this effort by the Attorneys General from Illinois, Iowa, Kansas, and North Dakota.

3. In the Spring of 1985, the Attorney General and the Minnesota State Bar Association formed a Task Force on Rural Legal Services. The Task Force developed recommendations relating to education, lawyer referral, legal assistance for low-income farmers, farmer-lawyer support systems, and alternative dispute resolution. Several of the recommendations were enacted into law by the 1986 Minnesota Legislature.

4. "Quick fix" schemes, often involving fraudulent practices, have become increasingly prevalent in the state's agricultural communities as a result of the farm crisis. We have actively investigated many of these schemes and have successfully brought several proceedings to stop individuals and companies from practicing law without a license, engaging in deceptive trade practices, and violating real estate and insurance licensing laws.

## Public Resources

5. In **Coleman v. Lyng**, a national class action against the Farmers Home Administration, we appeared as amicus curiae in support of the 250,000 FmHA borrowers nationwide, challenging FmHA's termination of family living and farm operating expenses without due process. We were joined in our appearance by the Attorneys General from Illinois, Iowa, Kansas, North Dakota, Oklahoma, and Texas.

6. The office monitors all proposed federal regulations relating to agriculture and has submitted comments on numerous regulations proposed by the Farmers Home Administration, the Farm Credit Administration, the Commodity Credit Corporation, and the United States Department of Agriculture.

7. We have formed, with several other midwestern Attorneys General offices, a working group which shares information and has submitted jointly several amicus briefs, proposed federal legislation, and comments on federal regulations.

8. In **American Feeder Pig Liquidation**, we represented several hundred Minnesota pig producers, assisting them in recovering approximately \$400,000 from the dissolved marketing organization.

9. We developed guidelines for foreclosure sales for Minnesota's county attorneys and sheriffs' association.

10. To provide public education on farm borrower's rights, we have developed several publications, have provided speakers to numerous interested groups around the state, and have responded to hundreds of citizen calls and letters.

## AGRICULTURAL REGULATION AND PROTECTION

The Attorney General's Office provides all necessary legal services for the Department of Agriculture and the Board of Animal Health. Demands for legal representation and assistance to these agencies substantially increased during the last two years as the farm crisis affected more and more of Minnesota's farmers and agricultural related businesses. The nature of the legal work performed by the Attorney General's representatives to the agriculture related agencies also moved beyond the traditional legal services needed by these regulatory agencies to include a new focus upon complex individual and systemic farm issues as they arose. The following is a summary of some of the more significant work performed by our division over the past two years.

### LITIGATION

1. **Johansson v. Minnesota Board of Animal Health**. We successfully defended the Board of Animal Health against a constitutional challenge brought in federal district court on the validity of the Board's newly adopted rules governing the control of pseudorabies.

## Public Resources

2. **In the Matter of Claims Against the Kern Grain Company.** In an administrative proceeding, the Commissioner of Agriculture found Kern Grain liable to numerous Minnesota farmers for grain that they stored or sold to Kern. As a result, Kern's surety, Auto Owner's Insurance, was found liable under its surety bonds for \$270,000 of the amount Kern owed. The Commissioner's determination was successfully defended through Court of Appeals and Supreme Court challenges, and the farmers ultimately received payment on their claims.

3. **First National Bank of Worthington v. State.** Our office won a verdict where the Commissioner of Agriculture was sued for approximately \$250,000 by a bank as successor in interest to a seller under the department's Family Farm Security Program loan guarantee.

4. **State v. Steffl.** The Commissioner obtained a judgment against a milk producer under new laws which impose civil penalties for the sale of adulterated milk.

## RURAL ISSUES AND ASSISTANCE

In conjunction with our representation of the Department of Agriculture, countless direct responses were made to questions from farmers, lenders, lawyers, and farm advocates regarding the provisions of the 1986 farm bill. Legal expertise was provided to the Department in its efforts to inform Minnesota's farmers, lenders, and farm product buyers of their new rights and duties as a result of changes to the "double jeopardy" provisions of the Uniform Commercial Code. Further, the Department was represented by our office at a number of formal and informal presentations at meetings in rural areas on the 1986 farm bill. In addition, the Attorney General's representatives to the agricultural agencies worked in close harmony with the Attorney General's Rural Issues group on numerous farm related matters including litigation, attempts to influence federal farm policy, investigation of rural fraud schemes, and implementation of the new farm bill.

## ADMINISTRATIVE PROCEEDINGS

The Department was represented and counseled in a number of administrative proceedings initiated to recover claims filed against the surety bonds of wholesale produce dealers, grain buyers, and grain warehouses, including proceedings involving Quali-Fresh Marketing, Judson Elevator, Hader Elevator, Viking Elevator, Freidricks Grain, Schultz Grain and Feed, Lakeland Bean, and Clinton Feed and Seed. The Department was responsible for determining the validity of claims filed by farmers in these cases and effectuating payment from the sureties involved for those claims found to be valid.

## TRANSPORTATION

The Attorney General's Office provides all legal services to the Department of Transportation, including representation in eminent domain actions, real estate lawsuits, contract disputes, and claims for damage to state-owned property. The following summarizes significant work handled in this area over the past two years:

1. The Attorney General assisted the Department of Transportation in collecting \$8,971 in FY 1985 and \$39,890 in FY 1986 through litigation of property damage cases and miscellaneous other matters.

## Public Resources

2. Our office defended the state against numerous contractors' claims for extra compensation on state contracts. For example, in **D.H. Blattner and Sons, Inc. v. State**, negotiations reduced the plaintiff's claim from \$1,017,000 to \$215,000. The total savings from such settlements or litigation in FY 1986 was more than \$2,852,000. In another contract case, **Tri-City Paving v. State**, we negotiated an arbitration agreement as an alternative to litigation.

3. The Attorney General successfully defended the Department in federal district court in two challenges to highway construction projects. One of these, **Ringsred v. Elizabeth Dole, et al.**, involved the \$220 million extension of Interstate 35 through Duluth, Minnesota.

4. Attorney General staff examined hundreds of titles for property acquired by the Department of Transportation, assisted with the preparation and filing of eminent domain petitions and other legal documents in the acquisition process, and represented the department in hundreds of eminent domain hearings before court-appointed commissioners, district court juries, and the Court of Appeals. Of particular note were two eminent domain actions for property acquisitions involving Interstate 35 in Duluth and the Lafayette freeway in Dakota County. Through appeals of those actions the cost to the state of the condemned property was reduced by \$1,300,000.

5. The office reviews contracts for the Department of Transportation. In the past two years, staff have reviewed and approved thousands of the department's contracts. These contracts cover a broad spectrum of transportation activities from highway and railway crossing construction to complex funding contracts.

6. Attorney General staff advise the department on a variety of environmental issues. For example, our office has taken an active role in assisting the department to identify potentially contaminated property, provide testing guidelines, and develop procedures to incorporate the cost of waste clean-up in both direct-purchase acquisitions and condemnation actions. We also represent the department in negotiating with citizen groups and local governments to address environmental concerns about construction projects.

7. The Attorney General advises the department on its aeronautics activities. In the past two years we reviewed 151 grant-in-aid contracts to various airport authorities in the state and defended the department in a matter contesting state aircraft registration fees.

8. Construction firms that have been found guilty of contract crimes are subject to debarment from state construction contracts. Our office assisted the department in debarring 13 contractors for bid rigging crimes during the biennium.

The Attorney General provides legal services to the Transportation Regulation Board which is vested with the authority to determine rates and the scope of operating authority for the regulated common carriers of Minnesota. We advise the members of the Board on matters which affect transportation policy and also represent the Board whenever its orders are appealed.

## Public Resources

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

**Brinks, Inc., v. Minnesota Public Utilities Commission.** In this case, we successfully represented the Minnesota Public Utilities Commission (the predecessor of the Transportation Regulation Board) in an appeal by Brinks, Inc., before the Minnesota Court of Appeals. The Court affirmed the agency's grant of authority to Rochester Armored Car, Inc., to transport coin and currency on behalf of the Federal Reserve Bank of Minneapolis.

**American Freight Systems, Inc., v. Transportation Regulation Board.** We successfully represented the Board before the Court of Appeals in this matter. The Court sustained the Board's conclusion that interstate common carrier authority and its related attributes, alone, are insufficient to warrant the administrative granting of a certificate for Minnesota statewide common carrier authority.

## UTILITY REGULATION

The Attorney General's Office provides legal services to the Public Utilities Commission and the Transportation Regulation Board. In addition to providing daily advice in rulemakings and contested case proceedings, the office defends the agency decisions before the Court of Appeals and Supreme Court. Over the past two years, the following cases are examples of the case load handled in this area.

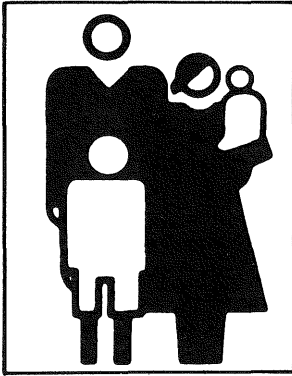
1. In **Re Inter City Gas Corporation, Re Peoples Natural Gas Company, and Re Continental Telephone Company of Minnesota**, all decided July 3, 1986, the agency's implementation of the interim rate law, 1982 Minn. Laws Ch. 414, was upheld. The Court agreed that the commission's use of across-the-board increases and refunds for interim rates for utility and telephone service fairly allowed for a temporary increase while a general rate increase was being investigated.

2. In a series of appeals arising from a Northwestern Bell Telephone Company rate case, the Attorney General's Office successfully defended the agency determination that the agency could look into costs billed the telephone company by affiliated companies, including obtaining records and reports of the costs incurred by the affiliated company. The office also defended the agency's determination of criteria to evaluate requests for intervenor compensation authorized pursuant to 1984 Minn. Laws Ch. 611. Additional appeals in other areas from this rate case are pending before the Supreme Court.

3. The Attorney General's Office advised the commission regarding its authority to address a situation where a commissioner sought employment with a utility while deciding its rate case. After considering legal standards supplied by its counsel, the commission dismissed the Northern States Power Company gas rate case on the grounds that improper conduct made a fair decision impossible. Upon accelerated appeal to the Minnesota Supreme Court, we have prepared a brief defending the commission's authority and actions.

## Public Resources

4. The Attorney General's Office has assisted the commission to draft rules providing a code of conduct for the commission and regulating ex parte communications with the commission. The need for these rules became apparent in light of revelations that commissioners had improper communications with utilities while deciding rate cases affecting such utilities. Further work on these rules in response to 1986 Minn. Laws Ch. 409, is presently being undertaken.



# PUBLIC ASSISTANCE

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

## HUMAN SERVICES

The Attorney General defends the Department of Human Services (DHS) against actions brought by groups or recipients, medical assistance providers, and persons challenging delivery of services to the mentally ill and mentally retarded. The office frequently handles several class action lawsuits simultaneously, each one raising novel and complicated questions of law and social policy. For example, in the past year, suits challenged administration of the legislature's shift in General Assistance eligibility and creation of a "work readiness" program; the federal court's authority to correct underpayments to AFDC recipients; the right of a patient committed as mentally ill and dangerous to refuse administration of psychotropic medications; standards for care of mentally retarded patients in community facilities, and so forth. Each of these cases involves potential liability of hundreds of thousands of dollars, or in some cases, millions of dollars.

At the same time, we defended the constitutionality of statutes governing indeterminate commitment of the mentally retarded, recovery of medical assistance from the estates of deceased recipients, and criteria for discharge of the mentally ill and dangerous from commitment. Challenges to rules promulgated by DHS have been successfully defended. Other litigation has addressed a wide variety of topics including independent adoptions, rights of hearing impaired mentally ill persons, unlicensed day care, implementation of nursing home rate reductions, the data practices act, the federal government's authority to consider child support in determining the AFDC eligibility, and use of aversive and deprivation treatment for mentally retarded. The Attorney General places the highest priority on this litigation to insure that the state's interests are well-represented.

DHS also promulgated a number of complex rules during the biennium. Our staff reviewed over 30 rules, including day care, long-term care rates, General Assistance, AFDC, Medical Assistance, Indian relief, cost of care in state hospitals, county delivery of social services, lump sum settlement of child support, and a number of other controversial topics. Also, the development of a consolidated chemical dependency treatment fund, authorization for new computer systems, and jurisdiction over Indian child welfare matters placed increased demands on our staff.

In response to an increased work load, the office has made several changes in the past two years. First, a legal assistant was added to help docket and process files. One legal assistant with special training in probate worked closely with DHS staff to handle a backlog of collection cases. As a result, there was a substantial increase in recoveries for the general fund.



## Public Assistance

FY 1984	\$ 233,158.68
FY 1985	\$ 514,538.15
FY 1986	\$1,089,543.45

Additional sources of payment will be pursued to maintain this trend. Similarly, because we resolved legal issues concerning the agency's right to intervene and sought statutory changes to permit recovery of assistance payments, DHS has increased its recovery of payments from workers' compensation insurers without increasing its use of our attorneys.

With over one thousand long-term care rate appeals pending and insufficient Attorney General staff to handle these files, DHS and the Attorney General agreed to retain outside counsel. These firms were assigned cases covered by old DHS reimbursement rules and were paid through the revolving account established under Minn. Stat. § 256.01, subd. 3(15) (Supp. 1985). Recoveries have exceeded costs; over \$1 million was recovered from nursing homes during the first year of the project.

In addition, new rate systems for both nursing homes and residential facilities spurred many new legal challenges. Although DHS has prevailed on each of these, the time it takes to litigate each one delays the final resolution of rates. Although 460 appeals were resolved last year, over 1,800 appeals were pending on January 1, 1986 — a net increase of 300 over the prior year. To reduce or bring the backlog under control will require additional Attorney General staff or expanded use of outside counsel.

During the biennium there has been a significant increase in litigation with the federal government. In some cases, we challenged the validity of federal policies or regulations of the United States Department of Health and Human Services (HHS); in others, HHS tried to disallow payments to the state. During the biennium, nine cases with over \$3.4 million in federal revenue were in dispute. Of the three cases fully resolved, HHS recovered \$78,038; DHS retained \$132,725. Since the federal government is reducing the allowable error rates for state-administered programs and strictly interpreting provisions which limit expenditures, we expect more litigation in this area.

For the balance of the biennium, our staff will be working closely with DHS to demonstrate compliance with the Consent Decree entered in 1980 governing standards for care of the mentally retarded in state hospitals. If compliance is shown, the federal court's jurisdiction over the delivery of services to the mentally retarded will end on July 1, 1987.

## HUMAN RIGHTS

The Attorney General's Office conducts litigation on behalf of the Minnesota Department of Human Rights and on behalf of individuals who have filed charges of discrimination with the Human Rights Department pursuant to the Minnesota Human Rights Act. The Human Rights Act protects individuals against discrimination in employment, housing, public accommodations, public services, and education and protects against discrimination on the basis of race, sex, age, religion, disability, and status with regard to public assistance. Hearings pursuant to the Minnesota Human Rights Act occur initially and on the merits before the Office of Administrative Hearings and on an appellate level at the Court of Appeals and Minnesota Supreme Court.

## Public Assistance

In the past biennium, our office resolved through settlement or litigation approximately 150 cases. In addition to obtained declaratory and injunctive relief for victims of discrimination, our office has recovered about \$1.1 million in compensatory and punitive damages. Of these cases, one is particularly noteworthy. In **State v. Sports & Health Club, Inc.**, the United States Supreme Court dismissed for lack of a substantial federal question an appeal from a decision of the Minnesota Supreme Court concluding that the state's interest in prohibiting sex and religious-based employment discrimination outweighed the religious beliefs of the owners of a chain of health and fitness clubs.

## HEALTH

The Attorney General responds to health-related citizen inquiries, renders legal advice and services with respect to the activities and proposed actions of the Department of Health and the ten health-related licensing boards, investigates complaints filed against licensed health professionals and human services occupational registrants, and represents the health agencies in all legal proceedings including disciplinary actions, contested cases, rule-making hearings, and litigation.

In the past two years the Attorney General has experienced a marked increase in its health-related workload. Two factors contributed significantly to the increase. First, the number of complaints filed against licensed health professionals continued to rise rapidly. In 1982 the Attorney General received only 250 complaints from the health licensing boards; by FY 1985 the number of complaints received annually had doubled and in FY 1986 reached 647. The sharp rise in the number of complaints produced a corresponding increase in the Attorney General's responsibility to investigate and represent the licensing boards in disciplinary conferences, contested cases, and appeals. Second, the Attorney General's workload was significantly increased by the recognition of the serious health threat posed by Acquired Immune Deficiency Syndrome (AIDS). The Attorney General has worked with the Department of Health to identify many legal issues raised by this health threat.

The Attorney General works closely with its health clients to further the public health of the state. Some of the significant matters in which the Attorney General has been involved during the last two years are:

1. **Actions Against Licensed Health Professionals.** People who seek care from health professionals are vulnerable not only because good health is of paramount importance but also because the licensed status of a health professional creates a feeling of trust on the part of the person seeking aid. The Attorney General plays an important public protection role by investigating complaints against licensed health professionals and representing the health boards in legal actions against licensees for such matters as incompetency, drug abuse, improper prescribing, sexual and other abuse of patients, and fraudulent billing practices. Some noteworthy examples of such cases are:

- a. A physician's license was revoked because he sold drugs to female patients in exchange for engaging in sexual activities. He also made sexual advances and had sexual contact with other patients when the sale of drugs was not involved.

- b. A dentist's license was indefinitely suspended for incompetency.

## Public Assistance

c. A chiropractor's license was revoked on many grounds including exposing patients to excessive amounts of x-rays, informing patients that they would contract a serious illness and die if they did not receive treatment from him, and making false statements to insurers regarding patients' needs for treatment.

d. A psychologist's license was revoked for harassing individuals with whom he had professional differences by committing them to financial obligations without their consent or knowledge.

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

a. The Attorney General assisted the Department in obtaining an injunction against a mens' call service when it learned that the men working for it may have been infected with the AIDS virus and that they were engaging in sexual activities with bi-sexual married men. This serious public health problem, created by the potential transmission of the AIDS virus not only to the male customers of the call service but also to their unsuspecting wives and unborn children, led to the Department's intervening through judicial means.

b. The Attorney General represented the Department in several contested cases and court challenges to Minn. Stat. § 144A.071 which establishes a moratorium against the Medicaid certification of new nursing home beds. The legal actions involved disputes over the Department's implementation of the law and challenges to its constitutionality. The Attorney General successfully defended the law.

## EDUCATION

As counsel for all state-level education boards and more than 25 state educational institutions, excluding the University of Minnesota, the Attorney General's Office provides a complete range of client legal services and appears in court and administrative proceedings on behalf of these agencies. The following are examples of the many cases handled by our office.

In **Columbia Pacific University v. State of Minnesota**, a California school sought to preclude the state from regulating the school's activities affecting Minnesotans. The school's efforts to resist the application of Minnesota's law in both state and federal court were defeated.

In **Sentz v. St. Cloud State University**, the University's program which allowed its students to complete their student teaching experience in private schools is being challenged in federal court as violating the First Amendment to the U.S. Constitution. Although the district court ruled against the program, pending and subsequent U.S. Supreme Court interpretations of the First Amendment made appeal to the U.S. Eighth Circuit Court of Appeals appropriate. The case is currently awaiting a ruling by the appeals court.

## Public Assistance

**Reddeman v. HECB**, in which an employee, whose position was terminated due to budget cutbacks, asserted age discrimination in his termination. The federal district court upheld the agency's termination of the position and the employee. The decision has been appealed by the employee to the U.S. Eighth Circuit Court of Appeals.

In an administrative proceeding which followed a federal audit, the U.S. Department of Education asserted that the State Board of Vocational Technical Education misused over \$158,000 of federal funds for a secondary vocational follow-up study and demanded refund of the amount. In the course of the proceedings, the federal agency was convinced by the state's arguments that it had properly expended the federal funds. The federal agency completely withdrew its adverse audit determination.

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

## HOUSING

The Minnesota Housing Finance Agency was advised and assisted by our office with its several real estate financing programs. As an example, the agency was assisted by our involvement in seven bond sales totaling \$260,805,860. These sales provided funds for the agency's residential purchase money mortgage and remodeling loan programs. The sales also provided funds for the construction and rehabilitation of more than 614 apartment units for occupancy by low and moderate income Minnesotans.

The agency was also assisted in a variety of other activities including our drafting of all contracts and reviewing all manuals relating to the acquisition and servicing of residential purchase money and remodeling loans, as well as the underwriting and management manuals for the agency's Apartment Development Division. Our office provided the legal services to the agency when it financed 102 Indian housing loans, 1,791 rehabilitation loans, 24 rental rehabilitation loans, and when it financed 295 energy loans for rental structures.

Our offices handled the legal questions relating to the agency's acquisition of notes and mortgages from participating institutional lenders and advised on legal matters relating to portfolio management. The substantial nature of this activity is evidenced in that during the last two years the agency purchased 6,883 home energy loans, 3,889 home improvement loans, and 4,584 home mortgage loans.

## UNEMPLOYMENT

The Attorney General provided assistance to the Department of Jobs and Training in over 150 court appeals involving challenges to the department's decision-making function in unemployment compensation cases. This function is significant because it supports Jobs and Training's efforts to uniformly and consistently implement the law which provides for unemployment compensation benefits.

The Attorney General also provided legal services in nearly 700 district court, probate, bankruptcy, and other legal actions to collect unpaid unemployment compensation taxes for a total yield of \$1,034,185.

## Public Assistance

### RESIDENTIAL UTILITY USERS

The Attorney General has the duty to represent the interests of residential consumers in utility matters. These duties must be contrasted with the duties of the Department of Public Service, which represents general consumer interests in utility matters. Since the Department must weigh the competing interests of large and small business users against the interests of residential customers, it has historically supported charging each customer class the costs they cause the utilities. Such positions must, by necessity, consider many factors. Attorney General Humphrey believes factors such as the affordability of the rates to each customer class, the ability to pass the costs on to others, and the tax deductibility of these charges by business customers are appropriate factors to consider in setting rates and in that manner supports lower rates for residential customers.

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

During this biennium, the Office of Attorney General proposed, and had accepted, the following revenue reductions in utility rate cases:

Northwestern Bell	\$38,787,000
United Telephone	199,562
Continental Telephone	7,291,000
Northwestern Bell (Misc. Tariff)	3,700,000
NSP Gas*	2,147,000
Continental (CPE)	958,505
NSP Electric	17,000,000
<b>TOTAL</b>	<b>\$70,083,067</b>

\*Case later dismissed as a savings of \$15 million for which we share credit with other intervenors. The dismissal has been appealed.

In addition, the Office of the Attorney General has jointly proposed, with other parties, the following adjustments which were accepted:

Northwestern Bell	\$ 2,197,234
United Telephone	1,338,071
NSP Gas	952,000
NSP Electric	57,900,000
<b>TOTAL</b>	<b>\$62,387,305</b>

We also proposed rate design changes, which were adopted and saved residential ratepayers:

Northwestern Bell	\$ 50,000,000
Minnesota Power	19,000,000
NWB (Switched Access)	55,600,000
<b>TOTAL</b>	<b>\$124,600,000</b>

Thus, the combined financial impact of the office's efforts has been \$257,070,372.

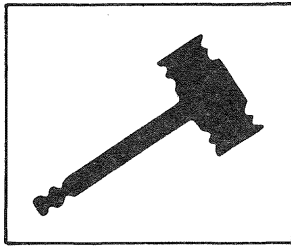
## **Public Assistance**

In addition to the above cases, our office has participated in eight contested cases which determined policy matters and filed comments on 43 other miscellaneous topics.

## **ECONOMIC DEVELOPMENT**

The Attorney General's Office has provided legal assistance in connection with the numerous economic development, tourism promotion, and energy conservation programs of the Department of Energy and Economic Development. Our office represented the Minnesota Energy and Economic Development Authority in connection with its issuance of \$137,614,558 of industrial development bonds. The bonds were issued and loans were made from the proceeds of the bonds in connection with economic development projects ranging from a precision instrument manufacturing company in Litchfield to a turkey and beef processor in St. Charles; for energy development projects including hydroelectric facilities in Hastings and St. Cloud; and for a statewide Hospital Equipment Loan Program.

Our office has also represented the state in connection with other state programs designed to stimulate private investment and to serve public needs for job creation, economic development and energy conservation including programs such as loans to small businesses made by Opportunities Minnesota, Inc., the Energy Loan Insurance Program, the Waste Tire Recycling Loan Program, the Tourism Loan Program, and the Minnesota Fund Loan Program. The total outstanding balance of loans made and committed under such programs is in excess of \$17,000,000.



# SOLICITOR GENERAL'S OFFICE

In the past biennium, Attorney General Humphrey reestablished the position of Solicitor General and the Solicitor General's Division within the Attorney General's office.

The division has three broad functions. First, it performs the civil litigation coordination function for the office, including: monitoring constitutional challenges to state statutes; distributing and reviewing pleadings; coordinating amicus curiae, or "friend of the court," brief activities; and providing consultation and advice to the staff attorneys on litigation matters.

Second, the division performs a civil litigation defense function, defending challenges to the constitutionality of Minnesota statutes; coordinating federal civil rights actions against state agencies and employees; and providing legal representation to all state court judges and judicial officers.

Third, the division performs a policy development and public interest function on behalf of the Attorney General.

Some of the significant activities of the Solicitor General's Office during the biennium were:

1. **Federal Land Bank, et al. v. Humphrey, et al.:** Defending the constitutionality of the 1986 Minnesota Farm Bill.

2. **Hodgson v. State:** Defending the constitutionality of the state's parental notification statute which requires minors to notify their parents or obtain a court order for an abortion.

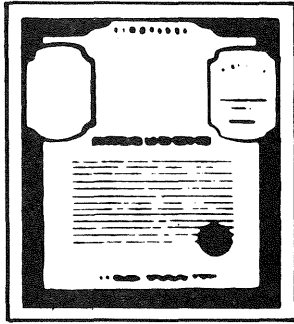
3. **Wygant v. Jackson Board of Education:** Supporting in the United States Supreme Court, as amicus curiae, a public employer's right to enter into a collective bargaining agreement providing for affirmative action.

4. Assisting the Department of Public Service in investigating contacts between regulated utilities and former members of the Public Utilities Commission.

5. Establishing and coordinating an interdivisional group to address issues arising out of the crisis in Minnesota's farm economy.

6. Proposing and supporting legislation including the Farmer-Lender Mediation Act, a children's trust fund for the prevention of child abuse, and restrictions on the distribution of smokeless tobacco.

7. Submitting comments on proposed federal regulations, particularly those relating to agriculture, health care and the environment.



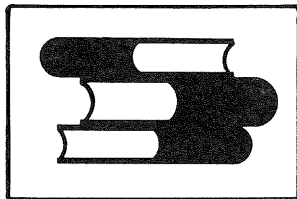
# LEGISLATION

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

During the past biennium the Attorney General supported and testified on behalf of numerous bills of importance to Minnesota citizens, particularly legislation to help Minnesota's farmers. He worked closely with the legislature on the 1986 farm bill including developing its mandatory mediation provisions. He also supported and testified on behalf of legislation to ban the free distribution of smokeless tobacco; a stronger new car lemon law; and a procedure for citizen involvement in the removal of elected county officials.

The Attorney General has continued to take an active role in criminal justice issues, particularly child abuse. He supported and testified on behalf of legislation to protect children in the courtroom and expedite the handling of child abuse cases. He also was involved in legislation that created a Children's Trust Fund to aid in the prevention of child abuse, and a Crime Victims Ombudsman to better protect the rights of victims of crime. He continued his efforts to strengthen drunk driving laws and to provide for expanded state authority regarding the forfeiture of profits from criminal activities.





# OPINIONS

The Attorney General's Office receives many requests for opinions from county, city, town attorneys or attorneys for school districts or unorganized territories, state officials and the legislature. Some requests are dropped after discussion with the person submitting the request for lack of jurisdiction, resolution without the need for an opinion, etc. Depending upon the general applicability and interest in the matter, a published formal opinion or an informal letter opinion may be returned to the person requesting the opinion from the Attorney General. In Fiscal Year 1985, we received 105 requests and prepared 14 formal and 76 informal opinions. During Fiscal Year 1986, we received 99 requests, issued 18 formal opinions, and prepared 74 informal opinions.

Several opinions rendered during the biennium warrant mention:

## Contracts

Ambulance service contracts awarded pursuant to Minn. Stat. § 471.476 are not subject to the competitive bidding requirements of Minn. Stat. § 375.21. This opinion supersedes Op. Atty. Gen. 707-A-7 issued November 12, 1968.

OP. ATTY. GEN.  
707a-7  
July 22, 1985

## County Attorneys

The term municipality as used in Minn. Stat. § 487.25, subd. 10, includes a town. Metropolitan County Attorney is generally not required to prosecute misdemeanor and gross misdemeanor offenses committed in towns.

OP. ATTY. GEN.  
121-b-7  
May 30, 1985

## Judicial Vacancies

Where vacancy occurs in office of district court judge after election of someone other than incumbent but before the time for the new judge to take office, the regularly elected judge should take office on the first Monday in January for a full six-year term.

OP. ATTY. GEN.  
141d-2  
June 20, 1986

## Legislature

Sine die adjournment of the legislature requires action of both the house and senate. Overruling Op. Atty. Gen. 280-O, June 12, 1961.

OP. ATTY. GEN.  
280-a  
March 19, 1986

## Opinions

### Mortgage Foreclosures

The published notice of a foreclosure sale does not need to include notice to the mortgagor of his right to request a separate sale of homesteaded property. Notice of that right however in ten point capitalized letters must be included in the notice of foreclosure served on the mortgagor; this requirement is satisfied if the notice is so composed as to actually call the new language to the attention of the mortgagor.

OP. ATTY. GEN.

301-c-1

May 30, 1986

### Open Meeting Law

Nonprofit corporation organized under Minn. Stat. Ch. 317 to operate mental health service program, as contemplated by Minn. Stat. §§ 245.61 to 245.66 (1984), is probably not subject to Minnesota Open Meeting Law, Minn. Stat. § 471.705 (1984), under particular facts, but should be encouraged to comply.

OP. ATTY. GEN.

92a-30

January 29, 1986

### Public Employees

Residency requirements imposed upon city employees outside the metropolitan area must be reasonable and job related.

OP. ATTY. GEN.

359a-19

July 27, 1984

Cities and counties in metropolitan area may not establish geographic or response-time residency requirements. Minn. Stat. § 415.16 (1984).

OP. ATTY. GEN.

359A-19

March 12, 1985

The limitations of Minn. Stat. § 465.72, establishing a maximum amount for severance pay to employee with leave employment with a school district, do not include payments made to a retiring teacher pursuant to the Teacher Early Retirement Incentive Program as authorized by Minn. Stat. § 125.611, as amended by Minn. Laws 1984, ch. 463, art. VII, § 15.

OP. ATTY. GEN.

175

July 25, 1984

A schoolboard of an independent school district may permit its retired employees to utilize the value of accumulated sick leave to discharge retired employees' obligations for medical and hospitalization insurance premiums. The value of the accumulated sick leave must be included in the calculation of the maximum severance pay allowable under Minn. Stat. § 465.72 (1984) and must be paid out within the time limit established in that section.

OP. ATTY. GEN.

161b-7

December 4, 1985

## **Opinions**

### **Students**

Whether a student has established “residence” for purposes of receiving a free tuition is a question of fact for the local Board. In order to determine residence, the Board must ascertain the actual purpose of the student’s presence within the district. All factors bearing on purpose should be considered including from whom the student receives care and support, and over what period of time.

OP. ATTY. GEN.

169p

February 6, 1985

The Pupil Fair Dismissal Act allows exclusion or expulsion of a pupil in the next school year for misconduct on the last day of the prior school year.

OP. ATTY. GEN.

169-f

September 3, 1985