

CONSUMER PROTECTION 1981

Attorney General



Annual Report of the Consumer Protection Division
OFFICE OF ATTORNEY GENERAL
ROBERT T. STEPHAN
State of Kansas

REC-31

Submitted pursuant to K.S.A. 50-628.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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January 18, 1982

The Honorable John Carlin
Governor
and
Members of the Kansas Legislature

Once again, I am pleased to report that the Consumer Protection Division of my office rendered assistance to more than 4,000 Kansas consumers during 1981.

During the last year, the division experienced several changes in its filing and recording systems in an effort to improve its accuracy and efficiency. And, as indicated in the statistical reports, the division received over 4,200 complaints and returned more than \$486,000 to Kansas consumers.

With the economy being what it is and with the various federal cuts to many state and local agencies, I anticipate the division will be very busy during 1982. And, although we sometimes find ourselves frustrated by fly-by-night, out-of-state con artists, the gratification we feel when we are able to help the majority of consumers who contact this office is, in itself, our greatest reward.

If I, or my staff, may ever be of assistance to you or your constituents, please feel free to contact me personally.

Very truly yours,

A handwritten signature in cursive script that reads "Robert T. Stephan".

ROBERT T. STEPHAN
Attorney General

INTRODUCTION

During 1981, the Consumer Protection Division of the Office of the Attorney General initiated several changes in its overall filing system. These changes were adopted in order to improve the accuracy and efficiency of the manner in which individual complaints and lawsuits were recorded with the office.

For example, prior to January, 1981, all inquiries, as well as complaints, were given file numbers and assigned to various staff members for response. Additionally, all complaints over which the division had no jurisdiction were given file numbers and then referred to the appropriate agency for further handling.

Under the new system, only complaints over which the division appears to have jurisdiction are given file numbers and assigned to the proper staff person for response and/or investigation. All inquiries and complaints which do not fall within the purview of the office still are answered in an expeditious manner, but are not assigned file numbers.

Accordingly, in 1981, the statistics reflect that 4,206 complaints were received, a smaller amount than was received the previous year. However, this figure does not include the hundreds of inquiries and referral complaints which were not assigned file numbers. Under the new system, the inquiries and referral complaints are kept in a "miscellaneous file" and can be easily located by name and subject matter with the assistance of a cross-reference directory. As of December 15, 1981, the number of files included in the "miscellaneous file" totaled 467.

Also affected by the new system are the opening categories and closing codes. Both areas have been expanded to include a more detailed explanation of the type of complaint or the final disposition of the case.

For the first time since Attorney General Stephan took office, in 1981 mail order complaints constituted the largest percentage of complaints received (19.78%). This figure is followed closely by the second largest area of complaints, automobiles (13.14%). Magazine complaints and home improvement complaints constituted 4.66% and 4.45%, respectively.

During 1981, the Consumer Protection Division continued its efforts to promote consumer education throughout the state. Regular publication of the "Consumer Corner" column was released weekly to over one hundred Kansas newspapers and other publications. As explained in previous reports, this column usually depicts a situation which has been brought to the attention of the Consumer Protection Division by a Kansas consumer, and advises the consumer what remedies may be available to him.

Also, in 1981 staff members of the Consumer Protection Division appeared in most of the 105 counties in the state and gave approximately 150 speeches to Kansas consumers. As usual, the main emphasis of consumer

education focused on the elderly. Unfortunately, citizens over 65 seem to be more likely to fall victim to illegal con games and "rip-off artists." The Consumer Protection Division has attempted to give the utmost exposure to the accessibility of this office in assisting consumers who feel they have been "taken."

While traveling throughout the state, members of the Consumer Protection Division have worked closely with various county and district attorneys. As a result of the frequent contact between the Consumer Protection Division and the county and district attorneys, criminal charges of theft by deception have been filed on various occasions. Pursuant to the Kansas Consumer Protection Act, the Consumer Protection Division of the Attorney General's Office does not have criminal jurisdiction, whereas the county and district attorneys do.

As outlined in the 1981 statistics, the "total annual savings" for this year fell short of the previous year's savings. However, in 1980, the Consumer Protection Division settled one lawsuit which resulted in a savings of over \$1,200,000 to Kansas consumers. If this particular case is disregarded, this year's total annual savings exceeds last year's savings by approximately \$60,000.

However, the main goal of the Consumer Protection Division is not to exceed a certain dollar amount in savings, but to help as many consumers as possible, regardless of the dollar amount involved in their complaint.

Keeping this objective in mind, it is the intention of Attorney General Robert T. Stephan and his Consumer Protection Division to continue to serve Kansas consumers by providing them with efficient, effective assistance and to inform them through statewide education of their rights as Kansas consumers.

DISPOSITION OF CLOSED COMPLAINTS

	Complaints Closed	Percent of Total
Inquiry or Information Only	640	16.07
Referred to Private Attorney	126	3.16
Referred to County/District Attorney	86	2.16
Referred to Other Attorney General	287	7.21
Referred to Other Kansas Agency	128	3.21
Referred to Small Claims Court	148	3.72
Referred to Federal Agency (FTC, Post Office, etc.)	187	4.69
Money Refunded/Contract Cancelled--amount	751	18.86
Merchandise Delivered	287	7.21
Repaired/Replaced	190	4.77
Mediation Only--No Savings	255	6.40
No Reply From Complainant	158	3.97
Unable to Locate Respondent	22	.55
Practice Discontinued	62	1.56
Respondent Out of Business	59	1.48
No Basis	65	1.63
No Jurisdiction	125	3.14
Insufficient Evidence	21	.53
Withdrawn	42	1.05
Unable to Satisfy Complainant--further action not warranted	63	1.58

Voluntary Compliance Agreement	33	.83
Other	226	5.67
Lawsuit Complaint Files	22	.55
a. Insufficient evidence	(0)	(0)
b. Merchandise delivered	(0)	(0)
c. Money refunded/contract concluded--amount	(1)	(.025)
d. No jurisdiction	(2)	(.05)
e. Practice discontinued	(0)	(0)
f. Repaired/replaced	(1)	(.025)
g. Respondent enjoined	(0)	(0)
h. Unable to locate respondent	(2)	(.05)
i. Other	<u>(16)</u>	<u>(.40)</u>
TOTAL CASES CLOSED	3,983	100%

CATEGORIES OF NEW COMPLAINTS

CASES RECEIVED	4,206
CASES CLOSED	3,983
TOTAL ANNUAL SAVINGS	\$486,548.89

	Complaints Received	Percent of Total
Miscellaneous	382	9.08
Aluminum Siding	17	.40
Advertising	121	2.87
Appliances	136	3.23
Automobiles	553	13.14
Boats, Boating Equipment, Repairs, etc.	8	.19
Book, Record and Tape Clubs	40	.95
Business Opportunity Services	30	.71
Cable Television	2	.05
Clothing	37	.88
Cemeteries	42	1.00
Collection Practices	129	3.06
Contests	64	1.52
Credit Reporting Agencies	10	.24
Credit Code	92	2.19
Discount Buying Clubs	36	.86

	Complaints Received	Percent of Total
Door-to-Door Sales	18	.43
Encyclopedias	4	.10
Energy Savings Devices	4	.10
Failure to Furnish Merchandise (other than mail order)	51	1.21
Farm Implements/Equipment	36	.86
Fire, Heat and Smoke Alarms	2	.05
Floor Coverings	21	.50
Food Products	6	.14
Fund Raising (charities, etc.)	12	.29
Funeral Homes	3	.07
Furniture	55	1.31
Gasoline Pricing	7	.17
Gasoline Content	3	.07
Gasohol and Stills	6	.14
Health Services (doctors, dentists, hospitals, etc.)	43	1.02
Health Spas and Weight Salons	16	.38
Hearing Aids	8	.19
Heating and Air Conditioning	53	1.26
Home Improvements	187	4.45
Home Construction	2	.05
Hypnosis (smoking, weight loss, etc.)	25	.59

	Complaints Received	Percent of Total
Inquiries	22	.52
Insurance	24	.57
Invoice and Billing Schemes (noncredit code)	10	.24
Interest Rates and Lending Companies (other than credit code)	2	.05
Jewelry	52	1.24
Kitchenware	4	.10
Land Sales (subdivided out of state)	8	.19
Land Sales (subdivided Kansas)	5	.12
Landlord/Tenant	29	.69
Loan Finders	6	.14
Lotteries	2	.05
Magazines	196	4.66
Mail Order	832	19.78
Mobile Homes and Campers (sales/service)	54	1.28
Motoreycles and Bicycles	7	.17
Moving and Storage	21	.50
Multilevel and Pyramid Distributorship Companies	70	1.66
Musical Instruments, Lessons, etc.	7	.17
Nurseries, Gardening Equipment, etc.	6	.14
Nursing Homes	3	.07
Office Equipment and Supplies	13	.31
Pest Control	62	1.47
Pets/Animals	18	.43

	Complaints Received	Percent of Total
Photo Equipment and Services	19	.45
Photo Studios and Companies	51	1.21
Referral Selling	7	.17
Real Estate (houses)	65	1.55
Real Estate (other than houses)	7	.17
Securities and Investments (other than stocks and bonds)	6	.14
Services (general)	6	.14
Services (professional)	21	.50
Sewing Machines	10	.24
Sporting Goods	4	.10
Stereos and Record Players	6	.14
Stocks and Bonds	1	.02
Sundrys	1	.02
Televisions and Radios	19	.45
Toys	4	.10
Trade and Correspondence Schools	15	.36
Travel Agencies	26	.62
Travel and Transportation	102	2.43
Utilities	41	.97
Warranty Problems	11	.26
Water Softeners, Conditions, Purifiers, etc.	3	.07
Work-at-Home Schemes	<u>67</u>	<u>1.59</u>
TOTAL	4,206	100%

SUMMARY OF 1981 LAWSUITS

STATE, ex rel., v. AMERICAN COUNCIL OF THE
BLIND, INC., ARLISS HENDERSON MANAGEMENT
COMPANY, INC., AMERICAN COUNCIL OF THE
BLIND ENTERPRISES AND SERVICES, INC.

This action was brought under the Charitable Solicitation Act to enjoin the charitable organization from soliciting contributions in Kansas until it complies with the statute. Defendant operated a thrift store and solicited donations in the form of used household goods. The question was whether the Act applied to such an operation and whether the defendants had complied with the provisions relating to professional fundraisers and charitable organizations, as well as the percentage limitations on the amount of gross receipts to be used for a charitable purpose.

There was trial to the court in June. Both American Council of the Blind and American Council of the Blind Enterprises and Services were found to be charitable organizations required to comply with the registration and reporting requirements of K.S.A. 17-1740 and 1742. Neither Arliss Henderson Management Company nor American Council of the Blind Enterprises and Services was found to be a professional fundraiser. Defendants were given a time period in which to complete registration. This has been accomplished and American Council of the Blind and American Council of the Blind Enterprises and Services are registered as required by the statute.

STATE, ex rel., v. PAT MULLIN,
d/b/a MULLIN EXTERIOR DESIGNING

An action was filed against defendant alleging deception in connection with a contract to furnish and install a patio cover. The petition alleged the defendant guaranteed the roof section would not leak, but when he was notified of a problem shortly after installation, he refused to comply with the guarantee, correct the problem, or refund the contract price. Restitution of \$680.51, and a civil penalty were requested.

Attempts to serve the defendant were unsuccessful. The action was dismissed without prejudice in March, 1981, because the defendant could not be located.

STATE, ex rel., v. BUSINESS MEN'S VENTURE, et al.

In January, 1980, an action was filed in Shawnee County District Court in an effort to halt the growth of a pyramid scheme. Business Men's Venture (BMV) was an alleged club with an office in Missouri. Every person who purchased a membership for the cost of \$1,000 became a club member. Emphasis was placed on recruiting new members with the representation being made that up to \$64,000 could be expected as the result of one purchasing the membership. In August, 1981, the case was concluded. Various named defendants agreed to refrain from promoting, offering, selling, or granting participation in BMV, or any similar plan or device based upon a multilevel or pyramidal or endless chain distribution scheme. A payment of \$2,000 was also received by the Office of the Attorney General.

STATE, ex rel., v. NITE-LITE CORPORATION

This action was filed in June, 1980, against a Florida corporation and dismissed without prejudice in December, 1981. The defendant solicited Kansans and sold telephone sticker strips, but in some cases, failed to deliver or issue a refund. The company experienced financial difficulty and disappeared. No one could be located by the sheriff and personal service was not obtained.

STATE, ex rel., v. GLEN BISHOP

In December, 1980, a petition was filed in Stafford County District Court against Glen Bishop. The defendant allegedly entered into contracts with consumers whereby defendant agreed to perform home repairs and household improvements. Prepayment was accepted, but defendant failed to complete the contracts or make refunds to consumers. The right to cancel the door-to-door sale was not given by the defendant as required by the Kansas Consumer Protection Act. An injunction, actual damages, civil penalties, and costs were sought.

On June 4, 1981, judgment was granted. The defendant agreed to make refunds, comply with the Act, and pay costs and a sum to the State. On July 2, 1981, the defendant filed a petition in bankruptcy. The discharge of the debtor was entered on November 30, 1981. By an agreed upon court order, our judgment is determined to be nondischargeable. The defendant is obligated to pay \$21,663.50, plus interest, to the plaintiff, \$19,163.50 for restitution, and \$2,500 to the Office of the Attorney General. Repayment of the indebtedness is to begin January 1, 1982.

STATE, ex rel., v. COMMERCIAL BROKERS EXCHANGE, INC.

In February, 1981, a petition was filed against Commercial Brokers Exchange. Defendant sold new car brokerages to Kansas consumers and, in connection therewith, failed to make disclosures to prospective purchasers which constituted deceptive acts. Defendant did not advise the broker of the existence and application of the Kansas Vehicle Dealers and Salesmen Licensing Act. The requirement of the broker paying an annual license fee and maintaining an established place of business which is not occupied as a residence, and having a bona fide contract or franchise with each manufacturer before dealing in new vehicles in Kansas was not disclosed. Judgment by default was granted. The defendant was permanently enjoined from engaging in business in Kansas and was assessed costs, along with a \$2,000 civil penalty and a \$500 payment to the Office of Attorney General. The company is no longer in business and the judgment has not been collected.

STATE, ex rel., v. DAWKINS & ASSOCIATES,
INCORPORATED, AND LEE DAWKINS

A petition for injunctive relief was filed in the District Court of Shawnee County against a Colorado corporation, Dawkins & Associates. The company was soliciting Kansans offering to provide advertising for persons desiring to sell their property and businesses. A subpoena was issued pursuant to K.S.A. 50-631. Complete information was not provided. In February, 1981, defendants were enjoined from doing business in Kansas until they comply with the subpoena.

STATE, ex rel., v. STEPHEN T. WISE,
d/b/a INTERNATIONAL HOMEMAILERS, INTERNATIONAL ADVERTISING

In April, 1981, an action was filed in the Wyandotte County District Court alleging the envelope stuffing and circular mailing programs advertised and sold by defendant were deceptive and in violation of the Act. The work-at-home programs allegedly created an illusion of employment, perpetuated an endless chain marketing scheme, and enriched the defendant unjustly.

In December, the defendant entered into a consent judgment. By the terms of the order, the defendant is prohibited from soliciting, advertising, or selling programs of envelope stuffing or circular mailing to consumers. No fee, charge, or deposit can be required by the consumer participant. Additionally, defendant made refunds to consumers totaling \$350 and paid \$500 to the Office of Attorney General.

STATE, ex rel., v. WAYNE RONALD LACEY,
d/b/a/ MIDWEST INDUSTRIES, WAYNE INDUSTRIES,
AMERICAN INDUSTRIES, BROOKS DISTRIBUTORS, STARBURST

On February 10, 1981, a consent judgment involving Wayne Ronald Lacey was presented to the Osage County District Court and approved. Defendant advertised and sold several work-at-home programs. The envelope stuffing programs were a major concern. The defendant agreed to discontinue soliciting, advertising, or selling programs of envelope stuffing or circular mailing. The defendant paid \$300 to the Office of Attorney General.

STATE, ex rel., v. PACESETTER INDUSTRIES,
INC., a/k/a PROFESSIONAL LAW
ENFORCEMENT OFFICERS JOURNAL

On February 20, 1981, a consent judgment was presented to the Shawnee County District Court and approved. Pacesetter Industries, Inc., a for profit Texas corporation, solicited, or caused to be solicited, Kansans to place sponsorship ads in a publication, Professional Law Enforcement Officers Journal. In an effort to prevent the contributing public from being deceived, misled, misinformed, and mistaken, the consent agreement provides for certain disclosures. The defendant, during its solicitation, shall disclose that it is not a nonprofit organization; it is not connected with a local law enforcement agency in Kansas; nor is it sanctioned, endorsed, or approved by any official law enforcement body.

STATE, ex rel., v. UNITED TRAVEL TOURS, INC.

In April, 1981, a petition was filed in Shawnee County District Court against a Florida corporation. The defendant, through telephone solicitation, offered and sold vacation packages to Kansans. The defendant allegedly committed deceptive acts in connection with the solicitation and sale of the Las Vegas-Miami-Reno-Hawaii packages costing the consumer \$55. On May 26, 1981, a consent judgment was entered into. The defendant has agreed to comply with the Act in the future and refrain from making false or misleading representations in the solicitation or sale of the vacation packages. Payment of \$1,000 was also received.

STATE, ex rel., v. LAWMEN'S NEWS,
A. A. ARONSON, INC.

This lawsuit was filed in April, 1981. Kansans were receiving bills from Lawmen's News for advertising. The complaint was that nothing had been

ordered, nothing was due and owing, and continued billing was false and deceptive. A. A. Aronson, Inc., a Wisconsin corporation, was substituted as the defendant, and on June 24, 1981, a consent judgment was entered into by the parties. The defendant was prohibited from soliciting advertisements in Kansas for the publication, Lawmen's News. Further, in connection with solicitations for other publications, defendant must make certain the mailing conforms with the federal law, 39 U.S.C. §3001. Defendant shall not mail or cause to be mailed billing statements or invoices to Kansans in an attempt to create an impression of an existing obligation, unless a valid contract giving rise to such obligation was in fact entered into.

STATE, ex rel. v. THE CHURCH OF THE
CHILDREN OF THE DESERT,
SHELDON HEIMAN, a/k/a REV. SHELLY

In December, 1980, a petition was filed in the Shawnee County District Court against the defendants for injunctive relief. The Church of the Children of the Desert in Nevada was an alleged charitable organization which solicited and collected contributions from Kansas residents for alleged charitable purposes through several methods, two methods being church bingo and Christmas Cash Contest. The defendant did not comply with the Charitable Solicitation Act. On February 23, 1981, the defendants were enjoined from soliciting contributions in Kansas in any manner whatsoever until they fully comply with the law.

STATE, ex rel., v. HEART DISEASE
RESEARCH FOUNDATION

In May, 1980, an injunction was granted which prohibited the above-named charitable organization from soliciting contributions in Kansas until it properly registered and complied with the Charitable Solicitation Act. On February 25, 1981, an order to appear and show cause was issued against the defendant. As a result of documentation provided by defendant, the injunction dated May 23, 1980, was lifted and vacated on April 23, 1981. The defendant did comply with the statutory requirements.

STATE, ex rel., v. UNITED FRATERNAL
ORDER OF PEACE OFFICERS ASSOCIATION,
ROSE MARY EVANS

On February 17, 1981, a second proceeding to recover civil penalties was commenced against the defendants who solicited advertisers for its publication. In 1974 an order had been entered which prohibited certain

practices and required specific disclosures by defendants in their solicitation of advertisers. Solicitations for advertising in United Peace Officers Yearbook violated the court's order. On July 31, 1981, a judgment of \$10,000 was granted. Efforts to collect have been unsuccessful.

STATE, ex rel., v. LARRY KING, d/b/a ROYAL SIGNS

In April, 1981, a lawsuit was filed in Shawnee County District Court against the defendant. The petition alleged defendant committed deceptive practices because he entered into contracts to make and paint signs, requested and accepted prepayment, but failed and refused to provide the signs or otherwise perform as agreed. On June 24, 1981, judgment was granted for the plaintiff. Defendant was enjoined from violating the Act and ordered to pay consumers actual damages, which totaled about \$1,200. Defendant also was ordered to pay a civil penalty of \$2,000 and \$500 to the Office of Attorney General. At the present time, the judgment remains unsatisfied.

STATE, ex rel., v. HENRY FULK, d/b/a NATIONAL HOME BUSINESS SERVICES, FULK ENTERPRISES, INC.

In June, 1981, a petition was filed against the defendants in Atchison County District Court. Defendants advertised and sold work-at-home programs for a charge to consumers and promised substantial earnings. The petition alleges defendants are committing deceptive and unconscionable acts in connection with the solicitation and sale of envelope stuffing and circular mailing programs.

Defendants have denied any violations of the Act. Discovery is underway. Plaintiff is seeking injunctive relief, refunds for consumers, expenses, costs, and civil penalties.

STATE, ex rel., v. PASSPORT TO PLEASURE VACATIONS OF TEXAS

In March, 1981, a lawsuit was filed against Passport to Pleasure Vacations of Texas. The company solicited Kansas consumers by mailing a Speed Gram and proceeded with a telephone solicitation for sale of a vacation certificate in Las Vegas. The fee charged was \$129 or \$139. The petition alleges the company misrepresents the package and benefits and utilizes a misleading marketing device. The defendant has denied the allegations. Discovery is not complete. A pretrial conference is scheduled for late January, 1982.

STATE, ex rel.,v. LOGAN AND TAYLOR, INC.

This action was filed on October 15, 1980, in the District Court of Shawnee County, Kansas. Donald I. and Gene Landry purchased a residence listed by Logan and Taylor, Inc., which was represented as having two woodburning fireplaces. Based upon this representation, the complainants purchased the home and, thereafter, attempted to build a fire in the basement fireplace. They discovered the basement fireplace was not an operable woodburning fireplace.

Settlement was reached immediately before the scheduled jury trial in the sum of \$500.

STATE, ex rel.,v. ANDREW BARNES, et al,
d/b/a/ GREENWOOD CEMETERY

Pursuant to K.S.A. 1980 Supp. 17-1367, a petition was filed on April 17, 1981, to dissolve the cemetery corporation and transfer title of the property to the Municipality of Leavenworth, Kansas. The cemetery corporation had failed to keep the cemetery markers in good condition, the ground properly maintained, and the cemetery lawn mowed. The case is expected to be resolved by settlement agreement by March, 1982.

STATE, ex rel. v. LOFTIN ENTERPRISES, INC.,
QUALITY POOL CONSTRUCTION, INC.

A lawsuit was filed December 2, 1980, against the defendant who agreed to build a swimming pool for the complainant by July 4, 1981. On the date the pool was to be completed, the digging of the ground for the pool had not yet been completed. When defendant failed to answer the petition, a default judgment was obtained. We have been unable to satisfy the judgment.

STATE, ex rel., v. CITY WIDE PEST CONTROL

This case was filed February 26, 1981. The defendant had performed a termite inspection at the property of the complainant in December, 1979. By mid-April, 1980, the house was so infested with termites that part of the house required reconstruction. The suit was dismissed with prejudice upon the defendant paying actual damages of \$2,000 to the consumer.

STATE, ex rel., v. CHARLES MAYERNIK,
d/b/a C.M. CONSTRUCTION CO.

This action involved a remodeling contractor in the Dodge City area who failed to meet the terms of a contract. A consent judgment was filed in 1980 under which \$850 which remained due and owing by the contractor would be refunded in payments of \$25 a month. Following sporadic payments during 1981, the defendant ceased making any restitution. Garnishment procedures were instituted with his current employer, and the payment schedule was brought up to date.

STATE, ex rel., v. GARY PARIS,
d/b/a PARIS AUTO PAINT

This case involved misrepresentations that were allegedly made concerning the way a car would look following repainting. Following discovery, a one-half day trial was held in June, and the action was dismissed. The court found that the representations which were made did not exceed mere "puffing," leaving no grounds for an action based on deceptive or unconscionable practices.

STATE, ex rel., v. MIDWESTERN DISTRIBUTION, INC.,
TRACTOR 8377, INC., B & D MOTOR PARTS, INC.

This lawsuit was initiated in July, 1980, against the first two of the above defendants, with the third added subsequently. The cause of action concerned the operation of the individual tractor corporation by a driver who was also made president and sole shareholder. The petition alleges that the agreements entered into by the driver gave the defendants an unconscionable amount of control over the affairs of the tractor corporation which itself was alleged to be a mere sham.

A motion to dismiss was filed by defendants Midwestern and B&D Motor Parts in November, 1980. The motion was based upon a lack of jurisdiction by this office to bring the action under the Consumer Protection Act. The trial court sustained the motion to dismiss, and the matter was taken on appeal to the Court of Appeals. That court, following oral arguments heard in October, 1981, upheld the trial court's decision that, insofar as dealings between two corporations were involved, no "consumer transaction" existed under the Act.

STATE, ex rel., v. MIDWESTERN DISTRIBUTION, INC.,
TRACTOR 8140, INC., B & D MOTOR PARTS, INC.

Same as the preceding case, although the facts involving the driver were somewhat different. This action was also dismissed by the trial court, and upheld by the Court of Appeals.

STATE, ex rel., v. MIKE ROBERTSON and
NATIONAL ENERGY SAVINGS CORPORATION

The above action involved the sale of gasoline-saving devices and plans to adapt cars to achieve the same result. The devices and plans allegedly increased mileage from 50 to 100 percent. Seven consumers with claims totaling over \$600 were represented in the suit, which also sought to halt the sale of these devices in the state. Following service upon defendants, default judgment was taken. Insofar as the corporation was defunct and the individual defendant had no assets remaining in Kansas, no monetary recovery was possible.

STATE, ex rel., v. LEO KING

This lawsuit was filed against an auto mechanic for work allegedly performed on a consumer's vehicle. Subsequent difficulties with the vehicle led to an investigation by this office. The lawsuit which was filed alleged that the work had in fact not been done, with resulting damages to the vehicle in excess of \$670.

Discovery was completed during 1981, with a trial held in November. Following one-half day of testimony, a settlement was reached whereby \$600, plus plaintiff's costs, were paid by defendant.

STATE, ex rel., v. HAROLD V. MATNEY
and ROBERT L. PINET, d/b/a
MEMORY GARDENS ASSOCIATION, et al.

A petition was filed in November, 1980, which sought a variety of remedies, including restitution and injunctive relief under the Kansas Consumer Protection Act. These allegations involved the sale of memorial markers and vaults by the defendants, and their failure to deliver said merchandise upon need by the consumer. The petition also alleged the two cemeteries in question were "abandoned," pursuant to K.S.A. 17-1366, and that the permanent maintenance trust funds for the respective cemeteries had been improperly handled.

Following preliminary motions and initial discovery, an amended petition was filed in June, 1981. Added to the lawsuit were four additional cemeteries operated by defendants, along with the respective counties in which the cemeteries were located. This was consistent with the original action, which named as defendants the two counties in which the initial cemeteries were found. Discovery was commenced during the summer and fall, with a pretrial hearing held in October, 1981. At that time, trial was set to begin in February, 1982.

Discovery completed to date indicates that several dozen individual complaints exist concerning nondelivery of markers, with an additional several dozen complaints concerning the way in which the cemeteries have been maintained. For each violation of the Consumer Protection Act, actual damages and a \$2,000 civil penalty are being sought. Additionally, an accounting is requested for the permanent maintenance funds of the cemeteries, with said funds totaling over \$200,000.

STATE, ex rel., v. GARY GELLNER,
d/b/a INDEPENDENT BROKERS ADVISORS,
and RON VAN ORDEN, d/b/a,
BUSINESS GROWTH ARCHITECTS

This case sought to have a business practice enjoined in Kansas whereby a consumer retained a company to put him in contact with other firms which provide loans, business counseling, and similar services. The petition alleged that while a fee of \$389 was paid by an individual consumer, the firms were not obligated to achieve anything concrete on his behalf, and, in fact, did little, if anything, to meet the representations which had been made.

Following service on both parties, a settlement was reached whereby the defendants agreed not to do any future business in Kansas. Actual damages were also recovered in the sum of \$190.

STATE, ex rel., v. JAMES E. WALLIS,
d/b/a, COMET MOVING & STORAGE

Following the receipt of a consumer complaint and subsequent investigation, suit was filed against the defendant, with the petition seeking recovery of actual damages arising out of the sale of a diesel tractor unit. The unit, which was sold to a Kansas consumer, was represented as being a 1979, when in actuality it was a 1978. This difference in model year resulted in a significant difference in the amount the vehicle was worth.

After the completion of discovery, a date was set for a pretrial hearing in January, 1982. At the present time, a motion for summary judgment

filed by the defendant is pending. The motion alleges the transaction does not come under the scope of the Kansas Consumer Protection Act, in that the defendant is not a "supplier." Briefs have been submitted by both sides on this question, and the matter is under advisement by the court.

STATE, ex rel., v. BLO-RITE INSULATION, INC.

This action involved a company which installed foam insulation in private residences, and was initiated following investigation in the Great Bend area which revealed that the door-to-door sale provisions of the Kansas Consumer Protection Act had been violated. Additionally, repairs made by the company following installations were found to be inadequate. Actual damages were sought for each of the individual complainants, together with an injunction on future practices. Following personal service upon defendants, default judgment was awarded by the district court in July, 1981, following failure of the defendants to appear for trial. Actual damages were awarded in the sum of \$16,800, and mechanics' liens which had been filed by the defendants were dissolved. In that the corporation has ceased to do business in Kansas, and the individuals involved have left the state, no enforcement of the actual damages provision of the judgment has been possible. The corporation, however, was enjoined from doing further business in the state.

STATE, ex rel., v. NON-SMOKE CLINIC, INC.

Following the receipt of a number of complaints in 1980 from consumers regarding the operations of Non-Smoke Clinic, Inc., the Attorney General's office entered into a consent judgment whereby refunds to listed individuals would be sent out by the end of the year. Following the failure of the Clinic to comply with any of the terms of the judgment, contempt proceedings were instituted in the Shawnee County District Court. While the corporation has ceased to do business in the state, due to the flight of the individual defendant, the bench warrant issued remains outstanding.

STATE, ex rel., v. SALINE CENTER CEMETERY ASSN., et al.

A petition to dissolve a cemetery corporation was filed in May, 1980, in the Ellis County District Court. The petition alleged that because the cemetery had not been maintained, it should be dissolved under the terms of K.S.A. 17-1366, et seq. Following a hearing before the district court, in August, 1981, an order for dissolution was rendered, with all permanent maintenance funds transferred to Ellis County, which now has the duty for the maintenance and upkeep of the cemetery grounds.

STATE, ex rel., v. FORD MOTOR CO.,
LAIRD NOLLER FORD, INC., DALE WICHMAN FORD, INC.,
HARPER FORD, INC., and SHAWNEE MISSION FORD, INC.

During the years 1974 through 1977, it was alleged by the Attorney General that the Ford Motor Co. manufactured a number of vehicles which subsequently proved to have defective engines. These vehicles included both cars and trucks, and involved cracked blocks and a premature wear of certain engine parts. Furthermore, the Attorney General alleged that when Ford became aware of these problems, it took steps to notify its dealers, but did not notify the public. As a result, individuals continued to buy both new and used Fords without knowledge of the possibility of these problems, as neither Ford nor the dealers disclosed the existence of such problems.

Following the receipt of several dozen complaints, a settlement was reached whereby Ford agreed to review each complaint on its own merits. For a number of vehicles which fell in a mileage range of between 25,000 and 50,000 miles, individual reimbursements were made. A number of other vehicles which exceeded these limits were not part of the settlement, insofar as the implied warranty which was sought to be enforced had expired.

While a final accounting is still being made of the complaints resolved, total savings will exceed \$9,000. Additionally, the principal of an implied warranty of merchantability has been successfully upheld.

STATE, ex rel., v. BARKMAN BROS., INC.

This petition was filed in the Reno County District Court in October, 1981. It alleges the defendant sold a riding lawnmower to a consumer, representing it as having been totally rebuilt. Subsequent problems with the machinery indicated such representations were not correct.

This matter is still in discovery, with depositions set for the January, 1982.

STATE, ex rel., v. AMERICAN MARKETING SERVICES, INC.

The defendant in this action was involved in the sale of pens used for advertising purposes. As an inducement to buy a certain number of pens, a representation was made that a piece of diamond jewelry would be included at no charge. In that the stone which was subsequently sent did not appear to be a diamond, an injunction was sought against such practices.

Following service on defendant, a settlement was reached whereby defendant agreed to suspend such practices and to refund the moneys paid by two individual complainants. These amounts total \$200.

STATE, ex rel., v. BROTHERHOOD STATE BANK & TRUST CO.

A petition was filed in July, 1980, against defendant on behalf of consumers who had taken out a loan from the bank five years earlier and who had secured the note with a mortgage on their home. The note was set up to have a 25-year amortization, but only a 5-year maturity, leaving the balance to either be paid in a "balloon" or refinanced at the prevailing interest rate. The suit is based on the bank's alleged failure to state the nature and effect of the balloon note to consumers.

A motion to dismiss was filed by defendant in January, 1981, alleging the action was barred by the statute of limitations. Following the submission of briefs on the question, the trial court ruled in March, 1981, that the motion to dismiss be upheld. An appeal was subsequently taken by the State to the Court of Appeals, where the matter now awaits oral argument.

STATE, ex rel., v. INTERNAL ENERGY
MANAGEMENT, INC.

This lawsuit sought to enjoin the sale of devices manufactured by the defendant corporation. Such devices were represented as having gasoline-saving capabilities. The petition alleged the device was, in fact, no more than an aluminum tube which could in no way have the claimed characteristics.

Following personal service on defendant, a consent judgment was agreed to, whereby the sale of these devices would be halted until the outcome of a similar suit brought by the Attorney General of Iowa is known.

STATE, ex rel., v. DEAN HACHENBERGER and
WOOD BROS. PRODUCTS, INC.

Following the receipt of a consumer complaint against the above parties, the Attorney General's office began a consumer investigation. Following a refusal by the suppliers to comply with requests for information, a legal proceeding was instituted to require compliance under K.S.A. 50-631. Following the institution of such action, the defendants agreed to remedy the subject matter of the complaint, which concerned defective workmanship on a remodeling project. Following completion of the work, the action was dismissed.

STATE, ex rel., v. ROY "DICK" HALEY
and INTERNATIONAL JEWELS, INC

The defendants in this action induced a Kansas couple to invest over \$15,000 in a franchise operation whereby defendants would supply them with

jewels and jewelry which the couple could then sell for profit. Following the initial consignment, defendants failed to take any steps to further supply the consumers, with the result being that they were unable to market or otherwise dispose of their remaining merchandise. The action, filed in April, 1981, sought recovery of actual damages and the granting of an injunction. Following a failure of the defendants to plead or otherwise appear, default judgment was granted in June, 1981. Because the defendants are located in Tulsa, Oklahoma, enforcement procedures were instituted there. These enforcement proceedings continue at this date.

STATE, ex rel., v. IVORY JOHNSON

Upon the receipt of a complaint concerning a home repair situation, an investigation was initiated by the Attorney General's office, which indicated that an elderly Topeka woman had been induced to pay nearly \$2,000 for certain home repairs, a number of which were never done. A consent judgment was reached whereby \$600 of the contract price was to be refunded. Following the failure of the defendant to meet the terms of the judgment, contempt proceedings were instituted which resulted in the arrest of the defendant on two occasions. At the present time, enforcement of the judgment is still being sought against the defendant.

STATE, ex rel., v. MARKETING ASSOCIATES, INC.
and WILLIAM E. BEILMAN

This lawsuit names two defendants, a corporation located in Denver, Colorado, and its president. The action seeks to recover \$10,000 paid by a Kansas consumer to the defendants. For his money, the consumer was to receive video game machines, locations to place the machines, and subsequent servicing. No delivery or other performance was ever made.

Personal service was attempted upon defendants in Colorado. To date, this has been unsuccessful. If personal service cannot be had, service by publication will be obtained.

STATE, ex rel., v. DAVID THOMMEN and
EILEN THOMMON, d/b/a FUR, FEATHER & FIN

This proceeding was instituted following the receipt of complaints from consumers alleging that dogs which had been represented as registered through the American Kennel Club had been sold by defendants. However, the registration papers to verify such A.K.C. status had not been obtained, despite a premium price having been paid by the consumers. Subsequent investigation

indicated the papers were still in the possession of the wholesaler, who retained them until she was paid by the defendants. Accordingly, the action sought to have the defendants pay the wholesaler, so the individual consumers could obtain the registrations.

Following discovery and a pretrial conference held in December 1981, trial date was set for April, 1982. Efforts are underway to arrive at a payment schedule.

STATE, ex rel., v. RALPH GARCIA
d/b/a GARCIA'S AUTORAMA

This lawsuit was filed on September 8, 1978, alleging defendant advertised a vehicle as a 1969 Chevrolet Z-28 Camaro, when the vehicle was actually a normal Camaro. The odometer reading for the vehicle in question was also incorrect. The petition requested the difference in value between the two types of vehicles. On October 10, 1980, summary judgment was entered against the defendant with respect to the Consumer Protection Act violations. A settlement agreement was entered into by the parties in question, which required the defendant to pay the complainants the sum of \$1,000. Half of that amount was paid in March, 1981; the balance was paid in October, 1981, after a hearing in aid-of-execution. A satisfaction of judgment was filed by the State on October 22, 1981.

STATE, ex rel., v. J. D. SCHRINER,
SHANE HOMES, INC., and KIMBERLY DEVELOPMENT, INC.

The petition in this case was filed April 30, 1979, alleging defendants had misrepresented several material facts to the complainants in connection with the sale of a modular home. Most important of the misrepresentations was defendants' promise that the electrical bills would not exceed approximately \$130, when, in fact, they had approached \$300. Further, the petition alleged the defendants misrepresented material facts of workmanship, heating and cooling capacity, and insulation. The petition sought to have the acts of the defendants declared unconscionable and deceptive as provided in the Kansas Consumer Protection Act. The complainants desired to pursue more lucrative remedies through private counsel and, therefore, consented to the dismissal of the case by the State. The State filed a motion to dismiss the action, without prejudice, on May 1, 1981.

STATE, ex rel., v. RONALD GENE THOMISON,
THOMISON AUCTIONS, MRS. O. E. WALKER,
MRS. O. E. MARTIN

This action was filed on September 25, 1979, alleging defendants advertised certain items of personal property as being antiques, when, in fact,

they were reproductions. The action claimed the representations constituted violations of the Kansas Consumer Protection Act. Interrogatories and request for admissions were filed by the State. The defendant Thomison failed to answer to the request within 30 days and the State moved for summary judgment, based upon the alleged admissions. The motion was denied. A consent agreement was entered into between the parties, stating defendants would buy back the articles purchased by the complainant. In addition, defendants agreed to pay \$400 to the Office of Attorney General. Those payments have been made.

STATE, ex rel., v. EDUKAN, INC.,
d/b/a CLARK'S SCHOOLS OF BUSINESS, CAMDEN MCKINLEY,
JOE SWALLWELL, NORTHWESTERN NATIONAL INSURANCE
COMPANY, and WESTERN CASUALTY & SURETY COMPANY

A petition was filed on September 3, 1980, alleging violations of the Kansas Consumer Protection Act and the Proprietary School Act in connection with a medical assistants program offered by Clark's School of Business. The petition alleges the defendants represented that (a) students who had completed the program would be allowed to sit for a certification examination for the American Association of Medical Assistants, (b) graduates would find a good market for their training and starting salary commensurate with their advanced education, and (c) placement service was effective in obtaining employment for graduates. The petition alleges the above representations were false or misleading, and asks for damages, penalties, and injunctive relief.

All parties have answered the petition. Western Casualty and Surety Company filed a third-party petition against third-party defendant Marshall Payn, former president of EduKan, Inc. In addition, Western Casualty and Surety filed a cross-claim against EduKan. Defendants EduKan and Camden McKinley submitted interrogatories to the State, which were answered. On April 1, 1981, plaintiff's motion to amend its petition was filed with the court. That motion was granted. Plaintiff's first set of interrogatories to defendants EduKan, Inc., and Camden McKinley were received by the State on June 2, 1981. The State's request for admissions directed to defendant EduKan, Inc., were received by the State on May 29, 1981. On November 10, 1981, a discovery conference was held by all parties. Time deadlines for discovery were set and settlement negotiations were explored at that time, and are continuing to be explored. On November 30, 1981, a second motion to amend the petition was filed by the State. Ruling on those motions will be requested by the State in the near future.

STATE, ex rel., v. DANIAL A. BURWELL, D.C.

A petition was filed on January 18, 1980, alleging violations of the Kansas Consumer Protection Act for practicing without a chiropractor's license and other misrepresentations. The lawsuit seeks restitution and injunctive relief.

The State's claims are based on defendant's representations that Blue Cross-Blue Shield would cover services rendered by the defendant. In fact, Blue Cross-Blue Shield had notified the defendant they would no longer pay claims to the defendant's patients. Additionally, the defendant's license had been revoked at a time when he continued to offer his services. The State obtained a temporary injunction against defendant, precluding practice of chiropractic medicine pending trial of the matter. The defendant was later found to be in indirect civil contempt of court, because he placed an advertisement on television, holding himself out to the public as a person capable of practicing chiropractic medicine. The advertisement was run after the entry of the temporary injunction. For that reason, the court ordered the defendant to pay into the court the sum of \$5,000. The order in contempt was appealed by the defendant to the Court of Appeals, which dismissed the appeal.

On the State's motion, the court ordered the defendant allow plaintiff to examine defendant's business records in order to gain the names and addresses of consumers who received treatment from the defendant after his license was revoked. On March 24, 1981, the State's motion for partial summary judgment was granted by the court. The order states that any practice of chiropractic medicine after December 28, 1978, is in violation of K.S.A. 50-626. The defendant is permanently enjoined from doing business in the State of Kansas. The defendant is permanently enjoined from practicing chiropractic medicine in the State of Kansas, and all contracts for services entered into by the defendant after the date of his license revocation are null and void. The defendant was ordered to make available to the plaintiff by April 29, 1981, documents needed to determine Kansas residents who received services from defendant since the date of his license revocation. Those files have never been made available, and defendant is believed to have left the country.

STATE, ex rel., v. FUTURE HOMES INSPECTION, INC.,
FLOYD D. PARRY AND PAMELA S. PARRY

The petition in this case was filed October 20, 1980. The State contends defendants have misrepresented the quality of home inspections they perform. Three consumers relied on defendants' representations and have been damaged as a result. The lawsuit seeks restitution for these consumers, and injunctive relief. Two of the complainants' claims have been satisfied through negotiations between the parties. On December 30, 1981, the depositions of both Floyd D. Parry and one of the complainants, Deborah (Waring) Whelan were taken. Settlement negotiations are continuing on the Waring complaint.

STATE, ex rel., v. RAY JORDAN and CLIFF JORDAN,
d/b/a EXPANSO MANUFACTURING CO.

The petition in this case was filed July 9, 1980. The State alleged the defendants accepted \$1,000 as a down payment for an Expanso room addition.

The work was to be performed within two weeks after Christmas, 1979. To date, the work has not been performed. The petition contends defendants have violated the Kansas Consumer Protection Act. The State obtained personal service over defendant Ray Jordan, and a journal entry of default judgment was filed on August 18, 1981. Defendant was ordered to pay actual damages of \$1,000 to the complainants. In addition, defendant was ordered to pay investigation fees expended by plaintiff in the amount of \$500 in the investigation of this matter. To date, that amount has not been paid, and the State is currently pursuing post-judgment remedies.

STATE, ex rel., v. MICHAEL GALLAGHER,
EDWARD GALLAGHER, CHARLES GALLAGHER,
PAT GALLAGHER, and MATHEW GALLAGHER

The petition in this case was filed September 16, 1980, seeking restitution and injunctive relief. The State contended defendants solicited and entered into contracts promising to weatherproof roofs. Low estimates were given, but, upon completion, exorbitant prices were charged. The petition also asserts defendants misrepresented their experience and business address. Door-to-door sales statutes were also violated. The State, assisted by Thomas County Attorney, Perry Murray, was successful in obtaining a temporary injunction, precluding the defendants from doing business in Kansas, pending resolution of this matter. To date, service has not been obtained upon the defendants. The Thomas County Attorney, Perry Murray, filed motion to dismiss without prejudice, because of lack of service, in May, 1981.

STATE, ex rel., v. NATUR-ALL, INTERNATIONAL,
BILL KEOHO, and KEITH PROBASCO

This lawsuit was originally filed on January 15, 1980. The lawsuit sought restitution and injunctive relief. The suit maintained the defendants promised, in connection with the promotion of vitamin distributorships, that complainants would be provided training and supplies. Also, certain commissions were promised. The petition alleged that consumers who chose to sell for the defendants had no reasonable opportunity to earn the sums promised as an inducement to join the program. Also, defendants could not be located for service of process, and the petition in the original action was dismissed without prejudice. That petition was re-filed on October 6, 1981. Personal service of process was obtained on Bill Keoho, both individually and as president of the Natur-All International company. Defendants failed to respond to the petition. On December 28, 1981, the State notified defendants of its intention to take default judgment in the case. The letter also notified defendants of the amount of damages which would be requested in the judgment. Those damages amount to a total of \$59,876.40.

STATE, ex rel., v. JEWELART, INC.

The petition in this case was filed November 30, 1981. Defendant is a corporation engaged in the business of selling jewelry through its mail-order catalogue. Defendant advertised the sale of certain items which were continually out of stock when ordered by Kansas consumers. Defendant also failed to send items which had been ordered and paid for by Kansas consumers. Many refunds have not been made, and where refunds were made, checks drawn on defendant's account were returned, marked "insufficient funds" or "account closed." The petition alleges defendant is guilty of deceptive acts and practices, as defined by K.S.A. 50-626. The petition prays for injunctive relief, as well as cancellation of the contracts with Kansas consumers and civil penalties. To date, defendant has failed to answer the petition.

STATE, ex rel., v. MICRO-COOK PRODUCTS, INC.

The petition in this action was filed November 30, 1981. Defendant is a corporation engaged in the business of selling kitchenware through its mail-order catalogue. The defendant advertised the sale of certain items which were continually out of stock when ordered by Kansas consumers. In addition, defendant failed to send items ordered and failed to send refunds where refunds were requested. The petition alleges defendant's actions constitute deceptive acts and practices, as defined by K.S.A. 50-626. The petition prays for injunctive relief, cancellation of contracts, and civil penalties. To date, defendants have failed to file an answer to the petition.

STATE, ex rel., v. SUPERMARKET MEDIA, INC., AND
SMM MAIL ORDER MARKETING, INC.

The petition in this action was filed November 30, 1981. Defendants are corporations holding themselves out to be mail-order companies engaged in selling a variety of items for home and personal use. Defendants placed advertisements in various magazines circulating in Kansas containing photo representations of the items offered for sale and brief descriptions of the product. Defendants failed to send items ordered or purchased by Kansas consumers and, where items were received and returned under the guaranteed return policy, refunds were not, and have not, been made. Some items received by Kansas consumers failed to conform to the advertising representations made by defendants. The petition alleges the actions of defendants constitute deceptive acts and practices as defined by K.S.A. 50-626. The petition prays for injunctive relief, cancellation of the contracts with Kansas consumers, and civil penalties. To date, defendants have failed to answer the petition, but the State has been in contact with defendants and settlement negotiations have commenced.