

CONSUMER PROTECTION 1986



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



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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TO: The Honorable Mike Hayden
and the Kansas Legislature

With pride, I again submit to you the annual report of my Consumer Protection Division.

I appreciate your support in the past for consumer protection in Kansas, and ask for your continued assistance in protecting the rights of Kansas consumers.

If my staff or I may be of service to you or your constituents, or if we can answer any questions you may have regarding consumer protection in Kansas, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script, reading "Robert T. Stephan".

ROBERT T. STEPHAN
Attorney General

INTRODUCTION

This past year proved once again that the consumer must be ever watchful in his or her dealings. The con artists touting get-rich-quick schemes and something-for-nothing continued to inundate the mail and the telephone lines. They offered everything from "free" vacations (that really were not free) to "free" mini-electronic organs on which there was a \$12.95 handling and service charge. (The same mini-organ could be purchased locally for \$2.99.)

Alternative long-distance telephone service companies sprung up like mushrooms. They offered "twice the service at half the price" or "unlimited service" for a flat monthly fee. Under the latter plan, customers were advised in the fine print they might experience "some difficulty" in gaining access to the lines, but they should keep trying. Many of these companies offered the service through multilevel marketing structures and claims subscribers could "get rich" selling long-distance service. Many of these companies disappeared almost as quickly as they came on the scene; however, others were around long enough to sign up dozens of Kansans before they, too, disappeared.

The "You have won" a prize promotions continued to proliferate and, again, many Kansans took the bait and bought products to enhance their chances of winning even greater "prizes" in contests which they never entered.

An investigation concerning the business practices of certain home loan companies was started in 1986. At one point in time, there were in excess of 300 complaints received by the office. The investigation is continuing on a lender-by-lender basis, and, to date, the recoveries for consumers exceeds \$250,000.

The Consumer Protection Division continued its efforts to advise Kansans of these and other pitfalls by delivering literally hundreds of speeches, by press releases, and by publication of an advice column, which is currently sent to over 250 newspapers each week.

DISPOSITION OF CLOSED COMPLAINTS

	Complaints Closed	Percent of Total
Inquiry or Information Only	182	4.72
Referred to Private Attorney	68	1.76
Referred to County/District Attorney	30	.78
Referred to Other Attorney General	118	3.06
Referred to Other Kansas Agency	16	.42
Referred to Small Claims Court	87	2.26
Referred to Federal Agency (FTC, Post Office, etc.)	93	2.41
Money Refunded/Contract Cancelled--amount	1,014	26.31
Merchandise Delivered	336	8.71
Repaired/Replaced	151	3.91
Mediation Only--No Savings	437	11.34
No Reply From Complainant	294	7.63
Unable to Locate Respondent	109	2.83
Practice Discontinued	36	.93
Respondent Out of Business	95	2.47
No Basis	83	2.16
No Jurisdiction	319	8.28
Insufficient Evidence	69	1.80
Withdrawn	62	1.60

	Complaints Closed	Percent of Total
Unable to Satisfy Complainant--Further Action Not Warranted	54	1.40
Voluntary Compliance Agreement	5	.13
Other	113	2.93
Lawsuit Complaint Files	83	2.16
a. Insufficient evidence	(0)	(0)
b. Merchandise delivered	(0)	(0)
c. Money refunded/contract concluded--amount	(11)	(.28)
d. No jurisdiction	(0)	(0)
e. Practice discontinued	(0)	(0)
f. Repaired/replaced	(0)	(0)
g. Respondent enjoined	(69)	(1.80)
h. Unable to locate respondent	(0)	(0)
i. Other	<u>(3)</u>	<u>(.08)</u>
TOTAL CASES CLOSED	3,854	100%

CATEGORIES OF NEW COMPLAINTS

CASES RECEIVED	4,017
CASES CLOSED	3,854
TOTAL ANNUAL SAVINGS	\$1,012,027.00

	Complaints Received	Percent of Total
Miscellaneous	209	5.20
Aluminum Siding	0	0
Advertising	55	1.37
Appliances	76	1.90
Automobiles	547	13.63
Boats, Boating Equipment, Repairs, etc.	4	.10
Book, Record and Tape Clubs	23	.57
Business Opportunity Services	9	.22
Cable Television	2	.05
Clothing	28	.70
Cemeteries	38	.95
Collection Practices	112	2.79
Contests	18	.45
Credit Reporting Agencies	10	.25
Credit Code	60	1.49

	Complaints Received	Percent of Total
Discount Buying Clubs	61	1.52
Door-to-Door Sales	19	.47
Encyclopedias	3	.07
Energy Savings Devices	69	1.70
Failure to Furnish Merchandise (other than mail order)	133	3.31
Farm Implements/Equipment	35	.87
Fire, Heat & Smoke Alarms	2	.05
Floor Coverings	23	.57
Food Products	5	.12
Fund Raising (charities, etc.)	14	.35
Franchise Sales	0	0
Funeral Homes	1	.02
Furniture	56	1.38
Gasoline Pricing	3	.07
Gasoline Content	5	.12
Gasohol and Stills	0	0
Government Agencies	1	.02
Health Services (doctors, dentists, hospitals, etc.)	34	.85
Health Spas and Weight Salons	35	.87
Hearing Aids	13	.32

	Complaints Received	Percent of Total
Heating and Air Conditioning	26	.65
Home Improvements	173	4.31
Home Construction	9	.22
Hypnosis (smoking, weight loss, etc.)	0	0
Inquiries	16	.40
Insurance	0	0
Invoice and Billings Schemes (noncredit code)	28	.70
Interest Rates and Lending Companies (other than credit code)	1	.02
Jewelry	27	.67
Kitchenware	0	0
Land Sales (subdivided out of state)	8	.20
Land Sales (subdivided Kansas)	30	.75
Land Resale Companies	2	.05
Landlord/Tenant	17	.42
Loan Finders	0	0
Lotteries	1	.02
Magazines	146	3.63
Mail Order Companies	653	16.26
Mobile Homes and Campers (sales/service)	25	.62
Mobile Home Parks	3	.07

	Complaints Received	Percent of Total
Motorcycles and Bicycles	8	1.10
Moving and Storage	21	.52
Multilevel and Pyramid Distributorship Companies	32	.80
Musical Instruments, Lessons, etc.	4	.10
Nurseries, Gardening Equipment, etc.	31	.77
Nursing Homes	0	0
Office Equipment and Supplies	60	1.49
Pest Control	8	.20
Pets/Animals	16	.40
Photo Equipment and Services	20	.50
Photo Studios and Companies	28	.70
Referral Selling	0	0
Real Estate (houses)	405	10.09
Real Estate (other than houses)	3	.07
Securities and Investments (other than stocks and bonds)	33	.82
Services (general)	6	.15
Services (professional)	7	.19
Sewing Machines	6	.15
Sporting Goods	0	0

	Complaints Received	Percent of Total
Stereos and Record Players	0	0
Stocks and Bonds	0	0
Sundries	0	0
Telephone Solicitations	30	.75
Televisions and Radios	103	2.56
Toys	2	.05
Trade and Correspondence Schools	22	.56
Travel Agencies	120	2.10
Travel and Transportation	48	1.20
Utilities	32	.80
Vending Machines	0	0
Warranty Problems	35	.87
Water Softeners, Conditions, Purifiers, etc.	12	.30
Work-at-Home Schemes	<u>57</u>	<u>1.42</u>
TOTAL	4,017	100.0%

SUMMARY OF 1986 LAWSUITS**STATE, ex rel., v. EAGLE OIL & GAS**

This suit involves an oil and gas leasing company, which was apparently the largest one in the business. Default judgment was taken for nearly three-quarters of a million dollars, with a garnishment made on annuities deposited in a California insurance company. Before payment was made, a federal court in south Florida enjoined the state from further proceedings, based on the fact that another, more recent lawsuit there involved the Federal Trade Commission and the defendant company. The state contested the exercise of the court's jurisdiction over the state suit, which is in no way connected with the Florida proceeding. The federal court ruled it properly enjoined the State of Kansas from further proceedings, pending the conclusion of the FTC's action. At the end of 1984, the FTC suit was nearing time for trial, following the conclusion of other federal proceedings of a criminal nature (mail fraud, etc.) against some of the same defendants. The Florida court has denied the State's motion for relief from the injunction. The State was made a defendant in a class action in ancillary suits for declaratory judgment of the State's claim against Eagle Oil & Gas.

STATE, ex rel., v. MATNEY, et al.

This action was filed in November, 1980, and sought a variety of remedies, including actual damages and injunctive relief under the Kansas Consumer Protection Act. It was alleged the defendants, who were both the owners of six separate cemetery corporations and the corporations themselves, had failed to deliver burial markers upon need by the consumer. Further portions of the petition alleged the cemeteries were abandoned under state law, and permanent maintenance trust funds had not been maintained as required by law.

Following extensive discovery, a settlement agreement was reached as to a portion of the lawsuit in February, 1982. The permanent maintenance funds were restored in the form of trust accounts in a bank (for a total of \$206,000), and the owners agreed to sell their interests by January 1, 1983. Such a sale was made to an established Kansas City firm which already owned and operated other cemeteries, and which agreed, as part of the sale, to provide those markers which had been purchased previously on a pre-need basis.

Summary judgment has been granted and the amount of damages is to be determined by the court. Negotiations are ongoing.

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

COLDWELL BANKER TITLE SERVICE, INC., v.
UNITED STATES OF AMERICA, STATE OF KANSAS,
DANIEL A. BURWELL, et al.

In 1981, the Attorney General obtained a consumer protection judgment against Dr. Daniel Burwell. Burwell had unlawfully practiced without a chiropractor's license and had engaged in misrepresentation and deceptive acts. The court imposed a penalty of \$5,000 against Burwell.

Coldwell Banker Title Co. filed a federal interpleader action in 1984 alleging Burwell had sold real estate in Wyandotte County, Kansas, which was subject to liens by the Attorney General and the United States Internal Revenue Service. Part of the proceeds from sale of the real estate are being held in an escrow account, subject to a federal court order determining whether the State of Kansas or the Internal Revenue Service will receive the proceeds. The Attorney General has filed briefs and supporting memoranda with the federal court, and a decision is expected soon. If proceeds are awarded to the State of Kansas, the money will be paid into the State general fund.

STATE, ex rel., v. BYRON WRIGHT, d/b/a
AGRICULTURAL STEEL BUILDINGS OF AMERICA
and EAGLE STEEL STRUCTURES

This lawsuit, filed in January, 1985, alleges defendant is selling steel building dealerships and has made misrepresentations of material facts to over 100 Kansas consumers who purchased the dealerships. The lawsuit alleges the defendant misrepresented the price competitiveness of steel building products, misrepresented the profit potential, and failed to provide proper dealership support services.

A trial was scheduled in August, 1986, but was continued at the request of defendant because of a pending federal criminal investigation. In December, 1986, the defendant and another individual were indicted by a United States grand jury in Springfield, Missouri. The indictment charges the defendants with conspiracy, mail fraud, fraud by wire, and perjury. The Kansas civil lawsuit is stayed pending the outcome of the federal criminal prosecution.

The Attorney General's office has also assisted the Federal Trade Commission in an investigation of Byron Wright's business practices. The FTC learned that Wright has changed the name of his company to Nationwide Building Systems. The FTC investigators have reviewed the Attorney General's evidence and files and will use that information to initiate proceedings against Nationwide Building Systems.

STATE, ex rel., v. RICHARD LANKFORD

Defendant is a resident of Indiana who sells horses to consumers. A Kansas consumer purchased a horse from defendant and discovered after the purchase that the horse would not perform in a safe manner. It was eventually learned that a previous consumer had purchased the horse and experienced difficulty in controlling the horse.

A lawsuit was filed on October 5, 1984, alleging defendant failed to state material facts with regard to the horse sold to the Kansas consumer. In addition, the lawsuit alleged material misstatements were made to the consumer. The lawsuit continues to pend in court.

STATE, ex rel., v. FINANCIAL RESEARCH AND
DEVELOPMENT, INC., UNIFIED BROKER
CONSULTANTS, INC., INDEPENDENCE BROKER
CONSULTANTS, INC., JACK CHOATE,
ROBERT JONES, AND CHARLES NAUDET

This lawsuit was filed in November, 1982. The petition alleged each defendant participated in a scheme by which consumers who wished to become loan brokers paid \$7,790. The materials received in return proved to be of dubious worth, while the references given later were found to be aligned directly with the defendants' businesses.

Following institution of the suit, an agreement was reached whereby defendants would cease doing business in this state, and would refund \$7,500. To date, \$6,000 has been repaid and forwarded to the consumers. The above-mentioned judgment was filed in the Circuit Court of Jackson County, Missouri, and an order for final personal judgment against the defendants was approved by the court. Negotiations continue with defendant for the collection of \$1,500 for the consumer.

STATE, ex rel., v. HUDSON OIL CO., INC., et al.

This suit was filed October 20, 1983. Thereafter, Hudson Oil Co., Inc., filed bankruptcy. Further proceedings against the company have been "stayed" by the bankruptcy court. Conferences with the bankruptcy court in regard to the claims against the other defendant have been held on May 29, 1984, November 19, 1984, and March 4, 1985. Negotiations between individual defendant and bankruptcy trustee are ongoing.

STATE, ex rel., v. CHERYL TIDWELL and
COMMUNITY CREDIT COUNSELING SERVICES
OF SOUTH CENTRAL KANSAS, INC.

This lawsuit alleged defendants committed deceptive acts and practices by representing to consumers that a credit counseling service would be offered. Consumers paid money to defendants, pursuant to an agreement whereby defendants agreed to forward portions of the payment to creditors of the consumers. Defendants failed to forward all of the money to creditors, and misrepresented the nature of the credit counseling and debt payment service. A consent judgment was entered into in 1985, and defendants have been making restitution payments to the consumers. In 1986 the Attorney General's office disbursed all restitution payments, in prorata shares, to approximately fifteen victims. Additional restitution payments continue to be received from the defendants, and the Attorney General anticipates a second distribution to consumers in 1987.

STATE, ex rel., v. MASSEY-FERGUSON, INC.

This lawsuit involved sale of a used combine to a Kansas farmer. The combine seller represented that the combine was "ready for harvest" and "reconditioned," when, in fact, it was not. The farmer subsequently incurred in excess of \$10,000 for repairs. In addition, the seller attempted to disclaim implied warranties by selling the combine in "as is" condition. The seller entered into a consent judgment, paid restitution to the farmer, paid investigative fees to the Attorney General, and agreed to cease and desist misrepresentations and "as is" disclaimers.

IN RE NORTHWEST FINANCIAL EXPRESS, INC.;
NWFX, INC., AND GOLD FINANCIAL EXPRESS

This is a bankruptcy action filed in the United States Bankruptcy Court in Arkansas. The Attorney General has participated in two aspects of this proceeding--representation of Kansas consumers and representation of the Kansas Bank Department.

NWFX, Inc., through contracts with 7-11 Convenience Stores and Derby Service Stations in Kansas, sold money orders to Kansas consumers. When NWFX filed for bankruptcy in August, 1986, several thousand Kansans were left holding worthless money orders. The Attorney General promptly demanded that the owners of 7-11 Stores and Derby stations give refunds to Kansas purchasers of the money orders. 7-11 and Derby subsequently entered into an agreement with the Attorney General and have paid approximately \$17,000 in refunds to Kansans.

The Kansas Bank Department holds a surety bond in the amount of \$200,000, issued by NWFX, Inc. The Attorney General has participated in the bankruptcy proceedings in order to assure that full refunds are made to any remaining Kansas consumers or businesses who were damaged by the bankruptcy action of NWFX, Inc. This case is pending.

CULTURE FARMS, INC., and ACTIVATOR SUPPLY COMPANY

In January, 1985, the Attorney General initiated the first law enforcement investigation into activities of Culture Farms, Inc., Activator Supply Company, and related companies. These companies and their promoters were selling milk culture growing kits to consumers in Kansas and other states. The Culture Farms promotion has been characterized as the largest ponzi pyramid scheme in recent history. The results of the Attorney General's investigation were shared with the Kansas Securities Commissioner and law enforcement agencies in other states, as part of a cooperative law enforcement effort.

The Kansas Securities Commissioner used the results of the Attorney General's investigation to file an administrative enforcement action against Culture Farms and related companies and their promoters. The Securities Commissioner's action resulted in a Shawnee County court judgment terminating the culture-selling activity. The promoters were found to be illegally selling unregistered securities. The Attorney General's office assisted in defending the district court judgment on appeal to the Kansas Supreme Court. The Kansas

Supreme Court affirmed the Securities Commissioner's action and the judgment of the district court, by finding that the Culture Farms promotion was, in fact, a fraudulent scheme to promote and sell unregistered securities.

The Attorney General also participated in a joint law enforcement investigation and prosecution which took place in the U. S. District Court in Kansas. The criminal prosecution task force was composed of representatives of the Kansas Attorney General's Office, United States Attorney's Office, United States Postal Inspection Service, and Kansas Securities Commissioner. In September, 1985, a federal grand jury in Topeka, Kansas, indicted twelve individuals on charges of conspiracy and mail fraud. By December, 1986, all twelve defendants had entered guilty pleas to federal charges. Sentencing is scheduled for all twelve defendants in March, 1987.

The Culture Farms scheme operated for only seven months, but resulted in victimizing approximately 27,000 consumers nationwide, in an amount exceeding \$80 million. The Kansas Attorney General's prompt investigation and extensive cooperation and coordination with other law enforcement agencies, has been credited as a major factor in preventing even larger losses by consumers.

STATE, ex rel., v. RYDELLE LABORATORIES, INC.

This case was settled by consent agreement without requirement of filing suit. The investigation by the Attorney General revealed that Rydelle Laboratories marketed a fiber-based laxative product called "Fiberall." The marketing program involved the use of rebate coupons. The Fiberall rebate coupons, attached to the outside of the container, represented that consumers could receive a \$1 rebate on each purchase. After purchasing the product, consumers found a rebate application form in the bottom of the bottle. The application required the consumer to send a cash register receipt and the protective seal from the container in order to receive the rebate. The Attorney General's investigation revealed that most consumers had discarded the receipt and protective seal weeks or days before they discovered the rebate application form in the bottom of the container. In addition, some rebate application forms stated the offer expired on a date long before the product was actually purchased by consumers. Rydelle agreed to pay substantial civil penalties and investigative fees to the Attorney General's office. In addition, Rydelle agreed to continue redeeming rebate coupons, without requiring consumers to present their cash register receipt or protective seal.

STATE, ex rel., v. ARLEN WALLIS, d/b/a HILLTOP MOTORS

On July 12, 1985, a lawsuit was filed against defendant in Wyandotte County District Court, alleging defendant was illegally selling used cars in "as is" condition. Our lawsuit seeks injunctive relief, actual damages, civil penalties, and costs. A settlement was agreed upon and the consumer received \$500. A journal entry dismissing the action was filed. The case is closed.

STATE, ex rel. v. KANSAS
SOLAR & ELECTRIC, INC.

The lawsuit involves the sale of experimental solar equipment. A consent judgment was entered into with defendant to replace vertical solar plates with horizontal solar plates to remove the air conditioning unit and a refund to the consumer. The Attorney General's office is presently attempting to collect money from the defendant.

STATE, ex rel., v. DEAN ENDSLEY,
d/b/a DEAN ENDSLEY CONSTRUCTION

The lawsuit resulted in the entry of a default judgment in 1986. The defendant committed deceptive and unconscionable acts and practices by soliciting money for painting service from consumer, who paid money to have buildings painted. Defendant kept the consumer's money, but did not complete the painting. The Attorney General's office is attempting to locate the defendant.

STATE, ex rel., v. HOWARD NICHOLS,
d/b/a HOWARD NICHOLS & SONS

The lawsuits involve the sale to consumers by the defendant of a service to waterproof basements and a guarantee to repair if leaks occur within ten years. The consumers have paid for the service and have not received a waterproof basement or repair. Service of process is being attempted.

STATE, ex rel., v. TANTALON CORPORATION

A consent judgment was entered into with defendant who agreed to refund \$2,500 to consumer for claim of a guaranteed loan.

This lawsuit was filed to recover money paid to a loan finder which "guaranteed" that if a loan was not consummated, the finder's fee would be returned. No loan was found, and the company refused to repay the fee.

STATE, ex rel., v. VICTORY ADVERTISER, LTD.

In August, 1985, a lawsuit was filed in Finney County District Court because of false representations allegedly made to Kansans in connection with the sale of advertising for a Garden City High School basketball schedule poster. A consent judgment was entered into on February 14, 1986; \$2,500 was paid by the defendant, with \$1,000 going to the general fund of Kansas, \$500 to the court cost fund, and \$1,000 for refunds.

STATE, ex rel., v. MARKET DYNAMICS

On December 10, 1986, a lawsuit was filed in Johnson County District Court. It alleged the defendant had failed to respond to a subpoena lawfully issued by the Attorney General. The subpoena seeks information on the practices of this business. Our lawsuit seeks injunctive relief to prevent the defendant from selling or advertising any property or services until it complies with the subpoena. An alias summons is to be issued, and another attempt will be made to serve the defendant.

STATE, ex rel., v. NATIONWIDE PRINTING, INC.,
PRINTERS CLEARING HOUSE, DAVID E. WILLIAMS, KEITH
AINSWORTH, BRENDA AINSWORTH, OLIVER EDWARDS

On October 23, 1986, a lawsuit was filed in the Shawnee County District Court. It alleges the defendants committed deceptive and unconscionable acts and practices in connection with their sale of advertising speciality products. Our lawsuit seeks injunctive relief, restitution, civil penalties, expenses and costs. Negotiations are ongoing with counsel for the defendants.

STATE, ex rel., v. DENNIS ASBURY,
d/b/a GOLDEN SWEEPSTAKES COMPANY

On February 20, 1986, a lawsuit was filed in Johnson County District Court. It alleged the defendant committed deceptive and unconscionable acts and practices in connection with its coupon program, utilizing cash register receipts and gift certificates. Our lawsuit sought to enjoin the defendant from engaging in business in Kansas, damages for consumers, civil penalties, expenses and costs.

We are in the discovery stage.

STATE, ex rel., v. SNYDER ENTERPRISES, INC.,
d/b/a SNYDER'S HONDA OF MANHATTAN

This action involved a motorcycle dealer who sold a vehicle as a "motorized bicycle" when, in fact, it was a "motorcycle," as defined by the laws of the State of Kansas. This distinction was most significant to the consumer who questioned the dealer about it to assure that the unit he was purchasing was a "motorized bicycle," since his 14-year old son could operate such a unit without the restrictions imposed on a 14-year old driver to operate any other type of vehicle.

This lawsuit was filed on October 16, 1986, alleging deceptive and unconscionable acts on the part of the dealer, since this unit was, in fact, a "motorcycle," a fact that was known or should have been known by the dealer. This action is filed in the District Court of Riley, County, Kansas, seeking damages for \$684.38, the price of the unit, civil penalties, injunctive relief, investigative fees, and costs.

IN THE MATTER OF ORDINANCE NO. 1351
OF THE CITY OF HERINGTON, KANSAS

The Office of the Attorney General intervened in a declaratory judgment action filed by the City of Herington to construe Ordinance No. 1351. Section 3 of that ordinance, described as "UTILITY BILLING DATES; DELINQUENCY DATE," mandated that bills "must be paid in full by the 25th of the month." Failure of a customer to make payment in full by the 25th, whether or not the business office of the city was open on that day, subjected the customer to a late payment charge.

The District Court of Dickinson County, Kansas, granted the intervention in view of the interest of the Office of the Attorney General on behalf of consumers affected by the Kansas Consumer Protection Act, and found the City had improperly construed and applied the ordinance. The court further required the City to make restitution to those consumers who were charged a late payment penalty on the first day after a weekend or holiday, but did not find the City's acts violated the Kansas Consumer Protection Act.

The City appealed, alleging the court should not have applied K.S.A. 60-206(a) relating to the computation of the time periods to this action in arriving at its decision. This office filed a cross-appeal, alleging the acts of the City constituted a violation of the Kansas Consumer Protection Act and, in its brief filed January 23, 1987, argued the City had reached the right result in its determination, whether or not the use of K.S.A. 60-206(a) was applicable.