

STATE OF KANSAS

1975 ANNUAL REPORT

OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Division



CURT T. SCHNEIDER
ATTORNEY GENERAL

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PREPARED IN ACCORDANCE WITH K.S.A. SUPP. 50-628

KANSAS CONSUMER PROTECTION ACT

January 1, 1976



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

January 12, 1976

HONORABLE ROBERT F. BENNETT, GOVERNOR
AND MEMBERS OF THE 67th LEGISLATURE

Pursuant to K.S.A. 1975 Supp. 50-628, I am pleased to issue this report to the Kansas Legislature on the activities of the Consumer Protection Division of the Attorney General's Office. It is my intention to present a detailed report on the many functions of this division.

To carry out this office's responsibility for enforcing the Kansas Consumer Protection Act, I have assigned four attorneys and two investigators to the division.

Even though the Consumer Protection Division obtained great success during 1975, much remains to be accomplished in this area. My staff will be initiating an even greater effort in 1976 to eliminate certain areas of "white collar crime" and reduce many others.

If you desire any further information from this division, please feel free to contact me or a member of my staff.

Very truly yours,

A handwritten signature in cursive script that reads "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:ska

INTRODUCTION

The report issued by the Consumer Protection Division at the conclusion of 1974 dealt primarily with interpreting the Consumer Protection Act and defining its powers and limitations in protecting the people of Kansas. As 1974 was the first year of the Act's existence, the Attorney General's Office, quite appropriately, spent a great deal of time determining the Act's applicability to Kansas. During 1975, the Attorney General's Office utilized the Act to its fullest extent in response to the nearly 4,000 complaints received.

Rather than paraphrasing the powers and functions of the law, this Annual Report has been designed to describe situations in which the Attorney General's Office was involved during 1975.

One function of the Consumer Protection Division is to work closely with local law enforcement agencies, county attorneys and district attorneys throughout Kansas. During 1975, the Attorney General's Office responded to more than 250 telephone calls from sheriffs' offices, police departments, etc., requesting information and assistance on companies that were soliciting sales of goods and services in this state. Information requests included confirmation on Kansas sales tax licenses, background checks on past business ethics of companies, better business bureau reports, and information from other Attorneys General offices on pending legal action.

The common procedure in dealing with these inquiries is to obtain the information requested and relay it via telephone to the law enforcement agency within thirty minutes. On several occasions the Attorney General's Office chose to send investigators into the field to assist local officials in ascertaining the legitimacy of a company in question.

For instance, in the Fall of 1975, the Attorney General's Office received reports from authorities in Cherokee and Montgomery counties regarding individuals that had opened meat stores in these areas. These firms placed advertisements in local newspapers for meat at prices as low as \$.38 per pound. Agents from the Attorney General's Office went to these communities to purchase meat from the stores and both stores refused to make the sale. The agents reported to the Attorney General that both firms were utilizing "bait and switch" tactics and possibly were in violation of the Kansas Consumer Protection Act. The firms chose to close their doors and cease operation in Kansas; otherwise, legal action would have been taken by the Office of the Attorney General.

On a number of occasions the Attorney General's Office assisted Attorneys General in other states in a mutual effort to combat violations of law. During the summer of 1975, information was received from the South Dakota Attorney General's Office regarding The Great Western Cattle Company, a company whose salesmen sold correspondence courses in Kansas, South Dakota, Oklahoma, Texas, South Carolina and Georgia. Investigation revealed that the co-owners of the company resided in Topeka, Kansas. Therefore, the Office of Kansas Attorney General undertook an investigation on

behalf of all states and determined that the company had engaged in false and misleading advertising. The owners refunded all monies paid by Kansas consumers. Information was sent to officials in several other states, two of whom initiated criminal action against these individuals.

One of the major functions of the Consumer Protection Division is to undertake routine checks of individuals who enter Kansas for special events within the state, such as fairs. In September, 1975, the Consumer Protection Division dispatched an agent to the Kansas State Fair at Hutchinson to determine if all companies soliciting business at that event were in compliance with the Kansas Consumer Protection Act. The agent quickly discovered that five California based firms did not mention the three day cooling off period in their contracts as is required by K.S.A. 1975 Supp. 50-640. The firms were instructed to cease operations in Kansas until they could comply with the law. After the Attorney General's Office notified Kansas State Fair officials, they agreed to inform all businesses, both in-state and out-of-state, of the provisions of the Kansas Consumer Protection Act so that all companies will comply prior to the 1976 Fair.

During 1975, the education program of the Consumer Protection Division sent speakers to appear before 101 audiences (more than 10,000 persons) to advise Kansas citizens of the services available to them through the Attorney General's Office. Furthermore, agents and attorneys for the office appeared on thirty-one different television and news casts and several radio programs dealing with consumer protection. On numerous occasions, Kansas newspapers contacted the Attorney General's Office requesting information on pending cases.

The 101 public appearances made by the Attorney General's Office during 1975 was a 40% decrease over 1974, as this administration has determined that staff members more effectively assist the people by spending more time conducting investigations and dealing with consumer complaints.

Staff members of the Consumer Protection Division traveled more than 30,000 miles in investigations, court actions, and public appearances in enforcing the Kansas Consumer Protection Act. This travel was in response to the nearly 4,000 complaints received in the Attorney General's Office from citizens in every county of the State.

During 1975 the Attorney General's Office held more than fifty hearings on consumer related matters. Many of these hearings were held through the issuance of subpoenas as provided by the Kansas Consumer Protection Act.

Approximately 20% of the complaints received in the Attorney General's Office were against mail order companies. An increasing number of Kansans purchased goods and services by mail in 1975 and were forced to wait as long as six months to receive their orders. On June 11, 1975, Attorney General Schneider went on record favoring a proposed Federal Trade Commission regulation requiring mail order companies to deliver products or services within thirty days after receipt of payment from consumers. In October, 1975, the FTC unanimously adopted a trade regulation regulating mail order companies, effective February 2, 1976. The regulation requires the mail order seller to notify a buyer if it cannot ship the merchandise within the stated time or within thirty days and to provide an option to cancel. The regulation also requires that a seller of mail order merchandise have a reasonable basis for shipping time estimates.

The Kansas Attorney General's Office is concerned with individuals that annually enter the state to sell various types of distributorships and franchises to Kansas citizens for franchise fees. Distributorships sold range from vending machines to books. Normally, the firm selling these distributorships enters the city, places an advertisement in the local daily newspaper inviting the consumer to attend a promotional meeting or to make an appointment to discuss the program with a promoter. Countless Kansans have reported instances of attending these meetings and being high pressured into signing a contract for several thousand dollars with the promise that they will make thousands of dollars annually by working part-time.

The Attorney General's Office does not know of any Kansan who has responded to one of these "get rich quick" advertisements and who has been satisfied. Usually, these Kansans are contacting the Attorney General's Office within a few days after signing their agreements asking for our assistance. Our investigations show that most sellers of distributorships leave the state without delivering the goods or services promised.

Therefore, the Attorney General decided at the beginning of his administration that a major attack should be made to prevent these companies from extorting hundreds of thousands of dollars from Kansans during 1975. Agents from the Attorney General's Office responded to these distributorship and franchise advertisements on a daily basis. The Consumer Protection Division had undercover agents attend functional meetings in an attempt to prevent these firms from obtaining money under deception and false pretenses. Additionally, the Attorney General's Office sent a form letter to

all companies soliciting distributorships in Kansas requesting information as to their mode of operation. Consequently, the Attorney General's Office has noticed a steady decline in the number of Kansans who come to the Attorney General requesting assistance and relief from contracts of this type. The Consumer Protection Division is continuing a similar attack during 1976 hoping that this type of consumer fraud will be completely eradicated from the State of Kansas.

Early in the administration, this office determined that a major attack should be made to eliminate individuals coming into Kansas during the spring and summer months claiming to be home repairmen; i.e., tree trimmers, house painters, lawn fertilizers, furnace cleaners, septic cleaners, house siding salesmen, and termite inspectors. In the past, these individuals have extorted hundreds of dollars from Kansans. The Attorney General's Office sent bulletins to law enforcement agencies through the Kansas Bureau of Investigation teletype throughout Kansas urging that these agencies monitor the operation of home repairmen. The bulletin stated that those violating the law would be forced to leave and those who chose to comply with the law would be welcome to solicit business in Kansas. The teletype bulletins were instrumental in solving consumer fraud complaints throughout Kansas. In early June, 1975, the Attorney General sent agents to the Brown County area to investigate a group of itinerant gypsies offering paint jobs to rural Kansas citizens. The individuals were informed of the various Kansas laws they would need to comply with before they could make solicitations. Rather than comply, they chose to leave the State of Kansas.

In the spring of 1975 this office was contacted by five Topeka Skelly gasoline dealers who were about to lose their franchise from Skelly Oil for no apparent reason. After several telephone and written communications with the Chief Counsel for Skelly Oil in Tulsa, Oklahoma, the Attorney General's office was able to assist these Skelly service station operators in retaining their current franchise or finding new locations of operation for them. It was apparent from our investigation that the oil company had decided to make these five stations self-service stations in an economy move. Therefore, Skelly Oil advised these licensees that their licenses would be removed within ninety days: These independent operators had been working with Skelly Oil from four to twenty-one years without any previous problems. Our office was pleased to be able to assist these service stations in either the retention or relocation of their service stations so that they would be able to continue gainful employment in the State of Kansas.

The Attorney General's Office has in the past worked to assist numerous college students who file consumer complaints. Shortly after the start of the 1975-76 school year, Attorney General Curt Schneider corresponded with student body presidents pledging his assistance on their behalf. The letter stated that this office was especially pleased that more colleges and universities were establishing consumer protection departments. These departments have been of great assistance to the Kansas Attorney General's Office by forwarding pertinent information on fraudulent activities. On numerous occasions information forwarded by these university branches have led to legal action by the Attorney General's Office.

The Office of Kansas Attorney General filed a lawsuit in October, 1975, against five corporations which were involved in the sale of metal buildings to Kansas farmers. The suit alleged that the companies engaged in false and misleading advertising and verbal and written misrepresentations and concealments in that large deposits were kept by the company and few farmers received their buildings. These corporation defrauded in excess of \$600,000 from Kansans. In an attempt to better protect businessmen and consumers from these situations, the Attorney General's Office corresponded with all Kansas bank presidents. It was suggested that an escrow account be utilized as a method of securing down payments on metal farm buildings when large deposits are required. The letter was not intended as an indictment of the metal building industry, rather it was intended as a precaution.

In November, 1975, this office received information that Family Heritage Society, Windom, Kansas, had failed to deliver more than 1,000 orders to citizens in several western Kansas counties who had purchased historical books. Agents were dispatched to the area to undertake an investigation. Shortly thereafter, approximately one-fourth of the orders were filled and the office has been informed that the remaining order will be delivered on or before June 1, 1976. To assist Kansans who have not received their orders, the Attorney General's Office has intervened to return the historical pictures that the seller took at the time the order was signed.

Investigations by this office of automotive odometer tampering have led to the arrest and conviction of several Kansas wholesalers. In some cases wholesalers were using forgery and conspiracy to perpetrate these criminal acts on legitimate Kansas retail dealers. One of the most common methods employed is to purchase a car in Kansas and remove it to Missouri where it is retitled and the odometer rolled back. Since Missouri does not record mileage on the title as Kansas does, the rollback is not discoverable when the car is resold at auction in Kansas City, Missouri, unless someone becomes suspicious and traces the car back. Our office strongly suggests that used cars coming into Kansas with an out-of state title have their serial numbers researched by the Vehicle Division of the Department of Revenue to see if they have been titled in Kansas previously. If the title has been previously titled, the mileage could be compared. Inasmuch as Kansas retail dealers can only re-assign Kansas titles, they must procure a Kansas title on any out-of-state car and mileage tampering would be more easily controlled before the car is sold to a consumer if the Vehicle Division of the Department of Revenue researched the serial number. We feel that such a search would also be in the best interest of Kansas retail dealers because the retail dealer, after a sale to a consumer, faces potential civil and criminal liability for a fraud perpetrated by a third party.

STATISTICS FOR JANUARY 1, 1975 THROUGH DECEMBER 31, 1975

CASES RECEIVED-----3,836
CASES CLOSED -----2,123
MONEY RETURNED TO KANSAS CONSUMERS--\$539,957.58

Closing code

1. Inquiry or information only-----315
2. Referred to private attorney-----80
3. Potential violator out of business-----10
4. Merchandise repaired, replaced or delivered-----895
5. Referred to county attorney-----32
6. Referred to other agency-----225
7. Referred to small claims court-----49
8. No jurisdiction-----78
9. Unable to locate violator-----18
10. No basis-----89
11. Unable to satisfy complaint. Further action not
warranted-----36
12. Voluntary assurance of discontinuance-----35
13. Court case closed-----7

LAWSUITS

STATE OF KANSAS, ex rel., v
CURT T. SCHNEIDER

SEWING DISTRIBUTORS, INC.
A ARIZONA CORPORATION AND
JOHN PATRICK ROONEY AND
BEVERLY ANN ROONEY, AS
INDIVIDUALS

This action was filed January 17, 1974, under the previous administration. In April, 1974, the defendant corporation filed for adjudication of bankruptcy in the U.S. District Court for Arizona. The filing of this petition has precluded the state from proceeding further against the corporation.

STATE OF KANSAS, ex rel., v
CURT T. SCHNEIDER

ALL STAR BEVERAGES, INC.

This action was filed for the failure to fill milk cartons to the appropriate level in accordance with the label. Our office has requested an injunction against further use of this practice. The injunction and Journal Entry were filed on June 27, 1975: Restitution was paid by Milk Producers Marketing Company in the amount of \$550.00 to the State of Kansas General fund and \$550.00 to the Attorney General's Court Cost fund. Grocers Dairy Company, Inc., paid \$430.00 to the Attorney General's Office Court Cost fund. A total of \$890.00 penalties and franchise taxes was paid for failure to register as a foreign corporation whose principle place of business had been in the State of Kansas since 1959.

STATE OF KANSAS, ex rel., v
CURT T. SCHNEIDER

SHORTMAN MOTORS, INC.

This action was initially filed in 1973. This office has been working with the defendants in an attempt to satisfy customers who purchased vehicles from Shortman Motors which were represented as factory executive and demonstrator cars when in fact they were formally owned by either Avis or Hertz Rent-A-Car. The last complaint on this matter was brought to a hearing in December, 1975, before Judge Vickers. Presently we are awaiting a final ruling on the amount of damages involved.

STATE OF KANSAS, ex rel., v
CURT T. SCHNEIDER

AII MARKETING CORPORATION

Aii Marketing Corporation was a Texas corporation involved in selling distributorships in the State of Kansas for vending machines and related products. This office has requested an injunction and restitution; however, the defendants have left Texas and their location is unknown at this time.

STATE OF KANSAS, ex rel., v
CURT T. SCHNEIDER

ALEXANDER BLAU AND IRENE
BLAU, d/b/a BLAU MOTORS

This suit alleged that Mr. Blau purchased used vehicles, tampered with the odometers thus removing substantial mileage from them. These facts were admitted by Mr. Blau in a pre-trial stipulation. However, the Johnson County District Court found that even though Mr. Blau was a licensed Kansas wholesaler who had admitted rolling odometers, all acts complained of had happened in the State of Missouri. The fact that the automobiles later were sold to Kansas residents was not controlling.

STATE OF KANSAS, ex rel., v
CURT T. SCHNEIDER

BENNIE SCHUCK

Bennie Schuck was the president and one of two stockholders of All Seasons Basement Waterproofing Company. This company waterproofed basements in the State of Kansas during 1974 and caused approximately 500 complaints to be filed with the Attorney General's Office. The petition requests that the corporate veil be pierced and that Mr. Schuck be found personally liable since the corporation is defunct. The prayer for relief is in excess of \$350,000.

STATE OF KANSAS, ex rel., v
CURT T. SCHNEIDER

EDUCATIONAL SCIENTIFIC
PUBLISHERS (A TRUST)

A petition was filed May 23, 1975, requesting an injunction, civil penalties and restitution in excess of \$100,000. Educational Scientific Publishers sold courses in trust creation. Kansas residents who were induced to purchase this course paid 4% of their estate to learn how to create a family trust that would save estate taxes. In actuality, no taxes will be saved; the IRS finds these trusts illusory. The case is currently in the discovery stage. This organization is based in Colorado and is currently involved in litigation in seven states according to information this office has received.

STATE OF KANSAS, ex rel. v
CURT T. SCHNEIDER AND GENE
OLANDER, DISTRICT ATTORNEY,
SHAWNEE COUNTY, KANSAS.

NATIONWIDE ABANDONED
PROPERTY RECOVERY AGENCY,
INC.

A petition was filed March, 1975, requesting an injunction and other relief. Obtaining service in New York has been difficult as this organization has been evading service. Therefore, the Attorney General's Office filed a motion to intervene as an additional party plaintiff in the concurrent Sedgwick County action filed by the District Attorney who has been able to obtain service in New York. Nationwide Abandoned Property Recovery Agency, Inc., has been contacting Kansas residents with the same or similar surname of decedents who left unclaimed bank accounts in the State of New York. For a fee the company will determine if the Kansas resident is related to the decedent. This matter is currently the subject of litigation in several other jurisdictions also.

SECRETARY OF HEALTH v
AND ENVIRONMENT

INTERSTATE BRANDS CORP.

A petition was filed in Shawnee County District Court on May 15, 1975, alleging that the defendant corporation has violated Kansas administrative regulations which cover the use of food colorings and in particular bread products. A high colored butter was used in the baking process which imparted a yellow hue to the bread. Upon examination by laboratories in Kansas, it was determined that the butter contained color fifty times greater than that normally found in butter. Our office has requested that the Court enjoin the sale of this product.

STATE OF KANSAS, ex rel. v
CURT T. SCHNEIDER

LIVESTOCK BUYERS,
A MISSOURI CORPORATION
AND SEVERAL INDIVIDUALS

A petition was filed February 28, 1975, in Shawnee County District Court for injunction and other relief based on violations of Proprietary School Act. Papers are being prepared for default judgment upon several of the defendants.

STATE OF KANSAS, ex rel. v
CURT T. SCHNEIDER

CHARLES B. JENKINS, d/b/a
JENKINS MOTOR COMPANY

A petition was filed in July, 1975, in Linn County District Court for injunction and other relief based on complaints received from individuals buying used cars from the defendant. The condition of the cars were misrepresented to the consumers.

STATE OF KANSAS, ex rel.
CURT T. SCHNEIDER

v

AMERICAN DISPLAY CORP.
A MISSOURI CORP.

Suit was filed on December 18, 1975, in Shawnee County District Court. Defendants have allegedly violated the Kansas Consumer Protection Act by engaging in false, misleading, and deceptive trade practices in the course of the sales of fireworks to citizens of Kansas. Relief requested includes a permanent injunction restraining the defendants from participating in deceptive consumer sales practices in the State of Kansas and civil penalties in the amount of \$2,000 per defendant per each violation, reasonable investigation fees, attorney fees, and court costs.

STATE OF KANSAS, ex rel.
CURT T. SCHNEIDER

v

MODULAR STEEL STRUCTURES,
INC.

Petition for injunction, civil penalties and other relief was filed in Shawnee County District Court on October 17, 1975. This case arose out of the sale of "Wonder Buildings" to almost 200 Kansas farmers. The manufacturer of the buildings was unable to produce enough buildings to fulfill contracts sold by dealers because of the steel shortage and price increases. The manufacturer is undergoing an arrangement and most of the dealers are out of business. Farmers, who each paid several thousand dollars for deposits, have never received a building or have received a building at an additional cost of several thousand dollars.

STATE OF KANSAS, ex rel.
CURT T. SCHNEIDER

v

PAUL HENDERSHOT

AND

STATE OF KANSAS, ex rel.
CURT T. SCHNEIDER

v

STEVE LONG

These two cases are companion cases, in that they arise out of similar transactions against the same victim, Mrs. Marsha Fischer of Plainville, Kansas. Mr. Hendershot was and is a tree trimmer by trade, who also engages in lawn spraying activities. Mr. Long is a painter and lawn and tree sprayer. These gentlemen swindled nearly \$1400 from an eighty-five year old woman (Mrs. Fischer) by overcharging her for work performed by them within the past year and a half. Service has been effected upon Hendershot, but our office has been unable to locate Steve Long; our understanding is that he is no longer in Kansas.

STATE OF KANSAS, ex rel.
CURT T. SCHNEIDER

v

STUDIO FOUR, INC.

Judgment was taken against this company for \$10,200. The company photographed the Topeka, Kansas Police Department, and failed to deliver many of the photographs promised. Some people who have received photographs have been unsatisfied with the results and desire return of their money. It may be necessary to contact the Michigan Attorney General, or an attorney in Michigan to have judgment executed against Studio Four, as the president of the corporation refuses to pay the judgment.

STATE OF KANSAS, ex rel.
CURT T. SCHNEIDER

v

JAMES BERRY

This case originated in 1969. At that time, a permanent injunction was granted prohibiting Mr. Berry from moving houses in Kansas. Mr. Berry violated that injunction and this year a contempt of court order was filed against him. Sentencing is scheduled for January 28, 1976.

An area of great concern to the Consumer Protection Division is the inability to provide witness fees for out-of-state witnesses subpoenaed in advance of trial and fees for in-state witnesses subpoenaed to the office. Our opinion is that an oversight in the drafting of the initial legislation exists, an oversight which has resulted in difficulties in several court actions. We would recommend that a revolving type fund be established in the Consumer Protection Division for utilization by the office in: (1) investigating consumer related complaints and procuring evidence; (2) subpoenaing out-of-state witnesses for trials and hearings which involve technical matters; and, (3) paying mileage fees for witnesses or persons subpoenaed within the state. Our impression is that once a revolving fund of this type is created, it could be maintained by civil penalties and expense investigation fees collected pursuant to K.S.A. 50-623. This fund could also be maintained through the addition of a provision permitting the Attorney General's Office to request attorneys fees for actions brought [to K.S.A. 50-623]. Attorneys fees are available to the individual consumer in a private action at the discretion of the trial judge and as the conduct of the defendant may require an action to be brought by the Office of the Attorney General, the State of Kansas should be duly reimbursed for expenses incurred in litigation. As in the case of the private consumer bringing an action and requesting attorneys fees, it would of course, follow that any attorneys fees awarded the state would also be at the discretion of the trial court.

The above-mentioned problems should be dealt with as soon as possible so that the citizens of the State of Kansas will continue to have one of the most progressive Consumer Acts in existence.

CONCLUSION

It should be pointed out that nearly 50% of all complaints received in the Attorney General's Office are nothing more than a misunderstanding between the buyer and the seller.

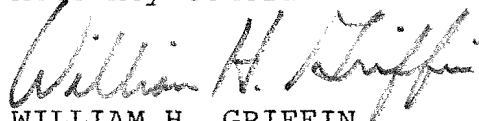
The Consumer Protection Division is more than happy to assist both merchant and consumer in settling these disputes. Although this division is called the Consumer Protection Division its intent and purpose is to protect not only the honest consumer of Kansas but the honest businessmen of Kansas by ridding the state of those businesses operating in violation of the law. The merchants of Kansas have been extremely cooperative in working with the Attorney General's Office to solve consumer related complaints.

The Kansas Attorney General's Office will continue a policy of strict enforcement of the Kansas Consumer Protection Act during the year 1976. Hopefully, by continued support and information from the citizens throughout Kansas, along with assistance from law enforcement agencies both in-state and out-of-state, the Division can continue the job of assisting all Kansans.

Respectfully submitted,

CURT T. SCHNEIDER
Attorney General

BY:



WILLIAM H. GRIFFIN
Assistant Attorney General
Chief, Consumer Protection Division