

THE ATTORNEY GENERAL AND CONSUMER REPRESENTATION

by

Joseph P. Summers
Special Assistant Attorney General
State of Minnesota

The Attorney General is uniquely situated among state elective officers in that he usually has a fairly large, fairly competent, professionally trained staff at his command which is not channeled by legislative or administrative tables of organization into rigidly defined functions.

Those who are familiar with state agencies, especially in the smaller states, will realize what a constricting influence the practice of legislatures can be. It is customary, in Minnesota at least, for the legislature to assign far more functions to the average state department than it is willing to pay for. Thus, most personnel are occupied with trying to keep up with their legally required functions and are unable to branch out into new areas of development without specific enabling legislation plus additional appropriations.

The Attorney General is rather more free. The legislature gives him some attorneys, and some money, and some jobs to do, and he is pretty well left to himself how he apportions the time of his office to these various

assigned functions. This is particularly true if, as in Minnesota, he is not encumbered by a civil service system among his office staff. Meaning no insult, this also means his people might work rather long hours on behalf of some new program which would not be worked by more formally organized state departments.

He is secondly privileged in being an elected officer. This means that whatever he might choose to say will receive attention from the press, radio, and TV.

This makes it much easier for him to do a job of public education than if he were not elected. For instance, our office has a biweekly column in Minnesota's newspapers which is read by over 200,000 families. This enables us to put out advance warnings on many tricky schemes which might otherwise result in considerable damage to our citizens.

Thirdly, the Attorney General already has many law enforcement responsibilities which actually have always been consumer protection. In many, if not most states, he provides counsel to regulatory agencies, and has powers to initiate certain kinds of lawsuits on his own. For instance, we were able in our last three years to initiate a million dollar antitrust suit on behalf of one hundred school districts victimized by a price-fixing conspiracy, and to initiate a suit (which we just successfully concluded yesterday) against one of our largest discount chains for fictitious price comparisons. These suits were both brought under laws which have existed for decades, but nobody thought to use before. It's consumer protection--always has been, but nobody ever did it.

Which leads into another important reason why Attorneys General at the state level are in such an advantageous position regarding consumer protection. This is that they rarely need enabling legislation to get active in the field. Certainly, as your experience grows, you are going to see areas where legislation is needed, but your bedrock powers--the power at common law to protect the public--the power to initiate license revocation proceedings, etc.--are already there. This is important where, as in Minnesota, you have a legislature which is quite cool to much consumer legislation.

The Attorney General's professional staff also enables him to do his own legislative drafting, which many state agencies, especially in states which have centralized legal services, cannot do. Since legislation is often--if not usually--a far, far cheaper and more efficient way to solve specialized problems than legal action, the Attorney General can do a great deal of good with comparatively small expenditure of effort. Our office, for instance, was faced two years ago with the problem of dance studios victimizing widows into \$10 and \$15 thousand dollar dance contracts. To pursue these vultures through the common law of fraud would have taken years and thousands of dollars worth of attorneys' time. Instead, we stole a page from New York's

book and secured the enactment of a statute setting maximum dance studio contracts at \$500 per crack. Of course, the studios are attempting to devise evasive techniques, but it will be a lot easier to deal with them.

What can't the Attorney General do? Well, first of all, his office is essentially negative. Almost by necessity, we deal with laws and law violations. Our fundamental emphasis, our entire attitude, is one of "thou shalt not." This is even true with respect to legislative items, such as "truth-in-lending," in which connection we expect to be very active in the next session of the legislature.

Our educational function is thus rather limited to being a warning voice, or else trying to press some new restriction onto the free enterprise system, as our enemies would have it.

Secondly, the Attorney General is only one man. His staff, while competent, is not large, and we are prevented by simple force of personnel restrictions from gathering any really significant popular support during legislative sessions and elsewhere. Most citizens, unfortunately, don't read newspapers, don't realize when a piece of legislation or an administrative decision is to their benefit, and thus when we take action we find ourselves testifying all by ourselves, surrounded by a lot of special interest lobbyists.

Also, the attractiveness of an Attorney General's proposal to a legislature or administrative agency dominated by members of the opposite political party varies inversely with the Attorney General's effectiveness as a politician. The better you are, the less they want to do for you.

Finally, the Attorney General is an elected official. He is, like most men, presumably subject to the normal pressures of politics. We have been notably free of this sort of pressure in Minnesota, but that is not to say this will always be the case with future Attorneys General, nor is it the case necessarily elsewhere.

We tend to feel, therefore, that something additional is needed by way of consumer representation in government. The usual such proposal is the consumer counsel, a bill to which effect has been languishing in our legislature for two years.

My own feeling is that the consumer counsel is a valuable and necessary part of the consumer movement at the State level if no necessary precondition exists. The consumer counsel must be an extraordinarily competent person and have the support of at least one powerful elected official in the executive department. Lacking executive support, I fear that the long-range possibilities for the consumer counsel will be quite limited, as without this executive--and legislative--support, the consumer counsel will become just another state agency at the complete mercy of the will and whim of the appropriations committee. And state legislatures often tend to view ordinary administrative agencies as their natural enemies--much more so an agency dedicated to criticizing the legislature.

We feel, therefore, that in addition to a consumer counsel in government, we also need consumer representation before government. The consumer, in other words, needs a lobbyist--he needs a lobbyist who can use some political power, is not afraid to reward friends and punish enemies, and is not totally dependent upon the exigencies of the electoral process for his continued existence.

For the consumer needs someone who can study the legislative and administrative workings of government at least as carefully as do the lobbyists for other interests, who knows what is at stake in rate-making proceedings, in the appropriations budget for the State Health Department, in the appointment or non-appointment of members of regulatory bodies, and in legislation which appears innocent but could have a disastrous effect upon the consumer.

This kind of lobbying, this kind of consumer interest, could hopefully be provided by a consumer association, broadly based, with an adequate and competent professional staff. Such an association could "spread the word" to its members, naming names, dates, and places, about what's happening on the consumer front at the state capitol. For, ironically, although state government is nominally closer to the people than is the federal government, it is much easier for the consumer to find out what a federal agency is doing than to follow the workings of his own state government.

We hope ultimately to see such an organization in Minnesota. We are working now with consumer oriented cooperatives and labor unions to organize a consumers' congress to form such an organization. We may be able to have the conference yet this spring, and at least by next fall.

I have tried to sum up a few thoughts on the role of the Attorney General, and I hope I have been of some assistance.