



The Commonwealth of Massachusetts

REPORT

OF THE

ATTORNEY GENERAL

FOR THE

Year Ending June 30, 1981



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The Commonwealth of Massachusetts

To the Honorable Senate and House of Representatives:

I have the honor to transmit herewith the Report of the Department of the Attorney General for the year ending June 30, 1981.

Respectfully submitted,

FRANCIS X. BELLOTTI
Attorney General

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MR

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R467

1981

DEPARTMENT OF THE ATTORNEY GENERAL

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FRANCIS X. BELLOTTI

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Thomas R. Riley

Assistant Attorneys General

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Robert Bohn	Michael Hassett
John Bonistalli	Catherine Hantzis
Kenneth Bowden II ³	F. Timothy Hegarty Jr.
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Paul Cirel	Anne Josephson ³⁷
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Elizabeth Donovan	Stephen Limon
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Harriet Fordham	Alan Mandl
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Susan Frey	Michael Marks
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Carol Fubini	Michael McCormack ³⁸
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 Donald P. Zerendow
 Stephen Ziedman

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Robert Lombard
 George J. Mahanna

Paul Molloy¹⁵

Chief Clerk
 Edward J. White

Assistant Chief Clerk

Marie Grassia¹⁷

Avis Patten⁴⁸

APPOINTMENT DATE

1. 3/19/81
 2. 3/2/81
 3. 3/30/81
 4. 1/17/81
 5. 2/9/81
 6. 10/14/80
 7. 9/29/80
 8. 7/14/80
 9. 5/11/81
 10. 1/81
 11. 8/25/80
 12. 8/27/80
 13. 1/81
 14. 8/4/80
 15. 11/14/80
 16. 12/1/80
 17. 6/2/81

TERMINATION DATE

30. 11/7/80
 31. 8/29/80
 32. 8/14/81
 33. 4/1/81
 34. 6/30/80
 35. 2/2/81
 36. 6/30/81
 37. 8/22/80
 38. 2/27/81
 39. 7/24/80
 40. 4/29/81
 41. 8/29/80
 42. 2/9/81
 43. 5/29/81
 44. 3/27/81
 45. 3/31/81
 46. 10/31/80
 47. 8/19/80
 48. 4/30/81
 49. 2/17/81

DEPARTMENT OF THE ATTORNEY GENERAL
STATEMENT OF FINANCIAL POSITION
FOR FISCAL YEAR ENDED
JUNE 30, 1981

<i>Account Number</i>	<i>Account Name</i>	<i>Appropriation</i>	<i>Expenditures</i>	<i>Advances</i>	<i>Encumbrances</i>	<i>Balance</i>
0810-0001	Administration	\$ 7,201,677.50	\$6,129,241.20	\$3,881.44	\$124,836.03	\$ 943,718.83
0810-0014	Public Utilities Auth. by Ch. 1224 1973	250,000.00	234,566.59	.00	14,173.52	1,259.89
0810-0021	Medicaid Fraud Control Unit	1,011,041.00	902,715.33	.00	55,039.70	53,285.97
0810-0031	Local Consumer Aid Fund	210,700.00	203,908.90	.00	6,255.00	536.10
0810-0032	Local Consumer Aid Fund Deposit	4,169.08	4,150.00	.00	.00	19.08
0810-0035	Anti-Trust Div. Adm.	247,110.00	210,416.15	.00	33,776.32	2,917.53
0810-0201	Insurance: Auth. by Ch. 266, 1976	200,000.00	157,566.83	.00	34,177.60	8,255.57
0810-8771	Capital Outlay Furnishings and Equipment - Law Library	42,852.81	37,527.77	.00	5,325.04	.00
0821-0100	Settlement of Claims	200,000.00	73,486.30	.00	6,513.70	120,000.00
	TOTALS	<u>\$ 9,367,550.39</u>	<u>\$7,953,579.07</u>	<u>\$3,881.44</u>	<u>\$280,096.91</u>	<u>\$1,129,992.97</u>
Schedule 2	TOTALS	\$ 1,153,945.87	\$ 800,033.19	\$.00	\$.00	\$ 353,912.68
	GRAND TOTALS	<u>\$10,521,496.26</u>	<u>\$8,753,612.26</u>	<u>\$3,881.44</u>	<u>\$280,096.91</u>	<u>\$1,483,905.65</u>

FEDERAL GRANTS

Receipts and Disbursements
July 1, 1980 to June 30, 1981

Schedule 2

Account Number	Account Name	Balance		Disbursements	Balance 6/30/81
		July 1, 1980	Receipts		
0810-6610	Attorney General Trust Fund	\$ 85,541.93	\$ 35,666.68	\$.00	\$121,208.61
0810-6630	Water Pollution Control Program	59,498.33	125,000.00	106,909.58	77,588.75
0810-6631	Air Pollution Control Program	10,656.20	45,000.00	44,624.40	11,031.80
0810-6637	Department of Justice Anti Trust Enforcement Unit	22,750.25	94,689.12	98,010.93	19,428.44
0810-6638	Federal Energy Administration				
0810-6639	Office of Consumer Services	19,996.29	.00	19,996.29	.00
	Department of Health, Education, & Welfare Consumer Education	4,718.00	.00	4,718.00	.00
0810-6640	Violent Crime Unit	154.58	.00	.00	154.58
0810-6641	Organized Crime Unit	1,100.00	.00	1,100.00	.00
0810-6642	Tax & Insurance Prosecution Division	12.00	.00	12.00	.00
0810-6643	Anti Trust Enforcement Program				
	N. England Bid Monitoring Project	20,561.72	22,614.00	43,023.55	152.17
0810-6644	C.A.P.E.S.	121,691.89	403,110.00	409,442.07	115,359.82
0810-6645	Tax & Insurance Prosecution Division	7,619.89	48,400.00	55,762.17	257.72
0810-6661	Coastal Zone Management Program Implementation	1,700.28	23,464.71	16,434.20	8,730.79
	TOTALS	<u>\$356,001.36</u>	<u>\$797,944.51</u>	<u>\$800,033.19</u>	<u>\$353,912.68</u>

SUSPENSE FUNDS

Receipts and Disbursements — July 1, 1980 to June 30, 1981

Schedule 3

Account Number	Account Name	Balance		Disbursements	Balance
		July 1, 1980	Receipts		
0810-6701	Dexter Nursing Home Case	\$ 344.95	\$.00	\$.00	\$ 344.95
0810-6703	Miami Vacations Inc. d/b/a Resort Hotel	869.05	.00	.00	869.05
0810-6704	Frammingham Civil Service School	16.18	.00	.00	16.18
0810-6705	Dante Gregorie d/b/a/ United Auto Buyers Trust Account	1,100.00	.00	.00	1,100.00
0810-6708	Mass. Rentals Inc. d/b/a City Wide Rentals	380.00	.00	.00	380.00
0810-6712	C. Murphy, W. Hartwick, Bird, Inc. Univ.	162.49	.00	.00	162.49
0810-6716	Compact Auto Inc.	1,500.00	.00	.00	1,500.00
0810-6721	Wish Realty Association	1,000.00	.00	1,000.00	.00
0810-6724	Bluebird Realty Trust	1,168.50	.00	1,168.50	.00
0810-6732	Thomas C. McMahon V. Nyanza	34,379.98	.00	12,000.00	22,379.98
0810-6733	G. C. Services	500.00	.00	.00	500.00
0810-6737	Allan G. Edward M.D.	.10	.00	.00	.10
0810-6738	General Motors Corp.	20.21	.00	.00	20.21
0810-6747	Brookfield Insurance Agency	290.63	.00	.00	290.63
0810-6748	M.A.R. Auto Wholesalers	6.00	.00	.00	6.00
0810-6751	Joseph D. Shuman d/b/a Roch Insurance Agency	10,000.00	.00	.00	10,000.00
0810-6754	TKO Insurance	10,000.00	25,000.00	9,127.95	26,526.30
0810-6756	Diamedic Weight Control Center Inc.	5,000.00	.00	.00	5,000.00
0810-6758	Peregrine White Sanctuary Inc.	23,200.69	.00	23,200.69	.00
0810-6760	Frank H. Parks	1,335.00	.00	.00	1,335.00
0810-6762	Alfred Zimei d/b/a Dinner Tours Assurance	50.00	.00	.00	50.00
0810-6767	Comm. v. Automotive Products and Richard Ryll	550.00	.00	550.00	.00
0810-6768	Comm. v. Robert Chalue	595.00	.00	595.00	.00
0810-6770	United Marketing Corp.	1,000.00	.00	1,000.00	.00
0810-6772	Main St. Insurance	365.38	.00	365.38	.00
0810-6773	Owens Motors	2,812.50	2,250.00	.00	5,062.50
0810-6774	King B's Auto Mart	7,000.00	5,000.00	.00	12,000.00
0810-6775	John Roche, et al	3,484.84	.00	.00	3,484.84
0810-6776	Leonard Corporale	.20	.00	.00	.20
0810-6777	Middlesex Vacuum Cleaners	1,250.00	1,250.00	2,121.45	378.55
0810-6778	General Mass. Markt.	305.00	.00	.00	305.00
0810-6779	Image One, Inc.	659.00	.00	659.00	.00
0810-6780	Bonded Dodge	.00	3,000.00	3,000.00	.00
0810-6781	William Hartwick, et al	8,000.00	.00	8,000.00	.00
0810-6782	Personnel Data System	10,000.00	.00	.00	10,000.00

0810-6783	Brighton Ins. Agency	2,000.00	.00	.00	2,000.00
0810-6784	Chrysler Corp.	10,000.00	.00	.00	10,000.00
0810-6785	Independence Ins. Agency	7,561.40	.00	3,787.50	3,773.90
0810-6786	United Resources Inc.	.00	50,000.00	48,844.90	1,155.10
0810-6787	Steven Sesser d/b/a Wonder Construction	.00	700.00	700.00	.00
0810-6788	David Rogers, et al	2,000.00	.00	1,999.85	.15
0810-6789	Thomas O'Connor	.00	4,171.00	4,171.00	.00
0810-6790	Ledgemere Farms Dev. Corp.	.00	27,622.63	27,622.63	.00
0810-6791	Carris Cruises - Crimson Travel	.00	15,600.00	15,600.00	.00
0810-6792	Belmont Auto Sales	.00	69,000.00	63,945.00	5,055.00
0810-6793	Patrick Ciampo & Howard Johnson a/k/a Edward Miller	400.00	.00	.00	400.00
0810-6794	McCoy Auto Sales	.00	2,500.00	2,499.93	.07
0810-6795	Peterson Ford Inc.	.00	3,000.00	2,198.51	801.49
0810-6796	Daniel Vassett et al	.00	4,500.00	.00	4,500.00
0810-6797	Amoco Oil Co.	1,500.00	.00	1,500.00	.00
0810-6798	Charles Kasparian AOK Prod.	.00	17,913.37	6,400.00	11,513.37
0810-6799	Eliot R. Schneider d/b/a The Garage	.00	4,000.00	.00	4,000.00
0810-6801	Leander Vlahakis d/b/a Watertown Roofing	.00	1,300.00	.00	1,300.00
0810-6802	Myles Chrysler Plymouth, Inc.	.00	10,000.00	.00	10,000.00
	TOTALS	<u>\$150,807.10</u>	<u>\$246,807.00</u>	<u>\$250,530.99</u>	<u>\$147,083.11</u>

DEPARTMENT OF THE ATTORNEY GENERAL
STATEMENT OF INCOME FOR FISCAL YEAR ENDED JUNE 30, 1981

Schedule 4

Account Number	
0801-40-01-40	Fees, Filing Reports, Charitable Organizations
0801-40-02-40	Fees, Registrations, Charitable Organizations
0801-40-03-40	Fees, Professional Fund Raising Council
0801-41-02-40	Fines & Penalties, Civil Actions
0801-62-01-40	Reimbursement for Services, Cost of Civil Actions
0801-62-02-40	Reimbursements for Services, Cost of Investigations
0801-62-03-36	Local Consumer Aid Fund-Reimbursement For Service
0801-67-01-40	Reimbursements, Indirect Cost Allowances
0801-69-99-40	Miscellaneous
	TOTAL INCOME
	\$ 151,203.00
	16,215.00
	310.00
	2,590.00
	5,938.40
	16,846.16
	4,169.08
	1,190,501.81
	<u>1,035,101.70</u>
	\$2,422,875.15

The Commonwealth of Massachusetts

In accordance with the provisions of section 11 of Chapter 12 and of section 32 of Chapter 30 of the General Laws, I hereby submit the Annual Report of the Department of the Attorney General. This document covers the period from July 1, 1980 to June 30, 1981 and is the seventh Annual Report I have filed as the Attorney General of the Commonwealth. It chronicles a period of unparalleled success in our efforts to combine the traditional role of the Attorney General with the function of a public interest law firm.

The primary function of the Department of Attorney General is to appear for the Commonwealth, its agencies and officers in all legal proceedings in state and federal courts. Traditionally such proceedings are defensive in nature and arise either when a legislative enactment or executive action is challenged. The Attorney General has no control over the number of such challenges filed in any given year, and the only goal he can set in relation to such cases is to handle them as competently and as expeditiously as possible.

Two of the Department's four bureaus are primarily responsible for this defensive litigation: The Civil Bureau which handles contract, land damage, tort and workmen's compensation matters, as well as other varieties of suits seeking monetary awards from the State; and the Government Bureau, which is principally responsible for lawsuits raising issues of administrative or constitutional law. Between these two bureaus more than three thousand new matters have been opened in each of the last seven fiscal years. While many of those cases may be described as garden variety litigation, scores of cases every year are of the utmost importance to the Commonwealth. During the twelve months covered by this report, lawyers from the Department of the Attorney General successfully defended the local tax-cutting measure known as "Proposition 2½", the Governor's establishment of increased automobile inspection fees pursuant to a delegation of authority from the General Court, and the State statute prohibiting dissemination of tax return information for non-tax purposes.

While it is difficult to establish pragmatic goals and priorities for this type of reactive litigation, areas likely to produce more lawsuits can be predicted. Torts is one such area. When the Legislature abrogated the doctrine of sovereign immunity by passing Chapter 258 of the General Laws, a "start-up" time was built into the statute. That hiatus period has expired and a constantly escalating number of tort cases are being filed in State court. Coincidentally, United States Supreme Court decisions have expanded the scope of federal civil rights actions to embrace a wide range of tort actions against State officials. Finally, an increased awareness of the rights of victims of criminal actions has led not only to new types of negligence cases, but also to more claims on the State's Victims of Violent Crimes fund. These claims are investigated and litigated by the Torts Division in the offices of the Attorney General. During the reporting period the case load of the attorneys handling torts matters skyrocketed and there is every reason to expect this explosion of new cases

to continue. It is a real credit to the staff of the Department that, with no expansion of resources, they have managed to perform the traditional role as defense lawyers for the Commonwealth, while simultaneously bringing affirmative public interest litigation affecting the lives of the citizens of the State.

The Criminal Bureau and the Public Protection Bureau are the two components of this Department which essentially handle affirmative cases. In the criminal area, the Attorney General's jurisdiction is co-extensive with that of the several District Attorneys. As a consequence, the Department is able to target particular types of crimes in a manner other prosecutors cannot. My personal philosophy has always led me to attempt to single out crimes which are capable of deterrence and which impact the greatest possible number of people. Last year, for instance, sixteen individuals and five corporations were prosecuted for unlawfully disposing of toxic wastes. Hazardous wastes pose a threat to all residents of the Commonwealth, but dumping hazardous waste is often a business decision made without regard to public health consequences. By prosecuting such cases, we hope to make unlawful business decisions too costly and therefore prevent future unlawful disposal.

Similarly, prosecution of arson for profit cases, large welfare fraud matters and political corruption cases, are a continuing priority for the office because of the real possibility of deterrence in these areas. Last year we continued our relentless pursuit of those who burned dwelling houses in Suffolk County and maintained our high incidence of conviction. As a result, the incidence of suspicious fires remains low. We also cracked one of the largest welfare fraud schemes ever uncovered in the country, which was headed by a college professor and which diverted hundreds of thousands of dollars from worthy welfare recipients. Finally, as a follow-up to the Special Commission concerning State and County Buildings, I created a Governmental Integrity Unit in the Criminal Bureau. Even in the few short months it was in existence during the past fiscal year, the unit commenced an investigation leading to the indictment of a cabinet secretary and nearly a score of other individuals and corporations in conjunction with an investigation of contractual practices of the MBTA. Again, the goal of all such prosecutions is to deter future conduct which violates the public trust by making the cost to those convicted of prior corrupt activities high.

The same basic philosophy underlies the work of the Public Protection Bureau. Every resident of the Commonwealth has been adversely affected by skyrocketing energy costs over the past few years. We have therefore focused on energy costs as a priority item for the Public Protection Bureau. The most obvious result is the involvement of the Utilities Division of the Department in every significant Federal or State ratemaking proceeding. The Consumer Protection Division has also been utilized effectively to prosecute dealers who were diverting fuel oil from their customers' tanks or delivering short measures of coal and wood. The Civil Rights Division has prevented major fuel companies from denying credit to residents of minority neighborhoods, and Bureau personnel participated in a United States Supreme Court case setting aside a first-use tax imposed on gas by the state of Louisiana, a tax which

would have cost Massachusetts users of natural gas tens of millions of dollars a year.

In fiscal 1981, we also targeted "health" as an area for Public Protection Bureau activity. We began a bureauwide effort to monitor the performance of Massachusetts health care providers under the "Federal 'Hill-Burton' Act", which guarantees medical services to low income individuals, we repeatedly contested increases in health insurance rates, and filed an action seeking to force insurers to comply with a state law guaranteeing certain minimal mental health coverage to Massachusetts policy holders.

Energy and health were by no means the exclusive targets of the Bureau. We also diverted significant resources to civil rights enforcement, housing and public transportation issues and to the routine consumer activities that are the hallmark of this agency. I single out energy and health, however, because they are illustrative of our unceasing attempt to bring cases which improve the quality of life for Massachusetts citizens.

As in years past, I close this introduction with the caveat that the activities described above are only partial highlights of the accomplishments of the Department. Hopefully the following pages will give the reader a more accurate picture of the many ways we have served the Commonwealth and its citizens over the past twelve months.

MONEY RECOVERED AND SAVED FOR THE COMMONWEALTH AND ITS CITIZENS

I. MONEY RECOVERED FOR THE COMMONWEALTH TREASURY

1. Antitrust Civil Penalties	\$ 8,650
2. Charitable Registrations & Certificate Fees	168,135
3. Escheats	364,450
4. Collections, Rent	131,412
5. Collections, General	328,593
6. Delinquent Unemployment Compensation Claims Recovered	1,393,024
7. Fraudulent Unemployment Compensation Claims Recovered	145,917
8. Civil Penalties in Environmental Protection Cases	225,000
9. Restitution and Fines in Tax Fraud Cases	<u>934,439</u>
TOTAL	<u><u>\$3,699,620</u></u>

II. MONEY RECOVERED AND SAVED FOR THE COMMONWEALTH'S CITIZENS:

1. Antitrust Recoveries	\$ 398,250
2. Back Pay Recovered for Female Employees at Publishing Companies	375,000
3. Judgments and Restitution in Consumer Protection Court Cases	714,096
4. Consumer Recoveries - Non-Court Cases	395,416
5. Consumer Recoveries - Springfield Office	45,554
6. Consumer Savings - Springfield Office	27,409
7. Negotiated Donation	1,000
8. Hill Burton Services	206,000
9. Savings in Auto Insurance Hearings	140,000,000
10. Savings in Utility Rate Hearings	170,829,000
11. Savings in Health Insurance Rate Hearings	<u>1,000,000</u>
	<u>TOTAL \$313,991,725</u>

I. CIVIL BUREAU

CONTRACTS DIVISION

The responsibility of the Contracts Division generally involves three areas:

- A. Litigation involving matters in a contractual setting;
- B. Advice and counsel to state agencies concerning contractual matters; and
- C. Contract review.

A. LITIGATION

The Contracts Division represents the Commonwealth, its officers and agencies in all Civil actions involving contract and contract related disputes.

A majority of the cases handled by the Division concern public building, state highway and other public work construction disputes. The Contracts Division attorneys represent the Commonwealth in both affirmative and defensive litigation. Typical cases in the Division involve claims arising from the interpretation of leases, employment contracts, statutes, rules and regulations.

In contract actions against the Commonwealth, G.L., c. 258, §12, is, for the most part, the controlling statute. With increasing frequency, multiple parties are becoming involved in contract actions, since there has been a tendency to implead consultant engineers, architects and subcontractors as third-party defendants.

Plaintiffs routinely seek temporary restraining orders and preliminary injunctive relief against the Commonwealth, its agencies and officers at the commencement of actions. The granting of such relief would delay the execution of contracts, increase contract costs, and result in additional claims for damages. During the fiscal year, the Division attorneys have successfully resisted all such attempts for injunctive relief.

Discovery in contract cases is prolonged due to the volume of the documentation, especially in building construction cases. Issues in contract cases are usually complex often involving long hearings before court appointed masters. However, there has been a trend, due to the efforts of the attorneys, to resist references to masters and to seek trials before the court.

Bid protests in the rapidly evolving data processing area are occurring with increasing frequency. Challenges relative to the propriety of the award of the building construction contracts have also increased, primarily due to more intensive scrutiny of bidders by the Bureau of Building Construction.

Seventy-seven (77) new actions were commenced during the fiscal year. Eighty-two (82) cases have been closed. As of June 30, 1981, there were 285 pending cases in the Division.

B. *ADVICE AND COUNSEL TO STATE AGENCIES*

On a daily basis the Division receives requests for legal assistance from state agencies and officials. Their problems involve formation of contracts, performance of contracts, bidding procedures, bid protests, contract interpretation, and numerous other miscellaneous matters.

The economy has its effect on bids and bidding procedures in the State Purchasing Agent's Office. Economic conditions have heightened competition. Bid awards are bitterly contested. All materials, supplies and equipment purchased by the state (except military and legislative departments) must be advertised, bid and awarded by the Purchasing Agent. We receive, on a weekly basis, new requests for assistance on purchasing matters. Members of the Division counsel the Purchasing Agent and his staff, interpret regulations, and attend informal protest hearings.

We also have an equivalent relationship with the Department of Public Works, Metropolitan District Commission, Secretary of Transportation, Board of Regents of Higher Education, Data Processing Bureau, Mental Health, Youth Services, Water Resources, State Lottery Commission, Public Welfare, Capital Planning and Operations, etc.

C. *CONTRACT REVIEW*

The Division reviews all state contracts, leases and bonds submitted to us by state agencies. During the fiscal year, the Division approved as to form a total of 2,380 such contracts. In many cases, 276 to be exact, we rejected the documents and later approved them after the deficiencies were eliminated.

All contracts are logged in and out and a detailed record is kept.

The monthly count for the fiscal year is:

July, 1980	313
August	210
September	141
October	264
November	185
December	133
January, 1981	249
February	151

March	126
April	184
May	172
June	<u>252</u>
TOTAL	2,380

Contracts are assigned to the attorneys in rotation. The average contract is approved within forty-eight hours of its arrival in the Division.

EMINENT DOMAIN DIVISION

The major function of the Eminent Domain Division is the representation of the Commonwealth in the defense of petitions for the assessment of damages resulting from land taking by eminent domain. The Commonwealth acquires land for a variety of purposes, including rights of way for roads, land for state colleges, land for recreation and park purposes, land for flood control and land for easements. The division deals primarily with the Department of Public Works, Metropolitan District Commission, Department of Environmental Affairs, State Colleges, the University of Massachusetts, Armory Commission and the Department of Food and Agriculture.

The Division also provides legal advice to the Real Estate Review Board to assist in settling damage claims on takings of government-owned land for highway purposes, and in some instances, we are called upon to testify before the Executive Council before they will approve land damage payments.

Informal advisory services, both written and oral are rendered to practically every state agency in existence, whether it be Executive or Legislative in nature. Every agency which has an eminent domain or real estate question or problem either writes or calls this division for consultation and advice. This division also appears before Legislative Committees to give advice on legislation of importance to this office as well as other state agencies.

Chapter 79 of the General Laws prescribes the procedure in eminent domain proceedings. Under Chapter 79, when property is taken, the taking agency makes an offer of settlement known as a pro tanto, which makes available to the owners an amount the taking agency feels is fair and reasonable but reserves to the prior owners the right to proceed, through the courts, to recover more money. In the event of a finding by the court or jury, the pro tanto payment is subtracted from the verdict and the taking agency pays the balance, with interest running at the rate of 6% from the date of the taking to the date of the judgment. In years past, during the road building boom of the sixties, land damage matters caused congestion in the civil sessions of the Superior Court. Special land damage sessions, including summer sessions, were set up to accommodate the trial of these cases and it was the practice to refer cases to auditors for their findings. The auditor system was not entirely satisfactory because too many cases previously tried to auditors were retried to juries. In 1973, the Legislature passed Section 22 of Chapter 79 which provides for the trial of land damage matters to a judge in the Superior Court, jury-waived in the first instance; and a trial by jury may be had unless both parties file waivers, in writing, waiving their right to a jury-waived trial. The statute also requires

the court make subsidiary findings of fact when the case is heard. If either party is aggrieved by the finding, they may reserve their right to a jury by so filing, within ten days of the finding.

It has been the practice of our division to try the great majority of our cases in accordance with Section 22 before a justice in a jury-waived session. We have found that in many instances, it is unnecessary to retry the case because the findings usually contain a clear statement of the subsidiary facts to support the decision of the Single Justice which may result in a final disposition of the case. We are still attempting to make Ch. 79 procedures even more expeditious.

During 1981, we filed legislation (Senate 1932) providing for one trial before a jury unless both parties agree to a waiver. The potential of a two-tiered trial system, either via the former Master's Hearing or the present jury-waived trial, is a luxury the court's can no longer afford. With full and complete discovery of the expert witnesses, both parties will be prepared to try the merits of the case one time, thereby eliminating the time consuming and expensive fishing expeditions and the so-called "trial by ambush". In addition, this Bill should result in more effective trial discovery resulting in a greater number of cases being settled without the necessity of trial. Such a result would be beneficial to the trial bar as well as the Commonwealth and its citizens.

If occupied buildings are situated on parcels acquired by eminent domain, the occupants remaining become tenants of the Commonwealth and obligated to pay rent under a lease agreement or for use and occupancy. The problem of rent collection is handled by a Special Assistant Attorney General who is assigned to the Department of Public Works at 100 Nashua Street, Boston on a full-time basis. He is under the direct supervision of the Right of Way Division with review supervision from the Eminent Domain Division. His primary function is to represent the Department of Public Works in all matters related to state owned property being leased or rented to the general public. This includes negotiating settlements, closing out uncollectables, bringing suits to enforce the payment of rent, and handling eviction matters. In those cases where rent is owed to the Commonwealth and there is a land damage case pending, the Eminent Domain Division trial attorney assigned handles both matters at the time of trial. During the past fiscal year 62 rent cases were closed and \$131,412 was collected and turned over to the State Treasurer.

In addition, the Eminent Domain Division has the responsibility of protecting the Commonwealth's interests in all petitions for registration of land filed in the Land Court. In each case, a determination must be made as to whether or not the Commonwealth, or any of its agencies or departments, has an interest which may be affected by the petition. If such a determination is made, no decree issues without our office being given a full and complete opportunity to be heard. Some of these issues are tried out to a judicial conclusion while others are amicably agreed upon and the rights of the Commonwealth are protected by stipulation.

Obviously, the Land Court involves the full-time activities of an Assistant Attorney General on a daily basis. Its jurisdiction covers every type of land transaction from foreclosure, tax takings, to determination of title absolute and all the equity rights which arise therefrom.

More and more, the equitable power of the Court is being used along with the temporary restraining order and injunction process. Zoning cases are now being transferred to the Land Court from the Superior Court and also being commenced at the first impression in the Land Court. The Attorney General is involved in all these cases due to the declaratory and constitutional nature of the issues involved.

The Attorney General's Office is involved in almost every petition to confirm or register title. The involvement requires the determination of all interests in state highways, the preservation of the taking lines, the determination of drainage and other easements and the assurance that the decree is entered subject to all of the above.

In addition, the Land Court determines so-called "water rights". As indicated in the report of past years, this is becoming a new problem area in that many rivers and streams have been cleaned and improved as a result of federally funded projects, bringing into question the Commonwealth's rights and responsibilities. Also, the tidal areas of the Commonwealth are creating additional litigation, particularly where the Colonial Ordinances are concerned. Litigation is developing whereby the public is asserting adverse possession and prescriptive rights in the flats of the tidelands and access to beaches.

We are seeing more claims being made against the insurance Fund and local probate courts are having an affect upon the land registration system in that their decisions are causing an affect upon the land registration cases. Considering current trends and statistics for the year, we can expect to be even busier in fiscal 1982 in discharging our Land Court responsibilities while protecting the rights of the citizens of the Commonwealth.

Further, all rental agreements, pro tanto releases, general releases, deeds of grants and conveyance, and documents relating to land under the control of any of the Commonwealth's departments or agencies find their way to the Eminent Domain Division for review and approval as to form.

This Division also was instrumental in assisting the Department of Food and Agriculture to expedite and carry out the mandates of Chapter 780 of the Acts of 1977, The Agricultural Preservation Restriction Act.

Since 1949, farming acreage in the Commonwealth has declined from approximately 2 million acres to about 600,000 acres in the year 1975. This loss has necessitated Massachusetts to import some 85% of its food supply from other states as distant as Florida and California. Considering the increase in costs of transportation and fuel in the last five years, the reasons for the alarming increase that our citizens must now pay for their food becomes obvious. This high cost of energy trend is expected to continue, making it incumbent for the Commonwealth to preserve and increase the amount of productive farmland. The Massachusetts Legislature made this possible by enacting The Agricultural Preservation Restriction Act and by their approval of a 15 million dollar bond issue. This Act offers the only real hope for preserving our remaining agricultural land, by providing for the public purchase of agricultural preservation restrictions, which are commonly referred to as "Developmental Rights". This program is completely voluntary. It allows the farmer to obtain the developmental value of his land without destroying its productive capacity as farmland. The statute provides that the Commonwealth

will pay the farmer the difference between the agricultural value of the land and its appraised market value. Stated simply, the farmer keeps his farmland but sells his developmental rights. A deed is then filed in the appropriate registry wherein it is agreed that the land be restricted in perpetuity to farming purposes.

The Eminent Domain Division worked very closely with the Department of Food and Agriculture in launching this program and is pleased to report that in fiscal 1981, agricultural restrictions were obtained on an additional 16 farms totalling 1,238 acres. Twenty-five farm properties, representing approximately 2,100 acres have been preserved for food production since the program's inception in 1980.

This program is the first major step in the protection and revitalization of the farming industry in Massachusetts. It will, no doubt, lessen our dependency on farm produce from distant parts of the United States and hopefully lower food costs to the citizens of Massachusetts.

The Department of Food and Agriculture is continuing with its very important Agricultural Preservation Restriction Program. Presently, fifty farms totalling in excess of 7,000 acres are under appraisal.

The Eminent Domain Division consists of a Chief, seven full-time attorneys, three special assistant attorneys general, three investigators, one administrative assistant, one administrative trial clerk and three legal secretaries. We also enjoy the services of a full-time Assistant Attorney General stationed in Springfield.

During the fiscal year July 1, 1980 through June 30, 1981, the following statistics indicate the activities of this extremely busy division:

Land Court Cases	160
Land Court Cases Closed	131
Land Court Cases Pending	326
New Land Damage Complaints Received	111
Land Damage Cases Disposed of in Superior Court	63
Land Damage Cases Disposed of by Settlement	72
Land Damage Cases Pending	587
Total Cases Pending	913
Rent Cases Closed by Special Assistant Attorneys General	62
Rent owed to the Commonwealth - Collected by Special Assistant Attorneys General	<u>\$131,412.00</u>

Fiscal 1981-1982 promises another busy year for the Eminent Domain Division. The Massachusetts Department of Public Works, as well as the Metropolitan District Commission predict a heavy workload for Fiscal Year 1982. The Department of Environmental Management is deeply committed and involved in the Heritage State Park Projects in Lowell, Lynn, Holyoke, North Andover and Lawrence. These ambitious undertakings are expected to cost approximately 60 million dollars and is expected to result in extensive litigation for this division.

The Division once again looks forward to accepting any and all challenges presented during the coming year.

INDUSTRIAL ACCIDENT DIVISION

The Industrial Accident Division serves as legal counsel to the Commonwealth in all workmen's compensation cases involving state employees. Pursuant to G.L. c. 152, section 69A, the Attorney General must approve all payments of compensation benefits and disbursements for related medical and hospital expenses in compensable cases. In contested cases this Division represents the Commonwealth before the Industrial Accident Board and in appellate matters before the Superior Court and the Supreme Judicial Court.

There were 13,135 First Reports of Injury filed during the last fiscal year for state employees with the Division of Industrial Accidents, an increase of 441 over the previous fiscal year. Of the lost time disability cases, this Division reviewed and approved 1900 new claims for compensation and 142 claims for resumption of compensation. In addition to the foregoing, the Division worked on and disposed of 199 claims by lump sum agreements and 21 by payments without prejudice.

This Division appeared for the Commonwealth on 1,592 formal assignments the Industrial Accident Board and before the Courts on appellate matters. In addition to evaluating new cases, this Division continually reviews the accepted cases; that is, those cases which require weekly payments of compensation, to bring them up to date medically and to determine present eligibility for compensation.

Total disbursements by the Commonwealth for state employees' industrial accident claims, including accepted cases, Board and Court decisions and lump sum settlements, for the period of July 1980 to June 30, 1981 were as follows:

General Appropriation (Appropriated to the Division of Industrial Accidents)	
Incapacity Compensation	\$6,458,442.79
Medical Payments	<u>1,610,991.27</u>
TOTAL DISBURSEMENTS	<u><u>\$8,069,434.06</u></u>

Metropolitan District Commission (Appropriated to M.D.C.)

Incapacity Compensation	\$ 719,164.74
Medical Payments	<u>158,609.48</u>
TOTAL DISBURSEMENTS	<u><u>\$ 877,774.22</u></u>

This Division also has the responsibility of collecting payments due the "Second Injury Fund" set up by Chapter 152, section 65, and defending the fund against claims for reimbursement made under Chapter 152, sections 37 and 37A. During the past fiscal year this Division appeared on 248 occasions to defend this fund against claims for reimbursement by private insurers. As of June 30, 1981, the financial status of this fund was:

Unencumbered Balance	\$ 57,637.68
Invested in Securities	<u>217,000.00</u>
TOTAL	<u><u>274,637.68</u></u>

Payment Made to Fund	\$ 822,760.98
Payments Made Out of Fund	<u>887,307.27</u>

Pursuant to G.L. Chapter 33, App. § §13-11A, the Chief of this Division represents the Attorney General as a sitting member on the Civil Defense Claims Board. This involves reviewing and acting upon claims for compensation to unpaid civil volunteers who were injured while in the course of their volunteer duties. During the past fiscal year the Chief of this Division appeared at the sitting of this Board and acted on 16 claims.

This Division also represents the Industrial Accident Rehabilitation Board. When an insurer refuses to pay for rehabilitative training for an injured employee, this Division presents the case to the Industrial Accident Board on behalf of the Industrial Accident Rehabilitation Board.

During the past fiscal year the attorneys of this Division were called upon numerous times to assist workers in private industry who contacted this Division regarding problems they were having with their compensation claims against private industry and their insurers. Every effort was made to assist these employees in resolving their difficulties or in referring them to appropriate persons or agencies.

TORTS, CLAIMS, AND COLLECTIONS DIVISION

The staff of the Torts Division as of the end of Fiscal Year 1981 consisted of a division chief, seven attorneys, three investigators and five clerical/secretarial personnel. By the latter part of the year their efforts were directed primarily toward defending tort actions against the Commonwealth and its officers and processing and reporting on Petitions for Compensation to Victims of Violent Crimes. Due to a steady increase in the numbers of both of these categories of cases, and a trend towards more complexity in the tort suits, many of these cases were also being assigned to other attorneys in the Civil Bureau. Actions by the Commonwealth to recover for property damage were being similarly assigned throughout the Bureau. The division is still engaged to some extent in the handling of older collection matters, but a policy decision not to accept new collection referrals from state agencies was implemented during the latter part of the year.

The total amount collected for the year was \$328,593.31 on a total of 956 claims, including 110 new cases. By the end of the period, 3,133 claims had been closed as uncollectible.

Approximately 427 new Victim of Violent Crime cases were opened during the fiscal period. The Treasurer ran out of appropriated funds for these claims in December of 1981 after paying out \$405,411.73 on 112 claims. An additional 237 claims totalling \$501,500.70 were approved by the courts and submitted for payment during the remainder of the year, awaiting approval of a deficiency appropriation.

New tort cases for the year totalled 224, while 191 were closed. Thirteen cases were litigated. The Commonwealth paid out \$73,486.30 on 36 claims.

II. CRIMINAL BUREAU

The Criminal Bureau, consisting of Trial, Organized Crime and Appellate Sections, Medicaid Fraud Control Unit, Arson Enforcement, Tax and Insurance Prosecution and Government Integrity Units and the Employment Security

Division continued to increase the number and expand the scope and intensity of investigations and prosecutions of criminal activity throughout the Commonwealth during FY 1980/1981. The following is structured to reflect a representative sampling of the cases the Bureau has instituted or resolved in its investigative and prosecutorial functions.

Trial Section: Following four years of investigation and hundreds of indictments, the three remaining defendants charged in the Vocational Education bribery cases were sentenced. More than half-a-million dollars in court ordered restitution has been assessed against the twenty-five defendants convicted in a case that has witnessed the imprisonment of both high state officials and private businessmen. Other functions of the state educational system also came under the scrutiny of the Bureau. Allegations involving the larceny of equipment and funds from the Massachusetts College of Art were explored while a former student government president at Boston State College who used his office for fraudulent purposes was sentenced to jail.

Mobile surveillances of home heating oil delivery trucks in Eastern Massachusetts resulted in the indictment of three oil deliverymen and a fuel company on charges that they fraudulently obtained money from their retail customers by employing oil diversion devices which were illegally installed on their trucks and which used pre-printed delivery tickets in order to misrepresent the amount of product actually received at the residence.

Seven individuals, including four New Jersey residents and two corporations were indicted and charged with the illegal disposal of large quantities of hazardous waste materials in several Plymouth County towns. This year also saw the successful prosecution in Middlesex County of nine individuals and three corporations involved in illegally dumping dangerous chemical wastes into tributaries of local water supplies. Following an extended trial, each of the defendants, in the largest hazardous waste dumping operation yet uncovered in New England, received substantial periods of incarcerations.

The Department of Revenue referred a number of tax cases to the Tax Insurance Fraud Unit for criminal investigation and prosecution. Of those investigations, thirteen individuals have been indicted representing almost \$650,000 in unpaid taxes. Sixteen cases have been concluded this year resulting in fines and restitution in excess of \$158,000 recovered by the Commonwealth.

The branch manager of a nationally recognized commodity trading house, charged with misappropriating in excess of half-a-million dollars of client's funds designated for the purchase of gold Krugerrands, was sentenced by the Suffolk Superior Court to imprisonment for violating the larceny statute and the Massachusetts Uniform Securities Act. In Essex County, a former used car salesman from Danvers who had been charged with forgery and altering automobile certificates of title and registration and an additional 21 counts of larceny was sentenced to state prison and ordered to make restitution to the defrauded customers. An Essex County attorney has been charged with defrauding a number of his clients of approximately half-a-million dollars by forging their names to settlement claims and depositing the proceeds in his personal bank account.

An independent life insurance agent, indicted in Middlesex County on charges of larceny by means of forgery and uttering checks, was ordered by

the court to make restitution in the amount of \$31,000 to two insurance companies. Pending the receipt of the funds, a mortgage on the defendant's home is required as security. A Marblehead druggist lost his license, was required to make restitution to Blue Cross/Blue Shield and had a suspended sentence imposed by the court after entering a guilty plea to charges that he fraudulently billed the health care agency for prescriptions he never issued.

A Hampden County murder trial resulted in indictments of perjury when the defendants sought to escape the consequences of their guilty pleas. Each received a consecutive sentence for the false testimony they gave in the earlier criminal prosecutions. In another case, a defendant is scheduled for trial on first degree murder charges emanating from the discovery of a body buried near Portland, Maine. In still another case, two Marlborough men are awaiting retrial after having been indicted on charges they conspired to murder a Framingham attorney.

Two of the largest recipient welfare fraud cases in the history of the Commonwealth were under prosecution by the Bureau. Five Boston residents have been indicted for misrepresenting their status. They purportedly received in excess of a quarter of a million dollars in illegal welfare benefits. Also, six aliens face charges in Suffolk County alleging that they stole in excess of four hundred thousand dollars in benefits from the welfare system by forging birth certificates to represent non-existing children. Other active cases involve ineligible recipients who, while fully employed, illegally receive welfare funds, food stamps and medical benefits to which they are not entitled.

Nine Greater Boston residents were sentenced to jail on charges they participated in a conspiracy involving hundreds of thousands of dollars in stolen luxury cars and that they illegally received money from insurance frauds. The organization printed near perfect counterfeit titles, in an attempt to legitimize the sale of the expensive motor vehicles they had stolen.

The number of arson cases investigated and prosecuted by the Arson Enforcement Unit increased dramatically this fiscal year. The property manager of a large Boston realty company was convicted on multiple indictments charging burning insured property. Five individuals, one a Boston firefighter, were indicted in separate conspiring charges alleging arson of a dwelling and setting fires to buildings to defraud insurers. One of the last defendants in the Suffolk County "Arson for Profit" ring was convicted on multiple arson indictments. The property manager and employees of a corporation deemed to be the largest owner of rental property in New England were indicted for burning the same apartment house on two different nights. The building was fully occupied at the time of the fire. Two Boston brothers, owners of extensive real estate holdings, were awaiting trial on charges they burned numerous multi-family dwellings in Roxbury, Dorchester and Jamaica Plain. The owner of a discotheque in Quincy was indicted for attempting to burn his restaurant by uncopping a gas pipe in the basement and placing lighted candles nearby on the floor. If the premises were occupied at the time the explosion occurred, hundreds of casualties would have resulted.

A number of public employees were indicted by the Criminal Bureau on charges arising out of the actions in course of their official positions. An accountant wrongfully took the Group Insurance Commissioner's promotional

examination for another; a former assistant director of the State Bureau of Building and Construction faced conflict of interest charges; an employee of the State Treasury awaits trial for embezzling \$36,000; a state worker was convicted of larceny from the Commonwealth; the Director of Food and Drugs of the Massachusetts Department of Public Health was under indictment for multiple counts of receiving bribes; the Treasurer of a regional division of the Department of Mental Health was charged with larceny from the Commonwealth; and the paymaster for the Department of Youth Services was terminated and ordered to make restitution for money he stole from the state by creating non-existent employee payroll accounts.

Organized Crime Section: While this law enforcement unit's charter mandates the investigation and prosecution of all illegal transactions implicating organized criminal activity, the section also supplies essential intelligence services to other governmental agencies engaged in similar prosecutorial missions. It also offers technical support assistance to other law enforcement organizations in need of photographic and electronic expertise.

Since the unit acts as the investigative arm of the Bureau, its activities closely parallel that of the parent organization. This fiscal year investigations into such diverse areas of criminal behavior as electrical current diversion, home improvement frauds, and hazardous waste dumping have come under its cognizance. An electronic surveillance of a major drug dealer instituted after a year of investigation resulted in the arrest of four major Boston heroin dealers, the seizure of two ounces of uncut heroin, guns, and more than \$350,000 alleged to be the proceeds of illegal drug sales.

A major investigation into bribery, political corruption, and larceny emerged this year as public officials and employees associated with the MBTA were questioned with regard to payoffs and kickbacks paid to secure contracts with that state authority. The investigative resources of the unit had this matter assigned a priority status.

State Police Officers specially assigned to the unit made more than fifty arrests this year of individuals involved in arson, narcotics, homicide, gambling, bribery, tax evasion, larceny, hazardous waste disposal, fraud and stolen motor vehicles offenses and have investigated a number of cases at the request of various district attorneys' offices where the results are transmitted to the county officials for criminal prosecution.

Appellate Section: The caseload of the Appellate section increased by fifty new cases over the previous fiscal year. Two hundred forty-four new cases were opened. Approximately 226 cases are presently active. The vast majority of the cases involve civil litigation arising from underlying criminal convictions. Of the 128 cases filed in the various state courts, sixty-nine petitioners sought relief in the Superior Court either by way of habeas corpus, declaratory judgment or civil rights damage actions. Forty-two petitions for review of sexually dangerous persons' (SDP) status pursuant to G.L. c. 123A, § 9 were filed. Nine suits seeking the invocation of the Supreme Judicial Court's superintendency powers under G.L. c. 211, § 3 were filed. Three briefs as *amicus curiae*, were filed in the Supreme Judicial Court. In one case, *Commonwealth v. Bastarache*, under the mandate of the Supreme Judicial Court, the Attorney General issued Suggested Guidelines for the Random

Selection of Jurors.

Eighty-eight cases were filed in the federal district court, which consisted of sixty-seven petitions seeking the writ of habeas corpus; and twenty-one civil rights actions or requests for declaratory and injunctive relief.

Twelve cases were argued in the Court of Appeals for the First Circuit. Sixteen petitions for writ of certiorari were successfully opposed in the Supreme Court of the United States and the one certiorari petition filed by this office was denied by that Court. The division successfully defended the Commissioner of Revenue in a contempt action in which the First Circuit, in a precedent setting decision, recognized a limited privilege for access to state tax records.

The Appellate Division also processes the rendition of fugitives from justice. Demands from both law enforcement officials of the Commonwealth and governors of other states are examined and an opinion rendered as to the legality of each demand. Approximately eighty-five rendition demands were reviewed during fiscal 1980-1981: sixty were foreign requests and twenty-five represented requests from Massachusetts authorities. In addition to the administrative duties involved, an attorney is required to appear in court whenever a rendition warrant is challenged.

Medicaid Fraud Control Unit: During the past fiscal year the Unit has continued to direct its resources to the detection, investigation and prosecution of provider fraud and abuse within the Medicaid system.

MFCU prosecutorial efforts resulted in the return of thirty indictments against those providers representing virtually the entire range of the Medicaid provider industry. Of those cases which reached disposition during the year, the Unit had twenty-nine convictions. Those convicted include dentists, podiatrists, nursing home owners, administrators, support staff, laboratories and transportation services.

Two-hundred-forty cases were opened, an increase of 121 cases over the previous year. One-hundred-fifty-eight cases were closed and one hundred ninety-eight cases are presently pending.

These efforts, combined with investigations which identified non-criminal abuses (and subsequent referral to the Department of Public Welfare for appropriate action) identified \$725,458 taxpayers dollars for recovery. In addition \$50,981 was returned to patient needs accounts.

The Unit has maintained a comprehensive training program for its staff as well as employees of other state agencies. The MFCU also participates in regional training sessions given to other Fraud Control Units.

Employment Security Division: The Attorney General's office in the Employment Security Division provides the Director with whatever legal assistance and representation is necessary to enforce G.L. c. 151A, §42.

The Employment Security Law is both technical and highly complex. All employers are subject to the statute and must comply with its provisions. The efficient and economical administration of the employment security program in Massachusetts depends in large measure on the cooperation and compliance of well-informed employers since they pay the entire costs of its operation. The employment security program also insures individuals who become unemployed through no fault of their own, a weekly benefit check paid on a claim filed with the Division of Employment Security.

Whenever an employer does not comply with the Employment Security law either by not filing the necessary reports or by refusing to pay the taxes due on his account with the Division, the matter is referred to the Attorney General for criminal prosecution under the provisions set forth by the statute.

The staff makes every effort to fully inform employers of their rights and obligations under the law. As a result, a certain percentage of the tax matters are settled immediately thereby avoiding the expense of prosecuting the offender and collecting the taxes owed through court action. Consequently, savings to the Commonwealth and its taxpayers are realized.

During the fiscal year ending June 30, 1981, 1454 employer tax cases were handled by this Division. 1167 cases were active on June 30, 1980. 287 additional cases were received during the fiscal year, and 329 cases were closed leaving the balance of 1125 employer tax cases on hand June 30, 1981.

Criminal complaints were brought in the Boston Municipal Court, charging 201 individuals with non-payment of taxes totaling \$1,201,049.11 owed on the 153 delinquent tax accounts.

\$1,393,023.67 in overdue taxes was collected during the fiscal year ending June 30, 1981. Monies collected were deposited to the Unemployment Compensation Fund.

Whenever individuals are found to be collecting unemployment benefits illegally on claims they filed while gainfully employed and earning wages, these fraudulent matters are referred to the Attorney General's office for prosecution of the criminal offense. Criminal complaints are brought only when the facts surrounding the offense have been investigated and reviewed with the individual involved and criminal intent is found. Action is brought in the court having jurisdiction over the offense, under the authority of either G.L. c. 266, §30 or G.L. c. 151A, §47, in order to reclaim monies stolen from the Division of Employment Security.

During the fiscal year ending June 30, 1981, 1101 fraudulent claims matters were handled by this Division. 990 cases were on hand July 1, 1980. 111 additional cases were received during the fiscal year, and 311 cases were closed leaving a balance of 790 cases on hand June 30, 1981.

Criminal complaints charging 49 individuals with larceny of \$82,924.00 in unemployment benefits fraudulently collected from the Division of Employment Security were brought by Division attorneys.

The amount of \$145,917.23 was collected during the fiscal year ending June 30, 1981, and returned to the Division of Employment Security for deposit to the Unemployment Compensation Fund.

The Division continues to prosecute CETA fraud claims. The caseload is minimal, however, since earlier actions taken by this Division have acted as a deterrent by keeping the filing of CETA claimants at a minimum.

During the fiscal year ending June 30, 1981, actions brought against or by the Director of the Division of Employment Security numbered twenty-three in total. Seventeen cases were on hand July 1, 1980, six additional cases were received during the course of the fiscal year, and three cases were disposed of at the court involved, leaving twenty cases remaining on hand as of June 30, 1981. The closings involved cases handled by the Administrative Division as well as the Employment Security Division of the Attorney General's Department.

Twenty-eight cases brought in the Supreme Judicial Court of the Commonwealth were handled by the Employment Security Division during the fiscal year ending June 30, 1981. Eleven cases were on hand July 1, 1980. Seventeen additional cases were received, increasing the total of cases on hand to twenty-eight. Eighteen cases were argued and closed thereby reducing the balance of cases on hand to 10, as of June 30, 1981. Of the 18 cases argued, the court upheld the position of the Division of Employment Security in sixteen cases and remanded two cases for further review and administrative action to be taken by the state agency.

During the fiscal year, the resources of the Division have been used to maximize its potential to provide a statewide impact and secure an effective remedy designed to enforce a social program which is structured to serve the people of the Commonwealth.

III. EXECUTIVE BUREAU

ELECTIONS DIVISION

A. CAMPAIGN AND POLITICAL FINANCE

One of the primary functions of the Elections Division is to enforce compliance with the state's campaign finance law by candidates and political committees. (G.L. c. 55). The division is also responsible for advising the Office of Campaign and Political Finance on questions of law.

In fiscal 1981, the Office of Campaign and Political Finance reported ninety-nine (99) individual candidates or treasurers who had failed to file the required financial disclosure reports. Through administrative action taken by the Division, compliance was obtained in eighty-four (84) instances. The Division brought civil suit against fifteen individuals; thirteen of whom have since complied with the disclosure statute. In addition, city and town clerks throughout the Commonwealth reported thirty-five (35) local candidates or political committee treasurers who had not complied with the filing requirements. The Division obtained compliance with the law in each case; in thirty instances by administrative action, and in five through litigation.

B. LOBBYISTS

The Elections Division also enforces the state statute that requires legislative agents and their employees to file financial disclosure statements with the Office of the Secretary of the Commonwealth. (G.L. c. 3 §§43, 44, 47). In fiscal year 1981, 51 violations of these sections were reported by the Secretary. As a result of administrative action taken by this Division, the required statements were filed by all reported violators.

C. LITIGATION

During fiscal 1981, the Elections Division was engaged in numerous civil suits brought by candidates and voters challenging the composition of the 1980 general election ballot. The Division also defended a state statute that required voters who were not enrolled in any political party to be designated as

“unenrolled” as opposed to “independent.” The Supreme Judicial Court in *Bachrach v. Connolly* found the statute to be an unconstitutional infringement on voters’ rights of political association.

The Division also drafted an opinion of the Attorney General concerning the extent to which corporations can become involved in political activities in the Commonwealth. A separate opinion was drafted concerning the appropriate definition of Legislative agents within the meaning of G.L. c. 3 §§43, 44, 47.

A submission to the United States Department of Justice was prepared by the Division under the Voting Rights Act of 1965 seeking clearance of changes in election laws enacted in certain towns in the Commonwealth that are subject to this act.

VETERANS DIVISION

The Veterans Division serves primarily as an informational agency referring private citizens to appropriate Federal and State offices for assistance in veterans matters. The Division serves as counsel to the Commissioner of Veterans Services and the Veterans Affairs Division of the Department of the Treasury. The Division handles civil litigation concerning appeals of agency decisions granting or terminating veterans benefits.

IV. GOVERNMENT BUREAU

The Government Bureau has four functions:

- (1) Defense of state officials and state agencies; principally in lawsuits raising issues of administrative and constitutional law and statutory interpretation;
- (2) Initiation of affirmative litigation on behalf of state agencies and the Commonwealth;
- (3) Preparation of Opinions of the Attorney General; and
- (4) Legal review of all newly-enacted municipal by-laws pursuant to G.L. c. 40, §32.

A report on each of those functions follows.

DEFENSE OF STATE AGENCIES

The Government Bureau represented the Commonwealth and its officials and agencies in defensive litigation in state and federal courts, and, in certain cases, before state and federal administrative agencies. These proceedings typically involved administrative and constitutional issues in diverse areas of public law.

During fiscal 1980, the Bureau received 589 new cases and concluded a total of 426 previously active cases. By general subject matter or client, the new cases fell into the following categories (with miscellaneous cases omitted):

<i>Type of Case</i>	<i>Number</i>
Automobile Surcharge	69
Defense of cases brought against judges and court personnel	56
Civil Service Commission	49
Taxation	41
Special Education (Chapter 766)	38

Registry of Motor Vehicles	32
Department of Public Welfare	30
Alcoholic Beverage Control Commission	30
Boards of Registration	23
Public Health	16
Housing	15
Mental Health	14
Rate Setting Commission	14
Insurance	13
Department of Public Utilities	10
Division of Personnel Administration	10
Department of Social Services	9
Banking	8
Retirement Board	7
Racing Commission	6
Public Safety	6
Education (non-Chapter 766)	5
Division of Employment Security	4
Massachusetts Rehabilitation Commission	4
Lottery Commission	3
CATV Commission	3
Board of Conciliation and Arbitration	3
Secretary of State	3
State Police	3
Transportation	2
Department of Youth Services	1
Treasurer	1
National Guard	1
Department of Corrections	1

The relative time spent representing specific agencies cannot be measured simply by the number of cases. The representation of certain agencies involves a significant commitment to complex litigation, even though the total number of lawsuits brought against such agencies might be quite small. For example, as in the previous four fiscal years, substantial Government Bureau resources were devoted to consent decrees previously entered in five cases seeking improvement in the conditions and treatment of residents at state institutions for the mentally retarded and in a similar case involving Northampton State Hospital, a mental health facility.

Government Bureau lawyers argued 12 cases before the Court of Appeals for the First Circuit which resulted in reported opinions. Among the more significant of these cases are the following: In *Aufiero v. Clarke*, the Court of Appeals rejected an attempt to retroactively apply a Supreme Court ruling that a public employee cannot be discharged solely for the reason that he or she is not affiliated with or sponsored by a particular political party. Thus, a demotion of an employee which occurred prior to the date of the Supreme Court's decision because of that employee's service relating to patronage hirings and promotions in a prior administration did not amount to a violation

of his civil rights. *Planned Parenthood League of Massachusetts v. Bellotti* involved an appeal from the District Court's denial of preliminary injunctive relief seeking to enjoin the implementation of St. 1980, c. 240. The Court found the statute's provisions relating to abortions for minors and the use of a prescribed consent form to be constitutionally permissible but held that its 24-hour waiting period for non-emergency abortions and the inclusion in the consent form of a description of the development of the fetus probably violated the plaintiffs' rights, thus warranting the granting of preliminary relief as to those features of the statute. The First Circuit held in *Klug v. New Perspectives Schools, Inc.* and *Rendell-Baker v. Kohn*, that the Commonwealth's delegation of the education of special-needs children to private schools does not amount to state action under the Fourteenth Amendment. In *Massachusetts Coalition of Citizens with Disabilities v. Civil Defense Agency* the Court upheld, in the face of equal protection and due process claims by disabled persons, the validity of the Commonwealth's plan for evacuation of persons in the event of a public safety emergency arising from a malfunctioning nuclear power facility. In *Newfield House v. Department of Public Welfare*, the First Circuit affirmed the decision of the District Court denying the Commonwealth's counterclaim for restitution of Medicaid payments made to a nursing home which had voluntarily withdrawn from the Medicaid program. The First Circuit found that, although such payments were not required by federal law, the Commonwealth could be held liable under contractual or quasi-contractual theories. The Court of Appeals in *Grendel's Den, Inc. v. Goodwin* reversed the District Court ruling that G.L. c. 138, §16C was unconstitutional. That statute governed the granting of liquor licenses within 100 feet of a church, synagogue or school. At the close of the reporting year, the plaintiffs had petitioned for rehearing *en banc*.

A substantial portion of the Government Bureau's resources were devoted in fiscal 1981 to the litigation of numerous cases in the United States District Court. Many of these cases involved special education (e.g., *Town of Burlington v. Dept. of Education*), the rights of institutionalized elderly, retarded, and mentally ill persons to treatment in the "least restrictive environment" (e.g., *Linden v. King*), and the amount of reimbursement to be paid providers of Medicaid services by the Commonwealth (e.g., *Massachusetts Hospital Association v. Secretary of Health and Human Services*). In addition, the Government Bureau was actively involved in a number of proceedings before the United States Bankruptcy Court in which Medicaid providers filed for bankruptcy. The Government Bureau's participation in these cases sought to ensure that state and federal Medicaid regulations were enforced, that the claims of the Commonwealth as a creditor were protected, and that challenges to the authority of state agencies to enforce their regulations against the debtors were defended.

During the fiscal year, Government Bureau attorneys were involved in 34 appeals before the Supreme Judicial Court, including the following cases. In *MBTA Advisory Board v. MBTA*, the Supreme Judicial Court declared that, although the Governor is not authorized to take possession of the MBTA because of an anticipated interruption of public transportation resulting from a budget dispute, he is permitted to continue to operate the MBTA under executive order for the brief period necessary to convene the Legislature. In

another MBTA case, *MBTA Advisory Board v. The Governor*, the MBTA Advisory Board sought declaratory and injunctive relief against assessments upon cities and towns in the MBTA district, claiming that certain of the expenditures under an executive order were illegal because they exceeded the budget approved by the MBTA Advisory Board. The Supreme Judicial Court held that the Advisory Board was not entitled to relief. In *County Commissioners of Plymouth v. State Superintendent of Buildings*, five counties and the city of Boston appealed the rent established by the state superintendent of buildings to be paid by the judicial branch for space in county buildings. The court held that any rent decisions by the superintendent are subject to the availability of appropriated funds and that no obligation would be imposed on the Commonwealth in excess of available appropriations. The superintendent should have, however, established a rent figure taking into account certain cost items.

There were a number of important cases decided during this reporting year involving First Amendment and due process claims. In *the Matter of Roche*, the SJC affirmed the finding of a single justice that a reporter was in civil contempt for refusing to testify at a deposition authorized by the Commission on Judicial Conduct. The Court in *Moe v. Secretary of Administration and Finance*, considered certain statutory restrictions on the funding of abortions under the state medical assistance program. Finding that restriction represented an impermissible burden on the exercise of a fundamental right secured by the Declaration of Rights, the SJC declared the statute unconstitutional. In *Commonwealth v. School Committee of Springfield*, the Court held that the anti-aid amendment of the state constitution and ordered the local educational agency to comply with the statute. The validity of a state statute was also upheld in *DiLoreto v. Fireman's Fund Insurance Co.* There, the SJC found that the "merit rating" provisions of G.L. c. 175, §113P did not amount to unlawful delegation and a denial of due process.

Personal rights were similarly at stake in three cases argued by Bureau attorneys involving questions having to do with parental unfitness, adoption, and child custody. The SJC articulated the appropriate standards and procedures to be followed by trial judges in cases involving children and parents.

During fiscal 1981, Government Bureau attorneys argued nine tax cases before the SJC. For example, in *New England Medical Center Hospital, Inc. v. Commissioner of Revenue*, the SJC found that all meals prepared by hospital employees and served in the hospital were exempt from the meals excise tax regardless of whether the consumer of such meals was a patient, employee, or visitor. In *Parker Affiliated Companies, Inc. v. Department of Revenue*, the Court concurred with the Department of Revenue that the amount of capital gains reported to the federal government determines the net income taxable under state corporate excise statutes. *Westinghouse Broadcasting Co., Inc. v. Commissioner of Revenue* concerned the issue of whether a broadcaster qualified as a manufacturing company so that its machinery would be exempt from local taxation. The court affirmed the Appellate Tax Board's decision denying the exemptions, stating that, while the definition of manufacturer may have changed from its historical origins, it was for the Legislature, not the court, to redefine the term.

Government Bureau lawyers also argued five insurance-related cases before the SJC in fiscal 1981. In *Massachusetts Automobile Rating and Accident Bureau v. Commissioner of Insurance*, the Court reviewed the decision of the Commissioner of Insurance fixing industry-wide automobile insurance rates for calendar 1980. The Court upheld the Commissioner's decision with respect to allowances for losses and expenses, but remanded for further consideration the allowance for profits. In *Metropolitan Property and Liability Insurance Co. v. Commissioner of Insurance*, the SJC upheld the Commissioner's decision to fix industry-wide private passenger automobile insurance rates pursuant to his traditional authority under c. 175, §113B.

Twenty one cases were argued in the state Appeals Court. For example, in *Ash v. Police Commissioner of Boston*, the Court affirmed a superior court decision that the state personnel administrator was empowered to round off Civil Service test scores to the nearest whole number to determine the pool of certified applicants. In *Stiger v. Dept. of Public Welfare*, the court held that the Department was not required to compensate for private psychological therapy under the Medicaid program. In another case arising under the Medicaid program, the Department argued that it was not obliged to adhere to a method of calculating costs incurred for medical care specified by the federal government. The Appeals Court agreed and, in *Tinkham v. Department of Public Welfare*, held that since the method was contained in a federal directive which had not gone through rule-making, the Department was not bound to follow it.

Wing Memorial Hospital v. Dept. of Public Health involved the question of whether a separate certificate of need was necessary for satellite clinics. The Appeals Court found that such clinics could not exist solely on the authority of a hospital's existing license. Rather, the clinics are required to obtain separate licenses based on a determination of need. In *Plymouth County Bus Transportation, Inc. v. Greater New Bedford Regional Vocational Technical High School, et al.*, the validity of a regional school district committee's plan to transport large numbers of students to and from its high school by means of public transportation rather than by private contractors was at issue. The plaintiff claimed that the state's approval of the transportation plan violated state law but the court upheld the trial judge's ruling that the plan was fully consistent with the statutory authority of the Commissioner of Education.

Bureau attorneys argued six cases in the Appeals Court involving the Alcoholic Beverages Control Commission. In one of these cases, *New Palm Gardens v. ABCC*, the Court upheld the Commission's suspension of a license on the grounds that the license permitted obscene dancing on the premises in violation of G.L. c. 272, §29.

AFFIRMATIVE LITIGATION

The Attorney General established the Affirmative Litigation Division within the Government Bureau in order to represent agencies of the Commonwealth when performance of their statutory functions require resort to the state and federal courts.

Cases which the Affirmative Litigation Division brings may be divided into three broad, and often over-lapping categories: (1) advocacy litigation; (2)

grant-in-aid related litigation; and (3) enforcement litigation. The first category subsumes cases which the Attorney General commences either on behalf of a state agency with an advocacy responsibility or in the furtherance of his own obligation to advance the public interest. Litigation related to grant-in-aid programs subject to federal oversight continues to account for a substantial portion of the Affirmative Litigation Division's efforts. These cases also tend to be the most significant ones in terms of financial value. Finally, the Division performs the traditional Attorney General enforcement function by commencing suit on behalf of state regulatory and licensing agencies. The following paragraphs contain brief descriptions of representative cases litigated during the reporting year.

In *Commonwealth v. Klutznick*, the Attorney General, in cooperation with twenty municipalities, challenged the conduct and results of the 1980 Decennial Census. Alleging that the methodology and management of the Census Bureau's effort produced an inaccurate enumeration of the Commonwealth's true population, the action seeks an upward adjustment in the figures in order to ensure the Commonwealth's entitlement to federal grants and other programs which are census-based. The case has been consolidated with similar litigation throughout the country challenging the 1980 census, and all cases are proceeding to trial in the United States District Court in Maryland.

In *Commonwealth v. New Hampshire*, the Attorney General intervened, on behalf of the Commonwealth and its residents, in a challenge to a decision of the New Hampshire Public Utilities Commission prohibiting the exportation of hydroelectric power by the New England Power Company. The cost of that decision to Massachusetts consumers is estimated to be in excess of one hundred million dollars annually. Following the New Hampshire Supreme Court's affirmance of the PUC order, the Attorney General sought further review in the United States Supreme Court, which accepted the case for argument.

In another case initiated by the Commonwealth and seven other states, *Maryland v. Louisiana*, the United States Supreme Court invalidated Louisiana's tax on natural gas, resulting in savings of eight million dollars to Massachusetts consumers. Finally, bankruptcy proceedings of nursing homes and hospitals have required the Attorney General in several instances to assert the Commonwealth's entitlement to the recovery of payments in excess of the amounts permitted under the Medicaid program.

OPINIONS AND BY-LAWS DIVISION

General Laws Chapter 12, section 3 authorizes the Attorney General to render legal advice and opinions to state officers, agencies and departments on matters relating to their official duties.

(1) *Standards for Issuing Opinions*

Following in large part the established practice of previous Attorneys General, the Attorney General gives opinions only to state agencies and departments and to the officials who head those entities. The Attorney General does not render opinions to individual employees of a state agency. He does not answer legal questions posed by county or municipal officials or by private persons or organizations.

The questions which the Attorney General considers in legal opinions must have an immediate, concrete relation to the official duties of the state agency or officers requesting the opinion. In other words, questions which ask generally about the meaning of a particular statute, lacking a factual underpinning, will not be answered.

The Attorney General does not render opinions on questions raising legal issues which are or soon will be the subject of litigation or concern collective bargaining. He also refrains from making findings of fact, as well as answering questions relating to the wisdom of legislation or administrative or executive policies. Finally, he does not generally undertake the task of construing federal statutes or the constitutionality of proposed or existing state or federal legislation.

(2) *Procedures in Requesting an Opinion*

In an effort to make the Attorney General's opinion rendering function as effective, helpful and efficient as possible, the Department of the Attorney General has established a number of procedural guidelines to govern opinion requests.

Opinion requests from state agencies (or heads of state agencies) which come under the jurisdiction of a cabinet or executive office must be first sent to the appropriate executive secretary for his or her consideration. If the secretary believes the question raised by a request is one which requires resolution by the Attorney General, the secretary would then request the opinion on behalf of the agency or send the agency's request with the secretary's approval noted.

There are two reasons for this rule. The first concerns efficiency. Opinions of the Attorney General, because of their precedential effect, are thoroughly researched and prepared. If a question can be satisfactorily resolved more quickly within the agency or executive office — by agency legal counsel or otherwise — everyone is better served. The second reason relates to the internal workings of the requesting agency and its executive office. It would be inappropriate for the Attorney General to place himself in the midst of an administrative or even legal dispute between these two entities. The rule, therefore, helps to ensure that the agency and its executive office speak with one voice insofar as opinions of the Attorney General are concerned.

If the agency or executive office requesting an opinion has a legal counsel, counsel should prepare a written memorandum explaining the agency's position on the legal question presented and the basis for it. The memorandum should accompany the request.

When an agency request raises questions of direct concern to other agencies, governmental entities, or private individuals or organizations, this Department will solicit the views of such other agencies, individuals or organizations before the Attorney General renders an opinion. In this way, the Attorney General seeks to make sure that he does not overlook the significant and relevant considerations of all interested parties.

The Attorney General strongly discourages the issuance of informal opinions. Informal opinions are often relied on as though they are formal opinions of the Attorney General. In a number of instances, this reliance has been seriously misplaced. As a result, the Attorney General is intent upon limiting the issuance of informal opinions to situations of absolute necessity.

(3) *Opinions for 1980-81*

Approximately 115 requests for opinions of the Attorney General were received during FY 1981. Because many of those requests originated from private individuals, municipal officials and other persons or organizations who are not entitled to an opinion of the Attorney General, most requests were declined. Eighteen formal opinions of the Attorney General were rendered in FY 1981, some of which are summarized below.

Opinions are frequently requested by newly created state agencies and agencies affected by recently adopted law to clarify their authority. The Chairman of the Arts Lottery Council requested an opinion on several questions relating to that agency's authority under newly passed legislation. The Attorney General concluded that, among other obligations, the Council did not have authority to permit arts organizations, acting as ticket sales agents, to receive more than the regular sales commission established by the Lottery Commission.

Adoption of Proposition 2½ generated a question from the Chairman of the Joint Labor-Management Committee who asked whether the Committee may use binding arbitration subsequent to the time Proposition 2½ took effect. The Attorney General concluded that the power of the committee is no longer binding on a municipality.

The Court Reform Act of 1979 was impetus for the Comptroller to solicit an opinion whether an individual may receive payment for services rendered as an employee of an agency of the Commonwealth and simultaneously be paid as an employee of the court system of the Commonwealth. The Attorney General concluded, generally, that it is a violation of G.L. c. 30, §21 for salaried employees of the Commonwealth who are salaried employees in the judicial system to continue to receive two salaries.

The creation of the Bay State Skills Commission left the Secretary of Economic Affairs with a question concerning the application of the "Anti-Aid" Amendment to the proposed activities of the Commission. The Attorney General concluded that the Bay State Skills Commission may use public funds to make matching grants to private, post-secondary, non-degree granting institutions of skills-training and education without violating the Anti-Aid Amendment of the Constitution.

Legal questions often arise out of the day-to-day functioning of a state agency. Four opinions were rendered concerning statutory interpretation of definitions and duties. One such opinion request came from the Secretary of State, who asked for a clarification of the appropriate standards to be used in administering G.L. c. 3, §39 *et seq.*, pertaining to legislative agents. The Attorney General found that all lobbying activity, both within state and in other jurisdictions, must be considered to determine whether the activity is part of the individual's regular and usual employment.

Two opinions relating to election laws were solicited. The Secretary of State asked whether certain ballot questions were ones of public policy, appropriate for submission to the voters. The Attorney General determined that the questions, which took the form of instructions to State Senators or Representatives, were appropriate public policy questions.

The Director of the Office of Campaign and Political Finance requested an opinion on the extent to which business corporations may become involved in

Massachusetts political activities. The Attorney General concluded that corporate expenditures or contributions of anything of value specifically to promote or oppose a candidate for state, county or local political office are forbidden and that corporations may not circumvent the prohibition by forming political action committees.

Two opinions clarified the financial administration of the state. The Clerk-Magistrate for Criminal Business for Suffolk Superior Court inquired whether money which is deposited as bail with the court should be deposited in interest-bearing accounts and whether the interest is payable to the surety, defendant, or Commonwealth. The Attorney General concluded that money held by the court as bail should be placed in interest accounts and the interest must be paid into the state treasury.

The Secretary of Administration and Finance asked whether he was required to hold public hearings before setting the amount of fees and charges to be paid to the Commonwealth. The Attorney General advised the Secretary that although no public hearings are required, he must give notice to afford interested persons an opportunity to present data, views, or arguments.

Finally, a constitutional question arose when the Commonwealth was in the process of acquiring land in the Town of Mashpee. The Commissioner of Environmental Management asked what the effect would be of certain terms of an agreement between the Town of Mashpee and the Department. The Attorney General concluded that an agreement to subject the use of state land to the terms of future ordinances and by-laws of the municipalities in which the land is located constitutes a relinquishment of control which, in conjunction with Article 97, necessitates a favorable two-thirds vote in each branch of the General Court.

(4) *By-Laws*

Town by-laws and home rule charters and amendments thereto are reviewed and must be approved by the Attorney General. During the fiscal year ending June 30, 1981, this office reviewed over 1500 by-laws and 12 home rule charter actions.

Regulations regarding pesticides, hazardous waste and the discharging of firearms were frequent subjects of by-laws approved over the past year. Also, several by-laws which sought to regulate condominium conversions without proper enabling legislation were disapproved.

Many towns have increased their fees in response to a legislative change allowing them to do so. Some by-laws were disapproved on the grounds that the cost of the service charge exceeded the cost of the service. This guideline is mandated by section 12 of the Proposition 2½ legislation.

The Federal Food Insurance Program, begun in 1974, continued to be adopted as more towns submitted Federal Flood Plain maps. These maps were submitted as general, rather than zoning, by-laws.

The concerns exhibited by the reporting year's by-law submittals suggest that Commonwealth's communities feel a need for regional environmental planning and expanded local control of nuclear and hazardous waste. This concern for the local environment, coupled with attempts to regulate condominium conversion, door-to-door solicitation and the display of potentially sexually

offensive material to minors, indicate that the towns of the Commonwealth are concerned with protecting and preserving local standards of living, notwithstanding the regional expansion and growth seen in previous years.

V. PUBLIC PROTECTION BUREAU

The Public Protection Bureau, the largest of the Bureaus in the Department of the Attorney General, carries on affirmative litigation in the public interest in a number of significant areas. During fiscal 1981, Bureau staff prosecuted violations of law in such areas as consumer protection, civil rights, antitrust, and environmental protection. The Bureau's attorneys also appeared to represent the public in numerous agency hearings held to set maximum rates for automobile and medical insurance and for utility services.

During the 1981 fiscal year, the number of cases brought through the joint efforts of attorneys from various divisions within the Bureau increased. Among these cases were:

(1) *Attorney General v. Lowell and Cape Cod Gas Companies*

On April 29, 1981, the Lowell Gas and Cape Cod Gas Companies were found to have committed unfair and deceptive acts and to have defrauded their ratepayers by employing improper accounting practices from 1970 through 1977. This judgment followed four years of litigation in the Superior Court by Bureau attorneys specializing in utilities and consumer law. It is the first case in which any Massachusetts utility company has been found liable for violations of Chapter 93A or for common law fraud. The Bureau will now ask for an assessment and payment of damages in excess of one million dollars to the companies' ratepayers.

(2) *Local Division 589 v. Commonwealth and M.B.T.A.*

In 1978 and 1980, the Massachusetts Legislature passed laws to reform collective bargaining and arbitration involving labor unions at the Massachusetts Bay Transportation Authority. M.B.T.A. unions immediately challenged the constitutionality of these laws. In November, 1980, the unions sought to prevent the Authority from receiving over 20 million dollars in vitally-needed federal operating grants and larger capital construction grants because of the Authority's efforts to enforce the laws in arbitration over labor contracts for 1981. Bureau attorneys, in cooperation with the M.B.T.A.'s staff, argued successfully for continuation of federal funding and defended the constitutionality of the disputed statutes in federal court. Following hearings in March, 1981, a federal district judge upheld portions of the statutes and found other portions unconstitutional. Appeals from the judgement were argued by both sides to the First Circuit Court of Appeals; with the court's decision pending at the close of the fiscal year.

(3) *Other M.B.T.A. Issues*

During fiscal 1981, Bureau attorneys from various divisions represented consumer and environmental interests in connection with M.B.T.A. decisions to increase fares. We negotiated agreements to ensure that the Authority complied with the Massachusetts Open Meeting Law and the Massachusetts Environmental Policy Act when considering changes in fare policies.

(4) *D.P.U. 555 - Gas Crisis Investigation*

Bureau attorneys specializing in consumer and utilities law have appeared to represent consumer interests in the Department of Public Utility's investigation into the causes of a major disruption in natural gas supplies to the Lowell, Cape Cod and Boston areas which occurred in January, 1981. Among the questions raised are the causes of the crisis and whether consumers should pay the expenses incurred by the companies to buy extra gas supplies on an emergency basis. Investigatory hearings continue at the close of fiscal year.

(5) *Small Loans Regulatory Board*

Bureau and consumer attorneys also appeared before the Small Loans Regulatory Board to oppose a proposed increase in the ceiling for interest rates for loans of less than \$6,000. The Bureau recognized the basis, under statutory criteria, for an increase in the maximum rate. We recommended that the ceiling be raised from 18 percent plus a flat administrative fee to 21 percent plus a fee. The lending industry proposed a sliding scale of 24 to 30 percent. We also introduced evidence that some large lenders engage in unfair and deceptive sales tactics and asked that the Board issue orders to insure that any increase be explained clearly to borrowers involved in refinancing. In July, 1981, the Board established a new rate of 23 percent plus a flat fee and adopted our requested refinancing notice.

(6) *Blue Cross-Blue Shield Hearings*

In fiscal 1981, attorneys from the public charities and insurance divisions jointly represented consumer interests in hearings held to fix maximum rates for "Medex" and non-group insurance offered by Blue Cross-Blue Shield. After the hearings, the rate increase ordered was equal to one-half the amount originally requested.

(7) *Bellotti v. Amoco Oil Company*

In July, 1979, after a statistical analysis of Amoco's credit scoring system showed it had a disproportionately heavy impact on black communities, civil rights and consumer attorneys in the bureau filed suit against the Amoco Oil Company because of its practice of "zip code redlining", *i.e.* the practice of penalizing applicants for credit cards solely because of the zip code area in which they live. After the filing of our lawsuit, which was the first such action by any government agency in the nation, Amoco agreed with the FTC to drop its practice nationwide, to re-evaluate rejected applicants, and to pay a \$200,000 civil fine. Further, by an agreement reached with the Attorney General on January 15, 1981, Amoco agreed to pay our expert costs and will make an additional payment of \$150 to each consumer who complained to us about this practice.

During fiscal 1981, in addition to the joint efforts described above, the Bureau's specialized divisions and sections carried on and expanded litigation in their subject areas. Reports of each section and division appear below.

INVESTIGATIVE SECTION

In the 1981 fiscal year the professionalization of the Investigative Section of the Public Protection Bureau continued. In the past, the Investigative Section

had dealt primarily with referrals from the Bureau's Consumer Protection Division. Over the last year, investigators handled cases referred not only from the other Bureaus in the Attorney General's Office, but also from agencies throughout the Commonwealth. At the close of the fiscal year, we were acting on referrals from Senate committees, the Comptroller's Office and the Department of Mental health. This influx of new cases is indicative of the increased reliance state agencies have placed on the Attorney General's investigators during the past fiscal year.

For example, a special committee to investigate seclusion, restraint and death in state supported institutions, and to review complaints of conditions at mental health institutions run by the Commonwealth of Massachusetts, referred to this office a number of cases. Most of these dealt with patients at the mental institutions who were alleged to have been mistreated or who were classified as missing for extended periods of time. In one such case, involving the disappearance of a female patient from one state facility, investigators discovered that the missing client had been killed, located her remains and identified the perpetrator, who was later convicted.

In November 1980, the Commissioner of Mental Health formally requested the Attorney General to review the results of a large number of audits of community mental health and mental retardation programs operated throughout the state by private providers. Since that time, DMH has administratively closed and taken action to recover funds against twenty-eight providers. The cases of fifteen providers have been forwarded to the Bureau's Division of Public Charities with our findings, and information about twenty-two providers has been turned over to the State Ethics Commission.

At the close of the year the financial operations of sixteen other providers were under continuing review by section investigators. The investigations of these referrals being conducted by personnel in the Investigative Section with the assistance of a financial investigator on loan from the State Auditing Department.

In fiscal 1981, investigators also began a survey of motor vehicle dealers in order to determine their compliance with the Commonwealth's motor vehicle statutes and regulations. As a result of this ongoing survey, several cases have been referred for prosecution under the state odometer statute and Consumer Protection Act. It is hoped that active enforcement will encourage voluntary compliance with the law.

Anti-arson and housing investigators have continued to break new ground in this highly specialized and important area in cooperation with Bureau attorneys specializing in housing issues. In fiscal 1981, we added experts knowledgeable in the areas of building and construction. This has enabled us to analyze housing problems more quickly and to identify opportunities for appropriate relief. The Bureau has also hired a second investigator who will specialize in the investigation of anti-trust complaints.

The Investigative Section continues to maintain a number of mediators to handle the numerous matters referred by the Complaint Section that should be handled through mediation. The Section also has two clerks who work directly with the attorneys in the Insurance Division handling both complaints and research on the structure of insurance rates.

Finally, during fiscal 1981, investigators were assigned periodically to continue monitoring of hospitals to insure that those hospitals that are required to furnish assistance under the Hill-Burton Act meet their obligations.

Over the past year, through the above efforts, the Investigative Section made continued progress toward meeting the Attorney General's aim of providing better service to the public and the Commonwealth.

ACCOUNTING SECTION

The Accounting Section of the Public Protection Bureau operates as a specialized support staff on a bureau-wide basis providing accounting services to each and every division when and how the need arises.

The Bureau's Accounting section made major progress during the fiscal year in a project in association with the Civil Rights Division to evaluate the compliance by hospitals in the Commonwealth with regulations under the Hill-Burton Act, a federal law requiring granted facilities to provide a level of free or reduced-cost services to persons unable to afford hospital care. Field visits were made to 37 facilities during the year, a majority of which were found to be in significant non-compliance with the regulations. Agreement was reached with one hospital, Haverhill Municipal (Hale) Hospital to provide an additional \$206,000 of uncompensated services to eligible persons in future years. Ten hospitals were found to be in substantial compliance; two administrative complaints were filed with the U.S. Department of Health and Human Services, against Fairlawn Hospital (Worcester) and St. Anne's Hospital (Fall River); settlement agreements were close to completion with five other facilities; and negotiations were under way with the remaining hospitals. Field audits are continuing at an accelerated pace by three teams of accountants, investigators and student interns. In addition, assistance has been provided to the Office of the Attorney General in New York State to support their efforts to institute a similar Hill-Burton compliance program. The Accounting Section also supported the Civil Rights Division in the suit filed against the City of Boston and others to keep the public schools open for the full school year.

The Accounting Section participated in the activities of the other divisions of the Public Protection Bureau as well:

- *Public Charities:*

Blue Cross contract with the Massachusetts Hospital Association and two other investigations.

- *Environmental:*

Study of the MBTA fare increase and four other cases involving assessment of ability to pay damages.

- *Utilities:*

Computation of damages in actions brought against the Lowell and Cape Cod Gas companies and consultation on accounting issues in four other rate cases and related matters.

- *Consumer Protection:*

Assistance in the preparation of civil investigative demands and review of accounting records in fifteen cases.

- *Anti-Trust:*

Review of accounting records and consultation on ability to pay damages in four cases.

- *Insurance:*

Analysis of data submitted and required in suit against Word Guild, Inc. and consultation on two other matters.

COMPLAINT SECTION

During fiscal 1981, the Public Protection Bureau's Complaint Section opened 6,334 new cases and closed 3,535 cases. The section recovered for consumers \$395,416 in refunds, savings and the value of goods or services they would not have received but for our intervention. In addition, we referred 4,865 written complaints to out of state agencies, other state agencies or departments, and local consumer groups.

The Bureau's information line staff received a total of 128,277 calls during the past year. 12,933 complaint/inquiry forms were sent to citizens, 14,586 citizens were given information, and 100,818 calls were referred to different agencies, departments or local consumer groups.

Through part of fiscal 1981, the Bureau maintained a Citizens' Intake Unit which was separate from its general information line staff; as of March 31, 1981 the Intake Unit was merged with the Bureau's information line.

Special projects conducted by the Complaint Section staff this year included: (1) Negotiations with representatives of AAMCO Transmissions concerning service and advertising complaints resulting in substantial cash refunds and services to complaining consumers. (2) Investigation of complaints from many automobile dealerships that they were being sent and charged for unsolicited parts, resulting in refunds for these dealerships. (3) Investigation of racial discrimination in the provision of certain transit services. (4) Formulation of procedures for distributing refunds to "Airport Jam '77" concert ticket-holders who were unable to obtain a refund at the time promoters cancelled the concert. (5) Review of the hundreds of complaints received alleging misrepresentations made in the sale of International Health Spa memberships.

On receipt of inquiries concerning solicitation of law firms for trips to Las Vegas, we initiated an investigation which led to the discovery of a massive credit card scam. Due to our intervention in the matter, many Massachusetts attorneys were instructed on how to have their credit cards credited through their banks for these purchases. This resulted in thousands of dollars of savings for the potential victims of this scam.

LOCAL CONSUMER AID FUND

For the fiscal year 1981, the Massachusetts Legislature appropriated \$210,700 to provide regional consumer groups throughout the Commonwealth with supplemental funding for consumer complaint mediation. This funding is distributed through the Local Consumer Aid Fund and is administered by the Department of the Attorney General.

Through this program, consumer complaints from 80% of the cities and towns in the Commonwealth are now serviced at the local level. The handling

of complaints at the local level has proven beneficial to both consumers and businesses, in that complaints are handled more quickly and a more workable rapport has developed between the merchants and the community. Their familiarity with local merchants enables groups to recognize patterns of unfair and deceptive practices at an early stage and has proven to be an asset to the Bureau in curbing these practices.

Because less money was appropriated for the Fund in fiscal 1981 than in previous years, distributions were lower, forcing some groups to cease operations entirely or to transfer their caseloads to other organizations. The 1981 appropriation was distributed among twenty-five agencies in the following manner:

<i>Grant Recipient</i>	<i>Amount Awarded</i>
Agawam Consumer Advisory Committee	\$ 2,000
Arlington Office of Consumer Affairs	\$ 4,100
Berkshire County Consumer Advocates, Inc.	\$12,500
Brockton Consumer Advisory Commission	\$ 7,000
Cambridge Consumer Council	\$ 6,500
Cape Cod Consumer's Assistance Council, Inc.	\$ 5,450
Duxbury Consumer Advisors	\$ 300
Fall River Consumer Service Office	\$10,000
Greater Lawrence Community Action, Inc.	\$ 5,800
Hampshire-Franklin Consumer Protection Agency	\$ 6,050
Haverhill Community Action Commission	\$10,000
Lowell Community Teamwork, Inc.	\$ 7,500
Mayor of Boston's Office of Consumer Affairs and Licensing	\$15,000
Medford Consumer's Council	\$ 9,000
Newton Department of Human Services	\$ 6,450
North Shore Community Action Program, Inc.	\$ 7,650
Northern Worcester County Consumer Rights Project	\$ 8,750
On the Corner Taunton Area Consumer Protection Program	\$12,100
Quincy Consumers' Council	\$ 5,000
Revere Consumer Affairs Office	\$ 8,050
Somerville Multi-Service Center	\$ 2,000
South Middlesex Consumer Protection Office	\$10,500
Southeastern Massachusetts Consumer Action Center	\$ 6,700
Springfield Consumer Action Center	\$13,100
Worcester Consumer Protection Coalition, Inc.	\$12,500

ANTITRUST DIVISION

A. Introduction

In fiscal 1981, the Antitrust Division of the Department of the Attorney General continued to progress in terms of development and maturity. It was staffed with five attorneys who had one or more years of involvement with antitrust law and litigation and ten support personnel. Thus we were able to provide a more experienced approach to all antitrust issues in which the Department was involved. Moreover, in selecting investigations and litigation to be given priority, the Division was primarily concerned with insuring that

the Commonwealth, its political subdivisions and citizens received adequate redress for injury resulting from antitrust violations and that violations centered in Massachusetts and New England not go undetected.

B. Federal Funding

During fiscal 1981, the Antitrust Division continued to have available limited federal funding. As of October 1, 1980, Attorney General Bellotti was able to obtain an additional \$99,000 to be used for further development of an effective antitrust enforcement program. However, approximately two-thirds of the operating expenses of the Antitrust Division for the fiscal year were funded through the Antitrust Revolving Fund, created by Chapter 459 of the Acts of 1978.

C. Litigation

During fiscal 1981, the Antitrust Division had the following cases, in various stages of litigation in both the federal and state court systems.

1. *Commonwealth of Massachusetts v. N.B.M.A., et al.*
(Northern District of Georgia)

This is a suit against 37 major producers of chicken in the United States charging them with conspiring to raise the price of chicken throughout the United States. The suit was brought on behalf of the Commonwealth and its political subdivisions in their proprietary capacities. A settlement, in excess of \$40 million, has been approved by the court in this global class action and the Commonwealth is presently awaiting a final determination of the potential recoveries available to the Commonwealth.

2. *Commonwealth of Massachusetts v. Amstar Corp., et al.*
(Eastern District of Pennsylvania)

This is a suit against seven refiners of sugar alleging that they conspired to fix prices of sugar in violation of the Federal Antitrust laws. The Commonwealth is representing itself in its proprietary capacity as well as the Cities of Boston and Cambridge. Settlements have been reached with all defendants for a total recovery of \$26.5 million and the Commonwealth is awaiting distribution to determine its share of the recovery.

3. *Commonwealth of Massachusetts v. Brinks, Inc., et al.*
(Northern District of Georgia)

This is a suit by the Commonwealth, on behalf of itself and its political subdivisions in their proprietary capacity, against three major armored car carriers alleging that they conspired to fix the price of armored car services throughout the United States. A global settlement of \$11.8 million has been approved. The Commonwealth is presently awaiting a determination of the appropriate division of the settlement amounts in order to determine its share of the recovery in this case.

4. *Commonwealth of Massachusetts v. Leviton, Inc., et al.*
(Eastern District of New York)

This is a suit by the Commonwealth, on behalf of itself and its political

subdivisions, for injunctive relief and damages under the Federal Antitrust laws alleging that the major wiring device manufacturers in the United States conspired to fix prices on wiring device products sold to the Commonwealth and to its citizens. The governmental portion of this case was settled with all defendants for a total of \$1.1 million. Massachusetts received a distribution of approximately \$155,000 in January, 1981.

5. *Commonwealth of Massachusetts v. Boise Cascade, Inc., et al.*
(*Eastern District of Pennsylvania*)

This is a suit by the Commonwealth, on behalf of itself and its political subdivisions, against 15 major paper manufacturers charging them with conspiring to fix the prices of fine paper products throughout the United States. The Commonwealth was certified as a class representative of its political subdivisions in this action. Trial had been scheduled for September 15, 1980 and the Commonwealth was assisting in preparation of plaintiffs case. On that date, however, settlement was reached with the remaining defendants. The total settlement of approximately \$62,000,000 has been approved by the Court. The Commonwealth is awaiting award of its share of the total settlement fund (to be based on claims submitted) and attorneys fees requested in the amount of \$35,000. The Division was actively involved in the processing of claims by the Commonwealth and its cities and towns.

6. *Commonwealth of Massachusetts v. Rockwell Corp., et al.*
(*Eastern District of Pennsylvania*)

The Commonwealth brought suit in fiscal 1980 on behalf of four municipally-owned gas works against three major manufacturers of gas meters in the United States, alleging that they have conspired to fix prices and rig bids on gas meters. This case has been settled for in excess of \$15 million and the Commonwealth is presently awaiting a final resolution of the method by which the settlement monies will be distributed in order to determine how much will be recovered by four municipally-owned gas works.

7. *Commonwealth of Massachusetts v. Campbell Hardware, Inc., et al.* (*District of Massachusetts*)

This is a suit by the Commonwealth, on behalf of itself and its political subdivisions, against 12 distributors of architectural hardware in the Commonwealth of Massachusetts, alleging that they had conspired to rig bids on governmental building projects within the Commonwealth of Massachusetts. In fiscal 1981, settlement was reached with the remaining defendants, creating a total settlement fund of approximately \$100,000. Distribution to affected public entities will be made in fiscal 1982.

8. *Commonwealth of Massachusetts v. D.H. Jones, et al.*
(*Hampshire County Superior Court*)

This is a suit brought by the Commonwealth, on behalf of its citizens, seeking civil penalties and restitution for consumers as a result of an alleged conspiracy by real estate brokers to fix and raise the rate of real estate brokerage commission fees in the Amherst area. This was the first suit brought under the state antitrust act. The case was settled with the two defendants for a total

recovery of \$60,000, of which \$40,000 will be distributed to persons overcharged as a result of the conspiracy. Additionally, a Consent Decree was entered against the two defendants prohibiting them from attempting to stop other agencies from charging lower commission rates, advertising lower commission rates or allowing a homeowner to sell his own home and yet use the Multiple Listing Service. The relief obtained in this Consent Decree was unique. During fiscal 1981, the Division proceeded with the processing of claims submitted by individuals who will be entitled to a refund.

9. *Commonwealth of Massachusetts v. Donnegan Office Supplies, Inc. (Suffolk County Superior Court)*

This is a suit brought by the Commonwealth, on behalf of itself and its political subdivisions, against the defendant, claiming that it and another supplier of film, Joseph Merritt & Co., had conspired to allocate territories within the Commonwealth. Prior to filing the complaint, a settlement was reached with Merritt Co., which agreed to pay \$2,650. A Consent Decree was entered prohibiting Merritt from allocating territories in the future. During fiscal 1981, settlement was reached with the defendant, resulting in a payment of \$5,000 and a consent decree being entered in Superior Court.

10. *Commonwealth of Massachusetts v. Bang and Olufsen, Inc. (District Court of Massachusetts)*

The Commonwealth brought suit in fiscal 1980, claiming that Bang and Olufsen, Inc., a manufacturer of stereo equipment, had been engaged in unlawful resale price maintenance activities with its distributors. The suit brought by the Commonwealth on behalf of itself and, as *parens patriae*, on behalf of consumers in the Commonwealth asks for injunctive relief and damages. The case was in pretrial discovery, to be completed by April 30, 1981, when it was settled. Defendant agreed to assure the Department of the Attorney General that it would not engage in unlawful resale price maintenance in the future.

11. *Commonwealth of Massachusetts v. B.L. Makepeace, et al. (District of Connecticut)*

The Commonwealth, along with the five major New England states filed suit in fiscal 1980 against three suppliers of drafting equipment, charging them with an unlawful conspiracy to raise prices and allocate territories in New England. The action, seeking damages and injunctive relief, was unique in that the six New England states joined together in filing a single action against the alleged co-conspirators. During 1981, defendants' motion to dismiss was denied and the parties continued in pre-trial discovery. Settlement was reached with all defendants creating a settlement fund in the amount of \$274,000. Approximately one half will be distributed to the Commonwealth and its cities and towns during fiscal 1982.

12. *Commonwealth of Massachusetts v. Harborside Liquor, Inc., et al. (Dukes County Superior Court, District Court of Massachusetts)*

The Commonwealth brought two antitrust actions in fiscal 1980, one in state

court and one in federal court, charging seven liquor stores on Martha's Vineyard with price-fixing for at least the last fifteen years. The state action seeks injunctive relief and a civil penalty, while the federal action, a *parens patriae* action, seeks injunctive relief and damages for consumers injured by the unlawful conspiracy. The case was settled with all defendants in fiscal 1981, during pre-trial discovery. The total settlement amounted to approximately \$80,000, and provided for the entry of a Consent Decree in federal court. A decision as to the manner of distribution is pending.

13. *Commonwealth of Massachusetts v. Milton Bradley Co., et al. (District of Massachusetts)*

The Commonwealth filed suit in fiscal 1980 against the four major manufacturers of art supplies in the United States, charging them with a nationwide conspiracy to raise the prices of art supplies and bid rigging. The suit was brought on behalf of the Commonwealth and its political subdivisions in their proprietary capacities. During fiscal 1981, the Commonwealth's case was consolidated with other civil antitrust actions brought against the same defendants and transferred to the Federal District Court in Cleveland, Ohio for coordinated pretrial proceedings. Class action discovery was then ordered to proceed by the Court. We are serving on the Plaintiffs' Executive Committee, responsible for overall management of the litigation.

14. *Commonwealth of Massachusetts v. Cuisinarts, Inc., et al. (District of Connecticut)*

The Commonwealth filed this case in fiscal 1981 against Cuisinarts, Inc., claiming that it had unlawfully engaged in a vertical price fixing agreement. Federated Department Stores was named as a party defendant several months after the filing of the complaint. This is a *parens patriae* action filed by the Department of behalf of Massachusetts residents and seeks treble damages. Defendant's motions to dismiss are pending and the parties are proceeding with class action discovery. In a related action, the Commonwealth filed a motion for release of materials presented to and testimony before a Federal grand jury which returned an indictment against Cuisinarts, Inc. The motion, filed and argued on behalf of fourteen states, was denied; it is being appealed in the Second Circuit Court of Appeals.

15. *Commonwealth of Massachusetts v. Richard Zimmerman, et al.*

This suit, filed in fiscal 1981 against two individuals and two corporations, alleges that the defendants engaged in bid-rigging with respect to busing contracts entered into by the Department of Education, Division of Special Needs. The suit seeks injunctive relief and damages for the Commonwealth. Motions to dismiss are pending.

16. *Jaymar-Ruby, Inc. v. Federal Trade Commission, et al. (Northern District of Indiana, Seventh Circuit Court of Appeals)*

The Commonwealth, along with nineteen other states, intervened in this proceeding in fiscal 1981. The states had been granted access to Federal Trade Commission documents which related to alleged resale price maintenance by Jaymar-Ruby. Jaymar-Ruby filed this action seeking to enjoin the Federal Trade

Commission from releasing the documents to the states. The District Court denied the injunctive relief and the Court of Appeals affirmed.

D. *Additional Proceedings*

In addition to the above cases, the Commonwealth has also disposed of a number of cases without having had to file formal proceedings against the respondents therein.

1. *In the matter of Stereo Component Systems, Inc. d/b/a Tech Hi Fi*

The Division accepted and filed in Superior Court an Assurance of Discontinuance from Stereo Component Systems, prohibiting it from engaging in resale price maintenance with respect to stereo equipment. An additional payment of \$1,000 was received as a penalty.

2. *In the Matter of New England Audio Co., Inc. d/b/a Tweeter, Etc.*

The Division accepted and filed in Superior Court an Assurance of Discontinuance from New England Audio, prohibiting it from engaging in resale price maintenance with respect to stereo equipment.

3. *Municipal Insurance*

The Division contacted municipalities in the Commonwealth to determine the manner in which various municipal insurance contracts were purchased. The Division had been informed that certain insurance agents were engaged in joint practices in violation of the antitrust laws. As a result of this review, a number of municipalities were informed that the practices of the insurance brokers with whom they were dealing for municipal insurance were questionable and should be modified. Letters were also sent to the insurance brokers involved.

4. *Marinas*

During fiscal 1980 and 1981, the Division conducted a thorough review of certain business practices of marinas located throughout the Commonwealth. This investigation revealed a significant number of practices which violated the antitrust laws. Accordingly, a letter was sent to all marinas in the Commonwealth listing twelve specific types of conduct which, if engaged in the future, would result in prosecution by the Department.

E. *Additional Activities*

1. *New England Bid Monitoring Project*

In the summer of 1978, the Commonwealth began a pilot program to determine the feasibility of collecting and analyzing masses of bid data from municipalities in order to determine whether antitrust violations were occurring in the sale of certain specified products. As part of the project, the Antitrust Division collected bid data from over 100 towns and cities in Massachusetts and commenced development of computer programs for analysis of the data.

During fiscal 1981, the computer programs thus far developed were applied to much of the bid data collected. Approximately a dozen products were chosen for thorough analysis. As a result, investigation of three product lines was commenced. Basic computer analysis was begun on approximately another

dozen product lines during fiscal 1981. Data collection also continued during the year, since it is imperative that bid information be kept current to assure the project's validity.

2. *Public Education*

In fiscal 1981, the Antitrust Division sponsored three antitrust seminars directed primarily at the small business. The seminars were held in Framingham, Fall River and Lowell. Lectures were given on basic antitrust law, state and federal enforcement of antitrust law and the small business' rights and obligations under antitrust law.

CIVIL RIGHTS DIVISION

A. *INTRODUCTION*

The Civil Rights and Liberties Division, established by G.L. c. 12, §11A, initiates affirmative litigation on behalf of citizens, citizen groups, agencies and departments of the Commonwealth in matters involving constitutional protections, and defends government agencies in cases which raise constitutional issues. In addition, staff of the division advise the Attorney General of developments and issues of civil rights and constitutional protections, draft legislation, comment on agency regulations and investigate complaints of violations of civil rights brought to the attention of the division by citizens of the Commonwealth. Finally, the Division is given the authority, pursuant to the provisions of G.L. c. 151B, §§5 and 9, to initiate complaints before the Massachusetts Commission Against Discrimination (MCAD), to represent that agency before trial and appellate courts when judicial review of MCAD decisions is sought, and to bring legal actions for violations of Chapter 151B in the Massachusetts Superior Court.

In FY-1981, the division was staffed by a Chief, five assistant attorneys general, one of whom directed the Women's Rights Unit, and appropriate support personnel.

B. *OVERVIEW*

In FY-81, five matters of particular importance were either concluded or begun.

On June 2, 1981, a consent judgment was approved by the Court in *Richardson v. Houghton Mifflin Company*, the last of the four Title VII cases brought by division attorneys in 1977 alleging race and sex discrimination in employment. The settlement provides for payment of over \$375,000 to class members, bringing our total recovery in the four publishing cases to approximately \$1.5 million. The settlement also establishes affirmative action goals for women and minorities; establishes an expanded educational assistance program, and mandates expanded job posting and career counselling.

Second, in the fall of 1980, the Mayor of Boston refused to recommend a supplemental appropriation request made by the Boston School Committee. Subsequently, the Mayor announced that he had instructed the Treasurer not to pay any bills submitted by the school Department once the annual appropriation of \$210 million was exhausted. As a result, it later appeared that

the Boston Public Schools would have to close before the end of the state-required 180 day school year.

On March 24, 1981, on behalf of the Board and Commissioner of Education, we filed suit against the Mayor, the School Committee, the City Council, the Auditor, and the Treasurer, to enjoin them from ending the school year before the required time. On April 28, 1981, the day the funds were to run out, a Superior Court Judge issued a preliminary injunction at our request requiring the City to continue to operate and fund the schools for the full 180 days. The City appealed and sought a stay of the Superior Court's Order. The request for a stay was denied after hearing by the Supreme Judicial Court on April 30. As a result, the City furnished additional funds to enable the public schools to complete the full 180 day school year.

In the meantime, the City and parent-student intervenors filed complaints naming the Governor, General Court, and other state officials as defendants, seeking state funds for Boston's schools. These claims were dismissed. The Superior Court's final judgment declared that the City had a duty, as long as it had unexpended funds in any account, to provide 180 days of schooling. It also declared that if such funds were unavailable, the Commonwealth would become responsible. The Superior Court judge reported his decision to the Appeals Court.

Third, throughout FY-81, and continuing, lawyers from the division, working with staff from the Accounting Section and the Investigative Division, began a project to enforce the uncompensated services provisions of the Hill-Burton Act, which requires hospitals receiving federal funds to provide a reasonable volume of free or reduced cost care to persons unable to pay. To date, audits of 36 hospitals have been completed. In those cases where the audits revealed non-compliance, attorneys negotiated with representatives from the hospitals to remedy violations and to insure future compliance. In those cases where negotiations were unsuccessful, administrative complaints were prepared and have been filed with the federal Department of Health and Human Services. As of June 30, 1981, hospitals have agreed to provide approximately \$300,000 in additional free or reduced cost care.

Fourth, throughout FY-81, attorneys from the division, either through their own effort or in conjunction with district attorneys in Suffolk and Middlesex counties, brought several successful prosecutions for several racially motivated incidents under Chapter 801 of the Acts of 1979, the state Civil Rights Act. These cases marked the first successful civil and criminal prosecutions under the newly enacted statute.

Finally, in FY-81, two significant cases involving conditions at county houses of corrections were concluded or begun.

In *Attorney General v. Sheriff of Worcester*, the Supreme Judicial Court firmly established the authority of the Department of Public Health to inspect and apply its minimum health regulations to county penal institutions, and the Attorney General's standing to enforce those regulations in court. Subsequently, we filed an administrative complaint before the Department of Corrections against the Mayor of Boston and his Penal Commissioner to remedy health and safety code violations at that institution. Hearings were held before an administrative hearing officer in September, 1980, and an order for renovation

issued. After negotiations for implementing the hearing officer's Order proved unsuccessful, we filed a complaint in the Suffolk Superior Court to enforce the Order. In April, 1981, after hearing argument from the parties, a judge of the Superior Court granted our motion for final and declaratory relief, appointed a special master to make further findings of fact and develop a schedule for implementation of the hearing officer's order, and took continuing jurisdiction over the case.

C. FURTHER DESCRIPTION OF ACTIVITIES

A further description of the more significant cases by category follows:

1. Correctional/Youth Services

Attorney General v. Sheriff of Worcester County

On August 2, 1979, we filed a complaint against the sheriff of Worcester County to enjoin him from the continued use of jail cells not equipped with a toilet, bed, and sink, as required by regulations of the Department of Public Health.

The sheriff defended the suit by arguing that the use of such a cell for disciplinary and medical purposes was not unlawful; that the Attorney General did not have standing to enforce DPH regulations and that the DPH did not have authority to inspect his institution.

After trial, a Superior Court Judge ruled that the Sheriff's use of the cells was lawful. We appealed.

On December, 3, 1980, the Supreme Judicial Court reversed the ruling of the Superior Court and ruled: a) that DPH county correctional standards are applicable to isolation or blue room cells; b) that DPH has the authority to inspect the houses of correction; and, c) that the Attorney General has standing to seek a declaration concerning the scope of the sheriff's duty to enforce the DPH regulation.

Following the SJC decision, the sheriff converted the so-called strip cells to regular cells meeting DPH standards.

Bellotti v. Penal Commissioner

In the fall of 1980, following the favorable SJC decision in the Worcester House of Correction matter, we initiated a joint DPH/DOC inspection of conditions at the Suffolk County House of Correction at Deer Island. In September 1980, administrative hearings were held by a Department of Corrections Hearing Officer, who subsequently adopted proposed findings of fact and conclusions of law prepared by attorneys in the division. An Order incorporating those proposals was issued on December 9, 1980. Negotiation for implementing that Order proved unsuccessful and, on March 31, 1981, we filed a complaint in Suffolk Superior Court for enforcement of the administrative order.

On April 9, 1981, a hearing on our Motion for Judgment on the Pleadings was held before a Suffolk County Superior Court Judge who, subsequently, ordered the City to comply with the earlier administrative decision and appointed a special master to prepare a schedule for compliance.

Further work will be required in FY-82 to insure compliance with all Orders and the eventual improvement in the physical conditions at Deer Island.

2. *Credit Discrimination*

Equal Credit Opportunity Act

In October, 1980, we filed comments with the Federal Reserve Board concerning its proposed interpretations of Regulation B under the Equal Credit Opportunity Act. The proposed interpretations relate to the way creditors should consider "protected income" such as alimony, and the way in which creditors should disclose the reasons for adverse action on credit applications.

3. *Developmentally Disabled*

In the Matter of Anne Marie Davee

In December, 1979, the special legislative committee to Investigate Restraint, Seclusion and Deaths in State Supported Institutions referred to us a case of a 36 year old woman who had been missing from Metropolitan State Hospital for two years.

On August 12, 1980, after an extensive investigation by personnel from the Investigative Unit of the Public Protection Bureau, we were led to the gravesite of the missing woman by a former patient. The former patient who was responsible for the missing woman's death and who had buried her body on the grounds of the hospital was later convicted.

Gens v. Coolidge; MHHI v. Board of Appeals; MMHI v. Priestly; MHHI and Comm. of DYS v. Priestly

These four cases, in which we have intervened on behalf of the Department of Youth Services, involve the denial by the Boston Board of Appeals of certificates of occupation requested by Massachusetts Halfway House, a community provider.

Bellotti, et al. v. Sandwich School Committee, et al.

This complaint, filed in February, 1981, sought to enforce G.L. c. 19, §28, which requires school committees to transport non-school age mentally retarded persons to "educational, habilitational, or day care programs or facilities of the Department of Mental Health." On March 4, 1981, a single justice of the Supreme Judicial Court granted our motion for summary judgment, declaring, among other things, that the statute applies to privately-run programs as well as facilities directly operated by D.M.H.

Bellotti, et al. v. Middleboro and Greenfield School Committees

On March 13, 1981, we filed suit against the Middleboro and Greenfield School Committees to enforce G.L. c. 19, §28. On March 25, a single Justice of the SJC granted our motion for preliminary injunctive relief, declaring, among other things, that a community program did not have to have a DMH license to be a "program of the DMH"; and, that the failure of the state to reimburse the towns did not relieve the towns of their obligation to provide transportation.

Attorney General et al. v. Rehoboth School Committee

On March 27, we filed suit against the Rehoboth School Committee to require it to provide transportation pursuant to G.L. c. 19, §28. On May 8, 1981, a single justice declared the Committee had an obligation to provide transportation independent of state reimbursement and that provisions of St. 1980 c. 580, §2 (Section 2 of Proposition 2½), which deal with state reimbursement for mandated programs, did not apply to costs imposed as a result of legislation adopted prior to the effective date of Proposition 2½.

Commonwealth v. New England Harness Raceway, Inc.

In December, 1980, after preparing a complaint, New England Harness Raceway, Inc., which administers the parking lot at Schaefer Stadium, agreed to comply with the provisions of G.L. c. 22, §13A, which requires the maintenance of a percentage of the spaces in parking lots for handicapped persons in accordance with Architectural Barriers Board Regulations.

Commonwealth v. New England Patriots

In February, 1981, following the preparation of a complaint and notice to sue, the New England Patriots agreed to discontinue their ticket-selling policy, which required persons in wheelchairs seeking to purchase a ticket in the special section of Schaefer Stadium reserved for wheelchair-users to purchase a second ticket for someone to push them. The Patriots also agreed to notify all persons requesting tickets in that section about the change of policy.

Architectural Barriers Board v. Clark and Clark v. A.B.B.

On January 12, 1981, the Norfolk Superior Court approved a consent judgment in this litigation brought to enforce a 1979 Architectural Barriers Board Decision requiring a Bellingham, Massachusetts shopping center be made accessible to the handicapped. The Judgment is the first application of the architectural barriers law to a building complex.

4. Educational Matters

Board of Education v. City of Boston

Through this action, the Board successfully enforced its regulation mandating a 180 day minimum length of the school year, as required by G.L. c. 71, §§1 and 4. The suit was brought in response to the likelihood that the Boston public schools would close for the year shortly after April 16, 1981, the 141st day of the year, because the School Committee's appropriation was exhausted. See Overview, *supra*.

Bellotti and Anrig v. Grace Bible Church Christian School

On December 10, we filed suit against the Grace Bible Church Christian School to enforce the state's compulsory school attendance laws by requiring the supervisory officers of the school to report the name, age and residence of the children of compulsory school age attending the school to the Superintendent of schools where the child resides, as required by G.L. c. 72, §2.

*Bellotti and Anrig v. New Life Christian Academy, et al., and
Bellotti and Anrig v. Temple Christian Academy, et al.*

These cases, filed in Suffolk Superior Court in April, 1981, seek a declaration that the supervisory officers of the schools are required to comply with the private school attendance reporting provisions of G.L. c. 72, §2.

*Attorney General Francis X. Bellotti v. School Committee of
the Town of Essex*

On October 31, 1980, we filed a complaint in Essex Superior Court to enforce the provisions of G.L. c. 76, §1 requiring school committees to provide students attending private schools with the same transportation benefits afforded to public school students. On February 17, 1981, partial summary judgment was entered requiring defendants to provide those students with transportation to the same extent as public school students. The trial court is reporting the question of the meaning of the language "to the same extent" to the Appeals Court.

Morgan v. McDonough

In FY-81, we continued to represent the Massachusetts Board of Education in this seven year old school desegregation case involving the Boston Public Schools. Major issues in FY-81 were those involving the closing of 24 elementary, two middle and one secondary schools, staff lay-offs caused by funding reduction, and preliminary negotiations to discuss final resolution of the case by way of settlement.

Braintree School Department v. Department of Education

In this c. 766 Special Education case, we defended the Bureau of Special Education in an appeal from a hearing officer's decision to allow individual psychotherapy to a child with special needs. A hearing on the merits was held May 4, 1981 at Norfolk Superior Court and the decision was affirmed.

In re: Spear School

In July, 1980, we assisted the Department of Education in suspending the license of this school for severely emotionally disturbed children. The license suspension was based on the school's failure to develop and implement educational plans as required by state regulation, and on serious health and safety problems at the school.

5. *Employment Discrimination and Other Employment Matters*
Houghton Mifflin

On June 2, 1981, a United States District Court Judge approved the consent judgment in this Title VII sex discrimination case brought against a Boston publishing company. See Overview, *supra*.

Boughton v. Addison-Wesley

On June 4, 1980, a United States District Court judge approved the negotiated settlement in this Title VII sex discrimination case for a class of women formerly or currently employed by the Addison-Wesley Publishing Company, in an amount totalling over \$375,000. On July 21 and 22, 1980, checks for back pay were mailed to 416 eligible class members.

Commonwealth v. Gulliver

In October, 1980, we filed a complaint in Middlesex Superior Court to enjoin operation of a farm labor camp for migrant apple pickers, because the camp failed to provide sleeping quarters with adequate natural light and outside ventilation as required by the State Sanitary Code.

Holden v. MCAD

After eight days of trial, at the close of plaintiff's case, the United States District Court granted our motion to dismiss the complaint in this race discrimination case brought against the MCAD, finding that there were legitimate, non-discriminatory reasons for plaintiff's discharge.

MBTA Starters Examinations

In January, 1981, after investigation, we notified the MBTA that its selection process for starters (by examination and supervisors' recommendation) may have had an adverse impact on minority applicants, that it appeared lacking in validation as job-related, and may have been in violation of state and federal antidiscrimination laws. We assisted the MBTA in remedying the matter without litigation.

Rock v. Westinghouse & MCAD

In February, 1981 we filed an *amicus* brief in this age discrimination case in support of the "continuing violation" concept under the six month filing requirement of §5 of G.L. c. 151B. We supported MCAD's ruling that the filing requirement is satisfied where a complaint is filed concerning a pension plan, the benefits of which are still being paid at the time of filing, although the eligibility criterion and the plan itself were established more than 6 months before the filing. In August, 1981, the Court affirmed the MCAD's ruling.

6. *Health Matters**Frechette v. Bergland*

On March 10, 1980, we filed this complaint against the U.S. Secretary of Agriculture challenging the formula for allocating funds among the states for the federal supplemental food program for women, infants and children (WIC). Cross motions for summary judgment were argued before the U.S. District Court for the District of Columbia in September, 1980. A decision on the cross motion is pending.

Commonwealth of Massachusetts v. Fairlawn Hospital

On March 20, 1981, we filed an administrative complaint with the Department of Health and Human Services against this Worcester Hospital for failure to comply with the uncompensated services obligation of the Hill-Burton Act for fiscal years 1975-1980. See Overview, *supra*.

Commonwealth v. St. Anne's Hospital

On May 28, 1981, we filed an administrative complaint with the U.S. Department of Health and Human Services against St. Anne's Hospital in Fall River alleging that the hospital violated its obligation under the Hill-Burton Act

to provide over \$230,000 in free health care from 1975 through 1980. See Overview, *supra*.

Department of Public Health v. Dare School

In FY-80, we had obtained an Order against the President of Dare, Inc. requiring him to correct numerous sanitary code violations in Dare's community facilities in Kenmore Square and Jamaica Plain.

On September 5, 1980, because the corrections had not been made, we filed a complaint for contempt against the President. Subsequently, all corrections were completed and on September 16, 1980, we withdrew our complaint.

Custody of a Minor II (Chad Green Case)

On April 19, 1978, a Superior Court Judge placed Chad Green in the limited legal custody of the Department of Public Welfare, whom we represented in this litigation, and required that he be treated by a board-certified pediatric hematologist within Massachusetts. Contrary to this order, the Greens left the state.

On Monday, December 8, 1980, following the Green's voluntary return, a Plymouth Superior Court Judge heard the Greens respond to civil and criminal contempt of court citations. The judge advised the parents that probable cause for criminal contempt had been found against them. The Greens waived a jury trial and admitted sufficient facts of criminal contempt. They then apologized to the Court.

The Court found the Greens guilty of criminal contempt and placed the matter on file. However, citing the extraordinary nature of this case, the judge declined to take any further actions against the Greens.

7. Housing

Attorney General v. Apartment Showcase

In September, 1980, settlement was reached in this case involving discrimination against persons with children in the rental of housing. Among other things, the defendant agreed to make changes in its policies and practices and to donate \$1,000 to a charity of its choice which benefits children.

Bellotti v. Charles Wedgewood, et al.

On January 18, 1981, we obtained a judgment against a Brighton real estate agent, permanently enjoining him from discriminating against applicants for rental housing because they have children.

Perez v. Boston Housing Authority

In October, 1980, on behalf of the Secretary of Communities and Development, an *amicus* brief was filed in the Supreme Judicial Court supporting the emergency eviction procedures instituted by the Superior Court for the Boston Housing Authority receivership. The issues addressed included the necessity for the emergency procedures and the validity of the Secretary's waiver of his lease and grievance regulations. The SJC, however, declared that the procedures violated due process.

Department of Public Health v. Clinton Housing Authority

On October 30, a complaint and motion for preliminary injunction was filed in Suffolk Superior Court against the Clinton Housing Authority to enforce compliance with the State Sanitary Code. On November 24, a Superior Court Judge granted our motion for a preliminary injunction and entered a detailed, time-specific order designed to improve the premises.

Department of Public Health v. Somerville Housing Authority

In January, 1981, in response to fire egress concerns voiced by both DPH and a State Building Code Commission inspector, we contacted the Somerville Housing Authority and requested them to correct locked or secured secondary fire egresses on the roofs in six buildings at the Mystic Park Development. After several communications and a meeting, the Authority agreed to open the existing secondary egress doors. Furthermore, the Authority entered into an architectural contract for design of new roofs and egress exits.

Department of Public Health v. Fabian Machinski and Tri-County Realty Co.

This 93A action, filed on March 13, 1980 against the owner of 23 buildings in Brockton, alleged multiple State Sanitary Code violations in every building. On March 25, 1981, the Defendant entered into a consent decree with this office and agreed to make all necessary repairs.

8. *Public Records**Bellotti v. The New Bedford Consortium*

In February, 1981, the Consortium, which is a collection of cities and towns grouped together to form a "private sponsor" under the CETA statute, refused to reveal the names and addresses of supervisory staff hired in the Summer Youth Employment Program on the grounds that it was not a political subdivision of the Commonwealth. At our intervention, the Consortium reversed its decision and released the information.

Bellotti v. Town of Watertown

On June 5, 1981, a Middlesex Superior Court Judge granted our motion for summary judgment in this suit filed in April, 1981 under the public records law, to compel the Town of Watertown to release portions of a study done about its police department. The town has subsequently appealed the decision.

Bellotti v. Milton Board of Appeals

This public records case arose from the Milton Board of Appeals' refusal to disclose a letter to it from town counsel regarding the legality of an existing sign. The Supervisor of Public Records ordered the Board to submit the document to him for an *in camera* inspection, pursuant to his regulations, or to disclose it. The Board refused. Our motion for summary judgment has been filed and briefed, and awaits argument.

9. *Other**Cambridge School Desegregation*

In FY-81 we advised the Cambridge School Department in handling possible

community opposition to desegregation of the Kennedy and Roberts elementary schools in September, 1981.

Task Force on Privacy, Human Sexuality and Sex Education

On February 24, 1981, the Task Force on Privacy, Human Sexuality and Sex Education for residents of the state schools for mentally retarded, of which a division attorney was the Chairman transmitted its final report to the Commissioner of Mental Health.

Conference of Law Enforcement Aspects of Racial and Religious Harassment

On February 3, 1981, Attorney General Bellotti gave the opening statement at a conference on Law Enforcement Aspects of Racial and Religious Harassment, Vandalism and Assault. The conference, sponsored by a coalition of civil rights agencies, was held at Boston University Law School. Those in attendance included clergy, community leaders, police chiefs, district attorneys and others.

Conference on Comparable Pay

In October, 1980, a division attorney led a workshop on litigation strategies at a conference on comparable pay for work of comparable worth attended by approximately 175 women. The conference was sponsored by the Women's Commission in Exile and the Conference on Alternative State and Local Government Policies.

Conference on Title VII Settlements

On April 3 and 4, 1981 an attorney from this Division conducted workshops on Title VII Settlements and the use of statistics in Title VII cases at the 12th National Women and the Law conference in Boston. Several thousand attorneys and law students attended the conference.

Civil Rights Inquiry Unit Manual

An updated and rewritten Civil Rights Inquiry Unit Manual was completed on January, 1981. The Manual will be a training tool for Civil Rights Intake Unit interns. It has also been distributed to lawyers in the Civil Rights Division and to the Division's legal interns.

Attorney General's Self-Evaluation Committee

In September, 1980, division personnel planned and participated in the Attorney General's self-evaluation committee, the function of which was to ensure that the Department's buildings, personnel procedures and programs do not discriminate against and are accessible to handicapped persons. A final report, drafted by division personnel, was presented to the Attorney General on January 19, 1981.

Rules and Regulations of the Architectural Barriers Board

Beginning in May, 1980, and continuing through June, 1981, we completely redrafted the Rules and Regulations of the Architectural Barriers Board, which provide for accessibility of public buildings to handicapped persons. After public hearings in August, the new regulations will be promulgated.

CONSUMER PROTECTION DIVISION

I. INTRODUCTION

The Consumer Protection Division has continued to place major emphasis on litigation in the areas of investment schemes, nursing homes, hospitals, automobiles, insurance, banking and credit, travel schemes and fraud in the sale of primary energy sources. In June, the Arson Unit merged with the Consumer Protection Division, which will carry on a number of major investigations and lawsuits aimed at discovering and preventing arson. Finally, the Division continues its cooperative actions with local, state and federal law enforcement agencies.

II. STATISTICS

During fiscal year 1980-1981, the Consumer Protection Division commenced ninety-seven lawsuits; obtained fifty-six judgments; obtained fifteen Assurances of Discontinuance; and initiated three contempt of court proceedings. In addition, the Division obtained \$664,096 in judgments and restitution for Massachusetts consumers.

III. MAJOR CASE AREAS

A. Contempt

Close monitoring of judgments resulted in the filing of two major contempt of court actions. In *Commonwealth v. George M. Ward*, after a six-day jury trial in Middlesex Superior court, the defendant Ward was found guilty of criminal contempt for violation of a Preliminary Injunction barring him from engaging in various unfair and deceptive practices in the course of his roofing business. Ward was sentenced to two years at Billerica House of Correction, thirty days to be served, the balance suspended for two years during which time Ward will be on probation.

In *Commonwealth v. Al Libman*, the defendant, a home improvement salesman, was found in contempt of a 1980 Final Judgment. The defendant was ordered to post a thirty thousand dollar bond with the Department of the Attorney General prior to continuing his aluminum siding business.

B. Health Care

The rights of health care consumers remain a major focus of the Division's efforts. We continue to use the consumer protection statute to combat patient abuse and neglect in nursing homes. In addition, the Division has successfully enforced the new patient abuse statute, G.L. c. 111, §72. In *Commonwealth v. Six States Management Corporation d/b/a Park Hill Manor Nursing Home*, the Division obtained a preliminary injunction enjoining the owner and administrator from failing to immediately report and investigate known or suspected abuse.

The Division also brought an equitable action in *Ashmere Manor Nursing Home, Inc. v. Commissioner of Public Health, et al.*, securing the appointment of a receiver to run a nursing home to ensure that patients would be properly cared for and to avoid precipitous transfer of the patients. In addition, the Division secured the appointment of a receiver to run a community health center

in *In Re Dimmock Community Health Center*, filed in April, 1981. The center, which was experiencing severe financial difficulties, was reorganized and is continuing to provide important health care services to the Roxbury community.

In addition, the division filed suit against the U.S. Food and Drug Administration, challenging a recent F.D.A. decision that bars the enforcement of a Massachusetts law designed to protect purchasers of hearing aids. As a result of the F.D.A. decision, Federal hearing aid regulations preempt the 1977 Massachusetts law, which requires a professional hearing test and a medical evaluation prior to the sale of a hearing aid. The Commonwealth's complaint alleges the F.D.A. has acted beyond the scope of its authority by preempting the Massachusetts statute.

C. Automobiles

The Division has continued its efforts in all areas of the automotive industry to protect the rights of consumers. While maintaining an emphasis on mediating individual complaints against motor vehicle dealers, the Division has focused its litigation in three specific areas of the industry: odometer tampering, option packing on new cars, and advertising.

Several consent judgments have been obtained against motor vehicle dealers who were engaged in the alteration of odometers on used cars in violation of G.L. c. 266, §141. These judgments required the restitution of thousands of dollars to consumers and enjoined the dealers from future alterations of odometers. One of the more significant odometer cases in 1980 was *Commonwealth v. Belmont Auto Sales, Inc., et al*, in which the corporate and individual defendants consented to the entry of a judgment requiring the restitution to consumers of over \$69,000 and the creation of an extended warranty for the vehicles purchased with altered odometers. In *Commonwealth v. Frank Lussier*, a temporary restraining order and an attachment of the defendant's bank accounts and vehicles on his lot were obtained. Following the entry of a preliminary injunction, the case was settled with the entry of a final judgment and the payment of \$15,000 in restitution.

A second major area of concentration concerned the practice by foreign car dealers of refusing to sell vehicles to consumers unless they agreed to purchase numerous unwanted accessories or options which increased the price of the vehicle by hundreds of dollars. These actions were in violation of G. L. c. 93B, §4(4)(a). After a year-long investigation, three judgments were entered by consent against Toyota dealers enjoining them from the aforementioned practices and requiring the payment of over \$40,000 in restitution to consumers. In addition, a preliminary injunction was entered in the case of *Commonwealth v. Middlesex Subaru, Inc.*, prohibiting similar practices by that dealer.

Finally, in the area of motor vehicle advertising, numerous investigations were conducted by the Division to enforce the Motor Vehicle Regulations as they apply to this area. As the result of these investigations, several Assurances of Discontinuance were obtained against dealers who had employed deceptive forms of advertising.

D. Energy

In the past fiscal year the Consumer Protection Division has continued its efforts to stop fraud in the sale of energy saving devices and fuel. Working

closely with the Massachusetts Division of Standards, the Division investigated a number of home heating oil dealers who overcharged consumers. Four judgments were obtained providing for injunctions against future unlawful activities and restitution of \$117,000 to Massachusetts residents.

E. *Investment Schemes*

Commodities futures trading and the related investments in physicals such as precious metals, oil and gas continued to be the primary investment problem dealt with by the Division. Several final judgments were entered and the Division continued to work with private attorneys appointed by state courts as receivers for the benefit of investors.

Several new investment schemes, such as overpriced advice on how to bid for oil and gas leases on government-owned land and margin purchases of specified coal deposits to be mined in the future, were investigated by the Division and agreements reached with the offerors that such opportunities would not be sold in Massachusetts.

In a pyramid sales scheme, the Division was able to use the affidavits of undercover investigators to obtain a continuing Preliminary Injunction preventing the company Feelin' Great, Inc. from doing business of any sort in Massachusetts.

F. *Banking and Credit*

In this area, the Division has focused on consumer injury caused by Truth-in-Lending violations both in advertising and required loan disclosures. Consent judgments were entered into with four Massachusetts banks during the period which resulted in \$34,416 restitution to consumers. Additionally, one credit union paid \$1,093 to consumers for similar violations.

Truth-in-Lending in advertising violations by finance and loan companies resulted in one Consent Judgment and several Assurances of Discontinuance. The Division made novel use of the Truth-in-Lending laws by applying them against a debt consolidation service. A Preliminary Injunction was entered in Suffolk Superior Court that required the debt consolidation service to make certain Truth-in-Lending disclosures to its customers because of its role as an intermediary between debtors and creditors.

G. *Real Estate/Landlord-Tenant*

Since the purchase of a home or vacation home constitutes the major investment of most people, protecting consumers from fraud in the sale of real estate is a priority for the Division. In *Commonwealth v. Land and Leisure*, the Division obtained a final judgment and \$50,000 restitution for Massachusetts consumers who purchased property located near Disney World in Florida from a Florida corporation. The developer failed to construct roads, provide sewage facilities and deliver other promised improvements which would have allowed consumers to construct homes on their lots. In addition, the judgment prohibits the defendants from land sales promotion in Massachusetts without notice to the Attorney General and the establishment of an escrow account to ensure the costs of promised improvements to the land.

In another real estate development case, the Division sued a Massachusetts developer for accepting consumer deposits for home construction, failing to build the homes or building homes with substantial and dangerous defects.

CONSUMER PROTECTION CASE LIST

A. ADVERTISING

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
AAA Rental (T.V.'s)	Consent Judgment	Middlesex
AAA Rental (T.V.'s)	Litigation	Middlesex
Aaron Glickman	Consent Judgment	Suffolk
Amherst Radio/Electronics/Videsign	Assurance of Discontinuance	Suffolk
Anderson's Furniture	Consent Judgment	Middlesex
Aqua-King Pool Co.	Consent Judgment	Hampden
Arkey Radio/Electronics	Assurance of Discontinuance	Suffolk
Atlantis Sound, Inc.	Assurance of Discontinuance	Suffolk
Audiosonics, Inc.	Assurance of Discontinuance	Suffolk
Auer, Bob-d/b/a Bob Auer & Sons	Consent Judgment	Middlesex
B & G Industries, Inc.	Assurance of Discontinuance	Norfolk
Booth Communications	Litigation	Essex
Boston Organ and Piano	Assurance of Discontinuance	Suffolk
Botolph Associates, Inc.	Assurance of Discontinuance	Suffolk
Brands Mart, Inc.	Assurance of Discontinuance	Suffolk
Building 19	Assurance of Discontinuance	Suffolk
Castro Convertible (Rinman, Inc.)	Assurance of Discontinuance	Suffolk
Columbia Research	Consent Judgment	Suffolk
Comm. Builders Supply	Assurance of Discontinuance	Suffolk
Consumer Audiosonics	Assurance of Discontinuance	Suffolk
Crown Convertibles (Johema, Inc.)	Assurance of Discontinuance	Suffolk
Discount Records	Consent Judgment	Suffolk
Eardrum of New England	Assurance of Discontinuance	Suffolk
Eclipse Sleep Prod. of N.E.	Assurance of Discontinuance	Suffolk
Ed's Radio	Assurance of Discontinuance	Suffolk
Edward's Wayside Furniture	Consent Judgment	Hampden
Emerson Rug	Assurance of Discontinuance	Suffolk
Figures & Fitness	Assurance of Discontinuance	Suffolk
Furniture Gallery	Assurance of Discontinuance	Suffolk
Gentlemen Warehouse Factory Outlet	Assurance of Discontinuance	Suffolk
Golub Furniture	Assurance of Discontinuance	Suffolk
Goodrich, B.F.	Assurance of Discontinuance	Suffolk
Graham Radio	Assurance of Discontinuance	Suffolk
H.M. Fisk/Emeralds	Judgment	Suffolk
Hercules Trouser Co.	Assurance of Discontinuance	Suffolk
Hi-Fi Buys/Leisure Distr.	Assurance of Discontinuance	Suffolk
Hyannis Hi-Fi	Assurance of Discontinuance	Suffolk
Indiana Merchandising Corp/Nassi	Assurance of Discontinuance	Suffolk
Jordan Marsh	Assurance of Discontinuance	Suffolk
Kaplan's Furniture Co.	Assurance of Discontinuance	Suffolk
Labovitz, Stanley (Andrew Furn.)	Assurance of Discontinuance	Suffolk
Lafayette Radio	Assurance of Discontinuance	Suffolk
Lane Pools	Assurance of Discontinuance	Suffolk
Leonard, Paul	Consent Judgment	Hampden
Mass. Camera Centers	Assurance of Discontinuance	Suffolk
Max Okun Furniture Co., Inc.	Consent Judgment	Hampden
Miller's Furniture Co.	Assurance of Discontinuance	Suffolk
Minute Man Radio Co., Inc.	Assurance of Discontinuance	Suffolk

Nantucket Sound	Consent Judgment	Suffolk
National Business Directory	Assurance of Discontinuance	Suffolk
New England Audio/Tweeter	Assurance of Discontinuance	Suffolk
New England Furniture Co.	Assurance of Discontinuance	Suffolk
New England Group	Assurance of Discontinuance	Suffolk
New England Photo	Assurance of Discontinuance	Suffolk
New England Sound Svc/Tech HiFi	Assurance of Discontinuance	Suffolk
Olde Colony Stereo	Assurance of Discontinuance	Suffolk
Overseas Employment Research	Assurance of Discontinuance	Suffolk
Paul's Furniture/Paul Doucette	Assurance of Discontinuance	Suffolk
Precision Motor Rebuilders	Consent Judgment	Middlesex
Professional Guild of America	Assurance of Discontinuance	Suffolk
Pyramid Construction Company	Assurance of Discontinuance	Franklin
Pyramid Construction Company	Consent Judgment	Franklin
Railroad Salvage of Connecticut	Assurance of Discontinuance	Suffolk
Rautio, James d/b/a Treas. Chest	Assurance of Discontinuance	Suffolk
S & L Sales Corp./K&L Sound	Assurance of Discontinuance	Suffolk
Saab-Scania of America	Consent Judgment	Suffolk
Seiden Sound	Assurance of Discontinuance	Suffolk
Seiden Sound	Consent Judgment	Hampden
Shaker's Workshops	Assurance of Discontinuance	Suffolk
Sherman's	Assurance of Discontinuance	Suffolk
Shuman, Stanley	Consent Judgment	Suffolk
Siesta Sleep Shop	Assurance of Discontinuance	Suffolk
Sound Co.	Assurance of Discontinuance	Suffolk
Spartan Paint & Supply	Assurance of Discontinuance	Suffolk
Starlander Beck	Assurance of Discontinuance	Suffolk
Stereo Component Systems, Inc.	Assurance of Discontinuance	Suffolk
Strawberries, Inc.	Consent Judgment	Suffolk
Summerfield's	Consent Judgment	Middlesex
Todd's World of Furniture	Assurance of Discontinuance	Suffolk
Wholesale Furniture & Carpet	Assurance of Discontinuance	Suffolk
Wholesale Marketing/Joanne Scheff	Consent Judgment	Suffolk
Wilmington Ford	Consent Judgment	Middlesex
Y.D.I. Corp. (You Do It Electr.)	Assurance of Discontinuance	Suffolk

B. AUTOMOBILES

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Abel Ford	Consent Judgment	Suffolk
Auto Brokers, Inc.	Assurance of Discontinuance	Suffolk
Auto Supermart, Inc.	Consent Judgment	Suffolk
Automotive Products	Default Judgment	Berkshire
Avenue Auto Wholesalers/Brazel	Assurance of Discontinuance	Suffolk
Bart Auto Ctr. (Rev-Ben Enterp.)	Consent Judgment	Worcester
Beacon Auto Sales	Assurance of Discontinuance	Suffolk
Belmont Auto Sales	Judgment	Suffolk
Belotti (Victor), Inc.	Assurance of Discontinuance	Suffolk
Big Beacon Chevrolet	Assurance of Discontinuance	Suffolk
Bob Brest Buick	Consent Judgment	Suffolk
Bonded Dodge	Judgment	Norfolk
Borlen, E.J. d/b/a City Auto Sales	Judgment	Hampden
Boston Imported Cars	Litigation	Suffolk

Boston Imports/Lamb Lotus/Wasil	Consent Judgment	Suffolk
Brigham-Gill Pontiac AMC	Assurance of Discontinuance	Suffolk
Brockton Auto Sales	Consent Judgment	Plymouth
Brockton Dodge	Assurance of Discontinuance	Suffolk
Budget Auto Sales	Assurance of Discontinuance	Suffolk
Cape Motors	Consent Judgment	Suffolk
Car Finders	Consent Judgment	Hampden
Chalet Motor Sales	Assurance of Discontinuance	Suffolk
Chestnut Hill Motors (odometer)	Assurance of Discontinuance	Suffolk
City Auto a/k/a Edward Borlen	Assurance of Discontinuance	Hampden
Clay Chevrolet	Assurance of Discontinuance	Suffolk
Colonial Motor Sales/B. Milton	Consent Judgment	Hampden
Connelly (Tom) Pontiac	Assurance of Discontinuance	Suffolk
Cullinan (Joe) Ford, Inc.	Consent Judgment	Middlesex
Dazell Volvo	Assurance of Discontinuance	Suffolk
Delaney (Kevin) Pontiac	Assurance of Discontinuance	Suffolk
Desautels, William	Contempt	Bristol
Dino Buick	Assurance of Discontinuance	Suffolk
Don's Getty Service Station	Consent Judgment	Hampden
Eastfield Auto Sales, Inc.	Judgement	Hampden
Eck's Auto Sales	Consent Judgment	Middlesex
English Chevrolet	Consent Judgment	Suffolk
Excellent Car Co.	Assurance of Discontinuance	Suffolk
Falmouth Datsun	Assurance of Discontinuance	Suffolk
Falmouth Dodge	Assurance of Discontinuance	Suffolk
Fife, Walter	Consent Judgment	Middlesex
Fleischer Auto Sales	Consent Judgment	Barnstable
Foreign Auto Import (Watertown)	Consent Judgment	Middlesex
Haddon Lincoln-Mercury	Final Judgment	Suffolk
Hallissy Toyota	Consent Judgment	Suffolk
Hallman Chevrolet	Assurance of Discontinuance	Suffolk
Holyoke Auto (Toyota of Holyoke)	Stipulation	Hampden
Howard Chevrolet	Assurance of Discontinuance	Suffolk
Imported Cars of Cape Cod	Assurance of Discontinuance	Suffolk
Infiorati (Owen), Inc.	Consent Judgment	Suffolk
Kent (Harold) Ford	Judgment	Hampden
King B's Automart/Joseph Graense	Final Judgment	Suffolk
Lakeside Auto Sales	Litigation	Worcester
Locke, Chet Auto Sales	Consent Judgment	Suffolk
Lord Toyota	Consent Judgment	Suffolk
Lord Toyota	Assurance of Discontinuance	Suffolk
Lynn Motors, Inc.	Final Judgment	Suffolk
Main Street Auto Sales & Serv.	Assurance of Discontinuance	Suffolk
Mass. State Auto Dealers Ass'n	Litigation	Suffolk
Medeiros (William) Chevrolet	Assurance of Discontinuance	Suffolk
Merrimac Savings Bank	Judgment	Suffolk
McCoy Auto Sales (odometer)	Consent Judgment	Suffolk
Morris Motors, Inc.	Assurance of Discontinuance	Suffolk
Motor Mart of Malden	Assurance of Discontinuance	Suffolk
Nassar Ford, Inc.	Final Judgment	Essex
Northshore Toyota	Consent Judgment	Suffolk
O'Brien (Tom) Pontiac/Datsun	Consent Judgment	Suffolk

One Twenty Eight (128) Sales, Inc.	Litigation	Middlesex
One Twenty Eight - 128 Imports.	Assurance of Discontinuance	Suffolk
Owens Motors	Consent Judgment	Suffolk
Peterson Ford	Assurance of Discontinuance	Suffolk
Pete's Chrysler/Plymouth	Assurance of Discontinuance	Suffolk
Plaza Oldsmobile	Assurance of Discontinuance	Suffolk
Precision Motor Rebuilders	Consent Judgment	Middlesex
Robichaud Auto Sales, Service	Judgment	Worcester
Ryll Automotive Products	Consent Judgment	Berkshire
Saab-Scania of America	Consent Judgment	Suffolk
Smyly Buick	Assurance of Discontinuance	Suffolk
Taunton Sales, Inc.	Consent Judgment	Bristol
Topor Motor Sales	Consent Judgment	Hampden
Toyota of Falmouth	Assurance of Discontinuance	Plymouth
United Auto Buyers/Gregoric	Consent Judgment	Worcester
Valley Chevrolet	Assurance of Discontinuance	Suffolk
Village Chevrolet	Assurance of Discontinuance	Suffolk
Wakefield Motors	Final Judgment	Middlesex
Wasil, Kenneth and Michael	Consent Judgment	Suffolk
West Country Motors	Final Judgment	Hampden
West Springfield Chevy/Plymouth	Consent Judgment	Hampden
Westport Autorama	Consent Judgment	Bristol
Wilmington Ford	Consent Judgment	Suffolk
Yenom Auto Sales	Litigation	Worcester

C. BANKING & CREDIT

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Aetna/St. Anns Credit Union	Final Judgment	U.S. Dis. Ct.
Allied Bond & Collection Agency	Litigation	Suffolk
Arthur Ind./1st Safety Nat'l Bnk	Litigation	Suffolk
Balfour Credit Union	Litigation	Bristol
Cambridge Trust Company	Final Judgment	Middlesex
Central Secret Service	Consent Judgment	Suffolk
Chrysler Credit Corp.	Consent Judgment	Suffolk
Financial Ent./Statewide Credit	Final Judgment	
Ford Motor Credit Corp.	Assurance of Discontinuance	Suffolk
General Motors Acceptance Corp.	Assurance of Discontinuance	Suffolk
Hancock Bank & Trust	Final Judgment	Suffolk
Hull Cooperative Bank	Final Judgment	Suffolk
Hull Cooperative Bank	Final Judgment	Suffolk
Industrial Nat'l Bank of R.I.	Consent Judgment	Suffolk
Legal Credit Counselors	Preliminary Injunction	Suffolk
Leominster Savings Bank	Consent Judgment	Worcester
Merrimac Savings Bank	Final Judgment	Suffolk
Security National Bank	Litigation	Hampden
Tuck & Pozzi	Consent Judgment	
Van Ro Credit Corp.	Consent Judgment	Suffolk

D. CONTRACTS

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
American Int'l Holiday	Assurance of Discontinuance	Suffolk

American Int'l Leisure/G. Paglia	Assurance of Discontinuance	Suffolk
Crimson Travel Service	Litigation	Middlesex
Diamedic, Inc.	Litigation	Norfolk
Great Amer. Travel (Southwind)	Consent Judgment	Suffolk
Intern'l Magazine Services	Assurance of Discontinuance	Suffolk
Kiddy Photographs	Assurance of Discontinuance	Suffolk
Northeast Marketing Services	Litigation	Suffolk
Pereira Brothers Roofing	Litigation	Middlesex
Selective Singles	Litigation	Norfolk
Slimtique, Inc.	Litigation	Suffolk
Supersonic Tours	Assurance of Discontinuance	Suffolk
United Marketing Corp., et al	Final Judgment	Suffolk
WAAF, A-Ok Productions	Final Judgment	Norfolk
Walo & Levine	Consent Judgment	Middlesex

E. EDUCATION

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Allied Construction Training Cntr	Assurance of Discontinuance	Suffolk
Colonial Travel School	Final Judgment	Worcester
Conway School of Landscape Design	Litigation	Franklin
E. Atl. Trac/Trail Training Sch.	Judgment	Hampden
Elro Ent./Brockton Auto Wholesaler	Judgment	Plymouth
Framingham Civil Serv. School	Consent Judgment	Middlesex
Graham Junior College	Consent Judgment	Suffolk
LaSalle Extension Univ.	Consent Judgment	Suffolk
New England Appliance Sch/Solari	Consent Judgment	Suffolk
New England Sch. of Culinary Arts	Consent Judgment	Middlesex
New England Trac/Trail Training	Consent Judgment	Hampden
Solari Schools	Preliminary Injunction	Suffolk

F. ENERGY

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
All Star Fuel Co./Marshall	Litigation	Essex
Atlantic Farm, Inc.	Assurance of Discontinuance	Suffolk
Birch, J.T.	Assurance of Discontinuance	Suffolk
C & C Oil Co. (Isaac Cohen)	Consent Judgment	Suffolk
Caporale, Leonard	Consent Judgment	Suffolk
Cardelli, Aenzo	Consent Judgment	Suffolk
Caswell, Patrick/Pat's Fireplace	Assurance of Discontinuance	Suffolk
Clene Heat/R.J. Holding	Consent Judgment	Suffolk
Coy, Ron/Northern Tree	Consent Judgment	Suffolk
D & P Service Co.	Litigation	Suffolk
D Oil Co./Jack DePalma	Final Judgment	Suffolk
Daigle, Barry	Assurance of Discontinuance	Suffolk
DePalma, Anthony/Hilltop Oil	Final Judgment	Suffolk
DePalma, Jack/D Oil	Final Judgment	Suffolk
DePalma, John	Consent Judgment	Suffolk
Festino Fuel, Inc.	TRO/Preliminary Injunction	Middlesex
Forbes, Richard/Dick's Landscp.	Assurance of Discontinuance	Suffolk
Global Oil	Litigation	Suffolk
Hilltop Oil/DePalma, Anthony	Final Judgment	Suffolk

Holding, R.J. Oil & Gas	Consent Judgment	Suffolk
Kero-Sun, Inc.	Partial Final Judgment	Suffolk
King's Row Fireplace Shop	Assurance of Discontinuance	Suffolk
Levesque, Edward	Consent Judgment	Suffolk
Marchetta, Ron/Timberline Tree	Final Judgment	Suffolk
Millian, Robert (Newton St. Gulf)	Consent Judgment	Suffolk
Orleans Coal & Oil Co.	Consent Judgment	Middlesex
Orleans Coal & Oil Co.	Contempt	Middlesex
Palingo Oil Co.	Litigation	Suffolk
Perry, Bill	Assurance of Discontinuance	Suffolk
Potter, Seth	Assurance of Discontinuance	Suffolk
Russo Oil Co.	Consent Judgment	Suffolk
Scholboro Foods/Evergood Market	Final Judgment	
Simonelli Oil Co.	Consent Judgment	Suffolk
Smith Farms/G. R. Smith	Assurance of Discontinuance	Suffolk
Smith, Mark	Assurance of Discontinuance	Suffolk
Superior Stove Co.	Litigation	Hampden
Wheeler, Steve/Saddleback Farms	Consent Judgment	Suffolk
Wilkensky, Julius	Consent Judgment	Suffolk
Wilkensky, Julius	Contempt	Suffolk
Zion, Ronald	Consent Judgment	Suffolk

G. HOME IMPROVEMENT/APPLIANCE REPAIR

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
A-Z Appliance/Allen Zellin	Assurance of Discontinuance	Suffolk
Acme Power Vac/Ralph Rigione	Consent Judgment	Bristol
Air Temp Engineering, Inc.	Final Judgment	Middlesex
Alco Aluminum Pool & Siding Co.	Final Judgment	Hampden
Anderson Construction/R. Anderson	Contempt	Suffolk
Associated Pools	Consent Judgment	Suffolk
Beacon Hill Roofing	Litigation	Norfolk
Bianco Construction	Final Judgment	Plymouth
Chalue	Default Judgment	Hampden
Factory Heating/Paul Johnson	Litigation	Middlesex
Hale/United Vinyl	Litigation	U.S. Dis. Ct.
Jack's Radio & TV (John Debie)	Contempt & Judgment	Essex
King Appliance Service	Consent Judgment	Suffolk
Libman, Al	Consent Judgment	Norfolk
Luisi, Paul, et al	Judgment	Suffolk
McCarthy Construction	Consent Judgment	Middlesex
O'Connor Brothers	Final Judgment	Middlesex
Rigione, Ralph/Acme Power Vac	Consent Judgment	Suffolk
Seamless Plumbing	Litigation	Suffolk
Stott Charles/Waltham Roofing	Litigation	Middlesex
Supreme Remodeling (Al Libman)	Judgment	1st Cir. Ct.
Vassett	Judgment	
Ward, George M.	Criminal Contempt	Middlesex
Watertown Roofing/Leander Vlahakis	Final Judgment	Middlesex
Watertown Roofing/Vlahakis	Criminal Contempt	Middlesex
Wonder Construction/Sesser	Consent Judgment	Middlesex

H. HEALTH

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Appelton, Lloyd O./Kings Mount	Assurance of Discontinuance	Suffolk
Beltone Hearing Aid Service	Consent Judgment	Hampden
Dimmock Community Health Center	Litigation	Suffolk
ELM Med Lab, Inc/Baez-Giangreco	Litigation	Suffolk
Genesis Laboratory	Litigation	Norfolk
Inter-Church Team Ministries	Litigation	Bristol
Roman Health Spa	Litigation	Hampden

I. INSURANCE

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Balfour Federal Credit Union	Litigation	Bristol
Blue Cross/Blue Shield, Inc.	Litigation	Suffolk
CUNA Mutual Insurance Society #1	Litigation	Suffolk
CUNA Mutual Insurance Society #2	Litigation	Middlesex
Edwards, Allan G., Jr. (M.D.)	Assurance of Discontinuance	Suffolk
Gallagher, Philip G. (M.D.)	Assurance of Discontinuance	Suffolk
Metropolitan Life Insurance	Litigation	Suffolk
Travelers Insurance Co.	Litigation	Suffolk
Union Fidelity Life Insurance Co.	Litigation	Suffolk

J. MOBILE HOMES

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Bluebird Acres Mobile Home Park	Consent Judgment	Hampden
Hampden Village	Partial Final Judgment	Hampden
Hampden Village	Contempt	Hampden
Mogan's Mobile Home Park	Consent Judgment	Middlesex
Suburban Estates	Final Judgment	Bristol

K. NURSING HOMES

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Adams Nursing Home/Alessandroni	Partial Judgment	Suffolk
Algonquin RH/Whitlow, Hazel/Irv	Litigation	Suffolk
Almeida Lewis	Consent Judgment	Bristol
Ashmere Manor Nursing Home	Litigation/Receivership	Suffolk
Berkshire Nursing Home	Final Judgment	Berkshire
Dranetz, Marshall/Daley, Harry	Litigation	Barnstable
Fleetwood Nursing Home	Litigation	Berkshire
Hancock House Of Beverly	Litigation	Middlesex
Harvard Manor Nursing Home	Final Judgment	Middlesex
Havolyn Management/Ray Monahan	Consent Judgment	Suffolk
Havolyn Management/Ray Monahan	Contempt	Suffolk
Heritage Hill Nursing Homes	Litigation	Suffolk
Jewish Nurs. Home Of West. Mass.	Litigation	Hampden
Kimwell, Weston Manor Nurs. Home	Consent Judgment	Suffolk
Lewis Bay Convalescent Home	Preliminary Injunction	Barnstable
Middlesex Manor Nursing Home	Judgment	Bristol
New Eng NH Devel Corp/Cape Ann NH	Judgment	Suffolk
People's Church Nursing Home	Judgment	Worcester

Resthaven Rest Homes
Six State Mgt/Park Hill Manor NH
Twin Pine Corp./Weston Manor NH

Receivership
Litigation
Final Judgment

Suffolk
Suffolk
Middlesex

L. PRICING/FOOD

Defendant

First Nat'l Stores
Purity Supreme

Status/Disposition

Assurance of Discontinuance
Final Judgment

County/Court

Suffolk
Middlesex

M. REAL ESTATE/HOUSING

Defendant

Acres 'n Acres
Alan Realty/Alan Zuker
Allen Realty
Apex Apartment Rentals
Arroyo
Battlegreen Construction
Bluebird Realty Trust
Cape Real Estate
City Real Estate
Citywide Rentals
Clarke-Jacob Realty
Christine Anne Realty Trust
Cohen, Terry (Bulfinch Realty)
Colonial Realty
Commonwealth Condo Tr/Gear/Bern
Co-Ree Real Estate
Countryside Realty
Delta Realty Co., Inc.
DiBiase, Ugo & Elio/DiBiase Realty
DiSarro, Stephen
Elwood Park Rlty Tr/Stivaletta
E-Z Rentals
Feroli, R.J., Inc.
Gei-Ger Real Estate
Gesner Construction Co.
Giambro, Ronald
Gladestone Realty Trust
Golden Eagle Apartments
Gray Rental Properties
H & F Realty
Hamilton Realty
Hampden Village
Harkey, John Realtor
Hartwick (William) Construction
Holt, Fran./Christine Anne Realty
Home Insulating of New England
Homes By Design
Hub Realty
Kantor, Irwin
Kaplan, Elliot/Sharonshire Homes

Status/Disposition

Litigation
Consent Judgment
Consent Judgment
Consent Judgment
Litigation
Litigation
Consent Judgment
Consent Judgment
Consent Judgment
Consent Judgment
Assurance of Discontinuance
Consent Judgment
Consent Judgment
Litigation
Consent Judgment
Consent Judgment
Consent Judgment
Consent Judgment
Consent Judgment
Assurance of Discontinuance
Consent Judgment
Consent Judgment
Consent Judgment
Litigation
Litigation
Assurance of Discontinuance
Assurance of Discontinuance
Consent Judgment
Consent Judgment
Partial Final Judgment
Consent Judgment
Litigation
Consent Judgment
Litigation
Consent Judgment
Consent Judgment
Judgment
Preliminary Injunction

County/Court

Essex
Norfolk
Norfolk
Suffolk
Middlesex
Norfolk
Middlesex
Hsing. Ct./Bos.
Hsing. Ct./Bos.
Suffolk
Suffolk
Suffolk
U.S. Dis. Ct.
Suffolk
Middlesex
Middlesex
Suffolk
Suffolk
Suffolk
Assurance of Discontinuance
Hsing. Ct./Bos.
Plymouth
Middlesex
Norfolk
Suffolk
Middlesex
Suffolk
Suffolk
Bristol
Suffolk
Hampden
Norfolk
Norfolk
Suffolk
Hampden
Middlesex
Suffolk
Hsing. Ct./Bos.
Suffolk

Kaufman & Broad	Judgment	Norfolk
Keith (John W.) Builders	Consent Judgment	Suffolk
Land & Leisure	Litigation	Suffolk
Land Auction Bureau	Litigation	Suffolk
Ledgemere Farms/Davis Farm Rd.	Consent Judgment	Middlesex
Liberty Hill Management Corp.	Consent Judgment	Essex
MacDonald Real Estate	Consent Judgment	Middlesex
Marshfield Real Estate	Consent Judgment	Plymouth
Messineo, Randolph/Randy's Rty.	Litigation	Middlesex
Murphy & Murphy Drive-In R.E.	Consent Judgment	Middlesex
Park Avenue Realty Trust	Restitution only	Suffolk
Parkwood Estates Realty	Consent Judgment	Suffolk
Pyramid Construction	Final Judgment	Hampden
Realty Sales Co.	Consent Judgment	Plymouth
Sergi Enterprises	Consent Judgment	Essex
Sharonshire Homes	Preliminary Injunction	Suffolk
Shibley, Edward (Sr.)	Consent Judgment	Hampden
Simeone, Inc., Realtors	Consent Judgment	
Southbrook Real Estate	Consent Judgment	Plymouth
Starr, Paul/Sharonshire Homes	Preliminary Injunction	Suffolk
United Resources, Inc.	Final Judgment	Middlesex
Weiss, Sheila	Assurance of Discontinuance	Suffolk
Wish Realty Assoc., Inc.	Consent Judgment	Suffolk
Woods Real Estate	Consent Judgment	Norfolk

N. SALES PRACTICES

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Apartment Showcase	Judgment	Middlesex
Aubin, Wm./North East Land Realty	Judgment	Hampshire
Automotive Equip. Co./Robert Webb	Final Judgment	Middlesex
Bonney Rigg Camping Club, et al	Assurance of Discontinuance	Suffolk
BIC's	Consent Judgment	Middlesex
Bi-Lo Food Warehouse	Judgment	Hampden
Butcher's Pride	Assurance of Discontinuance	Suffolk
Debie, John E./Jack's Radio & TV	Consent Judgment	Essex
Delta Electronics	Consent Judgment	Suffolk
Dinner Tours/Alfred Zimei	Litigation	Worcester
Diversified Hlth Ind/Roman Spa	Litigation	Hampden
Edwin R. Sage Co.	Consent Judgment	Suffolk
Executive Dating Serv. (Konior)	Final Judgment	Suffolk
Farm Stand of Peabody	Consent Judgment	Suffolk
Feelin' Great, Inc.	TRO/Preliminary Injunction	Suffolk
Food Marts	Judgment	Hampden
Foodmaster Supermarkets, Inc.	Consent Judgment	Suffolk
General Investment & Devel. Co.	Assurance of Discontinuance	Suffolk
Gloucester Dispatch, Inc.	Consent Judgment	Essex
Guarino, Stephen	Consent Judgment	Suffolk
Hearing Dynamics of New England	Consent Judgment	Norfolk
Homelike Apartments	Assurance of Discontinuance	Suffolk
Hub Ticket Agency	Consent Judgment	Suffolk
International Health Spa/Keene	Litigation	Suffolk
J & T Auto Repair	Assurance of Discontinuance	Suffolk

Jewell Companies, Inc.	Consent Judgment	Middlesex
Kilgo, John (Evelyn Wood)	Assurance of Discontinuance	Suffolk
Lamour, Inc.	Assurance of Discontinuance	Suffolk
Lane's Furniture	Appeal Decided	Suffolk
Leisure Distributors/Hi Fi Buys	Assurance of Discontinuance	Suffolk
Liberty Park Equip. & Sales	Consent Judgment	Hampden
Mansfield Mattress Corp.	Assurance of Discontinuance	Suffolk
Mass. Business & Prof. Directory	Consent Judgment	Plymouth
Mass. Distributors, Inc.	Assurance of Discontinuance	Suffolk
Maynard Market	Consent Judgment	Suffolk
Middlesex Vacuum	Stipulation/Restitution	Middlesex
Mold Specialists	Consent Judgment	Suffolk
Murphy, Wayne	Consent Judgment	Essex
National Business Assoc. Directory	Final Judgment	Suffolk
Okun's Furniture, Inc.	Consent Judgment	Hampden
Our House Furniture, Inc.	Litigation	Bnrk. of B
Out-of-Town Ticket Agency	Consent Judgment	Suffolk
Pat's Ticket Agency	Final Judgment	Middlesex
People's Choice	Consent Judgment	Middlesex
Pieroway Electric Co., Inc.	Assurance of Discontinuance	Suffolk
Pioneer Pools	Consent Judgment	Norfolk
Promotional Sales Consultants	Assurance of Discontinuance	Suffolk
Ray's IGA Store	Consent Judgment	Suffolk
Rocola Manufacturing Company	Consent Judgment	Hampden
Schultz Lubricants, Inc.	Assurance of Discontinuance	Suffolk
Showman, Oren	Assurance of Discontinuance	Suffolk
Skyline Manor	Judgment	Hampden
Stanley, James/King of Hottop	Preliminary Injunction	Middlesex
Stanley, LeGrant/AAA Paving	Preliminary Injunction	Middlesex
Supreme Furniture Co.	Consent Judgment	Suffolk
Swim-Rite Pools, Inc.	Litigation	Norfolk
Town & County Products/Leonard	Judgment	Hampden
Tyson Ticket Agency	Consent Judgment	Suffolk
Uniserv International Corp.	Litigation	Hampden
United Marketing	Litigation	Hampden
Valenti Ticket Agency	Consent Judgment	Suffolk
Weight Loss Medical Center	Consent Judgment	Norfolk
Woods, Paul (Swimming Pools)	Consent Judgment	Norfolk
World of Homes	Assurance of Discontinuance	Suffolk

O. TRAVEL

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Associated Travel Serv of Newton	Assurance of Discontinuance	Suffolk
Garber Travel	Investigation	Suffolk
G & G Travel	Litigation	Hampden
Intern'l Weekends	Litigation	Suffolk
Quality Tours/Gloria Patt	Litigation	Norfolk
Trans National Travel	Litigation	Suffolk

P. WEIGHTS & MEASURES

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Aceite Tropical Oil Co.	TRO/Preliminary Injunction	Suffolk

Blue Ribbon Dairy	Final Judgment	Suffolk
B & T Wood Products/Tarentino	Final Judgment	
Corrigan, James and Michael	Assurance of Discontinuance	Suffolk
Dick's Landscaping	Assurance of Discontinuance	Suffolk
Family Assoc.	Consent Judgment	Suffolk
J & J Market	Assurance of Discontinuance	Suffolk
Kneeland, Thomas (wood seller)	Litigation	Middlesex
Lamusta's Auto Service	Consent Judgment	Worcester
Mr. Meat of Mattapoissett	Consent Judgment	Suffolk
Ricci, Louis (wood seller)	Litigation	Middlesex
Sage's Market	Final Judgment	Suffolk
Scholbro Foods d/b/a Evergood Mkt	Litigation	Suffolk

Q. MISCELLANEOUS

<i>Defendant</i>	<i>Status/Disposition</i>	<i>County/Court</i>
Able Rug Cleaners, Inc.	Assurance of Discontinuance	Suffolk
Anchutz, Donald E.	Assurance of Discontinuance	Suffolk
Andrews Paint	Consent Judgment	Norfolk
Artistic Typing Headquarters	Assurance of Discontinuance	Suffolk
Barry, Henry	Consent Judgment	Plymouth
Big-Y-Foods, Inc.	Consent Judgment	
Blackstone Trading Company	Final Judgment	Suffolk
Bragel, Shirley	Assurance of Discontinuance	Suffolk
Brettman, Hy	Consent Judgment	Suffolk
Brigham's Ice Cream	Consent Judgment	Middlesex
Brown & Finnegan (Gerald), Inc.	Preliminary Injunction	Suffolk
Chala Foods	Judgment	Middlesex
Chatham Development Co.	Consent Judgment	Middlesex
Chawa Tash	Assurance of Discontinuance	Suffolk
Codman Co.	Consent Judgment	Suffolk
Coffman, Ralph	Assurance of Discontinuance	Suffolk
Comfort Comer	Assurance of Discontinuance	Suffolk
Continental Employment Agency	Assurance of Discontinuance	Suffolk
Coordinators, Inc.	Consent Judgment	
Datamarine International	Consent Judgment	Barnstable
Daylight Dairy Products	Consent Judgment	Hampden
DeSautels	Contempt	
Dorchester Wayport Trust	Assurance of Discontinuance	Suffolk
Doucette, Paul	Assurance of Discontinuance	Suffolk
Eck's Trucking Inc./David Eck	Preliminary Injunction	Suffolk
E & S Enterprises	Consent Judgment	Hampden
Fafco Division, VSI	Consent Judgment	Middlesex
Famalette, Anthony	Consent Judgment	
Feodoroff Agency	Consent Judgment	Suffolk
Framingham Housing Authority	Consent Judgment	Middlesex
Goldstein & Gurwite Auctioneers	Consent Judgment	Worcester
Grochmal, Richard	Consent Judgment	Hampden
Hearing Aid Petition/FDA	Litigation	U.S. Dist. Ct
Hewitt Assoc., Inc.	Assurance of Discontinuance	Suffolk
Iaciafano, Dominic, et al	Litigation	Norfolk
Juno, Inc.	Assurance of Discontinuance	Suffolk
Katz, Raanan/Victory Realty	Judgment	Suffolk

Kitchen Delight	Consent Judgment	Suffolk
LaFranchise, Arthur Jr.	Consent Judgment	Plymouth
Lesnow Mfg. Co.	Assurance of Discontinuance	Suffolk
Little & Co.	Consent Judgment	Suffolk
Loring Hills Assoc.	Consent Judgment	Suffolk
Mass. Rentals	Consent Judgment	Housing Ct./Bos.
Massachusetts Commodities, Inc.	Judgment	Suffolk
Miller, Ephram	Assurance of Discontinuance	Suffolk
Millis Commodity Ltd.	Litigation	Suffolk
Moccasin Craft	Consent Judgment	Middlesex
N.I. Associates	Assurance of Discontinuance	Suffolk
Nassi Assoc.	Assurance of Discontinuance	Suffolk
National Marketing Consultants	Litigation	
New England Studio Co.	Consent Judgment	
Paglia, Gene	Assurance of Discontinuance	Suffolk
Parks, Frank H.	Consent Judgment	Hampden
Pickwick Int'l Corp.	Consent Judgment	Suffolk
Quigley, Charles	Consent Judgment	Suffolk
Rao (Roger), Inc.	Assurance of Discontinuance	Suffolk
Ruderman's Furniture	Investigation	
Ryan, Kenneth	Consent Judgment	Plymouth
San-Mac Industries	Consent Judgment	Essex
Seven's, Inc./Hub Ticket Agency	Consent Judgment	Suffolk
Stamps Information Associates	Consent Judgment	Suffolk
Valve Service International	Consent Judgment	Middlesex
WAAF/A-OK Productions/Kasparian	Final Judgment	Worcester
Wasserman, Max	Consent Judgment	Middlesex
Waystack, Charles Jr.	Consent Judgment	Middlesex
Windsor Meadows	Assurance of Discontinuance	Suffolk

ENVIRONMENTAL PROTECTION DIVISION

The Environmental Protection Division is established by G.L. c. 12, §11D. The Division has responsibilities in two main areas. It is litigation counsel to all the agencies of the Commonwealth, principally those within the Executive Office of Environmental Affairs, that are charged with protecting the environment. In this role the Division appears in court on matters such as air and water pollution, hazardous and solid waste control, wetlands protection and billboard control. In addition, and also pursuant to its mandate under G.L. c. 12, §11D, the Division initiates and intervenes in judicial and administrative actions for the purpose of protecting the environment of the Commonwealth. These cases include hearings before federal agencies on the siting of energy generating facilities and participation in state and federal appellate courts on issues of significance to the environment.

During fiscal year 1980/81, the Division continued its involvement with three issues of great significance to Massachusetts: acid rain, hazardous waste disposal and the environmental effects of off shore oil drilling. The acid rain problem is now recognized as a serious threat to water quality and aquatic life and, potentially, to agriculture, forestry and human health. It is especially serious in the northeast because the pollutants that cause it are often carried long distances and deposited in this area. The Division is moving on this

problem in several areas. In *Massachusetts v. Ohio*, we have challenged the federal government's relaxation of air pollution requirements in Ohio. (Much of the problem begins in the midwest.) The case is under consideration by the Sixth Circuit. We are participating in several proceedings before EPA regarding the interstate transport of air pollutants. We have given testimony before a United States Senate committee considering amendments to the Clean Air Act.

The unlawful disposal of hazardous substances has been a problem in Massachusetts for some time. It threatens water supplies and public health, and the Division has for six years sought to combat the problem. Recent tightening of enforcement in the New York-New Jersey area has forced more hazardous material into New England. The Division has responded in several ways. Civil enforcement efforts have been increased. The Criminal Bureau and the State Police Unit of the Department have been enlisted to aid in the effort. Several specific cases are described below. In addition the Division was instrumental in the formation of the Northeast Hazardous Waste Coordination Committee, a committee composed of assistant attorneys general from the entire northeast to coordinate responses to the problem. The committee received one of the last grants ever awarded by the Law Enforcement Assistance Administration for this effort.

During fiscal 1981, the Division continued its long involvement with the issue of offshore drilling and its implications for the onshore environment and economy. In a number of cases, described more fully below, the Division has pressed those concerns and the rights of states to participate in decisions that will affect them and their citizens.

As a result of its role in environmental enforcement, the Division is the recipient of grant money from the United States Environmental Protection Agency. In fiscal year 1980, the Division received one hundred and seventy-five thousand dollars (\$175,000.00) of such funds, which are used primarily for staffing.

The Division's enforcement policy includes seeking monetary penalties in appropriate cases. During the year judgments entered calling for the payment of penalties of approximately two hundred and twenty-five thousand dollars (\$225,000).

CATEGORIES

AIR

Air pollution cases are referred from the Department of Environmental Quality Engineering, Division of Air Quality, and involve violations of the state Air Pollution Regulations. The statutory authority is G.L. c. 111, §42.

WATER

Water pollution cases are referred from the Department of Environmental Quality Engineering, Division of Water Pollution Control. Most of these cases involve violations of discharge permits issued jointly by the Division of Water Pollution Control and the United States Environmental Protection Agency. Others seek to recover costs expended in cleaning up oil spills. The statutory authority is G.L. c. 21, §§26-52.

WETLANDS

Wetlands cases are generally referred from the Department of Environmental Management, Wetlands Section, or Department of Environmental Quality Engineering, Wetlands Division. The cases fall into two categories: (1) those involving the permit program for altering of wetlands under G.L. c. 131, §40 and (2) those challenging the development restrictions the state imposes on inland and coastal wetlands pursuant to G.L. c. 130, §105 and G.L. c. 131, §40A.

SOLID WASTE

Solid waste cases are referred from the Department of Environmental Quality Engineering, Division of General Environmental Control. They involve the manner in which refuse is disposed and the enforcement of the state's sanitary landfill regulations. The statutory authority is G.L. c. 111, §150.

HAZARDOUS WASTE

Hazardous waste cases are referred by the Department of Environmental Quality Engineering, Division of Hazardous Waste. They involve the transport and disposal of hazardous substances in violation of state regulations. The statutory authority is G.L. c. 21C.

BILLBOARD

Billboard cases are referred by the Outdoor Advertising Board. A majority involve defending petitions for judicial review of decisions of the Outdoor Advertising Board. The statutory authority is G.L. c. 93, §§29-33.

OTHERS

A number of the cases handled by the Division do not fall into any of the above categories. Some of them involve representation of state agencies, for example, the defenses, in federal court, of the Massachusetts Executive Office of Environmental Affairs and Executive Office of Transportation and Construction. Others are brought pursuant to the Attorney General's statutory authority to prevent environmental damage. These are frequently in areas of broad concern, such as energy policy, the siting of nuclear facilities and the interpretation of state and federal environmental statutes. They involve the initiation of or intervention in proceedings in a variety of forums; judicial and administrative; state and federal.

SIGNIFICANT CASES

There follows a description of some of the cases the Division handled during the year.

DEQE and the Attorney General v. Danial Striar, Rockland Industries and the Striar Realty Trust

This was a hazardous waste case involving a chemical company in Middleborough. The company had been repeatedly cited for water pollution violations over a number of years. The Division obtained a search warrant and conducted an inspection of the property in the company of members of DEQE

and the state police which revealed numerous containers of hazardous waste scattered over the property. Some were leaking and all were stored illegally and unsafely. Suit was filed and a settlement was reached which included a compliance schedule for a full cleanup of the property and a \$50,000 civil penalty.

Attorney General and DWPC v. Westfield Electroplating Corp.

This was a hazardous waste and water pollution case involving an electroplating corporation in Westfield. The defendants were observed dumping hazardous materials including cyanide into a storm drain which discharges into the Westfield River. The Division obtained a search warrant and conducted an inspection of the premises in the company of members of DWPC and the state police. Suit was filed thereafter and a settlement was reached which included a compliance schedule for construction of pretreatment facilities and a \$35,000 civil penalty.

Attorney General and Metropolitan District Commission v. Cambridge Thermionic

This case involved a violation of MDC sewer use regulations by a Cambridge company which was discharging metal plating wastes into the MDC sewers in excess of the amounts allowed under regulations. The Division's suit was the first enforcement action involving these MDC regulations. The case settled with a compliance schedule for installation of pretreatment and a \$20,000 civil penalty.

DEQE and the Attorney General v. William H. H. Johnson III and J & G Auto Salvage, Inc.

This hazardous waste enforcement action arose out of the defendants unlawful receipt and burial of more than 300 barrels of hazardous waste in Middleborough. An Agreement for Judgment was filed in and approved by the Suffolk Superior Court, whereby the defendants were required to clean up the barrels of hazardous waste pursuant to a specified time schedule and to pay \$25,000 to the Commonwealth over a three-year period. The defendants failed to conduct the cleanup by the deadlines in the Judgment and a petition for contempt was filed. The Superior Court adjudged the defendants to be in civil contempt, ordered them to take various steps to raise money for the cleanup and to report bi-weekly to the court on their efforts to do so, and established a new schedule for completion of the cleanup.

DEQE v. D'Annolfo

This extremely complicated case involves a parcel of land in Woburn which was recently commercially developed, but which was historically the site of industrial and chemical facilities whose activities resulted in serious contamination of the area. The Division sued several years ago seeking to compel the present landowner to clean up the site. During the year an Agreement for Judgment was filed which called for a phased cleanup. The landowner did not meet the requirements of the judgment, and the Division sought and obtained an order allowing the Commonwealth to fence off the property and begin a cleanup. This is being accomplished with the assistance of EPA, and it is anticipated that federal "Superfund" money will be available for the job.

DWPC v. City of Leominster and Mayor Raymond Harper

In the spring of 1980, the Division brought a motion for contempt based on the defendants' refusal to comply with a consent judgment requiring construction of a sewage treatment plant for the last remaining major polluter of the Nashua River. After hearing, the Superior Court ordered the Mayor to proceed with the next steps in the compliance schedule. In September 1980, the defendants refused to award the contract for construction. The Division renewed its motion. The court again ordered the mayor to proceed; the contract was awarded and work commenced. In June 1981 the mayor ordered the work stopped and attempted to fire the consulting engineers who were supervising the project. The court ordered the mayor to rescind the stopwork order and to retain the consulting engineers unless EPA and the DWPC approved a change of engineers.

DEQE and Town of Edgartown v. Tuscarora Land Co. and Olsen Brothers, Inc.

This case involved a violation of the Wetlands Protection Act on Martha's Vineyard by a local contractor and a Pennsylvania based development company. The company had unlawfully bulldozed a sand dune on property it owned on South Beach in order to provide a better view for houses then under construction. The Division and the Town of Edgartown filed suit seeking full reconstruction and restoration of the dune. We eventually negotiated a settlement in which the defendants agreed to full restoration and guarantee the result with a \$20,000 letter of credit, payable to the Edgartown Conservation Commission if they were unsuccessful. The Town will be able to use the money to restore the dune if the developer does not succeed in doing so within prescribed time limits.

DEQE and the Attorney General v. Tobe Deutschmann Sr., Tobe Deutschmann Jr., and Tobe Deutschmann Laboratories, Inc.

Following a lengthy investigation into the presence of polychlorinated biphenyls ("PCB's") in barrels and in portions of the soil at three properties owned or rented by the defendants in Canton, the Division filed this civil hazardous waste enforcement case. Further tests revealed that the PCB's did not pose a health danger to the community. The case was settled with the defendants' agreement to clean up the PCB's on their properties.

Massachusetts v. EPA

This a challenge to EPA's relaxation of sulfur dioxide emission limits for two power plants near Cleveland, Ohio. (These two plants together emit more sulfur dioxide than all sources in Massachusetts combined.) Pennsylvania, New York and New Hampshire have joined us in this proceeding, which is pending in the Sixth Circuit Court of Appeals. Sulfur dioxide emissions from plants such as these in the midwest are transported long distances and undergo chemical changes in the atmosphere, resulting in acid rain and sulfate pollution. We are seeking to establish that EPA has an affirmative duty to consider and resolve problems of interstate air pollution when it approves, promulgates or revises a plan for air pollution control. Briefing is not yet completed. We have also filed comments in the administrative proceeding under review.

*California v. Watt**North Carolina v. Watt*

These cases were brought separately by California and North Carolina to enjoin the Secretary of Interior from leasing for oil and gas development tracts offshore those states. The cases raised issues of great significance to Massachusetts, in light of the federal government's plans to expedite offshore oil development here: (1) whether the Coastal Zone Management Act requires the Interior Department to determine, prior to conducting a lease sale, that the proposed sale is consistent with the affected state's coastal zone management plan; and (2) the extent to which the Secretary of the Interior must accept a coastal governor's recommendations regarding a proposed lease sale, pursuant to the Outer Continental Shelf Lands Act. We filed briefs as *amicus curiae* in support of the states in both cases. In the California action, the court granted first a preliminary and then a permanent injunction on the ground that the Secretary had unlawfully refused to render a consistency determination regarding the lease sale. There has been no decision in the North Carolina case.

California v. Watt

The Division is appearing *amicus curiae* in support of a challenge by the States of Alaska and California and a number of environmental groups to the Department of the Interior's 5-year plan for oil and gas leasing on the outer continental shelf. This plan includes three lease sales on Georges Bank. We argued that Interior failed to consider and incorporate environmental and other non-energy-related factors into its plan, as required by the Outer Continental Shelf Lands Act Amendments of 1978.

Illinois, Massachusetts, and New York v. Lewis

This suit was filed in 1976 to compel the Federal Aviation Administration ("FAA") to take various actions to control and abate airport and aircraft noise. While the suit was pending, the FAA took several of those actions. In March 1981, the court granted our motion for summary judgment and ordered the FAA to take the remaining action pursuant to a specified time schedule. The FAA subsequently took that action, promulgating new regulations regarding noise level standards for new aircraft. Still pending before the court is our motion for attorneys' fees and costs.

McMahon v. Amoco, et al.

This case was brought to recover clean-up costs for gasoline which leaked from an underground storage tank and contaminated a major water supply for Provincetown. The defendants moved to dismiss, raising several significant issues under the Massachusetts Clean Waters Act, including whether the term "waters of the commonwealth" includes groundwaters, whether the Act's remedies are exclusive and therefore preclude a public nuisance cause of action, whether the Attorney General has standing to bring a public nuisance claim for violation of the Act and whether recovery on a strict liability theory for an abnormally dangerous activity could be claimed in addition to claims for violation of the Act. The Superior Court resolved all issues in favor of the Commonwealth.

DEQE v. Hingham

In this case the Town of Hingham claimed that a special act authorizing the Town to improve waterways and drainage fell within the exemption provisions of the Wetlands Protection Act, so that the Town was not required to follow the Act. Since several towns operate under the provision of such special acts, and the question of whether Towns must submit the filings required by the Act to their own conservation commissions arises frequently, the outcome was important to the Department. The court granted summary judgment in the Department's favor, ruling that the special act did not exempt the Town from the Act's provisions.

Driscoll v. Lowell

Residents in the area of Lowell's new sewage treatment plant brought this action to enjoin operation of the plant, alleging that it created odors which were a private and public nuisance. Cessation of operation of the plant would have resulted in discharge of 8 million gallons of sewage a day into the Merrimack River. The Department of Environmental Quality Engineering intervened and brought a motion for summary judgment, arguing that a legislatively authorized activity (sewage treatment) could not be a nuisance absent negligence in carrying out the activity. The court granted the motion for summary judgment.

Pilgrim II

We are an intervenor in the construction permit proceeding for Pilgrim Unit II. Hearings have been held on all issues with the exception of emergency planning and the appropriate application to this proposed plant of the lessons learned from the Three Mile Island accident. We have been preparing during this past fiscal year for hearings on these issues, which are now scheduled to occur in October 1981. We have been assisted in our efforts by MHB Technical Associates, a consulting firm based in San Jose, California, Phillip B. Herr, a city planner and MIT professor, and Gordon Thompson of the Union of Concerned Scientists. Our concerns involve both the feasibility of evacuating the population surrounding the Pilgrim site in the event of an accident and the adequacy of current plans for such emergency actions.

STATISTICS

Cases opened in Fiscal Year 1981, by category:

AIR	4
BILLBOARDS	4
HAZARDOUS WASTE	12
SOLID WASTE	4
WATER	23
WETLANDS ENFORCEMENT	11
WETLANDS RESTRICTION	18
MISCELLANEOUS	<u>14</u>
TOTAL	<u>90</u>

Cases closed in Fiscal Year 1981, by category:

AIR	6
BILLBOARDS	22
HAZARDOUS WASTE	6
SOLID WASTE	25
WATER	37
WETLANDS ENFORCEMENT	14
WETLANDS RESTRICTION	30
MISCELLANEOUS	<u>29</u>
TOTAL	<u>169</u>

HOUSING AND ARSON PREVENTION UNIT

A. INTRODUCTION

The Housing and Arson Prevention Unit, which operates as part of the Attorney General's Comprehensive Arson Prevention and Enforcement System (CAPES), continued the work initiated when the program began in early 1980. The program concentrated on identifying buildings in the Greater Boston Area which showed symptoms of possible arson situations. By working jointly with Urban Educational Systems, a neighborhood consultant group, the CAPES unit identified and targeted over one hundred buildings which were either vacant, abandoned, or in extreme disrepair. Since these buildings with these characteristics are potential arson targets, the Unit would contact one or perhaps several municipal agencies. These included the Fire Department, Housing Inspection Department, Building Department, Collector Treasurer, and Boston Redevelopment Authority, in addition to various state agencies. There were several instances where the owner of a building was contacted to discuss the problems which existed in his building. If a building was found to be several years behind in property tax payments, the address was forwarded to the Collector-Treasurer's office for expedited foreclosure proceedings. This process would be monitored by periodic checks at the Land Court to ensure a speedy foreclosure process. Finally, arrangements were made with the Massachusetts Government Land Bank Program to facilitate the rehabilitation of vacant buildings which had been the subject of litigation.

LITIGATION

Commonwealth v. Longfellow Management

This suit was filed against Longfellow Management Company and Frederic W. Rust III for unfair and deceptive practices in misrepresenting to the tenants of a building that the building had been condemned and therefore that they had to vacate their apartment units. The building had just suffered a fire and was soon converted into condominiums. The suit sought to enjoin the condominium conversion and force the building to be kept open as apartments for one year, in compliance with the Boston Condominium Ordinance. A consent judgment was entered whereby the defendants are to keep seventeen of the apartments open for a period of fifteen months. In addition, all tenants who were forced to vacate the premises are to receive relocation expenses from the defendant's insurer.

*PENDING LITIGATION**Commonwealth v. Carista**Commwealth v. Second Realty**Commonwealth v. Sarah Cutler***INSURANCE DIVISION**

During 1980-1981, the Insurance Division operated with legal staff including three attorneys, three investigators and one secretary. The efforts of the Division were concentrated primarily on automobile and group health insurance. In addition to the Division's intervention in various administrative rate proceedings, staff attorneys initiated a number of actions under chapter 93A.

Chapter 93A Cases: The attorneys within the Division have recovered funds in the range of \$50,000 in each of several cases involving the failure of self insurance plans, the improper cancellation of several hundred automobile motorists, the failure of a large manufacturer to provide a continuation of insurance to approximately 500 laid-off workers and the removal of an improperly authorized medicare insurance product from the marketplace.

Rate Proceedings: The Division, as in the past, intervened in the hearings to fix and establish the 1981 auto insurance rates. The hearings, which took place over 13 days, resulted in a rate increase of 7% rather than the 24% requested by the industry. The staff also took an active role in hearings remanded to the Commissioner pursuant to the decision of the Supreme Judicial Court concerning 1980 rate levels.

In the area of health insurance, the Insurance Division participated in several Blue Cross/Blue Shield rate hearings. Recently, in the instance of a proposed increase in non-group rates, the Division was successful in indefinitely postponing the hearing by pointing out the failure of Blue Cross to comply with procedural guidelines.

INSURANCE CASES UNDER CHAPTER 93A

<i>CASE NAME</i>	<i>DISPOSITION</i>	<i>RESTITUTION</i>	<i>SECURITY</i>
<i>Commonwealth v. Cooke and Currie, et al.,</i>	In Litigation		
<i>Commonwealth v. Miles Chrysler</i>	Consent Judgment	\$20,000	\$10,000
<i>Commonwealth v. Calianos</i>	In Litigation		
<i>Commonwealth v. Cross Country Motor Club, Inc.</i>		\$25,000	
<i>Commonwealth v. TKO</i>	Consent Judgment		
<i>Commonwealth v. Marquis, et al.</i>	In Litigation		
<i>Commonwealth v. Amer Income Life Insurance</i>	In Litigation		
<i>Commonwealth v. Scribner</i>	In Litigation		

<i>In re: The Word Guild</i>	<i>In Litigation</i>
<i>In re: American Veterans Group Insurance Trust</i>	<i>Settled</i>
<i>Commonwealth v. Light-house Insurance Agency</i>	<i>Settled</i>

PUBLIC CHARITIES DIVISION

The Division of Public Charities, established by the Attorney General pursuant to G.L. c. 12, §8B, is one of seven divisions in the Public Protection Bureau. It performs a number of functions which protect the public generally from misapplication of charitable funds and from fraudulent or deceptive solicitations. These functions range from monitoring the filing of annual financial reports by charitable institutions, to maintenance of public viewing files, to enforcement of charitable registration statutes and the due application of charitable funds.

I. LITIGATION

Major enforcement efforts have been undertaken in the following areas:

Failure to Register - Cases Filed

<i>Defendant</i>	<i>Status/Disposition</i>
Barnstable County Agricultural Society	Consent Judgment
Berkshire County Fair Association	Consent Judgment
East West Foundation, Inc.	Consent Judgment
Fenway Community Health Center, Inc.	Consent Judgment
Franklin County Assoc. for Retarded Citizens, Inc.	Consent Judgment
Massachusetts Assoc. of Alcoholism Recovery Homes, Inc.	Consent Judgment
Northern Berkshire Mental Health Assoc.	Consent Judgment
Peoples Church Home, Inc.	Consent Judgment
Piedmont Citizens for Action, Inc.	Consent Judgment
Scituate Police Relief Association	Consent Judgment
The Communication Theatre Group, Inc.	Open
Westfield Fair Association	Consent Judgment

Failure to File Audited Financial Statements

<i>Defendant</i>	<i>Status/Disposition</i>
Arts Council of Franklin County	Consent Judgment
Barnstable Agricultural Society	Consent Judgment
Berkshire County Fair	Consent Judgment
Brockton Agricultural Society	Open
Columbia Point Alcoholism Project, Inc.	Consent Judgment
Fenway Community Health Center, Inc.	Consent Judgment
Harvard Street Neighborhood Health Center, Inc.	Consent Judgment
Independent Living for The Adult Retarded, Inc.	Consent Judgment
Language and Cognitive Center, Inc.	Consent Judgment
League School of Boston, Inc.	Consent Judgment
Marshfield Agricultural & Horticultural Society	Consent Judgment

Middleborough Agricultural Society	Open
New England Fellowship for Rehabilitation Alternatives, Inc.	Consent Judgment
Northern Educational Service, Inc.	Consent Judgment
Sharon Agricultural & Industrial Association, Inc.	Open
South Berkshire Community Arts Council, Inc.	Consent Judgment
South Central Massachusetts Elderbus, Inc.	Dismissed
The Institute for Community Economics, Inc.	Consent Judgment
The Urban Medical Group, Inc.	Consent Judgment
Westfield Fair Association	Consent Judgment
Weymouth Agricultural Society	Open

Dissolutions

A. The Attorney General during this fiscal year is in the process of investigating various inactive charities which have no assets and whose dissolution would be in the public interest. It is expected that approximately sixty charitable organizations will be dissolved in the first quarter of the next fiscal year.

B. In addition, organizations may dissolve voluntarily by filing an action against the Attorney General. While the division assents to most dissolutions, it is necessary in each case to be sure that there has been a proper disposition of charitable assets. During the past year the division has been involved in the following dissolutions:

<i>NAME</i>	<i>STATUS</i>
Berkshire Medical Center, Inc.	Open
Congregational Church of Chicopee Falls	Closed
Oliver Ditson Society for Relief of Needy Musicians	Closed
Energy Conservation Research Institution, Inc.	Closed
First Church of Christ Scientist	Closed
Foundation of Total Peace	Open
Groupways, Inc.	Open
Haemonetics Research Institute, Inc.	Closed
Health Fair of Greater New Bedford, Inc.	Closed
Merrimack Valley Council on the Arts & Humanities	Closed
Michah Foundation	Open
Mountain Rest, Inc.	Closed
Perriwinkle Nursery School	Open
Resource Planning Institute	Closed
Unitarian Universalist Association	Open
War Chest Fund Commission	Open
Wellesley Hospital Fund	Open
Worcester Academy for Girls	Closed

C. In addition to these matters, the Attorney General sued to dissolve the Peregrine White Sanctuary, Inc. in *Bellotti v. Peregrine White Sanctuary, Inc.* This matter arose from a probate proceeding in which it was discovered this previously inactive charitable corporation was entitled to \$23,000 of life insurance proceeds. The division sought to have these proceeds transferred to

the Department of Environmental Management for the improvement and beautification of the Ames Nowell State Park. The Ames Nowell State Park had been created by a gift from Peregrine White in 1955. On May 29, 1981, the Supreme Judicial Court approved the transfer of funds to the Department of Environmental Management and dissolved Peregrine White Sanctuary, Inc.

Las Vegas Nights

The Attorney General undertook a major enforcement program in the area of Las Vegas Nights held by charitable institutions. Charitable organizations are allowed by law to use Las Vegas Nights for fund-raising purposes if the organizations exclusively operate the games and the proceeds exclusively benefit the charity. Several months of investigation developed nine cases where it was found that certain suppliers of Las Vegas type gambling equipment promoted, conducted and operated the Las Vegas Nights. Pursuant to this investigation, civil suits were filed against the nine suppliers of Las Vegas type gambling equipment:

<i>Defendant</i>	<i>Status/Disposition</i>
Leo F. Johnson	Consent Judgment
Alfred R. Meurant d/b/a Vegas Time Associates	Consent Judgment
Aubrey Cole, James Spencer and Robert Pugliese d/b/a Arlington Las Vegas Knights	Consent Judgment
Richard Pacifico and Gail Pacifico d/b/a Authentic Las Vegas Equipment & Consulting Company	Consent Judgment
Paul Ryan & Paul Ryan Productions, Inc.	Consent Judgment
Leonard Sacco d/b/a Las Vegas Limited	Consent Judgment
Anthony Saponaro d/b/a Casino Fun Time Assoc.	Consent Judgment
Joseph K. Sinnott d/b/a Las Vegas Knights	Consent Judgment
Leo Ferry and Joseph Cantrella d/b/a/ Las Vegas Enterprises	Consent Judgment

Ad Books

The Attorney General also took enforcement action in the area of deceptive charitable solicitation through ad book schemes. In this scheme, for-profit corporations approach charities seeking to produce an ad book for a particular charity's benefit. In exchange, the for-profit corporations receive a large percentage of the gross receipts (usually about 75 percent). Other operators produce ad books for fictitious charitable organizations in a locality. The Attorney General filed complaints against three such organizations, alleging deceptive or fraudulent solicitation, failure to register as a professional fund-raiser/solicitor and failure to fully disclose the facts of the solicitation. After protracted negotiations, consent judgments were filed in each of the three cases which carefully delineate between commercial advertising and charitable solicitation and require full disclosure of the facts of the ad campaigns. These consent judgments go on to enjoin each of the defendants from further violation of any Massachusetts charitable registration or solicitation laws. The defendants in these cases are listed below:

<i>Defendant</i>	<i>Status/Disposition</i>
Charles Manfredi	Consent Judgment
M & M Publications, Inc.	Consent Judgment
General Mass Marketing	Consent Judgment

Registration of Professional Solicitors and Fund-Raisers

Professional solicitors and fund-raisers are required by law to be registered with the division and to obtain a bond to protect the public against misapplication of funds. During the course of the last year, cases were brought against the following professional solicitors or fund-raisers for failure to comply with these requirements:

<i>Defendant</i>	<i>Status/Disposition</i>
Help Fund-Raising Association, Inc., Paul and William Solas d/b/a Cancer Patient Rehabilitative Services	Open
Richard E. Markiewicz	Consent Judgment
Leo E. Wesner d/b/a Leo E. Wesner Assoc.	Consent Judgement

DECEPTIVE SOLICITATION

The Attorney General is empowered by law to bring actions to enjoin deceptive solicitation. During the past year such actions were filed in the following cases:

<i>Defendant</i>	<i>Status/Disposition</i>
Boston's Firemen's Band, Inc.	Consent Judgment
Horizons For Youth, Inc.	Assurance of Discontinuance
Steven Parker d/b/a Eastern Service Workers Association	Consent Judgment

Civil Investigative Demand

During the prior fiscal year the charitable registration and reporting statute was substantially altered. One significant addition was G.L. c. 12, §8H, which allows the Attorney General to issue civil investigative demands upon approval of the trial court. During this fiscal year the civil investigative demand power was utilized in the following cases:

The New Assembly of Saint Cecelia, Inc.	Open
Leo C. Wesner Associates	Consent Judgment

Compulsory Accounting and Record-Keeping

Pursuant to the revised registration and reporting statute, the Attorney General in G.L. c. 12, §8L was also given authority to demand the records of charitable organizations for audit purposes. This particular statute also compels charities to maintain such fiscal records as will enable the charity to comply with the financial disclosure requirements of G.L. c. 12, §8F. Pursuant to this statute the Attorney General in the past fiscal year brought actions against the following defendants for failure to maintain proper records and for failure to account for the charitable funds in the defendant's care:

Joan Callaghan et. al.	Preliminary Injunction/Open
Communications Theatre Group, Inc.	Preliminary Injunction/Open
Help-Fund Raising Association, Inc. Paul and William Solas d/b/a Cancer Patient Rehabilitative Services	Open

Probate Actions

The Attorney General is required by law to be named as a defendant in any legal action involving charitable interests. Many wills and trusts involve such

actions. Accordingly, the Attorney General is named in approximately 250 probate court actions per year. The more unusual or significant of these are set forth below.

Boston Bar Association v. Attorney General

Entry of final judgment in Cy Pres action for the benefit of the Boston Bar Association.

Bellotti v. Benjamin Freeman

Filed eight complaints for contempt against Benjamin Freeman for failure to obey a court order requiring him to render accounts of his administration of eight estates under his care.

Estate of Barbara Livermore

Entry of final judgment resulted in charities taking 70 percent of the amount in issue. The charities, in defending against an "undue influence" amendment to a will, received over \$300,000 for their efforts. The Division was instrumental in persuading the charities to insist on a settlement at this level.

Chase v. Pevear

The trustee of a trust with a charitable remainderman appealed a judgment of the Probate Court. The judgment surcharged the trustee for making imprudent investments, for improper allocation of fees and for excessive administration costs. In addition, the probate court ordered the trustee personally to pay counsel fees for other parties involved.

On appeal, the Supreme Judicial Court reviewed the prudent man rule as set forth in *Harvard College v. Amory* and overturned most of the charges for imprudent investments imposed by the lower court. The Supreme Judicial Court held that counsel fees were to be paid from the trust and remanded the case to the probate court for a determination of the amount of such fees.

Kaswell v. Brandeis University

This matter involves interpretation of a handwritten will of a physician who wrote his will without the benefit of legal advice. At issue is a \$25,000 bequest which may result in the establishment of a scholarship fund.

Luise v. Horgan et al

Trustees of a scholarship fund for medical students failed to file accountings of their administration of the fund. Pursuant to a court order obtained by the Attorney General, accountings were filed. The accountings indicate that the trustees have used improper practices in dealing with the trust funds and failed to properly carry out the terms of the trust. Negotiations are ongoing for repayment of funds by the trustees to the trust.

Miscellaneous

Blue Cross Non-Group Rate Hearing

The Division intervened in a hearing before the state Division of Insurance in October concerning a proposed rate increase sought by Blue Cross and Blue Shield of Massachusetts for their non-group subscribers. The hearing concluded after four days with an agreement with Blue Cross that they would settle for

a zero increase in non-group Blue Cross rates. Savings to Massachusetts non-group subscribers totalled approximately \$1 million.

Hearings of the Rate Setting Commission - Blue Cross/Hospital Contract

The Division also participated in hearings by the Massachusetts Rate Setting Commission concerning the approval of a contract between Blue Cross of Massachusetts and the state's 139 acute-care hospitals. Testimony prepared by the Division opposed approval of the contract because it did nothing to restructure a wasteful system of hospital reimbursements. Blue Cross and the hospitals subsequently agreed upon a revised contract which substantially changed reimbursement methodology.

Bellotti v. Survival, Inc.

A complaint and consent judgment were filed enjoining defendant from failing to timely file for real estate tax abatement.

In Re: General Lawton Post of Civil War Veterans Association

A petition was filed in Suffolk Superior Court on behalf of the Attorney General's office which sought to apply for similar charitable purposes the newly-discovered assets of a previously dissolved public charity. The Superior Court ordered the funds seized and distributed in equal amounts to the Holyoke Soldier's Home and Quigley Memorial Hospital for the purpose of obtaining video equipment to aid in the counseling of veterans at these institutions.

Bellotti v. Dimock Community Health Center

The Division obtained a temporary receiver for the Dimock Community Health Center to continue Center operations and preserve the Center's \$1 million dollar endowment.

In Re: Guardianship

A brief, proposed findings of act, proposed rulings of law and proposed order were filed in this case involving a seventy-three year old psychotic woman who had refused treatment of a suspected cancerous breast lump.

Bellotti v. Sylvester et al.

A consent judgment was filed in this action regarding surcharge and removal of a trustee for improper trustee actions. The charitable assets were transferred to a non-profit corporation in accordance with the original trust's terms.

Bellotti v. Stewart et al.

A consent judgment was entered against the present and former officers of the Scituate Police Relief Association regarding record-keeping and compliance with the Massachusetts statutes regulating charitable solicitation and financial reporting.

Bellotti v. Samuels et al.

Complaint filed against the trustees of the Knights of Pythias Relief Fund for imprudent investment of \$450,000 of charitable assets in a mortgage which primarily benefits the Knights of Pythias rather than the charitable beneficiaries. Complaint seeks to surcharge the trustees for losses and to remove said trustees.

INVESTIGATIONS

During the past fiscal year, the Division completed seventeen field audits. Four of these have resulted in enforcement actions. In addition, a number of investigations are pending.

II. ROUTINE FUNCTIONS

The Division has numerous administrative and routine responsibilities including:

- 1.) Receiving annual financial statements from nearly 12,000 charities operating in Massachusetts and maintaining these as public records;
- 2.) Administering the state's charitable solicitation act (G.L. c. 68, §§18-33);
- 3.) Registering and regulating professional solicitors and professional fund-raising counsel;
- 4.) Representing the Attorney General in the probate of estates in which there is a charitable interest; and
- 5.) Representing the State Treasurer in the public administration of estates escheating to the Commonwealth.

Annual Registrations Under G.L. c. 12, §8F

During the period from July 1, 1980 to June 30, 1981, the charitable registrations were processed as follows:

FORM PC - \$25.00 Fee	6028	\$150,700
FORM PC - \$15.00 Fee	<u>325</u>	<u>\$ 4,875</u>
	6353	\$155,575

Review of these registrations resulted in nearly 1500 individual requests for further information or additional fees.

During the past fiscal year, the Division made minor modifications in the form PC which is used in these registrations. The form now contains an expanded Investment Schedule and is simpler to fill out, process and review. The form is designed to be used in conjunction with the new federal IRS 990 and the combination of these two forms will provide the Division and the public with adequate financial disclosure.

Regulation of Charitable Solicitations

Under G.L. c. 68, §19, every charitable organization soliciting funds from the public must apply to the division for a Certificate of Registration. Each such application must be reviewed for compliance with the statutory requirements. For the period from July 1, 1980 to June 30, 1981, 1217 applications were processed. Certificate fees received were \$12,170.

Registration of Professional Solicitors and Fund-Raising Counsel

Under G.L. c. 68, §§21 and 23 all persons acting as solicitors or fund-raising counsel for soliciting organizations must register with the Division and file a bond. Each registration and each professional solicitation contract must be approved by the Director if it meets statutory requirements. During the fiscal year ending June 30, 1981, thirty-nine registrations were received and approved and total fees were \$390.

Participation in Estates With Charitable Interests

The Attorney General is an interested party in the probate of any estate in which there is a charitable interest. This year 1309 new wills were received. Each of these wills was reviewed and it was determined that the Attorney General had an interest in 704 of these estates.

Probate accounts were reviewed and approved as follows:

Executor Accounts	854
Administrator Accounts	37
Trustee Accounts	<u>2341</u>
Total	3232

In addition, the Division approved 83 petitions for the sale of real estate and 25 petitions for appointment of trustees and was involved in 110 miscellaneous probate legal actions.

The Division has continued its efforts to review old probate matters in order to close files where no further action is required and to investigate estates and trusts where additional accountings are required but have not been received by the Division. In the fiscal year ended June 30, 1981, 2900 estates were reviewed and closed. At the completion of this effort only active cases will remain in the files and as a result the monitoring of such cases by the Division will be more effective.

Public Administration

The Division represents the State Treasurer in the public administration of interstate estates where the decedent had no heirs. Such estates escheat to the Commonwealth. The following table represents activity in this area.

New Estates	125
Estates Closed	182
With Escheat	70
Without Escheat	112
Total Amount of Escheats Received	\$364,450

In addition, actions were filed against four Public Administrators as follows:

Bellotti v. Donald R. Kelly

Filed four (4) complaints for contempt against Donald R. Kelly for failure to obey a court order requiring him to render accounts of his administration of four public administration estates under his care.

Bellotti v. John Douglas Cummings

Filed two (2) petitions with the Probate Court against John Douglas Cummings to render an Inventory and Accounting of his administration of two public administration estates under his care.

Bellotti v. William L. Mahoney, Jr.

Filed a petition with the Probate Court against William L. Mahoney, Jr. to render an Inventory and Accounting of his administration of one public administration estate under his care.

Bellotti v. William J. Kittredge

Filed a petition with the Probate Court against William J. Kittredge to render an Inventory and Accounting of his administration of one public administration estate under his care.

UTILITIES DIVISION

Pursuant to Massachusetts General Laws, Chapter 12, Section 11E, the Attorney General is "authorized to intervene in administrative and judicial proceedings held in the Commonwealth on behalf of any group of consumers in connection with any matter involving the rates, charges, prices or tariffs of an electric, gas, telephone or telegraph company doing business in the Commonwealth and subject to the jurisdiction of the Department of Public Utilities." During the 1981 fiscal year a statutory budget of \$250,000 was provided which was used by the Division to act on behalf of consumers pursuant to Section 11E. Under authority conferred by other statutes or the common law, the Division has participated in utility related matters outside the Commonwealth.

As of the end of fiscal 1981, the Utilities Division consisted of six attorneys, one utility rate analyst, two secretaries and one administrative assistant. A summary of the cases handled by the Division is set forth below.

RATE CASES

During the fiscal year, the Utilities Division intervened in each of the thirteen gas, electric and telephone company rate cases filed with or decided by the D.P.U. during the year. In the seven matters decided during the fiscal year, \$322,771,000 in permanent rate increases was requested and \$151,842,000 was awarded by the D.P.U. The decisions of the Department to award less than the amounts requested are based in large part upon the record developed by the Division and the specific recommendations advanced in briefs. The discovery preparation, adjudication and briefing for each case all takes place within a 4-5 month portion of the D.P.U.'s 6 month suspension period. Individual rate case hearings may take anywhere from 3 to 30 days depending upon the number or complexity of the issues involved. The following charts set forth the status or outcome of the rates cases in which the Utilities Division was involved during the fiscal year.

FUEL CLAUSE HEARINGS

The Division has continued to intervene in electric fuel clause proceedings. During the fiscal year the Division participated in the quarterly fuel adjustment hearings of each electric company. The burden of rate cases, the short notice of fuel clause proceedings, and the need for the D.P.U. to decide such cases expeditiously has limited the ability of the Division to seriously contest many of the fuel clause filings. As a result of evidence presented in these proceedings, the D.P.U. is requiring utilities to pro-rate fuel adjustment charges when billing for more than one billing month. We testified on behalf of legislation which would give the D.P.U. greater authority to review fuel adjustment charges and disallow recovery of imprudently incurred costs and provide additional funding to the Attorney General for consumer representation.

TELECOMMUNICATIONS

During the fiscal year, the Division intervened in a major telecommunications rate case. In September of 1980, New England Telephone and Telegraph Company filed for a \$37 million interim rate increase and filed for a \$172 million permanent rate increase. The D.P.U. awarded \$121 million on an interim basis, but reduced the amount to \$12.1 million based upon adjustments suggested by the Division on reconsideration. In April, 1981, a permanent rate increase of \$56,065,000 was allowed. The majority of the Division's revenue adjustments were accepted by the D.P.U. Following the Division's recommendation, the D.P.U. rejected increases in pay phone rates and service and installation charges. The case was staffed by four attorneys. The Company presented nineteen witnesses and commercial intervenors presented several witnesses. The Division budget did not permit the hiring of any expert witnesses.

ELECTRIC UTILITY RATE DESIGN MATTERS

The Utilities Division has intervened in three adjudicatory proceedings before the D.P.U. which involve the question whether to adopt various ratemaking standards which must be considered by State regulatory agencies under the terms of the Public Utility Regulatory Policies Act (P.L. 78-617). These matters involve Boston Edison Company, Massachusetts Electric Company and Western Massachusetts Electric Company. The outcome of these proceedings will have a significant impact upon the cost of electricity to consumers, since electric rates in the near future may depend upon time of use of electricity or the way that utilities are permitted to allocate rate increases among residential, commercial and industrial customers. The work of our utility rate analysts has been very valuable here.

ENERGY FACILITIES SITING COUNCIL MATTERS

The Division continued its intervention in E.F.S.C. proceedings reviewing electric utility company long range energy and demand forecast. The work of the Division's utility rate analysts has also been invaluable here. E.F.S.C. forecasts are used by electric companies to justify the need for future construction of energy facilities such as power plants and transmission lines. During the fiscal year the following electric forecast matters in which the Division intervened were decided as follows:

NEGEA	forecast rejected
MMWEC	forecast conditionally approved
BECO	hearings not yet completed
NU	undecided
EUA	forecast conditionally approved

The Division was also involved in several gas utility forecasts to insure the adequacy of gas supplies to meet projected sendout requirements.

MISCELLANEOUS MATTERS

The Division has been involved in extensive hearings before the D.P.U. regarding the causes of the 1980-1981 winter gas shortage in Massachusetts (D.P.U. 555). It has also urged the D.P.U. to adopt regulations regarding profits from interruptible gas sales and submitted comments thereon.

The Division has been involved in D.P.U. rule makings regarding billing and termination practices, PURPA advertising guidelines, small power producer rates, home energy audit charges and AFUDC accounting. It participated in D.P.U. hearings involving the restructuring of Colonial Gas Energy System as well as other individual utility requests for authority to issue securities.

At the Federal level the Division represented the interests of Massachusetts in *Maryland v. Louisiana*, in which we succeeded in invalidating a Louisiana tax on Outer Continental Shelf Natural gas which was costing Massachusetts consumers about \$8 million per year. The Division has been participating in wholesale electric cases involving New England Power Company and Montaup Electric Company, each of which sell power to retail affiliates. It has also taken an active informal role in the review of coal conversion financing plans filed at FERC by Northeast Utilities and New England Power Company.

The Division has been involved in the Attorney General's Chapter 93A action against Cape Cod and Lowell Gas Companies. In April, 1981, summary judgment issued and the companies were found liable for unfair and deceptive practices and common law fraud.

The Division was also involved in two separate proceedings before the D.P.U. regarding the purchases of additional shares of Seabrook Units 1 and 2 by Massachusetts Municipal Wholesale Electric Company (MMWEC) and by 3 private electric companies, Montaup Electric Company, Fitchburg Gas and Electric Company, and New Bedford Gas and Edison Light Company. The Division took the position that these purchases were not in the public interest. The D.P.U. approved the acquisition of shares from Public Service of New Hampshire by MMWEC and by the three private companies, and Fitchburg's acquisition of shares from Connecticut Light and Power Company, but the D.P.U. disallowed Montaup's acquisitions of shares from Connecticut Light and Power Company and United Illuminating Company.

CONCLUSION

During the 1981 fiscal year, the Utilities Division continued to serve as the major, and in most cases the only advocate of consumer interests in utility rate cases and related matters. The burden placed upon division personnel increased greatly due to staff limitations, the absence of any D.P.U. staff intervention in all but one rate case and the increase in the number and complexity of rate cases in a highly inflationary year. Lack of resources has prevented the Division from hiring expert witnesses and sponsoring a direct case in opposition to portions of utility rate increase requests. The present budgetary outlook suggests that the Division can no longer engage such witnesses. A substantial effort must be mounted to increase the size of the statutory assessment, established in 1973. The record of the Division's past activities show that an increase in resources will return large benefits to consumers in the form of lower rates.

*RATE CASES FILED, HEARD AND/OR DECIDED DURING FISCAL YEAR 1981
BEFORE THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES*

<i>D.P.U. Docket #</i>	<i>Company</i>	<i>Date Filed</i>	<i>Amount of Increase Requested</i>	<i>Decision Date</i>	<i>Amount Granted By D.P.U. \$</i>	<i>% Granted Of Amount Requested</i>	<i>Appeal, Comment and Precedent</i>
155	Haverhill Gas	3/80	\$ 1,128,000	9/80	\$ 756,000	67%	
160	Boston Edison	3/80	68,900,000	9/80	31,700,000	46%	
160A	Boston Edison	10/80		10/80	5,812,000	+	- reconsideration - Company rec'd additional \$5,812,000 due to D.P.U. miscalculation.
160B	Boston Edison	10/80		2/81	5,167,000	+	- reconsideration due to property taxes - D.P.U. granted \$5,167,000 additional increase. - D.P.U. applied year end rate with new standard.
192	Blackstone Gas	4/80	83,550	11/80	51,780	62%	only 485 residential customers.
192A	Blackstone Gas				- 4,726	-	- Attorney General moved for recon- sideration which resulted in bottom line increase of \$47,054
192B	Blackstone Gas				- 18,145	-	- Attorney General moved for further reconsideration which resulted in new docket D.P.U. 511, the result of which was a refund to consumers of \$18,145 plus \$10,813 in interest or about \$60 to each customer
					42,679,000	62%	
					28,909	35%	

*RATE CASES FILED, HEARD AND/OR DECIDED DURING FISCAL YEAR 1981
BEFORE THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES*

<i>D.P.U. Docket #</i>	<i>Company</i>	<i>Date Filed</i>	<i>Amount of Increase Requested</i>	<i>Decision Date</i>	<i>Amount Granted By D.P.U.</i>	<i>% Granted Of Amount Requested</i>	<i>Appeal, Comment and Precedent</i>
200	Massachusetts Electric	4/80	33,000,000	10/80	16,944,500	51%	D.P.U. allowed inflation adjustment
243	Eastern Edison	5/80	9,550,667	11/80	5,380,000	57%	
380 (Interim)	New England Telephone	9/80	37,000,000	11/80	11,199,849	30%	D.P.U. adopted an interim relief standard different from the emergen- cy standard which makes interim relief in some amount almost automatic
411		9/80	172,000,000	4/81	51,529,000	30%	
411A		9/80		4/81	4,536,000	+	- reconsideration due to D.P.U. error - Company rec'd \$4,536,000
					<hr/> 56,065,000	33%	
490	Cambridge Electric	11/80	1,108,000	3/81	1,108,000	100%	based solely on 1980 property increase
557 (Interim)	Western Massachusetts Electric	1/81	17,310,000	4/81	5,000,000	29%	A.G. recommended "0" increase
558		1/81	42,168,000				A.G. recommended an increase of \$17,355,000 - briefed July 8, no decision yet.
614	North Attleboro Gas	2/81	197,354				

RATE CASES FILED, HEARD AND/OR DECIDED DURING FISCAL YEAR 1981
BEFORE THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

D.P.U. Docket #	Company	Date Filed	Amount of Increase Requested	Decision Date	Amount Granted By D.P.U.	% Granted Of Amount Requested	Appeal, Comment and Precedent
631 (Interim)	North Attleboro Gas	2/81	1,000,000	5/81	47,869	48%	A.G. moved to disallow collected of interim revenues by adjustment of gas adjustment factor (denied)
635 (Interim)	Lowell Gas	3/81	197,354				Pending
637	Lowell Gas	3/81	1,024,826				
636 (Interim)	Cape Cod Gas	3/81	4,447,873				Pending
638	Cape Cod Gas	3/81	680,887				Pending
701 (Interim)	Nantucket Electric	5/81	3,783,361				Pending - A.G. opposes interim re- lief as no emergency is evident
702	Nantucket Electric	5/81	260,627				Public hearing held on 7/9/81 at which A.G. strongly supported de- velopment of alternative energy re- sources - especially wind power.
750	Fall River Gas	6/81	389,196				Pending
			3,050,000				

SPRINGFIELD OFFICE

The Springfield Office of the Department of the Attorney General continues to be responsible for matters of concern to the Department of the Attorney General in the four Western Counties: Hampden, Hampshire, Franklin and Berkshire. As in the past, the primary function of the office has been to handle division referrals and requests for assistance from Boston. Only consumer protection matters originate in the Springfield Office.

In addition to the usual types of cases referred by the various Boston divisions during the fiscal year, the Springfield Office began handling Department of Employment Security criminal prosecutions relating to recipient fraud, Chapter 123A, §§9 discharge hearings, and Industrial Accident Board claims hearings in the four western counties.

The following represents, by bureau and division, the cases assigned to the Springfield Office:

<i>CIVIL BUREAU</i>	<i>Assigned</i>	<i>Closed</i>	<i>Pending</i>
Collection	11	5	6
Contracts	1	0	1
Eminent Domain	2	0	2
Victim of			
Violent Crime	31	12	19
Torts	25	14	11
Industrial Accidents	12	9	3

CRIMINAL BUREAU

Chapter 123A			
Section 9 hearings	7	2	5
Employment Security	8	6	2
Medicaid Fraud			
Investigations	22	2	20

GOVERNMENT BUREAU

Defense of State Agencies	14	3	11
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PUBLIC PROTECTION BUREAU

Consumer Protection	19	7	12
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In addition to the above cases, attorneys in the Springfield Office responded to 73 requests to make court appearances on behalf of the various divisions in Boston. These court appearances ranged from answering calls of the trial list to filing various pleadings and/or arguing various motions before the court.

At times such as above, attorneys from the Springfield Office will appear in court on a particular assignment but will not handle the entire case. During the course of the year over 150 hours were spent in court on such matters. The ability of the Springfield Office to respond to these requests on short notice contributes to the efficiency of the Department as a whole because of the savings that result from not having to send an attorney from the Boston Office out each time on such matters.

The Springfield Office also supplies personnel to the Board of Appeal on Motor Vehicle Liability Policies and Bonds which meets monthly.

The Consumer Protection section of the Springfield Office continued to actively pursue enforcement of the consumer protection statutes and regulations. Additionally, the office provides assistance and information to the local consumer groups in the four western counties and aids individual consumers where no local consumer groups exist. In FY '81 the office handled 179 such complaints resulting in savings to consumers of \$22,553.72.

Investigators assigned to the consumer protection section conducted numerous investigations of firms or individuals suspected of unfair and deceptive trade or business practices. The investigations covered a wide range of businesses including automobile sales and service, career schools, health spas, swimming pool sales, consumer savings booklets, business franchise sales, home improvement contractors and advertisers.

One of the major areas of concern for the Springfield Office in the consumer protection area was that of odometer turnbacks. The office conducted reviews of the records of 21 new car dealerships and 20 used car dealerships throughout the four western counties. The investigations entailed a review of dealer record books, odometer statements, warranties and follow-up with the consumer who purchased the automobile. Currently, the results of those investigations are being analyzed for a determination of the type of action to be taken against the dealerships we find to be in violation of the law.

The Consumer Protection section took action in two separate cases involving home improvement firms. In the first instance, complaints were received against a home improvement firm which installed vinyl insulated windows. The complaints generally involved failure to deliver, shoddy workmanship, failure to honor warranty, and failure to refund deposits. After an investigation a consent judgment was entered into whereby the firm agreed to deliver the goods in a timely fashion, repair or replace defective materials and refund money to over 50 consumers for a value of \$23,000.00. The second case involved a siding contractor. In this instance, complaints were received regarding poor workmanship and failure to perform specified work. Difficulty was encountered in locating the principals of the siding firm. A number of consumers affected had received loans from the same bank. The bank had a continuing relationship with the siding company, thus, never having holder in due course status. Through negotiations with the bank we were able to have a total of \$27,409 deducted from the outstanding loans to consumers.

The Springfield Office conducted a public hearing relative to proposed changes in the landlord-tenant regulations dealing with utility escalation clauses and gave testimony on behalf of the Attorney General at two Department of Public Utilities hearings held in the area. Additionally, personnel from the consumer protection section fulfilled speaking engagements for numerous groups.

The Medicaid Fraud investigators were assigned 22 separate cases involving suspected fraud or patient abuse. One investigation resulted in the indictment of a pharmacist for larceny. Another investigation involved patient abuse and resulted in the revocation of the license of a licensed practical nurse.

During the fiscal year, the Springfield Office has continued to provide a high level of service to the various divisions of the Department of the Attorney General and the citizens of western Massachusetts.

Number 1

July 21, 1980

David M. Marchand
Personnel Administrator
Division of Personnel Administration
One Ashburton Place
Boston, MA 02108

Dear Mr. Marchand:

You have requested my opinion whether disabled veterans must be accorded any preference when civil service employees are laid off due to lack of funding and whether my predecessor's opinion on this question, issued in 1936, is still valid in light of subsequent amendments to the pertinent statutes.¹ You have requested this opinion because several municipalities have asked you which employees must be laid off first due to lack of funds.

For the reasons discussed below, it is my opinion that when employees must be laid off due to lack of funding, disabled veterans should be laid off last.

In 1930, one of my predecessors issued an opinion on precisely this question, concluding that "a disabled veteran who has been given a position in the classified service . . . [is] entitled to preference in being retained at work, when, through lack of work or other cause, it is necessary to suspend some one in the class." 1930 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 69, 70 (1930). His conclusion was based on his interpretation of the veterans' preference statute in effect at that time, which provided that "[a] disabled veteran shall be appointed and employed in preference to all other persons, including veterans." St. 1922, c. 463, formerly codified at G.L. c. 31, §23 (hereinafter, "former section 23"). In his opinion, the statutory term "employed" applied to continuation in employment, as well as to original selection, and, therefore, disabled veterans were entitled to a preference in being retained at work when temporary suspensions were necessary.

In 1935, the General Court enacted a statute providing that "[i]f the separation from service of persons in the classified service becomes necessary from lack of work because of the season, because of lack of appropriations, or from any other temporary cause, they shall be suspended and re-employed according to their seniority in the service." St. 1935, c. 408, formerly codified at G.L. c. 31, §46G (hereinafter, "former section 46G"). This statute was silent as to its effect upon the preference accorded to disabled veterans by former section 23.

One year later, in 1936, when asked for his opinion as to the joint effect of these two statutes, another of my predecessors concluded that the statutory

¹You have also asked whether disabled veterans should be accorded a preference in the event of future funding. Because of the hypothetical nature of this question, I decline to answer it at this time. See 1979-80 Op. Atty. Gen. No. 17, Rep. ATG, Pub. Doc. No. 12 at 1 (1980); 1 Op. Atty. Gen. at 273, 275 (1895).

provision concerning temporary suspensions and reinstatements was an exception to the preference generally accorded to disabled veterans. 1936 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 71, 72 (1936). In 1938, however, the General Court effectively overruled this opinion by adding the following sentence to former section 46G: "Nothing in this section shall . . . impair the preference provided for disabled veterans." St. 1938, c. 297. Moreover, by St. 1971, c. 1051, the legislature amended the veterans' preference statute to provide that "[a] disabled veteran shall be *retained* in employment in preference to all other persons" (Emphasis added).

Given the pertinent statutes as they presently appear,² it is no longer possible to infer, as my predecessor did in 1936, that by enacting section 39, the legislature intended to create an exception to the rule of preference for disabled veterans. Rather, now that the legislature has indicated that the provisions of section 39 are subject to the disabled veterans' preference provided by section 26, and section 26 expressly provides that "disabled veteran[s] shall be retained in employment in preference to all other persons," it is clear that if employees are laid off due to lack of funds, all employees having the same title in a particular departmental unit who are not disabled veterans must be laid off first according to seniority, followed by such employees who are disabled veterans according to seniority.

This is the same conclusion reached by my predecessor in 1930. 1930 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 69, 70 (1930). It is no longer necessary, however, to resort to statutory construction to reach this conclusion, since section 26, unlike former section 23, expressly applies to retention in employment.

In sum, it is my opinion that when employees must be laid off due to lack of funding, disabled veterans, according to seniority, should be laid off last.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 2

July 31, 1980

Mr. Bradley E. Gage
Chairman of the Board
Division of Fisheries and Wildlife
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Gage:

You have requested my opinion whether the Board of Fisheries and Wildlife

²General Laws chapter 31, section 39 (hereinafter, "section 39") presently provides in relevant part.

If permanent employees in positions having the same title in a departmental unit are to be separated from such positions because of lack of work or lack of money or abolition of positions, they shall, except as hereinafter provided, be separated from employment according to their seniority . . . and shall be reinstated . . . according to such seniority, so that employees senior in length of service . . . shall be retained the longest and reinstated first Nothing in this section shall impair the preference provided for disabled veterans by section twenty-six.

General Laws chapter 31, section 26 (hereinafter, "section 26") provides that "[a] disabled veteran shall be retained in employment in preference to all other persons, including veterans."

may, consistent with its governing statute, give blanket approval to the Division's Director to employ necessary personnel. General Laws chapter 21, section 7F, provides, in pertinent part, that:

The director of the division of fisheries and wildlife shall be appointed and may be removed by the board . . . and the position shall not be subject to the provisions of chapter 31. The director, subject to the approval of the . . . board, may appoint, without regard for the provisions of chapter 31, an assistant director for non-game and endangered species . . . The director with the approval of the board, may employ such experts, clerks, and other employees from time to time, and for such periods as he may determine to be necessary for its operations.

It is my understanding that your question concerns only those appointments made pursuant to the last sentence of G.L. c. 21, §7F, referring to the employment of "such experts, clerks, and other employees" as the director "may determine to be necessary" for the operation of the division.

After examining the statutory provisions governing the Division of Fisheries and Wildlife, I have concluded that the Board may not give the Director a blanket approval to make appointments specified in the last sentence of G.L. c. 21, §7F. Rather, the Board must actively approve or disapprove employment candidates as they are recommended by the Director. I base my conclusion both upon the statutory structure of G.L. c. 21, §§7, *et. seq.*, and upon the interrelationship between the Division's appointment process and other statutory procedures governing state employment.

On its face, General Laws chapter 21, section 7F, clearly contemplates that the Board will assume some oversight role in the course of hiring personnel for the Division: the director may, under G.L. c. 21, §7F, appoint necessary "experts, clerks, and other employees," but only with the "approval" of the Board. Moreover, the supervisory role contemplated in G.L. c. 21, §7F, is consistent with the language of G.L. c. 21, §7, which provides generally that "[t]he division of fisheries and wildlife . . . shall be under the supervision and control of the fisheries and wildlife board."

In determining the precise nature of the supervisory role intended in G.L. c. 21, §7F, it is significant that employees who are appointed pursuant to the last sentence of §7F are subject to civil service and other laws regulating the state's employment process. With respect to these appointments, state statutes limit such factors as: the amount of money to be expended for the employment of personnel;¹ the job titles available;² and the range of candidates from which the appointing authority may choose.³ The Board has no supervisory role in these areas. Indeed the only approval function remaining for the Board is one which may be exercised after the Director has recommended candidates from among the names certified by the Division of Personnel Administration.

¹See G.L. c. 29, §27, prohibiting employment of personnel by a state agency "unless an appropriation by the general court and an allotment by the governor, sufficient to cover the expenses thereof, shall have been made."

²See G.L. c. 30, §45, which provides, in pertinent part, that "the personnel administrator shall establish a uniform and fair current an office and position classification plan and a pay plan of the commonwealth."

³See G.L. c. 31, §6, requiring, *inter alia*, that each appointment to a civil service position be made "only after selection from an eligible list established as the result of a competitive examination."

In light of these considerations, were the Board to issue the Director a blanket approval on hiring, it would leave the reference by G.L. c. 21, §7F, to Board "approval" virtually meaningless and would dilute the supervisory authority contemplated by G.L. c. 21, §7. Board approval of the Director's appointments is affirmatively required by statute. The Board may not subvert this requirement by issuing a blanket approval in advance of the action to be taken, for to do so would constitute an impermissible delegation of the authority which the legislature has granted. *Cf. City of Boston v. Shaw*, 42 Mass. 130, 138-139 (1840); *Commonwealth v. Howes*, 32 Mass. 231, 233 (1834) (where a power and a means of executing the power are expressly set forth in a statute, the power can be exercised in no other way); 1976/77 Op. Atty. Gen. No. 22, Rep. A.G., Pub. Doc. No. 12 at 132, n.1 (1976) (re-delegation of a decision-making power conferred by statute is unlawful); 5 Op. Atty. Gen. at 628, 629 (1920) (public officer may not delegate affirmative duties imposed by statute to other individuals or agencies).

For all of these reasons, I conclude that the Board may not delegate its authority to approve appointments by granting its Director blanket authority to hire Division personnel. Rather, General Laws chapter 21, section 7F, requires the Board to consider the Director's recommendations and voice either its approval or disapproval in each case.

I understand from the materials which you have provided that the Director has made appointments over the years pursuant to votes of the Board which purport to authorize him to employ members of his staff without specific Board approval. I am of the opinion that these appointments have not been made in compliance with the statute and are not, therefore, valid. Until such time as these employees are validly appointed by a specific vote of the Board, they serve in a *de facto*, as opposed to a *de jure* capacity. 1979/80 Op. Atty. Gen. No. 4, Rep. A.G., Pub. Doc. No. 12 at (1979). The proper method of validating these appointments is a formal vote of approval by the Board on each of them.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 3

August 1, 1980

Robert E. Sheehan
Comptroller of the Commonwealth
One Ashburton Place
Boston, MA 02108

Dear Mr. Sheehan:

You have requested my opinion whether it is a violation of General Laws chapter 30, section 21, for an individual to receive payment for services rendered as an employee of an agency of the Commonwealth, when that individual is also being paid as an employee in the court system of the Commonwealth. Your question arises because the expenses of the judicial branch, including personnel costs, were formerly paid by the counties, but are

now paid by the Commonwealth pursuant to the Court Reform Act, G.L. c. 29A, §§1 *et seq.*, as added by St. 1978, c. 478, §12.1. Consequently, many individuals who formerly received one salary from the Commonwealth and a second from a county, now find themselves on two Commonwealth payrolls and potentially liable for violating G.L. c. 30, §21.

Although your request included a list of named employees currently receiving pay simultaneously from two separate state agencies, I must respectfully decline to make individual determinations based upon specific cases, since this necessarily involves determinations of facts, which the Attorney General has traditionally refrained from making. I do, however, conclude that it is a violation of G.L. c. 30, §21, for salaried employees of the Commonwealth who are also salaried employees in the judicial system to continue to receive two salaries. In addition, I take this opportunity to offer general guidelines to assist your office in reviewing potential violations of the statute prior to submitting them to me for enforcement.

Your inquiry in this regard requires a construction of G.L. c. 30, §21, which provides:

“A person shall not at the same time receive more than one salary from the treasury of the Commonwealth.”

In order to determine whether there has been a statutory violation, you must first ascertain whether the employee is receiving a “salary” or a “wage”. If the person receives compensation other than “salary”, neither G.L. c. 29, §31 (“salaries payable by the Commonwealth . . . shall be in full for all services rendered to the Commonwealth by the persons to whom they are paid.”), nor c. 30, §21, has any application. For this purpose, one of my predecessors in office has formulated the following test:

(Salary) is limited to compensation established on an annual or periodical basis and paid usually in installments, at stated intervals, upon the stipulated per annum compensation. It differs from the payment of a wage in that in the usual cases wages are established upon the basis of employment for a shorter term, usually by the day or week or on the so-called “piece work” basis and are more frequently subject to deductions for loss of time.

5 Op. Atty. Gen. at 699, 700 (1920).

If, as tested, the compensation is a “salary”, General Laws chapter 30, section 21, would prohibit the receipt of a second “salary” from the Commonwealth. 8 Op. Atty. Gen. at 604 (1929). This is true even though the work of the second office might be done outside the usual working hours of employment of the first office. 7 Op. Atty. Gen. at 330 (1924).

Additional compensation may be paid, however, provided that any of the following conditions are met:

1. The compensation to be paid is not a salary but is in the nature of “wages” for special services performed from time to time. 1961 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 91 (1961).

2. The services are rendered only occasionally. 1967/68 Op. Atty. Gen. at 33 (1967).

3. The services are performed outside the normal working hours of the

salaried personnel. 1955/56 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 43 (1955).

4. The services are not required to be performed as part of their salaried duties. 1967/68 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 33 (1967).

5. No other person is available to perform the services as part of regular duties. 5 Op. Atty. Gen. at 698-699 (1920).

I have reviewed the Court Reform Act and have found that it contains no express or implied exemption from the application of G.L. c. 30, §21, for county employees who became state employees as the result of its passage. St. 1978, c. 478. Accordingly it must be construed so as to operate consistently with G.L. c. 31, §21. *Commonwealth v. Hayes*, 372 Mass. 505, 512 (1977). Cf. *Colt v. Fradkin*, 361 Mass. 447, 349-50 (1972) (statute is not to be deemed to supersede a prior statute in whole or in part in the absence of express words to that effect or of clear implication). For this reason, you should continue to review the information available to you to determine whether two Commonwealth salaries are currently being paid to these employees.

In reviewing the cases that come to your attention, prior to referral to this office for enforcement pursuant to G.L. c. 30, §22, you should ascertain additional facts, as follows:

1. the scheduled working hours for the employee in each position;
2. whether the positions are full-time or part-time;
3. whether any of the payments involved is attributable to limited services provided to the Commonwealth at times when the employee is not required to be working at his other employment.

Any referral should contain a brief recitation of these facts.

In sum, it is my opinion that General Laws chapter 30, §21, as construed by my predecessors, applies to those individuals who are employed in the Commonwealth's court system who, prior to passage of the Court Reform Act in 1978, were county employees.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 4

August 4, 1980

Jacqueline D. O'Reilly, *Chairman*
Arts Lottery Council
Room 212M,
State House
Boston, MA 02133

Dear Chairman O'Reilly:

You have requested my opinion regarding the operation of Chapter 790 of the Acts of 1979 (the Arts Lottery Act) and your authority pursuant thereto. Specifically, you have asked the following questions:

- (1) Does the Arts Lottery Council have authority to permit arts organizations which act as arts lottery ticket sales agents to receive

a percentage of the proceeds generated by them in addition to their regular commissions? If the Council does not have this authority, how could it acquire it?

(2) Are there any legal requirements that Arts Lottery Fund disbursement checks be made payable to the local or regional arts council or to the city/town itself, and are there any legal requirements that these funds be deposited in the general city/town fund or in a separate local arts council fund?

(3) Who is the "executive body" (a) in a city with a mayor, (b) in a city/town with a Plan E form of government, (c) in a town with a Board of Selectmen, (d) in a town with a town council form of government?

My response to the questions and the reasons therefor are stated below.

In response to your first question, it is my opinion that the Arts Lottery Council (hereafter, "the Council") is not authorized to permit art organizations engaged as sales agents to retain, in addition to their regular sales commissions, a percentage of the proceeds generated by them from the sale of lottery tickets. I base this opinion on the literal language of two related statutes. General Laws chapter 10, section 24, as amended, authorizes and directs the State Lottery Commission (hereafter, "the Commission") "to conduct a lottery for the arts . . . known as the arts lottery." It mandates that, subject to G.L. c. 10, §35A, the arts lottery be conducted "in accordance with the general provisions of the state lottery law." Section 35A creates an arts lottery and an arts lottery council. Although it authorizes the Council to establish guidelines for the use of art lottery funds, it does not prescribe a particular method for selling the arts lottery tickets or compensating ticket sales agents. Thus, the amount of commissions to which all sales agents, including arts organizations, may be entitled is governed by the general state lottery law.

Under G.L. c. 10, §24, the Massachusetts Lottery Commission is authorized to determine "the type or types of locations at which [lottery] tickets or shares may be sold, the method to be used in selling tickets or shares . . . *the manner and amount of compensation, if any, to be paid licensed sales agents*, and such other matters necessary or desirable for the efficient and economical operation and administration of the lottery . . ." (Emphasis supplied). General Laws chapter 10, section 35A, does not change or affect this provision. The legislature has vested the authority to set the commissions of sales agents in the Commission. Thus, only the Commission may establish the rate of reimbursement paid to lottery sales agents.

The second part of your first question asks how the Council could acquire the authority for increasing the commissions of art organizations which are engaged as sales agents. Such authority would be most appropriately conferred on the council through an amendment to the Arts Lottery Act.¹

¹The result sought may also be accomplished through the State Lottery Commission. The Lottery Commission has been given the authority to establish rules and regulations which allow seller art organizations to receive a percentage of their generated proceeds for commissions, in addition to the commissions normally paid to agents. See G.L. c. 10, §24

You have next asked whether there are any legal requirements that funds from the arts lottery be distributed directly to the local or regional arts councils or to the cities and towns, and also whether these funds must be deposited in the treasuries of the cities and towns, or in separate funds for each arts council. It is my opinion that monies derived from the arts lottery and certified by the Council as payable must be paid into the treasuries of the cities and towns and may not be distributed directly to the local or regional arts councils.

General Laws, chapter 10, section 24, as amended by St. 1979, c. 790, requires that, subject to section 35A, the arts lottery revenues must be distributed "in accordance with the general provisions of the state lottery law." The distribution of state lottery funds is governed by G.L. c. 10, §35, which provides that "revenues of the lottery commission from whatever source shall be expended only for the following purposes: (a) for the payment of prizes . . . (b) for the expenses . . . (c) the balance of said fund . . . shall be credited to the Local Aid Fund established under" G.L. c. 29, §2D and "shall be distributed to the several cities and towns in accordance with the provisions of section eighteen C of chapter fifty-eight." General Laws chapter 58, section 18C, establishes the procedure by which the Local Aid Fund is distributed and requires the distribution of this fund to be made directly to the cities and towns of the Commonwealth.

General Laws chapter 10, section 35A, on the other hand, requires the Arts Lottery Council to establish guidelines for the use of arts lottery funds by the local and regional arts councils. That same provision permits the Council to review applications for funds submitted by the local and regional groups. If the Council determines that an application complies with their guidelines, it "shall then certify to the comptroller the payment of the cost thereof to the extent that funds therefor are payable under section twenty-four to such city, town or region." Thus, while General Laws chapter 10, §24, provides that the distribution of arts lottery funds is subject to section 35A, that latter section is silent on the subject of distribution except for the specific reference to payment "to such city, town, or region." For purposes of your question, the essence of this section is that it establishes a system whereby local and regional arts councils apply for arts lottery funds. Once the Council determines that the application complies with its guidelines, it thereafter certifies to the Comptroller the amount to be distributed, to the extent that revenues from the arts lottery are available. Despite this statutory scheme, section 35A nowhere provides that monies are thereafter to be paid directly to the local and regional councils whose applications have been approved, nor, in fact, does the statute provide that any check is to be disbursed for the purposes approved and in the amount certified.²

Generally, when construing a statute, the statutory language itself is the principal source of insight into the legislative intent. *Hoffman v. Howmedica, Inc.*, 373 Mass. 32, 37 (1977). When a statute is ambiguous, however, whether in its language or its means of operation, resort must be made to the various principles of statutory construction to resolve the ambiguity. *See Globe*

²I am informed that the manner of distribution of monies from the Local Aid Fund is merely by means of the Bureau of Accounts cherrysheet, with no line item amounts signifying specific sources thereof.

Newspaper Co. v. Superior Court, Mass. Adv. Sh. (1980) 485, 489 (and cases cited therein); *Massachusetts Mutual Life Inc. Co. v. Commissioner of Corporations and Taxations*, 363 Mass. 685, 690 (1973). The inconsistencies should be resolved in a manner which coincides with the legislature's intent in passing the statute. See *Murphy v. Charlestown Savings Bank*, Mass. Adv. Sh. (1980) 1323, 1329.

To the extent that General Laws chapter 10, section 35A, contains an ambiguity, that ambiguity must be resolved through the legislative history of the Arts Lottery Act. *City of Worcester v. Quinn*, 304 Mass. 276, 281 (1939). This legislative history supports the conclusion that distribution of funds is to be made in accordance with the formula of G.L. c. 58, §18C.

As originally introduced into the Senate, the arts lottery bill required that distribution of the Arts Lottery funds be made directly to the local arts councils. Mass. S. Doc. No. 1873 (1977). This bill was not enacted. In 1978, the bill was again filed in the Senate. Again funds were to be distributed "in accordance with the state's lottery distribution formula to art councils in each city and town." Mass. S. Doc. No. 332 (1978) and Mass. S. Doc. No. 1329 (1978). Similar legislation was introduced in the House in 1979 and also called for distribution of the funds directly to local arts councils. Mass. H. Doc. No. 626 (1979) and Mass. H. Doc. No. 6720 (1979). Thus, each and every bill introduced into the Legislature since the inception of the arts lottery concept contained a provision calling for distribution to the local and regional councils. Despite these facts, the bill as approved on November 15, 1979 contained no such distribution provision. In place thereof was the more general mandate that the funds be made "payable under section twenty-four to such city, town, or region." St. 1979, §790.

The action of the Legislature in rejecting five bills requiring direct distribution to the arts councils and passing the only bill calling for a more general distribution is highly indicative of legislative intent. The "statutory expression of one thing is an implied exclusion of other things omitted from the statute." *Harborview Residents Committee Inc. v. Quincy Housing Authority*, 368 Mass. 425, 432 (1975). Thus, the included reference in Stat. 1979, c. 790 to distribution according to G.L. c. 10, §24, coupled with the exclusion of other distribution formula precludes any other interpretation than that the funds must be distributed by the comptroller directly to the cities and towns pursuant to G.L. c. 58, §18C. In my opinion, the legislature's action indicates an intention not to have the arts lottery funds distributed directly to the local or regional arts councils, but, as St. 1979, c. 790, section 1, specifically provides, to have the funds distributed under the general distribution formula of G.L. c. 58, §18C.

It is my opinion, then, that the distribution of arts lottery funds must be made in accordance with the formula set forth in G.L. c. 58, §18C. Moreover, the distribution of these funds may not be made directly to local or regional arts councils, but must be made directly to the cities and towns in accordance with section 18C. The funds must be deposited into the treasuries of the cities and towns and may not be used by the local or regional arts council until there has been specific appropriation therefor. G.L. c. 44, §53.

While I am mindful of the practical inconsistencies which may be inherent

in this construction,³ the statute can only be interpreted according to its language and the legislature's intent "without enlargement or restriction and without regard to [one's] own ideas of expediency." See *v. Building Com'r of Springfield*, 246 Mass. 340, 343 (1923). The scope of the statute's operation cannot be extended by any construction beyond its apparent limits. *Worcester v. Quinn*, 304 Mass. 276, 280 (1939).

Finally, I note that any practical problems or inconsistencies encountered by the State Arts Lottery Council may be resolved through further legislation. In this regard it is important to note that the disbursement mechanism is particularly susceptible to any remedial legislation the council deems appropriate, since the funds under the statute will not be distributed until June 1, 1981. G.L. c. 10, §35A.⁴

Your final question concerns the definition of executive body in the various municipal settings who will appoint the members of the local arts council. The "executive body" in a city with a mayor is the mayor. The mayor is "the executive head of the municipality and has general supervision of all departments of the city government." *Rollins v. Salem*, 251 Mass. 468, 471 (1925). See also G.L. c. 43, §48. Cities operating under the Plan E form of government have city managers rather than mayors as their chief administrative officers. See *Conway v. City Manager of Medford*, 5 Mass. App. Ct. 764, 778 (1977) and G.L. c. 43, §§103-05.

It is my opinion that the "executive body" in a town with a Board of Selectmen is the board. While there is no case law or statute defining "executive body", an analogy may be drawn to the procedure set forth in G.L. c. 41, §83 whereby the Board of Selectmen is authorized to appoint members to a local arts commission. It seems appropriate for the same procedure to apply to the appointment of arts council members. This conclusion is also supported by analogy to the Board of Selectmen's power to approve disbursement of funds under G.L. c. 41, §41. See also 18 Mass. Prac. §105 (2nd Ed., 1979) on the powers of selectmen.

Finally, the "executive body" for a town government with a town council form of government will depend upon the Home Rule charter creating the municipal entity. Normally, it will be the individual who exercises the administrative functions under the charter. His title may vary from community to community.

In sum, it is my opinion that:

- (1) the state Arts Lottery Council does not have authority to permit arts organizations which act as ticket sales agents to receive more than the regular sales commission established by the Lottery

³One could argue, for example, that the statutory scheme in its entirety is inconsistent with this manner of distribution. St. 1979, c. 790, creating the arts lottery fund, specifically provides that this fund be separate and distinct from the state lottery fund created by c. 10, §35. The general state lottery and the general state lottery fund have as their purpose the increase of revenue to the local municipalities. In contrast, the arts lottery and the arts lottery fund are established for the purpose of aiding the visual and performing arts. Thus, the use of these lottery funds is more narrow in scope than the general lottery and should arguably be distributed in a distinct manner. The statute, however, nowhere provides for any manner of distribution distinct from that by which the general state lottery is distributed.

⁴It would appear that legislative amendment of G.L. c. 44, §53, as well as of G.L. c. 10, §§24 and 35A, is required to achieve the purposes which you desire.

Commission;

(2) the disbursement checks must be made payable to the city and towns pursuant to G.L. c. 58, §18C; and

(3) a mayor, the city manager in a city/town with a plan E government, a Board of Selectmen, and the charter administrator in a town council form of government are the executive bodies of the various municipal entities.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 5

September 4, 1980

Edward Hanley

Secretary of

Administration and Finance

Executive Office for

Administration and Finance

State House

Boston, MA 02133

Dear Secretary Hanley:

You have requested my opinion whether you are required to hold public hearings pursuant to General Laws c. 30A before setting the amount of fees and charges to be paid to the Commonwealth, pursuant to G.L. c. 7, §3B, as recently amended by St. 1980 c. 572 §1 (hereinafter "Chapter 572").¹

For the reasons discussed below, it is my opinion that you are not required to hold public hearings pursuant to G.L. c. 30A, §2, prior to the determination of such fees and charges, but that you are required to comply with the procedures set forth in G.L. c. 30A, §3.

This conclusion is based, first on my opinion that the fees and charges set pursuant to Chapter 572 are "regulations" within the meaning of Chapter 30A. General Laws chapter 30A, section 1(5) defines the term "regulation" to include "the whole or any part of every rule, regulation, standard or other requirement of general application and future effect . . . adopted by an agency

¹St. 1980 c. 572, §1 provides:

Section 3B of chapter 7 of the General Laws, as inserted by section 27 of chapter 684 of the acts of 1975, is hereby amended by inserting, at the end thereof, the following paragraph.

For the period beginning July first, nineteen hundred and eighty, and ending December thirty-first, nineteen hundred and eighty-two, the secretary of administration (1) shall determine the amount to be charged by the Commonwealth for each service of any kind performed by any state personnel or agency which is primarily for the benefit of any individual person or corporation, other than services for patients in and by institutions of correction, (2) shall determine the charge to be made by the commonwealth for each use for private purposes or gain of state-owned buildings, houses, facilities, and equipment; (3) shall determine the charge to be made by the commonwealth for meals served in state institutions or facilities to employees thereof, and, (4) shall determine the amount to be charged for any other service, registration, regulation, license, fee, permit or other public function provided, however, that said secretary shall not determine the rates of tuition at state colleges, state community colleges, state universities, and the Massachusetts Maritime Academy or any fees or charges relative to the administration and operation of the trial court appeals court, supreme judicial court and any other department of the judiciary of the commonwealth.

The remaining sections of Chapter 572 generally strike out the amounts of fees and charges as set by various statutes and provide that such fees and charges shall be set by the secretary of administration pursuant to G.L. c. 7, §3B.

to implement or interpret the law enforced or administered by it." Moreover, since the secretary of administration is an "official of the state government authorized by laws to make regulations," he is an "agency" within the meaning of chapter 30A, §1(2). Fees and charges set pursuant to Chapter 572 would, therefore, be "requirements[s] . . . adopted by an agency to implement" Chapter 572. Since these fees and charges are "of general application and future effect," they must be characterized as "regulations."

This construction of Chapter 30A is supported by the well-established principle that rates or charges fixed by administrative agencies which operate prospectively and apply generally to a large group of people constitute regulations. See *United States v. Florida East Coast Railway Co.*, 410 U.S. 224, 246 (1973); *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908); *Automobile Club of New York, Inc. v. Cox*, 592 F. 2d 658, 664 (2d Cir. 1979); *Palm Manor Nursing Home v. Rate Setting Commission*, 359 Mass. 652, 654 (1971); 1965/66 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 259, 264 (1966).

The determination that fees and charges set pursuant to Chapter 572 constitute regulations is not dispositive, however, of the question whether public hearings are required, G.L. c. 30A, §2, provides, in part, as follows:

A public hearing is required prior to the adoption . . . of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public hearing is required as a matter of constitutional right.

Subsection (a) clearly does not apply here since failure to pay fees and charges is not punishable by fine or imprisonment. Nor is subsection (c) applicable, since there is no constitutional right to a hearing in rulemaking proceedings, even where the regulations may have an adverse impact on the economic interests of those affected. *Bi-Metallic Investment Co. v. Colorado*, 239 U.S. 441, 445 (1915); *Alaska Steamship Co. v. Federal Maritime Commission*, 356 F. 2d 59, 61 (9th Cir. 1966); *Cambridge Electric Light Co. v. Department of Public Utilities*; 363 Mass. 474, 488 (1973); *Cast Iron Soil Pipe Institute v. Board of State Examiners of Plumbers and Gas Fitters*, Mass. App. Ct. Adv. Sh. (1979) 2150, 2164.

Thus, any requirement that public hearings be held prior to the establishment of fees and charges pursuant to Chapter 572 would have to be imposed by statute. G.L. c. 30A, §2(b). Chapter 572 itself contains no express requirement that public hearings be held. By contrast, paragraph 2 of G.L. c. 7, §3B, which authorizes the secretary of administration to determine the costs of certain services provided by the Commonwealth, does require that such costs be determined "after notice and a hearing in the manner provided by chapter thirty A." The fact that such a requirement is absent from Chapter 572 (while present in the preceding paragraph of the same statute) indicates that in enacting Chapter 572 the legislature intended not to require public hearings. See *Richerson v. Jones*, 551 F.2d 918, 928 (3rd Cir. 1977) (where statute with respect to one subject contains a given provision, omission of such provision

from a similar statute is significant to show a different intention existed).² For these reasons I have concluded that no public hearings are required by Chapter 572, either expressly or by implication.

In sum, it is my opinion that since none of the conditions set forth in G.L. c. 30A, §2, apply here, no public hearings are required. General Laws chapter 30A, section 3, however, provides that "[p]rior to the adoption . . . of any regulation for which a public hearing is not required under section two, the agency shall give notice and afford interested persons an opportunity to present data, views, or arguments" as provided therein. *See also Cambridge Electric Light Co. v. Department of Public Utilities, supra* at 485; *Massachusetts General Hospital v. Cambridge*, 347 Mass. 519, 523 (1964); 1975/76 Op. Atty. Gen. No. 63, Rep. A.G., Pub. Doc. No. 12 at 161, 164 (1976). Therefore, prior to setting the fees and charges covered by Chapter 572, you should adhere to the procedural requirements set forth in G.L. c. 30A, §3.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 6

September 10, 1980

Honorable Michael Joseph Connolly
Secretary of the Commonwealth
State House
Boston, Massachusetts 02133

Dear Secretary Connolly:

By letter dated August 8, 1980, you have asked me whether certain questions are ones of public policy in accordance with G.L. c. 53, §19. It is my opinion that the questions concern important public matters in which every citizen of the Commonwealth would have an interest, are fit subjects for lawmaking, and, therefore, are questions of "public policy" which may be submitted to the voters, provided, however, that you determine that all other requirements of law are met.¹

My opinion that all of the questions are appropriate public policy questions is based upon the well-settled principle that the term "public policy" as used in G.L. c. 53, §19, should not be given a restrictive meaning. 1978/79 Op. Atty. Gen. Nos. 8 and 17, Rep. A.G., Pub. Doc. No. 12 at (1978). Each question must constitute an "important public question" in which "every

²Furthermore, this distinction between paragraphs two and three of G.L. c. 7, §3B, can be said to be a reasonable one since the cost determinations to be made pursuant to paragraph two need only be made from time to time while those of the fees and charges covered by paragraph three must be made annually. The legislature may therefore have considered public hearings to be overly burdensome with respect to the hundreds of fees and charges covered by Chapter 572.

¹The requirements to which I make reference are contained in G.L. c. 53 §§19, 20 and 21 and involve a number of technical prohibitions specifically set out in those sections which involve questions of fact. For example, a question which is technically accurate and presents an important public issue may not appear on the ballot if the question is substantially the same as one which has been submitted to the voters within less than three years. G.L. c. 53, §21. As Secretary of the Commonwealth, you have in your possession past election ballots from each of the relevant districts and are therefore in a better position than I to make the factual determination required by the statute.

Consequently, I have made no independent inquiry to determine whether these questions are statutorily defective for any reason other than a failure to qualify as a public policy question in proper form for presentation on the ballot. *See* 1958 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 44 (1958).

citizen in the Commonwealth has an interest.” 1976/77 Op. Atty. Gen. No. 7, Rep. A.G., Pub. Doc. No. 12 at 89 (1976); 1978/79 Op. Atty. Gen. Nos. 6, 9-11, 13-17, Rep. A.G., Pub. Doc. No. 12 at (1978).

Even when questions concern a small geographic area, if the problem is one of concern to the Commonwealth in general, then the question may be considered one of public policy. 1974/75 Op. Atty. Gen. No. 11, Rep. A.G., Pub. Doc. No. 12 at 54 (1974); 1978/79 Op. Atty. Gen. Nos. 16, 17, 18, Rep. A.G., Pub. Doc. No. 12 at (1978).

Accordingly it is my opinion that the questions you submitted are all matters of public policy and should be printed on the ballot in the following form:

Senatorial District: Franklin and Hampshire

“Shall the Senator from this district be instructed to vote in favor of legislation requiring a moratorium on the construction and licensing of new nuclear power plants and requiring the phased replacement of existing nuclear power plants with conservation, energy efficiency measures, short-term use of coal, co-generation, and renewable energy sources such as hydro-electricity, wind and solar?”

Senatorial District: 2nd Essex

“Shall the Senator from this district be instructed to vote in favor of legislation requiring a moratorium on the construction and licensing of new nuclear power plants, and mandating instead that the state promote energy conservation and renewable energy sources such as hydro-electric, wind and solar power?”

Senatorial District: 1st Suffolk and five other Senatorial Districts²

Representative District: 9th Bristol and nineteen other Representative Districts³

“Shall the Senator (or Representative) from this district be instructed to vote in favor of legislation requiring a moratorium on the construction and licensing of new nuclear power plants, and mandating instead that the state promote energy conservation and renewable energy sources such as hydro-electric and solar power?”

*Senatorial District: Berkshire
Franklin and Hampshire
Hampden*

“Shall the Senator from this district be instructed to vote in favor of a resolution requesting the President of the United States to propose to the Soviet Union a mutual nuclear weapons moratorium immediatly halting the testing, production, and deployment of all nuclear warheads, missiles, and delivery systems, and requesting Congress to transfer the funds that would have been used for those purposes to civilian use?”

²2nd Middlesex and Norfolk; Bristol and Plymouth; Suffolk and Middlesex; 4th Middlesex; 3rd Essex.

³4th Essex; 5th Essex; 6th Essex; 2nd Hampden; 4th Middlesex; 20th Middlesex; 26th Middlesex; 32nd Middlesex 3rd Plymouth; 12th Suffolk; 13th Suffolk; 17th Suffolk; 18th Suffolk; 19th Suffolk; 17th Worcester; 14th Norfolk; 6th Middlesex; 7th Middlesex.

Representative District: 9th Middlesex

“Shall the Representative from this district be instructed to vote in favor of legislation prohibiting the storage and transportation of nuclear waste within this district and to vote in favor of legislation providing for the development of alternatives to nuclear energy such as conservation and renewable energy sources?”

Representative District : 1st Essex

“Shall the Representative from this district be instructed to vote in favor of a resolution recommending to the Nuclear Regulatory Commission that no operating licenses for nuclear power plants be granted unless all state and federal guidelines for evacuation are met and also to vote against any expenditure of public funds for the purpose of developing such evacuation plans?”

*Representative District: 18th Suffolk
19th Suffolk*

“Shall the Representative from this district be instructed to vote in favor of legislation providing for a City Council in the City of Boston composed of nine members to be elected from equally populous districts and four members to be elected at large?”

Representative District: 1st Plymouth

“Shall the Representative from this district be instructed to vote in support of the construction and operation of a second nuclear power plant at Pilgrim Station, if all safety and other regulatory requirements are satisfied?”

Representative District: 1st Plymouth

“Shall the Representative from this district be instructed to vote in favor of legislation prohibiting the construction of a second nuclear power plant in the Town of Plymouth?”

Representative District: 31st Middlesex

“Shall the Representative from this district be instructed to vote in favor of legislation prohibiting the construction or licensing of any new nuclear power plants and providing state programs to encourage building insulation, energy conservation, solar and hydro-electric power and other renewable energy sources?”

Representative District: 12th Suffolk

“Shall the Representative from this district be instructed to vote in favor of legislation providing that abortions are to be paid for by the Commonwealth?”

Senatorial District: 3rd Essex

“Shall the Senator from this district be instructed to vote in favor of legislation prohibiting the construction of overhead high voltage power lines in excess of 69,000 volts, and to vote in favor of legislation mandating that such lines be buried underground?”

*Representative District: 6th Norfolk
7th Norfolk
8th Norfolk*

“Shall the Representative from this district be instructed to vote in favor of legislation preserving in its entirety the Prowse Farm at the gateway of the Blue Hills Reservation?”

*Representative District: 2nd Essex
3rd Essex*

“Shall the Representative from this district be instructed to vote in favor of legislation ordering the demolition of the Haverhill Parking Garage?”

*Senatorial District: Suffolk and Middlesex
2nd Middlesex
2nd Middlesex and Norfolk
5th Middlesex*

“Shall the Senator from this district be instructed to vote in favor of a resolution calling on the federal government to cease spending on military programs and, instead, to spend the funds for civilian needs such as construction of energy-efficient housing, mass transit, public education and health care?”

Representative District: 3rd Hampden

“Shall the Representative from this district be instructed to vote in favor of legislation providing for the use of a refundable deposit on soft drink and beer containers?”

Representative District: 38th Middlesex

“Shall the Representative from this district be instructed to vote in favor of legislation prohibiting the licensing of nuclear power plants until an independent public agency verifies that all safety and waste disposal problems are solved, implementing programs for conservation, and promoting the development of cost-efficient, renewable energy resources?”

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 6 - Addendum 1.

September 12, 1980

Honorable Michael Joseph Connolly
Secretary of the Commonwealth
State House
Boston, Massachusetts 02133

Dear Secretary Connolly:

I have received and considered your suggested wording for the Public Policy Question to be submitted to the voters in the Suffolk and Middlesex, 2nd Middlesex, 2nd Middlesex and Norfolk and 5th Middlesex Senatorial Districts.

You have suggested the following wording:

“Shall the Senator from this district be instructed to vote in favor of a resolution calling on the federal government to cease unnecessary spending on new military programs and, instead, to spend the funds for civilian needs such as construction of energy-efficient housing, mass transit, public education and health care?”

I concur with your suggestion and believe that the wording you proposed would be appropriate for inclusion on the ballot.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 7

September 25, 1980

Daniel J. Kelly, *Executive Secretary*
Teachers' Retirement Board
One Ashburton Place
Boston, MA 02108

Dear Mr. Kelly:

You have requested my opinion whether St. 1980, c. 429, requires retirement boards to pay an allowance for the benefit of students who have reached age 21 but have not yet turned 22. The question arises because St. 1980, c. 429 amends G.L. c. 32, §12B to provide for such payment until the student reaches 22, rather than 21 as under the prior law. The amendment was approved July 9, 1980, without an emergency preamble, and thus becomes effective on October 7, 1980. Since benefits have been discontinued for students who turned 21 prior to that date, your question is whether benefits must be resumed for such students who are not yet 22.

In construing St. 1980, c. 429, I must be guided by the plain meaning of the statute. *Burke v. Chief of Police of Newton*, Mass. Adv. Sh. (1978) 425, 427; *Boston v. Massachusetts Port Authority*, 364 Mass. 639, 657 (1974). On its face, the amendment clearly provides for payment on behalf of students under age 22.¹ There is no distinction made for students who, though still under 22, had turned 21 while the prior law was in effect.

A construction which imposed such a distinction would conflict with the apparent statutory intent and should therefore be avoided. In construing the statute, I must look to the language used, the evil to be remedied, and the objective to be accomplished by the enactment. *Hayon v. Coca Cola Bottling Co.*, Mass. Adv. Sh. (1978) 1888, 1893. Moreover, my interpretation must be “in accordance with sound judgment and common sense.” *Sun Oil Co. v. Director of the Division on the Necessaries of Life*, 340 Mass. 235, 238 (1960).

¹In relevant part, St. 1980, c. 429 provides:

“If a member in service . . . dies and leaves a spouse . . . and if there are any surviving children of said member who are under age eighteen . . . or under age twenty two; if a full-time student, there shall be paid to the spouse for the benefit of all such children an additional allowance of eighty dollars a month for one child (plus an allowance of sixty dollars a month for each additional child . . .”

The obvious purpose of St. 1980, c. 429 is to continue support of college students who typically turn 21 prior to graduation. It would be inconsistent with this purpose to refuse payments on behalf of those under 22 who have already turned 21, but have not yet graduated.

This analysis is consistent with the general rule that remedial statutes are commonly treated as applying to pending matters. *Hein-Werner Corp. v. Jackson Industries, Inc.*, 364 Mass. 523, 525 (1974). St. 1980, c. 429, "being in the main remedial" by merely extending a substantive benefit already provided, is to be "liberally interpreted in order to effectuate [its] purposes." *Wynn v. Board of Assessors*, 281 Mass. 245, 249 (1932).

For these reasons, I conclude that St. 1980, c. 429 requires the payment of benefits on behalf of students under age 22 regardless of whether such benefits had previously been terminated because the students had turned 21. I note that my conclusion is consistent with that of the Director of Retirement Systems within the Division of Insurance.²

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 8

October 23, 1980

George A. Luciano, *Secretary*
Executive Office of Public Safety
One Ashburton Place
Boston, MA 02108

Dear Secretary Luciano:

You have asked my opinion whether the provision in G.L. c. 32, §7(1), which prohibits retirement for certain state police officers "within any period of two years prior to attaining the maximum age," precludes an individual who falls within that period from being retired pursuant to the physical or mental incapacity provisions of G.L. c. 32, §26(2).¹ For the reasons set forth below, I conclude that a state police officer who is two or fewer years removed from the mandatory retirement age is not prohibited by statute from receiving a disability retirement pursuant to G.L. c. 32, §26 (2).

The facts as you have provided them to me are brief. A state police officer has submitted a request for retirement based upon a disability caused by duties performed during his employment. The officer is within two years of reaching

²G.L. c. 32, §21(1) (a) directs the Commissioner of Insurance "to inspect and examine the affairs of each [retirement board] to ascertain . . . whether all parties in interest have complied with the laws applicable thereto, and whether the transactions of the board have been in accordance with the rights and equities of those in interest."

¹G.L. c. 32, §26 (2) (a) provides in relevant part that:

(a) Any member in service classified in Group 3 who is an officer of the division of state police in the department of public safety shall be retired by the state board of retirement in case the rating board, after an examination of such officer by a registered physician appointed by it, shall report in writing to the state board of retirement that such officer is physically or mentally incapacitated for the performance of duty by reason of (i), illness incurred through no fault of his own in the actual performance of duty, or (ii), an injury resulting from an accident occurring during the performance and within the scope of his duty and without contributory negligence on his part, and that such incapacity is likely to be permanent.

State police officers are classified for purposes of retirement as "Group 3" employees. See G.L. c. 32, §3 (g).

age fifty, the mandatory retirement age for state police.² According to the required statutory procedures, the officer has submitted his retirement request to the Rating Board,³ which, if satisfied of the genuineness of the disability, is required to report in writing to the state board of retirement that the officer meets the statutory prerequisites for disability retirement. G.L. c. 32, §26 (2) (a). It is my understanding that the Rating Board has failed to act in this case because of what it considers to be ambiguity in the law. In particular, the Rating Board finds the following passage from G.L. c. 32, §7 (1) troublesome:

Any member . . . in service classified in Group 3 . . . shall be retired for accidental disability No such retirement shall be allowed within any period of two years prior to attaining the maximum age on account of any accident or hazard . . . undergone within three years of attaining such maximum age.

On its face, this language would appear to prohibit the disability retirement of a state police officer who is two or fewer years away from the mandatory retirement age. This passage, however, cannot be considered in isolation. It is an essential element of statutory construction that full force and effect must be awarded to all the words used by the legislature. *See, e.g., Hanley v. Eastern Steamship Corp.*, 221 Mass. 125, 131 (1915). It therefore cannot be ignored that G.L. c. 32, §7 (1), expressly exempts from its provisions those state police officers who seek disability retirement pursuant to G.L. c. 32, §26 (2). The opening proviso of section seven provides that it applies only to members:

in service classified in Group 3 *to whom the provisions of subdivision (2) of section twenty-six are not applicable*
(Emphasis added).

This particular exemption is repeated in section twenty-six, subdivision 4, of the chapter:

Section seven [of chapter 32] shall not apply to any member . . .
. . . to whom the provisions of subdivision (2) of this section are applicable.

There can be no doubt from the plain meaning of these statutes, *see, e.g., Rosenbloom v. Kokofsky*, 373 Mass. 778, 781 (1977), that the state police officer in question here, because he is eligible for disability retirement under section twenty-six (2), is not subject to the particular prohibition of section seven. *See* 1957 Op. Atty. Gen., Rep. A.G., Pub. Doc. No 12 at 21, 22 (1956) (the provisions of G.L. c. 32, §7, do not impact upon a question of retirement pursuant to G.L. c. 32, §26 (2), since section seven "is not applicable" to retirements under that letter section). I conclude, therefore, that the officer's

²G.L. c. 32, §26 (3) requires state police officers to retire upon reaching age 50. *See Massachusetts Board of Retirement v. Murcia*, 427 U.S. 307, 309 (1976).

³The Rating Board is established by statute to process disability retirement requests made by state police officers. G.L. c. 32, §26 (1). *See* 1957 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 71 (1957).

age in this case is immaterial to the ultimate decision whether he may be retired pursuant to G.L. c. 36, §26 (2), and the Rating Board is not estopped from taking appropriate action on the officer's retirement request.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 9

October 29, 1980

Edward V. Keating
Clerk-Magistrate for Criminal Business
712 Courthouse
Suffolk Superior Court
Boston, MA 02108

Dear Mr. Keating:

You have asked my opinion whether money which is deposited as bail with the court under General Laws chapter 279, sections 57 and 79, is money which should be deposited in interest-bearing accounts and, if it should be so deposited, whether the interest is payable to the surety or defendant or to the Commonwealth under General Laws chapter 35, sections 22 and 23.

You have advised me that cash held by the court as bail is currently deposited in a checking account which bears no interest and that this practice has long been in operation in Suffolk County. You have further advised me that in recent years there has been a large increase in the amount of money which is deposited with your office as bail. This fact, together with the apparent directive in General Laws chapter 35, sections 22 and 23, gives rise to your concern.

For the reasons stated below, I conclude that money held by the court as bail should be placed at interest and that this interest must be paid into the state treasury in accordance with the provisions of General Laws chapter 35, sections 22 and 23.

While I based my opinion primarily upon the language of sections 22 and 23, as interpreted according to basic maxims of statutory construction, my conclusion is supported by the fact that the admission of a defendant to bail in the Commonwealth is, subject to constitutional strictures,¹ wholly governed by statute. The posting of bail by a defendant does not create a relationship of trust between the Commonwealth and the defendant. *See Carpenter v. Suffolk Franklin Savings Bank*, 362 Mass. 770, 777 (1973). Hence, no fiduciary duty exists under which the Commonwealth would be required to make prudent investment of a defendant's bail money. The closest analogy is that of a contractual bailment, *see, e.g., Read & Sons, Inc. v. Bay State Auto Springs Mfg., Co., Inc.*, 48 Mass. App. Dec. 85, 88 (1972), which would, even if apt, create not a fiduciary duty, but only a duty of ordinary care with respect to the moneys paid to the clerk as bail. *Fireman's Fund Am. Ins. Co. v. Capt. Fowler's Marina, Inc.*, 343 F. Supp. 347, 350 (D. Mass., 1971).

¹U.S. Constitution, Amendment VIII; Massachusetts constitution, Part 1, Article XXVI. See, for example, *Carlson v. Landon*, 342 U.S. 524, 544-46; *U.S. v. Abrahams*, 575 F.2d 3 (1st Cir., 1978); *cert. den.* 439 U.S. 821 (1978).

General Laws chapter 35, section 22² directs that various officials, including clerks of the courts, who have "more money in their hands than is required for immediate use, shall deposit it . . . at the best practicable interest rates." St. 1978, c. 478, §23, added "and clerks of courts" to the final sentence of section 22, thereby mandating that interest earned on these deposits be paid to the Commonwealth.

General Laws chapter 35, section 23, as recently amended by St. 1978, c. 478, §25³, provides that money paid into the court shall, if possible, be placed in interest-bearing accounts by the clerks. Such interest shall be available to the commonwealth "unless the court directs it to be paid to the parties to the litigation in connection with which such money was paid into court."

The relevant bail statutes, General Laws chapter 276, sections 57⁴ and 79,⁵ both of which provide for cash bail, exhibit no conflict with the requirements of General Laws chapter 35, sections 22 and 23, concerning the disposition of actual cash deposited with the courts. Cash bail, therefore, should be placed in interest-bearing accounts, and the interest earned thereby should go to the Commonwealth, as specified in both sections.

In interpreting these statutes, I am guided by several rules of statutory interpretation. First, where the language of a statute is clear and unambiguous, that language must be interpreted according to its "usual and natural meaning." *Rosenbloom v. Kikofsky*, 373 Mass. 778, 781 (1977); *Johnson's Case*, 318 Mass. 741, 747 (1945). Section 22 concerns "more money . . . than is required for immediate use . . ." and section 23 concerns "[m]oney paid into the courts." There is no ambiguity in this language and in the absence of any language which limits the application of these two sections to certain money which comes to the various officials, these sections are applicable to money paid to the clerks as bail.

²G.L. c. 35, §22, in pertinent part, provides:

Except as otherwise provided, . . . clerks of the courts . . . having more money in their hands than is required for immediate use, shall deposit it, in their official names, in national banks or trust companies in the commonwealth or banking companies doing business in the commonwealth and qualified to receive demand deposits under the provisions of section six A of chapter one hundred and seventy two A, at the best practicable interest rates . . . Interest thereon shall be paid to the county, except that interest accruing to deposits by . . . clerks of courts shall be paid to the commonwealth; provided, that interest accruing on the deposit as aforesaid of any money paid to any official mentioned in this section which is so paid under order of a court or which is otherwise subject to the direction of a court shall, if the court so directs, be paid to the parties entitled to the principal fund of such deposit.

³G.L. c. 35, §23, in pertinent part, provides:

Money paid into the courts in any county shall, if possible be placed at interest by the clerks thereof, and the interest shall be available for the uses of the commonwealth unless the court directs it to be paid to the parties to the litigation in connection with which such money was paid into court. All interest in the custody of any clerk of said courts not directed to be paid as aforesaid, remaining after payment by order of the court of the principal fund to parties litigant entitled thereto, shall annually be paid to the state treasurer . . . to be used for the general purposes of the commonwealth.

⁴G.L. c. 276, §57, in pertinent part, states:

A justice of the supreme judicial or superior court, a clerk of courts or the clerk of the superior court for criminal business in the county of Suffolk . . . upon application of a prisoner or witness held under arrest . . . may admit such prisoner or witness to bail . . . No person offering himself as surety shall be deemed to be insufficient if he deposits money of an amount equal to the amount of the bail required of him in such recognizance . . . or a bank book of a savings bank, credit union or of a savings accounts in a trust company or national bank . . . or a passbook or paid-up shares of a cooperative bank doing business in the commonwealth, properly assigned to the clerk with whom the same is or is to be deposited . . . or deposits non-registered bonds of the United States or of the commonwealth or of any county, city or town within the commonwealth equal at their face value to the amount of the bail required of him in such recognizance

⁵G.L. c. 276, §79, in pertinent part, states:

A person held in custody or committed upon a criminal charge, if entitled to be released on bail, . . . may instead of giving surety or sureties, at any time give his personal recognizance to appear before the court and deposit the amount of the bail which he is ordered to furnish . . . with the court, clerk of the court or magistrate . . . who shall give him a certificate thereof The court or magistrate shall forthwith, upon receipt of such amount, deposit it with the clerk of the court.

Another principle of statutory construction provides that the legislature acts with full knowledge of the effect statutory enactments will have on pre-existing laws. *Lynch v. Commissioner of Education*, 317 Mass. 73, 79 (1945). General Laws chapter 35, sections 22 and 23, were recently amended in 1978 by the Court Reform Act, which brought these provisions into conformity with the general takeover of the court system by the Commonwealth. St. 1978, c. 478, §§23 and 25. Amendments to statutes should be construed as a continuation of those portions of the statute which remain unchanged. *Worcester County National Bank v. Commissioner of Corporations and Taxation*, 275 Mass. 216, 218 (1931). Furthermore, the legislature is presumed to be aware of existing situations at the time of an amendment. *Flanagan v. Lowell*, 356 Mass. 18, 21 (1969). I must presume that the legislature was aware that the courts in 1978 were increasingly utilizing cash bail for which clerks of court, as officials listed in sections 22 and 23 of chapter 35, were responsible. I must also presume, therefore, that the legislature knew of the impact of the amendments of G.L. c. 35, §§22 and 23, upon the payment of cash bail to the clerks of the courts of the Commonwealth.

Until such time as the legislature further considers this matter and indicates more specifically the disposition of moneys held by clerks of court as bail, I am compelled to follow the rules of statutory construction set out above and to conclude that clerks should place money deposited as bail at interest at the best practicable rates. This interest must be deposited into the General Fund unless the court orders the payment of interest to the surety or the defendant.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 10

November 6, 1980

Charles J. Doherty, *Director*
Office of Campaign and
Political Finance
Eight Beacon Street
Boston, MA 02108

Dear Mr. Doherty:

You have requested my opinion concerning the extent to which business corporations¹ may become involved in Massachusetts political activities. In your request you have posed twenty-nine specific questions, each relating to a narrow aspect of this single issue. In this response, I have not attempted to set forth and answer those questions in the form and order you have presented them, choosing instead to address the larger issue and to allow my answers to your individual questions to be subsumed in the resulting discussion.

¹I use the term business corporation in this opinion to include all of the business entities within the statutory prohibition contained in G.L. c. 55, §8. Those entities include corporations carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct or water company, any company having the right to take land by eminent domain or to exercise franchises in public ways granted by the Commonwealth or by any county, city or town, as well as any business corporation formed under the laws of, or doing business within, the Commonwealth.

The starting point for any discussion of corporate political activity in the Commonwealth, must be the provisions of G.L. c. 55, §8.² Business corporations organized under Massachusetts law or doing business within the Commonwealth are precluded by that statute from making contributions³ of anything of value to state or local candidates for public office or to any political committees organized on their behalf.⁴ In spite of this seemingly clear statutory prohibition, you have informed me that numerous political committees have registered with your office and have indicated that they are connected with business corporations, thus giving rise to the inference that corporate funds are being directly or indirectly used in political campaigns. Your questions are intended to clarify the scope of the statutory ban and eliminate the attendant confusion.

Confusion as to the meaning of G.L. c. 55, §8, can be traced to two recent developments. First, the United States Supreme Court recently ruled that the statute was unconstitutional as applied to corporate contributions or expenditures favoring or opposing ballot questions. *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). While the dissenting opinion therein casts some doubt on the continuing viability of a ban on corporate contributions to candidates,⁵ the reasoning of the Court and the holding itself make it clear that G.L. c. 55, §8, still applies to candidate-related corporate expenditures.

Second, federal law allows corporations to expend corporate funds to establish and administer separate, segregated accounts to be used to benefit candidates for federal elective office.⁶ 2 U.S.C. §441b. This is specifically authorized by exempting these corporate costs from the statutory definition of contribution and expenditure. 2 U.S.C. §441b (b) (2). Massachusetts provides no similar exemption, and corporate involvement in the establishment and administration of political committees to favor or oppose candidates remains an indirect corporate political expenditure prohibited by G.L. c. 55, §8.

² Massachusetts General Laws Chapter 55, section 8, provides in pertinent part:

... [N]o business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interests of any political party, or influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation.

³ The Supreme Court has noted that there are differences of constitutional dimension between "contributions" and "expenditure." *Buckley v. Valeo*, 424 U.S. 1, 15-23 (1976). General Laws chapter 55, section 1, defines the two terms and sets forth the distinctions between them. Since G.L. c. 55, §8, flatly interdicts both corporate contributions and corporate expenditures, these distinctions are of no significance here. See *First National Bank of Boston v. Bellotti*, 371 Mass. 773, 782-83, n. 11 (1977) reversed on other grounds, 435 U.S. 765 (1978). Accordingly, the two terms are used interchangeably in this opinion.

⁴ The statute also prohibits corporate contributions to committees organized to favor or oppose questions submitted to the voters, unless those questions materially affect the business, property or assets of the corporation. This prohibition, however, was held to be an unconstitutional infringement upon the right of the voters to hear the corporate viewpoint upon important questions of public concern. *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). Therefore, corporations are currently free to expend corporate funds either directly or indirectly in ballot question campaigns and may form political committees for that purpose. Those committees must register with your office pursuant to G.L. c. 55, §5.

⁵ The principal dissent noted that the Court's opinion "casts considerable doubt upon the constitutionality of legislation passed by some 31 States restricting corporate political activity, as well as upon the Federal Corrupt Practices Act, 2 U.S.C. §441 (b)." and suggested that statutes prohibiting corporate expenditures in the context of elections to public office were practically extinguished and merely awaited "formal interment . . . for another day." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 803, 821 (White, J., dissenting).

⁶ These accounts are generally referred to as political action committees, or by the acronym PAC's, terms which I adapt for purposes of this opinion. The phrase "political action committee" may be of indeterminate origin, but it appears to have gained currency by 1944, when it was used as a term of art by the Congressional Special Committees to Investigate Campaign Expenditures. H.R. REP. No. 2093, 78th Cong., 2d Sess. (1944); S. REP. No. 101, 79th Cong., 1st Sess. (1945). It now has a meaning fixed by federal law, 2 U.S.C. 441a (a) (4).

Some Massachusetts corporations may assume that they may utilize the federally-recognized PAC entity as a vehicle to make contributions to candidates for state or local office. Such an assumption is erroneous. The Federal Election Campaign Act of 1971, 2 U.S.C. §431, *et seq.*, does not purport to regulate corporate participation in campaign financing at the state or local level. *See generally Cort v. Ash*, 422 U.S. 66 (1975); 1974/75 *Op. Atty. Gen.*, Rep. A.G. No. 69, Pub. Doc. No. 12 at 165 (1975). Instead, Massachusetts law determines how candidates for state or local office may finance their campaigns, and prohibits corporate involvement both by direct contribution and by indirect expenditure of corporate resources for the administration of political committees. While a corporation may establish a PAC for purposes of federal elections, the PAC may not contribute directly or indirectly to state or local candidates.

This is not to say, however, that a multi-candidate committee⁷, organized in accordance with Massachusetts law, could not call itself a "political action committee". On the contrary, the prohibition contained in G.L. c. 55, §8, is one of substance, not form, and does not restrict the First Amendment-based freedom of committee members to choose a name for their committee. *See Riddell v. National Democratic Party*, 508 F. 2d 770, 778-79 (5th Cir., 1975). Thus, political committees organized in accordance with G.L. c. 55, §5, may utilize the appellation "political action committee" in their statement of organization, but they may not assume the legal incidents of federal PAC's.

The prohibition against corporate financial involvement in the election of candidates for state and local office does not extend to individual corporate officers and employees. The proscription contained in G.L. c. 55, §8, applies only to the activities of business corporations themselves. It does not attempt to restrict volunteered political activity by individuals associated with those corporations.⁸ The statutes do not restrict the right of corporate employees to endorse political candidates, to solicit political contributions, or to join political committees. Such a law would restrict political association and would almost certainly violate the First and Fourteenth Amendments to the United States Constitution. *See generally Cousins v. Wigoda*, 419 U.S. 477, 487 (1975); *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973). Any group of private citizens in this state may form political committees for any purpose regardless of their employment or financial investments.

It necessarily follows from this proposition that corporate officers, including a corporation's chief executive officer, are free to endorse any candidate they choose, to discuss that candidacy during the normal course of conducting corporate business, and to solicit support, financial or otherwise, for the candidates of their choice. Corporate officers and employees may form multi-candidate committees, may comprise the entire membership of such

⁷The election laws of this Commonwealth allow various individuals to form a political committee to support candidates who are sympathetic to their views. G.L. c. 55, §5. These "multi-candidate" committees are independent of any candidate and are in certain respects similar to federal PAC's.

⁸State, county and municipal employees are prohibited from soliciting campaign contributions, G.L. c. 55, §13, and from contributing to certain candidates for public office, G.L. c. 55, §15, although this prohibition does not extend to contributions to political committees. 1965 *Op. Atty. Gen.*, Rep. A.G., Pub. Doc. No. 12 at 112, 115 (1964). Certain other public officers may be precluded from seeking elective office while maintaining their public employment. *See Boston Police Patrolmen's Association, Inc. v. Boston*, 367 Mass. 368 (1975); *O'Hare v. Commissioner of Public Safety*, 367 Mass. 376 (1975).

committees, and may provide voluntary services during their non-business hours.

Even as the statute does not restrict the independent political activities of corporate officers, stockholders and employees, so also does it fail to provide them any insulation from solicitations by their peers. Federal law does regulate the manner by which PAC's solicit corporate personnel and their families and the frequency of such solicitation. 2 U.S.C. §441b (b) (4) (B). See FEC AO 1977-18; AO 1976-79. Since Massachusetts law does not permit PAC's or their functional equivalent to operate at all, such protections would be superfluous.

In considering the extent to which a business corporation may make goods and services available to candidates or political committees, the meaning of the phrase "anything of value," as used in G.L. c. 55, §8, is of critical importance. This phrase cannot be interpreted in isolation, but must be read in conjunction with the other components of the statutory scheme of which it is a part. *Boston v. Massachusetts Bay Transportation Authority*, 373 Mass. 819, 823 (1977). Of particular significance is the definition of the term "contribution" in G.L. c. 55, §1, where the word is said to include any "discount or rebate not available to other candidates for the same office and to the general public." Many of the specific questions you have posed may be answered by reference to this statutory provision.

The Massachusetts statutory scheme does not prohibit corporations from selling or renting their facilities, goods and services to candidates for political office or political committees organized on their behalf. Questions arise, however, as to the remuneration that the corporations must receive in return for the goods or services provided. It is my opinion that corporations may not offer those goods or services without charge and must charge a rate such that no discount or rebate is offered to any candidate or committee which is not available to other candidates for the same office and to the general public.⁹ Accordingly, Massachusetts business corporations can allow utilization¹⁰ of their meeting rooms, their equipment, including telephones, and their office supplies, including stationery, for candidate-related political purposes only where they receive such compensation for those goods or services.

A slightly more difficult question is presented when a particular fair market value cannot be ascribed to the use of corporate property. You have inquired, for instance, whether a business corporation may provide lists of its shareholders or employees to candidates or committees. These lists may be things of value, see *Zentner v. American Federation of Musicians of U.S. and Canada*,

⁹The Federal Elections Commission, operating under analogous federal law, has promulgated regulations which permit corporations to make available corporate facilities to candidates if they are reimbursed within a commercially reasonable period and at a rate consistent with normal and usual rental charges. 11 C.F.R. 114.9 (a) (2). The regulations are supplemented by a series of FEC advisory opinions which are illustrative of how the federal government has handled the discount or rebate problem. See FEC AO 1978-34 (reimbursement for use of corporate telephones must include charges by telephone company plus fair market rental value of office space and furniture); FEC AO 1975-94 (loan of corporate equipment such as typewriters, copying equipment and airplanes is an in-kind contribution in an amount equivalent to normal and usual rental charges).

¹⁰General Laws chapter 55, section 8 proscribes the use of corporate funds regardless of the identity of the user. Thus a corporation cannot pay for stationery or postage used by its chief executive officer to endorse or oppose a candidate or to solicit funds on behalf of such a candidate. Similarly the prohibition contained in section 8 extends to the facilities of an association of which the corporation is a dues-paying member. The prohibition extends to both direct or indirect expenditures or contributions. If a corporation cannot directly provide facilities to a candidate or committee by virtue of the statute, it may not do so indirectly through the associations to which it belongs.

237 F. Supp. 457, 463 (S.D.N.Y. 1965), and as such could not be provided to a candidate or political committee without appropriate remuneration.¹¹

You have asked whether a corporation may allow a candidate or political committee to use its internal mail system or to implement a payroll deduction plan for employee contributions. This type of corporate involvement is contemplated by the federal statute which permits PAC's to operate, 2 U.S.C. §441b (b) (2), and is explicitly allowed by regulations adopted by the Federal Elections Commission. 11 CFR, §§114.1 (b) and (f); 114.11 (a). Massachusetts law contains no similar exemption from the general ban on corporate contributions and expenditures. Accordingly, corporations may not provide internal mail or payroll deduction systems to candidates or political committees without receiving appropriate compensation in return.

You have also specifically inquired, concerning the use of a corporate name, logo or trademark by a political committee. The exclusive use of corporate names and trademarks is protected by Massachusetts statutes. G.L. c. 155, §9, c. 156B, §11; c. 110B, §§12, 13. There also exists at common law the right to protect the use of a business name. *Tiffany & Co. v. The Boston Club, Inc.*, 231 F. Supp. 836 (D. Mass. 1964). Trade names and trademarks have been held to constitute valuable property. *See General Electric Co. v. Kimball Jewelers, Inc.*, 333 Mass. 665, 677 (1956). I am of the opinion that insofar as a corporation would enforce its right to the exclusive use of its name, trademark or logo against other entities, it grants a thing of value if it allows their use by a committee or other organization. A business corporation may allow a multi-candidate committee to use its name, trademark, or logo without compensation, only to the extent that it would not prohibit such use by any other individual or entity.

The same reasoning applies to the use of corporate personnel. The statutory definition of the word "contribution" specifically includes "payment, by any person other than a candidate or political committee, or compensation for the personal services of another person which are rendered to such candidate or committee." G.L. c. 55, §1. A business corporation which requires an employee to work for the election of a candidate, while at the same time providing the employee with a salary, makes a political contribution to the candidate in violation of G.L. c. 55, §8. It is immaterial whether the employee is required to perform the political activity during normal business hours. As long as political activity is a condition of employment, it must be viewed as part of the duties of the employee for which he is compensated.

A separate issue is raised by the question whether a corporate employee may volunteer his time to a political candidate during business hours. If the corporation generally allows employees to perform non-business functions during normal working hours, then the corporation could allow an employee to perform volunteer political work in a similar manner. As this policy would be considered part of the normal course of conducting business and would "not involve corporate expenditures specifically designed to influence the electoral

¹¹G.L. c. 156B, §32, governs access by stockholders to the list of names and addresses of stockholders in a corporation and the amount of stock held by each, including access "for the purpose of selling said list."

process," *First National Bank of Boston v. Bellotti, supra*, 371 Mass. at 789, the provisions of G.L. c. 55, §8, would not be implicated. Of course, the corporation could not prescribe particular candidates or committees for whom the employees may volunteer their services during business hours. If, however, the corporation generally prohibits its employees from performing non-business activities during normal working hours, it may not make an exception for political services rendered to a political candidate. By allowing political services to be performed by an employee during a time when the employee would normally be required to devote his attention to corporate business, the corporation would in fact be making a donation of the employee's time. Such a donation is prohibited by G.L. c. 55, §8.

The prohibition against corporate expenditures does not apply to expenses incident to the publication of an internal newspaper which has editorialized in favor of a particular committee or candidate, urged that contributions be made to such a committee or candidate, or sold advertising space to a candidate or a multi-candidate committee. As the Supreme Judicial Court has authoritatively stated in construing the applicable law, "§8 does not bar such activities [as publishing a house organ or newspaper expressing political views] which are in the normal course of . . . corporate affairs and do not involve corporate expenditures specifically designed to influence the electoral process". *Id. See also United States v. C.I.O.*, 335 U.S. 106, 122-24 (1948) (Federal Corrupt Practices Act does not bar publication of internal corporate newspapers endorsing political proposals or candidates). Since the Supreme Judicial Court is the ultimate expositor of the meaning of Massachusetts law, *see Moore v. Sims*, 442 U.S. 415, 429 (1979); *Smiley v. Kansas*, 196 U.S. 447, 455 (1905), this narrowing construction of section 8 is controlling.

In summary, I believe that Massachusetts law interdicts any corporate expenditure or contribution of anything of value specifically to promote or oppose a candidate for state, county or local political office and that the law does not allow corporations to circumvent the prohibition by forming and administering PAC's. It does not, however, restrict the First Amendment freedoms of individual corporate officers, stockholders or employees to participate in such political activities, nor does it ban corporate expenditures in the normal course of business which are incidental to the internal dissemination of political views through house organs or newspapers.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

November 26, 1980

Number 11

Michael J. Sabbagh, *Commissioner*
Division of Insurance
100 Cambridge Street
Boston, MA 02202

Dear Mr. Sabbagh:

You inform me that a group of individuals in the Commonwealth proposes to organize an insurance company under General Laws chapter 175, section

48, to engage in one line of business specified in section 47 of that chapter, and that it desires to do so by forming a business corporation to act as a promoter in the formation of the insurance company. As a promoter, the corporation will purchase twenty-five percent of the first million dollars and fifteen percent of the second million dollars of original issue stock, thereby satisfying the requirement of section 48, concerning the amount of stock to be purchased by the promoters, organizers, directors and officers of the stock insurance company.

You seek my opinion whether a business corporation formed under General Laws chapter 156B may be a "promoter" of a stock insurance company, as that term is used in G.L. c. 175, §48. Specifically, you ask whether the word "person", as used in G.L. c. 175, §48, includes such a business corporation or whether it refers only to natural persons.

General Laws chapter 175, section 48, as amended by St. 1966, c. 95, §2, defines a promoter as follows:

The word "promoter", as used in this section, shall mean any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing any company organized under this section.

You properly observe that G.L. c. 4, §7 (23), provides that unless a contrary intention clearly appears, the word "person" in a statute includes corporations. In light of this provision, your question is clearly posed: does the word "person" as used in the statutory definition of promoter include a corporation or does "a contrary intention clearly appear" in G.L. c. 175, §48, thereby making G.L. c. 4, §7 (23) inapplicable?

It is my opinion that the word "promoter", as it is used in section 48, refers only to natural persons acting in that capacity. Based upon the literal language of the statute, in conjunction with the legislative purpose of its enactment, it clearly appears that in using the term in section 48, the legislature contemplated that only natural persons would be promoters.¹

As with the construction of any statutory provision, section 48 must be interpreted "according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Board of Education v. Assessor of Worcester*, 368 Mass. 511, 513 (1975), quoting *Industrial Fin. Corp. v. State Tax Comm.*, 367 Mass. 360, 364 (1975). Following that methodology, I begin with an analysis of the words of the statute itself.

The word person is used twice in section 48, once in the definition of

¹There is some indication in the General Laws that corporations are not precluded from acting as promoters. See G.L. c. 156B, §9 (o); G.L. c. 175, §30 (a); *Productora E Importadora De Papel v. Fleming*, Mass. Adv. Sh. (1978) 3106, 3117; see also American Bar Foundation, Model Business Corporation Act, §4 (1971 & Supps. 1973, 1977). Indeed, the law has not undertaken to define or to catalogue the nature or functions of a promoter. Massachusetts courts have wisely restricted themselves to stating promoters' rights and duties on the facts of a particular case. See, e.g., *Whaler Motor Inn, Inc. v. Parsons*, 372 Mass. 620, 625-27 (1977) (It is well to proceed modestly, with no hope of finding invariant precepts); *Productora E Importadora De Papel v. Fleming*, *supra*, Mass. Adv. Sh. (1978) at 3117; *Old Dominion Copper & Co. v. Bigelow*, 203 Mass. 159, 178 (1909). The definition of "promoter" contained in section 48, as any person who "directly, or indirectly takes initiative in founding and organizing any company," is as precise as any hazarded by a court.

“promoter”, and once in the first sentence of the section: “Ten or more persons residents of this commonwealth may form a stock company” Both the numerical requirement of ten or more persons, and the requirement that those persons be residents of the commonwealth are significant. The number of persons required to join in forming an insurance company makes little sense if corporations are counted as persons. Similarly, the use and definition of the term “resident” in chapter 175 suggests that the legislature contemplated that only natural persons be promoters.² See G.L. c. 175, §1.

Finally, the statutory limitations on the issuance of options and warrants to promoters also clearly indicate that promoters must be natural persons. The statute requires in the fourth paragraph that any options and warrants issued to promoters cannot be transferred except by operation of law as a result of death or with the prior written approval of the Commissioner. G.L. c. 175, §48. This initial factor is significant because only natural persons are subject to a transfer of property by operation of law as a result of death.

In addition, it is an historical fact that corporations have not had formal authority to join in the formation of other corporations. In the absence of a statute expressly so providing, corporations may not be incorporators or original subscribers for stock in another corporation. W. Fletcher, *Cyclopedia of the Law of Private Corporations*, §85 (perm. ed. rev. vol. 1974), §2827 (perm. ed. rev. vol. 1968). They may not join in partnership with individuals. See, e.g., *Walsh v. Atlantic Research Associates, Inc.*, 321 Mass. 57, 64 (1947); *Hosher-Platt Co. v. Miller*, 238 Mass. 518, 523 (1921). Consequently, they have not, historically, acted as promoters. See Henn, *Law of Corporations*, §183 (1970).³ But see generally American Bar Foundation, *Model Business Corporation Act* §4 (p) and *Commentary* (1971). Thus statutes, such as G.L. c. 175, §48, which provide for the formation of corporations are not to be construed as authorizing other corporations to become incorporators, unless such an intention on the part of the legislature is clear. Therefore, it seems clear that where section 48 provides that “ten or more persons” may form a stock insurance company, the statute refers only to natural persons.

Chapter 175 of the General Laws was first enacted in 1872. The provision that “[t]en or more persons residents of this commonwealth” may join to form an insurance company is essentially unchanged from the original enactment. See Stat. 1872, c. 375, §1. There is no provision in chapter 175 expressly granting to insurance companies the powers only recently given to business corporations. See St. 1969, c. 392. It is thus fair to say, for the reasons set out above, that these words have always referred to natural persons, notwithstanding that G.L. c. 4, §7 (23), has been in effect since 1836. R.S. 1836, c. 2, §6, cl. 13. In my opinion, that remained true in 1966, when the last three paragraphs of section 48 were inserted. These considerations require the

²Indeed, where statutes providing for the formation of corporations require persons forming the corporation to be residents it is generally held that the term “persons” refers to individual natural persons. See W. Fletcher, *Cyclopedia of the Law of Private Corporations*, §82 (perm. ed. rev. vol. 1974).

³These were the circumstances concerning corporations formed under G.L. c. 156, notwithstanding that section 6 of that chapter provides that a corporation could be formed by “three or more persons.” When the new Business Corporations Act, chapter 156B, was enacted in 1964, section 12 provided that “Three or more natural persons . . . may act as incorporators.” St. 1964, c. 723, enacting G.L. c. 156B, §12. It was not until 1969 that corporations were permitted to act as incorporators and freely to join in partnerships. See St. 1969, c. 392, amending G.L. c. 156B §9 (o), and inserting G.L. c. 156B, 9A.

conclusion that the word "person", as it appears in the final paragraph of section 48, likewise refers only to natural persons. This follows both from the desirability of according the same meaning to a word that appears more than once in a statute, see *Plymouth County Nuclear Information Committee, Inc. v. Energy Facilities Siting Council*, 374 Mass. 236, 240 (1978), and from the fact that the amendments increasing the power of business corporations were enacted after the insertion of the final three paragraphs of section 48.

That this interpretation is consistent with the legislative purpose may be ascertained by further analysis of the statute and its history. The third paragraph of section 48 provides that:

. . . The promoters, organizers, directors and officers of the company shall purchase a total of at least twenty-five per cent of the first million dollars of stock originally issued and a total of not less than fifteen per cent of each additional one million dollars of stock originally issued. Any such stock shall be purchased at the same price and on the same terms as stock offered publicly. Any stock issued to the promoters, organizers, directors or officers of the company shall be held by the person to whom issued for a period of not less than five years. . . .

This provision, in effect, requires those most responsible for the success and soundness of the company to have a substantial stake in that success, thereby assuring good faith in their dealings with the company.⁴ Plainly, the General Court has concluded that there is special need in the insurance industry for measures designed to insure the responsibility and good faith of those who form, control and operate insurance companies.⁵ See generally, *Elmer v. Commissioner of Insurance*, 304 Mass. 194, 197-98 (1939).

Granting this premise of section 48, it is evident that the scheme which you have described would seriously imperil the statutory purpose. If a business corporation may hold the shares required to be held by an insurance company's promoters, organizers, directors or officers, then no individual promoter, organizer, director or officer need have the personal stake envisioned by the statute.⁶ Nor is the corporate promoter's stake in the insurance company an adequate substitute for the personal interest of individuals. This is so because a corporation acts through individuals, and the individuals through whom it acts may have no personal stake in the success of the insurance company. Moreover, a business corporation cannot give undivided attention to making a success of the insurance company, for it is obliged to answer to its shareholders. It is true that the insurance company's individual promoters, organizers, directors and officers have well defined legal duties to the company,

⁴No similar requirements are to be found in chapter 156B, the Business Corporations Law.

⁵A complementary provision may be found in G.L. c. 175, §49, requiring the Commissioner of Insurance to satisfy himself that the incorporators of an insurance company are "of good repute and intend in good faith to operate the company."

⁶To put the worst case, suppose that a group of individuals promotes a business corporation, and capitalizes it by the sale of shares to the public. Suppose next that this corporation nominally acts as a promoter in concert with the same individuals to form a stock insurance company, and that it purchases all of the requisite shares. In that case, only the shareholders in the business corporation have a substantial money stake in the success of the company, the individuals most responsible for promoting the company need have no money stake at all. Worse, they will look to their promoters' fees for their compensation, rather than to a speedy return on investment in a healthy insurance company.

but the very premise of section 48 is that these duties are not sufficient assurance of individual good faith and responsibility.

My conclusion is reinforced by consideration of the context of section 48 in the overall statutory scheme. One objection to construing section 48 to treat corporations as promoters is the consequence of that construction in light of the merger provisions of chapter 175. General Laws chapter 175, section 193S, provides that an insurance holding company may be merged into its domestic insurance subsidiary if at least eighty per cent of its assets are committed to its subsidiary's insurance business. Thus, in the case that you have stated, a business corporation formed for the sole purpose of promoting a stock insurance company could be merged into the insurance company upon its formation. If the business corporation were the only promoter holding shares in the insurance company, its merger into the company would eliminate the only promoter, organizer, director or officer with the "personal" stake contemplated by the statute. This result is clearly inconsistent with the statutory requirement that stock issued to promoters, organizers, directors or officers "be held by the person to whom issued for a period of not less than five years, unless the commissioner shall approve a prior transfer, in writing." G.L. c. 175, §48. I do not mean to say that such a result would necessarily follow on the construction advanced; it is enough to say that chapter 175 does not clearly provide for such an eventuality. This is significant because the act which added the final three paragraphs of section 48 also amended section 19A to require that the corporation resulting from a merger comply with part of the amended section 48, but not with the provisions concerning promoters. St. 1966, c. 95, §2. Had the legislature contemplated the possibility that a corporation could act as a promoter, it would have made specific provisions in the same statute for the situation hypothesized.

Although there has been movement recently toward removing disabilities of business corporations to act as incorporators and partners, see Henn, *Law of Corporations* §183 (1970), there is no evidence in chapter 175 to suggest that the legislature has intended to remove such disabilities with respect to insurance companies. On the contrary, the movement in that chapter has been toward establishing greater individual responsibility for the affairs of insurance companies. *See generally* Clark, *The Regulation of Financial Holding Companies*, 92 *Harv. L. Rev.* 787, 814-48 (1979); Clark, *The Soundness of Financial Intermediaries*, 86 *Yale L. J.* 1, 10-25, 77-85 (1976). In short, it would be egregious to alter the traditional meanings of words in that chapter because of events in a diverging area of corporation law.

For the foregoing reasons, it is my opinion that a corporation may not be a promoter of a stock insurance company for the purposes of General Laws, chapter 175 section 48.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 12

February 10, 1981

John T. Dunlop, *Chairman*
 Morris A. Horowitz, *Vice-Chairman*
Joint Labor-Management Committee
 130 Bowdoin Street - Room 408
 Boston, MA 02108

Gentlemen:

You have requested my opinion concerning the effect of Section 10 of Question 2,¹ which was approved by the voters on November 4, 1980, upon the powers of the Joint Labor-Management Committee (hereafter, "the Committee"). Specifically, you ask whether the Committee may use binding arbitration subsequent to December 4, 1980, as a means to resolve disputes in cases where the Committee has exercised jurisdiction prior to that date, but where the case has not been resolved as of that date.

For the reasons set forth below, I conclude that while the Committee may use arbitration as a method to resolve a dispute over the negotiation of the terms of a collective bargaining agreement involving municipal fire fighters or police officers, it may not bind the legislative body of the affected municipality to honor the resulting agreement. I base this conclusion upon the fact that unlike Section 4, Section 4A of Chapter 1078 of the Acts of 1973, from which the authority of the Committee derives, nowhere expressly states that arbitration awards shall be binding upon the legislative body of the municipality, nor may such authority be inferred from the statute.

Section 4 of Chapter 1078 of the Acts of 1973 established a procedure for the resolution of labor disputes between a municipality and the collective bargaining unit of its policemen or firefighters. Under that section, the Board of Conciliation and Arbitration must first determine that an impasse exists in negotiations over the terms of a collective bargaining agreement.² The statute then provides for the submission of such a dispute to a panel of three arbitrators, which, after hearing, selects one of two written statements submitted by the respective parties and containing that party's last and best offer for each of the issues in dispute. The statute expressly provides that "the selection [by a majority of the panel] shall be final and binding upon the parties and upon the appropriate legislative body." St. 1973, c. 1078, §4. This "last best offer, final and binding arbitration" was designed to balance the collective bargaining rights of public employees against the public health and safety in police and fire protection. *Arlington v. Board of Conciliation & Arbitration*, 370 Mass. 769, 780 (1976).

St. 1977, c. 730, entitled "An Act Establishing a Joint Labor-Management Committee to Oversee Municipal Police and Firefighter Collective Bargaining

¹Question 2, popularly known as "Proposition 2½" and recorded as St. 1980, c. 580, became effective December 4, 1980. Section 10 thereof provides:

Section 4 of Chapter 1078 of the Acts of 1973, as most recently amended by Chapter 154 of the Acts of 1979, is hereby repealed.

See n. 3 accompanying text, *infra*.

²Such arbitration, involving the formation of a contract between the parties, is known as "interest arbitration". See *School Committee of Boston v. Boston Teachers Union*, 372 Mass. 605, 606, n.4.

and Arbitration Proceedings," amended St. 1973, c. 1078, by inserting therein Section 4A. As subsequently amended by St. 1979, c. 154, Section 4A grants the Committee "oversight responsibility for all collective bargaining negotiations involving municipal police officers and firefighters" and, at its discretion, exclusive jurisdiction over any dispute involving the negotiation of the terms of a collective bargaining agreement. Section 4A provides:

The committee shall forthwith review the petition [of either party or both parties for the exercise of jurisdiction and for the determination of the existence of an impasse] and shall make a determination within thirty days whether to exercise jurisdiction over the dispute [If] the committee declines to exercise jurisdiction over the dispute or fails to act within thirty days of receipt of the petition on jurisdiction, the petition shall be automatically referred to the board of arbitration and conciliation . . . for disposition in accordance with the provisions of [G.L. c. 150E, §9]

Said board shall not accept any petition from a party to a municipal police and fire negotiation under [G.L. c. 150E, §9] if the petition has not been first reviewed in accordance with the provisions of this section by the committee

The committee after consultation with the board of arbitration and conciliation may remove at any time from the jurisdiction of the board any dispute in which the board has exercised jurisdiction, and the board shall then take no further action in such dispute. The committee may, at any time, remand to the board any dispute which the committee has exercised jurisdiction. . . .

St. 1979, c. 154, §1.

Thus the Committee has been granted the authority to determine which disputes may be submitted to "last best offer, final binding arbitration" by the Board of Arbitration and Conciliation and which disputes are to be resolved pursuant to its own authority granted by Section 4A.

Section 4A also provides that the Committee, after determining that a genuine impasse exists and that the process of collective bargaining has been exhausted, shall "determine the form of arbitration, conventional arbitration, issue by issue, last best offer, or such other form as the committee deems appropriate" and "determine the procedures to be followed in the arbitration proceedings." Section 4A goes on to provide:

Except as provided herein, arbitration proceedings in matters over which the committee assumes jurisdiction, shall be conducted in accordance with the standards, provisions and limitations of . . . section four

St. 1979, c. 154, §1.

Your question arises because Section 4 has now been repealed by the passage of Question 2. As I stated in my summary to the voters, the effect of passage of Question 2 is, in part, to "repeal the law which provides for compulsory binding arbitration when labor negotiations concerning police and fire personnel

come to an impasse.” Some confusion has arisen from the fact that although the original initiative petition called for the repeal of Section 4A, the first ten signers of that petition subsequently submitted a “perfecting amendment” clarifying their intent to repeal Section 4. See Mass. Const. Amend. Art. 48, Init., Pt. 5, §2. I certified that their amendment was perfecting in nature and did not materially change the substance of Proposition 2½, relying in part on *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230 (1946).³ In my view, therefore, when Question 2 was ultimately submitted to the voters, it called for the repeal of Section 4, but not for the repeal of Section 4A.

In my opinion, Sections 4 and 4A are entirely different, albeit somewhat related, provisions of law, and the latter statute was not repealed by the passage of Question 2, either by the express terms of that statute or by implication. See *Colt v. Fradkin*, 361 Mass. 447, 449-50 (1972); *Kardas v. Selectmen of Dedham*, Mass. App. Adv. Sh. (1979) 1596, 1600. The questions remain, however, whether and how the remedies available to the Committee have been affected by the repeal of Section 4.

The answer to your question requires a construction of Section 4A in light of St. 1973, c. 1078, as amended, the statute governing labor relations in the public sector, of which Sections 4 and 4A have been a part. That statute must be read “so as to constitute a harmonious whole.” *Director of Division of Employee Relations v. Labor Relations Commission*, 370 Mass. 162, 172 (1976). Moreover, in determining the remedies available to the Committee, Section 4A cannot be viewed in isolation, but must be construed in relation to other portions of the law governing public sector labor relations, the context in which it was enacted, and its present language. See *Pereira v. New England LNG Co., Inc.*, 364 Mass. 109, 115 (1973).

St. 1973, c. 1078, §2, added chapter 150E to the General Laws. Section 9 of chapter 150E provides for voluntary interest arbitration when an impasse exists in the negotiation of a collective bargaining agreement for public employees and that impasse remains unresolved after mediation and fact-finding proceedings. That section provides in relevant part:

Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an impasse shall be binding on the parties and on the appropriate legislative body and made effective and enforceable pursuant to the provisions of chapter one hundred and fifty C, provided that said arbitration proceeding has been authorized by the appropriate legislative body or in the case of school employees, by the appropriate school committee.

See *School Committee of Boston v. Boston Teachers Union*, 372 Mass. 605, 607 (1977).

³The validity of my certification of that perfecting amendment has been challenged by a number of individuals in litigation pending in the Superior Court for Suffolk County. See *International Brotherhood of Police Officers, et al., v. Secretary of the Commonwealth, et al.*, Civil Action No. 45440 (Sup. Ct. Dept., Suffolk Cty., filed Nov. 26, 1980). In theory, one could argue that the allegedly improper certification resulted only in the repeal of Section 4A, or contend that both Sections 4 and 4A have been repealed, or even assert that neither section was effectively rescinded. Furthermore, one might argue that the purported violation tainted all of Question 2, so that Proposition 2½ in its entirety must fall. It is unnecessary for me to determine in this opinion what the impact of an erroneous certification would be, not only because the issue is in litigation, but also because I believe that the certification was proper.

In enacting St. 1973, c. 1078, the legislature clearly made interest arbitration involving firefighters and police officers subject to different procedures under Section 4 and expressly made the arbitration award "final and binding" upon both the parties and the appropriate legislative body. Section 4 was experimental and highly controversial. See, e.g., "Final Offer Arbitration in Massachusetts," 12 N.E. Law Rev. 693 (1977). Its constitutionality was challenged, although upheld in *Town of Arlington v. Board of Conciliation and Arbitration*, 370 Mass. 769 (1976). Despite the pressures of competing interest groups,⁴ the statute, which was originally due to expire on June 30, 1977, was reenacted that year with amendments, and its life extended by the legislature for two additional years. St. 1977, c. 347, §§2, 3. It is in this context that the legislature enacted Section 4A. St. 1977, c. 730, §1. As originally enacted, Section 4A, as the amended Section 4, was to expire on June 30, 1979. St. 1977, c. 730, §2. See also St. 1977, c. 347, §3. In 1979, seven petitions were introduced in the House and Senate, some to repeal, some to amend, and some to affirm final and binding interest arbitration for police officers and firefighters. Once again, however, Section 4 was extended to June 30, 1983. St. 1979, c. 154, §2. Section 4A was reenacted, with amendments, and with no provision for its expiration. St. 1979, c. 154, §1.

It is noteworthy that nowhere in Section 4A, as enacted both in 1977 and 1979, did the legislature provide that arbitration awards under that section are to be binding upon the legislative body of the municipality.⁵ This is the case notwithstanding that the legislature has expressly indicated both in Section 4 and G.L. c. 150E, §9,⁶ the circumstances under which interest arbitration shall be "final and binding" upon the appropriate legislative body. In light of the legislative history of Section 4A, I must conclude that this omission was intentional.

In reaching that conclusion, I am also guided by the fact that "there is a general policy favoring voluntary arbitration in the labor field"⁷ and "an understandable attitude of wariness about arbitration forced on a party." *School Committee of Boston v. Boston Teachers Union*, supra, 372 Mass. at 612-13. Moreover, as the Supreme Judicial Court has noted elsewhere, the experimental nature of Section 4 reflected "the Legislature's caution and hesitation in prescribing arbitration as the uniform method for the resolution of labor

⁴In 1977, sixteen bills were introduced in the House and Senate on the subject of binding arbitration, reflecting the divergent views of the public on the issue. State employees, for example wanted the right to binding arbitration, but the Massachusetts Federation of Teachers proposed to prohibit it. The Massachusetts League of Cities and Towns proposed that arbitration awards not be binding, while firefighters and policemen wanted to extend it beyond its expiration date. In addition, the Governor's task force recommended extending its expiration date for an additional two years. Massachusetts Department of Labor and Industries, Interim Report of the Governor's Tax Force on Chapter 150E and Impasse Procedures. Pub. No. 9102-14-35-8-76-CR. at 9 (Sept. 20, 1976).

⁵As originally enacted, Section 4A provided that "[e]xcept as provided herein, arbitration proceedings in matters over which the committee assumes jurisdiction shall be conducted in accordance with the standards and provisions of section 4." That language was included within the 1979 re-enactment, with two modifications. It was inserted as a new paragraph after the language "determine the procedures to be followed in the arbitration proceeding" and the words "and limitations" were added so as to read "standards, provisions and limitations of said section four." Giving this language its plain and ordinary meaning, *Burke v. Chief of Police of Newton*, 374 Mass. 450, 452 (1978), I conclude that this portion of Section 4A was intended to govern only the manner in which arbitration proceedings are to be conducted and does not refer to the effect of any award forthcoming as the result of these proceedings. This reading of the statute makes it unnecessary for me to determine whether the repeal of Section 4 impliedly repealed the portions of Section 4A which incorporated the former statute by reference.

⁶See also G.L. c. 150E, §8, providing for binding grievance arbitration.

⁷For a discussion of policy implications favoring non-mandatory arbitration in the public sector, see D. Bok and J. Dunlop, *Labor and the American Community* at 338 (1970).

disputes.” *Director of Division of Employee Relations v. Labor Relations Commission*, 370 Mass. 162, 169, n. 9 (1976). This “caution and hesitation” speaks against an enlargement of the terms of Section 4A to make arbitration awards binding on the legislative body of the affected municipality. *See also Datatrol, Inc. v. State Purchasing Agent*, Mass. Adv. Sh. (1980) 299, 320; *Worcester v. Quinn*, 304 Mass. 276, 280 (1939).

I am thus of the opinion that to the extent that Section 4A grants the authority to refer disputes to the Board of Conciliation and Arbitration, the Committee may, of course, no longer refer disputes for purposes of mandatory “last best offer, final and binding arbitration” by the Board. Any such disputes referred to the Board are subject to voluntary “final and binding” arbitration in accordance with G.L. c. 150E, §9. Furthermore, even as to those cases pending on December 4, 1980, and over which it has exercised jurisdiction, the Committee is without authority in resolving those cases to utilize arbitration which is binding upon the legislative body of a city or town. The passage of Question 2 has, therefore, left the Committee with the continuing authority to arbitrate disputes between the bargaining agents for municipal police or firefighters and the executive officials of those municipalities, but has eliminated the binding effect of Committee awards on municipal legislative bodies.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 13

February 10, 1981

Gregory R. Anrig, *Commissioner*
Department of Education
31 St. James Avenue
Boston, MA 02116

Dear Commissioner Anrig:

You have requested my opinion whether General Laws chapter 31, section 37, requires a school committee to grant a leave of absence to a public school teacher who is serving in an elective state office. Your request derives from your responsibilities to advise school committees concerning their legal duties and to ensure that the laws pertaining to education are enforced.

For the reasons set forth below, I am of the opinion that General Laws chapter 31, section 37, does not apply to public school teachers and does not, therefore, require a school committee to grant a leave of absence to a teacher who is serving in elective state office.¹

¹I reach no conclusion whether a public school teacher, by virtue of some other provision of law or the terms of a collective bargaining agreement, may otherwise be entitled to such a leave of absence. See n.5, *infra*.

General Laws chapter 31, section 37,² provides in pertinent part:

. . . any person elected to a state office or elected by the people to the office of mayor who is a permanent employee in a civil service position or is employed in a position in any public authority which is supported in whole or in part by public money shall, upon his written request made to the appointing authority, be granted a leave of absence without pay from his civil service position or from his position in such public authority for all or such portion of the term for which he was elected as he may at any time, or from time to time, designate, and shall not, as a result of such election, be suspended or discharged or suffer any loss of rights under the civil service law and rules

You specifically ask whether the phrase "person . . . employed in a position in a public authority" may be construed to include public school teachers who are employees of school committees. I believe the answer to that question is "no", based in part upon the terms of General Laws Chapter 31, section 48, which provides in pertinent part:

All offices and positions in the service of the commonwealth or of any district or authority established by general or special law shall be subject to the civil service law and rules unless expressly exempted by this chapter or other law.

. . . [t]he following shall be exempt from the civil service law and rules, unless expressly made subject thereto by statute:

Public school teachers and administrators whose duties require the possession of a teacher's certificate.

General Laws chapter 31, section 1, defines "civil service law and rules" as "this chapter and the rules promulgated pursuant to this chapter". Because the language of a statute is the principal source of insight into legislative purpose, *Hoffman v. Howmedica, Inc.*, 373 Mass. 32, 37 (1977), I must conclude that the clear intent of the legislature was that the provisions of chapter 31 should not generally apply to public school teachers.

That the legislature intended that public school teachers be exempt from the provisions of General Laws chapter 31 is supported by further analysis of the statute. General Laws chapter 31, section 48, also provides that "[o]ffices and positions in the service of cities and towns shall be subject to the civil service law and rules as provided by sections fifty-one, fifty-two, and fifty-three." General Laws chapter 31, section 53, provides that a school committee for a regional school district may vote to accept the applicability of the "civil service law and rules" to all non-academic positions within a regional school district or regional vocational school district. G.L. c. 31 §53 (a). That section also

²Prior to the passage of St. 1978, c. 393, §11, the section was formerly G.L. c. 31, §46 F. The comparable paragraph within that section was added by St. 1965, c. 703, §1, and provided.

Any person holding an elective state office, or the mayor of any city elected to said office by the people, who holds a permanent office or position in the classified civil service or the labor service or who is employed on a permanent basis by any public authority which is supported in whole or in part by public money shall, upon his written request made to the appointing authority, be granted a leave of absence without pay from such office, position or employment for all or such portion of the term for which he was elected as he may at any time, or from time to time, designate, and he shall not be suspended or discharged, and shall suffer no loss of civil service rights, as a result of such election.

provides for the acceptance by a city or town, in accordance with G.L. c. 31, §§54 and 55, of the applicability of "the civil service law and rules" to certain positions. The statute, however, expressly exempts "the office of . . . public school teachers" from its provisions. G.L. c. 31, §53 (b).³

The leave of absence provision in section 37 of chapter 31 brings within its terms "[a]ny person . . . who . . . is employed in a position in any public authority which is supported in whole or in part by public money". While that language appears to encompass a wide range of public employees, it must nevertheless be construed together with section 48 so that the provisions of the civil service law constitute a harmonious whole consistent with the legislative purpose. *Board of Education v. Assessor Worcester*, 368 Mass. 511, 513-14 (1975). Considering the obvious intent to exclude public school teachers from the provisions of General Laws chapter 31, I am unable to conclude that by the terminology of section 37, the legislature intended to make any exception to this general rule when providing for leaves of absence upon election to state office or to the office of mayor.⁴ See *Zoulalian v. N.E. Sanatorium and Benevolent Assoc.*, 230 Mass. 102, 105 (1918). While the exemption for public school teachers contained in section 48 is not necessarily in conflict with the leave of absence provision of section 37, that latter section does not refer to public school teachers as such and, therefore, does not "expressly" make public school teachers subject to its terms. There is no basis, therefore, for applying section 37 in the situation which you have posited. *O'Hara v. Commissioner of Public Safety*, 367 Mass. 376, 384 (1975).

For the foregoing reasons, I am of the opinion that General Laws chapter 31, section 37, does not apply to public school teachers and does not, therefore, require a school committee to grant a leave of absence to a teacher who is elected to a state office.⁵

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

³See also G.L. c. 71, §§37, *et seq.*, governing the appointment of public school teachers. These statutes, read together, provide teachers with many of the protections otherwise granted to public employees under the civil service law.

⁴This conclusion is supported by the fact that the term "person . . . employed in a position in any public authority," as used in section 37, was most likely not intended to include public school teachers. Section 48 expressly distinguishes "all offices and positions in the service of . . . any . . . authority [established by general or special law]" from "[o]fficers and positions in the service of cities and towns." Cf. *Plymouth County Nuclear Information Committee, Inc. v. Energy Facilities Siting Council*, 374 Mass. 236, 240 (1978) (words used in one part of statute in definite sense should be given same meaning in another part of same statute). In construing section 37, I conclude that the legislature intended to continue the distinction between authorities, such as the Massachusetts Bay Transportation Authority established pursuant to G.L. c. 161A or the Massachusetts Port Authority, established under G.L. c. 91 App., on the one hand, and municipal bodies such as school committees, on the other.

⁵This conclusion is consistent with the broad discretion and "complete and exclusive" authority given to school committees under G.L. c. 71, §38, to contract with teachers as to wages, hours and other conditions of employment. See *Allen v. Sterling*, 367 Mass. 844, 847 (1975). Leaves of absence for public school teachers are governed, in part, by G.L. c. 71, §41A, and by the terms of collective bargaining agreements. See G.L. c. 150E, §§4-7.

Number 14

February 12, 1981

Michael J. Connolly
 Secretary of the Commonwealth
 State House, Room 337
 Boston, MA 02133

Dear Secretary Connolly:

You have requested my opinion concerning the appropriate standards to be used by your office in administering G.L. c. 3, §§39, *et seq.*, pertaining to legislative agents.¹ You inquire, first, whether those individuals who appear before legislative committees for compensation and offer brief testimony or written comments (the so-called expert witnesses) are exempt from the registration and disclosure requirements that are generally applicable to lobbyists. You next ask what employment relationships should be considered in determining whether the particular lobbying activity under consideration is "incidental" to an individual's regular employment, thereby exempting him from the registration and disclosure requirements.

The answer to both your questions requires a close analysis of General Laws chapter 3, section 39, which defines legislative agent as:

. . . any person who for compensation or reward does any act to promote, oppose, or influence legislation, or to promote, oppose, or influence the governor's approval or veto thereof or to influence the decision of any member of the Executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto. The term shall include persons who, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation or the governor's approval or veto thereof, whether or not any compensation in addition to the salary for such employment is received for such services.

In construing this statute, I first examine its plain words, *Sachs v. Board of Registration in Medicine*, 300 Mass. 426, 428 (1938); *Moynihan v. Town of Arlington*, Mass. App. Adv. Sh. (1978) 1255, construed so as to fulfill the legislative intent. *Industrial Finance Corp. v. State Tax Commission*, 367 Mass. 360, (1975). The intent of the legislature should be determined by an examination of the language used, in connection with its legislative history, and the system of law of which it is part. *Commonwealth v. Welosky*, 276 Mass. 398, 401 (1931).

The plain words of this statute are clear and unambiguous. The statute essentially defines legislative agent as anyone who does anything to influence legislation² and receives compensation for his efforts. There is no specific

¹All legislative agents must register with your office, G.L. c. 3, §40, and file periodic statements of their compensation and expenditures in relation to their lobbying activities. G.L. c. 3, §43. Their employers must likewise register, G.L. c. 3, §40 and disclose their expenditures for lobbying activities. G.L. c. 3, §47.

²The statute also specifically includes attempting to influence the governor's approval or veto of laws, as well as attempting to influence any member of the Executive Branch concerning the adoption of any standard, rate, rule or regulation. For purposes of simplification, I refer to all of these activities in this opinion by the generic term of "influencing legislation."

exemption provided by G.L. c. 3, §39, for expert witnesses who appear before legislative committees and bodies of the Executive branch, and the manifest legislative intent of the statute appears to be to broadly regulate those who seek to influence the legislative process for compensation. An examination of the legislative history of this statute strongly indicates that the legislature did not intend to exclude expert witnesses from the broad requirements of registering and disclosing their employers.

When the Massachusetts legislature first provided for the registration of lobbyists, a distinction was made between "legislative counsel" and "legislative agents". St. 1890, c. 456, §2. The law provided for the keeping of two separate dockets, in the following terms:

In the docket of legislative counsel shall be entered the names of counsel employed to appear at a public hearing before a committee of the general court for the purpose of making an argument or examining witnesses . . . in the docket of legislative agents shall be entered the names of all agents employed in connection with any legislation included within the terms of section one of this act, and all persons employed for other purposes who render any services as such agents.

This distinction was maintained by St. 1911, c. 728, §1, which for the first time specifically defined the term "legislative counsel" as:

. . . any person who for compensation appears at any public hearing before committees of the general court in regard to proposed legislation, and who does no other acts in regard to the same except such things as are necessarily incident to such appearance before such committees.

It further defined "legislative agent" as:

. . . any person, firm, association or corporation that for hire or reward does any act to promote or oppose proposed legislation except to appear at public hearings before committees of the general court as legislative counsel.

While the definition of legislative counsel had previously included what is commonly referred to as "expert witnesses," the legislature in 1973 eliminated the distinction between legislative counsel and legislative agent. St. 1973, c. 981. This statute simply defined legislative agent to include anyone who did anything, for compensation, to influence legislation. The intent of the Legislature to include legislative counsel, and presumably expert witnesses, within the definition of legislative agent is expressed in a "[s]tatement of intent," which specifically provides that the statute was enacted to require the disclosure of "the identity, expenditures and activities of certain persons who engage in reimbursed efforts, the so-called lobbyists, to persuade members of the General Court or the executive branch to take specific legislative actions, either by direct communication to such officials, or by solicitation of others to engage in such efforts . . ." St. 1973, c. 981, §1.

The intent to include expert witnesses within the definition of legislative agent is further evidenced by the fact that in 1974, the legislature provided a specific exemption from the definition of "legislative agent" for certain

expert witnesses. St. 1974, c. 382, amending G.L. c. 3, §50. That statute provides that laws pertaining to lobbyists do not apply to "any person requested to appear before any committee or commission of the general court by a majority of the members of such committee or commission; provided that such person performs no other act to influence legislation" It is a well-settled principle of statutory construction that all parts of a statute should be read together so that no clause, sentence or word is rendered superfluous, void or insignificant. *Board of Appeals of Hanover v. Housing Appeals Committee in the Department of Community Affairs*, 363 Mass. 339 (1973). Here the legislature has provided a specific exemption to a general requirement. Where the legislature has provided such an express exemption, it must be construed to be the only exemption that the legislature meant to apply to the rule. See *McArthur Brothers Co. v. Commonwealth*, 197 Mass. 137, 139 (1908).

I conclude, therefore, that expert witnesses who for compensation appear before legislative committees and offer testimony or written comments are legislative agents and must register and file the required disclosure forms with your office. The only exception to this requirement is in the limited instance provided in G.L. c. 30, §50, for those individuals whose testimony is requested by the legislative committee itself.

You have posed separate questions concerning the appropriate factors to be considered in determining whether an individual should be considered a legislative agent within the meaning of G.L. c. 3, §39. The terms of the statute clearly indicate that if any compensation is received by the individual for his lobbying activities, including compensation received from his usual employer, he must be considered a legislative agent.

The statute does not restrict or limit the definition according to the source of the compensation. Rather, it explicitly includes within the definition of legislative agent an individual who performs lobbying activities as any part of his regular and usual employment. If that individual's salary or compensation is in any way substantially attributable to activities enumerated in G.L. c. 3, §39, he falls within the definition of legislative agent. 1974/75 Op. Atty. Gen. No. 48, Rep. A.G., Pub. Doc. No. 12 at 112 (1975). Those individuals who engage in lobbying simply as an incidental aspect of their regular and usual employment³ are excluded from the statutory definition. This determination must of necessity be decided on a case-by-case basis. *Id.*

In those situations where the statutory exemption applies, you should continue to examine the entire scope of the individual's regular and usual employment, including all of the functions performed by the employee, to determine whether or not lobbying activity is a substantial part of that employment or merely incidental thereto. The location of the lobbying activity is immaterial to the determination of whether or not it was contemplated at the time the individual's annual salary was set, see 3 Op. Atty. Gen. at 469 (1912), and, therefore, part of his usual and regular employment. For this

³The exception was held to apply to an engineer employed by a public utility who testified before a legislative committee on behalf of the utility, when a substantial amount of his usual compensation from the utility was not attributable to his appearance or to other lobbying activities. 1974/75 Op. Atty. Gen. No. 48, Rep. A.G., Pub. Doc. No. 12 at 112 (1975). See 3 Op. Atty. Gen. at 469 (1912).

reason, I conclude that you should continue to view all lobbying activity, both within Massachusetts as well as in other jurisdictions, to determine whether or not such activity is part of the individual's regular and usual employment or is merely incidental thereto.

In closing, I note that the statutory exemption is based upon an analysis of the employment relationship between the individual who performs the lobbying activity and his regular and usual employer only. It does not apply when an individual receives compensation for the lobbying activity from a source other than his regular and usual employer. In that instance the individual is simply lobbying for compensation and, by definition, subject to the registration and disclosure requirements. Because his lobbying activity is separate from his usual employment, there is no necessity to inquire whether the statutory exemption applies.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 15

February 12, 1981

George S. Kariotis, *Secretary*
Executive Office of Economic Affairs
State House, Room 212
Boston, MA 02133

Dear Secretary Kariotis:

You have requested my opinion concerning the application of the provisions of the Eighteenth Article of Amendment to the Constitution of the Commonwealth (the so-called Anti-Aid Amendment) to the proposed activities of the newly created Bay State Skills Commission. You inform me that on September 24, 1980, the Governor issued an Executive Order¹ creating the Bay State Skills Commission, a public commission intended to enable and encourage interested "institutions of skills training and education"² to better respond to employment opportunities presented by business and industry within the Commonwealth. You further inform me that a major function of the Commission is to operate a matching grant program whereby institutions of skills training and education may receive state funded grants in support of programs and activities consistent with employment demand. As chairman of the Commission, you envisage that these grants-in-aid would be made available to independent, post-secondary, non-degree granting institutions.

Based on the foregoing, you ask whether the Eighteenth Article of Amendment, which generally restricts the use of state funds to public purposes, proscribes publicly funding grants-in-aid to independent, post-secondary, non-degree granting institutions of skills training and education. It is my opinion that this program does not violate the Anti-Aid Amendment, first,

¹Executive Order No. 185, September 24, 1980.

²Although this term is not defined in the Executive Order, you inform me that the phrase "institutions of skills training and education" includes independent colleges, universities and other post-secondary educational institutions which develop and offer courses consistent with the employment demand.

because the proposed grants-in-aid are permitted by that express exception of the Amendment for the funding of private higher educational institutions and, second, because it does not conflict with the objectives and purposes of the Amendment.

The Eighteenth Article of Amendment to the Constitution of the Commonwealth, as amended by the Forty-Sixth and One Hundred and Third Articles of Amendment, provides in part, as follows:

No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the commonwealth or federal authority or both Nothing herein contained shall be construed to prevent the commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

By its express terms, the Amendment does not prohibit the Commonwealth, and therefore, the Bay State Skills Commission, from making grants in aid to "private higher educational institutions". Your question is, therefore, directly posed: whether the phrase "private higher educational institutions," as that term is used in the Amendment, includes independent, non-degree granting post-secondary educational institutions. Although the term, "private higher educational institutions" is not defined, it is my opinion that independent, post-secondary, non-degree granting institutions are included in that term and therefore fall within that exception to the Anti-Aid Amendment carved out by the 103rd Amendment to the Constitution of the Commonwealth.

In resolving the central issue presented by your question, i.e., whether the proposed grant-in-aid program exceeds the boundaries established by the Anti-Aid Amendment, I first survey the history and purposes of the Amendment, guided by the cardinal rule of constitutional interpretation that provisions of a constitutional amendment are to be construed in the sense most obvious to the common intelligence so as to accomplish a reasonable result and achieve its dominant purposes. *Opinion of the Justices*, 365 Mass. 655, 657 (1974). See also *Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 199 (1976).

As adopted in 1855, Article 18 of the Amendments contained general and "rather uncertain language," *Bloom v. School Committee of Springfield, Mass. Adv. Sh.* (1978) 2110, 2113, concerning the use of public money for private schools. Growing public dissatisfaction with that Article 18, see, e.g., *Opinion of the Justices*, 214 Mass. 599, 601 (1913), resulted in consideration by the Constitutional Convention of 1917 of an amendment which would prohibit the expenditure of public funds for private purposes altogether. *Bloom v. School*

³There were repeated efforts in the legislature, from 1900 to 1916, to revise Article 18. In 1917, one such statute was referred to the Constitutional Convention. R.L. Bridgman, *The Massachusetts Constitutional Convention of 1917* 31 (1923)

Committee of Springfield, supra, Mass. Adv. Sh. (1978) at 2113. Article 46, which emerged from the Debates at that Convention, contained an absolute prohibition against the use of public funds for any non-public educational institution. The objectives of the amendment were twofold: to clearly prohibit public support for religious schools and institutions and to prohibit such aid to non-sectarian schools. *Bloom v. School Committee of Springfield, supra*, Mass. Adv. Sh. (1978) at 2114; *Opinion of the Justices*, 357 Mass. 836, 843-844 (1970); *Opinion of the Justices*, 354 Mass. 779, 784 (1968). See also Comments of Mr. Barnes of Weymouth, 1 Debates, Massachusetts Constitutional Convention 1917-1918, 157-158 (1917). The amendment's broad prohibition, provoked in part by the fact that public aid had in select instances been provided to private schools, had as its purpose the protection of state and municipal treasuries from increasing pressure by religious and other interest groups in search of appropriations. Second, the amendment sought to prohibit those appropriations which had been made upon a political basis or upon individual need, rather than upon a "wide survey of the needs of the state." Comments of Mr. Anderson of Newton, 1 Debates, Massachusetts Constitutional Convention 1917-1918, 167 (1917).

In 1974, a final revision of the Anti-Aid Amendment occurred with the passage of Article 103 by the electorate. For purposes of this opinion, Article 103 resulted in two relevant modifications to Article 18. First, prohibitory language in the opening clause of the 1917 version ["All moneys . . . shall be applied to, and expended *in, no other schools* than those . . . under the order and superintendence of the authorities of the town or city in which the money is expended"] was stricken. In its place, the 103rd Amendment employed the language that: "No grant . . . or use of public money . . . shall be made or authorized . . . for the purpose of founding, maintaining, or aiding any . . . primary or secondary school." Of primary significance, however, Article 103 carved out an exception for private higher educational institutions and students attending those institutions.⁴ This exception was designed to address the severely depressed financial condition of private higher education institutions and the resulting adverse impact upon educational opportunities in the Commonwealth. This adverse impact included additional fiscal burdens upon public higher education if substantial numbers of private colleges and universities in the Commonwealth were required for these financial reasons to reduce their classrooms or close.⁵

It is in light of this historical background of Article 18 that I conclude that the proposed matching grant program does not violate the Anti-aid Amendment because independent, post-secondary, non-degree granting institutions are included in the "private higher educational institution" exception carved out by the 103rd Amendment to Article 18.

As I have stated previously, prior to the 103rd Amendment, the Eighteenth Amendment provided that public funds could not be used to aid any "school,

⁴See Election Statistics, Public Doc. No. 43, at 513-518 (1974), and Summary of Question No. 3 regarding the Proposed Constitutional Amendment.

⁵House No. 6106 — Legislative Research Council, Report Relative to State Aid to Private Higher Educational Institutions and Students, 8-17 (1973).

or college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned." In 1967, the Attorney General opined to the Board of Higher Education that this terminology proscribed the use of public moneys in support of an independent, post-secondary, non-degree institution where the intended recipient was an "educational or charitable undertaking". 1966/67 Op. Atty. Gen. No. 97, Rep. A.G., Public Doc. No. 12 at 188, 189 (1967). The 103rd Amendment deleted the broad term "educational" from the proscriptive language. It further defined the term "school" as a primary and secondary institution and provided that funds could be used in support of "higher educational institutions".⁶ This comprehensive redrafting of the language of the Eighteenth Article of Amendment is significant because the phrase "higher educational institutions" is a phrase far broader than the term "college" or "university" and thereby evidences an intent that public funds may be used to aid post-secondary, non-degree institutions.⁷ There is a second reason for my conclusion that the proposed matching grant program of the Commission does not violate the Anti-Aid Amendment. Based upon the information which you have provided me, I am of the opinion that the expenditure of funds by, and activities of, the Commission are valid public purposes which do not conflict with the objectives and purposes of the Amendment.

In considering claims arising under the Anti-Aid Amendment, the Supreme Judicial Court has indicated that three criteria are appropriate. *Kent v. Commissioner of Education*, Mass. Adv. Sh. (1980) 803, 809-810 n. 11. Thus, no violation of the core prohibition of the amendment will exist if the matching grants program of the Commission meets the following tests:

- (1) its purpose is not to aid private schools;
- (2) it does not in fact substantially aid such schools; and
- (3) it avoids the political and economic abuses which prompted the passage of Article 46. *Kent v. Commissioner of Education, id.*, quoting from *Colo v. Treasurer and Receiver General*, Mass. Adv. Sh. (1979) 1893, 1903-04.⁸

Applying these criteria to the facts as you have presented them to me, I conclude that the proposed grant-in-aid program does not contravene the provisions of Article 18 of the Amendments to the Massachusetts Constitution for the following reasons.

First, it is clear that the purpose of the Bay State Skills Commission is not to aid private schools. Instead, the Executive Order indicates recognition of

⁶I note that the matching grant program is to be available to both public and private institutions of higher education. Moreover, as the Supreme Court has observed in *Tilton v. Richardson*, 403 U.S. 672 (1971), as public funding moves away from the primary and secondary school levels and into higher education, the possibilities of violation of the Establishment Clause lessen.

⁷It is also interesting to note the language of the 96th Articles of Amendment, approved in 1972, and a precursor of the 1973 Amendment contains express recognition that non-degree institutions may properly be the recipient of public funds:

The general court shall have the power to authorize the commonwealth to make loans . . . to any residents of the commonwealth . . . at any college, university, or other institution of higher learning. (Emphasis added.)

⁸While each of these criteria are not "precise limits to the necessary constitutional inquiry . . . they are guide lines for a proper analysis." *Kent v. Commissioner of Education*, Mass. Adv. Sh. (1980) 803, 810. Indeed, the 1973 Amendment lends support to the use of this test with its language: "No grant . . . or use of public money shall be made or authorized . . . for the support of . . ." (Emphasis added.) Article 103 of the Amendments.

a general unemployment crisis caused by the existing availability of employment opportunities in commerce, trade, and manufacturing, but a corresponding inadequate number of trained and educated citizens to take advantage of these opportunities. The purpose of the matching grant program is to confront this dilemma by increasing the training opportunities among the institutions of skills training and education. It seeks, through a matching grant system, to encourage institutions of skills training and education to provide those programs which can ensure that existing and future employment opportunities in commerce, trade and manufacturing are filled. Thus, the ultimate purpose of the program is to alleviate unemployment in the Commonwealth and the alleviation of unemployment is clearly a public purpose. *Opinion of the Justices*, 368 Mass. 880, 885 (1975). Public monies to be expended in the form of grants-in-aid would not, therefore, be used for the purpose of founding, maintaining, or aiding private schools.⁹

Second, and for the same reasons, the proposed grant-in-aid program does not substantially aid private schools. Because the skills training and educational institutions must themselves provide at least half the money for these programs, any evidence of substantial aid to private schools is absent. Moreover, this factor makes it highly unlikely that the funding from the Commission would be substantial when compared to the overall funding for other programs offered by those educational institutions.

Third, the proposed matching grant program does not raise the spectre of the political and economic abuses existing at the time of the 1917 Constitutional Convention and which the Anti-Aid Amendment seeks to avoid. The Executive Order sets out a detailed scheme whereby the Commission, prior to making a grant, is required to collect data to ascertain the need for persons trained in the area of commerce, trade and manufacturing. The Commission is also required to monitor the activities, capacities and resource requirements of institutions of skills training and education to meet the demand for training and educational skills. Therefore, because of this oversight function by the Commission, any possibility of political or economic abuse is significantly lessened.

For the foregoing reasons, I conclude that the Bay State Skills Commission may, without violating the Anti-Aid Amendment, make matching grants to post-secondary non-degree granting institutions of skills training and education.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

⁹By further analogy to the Supreme Judicial Court's "public purpose" cases a similar result is evident. In these cases, statutes which involve expenditures of public monies are examined to determine if their purpose is to further a valid public rather than private purpose. The paramount test for determining whether an expenditure is for such a public purpose is "whether the expenditure confers a direct public benefit of a reasonably general character . . . to a significant part of the public, as distinguished from a remote and theoretical benefit". *Opinion of the Justices*, 337 Mass. 777, 781 (1958); An expenditure for a public purpose is constitutionally permissible. See *Mass. Home Mortgage Financing Agency v. New England Merchants National Bank*, Mass. Adv. Sh. (1978) 2909; *Opinion of the Justices*, 368 Mass. 880, 885 (1975); *Opinion of the Justices*, 359 Mass. 769, 772 (1971); *Opinion of the Justices*, 337 Mass. 777, 781 (1958).

Number 16

March 26, 1981

William F. M. Hicks, *Commissioner*
Department of Environmental Management
100 Cambridge Street - 20th Floor
Boston, MA 02202

Dear Commissioner Hicks:

Your predecessor in office has requested my opinion regarding certain terms of an Agreement entered into September 22, 1980, between the Department of Environmental Management and the Town of Mashpee for the purpose of allowing the Commonwealth to acquire land currently belonging to the Town as part of the process of constructing the South Cape State Park.

My understanding of the applicable facts and statutes underlying the proposed transfer is as follows:

Chapter 1058 of the Acts of 1971 authorized the Department of Natural Resources¹ to acquire the land necessary to make up the South Cape Beach Park by gift, purchase or eminent domain, excepting, however, land owned by the Town of Mashpee which the statute provided could not be acquired by eminent domain. Chapter 283 of the Acts of 1976 amended St. 1971, c. 1058, to provide that the Commonwealth could exercise eminent domain powers over Mashpee land with the approval of the Board of Selectmen of the Town.²

An agreement between the Town and the Department was reached in July, 1976, in which the South Cape Beach Advisory Committee was formed and given the responsibility for advising the Department regarding the proposed park. Acquisition of Town land was delayed, however, because of concern over the litigation by the Wampanoag Indians against the Town of Mashpee, which affected conveyancing in Mashpee for several years.

Following the resolution of the Wampanoag litigation, negotiations resumed between the Department and the Town, resulting in the Agreement of September 22, 1980, which has been submitted to a Town vote and accepted. It is the terms of this Agreement which are the subject of this opinion.³ You ask whether the provisions of paragraphs (3) and (6) of that Agreement are permissible under the Constitution and laws of the Commonwealth. Paragraph (3) provides that the rules and regulations of the park will conform to the rules, regulations and by-laws of the Town of Mashpee. Paragraph (6) provides for a right of reversion to the Town in the event of breach of any conditions of the Agreement. Specifically, you ask, first, whether the Department may submit the regulation of activities in state parks to existing and prospective local ordinances or by-laws of the municipalities in which such parks are located. Second, you ask whether the Department may acquire land for the purposes

¹By St. 1975, c. 706, §33, certain functions of the Department of Natural Resources, including those here in issue, were transferred to the Department of Environmental Management.

²The legislature also appropriated that year the amount of \$1.5 million for the acquisition of that land, development of various outdoor recreation and conservation areas, and other costs connected with that acquisition and development. St. 1976, c. 481, §4, item 2120-8777.

³Paragraph (20) of the Agreement provides that all terms and provisions thereof are subject to an advisory opinion of the Attorney General and grants to the Town the option to terminate the Agreement if any provision of the Agreement is not fully approved by the Attorney General.

set forth in Article 97 of the Amendments to the Constitution of Massachusetts by a deed containing a right of reversion of said lands to the grantor in the event of breach of covenant on the part of the Commonwealth.

For the reasons set forth below, I conclude that the Department may submit the regulation of activities in state parks to existing local ordinances or by-laws of the municipalities in which such parks are located. With respect to prospective local ordinances and by-laws, however, it may do so only when the legislature approves such submission by a two-thirds vote, as required by Article 97 of the Amendments to the Constitution.⁴ I must respectfully decline, however, to render an answer to your second question. I do so in view of the fact that paragraph (6) of the Agreement between the Department and the Town provides me with the discretion to disapprove the deed from the Town to the Department and paragraph (20) makes the acceptance of the Agreement by the Town also subject to my approval.⁵ Contemporaneously with this opinion, I have this day informed you of my reservations concerning the terms of paragraph (6) of the Agreement. Because I have thus stated my disapproval of paragraph (6), it is inappropriate for me to render an opinion concerning its legality.⁶

Your first question requires an analysis of paragraph (3) of the Agreement, which provides:

(3) That the Department will manage the fragile wetland, dune and upland areas of the site to prevent erosion and to preserve critical habitat and the area's natural scenic qualities. Local ordinances and by-laws now effective will be incorporated into and made part of the park's rules and regulations and shall govern and control, provided no legal conflict exists. No park rule or regulation will permit an activity or use otherwise prohibited by the rules, regulations and bylaws of the Town of Mashpee.⁷

Thus, as that paragraph itself provides, your question appears to present two issues for resolution: (1) whether the Department may promulgate park rules and regulations which conform to Town ordinances and by-laws in existence as of the date of the Agreement; and (2) whether the Department may agree that park rules and regulations will conform to future rules, regulations and by-laws of the Town.

⁴I note that subsequent to the request for this Opinion, the Department has filed proposed legislation relative to the acquisition of the South Cape Beach. H. 1706. Section 2 of that bill provides in pertinent part: "All such lands shall be used by the department of environmental management and the town of Mashpee only in accordance with said agreement [between the Town and the Department]."

⁵In addition, section 2 of H. 1076 provides in part: "The department of environmental management reserves the right to transfer title, or lesser interest in land acquired for recreation or conservation purposes pursuant to item 2120-8777 in section 4 of chapter 481 of the acts of 1976, to the town of Mashpee without further authorization, provided that the agreement relative to the use of such land executed between the department of environmental management and the town of Mashpee is approved by the attorney general. The town of Mashpee may transfer title, or lesser interest in, land used for recreation or conservation purposes to the department of environmental management without further authorization, subject to said agreement approved by the attorney general."

⁶As I have stated in my disapproval, the provision for a right of reversion to the Town, viewed in light of the requirement that activities within the proposed park be subject to prospective local by-laws, presents the possibility that breach of the conditions of the Agreement may be solely within the control of the Town. I have grave doubts that even with prior legislative approval by two-thirds vote, the right of reversion of state-owned lands in such circumstances is permitted by Article 97. To the extent that discretion is vested in me to approve or disapprove the proposed transaction, I exercise that discretion by disapproval. Thus, it is unnecessary for me to reach the legal issue you have raised.

⁷I note that the requirements of this paragraph of the Agreement will apply not merely to land acquired from the Town, but to the entirety of the park, including land taken or otherwise acquired from private ownership.

As to those town ordinances and by-laws in effect as of the date of the Agreement, the Department has the discretion to determine whether that regulation of activities within the proposed park is consistent with the Commonwealth's policy of conservation and recreation. See Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 335, 337 (1966). General Laws chapter 132A, Section 7, gives the Commissioner of Environmental Management broad power to promulgate rules and regulations governing the use of property controlled by the Department, subject to the approval of the Governor and Council. General Laws chapter 21, section 4A, gives similar power to the Director of the Division of Forest and Parks, subject to the approval of the Commissioner. Thus, the Department may promulgate rules and regulations governing activities within the park which conform to existing Town ordinances and by-laws, provided, however, that the Department reserves its control over the property, as well as its right to enact restrictions more stringent than those enacted by the Town.

Paragraph (3) also binds the Department to those rules, regulations and by-laws which the Town enacts in the future. Certainly as to the future regulation of activities within, and use of, the proposed park, the Department is unable at this time to determine that prohibitions or restrictions upon use which the Town may enact will be consistent with the purposes for which the Department holds the land. Because such a determination is entirely speculative, more is required than the mere acquiescence by the Commissioner to the terms of this Agreement.⁸

The general rule is that in the absence of statutory provisions to the contrary, the Commonwealth and its agents are immune from municipal regulations when acting in pursuance of a public function on land owned by the Commonwealth. *County Commissioners of Bristol v. Conservation Commission of Dartmouth*, Mass. Adv. Sh. (1980) 1289, 1291-94; *Medford v. Marinucci Bros. & Co., Inc.*, 344 Mass. 50, 54-58 (1962); *Teasdale v. Newell & Snowling Construction Co.*, 192 Mass. 440 (1906). The legislature may, of course, subject land owned by the Commonwealth to municipal regulation. *County Commissioner of Bristol v. Conservation Commission of Dartmouth*, *supra*, 344 Mass. at 57. Such legislative action, however, must be by specific statutory language. *Id.*⁹

I am, moreover, of the opinion that Article 97 of the Amendments to the Massachusetts Constitution requires that such legislative action be by two-thirds vote. Article 97 provides:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

⁸While the Commonwealth may exercise its police powers over property held in trust for the public, *Home for Aged Women v. Commonwealth*, 202 Mass. 422, 435 (1909), it is possible for the Town to enact restrictions upon the use of the park which are inconsistent with the duty of the Department, pursuant to G.L.C. 132A, to hold land in the public trust.

⁹I note that H. 1706 does not include that sort of "unmistakable" language which would be required to effect such a result. See *County Commissioners of Bristol v. Conservation Commission of Dartmouth*, Mass. Adv. Sh. (1980) 1289, 1296; *Medford v. Marinucci Bros. & Co., Inc.*, 344 Mass. 50, 57 (1962).

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court. (Emphasis supplied.)

The relevant inquiry is whether the regulation of activities within, and uses of, the park by as yet unenacted local ordinances and by-laws is a "disposition" within the purview of Article 97. My predecessor has concluded that "dispositions" for which two-thirds roll-call vote of each branch of the General Court is required include "transfers of legal or physical control between agencies of government, between political subdivisions, and between levels of government, of land, easements and interests therein originally taken or acquired for the purposes stated in Article 97" 1972/73 Op. Atty. Gen. No. 45, Rep. A.G., Pub. Doc. No. 12 at 139, 144 (1973). In further construing the requirements of Article 97, I have earlier given my opinion to your predecessor that "[a]ny relinquishment of physical control over [land held by the Department] would be a disposition and would require a vote of two-thirds of both Legislative branches. The Department cannot, therefore, . . . surrender its duty to police, conserve, preserve, and care for [such land]." 1979/80 Op. Atty. Gen. No. 15, Rep. A.G., Pub. Doc. No. 12 at (1980). Although the Department would retain its enforcement powers within the proposed park, it is nevertheless clear that subjecting the park to as yet unenacted by-laws of the Town of Mashpee is such a surrender by the Department of its duty to regulate the use of that land. "Control" over land is traditionally incident to an interest in land. *Cf. Baseball Publishing Co. v. Bruton*, 302 Mass. 54, 56 (1938); *Gaertner v. Donnelly*, 296 Mass. 260, 262 (1936). By relinquishing this control, the Department would effectively transfer one of the incidents of ownership of this land. *Cf. Restatement of Property*, §13 (1936).

Guided by these standards, I am of the opinion that an agreement to subject the use of state land to the terms of future ordinances and by-laws of the municipalities in which that land is located is a relinquishment of control of such land and, therefore, a "disposition" within the meaning of Article 97.¹⁰ The validity of so much of paragraph (3) of the Agreement between the Town and the Department which concerns such future control over the land, depends upon a favorable vote by two-thirds of each branch of the General Court. In addition, the statutory language effecting such a determination must be specific so that the legislative intent is "unmistakable." *See County Commission of*

¹⁰ In reaching this conclusion, I am also guided by the directive of my predecessor that the scope of application of Article 97 is to be "very broadly construed". 1972/73 Op. Atty. Gen. No. 45, Rep. A.G., Pub. Doc. No. 12 at 139, 142 (1973).

Bristol v. *Conservation Commission of Dartmouth, supra*, Mass. Adv. Sh. (1980) at 1296; *Medford Bros. & Co., Inc., supra*, 344 Mass. at 57.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 17

April 8, 1981

The Honorable Robert Q. Crane
Treasurer and Receiver General
State House - Room 227
Boston, MA 02133

Dear Mr. Crane:

In your capacity as Chairman of the State Lottery Commission, you have requested my opinion concerning the operation of the state arts lottery. Specifically, you ask whether revenues received from the sale of arts lottery tickets are to be deposited directly into the State Arts Lottery Fund or whether they are first to be deposited into the State Lottery Fund and transferred to the State Arts Lottery Fund only after payments have been made to holders of winning tickets and to the State Lottery Commission for its expenses in operating the arts lottery. In addition, you ask how you are to administer two appropriations by the legislature for expenses in the operation and administration of the arts lottery and for payment of arts lottery prizes.

For the reasons set forth below, I am of the opinion that revenues from the sale of state arts lottery tickets are to be deposited first into the State Lottery Fund, from which payment of prizes and the costs of operating the arts lottery are to be made. Thereafter, the remaining balances are to be transferred into the State Arts Lottery Fund. I also conclude that both appropriations to which you refer must be deposited into the State Lottery Fund and, if there are unexpended balances when the term of each appropriation expires, those monies are to revert to the general fund.

Your first question concerns the composition of the State Arts Lottery and the appropriate handling of revenues as well as expenses of the arts lottery. The answer to that question requires an interpretation of the act which established the state arts lottery, St. 1979, c. 790 ("chapter 790"). I cannot look at that statute in isolation, but must instead examine the overall statutory scheme in order to ensure that statute is read so as to constitute a harmonious whole. *Registrar of Motor Vehicles v. Board of Appeal on Motor Vehicle Liability Policies and Bonds*, Mass. Adv. Sh. (1981) 415, 420.

Chapter 790 amended G.L. c. 10, §24, by adding a sixth paragraph which provides:

The Commission is hereby authorized and directed to conduct a lottery for the arts which shall be known as the arts lottery. The arts lottery shall be conducted weekly and tickets shall be sold at a minimum price of five dollars per ticket. Subject to the provisions of section thirty-five A, the arts lottery shall be conducted and the

revenues therefrom distributed in accordance with the general provisions of the state lottery law.

Chapter 790 also added a new section 35A to General Laws, chapter 10. Section 35A establishes "a separate fund to be known as the State Lottery Fund. Said fund shall consist of all revenues received from the sale of arts lottery tickets less prizes and expenses and all other monies credited or transferred thereto from any other fund or source pursuant to law." That section goes on to provide for the creation of an Arts Lottery Council, consisting of five unpaid members appointed by the Governor; for the creation of local or regional arts councils, consisting of five unpaid members appointed by the executive body of the city or town; and for a mechanism to approve grants of arts lottery funds to local and regional arts councils.

Reading together these two sections, it is clear from their plain meaning that the State Lottery Commission is to conduct the arts lottery and must do so in accordance with the state lottery law.¹ It is equally clear that the purpose of the State Arts Lottery Fund is to provide monies to local and regional arts councils for those uses approved by the Arts Lottery Council and, in addition, to pay for the limited administrative costs incurred by the Arts Lottery Council in connection with that distribution.²

General Laws chapter 10, section 35A, plainly states that the State Arts Lottery Fund shall consist of all revenues from ticket sales *less* prizes and expenses, plus all other monies from any other fund or source. This language is distinguishable from that of G.L. c. 10, §35, establishing the general State Lottery Fund and providing: "Said fund shall consist of all revenues received from the sale of lottery tickets or shares, and all other monies credited or transferred thereto from any other fund or source pursuant to law." Because these two provisions are contained within the overall state lottery statute, *see Registrar of Motor Vehicles v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, supra*, Mass. Adv. Sh. (1981) at 420, and because the Legislature must be presumed to have been aware of existing statutes when enacting St. 1979, c. 790, *see id.* at 424, I must conclude that this distinction is intentional.

Thus, it is my opinion that revenues derived from the sale of arts lottery tickets are to be deposited in the State Lottery Fund. From that Fund, the Commission must make payments to prize-winning ticket holders, as well as expend amounts attributable to the costs associated with conducting the arts lottery game. The remaining balance shall then be maintained as a separate State Arts Lottery Fund, the primary purpose of which is to assist local arts

¹While General Laws, chapter 10, section 35A, is silent as to the manner in which the arts lottery is to be conducted, it does provide for a manner of distribution of arts lottery revenues somewhat different from that of the general state lottery. Arts lottery funds are to be distributed to those cities and towns whose arts councils have filed applications for uses approved by the Arts Lottery Council, which "shall then certify to the Comptroller the payment of the cost thereof to the extent that funds therefor are payable under section twenty-four to such city, town, or region". G.L. c. 10, §35A. *See* 1980/81 Op. Atty. Gen. No. 4, Rep. A. G., Pub. Doc. No. 12 at (1980).

²G.L. c. 10, §35A, provides in pertinent part:

... The arts lottery council, local and regional arts councils may establish their own administrative units, but no arts council shall utilize more than five per cent of the monies received from the State Arts Lottery Fund for administrative purposes, in the case of the arts lottery council not more than three per cent of the monies of the total State Arts Lottery Fund for administrative purposes.

councils. I note that this conclusion is consistent with the directive of G.L. c. 10, §24, that the State Lottery Commission shall conduct the arts lottery in accordance with the general provisions of the state lottery law. This manner of administration will also ensure that the State Arts Lottery Fund will consist solely of monies which are in fact available for distribution to local and regional arts councils and for the administrative expenses of the Arts Lottery Council.

Your second question concerns two legislative appropriations. The first of these is contained in the general appropriation bill for fiscal year 1981 and is in the amount of \$759,500., "[f]or the expenses of the operation and administration of the arts lottery". St. 1980, c. 329 §2, item 0640-0100. The second is contained in a supplementary budget for fiscal year 1980 and is in the amount of \$1,000,000., "[f]or the payment of prizes by the state lottery commission in accordance with the provisions of chapter seven hundred and ninety of the acts of nineteen hundred and seventy-nine; provided, that a sum equal to said payments shall be reimbursed by said commission from the revenues received under the provisions of said chapter seven hundred and ninety". St. 1980, c. 354, §2, item 0640-0200. You ask whether it is proper to make payments for expenses and prizes based on these appropriations through the State Lottery Fund and, if that answer is in the affirmative, whether the balances remaining after such payments are to be transferred to the State Arts Lottery Fund. For the following reasons, I answer the former question in the affirmative, but conclude that any unexpended balances from these appropriations may not be transferred to the State Arts Lottery Fund for distribution to local arts councils and for payment of administrative expenses of the Arts Lottery Council and must instead ultimately revert to the general fund.

The introductory sections of both appropriation acts in which these items are contained provide that the appropriations are made "subject to the provisions of law regulating the disbursement of public funds . . ." St. 1980, c. 329, §1, and St. 1980, c. 354, §1. General Laws chapter 29, section 12, provides as follows:

Appropriations by the general court, unless specifically designated as special, shall be for the ordinary maintenance of the several departments, offices, commissions and institutions of the commonwealth and shall be made for the fiscal year unless otherwise specifically provided therein.

See also G.L. c. 29, §13. General Laws chapter 29, section 14, governs "[a]ppropriations for other than ordinary maintenance" and provides in pertinent part that such appropriations:

. . . unless otherwise specifically provided therein, shall be available for expenditure in the two fiscal years following June thirtieth of the calendar year in which the appropriation is made and any portion of such appropriation representing encumbrances outstanding on the records of the comptroller's bureau at the close of such second fiscal year may be applied to the payment thereof any time thereafter. The unencumbered balance of such appropriation shall revert to the commonwealth at the close of such second, or other designated, fiscal year . . .

Thus, whether the appropriations are for ordinary maintenance or some other purpose, unencumbered balances from these funds will ultimately revert to the Commonwealth.

St. 1980, c. 329, §2, item 0640-0100, is by its terms specifically earmarked for the expenses of the operation and administration of the arts lottery. Since the clear legislative intent of chapter 790 is that the State Lottery Commission is to operate and administer the arts lottery,³ I must conclude that this appropriation is intended to be for the use of the Commission. Therefore, for the reasons set forth above, the appropriation is to be deposited into the State Lottery Fund. Furthermore, because the "provisions of law regulating the disbursement of public funds" so require and because the appropriation does not otherwise specifically provide, the unencumbered balance of this appropriation, after payments for the expenses of operation and administration of the arts lottery, will revert to the general fund.

Similarly, and for the same reasons, the appropriation contained in St. 1980, c. 354, §2, item 0640-0200, is specifically earmarked for the payments of arts lottery prizes by the State Lottery Commission and is, therefore, to be deposited into the State Lottery Fund. The unencumbered balance of that appropriation, after payments of arts lottery prizes, will also ultimately revert to the general fund. Furthermore, that appropriation requires the State Lottery Commission to reimburse the general fund from revenues received from the arts lottery game in an amount equal to the payments made for prizes. Thus, if the revenues from the sale of arts lottery tickets at least equal the costs of prizes, this \$1 million appropriation will be returned in full to the general fund. This result is consistent with the manifest purpose of this appropriation item, that is, to assist in implementing the arts lottery in its initial operations. See St. 1980, c. 354, §1. See also St. 1980, c. 329, §2, item 0640-0100.

In reaching this conclusion, I am guided not only by the plain language of these appropriation items, *Hoffman v. Howmedica, Inc.*, 373 Mass. 32, 37 (1977), but also by the language of G.L. c. 10, §35A, defining the State Arts Lottery Fund. Nowhere in these appropriations is it indicated that the unexpended balances are to be "credited or transferred" to the State Arts Lottery Fund. See G.L. c. 10, §35A. Thus, in the absence of express legislative authority to the contrary, these appropriations must be made in accordance with the statutes governing the disbursement of public funds. See *Baker v. Commonwealth*, 312 Mass. 490, 492 (1942); St. 1980, c. 329, §1; St. 1980, c. 354, §1.

I conclude, therefore, that, unlike the State Lottery Fund, the State Arts Lottery Fund consists of an amount equal to revenues less prizes and expenses, plus all other monies credited or transferred from other sources. Revenues from the sale of arts lottery tickets are to be first deposited in the State Lottery Fund, from which payments for prizes and the costs of administration and operation

³The administration of the arts lottery by the State Lottery Commission is to be distinguished from the administrative duties of the Arts Lottery Council, see 1980/81 Op. Atty. Gen. No. 4, Rep. A.G., Pub. Doc. No. 12 at (1981), the expenses for which are expressly limited to "three percent of the monies of the total State Arts Lottery Fund", G.L. c. 10, §35A. Because it is clear that the Council is not involved in the operation of the arts lottery and because the administrative expenses of the Council are thus specifically limited, I am unable to conclude that this appropriation is available for the expenses of the Council. See *Baker v. Commonwealth*, 312 Mass. 490, 492 (1942).

are to be made. Those appropriations for the operation and administration of the arts lottery and for arts lottery prizes are also to be deposited into the State Lottery Fund. In the absence of specific statutory authority, any unexpended balances from these appropriations are not to be transferred to the State Arts Lottery Fund, but must ultimately revert to the general fund, as required by law.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

Number 18

May 5, 1981

Romulus DiNicola, *Executive Secretary*
Board of Registration in Pharmacy
100 Cambridge Street - 15th Floor
Boston, MA 02202

Dear Dr. DiNicola:

You have requested my opinion on a question relating to that portion of G.L. c. 112, §39A, which permits a "restricted pharmacy," as defined by that section, to accept and fill prescriptions by mail, "provided, however, that the prescribing physician is verified, according to procedures established by the board [of registration in pharmacy], as licensed to practice in the commonwealth or in any New England state". General Laws chapter 94C, section 18 (c), permits physicians who are licensed to practice medicine in a state contiguous to Massachusetts and who are registered with the Commissioner of Public Health to issue prescriptions for controlled substances. You ask whether this latter statute limits the authority of restricted pharmacies to accept and fill prescriptions by mail. For the reasons stated below, it is my opinion that chapter 94C does limit the practice of filling prescriptions by mail and that restricted pharmacies may accept and fill by mail prescriptions issued only by those physicians registered with the Commissioner of Public Health in accordance with G.L. c. 94C, §18 (c).

Authority to regulate the dispensing of prescription drugs¹ in the Commonwealth is divided under a comprehensive statutory plan between the Commissioner and the Board of Registration in Pharmacy. See generally G.L. C. 94C; G.L. c. 112, §§30-42A.² As part of the Commissioner's authority in this area, General Laws chapter 94C, section 18 (c), provides for the registration of certain out-of-state physicians who may issue prescriptions within the Commonwealth, as follows:

A prescription for a controlled substance may also be issued by any physician who is licensed or registered in a contiguous state and

¹By virtue of G.L. C. 94C, §3, all prescription drugs are by definition controlled substances.

²The authority of both the Commissioner and the Board in this area is drawn in large measure from G.L. c. 94C, the Commonwealth Substances Act. Chapter 94C gives the Commissioner full responsibility to regulate and control the manufacture, distribution, dispensation and possession of all controlled substances by any person or business operation with the exception of veterinarians and pharmacists. The Board, on the other hand, is charged with regulating the operation of wholesale and retail drug businesses and the professional activities of registered pharmacists. G.L. C. 94C, §§4-7, 11, 17, 20, 28, 30.

who resides or practices in said state provided that such physician is registered with the commissioner subject to such rules and regulations as he may establish. Such registration shall be valid only for the purpose of authorizing the filling of prescriptions within the commonwealth and shall not authorize such physician to possess, administer or dispense controlled substances as provided in section nine, or to practice medicine within the commonwealth. Any prescription issued under this paragraph shall be issued in the manner prescribed in section twenty-two and all relevant provisions of this chapter shall apply to such physician and prescription.

Notwithstanding this provision, General Laws chapter 112, section 39A,³ authorizes the Board to "verify" those out-of-state physicians whose prescriptions a restricted pharmacy may fill by mail. That section provides in pertinent part:

Nothing in this section shall prohibit a restricted pharmacy from accepting and filling prescriptions by mail; provided, however, that the prescribing physician is verified according to procedures established by the board, as licensed to practice in the commonwealth or in any New England state.

These two provisions of law appear to differ in two respects. First, General Laws chapter 94C, section 18 (c), authorizes non-resident physicians to issue prescriptions for controlled substances to be filled in Massachusetts only if the prescribing physician is licensed to practice in a state contiguous to Massachusetts. General Laws chapter 112, section 39A, appears to authorize restricted pharmacies to accept and fill by mail prescriptions issued by physicians licensed to practice in any New England state.⁴ Second, while General Laws chapter 94C, section 18 (c), requires that a non-resident prescribing physician must be registered with the Commissioner, General Laws chapter 112, section 39A, imposes no such prerequisite, but instead requires verification by the Board that the prescribing physician is licensed to practice in Massachusetts or in any New England state.

For the following reasons, I am of the opinion that General Laws chapter 112, section 39A, does not impliedly repeal the requirements set forth in General Laws chapter 94C, section 18 (c), and that only those physicians practicing in states contiguous to Massachusetts who are duly registered with the Commissioner of Public Health may issue prescriptions for controlled substances to be filled in the Commonwealth.

In arriving at that conclusion, I am mindful that I must not view these two statutes in isolation, but must construe them together so as to constitute a harmonious whole consistent with the legislative purpose. *Registrar of Motor Vehicles v. Board of Appeal on Motor Vehicle Liability Policies and Bonds*, Mass. Adv. Sh. (1981) 415, 420. Moreover, I am guided by the principle that

³General Laws chapter 112, section 39A, was added by St. 1980, c. 135, and provides for the registration by the Board of Registration in Pharmacy of a "restricted pharmacy" to furnish pharmaceutical services only to residents of the Commonwealth or of any New England state who are beneficiaries of a "trust, fund, pension plan, combination plan or profitsharing plan," established in accordance with General Laws, chapter 151D.

⁴All New England states except Maine are contiguous to Massachusetts, while New York is contiguous, but is not numbered among those six New England states.

statutes alleged to be inconsistent with each other must be so construed as to give reasonable effect to both unless there be some positive repugnance between them. *Everett v. Revere*, 344 Mass. 585, 589 (1962), quoting from *Fitchburg v. Leominster Street Railway*, 200 Mass. 8, 17 (1908). *Accord Hadley v. Amherst*, 372 Mass. 46, 51 (1975); *Goldsmith v. Reliance Insurance Company*, 353 Mass. 99, 102 (1967). When no irreconcilable conflict exists, I must invoke a long-standing preference to reach a solution which brings the statutes into correlation and gives effect to both. *Parker Affiliated Cos., Inc. v. Department of Revenue*, Mass. Adv. Sh. (1981) 77, 83; *County Commissioners of Middlesex County v. Superior Court*, 371 Mass. 456, 460 (1976); *Board of Education v. Assessor of Worcester*, 368 Mass. 511, 513-514 (1975).

The statutes at issue here are not so antagonistic as to preclude reasonable interaction. Both measures were enacted to serve very distinct and largely independent purposes. Their interrelation occurs on a very narrow ground and need not frustrate the primary objectives of either provision.

Among its many important directives, General Laws chapter 94C provides that physicians and certain other health care professionals who, in the course of their professional practice, possess, dispense, or prescribe controlled substances, must register with the Commissioner and must fulfill the requirements of that chapter and of regulations issued by the Commissioner. G.L. c. 94C, §§6, 7, 9, 15-24. At the time of its enactment, chapter 94C prohibited physicians not licensed to practice in Massachusetts from prescribing controlled substances. The Legislature, however, recognized the hardship such a blanket provision created for Massachusetts residents who regularly receive medical care from non-Massachusetts physicians conducting a practice in areas close to the Massachusetts border. *See* Mass. H. 3231 and 3232 (1976). Chapter 498 of the Acts of 1976 added paragraph (c) to section 18 and thus permitted physicians licensed to practice in contiguous states and registered with the Commissioner to issue prescriptions for controlled substances. Massachusetts residents who consulted such physicians could receive necessary pharmaceutical services in Massachusetts.⁵

General Laws chapter 112, section 39A, was added to St. 1980, c. 135, the purpose of which was to authorize the Board to register pharmacies operated by health, welfare or retirement plans established under G.L. c. 151D. Such pharmacies are thus able to furnish pharmaceutical services to plan beneficiaries. Recognizing that such restricted pharmacies may not be easily accessible to beneficiaries, sponsors of the measure included a provision authorizing restricted pharmacies to accept and fill by mail prescriptions issued by physicians licensed to practice in the Commonwealth or in "any New England state". An examination of the original bill makes apparent the sponsors' intention to ease the difficulty confronted by beneficiaries of a chapter 151D plan who regularly receive professional medical services from physicians practicing in other New England states, but wish to obtain pharmaceutical services from a plan pharmacy. *See* Mass. S. 512 (1980); Mass. H. 2412

⁵The legislation, when originally introduced, used the term "bordering state" to define the scope of the expanded privilege granted to non-resident physicians to issue prescriptions for controlled substances to be filled in Massachusetts. That language was replaced by the term "contiguous states" when the sponsors substituted a revised bill which was enacted without further alteration. Mass. H. 5105 (1976).

(1980). In enacting G.L. c. 112, §39A, the Legislature exercised its judgment that such authority is necessary to facilitate the utilization of restricted pharmacies by the plan beneficiaries.

Despite their inconsistencies, I find that these two statutes are fully reconcilable. Because of its narrow application to restricted pharmacies, General Laws chapter 112, section 39A, does not operate to negate the requirements of G.L. c. 94C, §18 (c). Those requirements must be satisfied by non-Massachusetts physicians who desire to issue prescriptions to be filled in Massachusetts. "The mere existence of one regulatory statute does not affect the applicability of a broader, nonconflicting statute, particularly when both statutes provide for concurrent coverage of their common subject matter." *Dodd v. Commercial Union Ins. Co.*, 373 Mass. 72, 78 (1977). Enforcement of both the general requirements of G.L. C. 94C, 18 (c), as well as the more narrowly circumscribed requirements of G.L. C. 112, 39A, can be fulfilled without interfering with the accomplishment of the other. Moreover, nothing contained in either statute serves to frustrate implementation of the other. Both statutes can be readily harmonized to fulfill the legislative plan for regulating the distribution of prescription drugs.

Finally, I am unable to conclude that General Laws chapter 112, section 39A, was intended to repeal by implication those portions of G.L. c. 94C, §18 (c), which are not fully consistent with its provisions. A statute does not operate to "repeal or supersede a prior statute in whole or in part in the absence of express words to that effect or of clear implication". *Commonwealth v. Hayes*, 372 Mass. 505, 512 (1977), quoting from *Cohen v. Price*, 273 Mass. 303, 309 (1930). While repeal by implication is disfavored, *Kardas v. Board of Selectmen of Dedham*, Mass. App. Adv. Sh. (1979) 1596, 1600, the test of the applicability of the principle of implied repeal is "whether the prior statute is so repugnant to and inconsistent with the later enactment covering the subject that both cannot stand". *Registrar of Motor Vehicles v. Board of Appeal on Motor Vehicles Liability Policies and Bonds*, *supra*, Mass. Adv. Sh. (1981) at 421.

After reviewing the interaction of both statutes, it is my opinion that they are not so repugnant to and inconsistent with each other that they cannot be reconciled. On the contrary, each enactment is capable of a construction which will give maximum effect to both measures. This reconciliation permits restricted pharmacies to accept and fill by mail prescriptions received from physicians verified according to procedures established by the Board, to be licensed to practice in Vermont, New Hampshire, Rhode Island or Connecticut and registered with the Commissioner pursuant to G.L. c. 94C, §18 (c). It also permits physicians licensed in any of those states or in New York to write prescriptions for their patients which may be filled in person at other non-plan pharmacies in the Commonwealth.

Very truly yours,
FRANCIS X. BELLOTTI
Attorney General

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