

AN ATTORNEY GENERAL'S ROLE IN THE FARM CRISIS: THE MINNESOTA EXPERIENCE

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State governments must act to relieve the economic crisis in rural America. The state attorneys general, working in combination with concerned individuals and officials both in and out of their own states, have a crucial role to play in meeting the challenges created by this crisis. The purpose of this article is to examine that role, focusing on the Minnesota experience.

I. THE FARM CRISIS IN MINNESOTA

The health of Minnesota's agricultural economy is a significant factor in the overall health of the state's economy. Farming generates 24 percent of the state's total jobs and 40 percent of its total exports.¹ As a result, the present national agricultural depression has had a particularly serious impact on Minnesota.² For the year ending June 1, 1985, Minnesota led the nation in the number of farms lost as the total number of Minnesota farms fell from 101,000 to 96,000.³ Also in 1985, 52 percent of Minnesota farmers had debt-to-asset ratios of over 40 percent, indicating some degree of financial difficulty. Twelve percent of Minnesota farmers were technically insolvent, with debt-to-asset ratios of over 100 percent.⁴ In 1986, the value of Minnesota farm land declined for the fifth consecutive year; since 1981, the average price per acre has

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1. MINNESOTA AGRICULTURAL STATISTICS SERVICE, *FARMING: BIG BUSINESS IN MINNESOTA* (May 1986).

2. Evidence of this financial crisis is well-documented. See generally, ECONOMIC RESEARCH SERVICE, U.S. DEP'T OF AGRIC., *FINANCIAL CHARACTERISTICS OF U.S. FARMS*, (1986); Harl, *The Architecture of Public Policy: The Crisis in Agriculture*, 34 U. Kan. L. Rev. 425 (1986). Regarding Minnesota, see OFFICE OF THE MINN. ATTORNEY GEN. & THE MINN. STATE BAR ASS'N, *THE DELIVERY OF LEGAL SERVICES TO MINNESOTA FARMERS: A JOINT TASK FORCE REPORT* (1985) [hereinafter JOINT TASK FORCE REPORT] (copy on file at the New York University Review of Law & Social Change).

3. JOINT TASK FORCE REPORT, *supra* note 2, at 1.

4. FARM FINANCIAL DATA COLLECTION TASK FORCE, *1985 REPORT TO THE MINNESOTA LEGISLATURE* 3 (1985).

fallen from \$1,367 to \$650.⁵

Moreover, the impact of the farm crisis is not limited to farmers. The decline in Minnesota's agricultural economy has had a substantial ripple effect on the remainder of its rural economy and social structure. For example, it is estimated that for each farm that fails, three jobs are lost in the local economy.⁶ For every ten farms lost, one local business is expected to fold.⁷ Numerous grain elevators and banks have failed.⁸ Minnesota also has suffered from increased rates of suicide, family violence, and divorce.⁹

Probably the single most important problem facing financially distressed farmers is their debt burden. Generally, a farmer with a debt-to-asset ratio of over 40 percent will be unable to service her debt.¹⁰ Of the approximately 113 billion dollars in farm debt nationwide, 66 percent is held by highly leveraged farmers (debt/asset ratios of over 40 percent).¹¹ This serious debt burden inevitably gives rise to equally serious legal problems involving numerous complex areas of the law including real estate, bankruptcy, tax, and federal law relating to agriculture.¹² In 1986, the Joint Task Force on the Delivery of Legal Services to Minnesota Farmers, created by the Minnesota Attorney General and Minnesota State Bar Association,¹³ found that:

The farm financial crisis has created a tremendous challenge to Minnesota's legal system in an area of law generally unexplored until recently. Simply put, the farm financial crisis has created a farm legal crisis.¹⁴

II.

THE ATTORNEY GENERAL'S POWERS AND DUTIES

An attorney general's contribution to the resolution of the farm crisis depends upon the breadth of the attorney general's authority as defined by a state's constitution, statutes and common law.¹⁵ Today, each of the United

5. Hagen & Raup, *The Minnesota Rural Real Estate Market in 1986*, MINN. AGRIC. ECONOMIST, Jan. 1987, at 3.

6. JOINT TASK FORCE REPORT, *supra* note 2, at 3.

7. *Id.* at 4.

8. *Id.*

9. *Id.*

10. Harl, *supra* note 2, at 426.

11. ECONOMIC RESEARCH SERVICE, U.S. DEP'T OF AGRIC. *supra* note 2, at 26.

12. The many federal agriculture and agriculture-related programs include price and income support programs, credit programs, emergency programs, crop insurance, export programs, foreign assistance programs, and domestic food programs. *See generally*, K. MEYER, AGRICULTURE LAW 28-35 (1984); Fraas, *Federal Assistance Programs for Farmers: An Outline for Lawyers*, 3 AGRIC. L.J. 405 (1981).

13. JOINT TASK FORCE REPORT, *supra* note 2, at i; *see infra* text accompanying note 38.

14. JOINT TASK FORCE REPORT, *supra* note 2, at 6. *See also*, Massey, *Farmers and the Law: Another Kind of Farm Crisis*, 54 HENNEPIN LAW. 8 (1985); Massey, *Farmers in Crisis: A Challenge to Legal Services*, 18 CLEARINGHOUSE REV. 704 (1984).

15. The origins of the office of attorney general in the U.S. lie in England, where the king's lawyer had evolved by the sixteenth century into the state's chief legal representative. The

States and its territories has an attorney general.¹⁶ Although the authority of an attorney general is broad, the precise contours of that authority vary from jurisdiction to jurisdiction. In some states, the office of Attorney General is established by constitution; in others it is established by statute.¹⁷ Where established by constitution, the constitution may set forth the attorney general's duties.¹⁸ Alternatively, the constitution may direct the legislature to prescribe those duties, or to supplement its own prescriptions.¹⁹ In addition, most jurisdictions recognize that their attorneys general possess inherent common law powers.²⁰ In the remaining states, commentators have argued vigorously for the recognition of common law powers in order to ensure the broadest possible authority for the attorneys general to act in the public interest.²¹

The Minnesota Constitution establishes the elective office of attorney general as part of the executive department.²² The constitution itself sets forth only two specific duties of the attorney general: (1) to sit on the State Board of Investment;²³ and (2) to approve any exchange of public land.²⁴ The consti-

colonial attorneys general in the American Colonies were based on the English system, and the American Revolution brought little change. The offices of attorney general in the colonies and the territories eventually became the offices of attorney general in the various states. For further discussion of the early history of attorneys general, see Van Alstyne & Roberts, *The Powers of the Attorney General in Wisconsin*, 1974 WIS. L. REV. 721, 723-31; Note, *The Role of the Michigan Attorney General in Consumer and Environmental Protection*, 72 MICH. L. REV. 1030, 1031-33 (1974) [hereinafter Note, *The Role of the Michigan Attorney General*].

16. Miller & Miller, *The Constitutional Charter of Ohio's Attorney General*, 37 OHIO ST. L.J. 801, 801 (1976).

17. Van Alstyne & Roberts, *supra* note 15, at 729.

18. *Id.*

19. *Id.* For a complete summary of each state's status, see Heiser, *The Opinion Writing Function of Attorneys General*, 18 IDAHO L. REV. 9, 11-12 (1982). See also Comment, *The Litigation Function of the Iowa Attorney General*, 63 IOWA L. REV. 1264, 1270 (1978) [hereinafter Comment, *The Litigation Function*].

20. See Van Alstyne & Roberts, *supra* note 15, at 729 n.51.

21. "[A]n attorney general seeking to protect the public interest would be buttressed by the common-law powers — perhaps crucially so in the marginal case where the statutes do not precisely support his position." *Id.* at 748. See, e.g., Comment, *The Litigation Function*, *supra* note 19; Miller & Miller, *supra* note 16, at 825-29; Myhre, *The Attorney for the State and the Attorney for the People: The Powers and Duties of the Attorney General of North Dakota*, 52 N.D.L. REV. 349, 356 (1975).

22. MINN. CONST. art. V, § 1. The predecessor of the Minnesota Attorney General was established by Congress in 1849. Act to Establish the Territorial Government of Minnesota, ch. 121, 9 Stat. 403 (1849). The enabling legislation provided for a territorial attorney, but prescribed no duties or powers of the office. See *id.* § 10, 9 Stat. 403. In 1857, Congress authorized Minnesota to become a state. An Act to authorize the People of the Territory of Minnesota to form a Constitution and State Government, preparatory to their Admission in the Union on an Equal Footing with the original States, ch. 60, 11 Stat. 166 (1857). The territory adopted a constitution in 1857, and Minnesota was admitted to the Union in 1858. An Act for the Admission of the State of Minnesota into the Union, ch. 21, 11 Stat. 285 (1858). The constitution expressly established an office of attorney general. Although the original constitution has been revised, the provisions establishing the office of attorney general have remained essentially the same.

23. MINN. CONST. art. XI, § 8. The Board is "constituted for the purpose of administering and directing the investment of all state funds." *Id.*

24. MINN. CONST. art. XI, § 10.

tution directs that the attorney general's duties "shall be prescribed by law."²⁵

Pursuant to the constitution, the Minnesota Legislature has defined numerous duties and powers of the attorney general.²⁶ For example, the attorney general has authority to appear in court in civil cases "whenever, in his opinion, the interests of the state require it," and in criminal cases, upon the request of the county attorney.²⁷ In addition, the attorney general must be notified of and is authorized to intervene in any challenge to the constitutionality of a state statute.²⁸ The attorney general is the attorney for all state officers, boards and commissions in "all matters pertaining to their official duties."²⁹ The attorney general must also prepare written opinions on questions of law at the request of state officers, legislators, and certain local officials.³⁰ Finally, the attorney general must investigate and enforce various consumer protection, antitrust, and charitable trust laws.³¹

Beyond the powers expressly conferred on the attorney general by statute, the Minnesota Supreme Court has recognized that the attorney general

25. MINN. CONST. art. V, § 4.

26. The Minnesota Statutes contain over 500 references to the attorney general. However, the attorney general's basic duties and powers are set forth in MINN. STAT. ch. 8 (1977 & Supp. 1987).

27. MINN. STAT. § 8.01. The authority granted by this statute is indeed very broad: The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts of the state whenever, in his opinion, the interests of the state require it. Upon request of the county attorney he shall appear in court in such criminal cases as he shall deem proper. Whenever the governor shall so request, in writing, he shall prosecute any person charged with an indictable offense; and in all such cases he may attend upon the grand jury and exercise the powers of a county attorney.

Id.

28. MINN. R. CIV. P. 24.04.

29. MINN. STAT. § 8.06.

30. MINN. STAT. §§ 8.05-8.07. Although not binding on the judiciary, such opinions are entitled to careful consideration by the courts. *Governmental Research Bureau v. St. Louis County*, 258 Minn. 350, 104 N.W.2d 411 (1960). The attorney general has historically imposed certain limitations on his opinion function. For example, the attorney general does not ordinarily determine the constitutionality of state statutes, decide hypothetical or moot questions, render an opinion upon a fact question, or render opinions on matters in litigation where he does not appear for one of the parties. *Op. Att'y Gen. 629-a*, 8 *Minnesota Legal Register*, No. 5, at 22 (May 1975).

31. For example, MINN. STAT. § 8.31 subd. 1 (Supp. 1987) requires the attorney general to investigate violations under and enforce:

[t]he law of this state respecting unfair, discriminatory and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, the act against unfair discrimination and competition (sections 325D.01 to 325D.08), the unlawful trade practices act (sections 325D.09 to 325D.16), the automobile dealer's anticompetition act (sections 325D.17 to 325D.29), the antitrust act (sections 325D.49 to 325D.66), section 325F.67 and others laws against false and fraudulent advertising, the antidis-crimination acts contained in section 325D.67, the act against monopolization of food products (section 325D.68), and the prevention of consumer fraud act (sections 325F.68 to 325F.70). . . .

In addition, the attorney general must represent the consumer interest in public utility matters in state and federal proceedings, MINN. STAT. § 8.33 (Supp. 1987), and must represent and enforce charitable trusts, MINN. STAT. § 501.12 subd. 3 (1947 & Supp. 1987).

has extensive common law powers. In *Slezak v. Ousdigian*,³² the Court described these powers as follows:

[The attorney general] may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights. He is the legal advisor to the executive officers of the state, and the courts will not control the discretionary power of the attorney general in conducting litigation for the state. He has the authority to institute in a district court a civil suit in the name of the state whenever the interests of the state so require.³³

In sum, both the legislature and the courts have recognized the need for the Minnesota Attorney General to exercise broad authority in order to protect the legal rights of the state and its citizens. It is against this background that the Minnesota Attorney General has developed an activist approach to the farm crisis.³⁴

III.

THE DEVELOPMENT OF THE MINNESOTA ATTORNEY GENERAL'S ROLE IN THE FARM CRISIS

The breadth of legal authority possessed by the Minnesota Attorney General has been an excellent foundation from which to assist farmers in protecting their legal rights. Historically, the Minnesota Attorney General's activities relating to agricultural law have been limited primarily to representing the Minnesota Department of Agriculture and to various consumer-related projects, for example the Farm and Home Mortgage Hotline.³⁵ Due to a dramatic increase in hotline activity,³⁶ the Attorney General realized that a more active role was needed regarding farm issues.

In his search for solutions, the Attorney General contacted others active

32. 260 Minn. 303, 110 N.W.2d 1 (1961) (overruled on other grounds 331 N.W.2d 745 (1983)).

33. 260 Minn. at 308, 110 N.W.2d at 5.

34. As has been noted previously, not all states enjoy the very broad authority of the Minnesota Attorney General. See *supra* notes 19-21 and accompanying text. Yet, as will be discussed in detail below, many of the states with an apparently more limited authority, at common law have nonetheless taken strong and creative stands in protecting the legal rights of their states' farmers. Perhaps this reflects a growing recognition that an attorney general is no longer merely a legal adviser to the state, but is an attorney in the public interest. For a discussion of the changing role of attorneys general, see generally, Myrhe, *supra* note 21; Kelley, *Changes in the State's Law Firm Over the Past Twenty Years*, 29 WAYNE L. REV. 267 (1983).

35. The toll-free hotline was established in 1983 as a home mortgage hotline, but in 1984 was expanded to include farm issues, in response to the growing economic crisis. The hotline has received over 17,000 calls since its inception, and over two-thirds of these from financially distressed farmers. Telephone interview with Roger Culhane, Hotline Coordinator, Minnesota Attorney General's Office (Jan. 15, 1987); See also *infra* text accompanying note 130.

36. The hotline averaged 156 farm calls per month in 1984 and 458 calls per month in 1985. It has maintained approximately that level of activity since that time. Telephone interview with Roger Culhane, *supra* note 35.

in farm finance and law in order to gain insight into the issues and to develop mechanisms for sharing resources. Within the office, the Attorney General organized a cross-divisional rural issues group, consisting of staff specializing in agricultural law, banking law, consumer law, and litigation. The Attorney General also formed a "working group" with other midwestern attorneys general. The group has worked together consistently over the past three years, sharing resources and collaborating on projects of mutual interest.³⁷ In addition, the Attorney General successfully urged the National Association of Attorneys General to establish a Special Committee on Agriculture and Rural Legal Affairs. This committee provides a forum within the Association for agricultural legal issues. Shortly thereafter, the Attorney General, with the Minnesota State Bar Association, formed the Joint Task Force on the Delivery of Legal Services to Minnesota Farmers. The Task Force included members of the major state farm organizations, the state government, the Minnesota law schools, the Minnesota Extension Service, the Minnesota Legislature, the Minnesota Legal Services Coalition, and the Minnesota State Bar Association. The Task Force met over a period of several months to evaluate and coordinate the existing legal delivery system for farmers, and to recommend improvements.³⁸

Participation in these projects revealed that the problem of providing adequate legal protection to farmers was a task far beyond any one agency or organization. However, the particular role of a state attorney general in the protection of farmers' legal rights also emerged. The remainder of this article will describe some of the Attorney General's projects which arose over the next three years. These projects fall into three broad categories: litigation; legislation and rulemaking; and education.

A. Litigation

Given the Minnesota Attorney General's broad statutory and common law authority to protect the interests of Minnesota's citizens,³⁹ the office may have the authority to represent individual non-state clients in appropriate situations. However, historically, in Minnesota and other states, the attorney general's role has been confined to representation of the state for which the attorney general holds office.

Standing requirements deriving from Article III of the United States Constitution have confined to some degree a state's ability to litigate agricultural law issues on behalf of its citizens.⁴⁰ The problem often arises when a state attempts to litigate against the federal government.⁴¹ Consequently, the Minnesota Attorney General has confined his litigation concerning the farm

37. The working group includes the states of Minnesota, Illinois, Iowa, Kansas, North Dakota, South Dakota and Wisconsin.

38. JOINT TASK FORCE REPORT, *supra* note 2, at i-iii.

39. See *supra* notes 22-34 and accompanying text.

40. See *infra* notes 42-49 and accompanying text.

41. See *infra* notes 50-54 and accompanying text.

crisis to consumer fraud actions, the defense of state statutes in response to constitutional challenges, and participation as *amicus curiae*.

A state's ability to sue on its own behalf in the agricultural area is probably limited. The Article III standing criteria require a plaintiff to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," . . . and that the injury 'fairly can be traced to the challenging action' and 'is likely to be redressed by a favorable decision.'⁴² In addition, the Supreme Court has stated that a plaintiff "must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties."⁴³ These requirements are difficult for a state to satisfy in the agricultural area, where the state's loss is generally economic. In *Iowa ex rel. Miller v. Block* (hereinafter *Iowa v. Block*),⁴⁴ the State of Iowa sought to compel the United States Department of Agriculture to implement three federal agricultural disaster relief programs. The Eighth Circuit Court of Appeals held that the state lacked standing to sue on its own behalf because its grievances were "generalized grievances, shared by each citizen of Iowa,' and . . . that these injuries 'fail to constitute distinct, palpable injuries to the State as a state.'⁴⁵ The Eighth Circuit further noted that "economic loss 'is the sort of generalized grievance about the conduct of government, so distantly related to the wrong for which relief is sought, as not to be cognizable for purposes of standing.'⁴⁶

As an alternative to suing on its own behalf, a state may litigate on behalf of its citizens as *parens patriae*. In *Alfred L. Snapp and Son, Inc. v. Puerto Rico*,⁴⁷ the Supreme Court outlined the requirements for a state to achieve standing as *parens patriae*. The state must demonstrate: 1) a quasi-sovereign interest; and 2) "more . . . than injury to an identifiable group of individual residents."⁴⁸ The requisite quasi-sovereign interest may lie in the state's interest in the physical and economic health and well-being of its citizens, or it may lie in the state's interest in "not being discriminatorily denied its rightful status within the federal system."⁴⁹

Under these criteria, it appears that a state has considerable latitude in bringing suit as *parens patriae* against private entities. However, a state's ability to sue the federal government is probably more limited. In a footnote in *Snapp*, the Court stated squarely that "a State does not have standing as

42. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (citations omitted).

43. *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

44. 771 F.2d 347 (1985), *cert. denied*, 106 S. Ct. 3312 (1986).

45. *Id.* at 353 (citation omitted)(quoting the district court opinion, 626 F. Supp. 15, 18 (S.D. Iowa 1984)).

46. *Id.* (quoting *Pennsylvania v. Kleppe*, 533 F.2d 668 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 977 (1976) (suit by Pennsylvania against the Small Business Administration for alleged incorrect classification in hurricane relief program)).

47. 458 U.S. 592 (1982).

48. *Id.* at 607.

49. *Id.* at 608.

parens patriae to bring an action against the Federal Government.”⁵⁰ The Court relied on *Massachusetts v. Mellon*, in which the Court stated that “it is no part of [the state’s] duty or power to enforce their [the citizens’] rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*.”⁵¹

A number of courts have relied on both *Snapp* and *Mellon* to prohibit a state from bringing an action as *parens patriae* against the federal government.⁵² Significantly for Minnesota, the Eighth Circuit Court of Appeals has adopted this position. In *Iowa v. Block*,⁵³ discussed above, the Eighth Circuit, citing *Snapp*, quickly disposed of Iowa’s attempt to pursue the litigation as *parens patriae*.⁵⁴

If *Snapp* and *Mellon* do preclude states from suing the federal government, this preclusion creates a particular hardship for states and their residents suffering under the farm crisis. The federal government’s policies and programs significantly influence the status of agriculture.⁵⁵ In addition, the federal Farmers Home Administration (“FmHA”) is a major lender to financially troubled farm borrowers.⁵⁶ Since the FmHA is the so-called lender of

50. *Id.* at 610 n.16 (citation omitted).

51. 262 U.S. 447, 485-86 (1923).

52. *E.g.*, *Iowa ex rel. Miller v. Block*, 771 F.2d 347, 354 (1985), *cert. denied*, 106 S. Ct. 3312 (1986)(suit to compel Secretary of Agriculture to implement disaster relief programs); *Graham v. Schweiker*, 545 F. Supp. 625, 627 (S.D. Fla. 1982)(suit by Florida challenging regulations for refugee funding). *See also* *Pennsylvania v. Kleppe*, *supra* note 46, at 677. *But see* *Wash. Util. & Transp. Comm’n v. FCC*, 513 F.2d 1142, 1153 (9th Cir. 1975) *cert. denied*, 423 U.S. 836 (1975) (state sought review of an FCC order); *Louisiana v. Lee*, 596 F. Supp. 645, 649 (E.D. La. 1984), *vacated on other grounds*, 758 F.2d 1081 (5th Cir. 1985)(state sued Army Corps of Engineers alleging the Corps violated the National Environmental Policy Act), *cert. denied sub nom. Dravo Basic Materials Co. v. La.*, 106 S. Ct. 1259 (1986); *Holden v. Heckler*, 584 F. Supp. 463, 485 (N.D. Ohio 1984)(suit challenging statute by which Secretary of Health and Human Services terminated Social Security disability cases); *Abrams v. Heckler*, 582 F. Supp. 1155, 1160 (S.D.N.Y. 1984)(state sought declaration that Medicare regulation reversing state set-off on no-fault insurance was unlawful); *City of New York v. Heckler*, 578 F. Supp. 1109, 1123 (E.D.N.Y. 1984)(challenging procedures used in dispensing of Social Security disability and supplemental security income benefits), *aff’d*, 742 F.2d 729 (2d Cir. 1984)(without discussing the standing issue), *aff’d sub. nom. Bower v. City of New York*, 106 S. Ct. 2022 (1986)(without discussing the standing issue); *Maryland Dep’t of Human Resources v. USDA*, 617 F. Supp. 408, 414 (D. Md. 1985)(challenge to food stamp eligibility requirements). The Court of Appeals for the District of Columbia has reconciled these two classes of cases by finding an exception permitting the state to sue the federal government where “the subject of the challenge is Executive compliance with statutory requirements in a field where the federal government and the states have long shared regulatory responsibility.” *Maryland People’s Council v. FERC*, 760 F.2d 318, 322 (D.C. Cir. 1985)(state did have standing as *parens patriae* to obtain review of FERC order authorizing natural gas special marketing programs).

53. *See supra* note 52 and accompanying text.

54. *Iowa ex rel. Miller v. Block*, *supra* note 52, at 354-55.

55. *See supra* note 12.

56. FmHA holds 12.1 per cent of the nation’s farm debt. U.S. GENERAL ACCOUNTING OFFICE, FARMERS HOME ADMINISTRATION: AN OVERVIEW OF FARMER PROGRAM DEBT, DELINQUENCIES, AND LOAN LOSSES 16-17 (1986) [hereinafter FMHA OVERVIEW].

last resort,⁵⁷ its borrowers are particularly likely to experience financial problems and their accompanying legal difficulties.⁵⁸ Farmers' rights advocates have found FmHA to be particularly intransigent in implementing Congressional directives designed to assist farmers.⁵⁹ Yet farmers experiencing financial distress often lack the necessary resources to obtain adequate legal representation, especially when the representation will involve complex litigation against the federal government.⁶⁰

Despite the difficulties for a state attorney general in initiating direct litigation on behalf of its farmer residents, especially against the federal government, some strategies can be very effective. The most common and successful strategy is direct litigation against the pervasive modern-day "snake-oil peddlers." These "snake-oil peddlers" offer creative, but illegal and ineffective solutions to individual farmer's credit problems. The schemes may involve trusts, leases, liens, and other financial devices which at first appear legitimate. Further examination often reveals violations of a state's consumer protection, real estate or insurance laws, or laws regulating the practice of law—areas traditionally enforced by the state and often by the attorney general. The two following examples illustrate the role of the Minnesota Attorney General in protecting farmers against such schemes.

In early 1986, the Minnesota Attorney General's office was alerted to a

57. Farmers are eligible for FmHA loans only if they "are unable to obtain sufficient credit elsewhere." *See, e.g.*, 7 U.S.C. § 1922 (1973 & Supp. 1987)(real estate loans).

58. Twenty-three percent of FmHA's outstanding principal is delinquent, and 75 percent of the agency's delinquent principal has been delinquent for more than three years. FMHA OVERVIEW, *supra* note 56, at 55, 59.

59. Perhaps the best example is the extraordinary amount of litigation which was necessary to compel FmHA to implement a deferral relief program pursuant to 7 U.S.C. § 1981a (Supp. 1987). Congress enacted § 1981a in 1978; however, FmHA fought implementing the statute in federal courts throughout the country. *E.g.*, *Curry v. Block*, 738 F.2d 1556 (11th Cir. 1984); *Matzke v. Block*, 732 F.2d 799 (10th Cir. 1984); *Allison v. Block*, 723 F.2d 631 (8th Cir. 1983); *Coleman v. Block*, 580 F. Supp. 194 (D.N.D. 1984). FmHA finally published final regulations implementing § 1981a in November, 1985. 7 C.F.R. pts. 1854, 1872, 1900, 1910, 1924, 1941, 1945, 1950, 1951, 1955, 1960, 1962 (Supp. 1987). Some of these regulations are still under challenge in ongoing litigation. *See Coleman v. Lyng*, 663 F. Supp. 1315 (D.N.D. 1987).

60. *See* JOINT TASK FORCE REPORT, *supra* note 2, at 8-9; J. Massey, Unmet Legal Needs of Minnesota Farmers (1985)(unpublished manuscript). This problem of affording adequate legal representation in the face of complex litigation also plagues borrowers of the Farm Credit System, which holds 31.9 percent of the nation's farm debt. FMHA OVERVIEW, *supra* note 56, at 16-17. The System's Federal Land Banks provide real estate loans, 12 U.S.C. § 2014 (1980 & Supp. 1987), and the Production Credit Associations provide short and intermediate term loans, 12 U.S.C. § 2096 (1980 & Supp. 1987). These institutions are federally chartered instrumentalities and are regulated by a federal agency, the Farm Credit Administration, pursuant to a multitude of complex statutes and regulations. *See generally*, 12 U.S.C. §§ 2001-2276 (1980 & Supp. 1987); 12 C.F.R. pts. 600-619 (1987). However, in contrast to FmHA, Farm Credit System institutions, other than the Farm Credit Administration itself, do not appear to be federal agencies. *See, e.g.*, *DeLaigle v. Federal Land Bank of Columbia*, 568 F. Supp. 1432, 1439 (S.D. Ga. 1983)(Farm Credit System institutions are federally chartered private corporations rather than government agencies for fifth amendment purposes). *But see Smith v. Russellville Prod. Credit Ass'n*, 777 F.2d 1544, 1550 (11th Cir. 1985)(production credit associations are not liable for punitive damages because they are federal instrumentalities). Thus, it may be possible for a state to achieve standing as *parens patriae* against them in an appropriate case.

scheme brought in from out-of-state involving "off-shore trusts."⁶¹ Paul Davis offered, for \$750, a deal in which the farmer would agree to give all of the assets of the farm to a corporation allegedly located in the Bahamas. In exchange, the farmer would receive nearly total ownership of the corporation. The corporation would obtain a "common law lien" on all farm assets. The corporation would only release the lien to lenders and holders of mortgages or other security interests if paid substantial amounts of money. Davis consistently represented himself as competent and qualified to give legal advice, and in fact, offered such advice and counsel in connection with the deal. In the promotion of his scheme, Davis violated Minnesota's laws regulating deceptive trade practices,⁶² consumer fraud,⁶³ and the practice of law.⁶⁴ All of these provisions are subject to enforcement by the Minnesota Attorney General.⁶⁵ On these grounds, the office obtained a preliminary injunction against Davis.⁶⁶

At about the same time, the office instituted an action against Chester Dawson. Acting as a corporation, Dawson told farmers that he had could obtain \$5 million in real estate mortgages, if the farmers paid him a finder's fee. The scheme violated Minnesota's laws regarding deceptive trade practices,⁶⁷ consumer fraud,⁶⁸ and the state requirement that a person negotiating loans secured by a mortgage on real estate obtain a real estate broker's license.⁶⁹ Dawson also had failed to file with the Minnesota Secretary of State the certificate required when using an assumed name.⁷⁰ The Minnesota Attorney General's office, in conjunction with the Minnesota Commissioner of Commerce, obtained a default judgement against Dawson, including injunctive relief, a \$25,000 fine, and costs.⁷¹ Dawson was also convicted of theft by swindle.⁷²

A second litigation strategy employed by the Minnesota Attorney General is the defense of state statutes against constitutional challenges.⁷³ The Minnesota legislature has enacted laws providing significant protections to farm debtors.⁷⁴ These laws, controversial from the outset, have resulted in

61. The network of midwestern attorneys general has contributed substantially to keeping track of the many rural fraud schemes that move from state to state.

62. MINN. STAT. § 325D.44 subd. 1 (5), subd. 1 (12) (1981 & Supp. 1987).

63. MINN. STAT. § 325F.69 (1981 & Supp. 1987).

64. MINN. STAT. § 481.02 (1971 & Supp. 1987).

65. The Attorney General enforces MINN. STAT. §§ 325D.44, 325F.69, pursuant to MINN. STAT. § 481.02 subd. 8 (Supp. 1987).

66. *State v. Davis*, No. C86-66, (Nobles County Dist. Ct. Jan. 31, 1986). The office also subsequently assisted the United States Department of Justice in their successful prosecution of Davis for tax fraud in federal court in North Carolina. *U.S. v. Davis*, No. 86-60-01-CR-3 (E.D.N.C. indictment filed Jul. 1, 1986).

67. MINN. STAT. § 325D.44 subd. 1 (9), subd. 1 (12) (1981 & Supp. 1987).

68. MINN. STAT. § 325F.69 subd. 1.

69. MINN. STAT. § 82.19 subd. 1 (1986).

70. MINN. STAT. § 333.02 (1981 & Supp. 1987).

71. *State v. Dawson*, No. C-86-338 (Freeborn County Dist. Ct. Apr. 21, 1986).

72. *State v. Dawson*, No. 24-K-86-502 (Freeborn County Dist. Ct. final disposition Sept. 24, 1986).

73. See *supra* note 28 and accompanying text.

74. See generally Joint Task Force Report, *supra* note 2, at 46. See also *supra* note 63.

numerous constitutional challenges by creditors. In particular, creditors have attacked the validity of several provisions of the 1986 Minnesota farm bill⁷⁵ which provided a comprehensive package of farm debtor protections. The bill's major provisions included: requiring mandatory mediation prior to debt collection;⁷⁶ providing former owners a right of first refusal on farm land;⁷⁷ increasing the homestead exemption to 160 acres;⁷⁸ and restricting a creditor's ability to obtain a deficiency judgment.⁷⁹ Creditors have directly challenged these particular provisions in litigation,⁸⁰ and have also challenged these provisions in private litigation.⁸¹ Such challenges afford the Attorney General the opportunity to defend the law, and, in the case of intervention, to assist the litigating farm debtor, whose resources are often insufficient to mount a serious defense.

The third litigation strategy available to an attorney general is participation as *amicus curiae* in farm debtor litigation. Courts are generally receptive to such participation, although a particular jurisdiction's rules of court may impose limitations.⁸² As a result, the Minnesota Attorney General has relied on the filing of *amicus* briefs as a major litigation strategy. The office's involvement in the midwestern Attorneys General working group has enhanced the effectiveness of this strategy.⁸³ This network has increased each state's awareness of opportunities for *amicus* participation and has provided a means of sharing resources. Through *amicus* briefs an attorney general can support both principles of law and policies benefiting farm debtors. Attorneys general are able to address a wide range of issues, particularly regarding the Federal Government, which they otherwise might not address due to the limitations of their authority.⁸⁴ The attorney general's participation benefits the farmer who lacks the resources to litigate and provides the court with an opportunity to assess the breadth of the impact of the decision. Cases in which the Minnesota Attorney General has participated have involved bankruptcy issues,⁸⁵ FmHA

75. 1986 Minn. Laws ch. 398 as amended by 1986 Minn. Spec. Sess. Laws chs. 2-3.

76. MINN. STAT. §§ 583.20-583.32 (Supp. 1987) as amended by 1987 Minn. Laws ch. 292 §§ 2-40.

77. MINN. STAT. § 500.24 subd. 6 (Supp. 1987) as amended by 1987 Minn. Laws ch. 292 art. 2.

78. MINN. STAT. § 510.02 (1947 & Supp. 1987).

79. MINN. STAT. §§ 580.225, 581.09, 582.30, 582.31 (1947 & Supp. 1987).

80. Federal Land Bank of St. Paul v. Humphrey, No. 3-86-605 (D. Minn. filed July 3, 1986) (plaintiffs dismissed their complaint on Aug. 12, 1987).

81. See, e.g., Laue v. Prod. Credit Ass'n, 390 N.W.2d 823 (Minn. Ct. App. 1986) (upholding application of the Farmer-Lender Mediation Act, MINN. STAT. §§ 583.20-583.32 (Supp. 1987), to debt collection proceedings commenced, but not completed, prior to the Act's effective date).

82. See, e.g., SUP. CT. R. 36 (restrictions as to timing and length of brief); FED. R. APP. P. 29. Although the federal district court rules do not specify a procedure or criteria for *amicus curiae* participation, the appellate court rules appear to be generally followed.

83. See *supra* note 37 and accompanying text.

84. See *supra* text accompanying notes 41-54.

85. In re Ahlers, 794 F.2d 388 (8th Cir. 1986) cert. granted 107 S. Ct. 1279 (1987).

issues,⁸⁶ the Farm Credit System⁸⁷ and federal disaster relief programs.⁸⁸

B. Legislation and Rulemaking

Attorneys general, to further the protection of farmers' rights, should also initiate and promote legislation and participate in rulemaking, at both the state and federal levels.

An attorney general's involvement in the legislative process is widely accepted. Attorneys general have historically fulfilled a legislative function in other areas affecting the public interest, for example, consumer and environmental protection.⁸⁹ In heavily agricultural states, protection of farmers' legal rights is similarly important. This is particularly true today when the farm crisis is resulting in increased tension and even violence in rural areas, thus implicating the attorney general's role as the state's chief law enforcement officer.⁹⁰

In response to the farm crisis in 1986, the Minnesota Attorney General proposed the Minnesota Farmer-Lender Mediation Act.⁹¹ The Act establishes a mandatory farmer-lender mediation program administered by the Minnesota Extension Service. The Act requires that a creditor,⁹² before initiating a debt collection proceeding against agricultural property,⁹³ must notify the debtor⁹⁴ of his right to request mediation. If the debtor requests mediation, the creditor's remedies are suspended for 90 days,⁹⁵ and the debtor and creditor pro-

86. *E.g.*, Allison v. Block, *supra* note 59; Coleman v. Block, *supra* note 59 (on issue of release of necessary living and operating expenses); United States v. Elverud, 640 F. Supp. 692 (D.N.D. 1986)(regarding application of state redemption period to FmHA).

87. Spring Water Dairy v. Federal Intermediate Credit Bank, 625 F. Supp. 713 (D. Minn. 1986)(arguing that the Farm Credit Act creates an implied cause of action in favor of System borrowers).

88. Iowa ex rel. Miller v. Block, *supra* note 52 (on issue of *parens patriae* standing); Kjeldahl v. Block, 579 F. Supp. 1130 (D.D.C. 1983)(challenging USDA's failure to implement the Emergency Agricultural Credit Adjustment Act).

89. Note, *supra* note 15.

90. See generally ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, THE AMERICAN FARMER AND THE EXTREMISTS (1986); *Fear & Fanaticism in the U.S.*, Minneapolis Star & Tribune, Dec. 28-31, 1986, at 1A, col. 1. See also, MINN. STAT. §§ 583.20-583.32 (1947 & Supp. 1987), the legislative findings supporting the Minnesota Farmer-Lender Mediation Act, wherein the legislature found:

[T]hat the agricultural sector of the state's economy is under severe financial stress due to low farm commodity prices, continuing high interest rates, and reduced net farm income The agricultural economic emergency requires an orderly process with state assistance to adjust agricultural indebtedness to prevent civil unrest and to preserve the general welfare and fiscal integrity of the state.

MINN. STAT. § 583.21 (Supp. 1987).

91. See *supra* note 76.

92. "Creditor" is defined at MINN. STAT. § 583.22 subd. 4. See also MINN. STAT. § 583.24 subd. 1 (Supp. 1987), as amended by 1987 Minn. Laws ch. 292 § 15.

93. "Agricultural property" is defined at MINN. STAT. § 583.22 subd. 2 as amended by 1987 Minn. Laws ch. 292 § 11.

94. "Debtor" is defined at MINN. STAT. § 583.24 subd. 2.

95. Remedies are suspended for 180 days if the creditor is a federal agency. MINN. STAT. § 583.26 subd. 5 (b) as amended by 1987 Minn. Laws ch. 292 § 22.

ceed to complete mediation.⁹⁶ Mandatory mediation legislation was also proposed by the Iowa Attorney General in 1986 and enacted by the Iowa Legislature.⁹⁷

Both the Minnesota and Iowa mediation programs have been very successful. In Minnesota, over 3,700 mediations have been completed. Of these, 1,944 have resulted in debtor-creditor agreements: 1,407 during mediation, and 537 outside of mediation.⁹⁸ The Iowa program has been similarly successful, resulting in mediation agreements in about 55 percent of the mediation proceedings.⁹⁹ Both states have found that mediation works. It helps keep farmers on the land, creditors in business, and most importantly, it has significantly reduced the threat of violence in the rural areas.¹⁰⁰ Moreover, recent data indicates that mediation is a viable alternative to bankruptcy. An analysis completed by the Center for Rural Affairs indicates that states with mandatory mediation have also had proportionately fewer Chapter 12 filings.¹⁰¹

The attorney general's role in rulemaking at the state level is more limited. Under the Minnesota Administrative Procedures Act, a state agency, including the attorney general, may only adopt rules "pursuant to authority delegated by law."¹⁰² No such authority has been delegated relevant to agriculture. The attorney general does have other duties affecting rulemaking: the office reviews, as to legality and form, rules adopted by an agency without a

96. The creditor's remedies are suspended until 90 days after the date the debtor files a mediation request. MINN. STAT. § 583.26 subd. 5 *as amended by* 1987 Minn. Laws ch. 292 § 22. The mediation process includes a 60-day period during which meetings between the debtor, creditors, and a mediator will occur. MINN. STAT. § 583.26 subd. 8. The Act also provides for the immediate reinstatement of creditor's rights if the creditor proves that the debtor is participating in bad faith. MINN. STAT. § 583.27 subd. 4 *as amended by* 1987 Minn. Laws ch. 292 § 28. If a creditor participates in bad faith, the debtor may request court-supervised mandatory mediation, and the creditor's suspension of remedies may be extended for up to 240 days. MINN. STAT. § 583.27 subd. 3 *as amended by* 1987 Minn. Laws ch. 292 § 27.

97. 1986 Iowa Code ch. 654A (1987).

98. MINNESOTA EXTENSION SERVICE, WEEKLY FARM MEDIATION STATUS REPORT 3 (Sept. 4, 1987).

99. Telephone interview with Tam Ormiston, Assistant Attorney General, Iowa Attorney General's Office (Sept. 1, 1987).

100. MINNESOTA EXTENSION SERVICE, FARM CREDIT MEDIATION EVALUATION REPORT 1 (Dec. 1986).

101. CENTER FOR RURAL AFFAIRS, MANDATORY MEDIATION IS ALTERNATIVE TO BANKRUPTCY, INFORMATION ALERT No. 87-06, 1 (July 27, 1987).

The Center compiled the following data:

<u>State</u>	<u>No. of Farmers</u>	<u>No. of Ch. 12 Filings</u>	<u>No. of Ch. 12s per 1000 Farmers</u>	<u>Type of Mediation</u>
So. Dak.	36,500	349	9.6	None
Nebr.	59,000	446	7.6	None
N. Dak.	34,000	90	2.6	Voluntary
Kansas	72,000	188	2.6	Voluntary
Iowa	111,000	280	2.5	Mandatory
Minn.	96,000	114	1.2	Mandatory

102. MINN. STAT. § 14.05 subd. 1 (Supp. 1987).

public hearing;¹⁰³ and the office advises agencies engaged in rulemaking pursuant to the attorney general's advice function.¹⁰⁴ However, thus far, these duties have provided little opportunity for the Minnesota Attorney General to address farm crisis issues.¹⁰⁵

An attorney general has a potentially significant role to play in federal legislation and rulemaking. This strategy is especially important since federal programs and laws are inextricably entwined with farm crisis issues,¹⁰⁶ and because states are limited in their ability to enforce farm borrowers' rights against the federal government.¹⁰⁷ Particularly by working with others, an attorney general can effectively propose and achieve changes which protect farm borrowers' legal rights. For example, in 1985, a group of five midwestern attorneys general¹⁰⁸ proposed, and secured, amendments to the Farm Credit Act,¹⁰⁹ which established certain protections for Farm Credit System borrowers.¹¹⁰ The attorneys general involved had realized that basic elements of fundamental fairness were seriously lacking in the Farm Credit System. In response, they initiated a campaign for reform by submitting and publicizing an open letter to then-Governor Wilkinson of the Farm Credit Administration. The letter requested reforms in areas relating to disclosure of loan terms, access to documents and information, right of review of adverse credit decisions, forbearance, and shareholder rights.¹¹¹ After the attorneys general's request met with little response from the Farm Credit Administration, the states turned directly to Congress. The attorneys general drafted proposed legislative language,¹¹² and testified at Congressional hearings.¹¹³ Ultimately, bor-

103. MINN. STAT. § 14.26 (Supp. 1987). However, the circumstances under which an agency may adopt rules without a public hearing are limited. See MINN. STAT. § 14.22 (Supp. 1987).

104. See *supra* note 29 and accompanying text.

105. The Iowa Attorney General, because it is the agency administering Iowa's mandatory mediation, was responsible for promulgating the rules implementing the program. See 120 IOWA ADMIN. CODE ch. 61-17 (1987).

106. See *supra* note 12.

107. See *supra* notes 42-54 and accompanying text.

108. The Attorneys General of Minnesota, North Dakota, Iowa, Illinois, and Kansas.

109. 12 U.S.C. §§ 2201-2260 (1980 & Supp. 1987).

110. See *supra* note 60 for a discussion of the Farm Credit System.

111. Letter from Attorney General Tom Miller to Governor Wilkinson, Farm Credit Administration (Sept. 24, 1985) (copy on file at the New York University Review of Law & Social Change). In addition to the above-mentioned attorneys general, see *supra* note 108, the Attorneys General of Indiana, Kentucky, Missouri, Nebraska, South Dakota and Wisconsin also joined this initial letter.

112. *Examination of the Financial Condition of the Farm Credit System: Hearings Before the Senate Comm. on Agriculture, Nutrition, and Forestry*, 99th Cong., 1st Sess. (1985) (draft proposed amendments to the Farm Credit Act).

113. *Id.* (statements of Hubert H. Humphrey, III, Attorney General of Minnesota; Nicholas J. Spaeth, Attorney General of North Dakota; Robert T. Stephan, Attorney General of Kansas; Thomas Miller, Attorney General of Iowa; Neil Hartigan, Attorney General of Illinois). See also *Agricultural Credit Conditions: Hearings before the Subcomm. on Conservation, Credit, and Rural Development of the House Comm. on Agriculture*, 99th Cong., 1st Sess. (1985)(statements of Humphrey, Miller & Stephan).

rowers' rights provisions were included in the Farm Credit Act Amendments of 1985.¹¹⁴

An attorney general's role in commenting on proposed federal agency regulations is perhaps less dramatically effective than legislation. However, it is valuable in protecting farm borrowers' rights and in making a record of agency responsiveness, or lack thereof, for purposes of future litigation and legislation. Generally, proposed rules are published for comment in the Federal Register.¹¹⁵ Comments received by the agency within a specified time period must be considered and responded to by the agency.¹¹⁶ The agency may modify the proposed regulations in response to the comments received. Due to the multitude of federal agriculture and agriculture-related programs,¹¹⁷ there are many opportunities to comment on rules affecting farmers' legal rights. As with legislation and litigation, cooperating with other attorneys general has enhanced Minnesota's effectiveness in responding. In the past three years, the Minnesota Attorney General, generally in conjunction with the midwestern working group, has commented on a number of regulations proposed by the Farmers Home Administration,¹¹⁸ the Farm Credit Administration,¹¹⁹ the Commodity Credit Corporation,¹²⁰ and the United States Department of Agriculture.¹²¹

The impact of the midwestern working group on the Farmer's Home Administration's recently proposed amendments to its farmer program regulations¹²² illustrates the potential of this strategy. On January 19, 1987, FmHA proposed 100 pages of amendments to its farmer program regulations, which, if adopted, would dramatically change FmHA from the lender of last resort to

114. Farm Credit Amendments Act, Pub. L. No. 99-205 §§ 301-307, 99 Stat. 1708, 1709 (1985).

115. See 5 U.S.C. § 552 (1977 & Supp. 1987).

116. *Home Box Office v. FCC*, 567 F.2d 9 (D.C. Cir. 1977) cert. denied, 434 U.S. 829 (1977).

117. See *supra* note 12 and accompanying text.

118. *E.g.*, regulations relating to deferral relief, 49 Fed. Reg. 47,007 (1984)(to be codified at 7 C.F.R. pts. 1872, 1900, 1910, 1924, 1941, 1943, 1945, 1951, 1955, 1960 & 1962)(proposed Nov. 30, 1984); regulations restricting loans to producers of surplus commodities, 50 Fed. Reg. 49,395 (1985) (to be codified at 7 C.F.R. pt. 1032) (proposed Dec. 2, 1985); proposed amendments to farmer program regulations, 52 Fed. Reg. 1,706 (1987) (to be codified at 7 C.F.R. pts. 1809, 1900, 1902, 1910, 1924, 1941, 1943, 1945, 1951, 1955, 1962, 1965, 1980) (proposed Jan. 15, 1987).

119. *E.g.*, regulations relating to borrowers' rights, 51 Fed. Reg. 39,486 (1986) (to be codified at 12 C.F.R. pts. 614, 615 & 618) (proposed Oct. 28, 1986); regulations relating to the liquidation of system institutions, 50 Fed. Reg. 6,000 (1985) (to be codified at 12 C.F.R. pt. 611) (proposed Feb. 13, 1985).

120. *E.g.*, regulations restricting price support loans, 50 Fed. Reg. 26,778 (1985)(to be codified at 7 C.F.R. 1421)(proposed June 28, 1985); regulations relating to the producer loan program, 50 Fed. Reg. 16,221 (1985)(to be codified at 7 C.F.R. pt. 1421)(proposed Apr. 25, 1985).

121. *E.g.*, regulations relating to the special disaster payments program, 51 Fed. Reg. 18,552 (1986)(to be codified at 7 C.F.R. pt. 1476) (proposed May 20, 1986).

122. 52 Fed. Reg. 1,706 (1987)(to be codified at 7 C.F.R. pts. 1809, 1900, 1902, 1910, 1924, 1941, 1943, 1945, 1951, 1955, 1962, 1965 & 1980) (proposed Jan. 15, 1987).

a commercial-type bank. The proposed amendments would erect substantial barriers to beginning and re-entering farmers, including: (1) establishing risk assessment ratios which would impose commercial credit standards on applicants for FmHA credit; (2) severely restricting the availability of direct operating loans; and (3) reducing the period in which FmHA will give preference to family-sized farms when disposing of acquired property. FmHA originally permitted only a 30 day comment period on the proposed amendments.¹²³ and brought them to the attention of the United States Senate Agriculture Committee. At the urging of the attorneys general, the Senate Agriculture Committee requested FmHA to extend the comment period until March 19, 1987, and on March 11, the Committee held hearings on the regulations and requested further delay. Significant changes in the FmHA proposals are likely.

C. Education

The final major role for an attorney general in the farm crisis is one of education: for farmers, their advisors, and interested citizens. The Joint Task Force on the Delivery of Legal Services to Minnesota Farmers found that:

One of the most pressing needs generated by the farm legal crisis is to educate farmers and attorneys so that the two groups can effectively work together. Such education is the foundation of effectively delivering legal assistance to Minnesota's rural areas.¹²⁴

Adequate education regarding farm legal issues is absolutely essential if farmers are to preserve and assert their rights. The issues are complex, and farmers facing financial difficulty need to seek expert legal and financial advice. A third party, such as an attorney general's office, can provide farmers and their advisors with general information regarding the relevant issues. Such information may alert farmers to the need to seek additional expert advice before it is too late.¹²⁵

In response to the need identified by the Joint Task Force, the Minnesota Attorney General's Office has developed several educational tools. Staff members are available to speak to farmers, lawyers, and others on agricultural law issues. In addition, the office has developed numerous "Know Your Rights" bulletins on topics such as mediation,¹²⁶ the Minnesota debt restructuring pro-

123. Letter to FmHA from Nicholas J. Spaeth, Attorney General of North Dakota, Thomas J. Miller, Attorney General of Iowa, Neil F. Hartigan, Attorney General of Illinois, and Hubert H. Humphrey, III, Attorney General of Minnesota (Feb. 13, 1987) (copy on file at the New York University Review of Law & Social Change).

124. JOINT TASK FORCE REPORT, *supra* note 2, at 16.

125. *Id.* at 16-17.

126. *See supra* notes 91-97 and accompanying text (discussion of the Minnesota Farmer-Lender Mediation Act).

gram,¹²⁷ foreclosure law, FmHA issues, legal assistance,¹²⁸ and rural fraud. These bulletins are published as monthly columns in many newspapers around the state and are available for free distribution upon request. The office has also developed foreclosure sale guidelines for use by the Minnesota Sheriffs Association.¹²⁹

The office's constituent assistance function regarding farm issues also facilitates farmer education. In addition to the normal constituent assistance functions of answering telephones and letters, in 1984 the office established a Farm and Home Mortgage Hotline. The hotline has handled over 17,000 calls since its inception, over two-thirds of these from financially distressed farmers. The hotline functions primarily as a referral mechanism, identifying callers' needs and referring callers to appropriate resources: the Minnesota State Bar Association's Attorney Referral Service, Legal Services offices, the Minnesota Department of Agriculture farm advocate program,¹³⁰ the Minnesota Extension Service, and social service agencies. In order to facilitate referrals, the hotline coordinator has developed a referral book which identifies each of the above-listed resources for every county in Minnesota. The hotline provides written material, such as the "Know Your Rights" bulletins described above, on request, and refers general legal questions to attorneys on staff.

An attorney general's final role in education consists of pooling resources among organizations. For example, the Minnesota Joint Task Force¹³¹ brought together a number of different organizations, each with a slightly different perspective on the farm crisis. In sharing information, Task Force members found that a significant amount of information was already available. They also identified ways to effectively utilize and improve such information. The midwestern Attorneys General working group has had a similar experience,¹³² and has expanded its efforts even further through the National Association of Attorneys General Special Committee on Agriculture and Rural Affairs.¹³³

127. See the Minnesota Rural Finance Administration Act of 1986, MINN. STAT. ch. 41B (Supp. 1987) as amended by 1987 Minn. Laws ch. 396 art. 1.

128. The 1986 Minnesota Legislature established a family farm legal assistance program which provides free legal assistance to eligible farmers. See MINN. STAT. § 480.250 (Supp. 1987).

129. Letter from Hubert H. Humphrey, III, to Minnesota Sheriffs Association (Nov. 26, 1985). The guidelines emphasize that foreclosure sales must be public and should be conducted in good faith and for the best interest of both the debtor and creditor. Although not binding, the guidelines have been useful in alleviating tension over this issue. It should be noted that the guidelines are not an opinion of the Attorney General. As was discussed previously attorney general's opinions are only available in certain limited circumstances. See *supra* note 30. However, informal guidelines such as these may be useful as an educational tool in appropriate circumstances.

130. The Department has established a farmer-to-farmer advice and advocacy program under which farmers contract with the Department to provide free advice and assistance to financially distressed farmers.

131. See *supra* note 38 and accompanying text.

132. See *supra* note 37 and accompanying text.

133. See *supra* notes 37-38 and accompanying text.

CONCLUSION

The Minnesota experience demonstrates that any attorney general seeking to assist farmers during the continuing farm crisis has numerous alternatives. All of the above-described strategies (litigation, legislation, rulemaking and education) can be adapted by each attorney general's office. Each strategy has its own success story. However, the strategies work best in concert rather than in isolation. Litigation and legislation complement each other well to compel systemic changes with broad impact. Education is crucial in affecting the lives of individual farmers.

Numerous opportunities also exist for attorneys general to work together and with other interested groups. The midwestern working group has found without exception that the effectiveness of each attorney general's office has been heightened dramatically through the sharing of information and resources among them. The group's impact overall is evident in its successes with regard to Farm Credit System and Farmers Home Administration issues.¹³⁴

Farm debtors, creditors, and public officials must all work together to meet the challenges of the farm crisis. The Minnesota experience demonstrates that any effort by a state attorney general will be gratefully received by the many farmers struggling to preserve their way of life.

134. *See supra* notes 108-14, 122-23.