

**Office of Attorney General  
2009—2011  
BIENNIAL REPORT**



Attorney General  
Wayne Stenehjem



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# OFFICE OF ATTORNEY GENERAL

## THE AGENCY

The Attorney General is one of 12 statewide elected officials. The Office of Attorney General was established in the 1889 state constitution. The office is headed by the Attorney General, an independently elected constitutional officer.

The Office of Attorney General is organized into 13 divisions with specific duties and responsibilities: Administration, Bureau of Criminal Investigation, Civil Litigation, Consumer Protection and Antitrust, Criminal and Regulatory, Finance and Administration, Fire Marshal, Gaming, Information Technology, Natural Resources and Indian Affairs, Crime Laboratory, Lottery, and State & Local Government.

## QUALIFICATIONS

To be eligible for election to the Office of Attorney General, an individual must be a licensed attorney, at least 25 years old, and qualified to vote in North Dakota.

## BOARDS/COMMISSIONS

The Attorney General serves on numerous boards and commissions, including the Board of University and School Lands, Industrial Commission (which oversees all state-owned industries), Commission on Drug and Alcohol Abuse, PERS Board of Trustees, Judicial Council, and Pardon Advisory Board.

## DUTIES AND FUNCTIONS

The Attorney General represents the state in all legal matters, civil and criminal, where the state is named as a party or the state may have an interest in the outcome of the litigation. The duties of the Attorney General are set out in several chapters of the North Dakota Century Code.

### North Dakota ATTORNEYS GENERAL

Wayne Stenehjem 2001-  
M. K. "Heidi" Heitkamp 1993-2000  
Nicholas Spaeth 1985-1992  
Robert Wefald 1981-1984  
Allen I. Olson 1973-1980  
Helgi Johanneson 1963-1972  
Leslie R. Burgum 1955-1962  
Paul Benson 1954-1954  
Elmo T. Christianson 1951-1954  
Wallace E. Warner 1949-1950  
P.O. Sathre 1948-1948  
Nels G. Johnson 1945-1948  
Alvin C. Strutz 1937-1944  
P.O. Sathre 1933-1937  
Arthur J. Gronna 1933-1933  
James Morris 1929-1932  
George F. Shafer 1923-1928  
Sveinbjorn Johnson 1921-1922  
William Lembke 1921-1921  
William Langer 1917-1920  
Henry Linde 1915-1916  
Andrew Miller 1909-1914  
Thomas F. McCue 1907-1908  
Carl N. Frich 1903-1906  
Oliver D. Comstock 1901-1902  
John F. Cowan 1895-1900  
William H. Standish 1893-1894  
Clarence A.M. Spencer 1891-1892  
George F. Goodwin 1889-1890

Office of Attorney General  
600 E. Boulevard Ave  
Dept. 125  
Bismarck, ND 58505  
(701) 328-2210  
(701) 328-2226 (fax)  
**E-mail: [ndag@nd.gov](mailto:ndag@nd.gov)**  
**Website: [www.ag.nd.gov](http://www.ag.nd.gov)**

Consumer Protection and Antitrust  
1050 E Interstate Avenue Suite 200  
Bismarck ND 58503  
(701) 328-3404  
Toll free (800) 472-2600

Bureau of Criminal Investigation  
PO Box 1054  
Bismarck ND 58502  
(701) 328-5500  
Tip Hotline (800) 472-2185

Gaming Division  
17th Floor, Capitol Building  
(701) 328-4848

Licensing Section  
17th Floor, Capitol Building  
(701) 328-2329

Fire Marshal  
(701) 328-5555

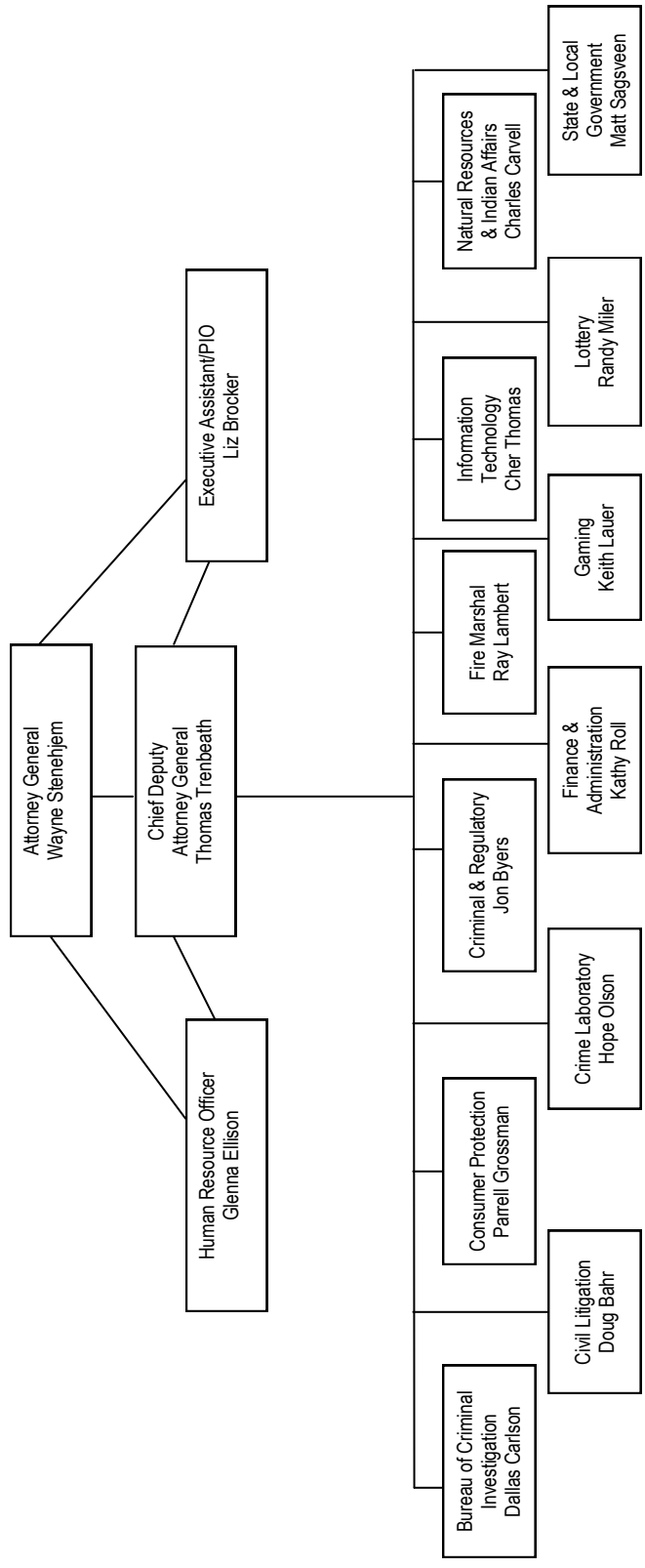
North Dakota Lottery  
1050 E Interstate Avenue Suite 200  
Bismarck ND 58503  
(701) 328-1574  
E-mail: [ndlottery@nd.gov](mailto:ndlottery@nd.gov)  
Website: [www.lottery.nd.gov](http://www.lottery.nd.gov)

The Attorney General issues opinions on questions of law related to matters involving state statutes, the state constitution, and matters having statewide significance. The office provides legal services to state and constitutional officers, state agencies, boards, and commissions. The office enforces the open meetings and open records laws, and issues opinions in response to complaints that a public entity has violated those laws

In addition to its legal duties, the Office of Attorney General has several divisions with regulatory or investigative functions:

- The **Bureau of Criminal Investigation** assists local governments in criminal and drug enforcement investigations, maintains the criminal history and sex offender registration systems, issues concealed weapon licenses, and provides training for law enforcement officials.
- The **Consumer Protection and Antitrust Division (CPAT)** enforces the state's consumer fraud and do not call laws, investigates and prosecutes consumer fraud cases and enforces the state's anti-trust statutes.
- The **Fire Marshal's Office** conducts fire safety training and inspections, controls hazardous materials incidents, and investigates fires.
- The **Gaming** division regulates charitable gaming, and ensures compliance with tribal-state casino gaming compacts.
- The **Licensing** section regulates and issues certain wholesale, retail, and distributor licenses.
- The North Dakota **Lottery** division is responsible for the day-to-day operation of the lottery and its games.

# ORGANIZATIONAL CHART



# AGENCY INITIATIVES

“Prescription drugs are perceived to be less dangerous or addictive, but drug abuse is drug abuse. We need to focus attention on this problem and work together to find a solution.”

*Attorney General Wayne Stenehjem  
(November 27, 2009)*

## ❖ **PRESCRIPTION DRUG ABUSE TRAINING**

In December 2009, Attorney General Wayne Stenehjem held one-day Prescription Drug Abuse conferences in Bismarck and Fargo to focus attention on the state’s fastest growing drug problem.

The conference offered training and education opportunities to law enforcement officers, treatment and addiction counselors, social workers, doctors, and prosecutors, and addressed a variety of topics ranging from addiction and treatment to prevention, as well as the prescription drug monitoring program. Over 600 people attended the conferences.

## ❖ **RX DRUG TAKE BACK PROGRAM**

In conjunction with the Prescription Drug Abuse conference, Stenehjem launched the Prescription Drug (RX) Take Back Program. The Take Back Program provides disposal units for people to dispose of their unused medications. The program accepts all over-the-counter and prescription medications – including controlled substances. The Take Back units, which are similar to the needle disposal containers in hospital rooms but on a much larger scale, are located in the lobby of the police departments.

The program is operated by the BCI at no cost to the communities or the local law enforcement agencies. Once the container is full, the BCI collects the drugs for disposal. The BCI is responsible for the Drug Enforcement Agency required documentation relating to collection and disposal of controlled substances deposited into the containers.

Designed to remove unwanted and frequently abused narcotics from circulation, the program was immediately popular with residents and law enforcement alike. Initially launched as a pilot program in just five cities, the program quickly expanded and now operates statewide.

## 2009-2011 LEGISLATION

The 2009 and 2011 Legislative Assemblies passed several bills which directly or indirectly affected the Office of Attorney General, including:

- 2009 HB 1306—Expanded the 24/7 Sobriety program statewide.
- 2009 HB 1368—created standards for the Fire Marshal’s division to monitor cigarette manufacturer and distributor compliance with federal “fire safe” regulations.
- 2009 SB 2218 “Justin’s Law”—requires a face-to-face appointment before prescribing controlled medications.
- 2009 SB 2415—created two types of concealed weapon license, giving applicants a choice of training and testing levels which relate to reciprocity with other states.
- 2011 HB 1205 “Kelsey Smith Act”—provides authority and process for disclosure of wireless call information to law enforcement in emergency situations involving risk of death or serious physical harm.
- 2011 HB 1451—additional restrictions for eligibility for a class 1 concealed weapon license.
- 2011 SB 2247 created a Domestic Violence Fatality Review Commission to investigate and report the circumstances of domestic violence deaths and make recommendations for policies and procedures.

The Attorney General is required to report on any defects in the practical operation on the law. At this time, the Office of Attorney General has not identified any issues requiring legislative amendment.

### OPINIONS

Opinions from 1942 to date are available online at [www.ag.nd.gov](http://www.ag.nd.gov) on the “Legal Opinions” page.

Individual copies of opinions issued prior to 1942 may be requested by contacting the Office of Attorney General at (701) 328-2210, or by e-mail to [ndag@nd.gov](mailto:ndag@nd.gov).

During the biennium, the Attorney General issued 16 news releases relating to current scams affecting the state's residents or enforcement actions against entities that had violated the state's consumer fraud laws.

## IN THE NEWS

The Office of Attorney General issues news releases on a variety of issues and distributes them to media from North Dakota and the United States, legislators, state officials, and members of the public who have asked to receive such information. All news releases and consumer alert releases are posted to the agency's website.

- 8TH CIRCUIT DISMISSES LAWSUIT FILED BY FEMALE INMATES (July 2, 2009): <http://www.ag.nd.gov/NewsReleases/2009/07-02-09.pdf>
- ATTORNEY GENERAL SEEKS DISMISSAL OF LAWSUIT (August 18, 2009): <http://www.ag.nd.gov/NewsReleases/2009/08-18-09.pdf>
- NORTH DAKOTA LAW BANNING ROBOCALLS IS UNDER ATTACK (November 25, 2009): <http://www.ag.nd.gov/NewsReleases/2009/11-25-09.pdf>
- STENEHJEM ANNOUNCES NEW PRESCRIPTION DRUG "TAKE BACK" PILOT PROGRAM (December 2, 2009): <http://www.ag.nd.gov/NewsReleases/2009/12-02-09.pdf>
- SCAM ARTISTS POSING AS LAW ENFORCEMENT OFFICERS IN TELEPHONE CALLS (December 15, 2009) <http://www.ag.nd.gov/NewsReleases/2009/12-15-09.pdf>
- STENEHJEM JOINS CHALLENGE TO EPA RULING (March 26, 2010): <http://www.ag.nd.gov/NewsReleases/2010/03-26-10.pdf>
- STENEHJEM WILL JOIN LAWSUIT CHALLENGING CONSTITUTIONALITY OF FEDERAL HEALTH CARE LAW (April 5, 2010): <http://www.ag.nd.gov/NewsReleases/2010/04-05-10.pdf>
- STENEHJEM JOINS BRIEF TO PROTECT FAMILIES OF FALLEN SOLDIERS (May 21, 2010): <http://www.ag.nd.gov/NewsReleases/2010/05-21-10.pdf>

- ATTORNEY GENERAL WARNS ABOUT CREDIT CARD INTEREST RATE REDUCTION SCAMS (May 25, 2010): <http://www.ag.nd.gov/NewsReleases/2010/05-25-10A.pdf>
- ATTORNEY GENERAL ISSUES CEASE AND DESIST ORDER AGAINST XM BRANDS AND KENNETH JACOBI (August 13, 2010): <http://www.ag.nd.gov/NewsReleases/2010/08-13-10.pdf>
- PAYDAY LOAN COLLECTION CALLS SCAM (September 9, 2010): <http://www.ag.nd.gov/NewsReleases/2010/09-09-10.pdf>
- NEW DIRECTOR APPOINTED TO HEAD THE BUREAU OF CRIMINAL INVESTIGATIONS (December 3, 2010) <http://www.ag.nd.gov/NewsReleases/2010/12-03-10.pdf>
- INVESTIGATION OF BISMARCK POLICE DEPARTMENT SHOOTING INCIDENT COMPLETED (February 14, 2011): <http://www.ag.nd.gov/NewsReleases/2011/02-14-11.pdf>

The Consumer Protection division issues a monthly consumer newsletter, *Too Good To Be True ...*, which is published in daily and weekly newspapers across the state.

# ADMINISTRATION

The 2009-2011 biennium budget for the Office of Attorney General was \$54.85 million; **during the biennium, the agency collected \$76.66 million.**

The Administration Division is responsible for providing personnel support services, coordinating public education and information programs, and coordinating relations with state and local government officials and the legislative branch.

## PUBLIC INFORMATION

### ❖ **CONSTITUENT RESPONSES**

In addition to thousands of telephone calls received by the Office of Attorney General dealing with everything from requests for general information to referrals to other government entities, the public information office responded to 2131 e-mails and 292 letters from citizens. The average response time was 1.5 days.

### ❖ **PUBLICATIONS**

During the biennium, the division continued its efforts to provide the public with useful information regarding the Office of Attorney General and state government in general. The office also continued to prepare and offer information and publications to the public on a variety of topics. These are listed at the end of this report in the “Publications” section.

### ❖ **WEB ACCESS**

The Office of Attorney General serves the people of North Dakota and is committed to providing instant access, via the Internet, to information and resources on a variety of issues, including concealed weapons licenses, open records and meetings, consumer scams, Attorney General Opinions and crime reports.

**The Office of Attorney General website is [www.ag.nd.gov](http://www.ag.nd.gov).**

# BUREAU OF CRIMINAL INVESTIGATION

The Bureau of Criminal Investigation (BCI) is the law enforcement division of the Office of Attorney General. It assists local, state, and federal law enforcement agencies in criminal and drug enforcement investigations, maintains the criminal history and sex offender registration systems, issues concealed weapons licenses, provides training and licensing for law enforcement officials, and facilitates federal funding for many local law enforcement agencies.

## ❖ NORTH DAKOTA STATE AND LOCAL INTELLIGENCE CENTER (ND SLIC)

During the 2009-2011 Biennium, the ND Fusion Center and the ND PSAT combined, forming the North Dakota State and Local Intelligence Center (ND SLIC) - a centralized support center for state, local, tribal and federal partners across North Dakota. The ND SLIC is comprised of thirteen officers and analysts from seven federal, state and military agencies, including the Bureau of Criminal Investigation, North Dakota Highway Patrol, Department of Homeland Security, North Dakota Department of Emergency Services, North Dakota National Guard, The Office of the Adjutant General, and Customs and Border Protection. The center produces tactical law enforcement alerts and bulletins and develops strategic situational awareness products for dissemination to state, local, tribal and federal agencies. The center also provides law enforcement throughout the state with case support.

## ❖ INFORMATION SERVICES SECTION

The Information Services Section includes a variety of systems that provide criminal justice agencies and the public with information critical to the protection and safety of the citizens of North Dakota. The systems include the state central repository for criminal histories which includes arrest and prosecution information for individual offenders; the Uniform Crime Reporting (UCR) program which compiles statistics on reported crimes and provides annual reports; the Central Warrant Information System (CWIS) which is available for law enforcement to record outstanding warrants, protection and restraining orders; and the Automated Fingerprint Identification System (AFIS).



The BCI has 12 field offices which house criminal and narcotics agents who support local law enforcement agencies and provide smaller agencies a mechanism through which to share resources and personnel.

BCI agents provided community awareness training about the signs of drug abuse and meth manufacture to 1,450 adults and children. Agents are current on the latest trends and can share anecdotal stories with the public that are extremely effective in demonstrating the danger of drugs.

Sex Offender Website  
[www.sexoffender.nd.gov](http://www.sexoffender.nd.gov)

**North Dakota's sex offender registration compliance rate is 99%.**

During the biennium, the information section conducted 69,266 state and federal record checks, compared to 63,060 in the previous biennium.

#### ❖ **CONCEALED WEAPONS LICENSES**

Legislation regarding reciprocity of North Dakota's concealed weapon license caused a great increase in workload during this biennium, with more and more states adding North Dakota to their list of acceptable licenses to hold. Concealed weapon license applications continued to increase during the 2009-11 biennium.

During the biennium, 8,533 concealed weapon licenses were issued. The number of active concealed weapon licenses grew from 12,111 last biennium, to 13,730 at the end of the 2009-11 biennium.

#### ❖ **INTERNET CRIMES AGAINST CHILDREN**

The Internet Crimes Against Children (ICAC) Taskforce has grown from 22 to 42 cooperating state and local law enforcement agencies and two federal partners. In addition to criminal internet investigations the ND ICAC taskforce has provided specialized law enforcement training to over 135 officers and 25 prosecutors. ND ICAC also provided public outreach by conducting internet safety presentations for schools and public groups. BCI provided computer forensic support to state and federal law enforcement agencies with four trained computer forensic agents.

#### ❖ **SEX OFFENDER REGISTRATION**

During the 2009-2011 biennium, the number of registered sex offenders increased from 1,236 to 1,504. Of those, as of the end of the biennium, only 11 offenders were delinquent, which equates to a 99% compliance rate.

A risk assessment committee reviewed data on each registered offender and determined each individual's risk assessment level as either low, moderate, or high. Through the biennium, 591 assessments on new offenders were completed. At the end of the biennium, 403 offenders had been identified as high risk, 527 as moderate risk, and 793 as low risk.

## ❖ **24/7 SOBRIETY PROGRAM**

After a successful pilot program was implemented in the 2007-09 biennium, the 2009 Legislature authorized the Attorney General to implement the program across the state. Statewide implementation of the program was completed in August 2010. Initially targeting individuals arrested for a second or subsequent DUI, the 2009 Legislature also authorized additional uses. Participation in the 24/7 program be required as a condition of parole & probation, for any violation where drugs or alcohol may be involved, or in cases involving domestic abuse, or abuse/neglect of a child. Participants are responsible for payment of the fees associated with the program.

## ❖ **SIGNIFICANT CASES**

- 2010 - ND v. Richard and Irene Daniel: BCI agents with the Narcotics Task Force seized over 500 marijuana plants at a site in Stutsman County. Its estimated value, had it eventually reached the streets, would have been approximately \$500,000.
- 2011 – ND v. Daniel Wacht: BCI assisted with the investigation of a missing person, Kurt Johnson, who was last seen in Cooperstown on New Year’s Eve with Daniel Wacht. During the investigation, parts of Johnson’s body were located in the basement of Wacht’s house. Wacht was charged with murder.
- 2011 - ND v. Vicente Chacano: After being convicted of gross sexual imposition, Chacano pulled a weapon and attempted to shoot Assistant Attorney General Jonathon Byers and several members of the jury in the courtroom. Chacano was subdued and subsequently charged with terrorizing and other charges.

The 24/7 Sobriety program has been very well received and supported by law enforcement, the courts, and the participants.

As of June 30, 2011, 2,000 offenders participated in the 24/7 program, with 1,274 successfully completing the program, and 291 active at that time.

# CIVIL LITIGATION

During the biennium, the Civil Litigation division collected \$7.18 million for its client agencies.

Division attorneys represent numerous state professional licensing boards and commissions in a variety of cases, including appeals from the denial of applications, and disciplinary actions. Most cases are handled or resolved at the administrative hearing stage.

The Civil Litigation Division represents state agencies, officials, and employees in legal actions, including administrative hearings, state court lawsuits, federal court lawsuits, and appeals. The attorneys handle cases ranging from challenges to the constitutionality of state laws to collection actions for various state agencies.

## DIVISION CLIENTS

### ❖ BANK OF NORTH DAKOTA

The Attorney General represents the Bank of North Dakota in cases seeking to recover overdue loans or property from delinquent borrowers. During the biennium Civil Litigation Division legal staff represented the Bank in 99 home loan foreclosures, 7 home loan bankruptcies, 13 farm loan foreclosures, 1 farm bankruptcy case, and 42 student loan collection actions. Through its efforts this biennium, the Office of Attorney General collected \$4,642,456.69 for the Bank.

### ❖ DEPARTMENT OF CORRECTIONS & REHABILITATION/STATE PENITENTIARY

The division represents the North Dakota State Penitentiary and penitentiary employees in state and federal court cases involving inmates' allegations of unlawful conduct by prison officials, including challenges to prison policies and civil rights actions. During the past biennium, Civil Litigation Division attorneys handled 30 such cases.

### ❖ DEPARTMENT OF HUMAN SERVICES

During the biennium, division attorneys represented DHS in 135 economic assistance, developmental disability services, and adoption cases and 122 child care licensing, child care protective services, and foster care cases.

### ❖ DEPARTMENT OF TRANSPORTATION

Civil Litigation Division attorneys represent the Department of Transportation in a variety of cases, including im-

plied consent, driver's license, condemnation, quiet title, and contract cases. During the biennium, division staff was involved in 315 district court and 28 North Dakota Supreme Court appeals relating to drivers licenses.

### ❖ **EMPLOYMENT**

Division attorneys represented Job Service in 26 state district court appeals and two North Dakota Supreme Court appeals involving grants or denials of unemployment benefits. Staff attorneys issued 422 unemployment tax complaints against employers who owed payments to Job Service, resulting in 217 judgments and the recovery of over \$1.6 million. Division attorneys took legal action for Job Service to recover employee benefit overpayments in 1,130 cases, resulting in 166 judgments and collection of an additional \$893,000.00. Total recovery (tax and overpayment) was approximately \$2,541,000.00.

The division handled 116 wage claim cases for the Labor Department against employers who failed to pay their employees, recovering over \$75,724 for those employees. In addition to representing state agencies in employment cases, staff attorneys also defended matters appealed through the Central Personnel Division.

### ❖ **RISK MANAGEMENT FUND**

The division provides general counsel services to the Risk Management Fund and represents the State Risk Management Fund in litigation. In addition to assisting the Risk Management Fund in responding to and resolving many of the new claims filed during the biennium, staff defended the Risk Management Fund in 63 lawsuits.

## **SIGNIFICANT CASES OR MATTERS**

### ❖ **UND NICKNAME AND LOGO**

Eight enrolled members of the Spirit Lake Tribe sued the State and the State Board of Higher Education in an effort to enjoin the Board from retiring the "Fighting Sioux" nickname and logo. The district court granted the Board's motion to dismiss. The North Dakota Supreme Court affirmed, explaining the Board "is the constitutionally estab-

### **ABORTION CONTROL ACT**

Division staff successfully defended the constitutionality of 2009 House Bill No. 1371, which requires an abortion facility to offer a woman an opportunity to receive an ultrasound of both an image of the fetus and the auscultation of the fetal heart tone, if available.

Division staff is currently defending a lawsuit challenging the constitutionality of 2011 House Bill No. 1297, which made several changes to the North Dakota Abortion Control Act, mainly relating to medicinal abortion techniques. The lawsuit is in state court and challenges several sections of HB 1297 as unconstitutional under the North Dakota Constitution.

At the request of plaintiffs, the district court issued a temporary injunction restraining the State from enforcing the challenged provisions of HB 1297. Both parties have filed for summary judgment. Arguments will likely be held in December 2011, and a decision issued shortly thereafter.



### **AMICUS CURIAE**

Amicus curiae or "friend of the court" briefs are filed by a state or other entity in a pending court case in which it is not a party. The briefs are designed to provide the court with information or a perspective that should be considered in the court's decision but that might not be presented to the court by the parties to the case.

During the 2009-2011 biennium, the Office of Attorney General received 150 requests to write or join briefs amicus curiae, the majority of the briefs filed in the United States Supreme Court. The Office of Attorney General joined or wrote briefs in 47 of these cases.

lished entity for the control and administration of state educational institutions, including UND." It also interpreted the settlement agreement between the Board and the NCAA and found the agreement does not limit the Board's constitutional and statutory authority or require the Board "to continue using the nickname and logo" or "to change the nickname and logo."

More recently, eight Native American UND students filed a lawsuit in federal court seeking damages and an injunction ordering the Board to retire the "Fighting Sioux" nickname and logo. The Board filed a motion to dismiss. No decision has been issued regarding the motion to date.

### **❖ ECONOMIC DEVELOPMENT AUTHORITY**

Division staff is defending a lawsuit against the State and the North Dakota Department of Commerce that alleges the Department's disbursement of funds to private persons, associations, and corporations for economic development purposes violates Article X, section 18 of the North Dakota Constitution. The Department moved to dismiss the complaint, which was granted by the district court. The matter is now on appeal to the North Dakota Supreme Court.

### **❖ SECRETARY OF STATE CASES**

During the biennium, division staff defended three lawsuit against the Secretary of State. One involved the initiative petition process. In that case, the Secretary of State rejected the petitions as insufficient because they were circulated and signed without the names and addresses of the sponsors. Petitioners argued the sponsor information was not required to be with the petitions at the time of circulation and signature. The North Dakota Supreme Court disagreed, holding the plain language of the Article III of the North Dakota Constitution "requires petitions for initiated measures, including petitions circulated for signatures, to contain the names and addresses of the sponsors." Accordingly, the Court held, "the Secretary of State correctly determined that the petitions submitted to him in this case were insufficient."

Another case involved RECALLND's attempt to recall a United States Senator. The Secretary of State, based on an opinion of the Attorney General, did not approve for circu-

lation RECALLND's petition because neither the Constitution nor laws of the State of North Dakota allow for the recall of a congressional officer. The North Dakota Supreme Court agreed with the opinion of the Attorney General and denied RECALLND's request that the Court order the Secretary of State to approve the recall petition. It held: "Congressional officials, including a United States Senator, are not subject to recall under the North Dakota Constitution. The Secretary of State acted appropriately in denying RECALLND's petition for circulation on this basis."

The third case involved three Libertarian Party candidates. The Libertarian Party of North Dakota challenged the constitutionality of N.D.C.C. § 16.1-11-36, which requires a candidate on the primary election ballot to receive the number of votes equal to 1% of the population of the candidate's legislative district or 300 votes, whichever is less. The federal district court upheld the law's constitutionality. The issue has been briefed and argued at the Eighth Circuit Court of Appeals.

### ❖ **SUPREME COURT DISCIPLINARY JURISDICTION**

Division staff successfully represented the North Dakota Disciplinary Board in a challenge to its jurisdiction. The plaintiff, a member of the Three Affiliated Tribes, is licensed to practice law by the state of North Dakota and the Fort Berthold District Court. The Disciplinary Board initiated disciplinary action against the plaintiff based on the plaintiff's conduct on the Fort Berthold Indian Reservation. The plaintiff filed an action in federal court requesting the federal court enjoin the Disciplinary Board from pursuing the disciplinary action, arguing the Disciplinary Board, and thus the North Dakota Supreme Court, lacks jurisdiction to discipline the plaintiff based on his conduct on the Fort Berthold Indian Reservation. The Disciplinary Board moved to dismiss the Complaint. On January 14, 2009, the federal district court entered an order dismissing the Complaint. The district court found the North Dakota Supreme Court has jurisdiction to discipline the plaintiff. The plaintiff appealed the district court's decision to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals found in favor of the Disciplinary Board.

Civil litigation attorneys represented the Labor Department in 26 new administrative actions and cases enforcing the North Dakota Human Rights Act and North Dakota Housing Discrimination Act.

❖ **MASTER SETTLEMENT AGREEMENT (MSA)  
& NON-PARTICIPATING MANUFACTURERS  
(NPM) STATUTE ENFORCEMENT UPDATE**

The MSA requires each Settling State (North Dakota and others) to pass a “Qualifying Statute” (N.D.C.C. ch. 51-25, Tobacco Sales Act) allowing the Settling State to collect escrow payments from the NPMs. Under the MSA, a Settling State’s annual settlement payment cannot be reduced by the NPM Adjustment so long as that Settling State “diligently enforced” its Qualifying Statute. North Dakota’s total share of the settlement is expected to be **\$866 million**. Through the end of the biennium, the state had received a total of \$298,723,636.99 in settlement payments. Of that amount \$170,356,458.57 was received during the 2009 -2011 biennium.

In April 2006, several PMs withheld approximately \$775 million from the Settling States, claiming an offset for the 2003 NPM Adjustment. While North Dakota’s current share of the amount withheld by the PMs is approximately \$2.75 million, it is possible for North Dakota to lose its entire payment of approximately \$28 million. In May 2006, the North Dakota Attorney General filed a motion in Cass County District Court, requesting a ruling that North Dakota diligently enforced its Tobacco Sales Act. In July 2006 the Cass County District Court denied the PMs’ motion to compel arbitration of the diligent enforcement dispute. The PMs appealed and the North Dakota Supreme Court reversed, holding the MSA requires the diligent enforcement dispute be arbitrated.

Division staff is working with other Settling States in a multi-state arbitration, which is being held before three retired federal judges. Based on the discovery obtained in the arbitration, on November 3, 2011 the PMs are required to identify which States they continue to contest did not diligently enforce their statutes. Hearings regarding the contested States will begin in May 2012. Whether North Dakota will be contested and, if it is, when its hearing will be held, is currently unknown.

Civil Litigation attorneys participated in 26 arguments before the North Dakota Supreme Court, one argument in the Eighth Circuit Court of Appeals, and numerous arguments in other courts and administrative proceedings.

# CONSUMER PROTECTION & ANTITRUST

The Consumer Protection and Antitrust Division (CPAT) enforces the state's consumer fraud laws, investigates and prosecutes consumer fraud cases, mediates individual consumer complaints, enforces the state's do not call laws, is the state's clearinghouse for identity theft prevention, and educates the public on how to avoid becoming victims of fraud.

The division conducted 153 consumer fraud presentations and public appearances discussing consumer fraud issues. CPAT continued publication of its monthly consumer newsletter "Too Good To Be True," printed in newspapers throughout the state; issued news releases and consumer alerts; and participated in frequent radio and television appearances to talk about current consumer scams.

The division provided 33 victims with identity theft affidavits to complete and file with the Office of Attorney General, credit reporting agencies, and creditors.

## ❖ **CEASE & DESIST ORDERS AND INJUNCTIONS**

During the biennium CPAT issued cease and desist orders against seven businesses for fraudulent or illegal activity. These orders typically are issued in the event of blatantly fraudulent activity, or in circumstances that present imminent harm to consumers. The division also obtained court ordered injunctions against one business, suspending its business activities in North Dakota until it complied with the Attorney General's request for information.

## ❖ **INVESTIGATIONS/LEGAL ACTIONS**

CPAT pursued numerous investigations or legal actions against individuals or entities under consumer protection, do not call, and other laws. The investigations resulted in 78 civil actions for violations of consumer fraud laws and 33 civil actions for violations of do not call laws.

The actions included violations of deceptive and misleading practices, false advertising, do not call, home solicitation sales, transient merchant, contractor, charitable solicitations, security breach, non-profit corporation, and

**CPAT recovered or collected \$3,452,897 during the 2009-11 biennium, a 15.6% increase from the previous biennium.**

Consumer Protection  
opened 2,203 complaints  
and investigations and  
closed 2,745 files during  
the biennium.

antitrust laws. CPAT's aggregated costs of prosecuting these actions was less than \$2,000.

### ❖ **DO NOT CALL ENFORCEMENT**

The Attorney General continues to pursue enforcement of the do not call laws through business and consumer education, investigations, and legal actions. During the biennium, the division received 202 complaints for solicitations to consumers registered on the national and state do not call registry and 143 complaints about pre-recorded messages. The division conducted 44 investigations and reached 37 settlements with total civil penalties collected in the amount of \$47,000.

### ❖ **LIFESMARTS**

The Consumer Protection continued its participation in the National Consumers League's "LifeSmarts" educational program that develops the consumer and marketplace skills of teenagers in a fun way and rewards them for this knowledge. Students participate in online preliminary rounds to advance to the state final event. The state final event, hosted by the Attorney General's office, is a game-show style competition with elimination rounds. The final round involves three teams, with the winning team representing the state in the national competition.

Jamestown High School, the 2010 winning team, participated in the national LifeSmarts competition in Miami Beach, Florida, where they took second place.

Jamestown High School repeated its success in 2011, winning the state competition. Because of conflicts, however, the team opted not to attend the national competition. The second place state team, Ray High School, instead represented North Dakota at the national competition in Los Angeles, California.

# CRIME LABORATORY

The Crime Laboratory provides scientific support to the state's criminal justice system through the analysis, identification, and comparison of physical evidence used in the investigation and prosecution of criminal offenses. Services provided by the Crime Lab include examination of physical and toxicological evidence for local, state, and federal law enforcement agencies, prosecutors, and defense attorneys, and equipment selection, inspection, repair, and training of law enforcement agents in breath alcohol analysis.

During the 2009-2011 biennium, the Crime Laboratory Division processed 14,491 cases: 7,426 blood alcohol (driving under the influence), 4,194 narcotics, 1,714 urine/blood drug screens; 446 biological screening, 538 DNA, 102 latent fingerprint; 26 firearm/toolmark, 30 arson, and 15 miscellaneous cases. Laboratory staff testified in over 160 administrative hearings, depositions, or court hearings.

The Toxicology section held 31 classes and trained 365 law enforcement officers in the use of breath alcohol instruments. An additional 1,985 officers received certification for breath equipment remotely via the internet and 857 officers completed training from a DVD presentation at their local agency. Laboratory staff members maintained, supported, and certified 835 (S-D5) and 852 (S-D2) non-evidentiary preliminary screening devices and 65 evidentiary breath alcohol instruments for law enforcement agencies for a total of 7,636 breath alcohol cases statewide.

The Lab received 5,821 convicted or registered offender/felony arrestee samples for the National DNA Index System (NDIS). During the 2009-2011 biennium, the DNA database matched to 122 samples, which produced investigative leads for law enforcement agencies.

In June 2010, the Lab implemented a new Laboratory Information Management System (LIMS). This first system component enables law enforcement agencies to pre-log evidence before it is submitted to the Crime Lab. Additional components will be brought online during the 2011-2013 biennium.

In January, 2010, the Lab launched its monthly newsletter "**Under the Microscope.**"

The publication provides information to criminal justice agencies and the public about different aspects of the Laboratory and covers a variety of topics from new instruments to turnaround times and upcoming training to techniques and tips. The newsletter is available for download from the Crime Lab page of the Attorney General's website, [www.ag.nd.gov](http://www.ag.nd.gov).

The Lab also created a Law Enforcement Liaison position to facilitate communication between the Lab and local law enforcement agencies and enhance customer service.

# CRIMINAL AND REGULATORY

The division conducts research on legal issues for local prosecutors and law enforcement officials, assists in the prosecution of criminal cases when requested by a local state’s attorney, and provides legal services to various state agencies and officials, including the Department of Corrections & Rehabilitation, and ND Highway Patrol. The division provides general legal counsel to the ND POST Board and represents the Board in adverse license actions against peace officers.

Division attorneys have been actively involved in the risk assessment of sex offenders and those persons who committed offenses against children. The division participated in law enforcement and correctional training at the Law Enforcement Training Academy, and public presentations regarding offender risk assessment and notification of offender community presence.

The division also handles the legal issues associated with alcoholic beverage licensing, including enforcement actions for gaming and alcoholic beverage administrative rule and statutory violations.

The Licensing section issues licenses to alcoholic beverage retailers, wholesale and retail tobacco products dealers, transient merchants, coin operated amusement device operators, fair boards, polygraph examiners, charitable gaming operators, gaming manufacturers and distributors, and wholesale fireworks distributors.

The division processes all extradition requests received by the Governor. During the biennium, there were **69 extradition** requests processed.

## ❖ LICENSING REVENUE

Type of License	# Issued	Revenue
Beer License	3,203	\$254,723
Liquor License	2,951	233,195
Cigarette License	3,317	52,425
Coin License	233	81,900
Detection of Deception License	32	1,130
Fair Board License	18	900
Gaming/Distributor/Manufacturer	1,263	308,150
Transient Merchant License	147	29,400
Wholesale Fireworks	46	11,500
<b>Total Licensing Revenue:</b>	<b>11,210</b>	<b>\$973,323</b>

# FINANCE & ADMINISTRATION

Finance and Administration is responsible for budget, payroll, and accounting matters; information processing; purchasing and other administrative functions for all divisions of the Office of Attorney General.

## BIENNIUM EXPENDITURES

Total expenditures for the 2009-11 biennium were approximately \$44.4 million. Of the total expenditures, \$29 million (65%) was general fund monies, \$7 million was federal funds (16%), and \$8.4 million (19 %) was special funds. The agency had authorized 202.5 FTEs and salary expenditures of \$25.7 million.

Division	Expenditures
Finance & Administration	1,729,560
Information Technology	4,467,429
Administration	947,398
Legal*	6,461,233
BCI	16,141,118
Crime Lab	6,571,086
Consumer Protection	1,476,557
Gaming	2,492,536
Fire Marshal	1,278,064
Lottery	2,789,811
* Expenditures for the Civil Litigation, Natural Resources & Indian Affairs, State and Local Government and Criminal & Regulatory divisions are combined under "Legal"	

The costs associated with defending and prosecuting actions on behalf of the state by attorneys within the Office of Attorney General totaled \$2.1million- approximately the same as litigation costs from the 2007-09 biennium. The agency's five legal divisions were responsible for the legal costs.

### ❖ SPECIAL ASSISTANT ATTORNEYS GENERAL (SAAG)

Section 54-12-08 N.D.C.C. authorizes Workforce Safety and Insurance, the Department of Transportation, State Tax Commissioner, Public Service Commission, Insurance Commissioner, Board of Higher Education, and the Securities Commissioner to employ attorneys to represent them. State entities also may request the appointment of outside counsel to assist on specific issues or cases. These attorneys are appointed Special Assistant Attorneys General by the

Attorney General. Following is a summary of the costs associated with legal services not provided by the Office of Attorney General, as reported by the agencies and entities.

During the 2009-2011 biennium, the billing rate charged to client agencies for legal services provided by attorneys within the Office of Attorney General was **\$70.21 per hour**.

<b>STATE AGENCY/BOARD/COMMISSION</b>	<b>2009-2011 \$</b>
Accountancy Board	2,365
Architecture	8,831
Bank of North Dakota	66,227
Department of Commerce	51,610
Corn Council	26,119
Development Fund	6,962
Electrical Board	54,761
Fair Board	11,594
Garrison Diversion Conservancy District	87,367
Health Department	147,814
Human Services, Department of	1,180,196
Human Services, Child Support	2,054,405
Industrial Commission	150,166
Housing Finance Agency	394,148
Information Technology	3,664
Insurance Department	603,893
Law Examiners, State Board of	31,315
Medical Examiners Board	94,010
Milk Marketing Board	5,013
Nursing Board	83,890
Optometry Board	2,397
PERS/RIO/TFFR/Investment Board	619,080
Pharmacy Board	25,237
Physical Therapists Board	24,415
Podiatric Medical Examiners Board	2,502
Professional Engineers/Land Surveyors	21,364
Protection & Advocacy Project	7,189
Public Service Commission	369,922
Public Finance Authority	5,125
Public Instruction, Department of	38,855
Real Estate Commission	87,078
Risk Management	396,490
Securities Commission	156,702
Tax Commissioner's Office	655,096
Transportation, Department of	526,854
University System/Board of Higher Ed.	560,673
University System-UND	1,104,235
University System-NDSU	722,777
Water Commission	332,567
Workforce Safety & Insurance	2,365,465
<b>TOTAL:</b>	<b>\$13,138,389</b>

# FIRE MARSHAL

The Fire Marshal Division's goal is the prevention of fires through education, training, inspections and investigations. The division's main office is located in Bismarck and there are field offices located in Grafton, Fargo, Dickinson, and Minot.

The Fire Marshal's emphasis on prevention is carried out through public education programs and training. Education programs are conducted to assist citizens in preventing fire and protecting themselves and their families should a fire occur. The division also provides specialized training in fire prevention, fire scene investigation, and hazardous materials response support.

The division conducts fire investigations to determine origin and cause. During the biennium, the division conducted 139 fire origin and cause investigations. Arson was determined to be the cause in 23% of investigations. Thirteen people lost their lives to fire this biennium.

To enhance the level of fire safety throughout the state, the division conducts fire inspections in public facilities, educational buildings, childcare facilities, state buildings, and at flammable material storage sites. The Fire Marshal staff conducted 293 school inspections, 268 fuel site inspections, 388 state building inspections, 72 day care inspections, 49 assembly inspections, and 26 other inspections.

North Dakota Century Code 18-13, which went into effect August 1, 2010, requires manufacturers to certify with the North Dakota State Fire Marshal that their cigarettes sold in this state are reduced ignition propensity (fire-safer). During this biennium, 21 manufacturers have certified 866 different brand styles of cigarettes.

The Fire Marshal's office manages the state's National Fire Incident Reporting System (NFIRS) and compiles state fire statistics from reports provided by local fire departments. The National Fire Incident Reporting System (NFIRS) shows 51.5% of all North Dakota fire departments/districts reporting. The Fire Marshal Division performs periodic quality checks on the information submitted by the fire service.



Increased oil activity in the western part of the state has challenged the division. Oil companies, political subdivisions, architects, contractors, builders, installers, and others have requested information from the Fire Marshal's office pertaining to code regulations for aboveground storage tanks, housing construction, sprinkler systems, licensing requirements and fire safety.

# GAMING

**GAMING UPDATE**  
The "Gaming Update" quarterly newsletter includes statistics on gaming, interpretation and updates of law and rules, calendar of events, and other special topics. It is distributed to organizations, distributors, manufacturers, the Gaming Advisory Board and Gaming Commission, and is available online

Among its many duties, the Gaming division regulates, enforces and administers charitable gaming, provides training, and performs audits and investigations of gaming organizations, and ensures compliance with tribal-state casino gaming compacts.

During the biennium, there were approximately 900 active gaming sites, taking wagers of \$513 million, raising over \$34 million for charitable uses, and bringing in \$16 million in gaming, pull tab and bingo excise taxes.

## LEGISLATIVE CHANGES

The 2011 Legislative Assembly enacted several changes to gaming statutes relating to gaming organizations:

- HB 1380 changed the definition of an "eligible" organization.
- SB 2003 provided an additional appropriation to the State Gaming Commission.
- SB 2042 consolidated the gaming and excise taxes into a single gaming tax on gross wagers. Allowable expenses were also consolidated into a single 60% expense allowance on adjusted gross proceeds.
- SB 2145 exempts nonprofit organizations that sell an alcoholic beverage as part of a fundraising activity from needing an alcoholic beverage license.

### ❖ LOCAL LAW ENFORCEMENT GRANTS

The Legislature authorized local gaming enforcement grants. The grant allocation amount is 3% of the gaming and excise taxes paid, or \$63,750 per quarter, not to exceed \$510,000. The amount a city or county receives is proportionate to the level of its gaming activity. The total enforcement grants awarded were \$497,073.

### ❖ EDUCATION PROGRAM

The division conducted seven group training sessions in

five major cities, reaching 175 individuals representing 84 organizations. Individual training was provided to 65 individuals from 38 organizations, and post-audit training was given to 26 individuals from nine organizations.

### ❖ **AUDIT PROGRAM**

During the biennium, the division conducted 18 comprehensive field audits, 62 in-office, and 36 limited compliance reviews of organizations.

### ❖ **INDIAN GAMING**

The state has tribal-state casino gaming compacts to allow the five Indian tribes to conduct gaming operations at the following facilities:

- Dakota Magic Casino & Hotel, operated by the Sisseton Wahpeton Oyate Tribe, employing 447 people and containing 1,006 slot machines, 7 table games and a poker room.
- Four Bears Casino & Resort operated by the Mandan, Hidatsa, and Arikara Nation (Three Affiliated Tribes), employing 306 people and containing 626 slot machines, 12 table games, and a poker room.
- Prairie Knights Casino & Resort, operated by the Standing Rock Sioux Tribe, employing 370 people and containing 727 slot machines and 9 table games.
- Sky Dancer Casino & Hotel and Mini-Casino, operated by the Turtle Mountain Band of Chippewa Indians, employing 414 people and including 650 slot machines, 9 table games, and a poker room.
- Spirit Lake Casino & Resort, an alcohol-free facility operated by the Spirit Lake Tribe, employing 434 people and containing 701 slot machines, 9 table games, and a poker room.

### ❖ **OVERVIEW OF THE GAMING INDUSTRY**

An overview of the gaming activity for the fiscal years ended June 30, 2010, and June 30, 2011, follows:

During the biennium, 60 administrative complaints were issued to organizations operating games of chance. **The division collected \$26,250 in fines as a result of these complaints.** Twenty incidents of suspected criminal activity were referred to local law enforcement.

# OVERVIEW OF GAMING ACTIVITY

## ❖ FISCAL YEAR ENDED JUNE 30, 2010

	<u>Gross Proceeds</u>	<u>Prizes</u>	<u>Adjusted Gross Proceeds</u>
Bingo	\$31,976,605	\$25,319,334	\$6,657,271
Raffles	4,348,675	1,909,129	2,439,546
Pull Tabs (Jar Bar)	79,305,540	62,606,258	16,699,282
Pull Tabs (Dispensing Devices)	56,136,198	43,444,022	12,692,176
Club Specials, Tip Boards, Coin Boards, & Seal Boards	1,014,680	740,156	274,524
Punchboards	6,896	5,169	1,727
Sports Pools	128,955	102,923	26,032
Twenty-one	70,087,344	59,025,988	11,061,356
Calcuttas	194,855	164,871	29,984
Paddlewheels	180,040	102,936	77,104
Paddlewheels used with a table	5,185,002	3,868,029	1,316,973
Poker	882,088	709,118	172,970
Totals	<u>\$249,446,878</u>	<u>\$197,997,933</u>	<u>\$51,448,945</u>
Plus:	Interest Earned & Cash Long (Short)		\$21,526
Less:	ND Excise Tax		\$3,969,763
	Federal Excise Tax		91,018
	Bingo Excise Tax		930,528
			<u>\$4,991,309</u>
	Total Adjusted Gross Proceeds		\$46,479,162
Less:	ND Gaming Tax		\$2,989,120
	Allowable Expenses		<u>26,736,519</u>
	Total Deductible Expenses		<u>\$29,725,639</u>
	Net Proceeds Earned		\$16,753,523
	Eligible Use Contributions		\$18,999,916

# OVERVIEW OF GAMING ACTIVITY

## ❖ FISCAL YEAR ENDED JUNE 30, 2011

	Gross Proceeds	Prizes	Adjusted Gross Proceeds
Bingo	\$36,697,981	\$29,832,766	\$6,865,215
Raffles	5,668,923	2,354,687	3,314,236
Pull Tabs (Jar Bar)	80,587,708	63,721,629	16,866,079
Pull Tabs (Dispensing Devices)	60,181,513	46,551,646	13,629,867
Club Specials, Tip Boards, Coin Boards, & Seal Boards	1,028,651	771,458	257,193
Punchboards	4,296	3,384	912
Sports Pools	109,832	87,544	22,288
Twenty-one	73,068,444	61,602,472	11,465,972
Calcuttas	200,194	170,818	29,376
Paddlewheels	193,604	118,089	75,515
Paddlewheels used with a table	5,246,566	3,833,051	1,413,515
Poker	1,000,924	807,588	193,336
Totals	<u>\$263,988,636</u>	<u>\$209,855,132</u>	<u>\$54,133,504</u>
Plus:	Interest Earned & Cash Long (Short)		\$32,170
Less:	ND Excise Tax		\$4,125,120
	Federal Excise Tax		94,705
	Bingo Excise Tax		1,067,914
			<u>\$5,287,739</u>
	Total Adjusted Gross Proceeds		\$48,877,935
Less:	ND Gaming Tax		\$3,123,262
	Allowable Expenses		28,029,397
	Total Deductible Expenses		<u>\$31,152,659</u>
	Net Proceeds Earned		\$17,725,276
	Eligible Use Contributions		\$17,746,800

# INFORMATION TECHNOLOGY

During the biennium the Information Technology (IT) division continued to provide technical services and support for the agency's 12 locations across the state, as well as Bismarck. Over 5,400 calls for service came into the IT help desk during the biennium. These calls resulted in IT staff providing network support, troubleshooting, software installation, equipment replacement, creation of new computer applications, and enhancement of existing applications.

The IT staff also maintains the website for the Office of Attorney General, the North Dakota Lottery, and the state's Sex Offender web site (which shares information with the National Dru Sjodin web site). In addition, staff facilitate information sharing from agency databases with law enforcement across the state through State Radio and the Criminal Justice Information Sharing (CJIS) initiative.

The IT staff maintains approximately 20 business applications for the agency.

Staff is on call 24 hours a day, 7 days a week.

## SIGNIFICANT ACCOMPLISHMENTS

- IT worked with the Crime Lab to produce a Request for Proposal for a new Crime Laboratory Management Application. A product from Forensic Advantage was selected and a project team identified to implement the system.
- IT hired MorphoTrak to develop a 2-finger identification routine that allows fingerprints to be checked against the Automated Fingerprint Identification System (AFIS) database and return a name and other identification information. This process will be used in the future to validate DNA samples being taken. It will also be used to identify sex offenders when they change their registration information.
- The paper sex offender registrations forms were replaced with online forms that can be printed and mailed to the office. The division will continue work to develop a process to allow these forms to be submitted electronically to our office in the future.

# LOTTERY

The North Dakota Lottery regulates, enforces and promotes the state’s lottery.

The Lottery selects and licenses retailers; trains retailer employees; develops administrative rules and proposes legislation; investigates allegations of unlawful activity; assists retailers in promoting lottery games; pays high-tier prizes to players; ensures that retailers and players comply with the lottery law and rules; and provides full accountability to the public and Legislature.

The Lottery conducts five multi-state games: POWERBALL®, HOT LOTTO®, WILD CARD 2®, 2BY2® and MEGA MILLIONS®. The Lottery’s product mix of games provides jackpots starting from \$22,000 to \$20 million, and overall odds of winning a prize on a \$1 play ranging from 1:3.59 to 1:39.89.

The number of retailers and sales percent, by type, for the biennium are:

No.	Type	Sales %
300	Convenience Store	71.7
61	Grocery Store/Supermarket	23.1
7	Gas/Service Station	.7
18	Truck Stop/Plaza	3.0
14	Other (i.e. Bar, Drug Store)	1.5

## ❖ MARKETING PROMOTIONS

The Lottery conducted several marketing promotions during the biennium, including subscriptions discount, Powerball Cash Dash, Holiday subscriptions discount, Mega Millions game launch, Powerball 10X, Mega Millions Match 5, Cash Dash “One of Each,” The “Big 3,” Wild Card 2 “Wild Winnings” and Father’s Day subscriptions discount.

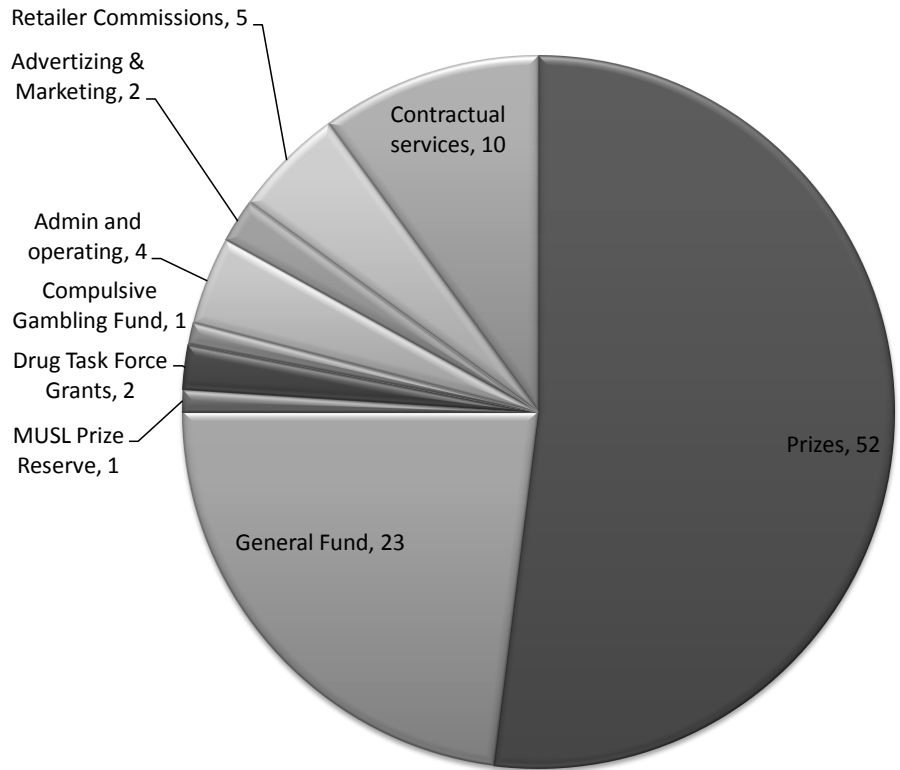


The lottery generated total operating revenue of \$47.58 million, **paid out \$24.58 million in prizes**, and generated net proceeds of \$12.35 million.

The Lottery transferred **\$10.4 million to the state general fund**, \$845,000 to the multi-jurisdictional drug task force grant fund, and \$400,000 to the compulsive gambling prevention and treatment fund.

## LOTTERY SALES

The chart below shows a breakdown of each \$1 of sales:



This biennium, the Lottery gave away the largest prize since the Lottery began.

A lucky player from Grafton won a **\$1,648,155 Wild Card 2** jackpot.

## SIGNIFICANT ACCOMPLISHMENTS

During the biennium, the Lottery:

- Implemented text messaging capabilities to allow players to subscribe to receive notice of winning numbers, jackpot alerts, and promotional announcements.
- Added the Mega Millions game to its product mix. The price of a play is \$1. The jackpot starts at \$12 million. For an additional one dollar per play a player may add the Megaplier option for an opportunity to multiply the player's set prizes (excluding the jackpot prize) by 2, 3, or 4 times. The match 5+0 prize, for players selecting the Megaplier option, is one million dollars.

# NATURAL RESOURCES/INDIAN AFFAIRS

North Dakota's natural resources are vital to the state's economy and to its citizens' lifestyle and well-being. The Attorney General, as a member of boards that oversee natural resources, plays an important role in the wise use of these resources. In addition, the Attorney General and the division provide legal advice to the state's natural resource agencies.

The division, comprised of five lawyers and a paralegal, assists the Land Department in managing state owned lands and minerals; the State Engineer in regulating dams, dikes, drains, and the appropriation of water, as well as managing the beds of navigable rivers and lakes and regulating the appropriation of water; the Industrial Commission in regulating the exploration and development of mineral resources and administering grant programs for fossil fuel industries; the Health Department in protecting our environment; the Game & Fish Department in managing wildlife and wildlife habitat; the Water Commission in developing water resources; and the Parks & Recreation Department in managing public recreation areas.

The division administers the state's anti-corporate farming law and represents the Department of Agriculture, Board of Animal Health, Agricultural Mediation Service, Wheat Commission, Corn Council, and other agriculture related agencies. The division also advises state and local officials on Indian law issues.

## ENVIRONMENTAL PROTECTION

During the biennium, the division assisted the Health Department with its regulatory work involving air pollution control, asbestos removal, water pollution control, and solid waste and hazardous waste management.

Enforcement work in these areas often involves negotiating settlements with polluters. The settlements may require payment of civil penalties and compliance with a remediation plan. Sometimes settlements include "supplemental environmental projects" designed to enhance and protect the environment.

In the interest of consumers, the division, along with the Wyoming and South Dakota Attorneys General, filed an amicus brief supporting the Surface Transportation Board's decision to reduce BNSF rail rates and ordering the railroad to refund overpayments.

The division assisted the Conference of Western Attorneys General in preparing annual supplements to the Conference's American Indian Law Deskbook, which is in its fourth edition.

Division members authored the article "Indian Reserved Rights: Impending Conflicts or Coming Rapprochement Between the State of North Dakota and North Dakota Indian Tribes," published by the North Dakota Law Review.

The division is involved in three federal lawsuits that challenge aspects of EPA's greenhouse gas regulatory regime, and has petitioned a federal court to settle a dispute between the state and EPA over the proper method to implement a new EPA sulfur dioxide regulation.

The division is involved in litigation with EPA over the "best available control technology" to regulate nitrogen oxide emissions at the Milton R. Young power plant. The division is also assisting state officials in responding to EPA's regional haze rule. EPA rejected the state's plan to address regional haze by reducing power plant emissions with new technology. EPA's rejection is through a rulemaking process and the division is assisting state officials in that process. The state is also responding by intervening in two federal court cases involving EPA and environmental groups that involve the regional haze rule.

The division assisted the Industrial Commission in matters before the Minnesota Public Utilities Commission that would adversely affect North Dakota coal and power industries by reducing the amount of power exported to Minnesota.

## **WATER**

The division provided legal advice on the many issues that arose with the 2011 Minot and Missouri River floods, management of Lake Sakakawea by the Corps of Engineers, the continuing and extraordinary rise of Devils Lake, and the effort to protect Fargo from floods and to move Missouri River water to supplement Fargo drinking water supplies.

The division represented the State Water Commission in litigation brought in federal court by Manitoba and the State of Missouri challenging the Northwest Area Water Supply Project, and in a trans-boundary dispute filed in Canadian Federal Court by political subdivisions in Manitoba alleging that the state and local entities in northeastern North Dakota have, through water management practices, exacerbated flooding in Manitoba.

Lastly, the division represents the state in a lawsuit over proper interpretation of the Yellowstone River Compact, to which Montana, Wyoming, and North Dakota are parties.

## **AGRICULTURAL LAW**

The division assisted the Agriculture Department in administering numerous programs, including noxious weeds, ammonia anhydrous operations, fertilizers, and others, provided legal advice to agricultural agencies such as the Wheat Commission and Corn Council., and assisted the Board of Animal Health in such matters as livestock import violations, non-traditional livestock, abandoned animals, and the humane treatment of animals.

## **STATE LAND AND MINERALS**

As a member of the Board of University and School Lands, the Attorney General helps manage approximately 712,000 acres of state owned land and 1.8 million acres of state owned minerals. Income generated from these resources supports the state's schools. The division assisted the Land Board with the many property law questions and other problems that arise in managing a large amount of land and minerals. The recent and rapid expansion of the state's oil and gas industry directly affects the Land Board and its minerals management work, requiring the division's active involvement. In particular, the division has advised the Land Board on complex issues concerning mineral title, including title to minerals under the bed of the Missouri and Yellowstone Rivers and under Lake Sakakawea.

## **INDIAN ISSUES**

During the biennium, state agencies and local officials were confronted with complex issues involving North Dakota Indian tribes. The division provided legal advice on such issues as the Standing Rock Sioux Tribe's water rights and the scope of state regulatory jurisdiction over the on-reservation activities of Indian as well as non-Indians.

The division presided over more than 2,000 oil and gas administrative hearings.

The division administers the state's corporate farming law, which included enforcement actions against entities acquiring agricultural land in violation of the law. Both entities challenged the law's constitutionality, with one challenge being rejected by a state district court and the other one still in litigation.

# STATE AND LOCAL GOVERNMENT

By statute the Office of Attorney General must review all administrative rules adopted by state agencies and boards for legal sufficiency and to ensure that proper procedures have been followed. The division reviewed 75 sets of rules during the biennium.

The Attorney General issues opinions on questions of law related to matters involving state statutes, the state constitution, and matters having statewide significance.

## LEGAL SERVICES

The State and Local Government division provides day-to-day legal services to 65 state agencies, boards, and commissions. Division attorneys represent multiple agencies and are required to be experts in a wide variety of practice areas. In addition to providing legal services, attorneys from the division assisted agencies and members of the Legislative Assembly by drafting bills and amendments, explaining the ramifications of proposed legislation and testifying before legislative committees when requested.

## ATTORNEY GENERAL OPINIONS

The Attorney General is frequently asked for legal opinions by state legislators, state officials, county state's attorneys, city attorneys, city governing bodies, water resource boards, and soil conservation districts. These opinions regulate the actions of public officials until the courts decide the issue. During the biennium the Attorney General issued 32 legal opinions. The Attorney General issued 11 opinions to legislators, 10 to state's attorneys, five to city attorneys, and 6 to state agencies.

### ❖ SIGNIFICANT OPINIONS

- 2009-L-19 COUNTY WEIGHT RESTRICTION ORDINANCE: While a home rule county may enact a weight restriction ordinance duplicating state law, it may not divert revenue raised through enforcement of its ordinance from the state treasury .
- 2010-L-02 MINIMUM HIGH SCHOOL CREDITS TO GRADUATE: A local school board may require a high school student to complete more than the twenty-two of units of coursework specified in statute for graduation because that number is a minimum requirement to graduate and not a maximum.
- 2010-L-07 AUTHORITY OF STATE AUDITOR: The State Auditor has broad statutory authority to

conduct financial and performance audits and post audits, and to report instances of waste, fraud and abuse and violations of state or federal law to the proper authorities, but does not have general independent authority to initiate investigations of such allegations.

## **OPEN RECORDS AND MEETINGS**

The agency issued 35 opinions addressing alleged violations of the open records or open meetings laws. The division also handled a large number of telephone calls from public entities and citizens regarding open records and meetings requirements. Responding by telephone eliminated many potential violations or opinion requests.

### **❖ SIGNIFICANT OPINIONS**

- **2009-O-18 NOTICE REQUIREMENTS FOR TOWNSHIPS:** Regardless of whether the notice is published, the open meetings law requires a township to file the meeting notice with the county auditor and post it at the location of the meeting.
- **2010-O-08 RISK MANAGEMENT RECORDS:** The Risk Management division did not violate the open records laws when it redacted attorney work product from requested billing records because state law grants the Office of Management and Budget broad discretion to decline to disclose its litigation files.
- **2010-O-14 BOARD ATTENDS SQUAD MEETING:** The Mercer County Ambulance Board violated the state's open meetings laws by failing to provide public notice when a quorum of the board attended a squad meeting at which public business was discussed.
- **2011-O-04 STREET INSPECTION WAS A PUBLIC MEETING:** The McKenzie Township Board and McKenzie Zoning Commission violated the law because each failed to provide public notice of a meeting when both governing bodies made an inspection of the streets, culverts and property within McKenzie.

### **Not sure if a record or meeting is open?**

Look on the Open Records and Open Meetings link of the Attorney General's website for:

A **Summary of Open Records**, giving examples of open, exempt and confidential records along with the statutory authority; and a **Summary of Open Meetings**, setting out the steps for noticing and holding a general, special or sub-committee meeting.

# PUBLICATIONS OF THE OFFICE OF ATTORNEY GENERAL

The Office of Attorney General makes available a variety of forms and publications, from informational pamphlets explaining consumer rights to administrative rules and license applications for gaming organizations. For convenience, these publications are available online from the “News/Publications/Forms” link on the agency’s website, [www.ag.nd.gov](http://www.ag.nd.gov).

## NEWS/PUBLICATIONS

### ❖ NEWS

- News Releases
- Too Good To Be True...
- Under the Microscope
- Gaming Update
- Lottery Links

### ❖ PUBLICATIONS

- Attorney General, Office of
- Attorney General, Office of-Brochure
- Attorney General Opinions
- Attorney General Opinions-Brochure
- Choosing a Contractor
- Choosing a Contractor-Brochure
- Concealed Weapons
- I Want to File a Complaint
- Disaster Scams
- Disaster Scams-Brochure
- Do Not Call
- Do Not Call-Brochure
- Document Retention
- Eminent Domain - Landowner Rights
- Eminent Domain - Landowner Rights-Brochure
- Fair Credit Reporting Act
- Fair Debt Collections Practice Act
- Identity Theft
- Junk Mail
- Lemon Law, North Dakota
- Liability of State Employees
- What You Should Know About Meth
- Network Marketing/Pyramid Schemes
- Online Safety Tips
- Open Records and Open Meetings
- Satellite and Cable Programming
- Security Freeze
- Sex Offender Information
- Small Claims Court in North Dakota
- Smart Shopping Tips

- Tenant Rights
- Your Credit Score
- What Teenagers Need to Know About Sex and the Law

## FORMS

### ❖ BCI

- Criminal History Authorization
- Application for Reduction in Fee
- Non-Criminal Justice Request
- Offender Registration

### ❖ CONSUMER PROTECTION

- Consumer Complaint

### ❖ FIRE MARSHAL

- Certificate of Fire Department Existence
- Training Report
- Assembly Occupancy Inspection Form
- Aboveground Fuel Storage Tank Pre-Installation Application - Fuel Dispensing Sites
- Adjunct Instructor Expense Form
- Liquefied Petroleum Gas Pre-Installation Checklist
- Law Enforcement Training Roster

### ❖ GAMING

- Gaming and Tax Returns
- Bingo
- Bingo Dispensing Device
- Calcutta
- Club Special
- Combined Concept
- Long Form Tax
- Paddlewheel W/Table
- Paddlewheel W/O Table
- Poker
- Prize Board Dispensing Devices
- Prize Board
- Pull Tab Dispensing
- Pull Tab

Pull Tabs By Deal Method  
Raffle  
Short Form Tax Return  
Sports Pool  
Twenty-One  
Request for Record Check  
Designated Usage of Funds  
Evaluation of Video Surveillance Equipment

❖ **LICENSING**

Alcoholic Beverage License  
Amusement Games  
Local Gaming Permit/Application/Report  
Fireworks  
Gaming License Application  
Manufacture/Distribute Gaming Equipment  
and Supplies  
Polygraph  
Tobacco  
Transient Merchant

❖ **OTHER**

Forensic Medical Exam Reimbursement  
Application to Limit Liability of Vendor  
Prosecution Witness Fee Reimbursement  
Report of Expenditures

## REPORTS

Law Report  
Attorney General Biennial Reports  
Crime & Homicide Reports  
Comprehensive Status and Trends Report

## MANUALS

Acquisition and Disposal of Property and  
Services  
Administrative Rules Manual  
Concealed Weapon Manual  
Contract Drafting Manual  
Extradition Manual  
Sample Personal Service Contract  
Offender Registration  
Open Records and Meetings Manual  
Chemical Test Operator  
S-D2 Operating Instruction Manual  
Sample Retention/Disposal

## INFORMATION-DIVISION

❖ **BCI**

Concealed Weapons Permits  
Criminal History Records  
Law Enforcement Training & Licensing  
Methamphetamine  
Offender Registration  
Cold Case Unit

❖ **CONSUMER PROTECTION**

Consumer Rights and Information  
Security Freeze  
Do Not Call  
Free Credit Reports  
Identity Theft  
Internet Safety

❖ **FIRE MARSHAL**

Fireworks Safety  
Guidelines for Requesting Assistance  
Fire Safety Standards for Cigarettes

❖ **GAMING**

Gaming Newsletter  
Gaming Commission & Advisory Board  
Sample Gaming Compact  
Rules and Regulations  
License Holders

❖ **LICENSING**

Alcoholic Beverage License  
Amusement Games  
Local Gaming Permit/Application/Report  
Fireworks  
Gaming License Application  
Manufacture/Distribute Gaming Equipment  
and Supplies  
Polygraph  
Tobacco  
Transient Merchant  
License Holders

❖ **STATE & LOCAL GOV'T**

Opinions  
Open Records & Open Meetings Opinions

