

# DEPARTMENT OF JUSTICE

## STATE OF NEBRASKA

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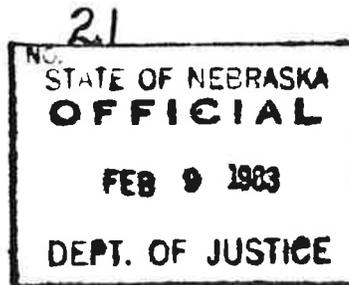
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February 2, 1983



Senator Jerome Warner  
Nebraska State Legislature  
State Capitol  
Lincoln, NE 68509

Dear Senator Warner:

We have examined the statutes to determine what legislation may be proposed in order to correct deficiencies within the antitrust section, and more especially, that of the payment of sums collected under antitrust violation to the respective agencies when they can be defined.

The Constitution of Nebraska holds that any "penalty" or "fine" shall be paid to the school fund. Therefore, on this issue only, a constitutional amendment may affect this payment.

We do, however, recognize where "damages" are collected, as in bid rigging contractor cases, a provision may be made for reimbursement or return of payment to the agency from which the money was wrongfully taken.

Therefore, we suggest either an addition to Neb.Rev. Stat. §59-1614 making provision for repayment, or an additional section, Neb.Rev.Stat. §59-1614.01, be added. In any case, the language treating this damage payment may be substantially in the form as follows:

When the Attorney General, on behalf of a State agency or a political subdivision is authorized to investigate, file suit, or otherwise take action in connection with violations under the Consumer Protection Act,

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Neb.Rev.Stat. §59-1601 through 59-1623, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or by other final result, such investigations, suit or recovery shall be subject to the following:

All State agencies or political subdivisions of this State are authorized by this act to make payment to the Attorney General of the costs, expenses or billings as they occur and are incurred by the Attorney General in any investigations, filing suit, taking action, seeking judgment, final decree, settlement in or out of court, or other final result arising out of violation under Neb.Rev.Stat. §59-1601 through 59-1623, which may be retained on the Attorney General for the operation of his office. Upon recovery of damages or any monetary payment except criminal penalties, the costs incurred by the State agency or political subdivision shall be sought in any judgment, final decree, settlement in or out of court, or final result and returned by the Attorney General to the State agency or political subdivision for whom such recovery was made where such is capable of recovery.

When the Attorney General, pursuant to Neb.Rev.Stat. §59-1601 to 59-1623 (Reissue 1978) makes recovery of any moneys, funds, securities, or other thing of value in the nature of civil damages, or other, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise or settlement in or out of court, or other final disposition of any case or controversy, such moneys, funds, securities or other things of value shall be transferred or paid by the Attorney General to the State agency or political subdivision for which recovery is sought from the wrongdoer. Where such State agency or political subdivision has a dedicated fund, and such recovery is paid to that fund, such returned moneys, funds, securities, or thing of value shall be used only for the purposes intended by the fund.

We trust the above language will assist you in drafting language correcting the consumer protection statutes. We do recommend an emergency clause to this legislation.

Very truly yours,  
PAUL L. DOUGLAS  
Attorney General

  
Gary R. Welch  
Assistant Attorney General

GRW/ta

cc: Patrick J. O'Donnell  
Clerk of the Legislature