



PERFORMANCE AUDIT REPORT

Limited-Scope Audit

**Office of the Attorney General:
Reviewing Its Role in Overseeing Enforcement of
State Architectural Accessibility Laws**

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
May 2006**

Legislative Post Audit Committee

Legislative Division of Post Audit

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We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. Government Accountability Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

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May 8, 2005

To: Members, Legislative Post Audit Committee

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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Office of the Attorney General: Reviewing Its Role in Overseeing Enforcement of State Architectural Accessibility Laws*.

The report includes two recommendations. The first calls for the Office to improve its response time when overseeing enforcement of accessibility complaints. The second calls for the Office to request more information from enforcement agencies about the structure named in a complaint.

We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

A handwritten signature in black ink, reading "Barbara J. Hinton". The signature is written in a cursive, flowing style.

Barbara J. Hinton
Legislative Post Auditor

Get the Big Picture

Read these Sections and Features:

1. **Executive Summary** - an overview of the questions we asked and the answers we found.
2. **Conclusion and Recommendations** - are referenced in the Executive Summary and appear in a box after each question in the report.
3. **Agency Response** - also referenced in the Executive Summary and is the last Appendix.

Helpful Tools for Getting to the Detail 🔍

- In most cases, an “**At a Glance**” description of the agency or department appears within the first few pages of the main report.
- **Side Headings** point out key issues and findings.
- **Charts/Tables** may be found throughout the report, and help provide a picture of what we found.
- **Narrative text boxes** can highlight interesting information, or provide detailed examples of problems we found.
- **Appendices** may include additional supporting documentation, along with the audit **Scope Statement** and **Agency Response(s)**.

EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

Overview of the State's Architectural Accessibility Requirements

The State aligned its accessibility law with the Americans with Disabilities Act in 1994.page 3
The Kansas Architectural Accessibility Act specifies that "all facilities covered by this act are to be designed, constructed and altered to be readily accessible to and usable by individuals with a disability." Different accessibility standards can apply to different buildings, depending on their age and the extent to which they have been renovated.

State law spells out which entities are responsible at the State level for enforcing architectural accessibility requirements. These entities include the State Board of Education, Department of Administration, and local governments. The Attorney General's Office is responsible for overseeing enforcement of the Architectural Accessibility Act. Entities that violate the Act may be subject to injunctions and civil penalties.

What Does the Attorney General's Office Do To Oversee Enforcement of State Accessibility Laws, and Are Complaints Being Adequately Resolved at the Local Level?

The Attorney General's Office received additional funding in 1993 to carry out its oversight enforcement responsibilities.page 7
This funding was used for an additional quarter-time Assistant Attorney General and a full-time architect, who was "loaned" to the Office from the Department of Administration's Division of Architectural Services. The staff resources devoted to overseeing enforcement have been reduced over time because of decreased need and budget cuts. The contract with the Department for a portion of an architect's time was phased out entirely by the beginning of fiscal year 2002.

A bill introduced in the 2005 legislative session would add more staff to help oversee enforcement of State accessibility standards. If passed, the Office would be required to appoint an additional assistant attorney general and appoint or contract for the services of other people as necessary.

The Office attorney assigned to oversee enforcement of accessibility standards on a part-time basis primarily handles questions and complaints. In fiscal year 2005, officials estimate they spent about \$12,000 in salary costs for the quarter-time position, plus about \$2,700 in overhead.

Our work in this audit focused on the Office's handling of written complaints.page 10
We reviewed all 12 written complaints the Office had received in the 18 months between July 2004 and the end of 2005 that fell

under the authority of the State Architectural Accessibility Act. As part of its oversight role, the Attorney General's Office has a standard process for handling complaints to help ensure they are satisfactorily resolved. The assigned attorney identifies the proper enforcement agency and sends a standardized letter, along with a copy of the complaint, requesting that the agency investigate the complaint and respond back within 60 days.

The Office's actions related to the written complaints we reviewed weren't always timely or thorough. page 11
It took the Office five months to send a follow-up letter asking for additional information in one case. Three-fourths of the complaints weren't referred to the enforcement agency for more than 30 days after they were received. For three complaints, the Office didn't take appropriate action when the investigating agency failed to report back to it. And in two cases, there's no indication in the file that the complainant received a copy of the investigating agency's response.

Most complaints reportedly resulted in some changes to facilities' accessibility. page 12
Two complaints weren't found to be valid. Four complaints resulted in all or some items cited in the complaint being addressed. Two responses didn't indicate whether any changes were made, but neither facility was subject to enforcement under the State Act. The investigating agencies hadn't submitted complete responses yet for three complaints. One complaint didn't provide specific building information, so it wasn't referred for investigation.

The Attorney General's Office can't always tell from the information the enforcement agencies send back whether complaints were resolved in accordance with State law. page 14
To know whether the local agency actually has enforcement responsibility under the State law and, if so, the extent to which changes must be made to bring buildings into compliance, the Office needs to know when a building was built, and the extent of any renovations made after ADA took effect in 1992. To know whether the complaint was adequately addressed, the Office needs to know the changes the investigating agency said were needed, and the extent to which those changes were made.

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This audit was conducted by Amy Thompson. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Amy at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.

Office of the Attorney General: Reviewing Its Role in Overseeing Enforcement of State Architectural Accessibility Laws

The Kansas Architectural Accessibility Act, originally passed in 1968, was amended in 1994 to incorporate the provisions of the federal Americans with Disabilities Act. These laws prohibit discrimination against—and ensure equal opportunity for—people with disabilities related to access and use of State and local government services, public accommodations, and commercial facilities.

Various State and local entities have a role in enforcing compliance with State requirements related to accessibility, including the Departments of Administration and Education and local units of government. The Attorney General is responsible for overseeing enforcement of the Architectural Accessibility Act.

Legislation introduced during the 2005 session would require the Attorney General to hire an additional assistant attorney general—and appoint or contract for other staff as needed—to oversee enforcement of State accessibility laws. In conjunction with that proposal, legislators expressed an interest in knowing what resources the Office currently devotes to overseeing enforcement of the Act, what actions the Office currently takes when it receives a complaint, and whether compliance is achieved as a result of those actions.

This limited-scope performance audit answers the following questions:

- 1. What State resources are devoted to overseeing enforcement of State architectural accessibility laws?**
- 2. What actions does the Attorney General's Office take to oversee enforcement of the accessibility provisions of State law?**
- 3. To what extent are accessibility complaints being resolved at the local level?**

These questions have been modified somewhat from the original scope statement to more accurately reflect the issues we were asked to address in this audit. To answer these questions, we reviewed State and federal accessibility laws and guidelines, and examined all 12 accessibility complaints the Attorney General's Office received between July 2004 and December 31, 2005. We also

interviewed officials from the Office and from the Departments of Administration and Education, and reviewed local government officials' responses regarding the complaints the Attorney General's Office referred to them to investigate; we did not try to identify or evaluate the resolution of complaints that did not in some way involve the Office.

A copy of the scope statement for this audit approved by the Legislative Post Audit Committee is included in *Appendix A*. For reporting purposes, we've collapsed the three questions into one.

In conducting this audit, we followed all applicable government auditing standards. Our findings begin on page 7, following a brief overview.

Overview of the State's Architectural Accessibility Requirements

The State Aligned Its Accessibility Law With the Americans with Disabilities Act in 1994

The Kansas Legislature amended the Architectural Accessibility Act (K.S.A. 58-1301 et seq.) in 1994 to make Kansas law consistent with the federal Americans with Disabilities Act, which became effective in 1992. Among other things, Titles II and III of the Americans with Disabilities Act require that facilities be made accessible to people with disabilities, and the Act's architectural guidelines spell out the accessibility standards that must be met to ensure access to public places.

These standards address such things as making entrances and bathrooms accessible to people in wheelchairs, providing ramps or elevators, lowering counter heights or water fountains, providing handicapped parking spaces, using Braille numbers in elevators, and the like. Besides public buildings, the following privately funded facilities generally have to be made accessible to people with disabilities:

- **places of public accommodation.** These include private establishments that are open to the public, such as restaurants, hotels, theaters, day care centers, retail stores, and hotels.
- **commercial facilities.** These include private non-residential facilities—such as office buildings, factories, and warehouses—whose operations affect commerce.

In incorporating these federal accessibility provisions into State law, the Kansas Architectural Accessibility Act specifies that “all facilities covered by this act are to be designed, constructed and altered to be readily accessible to and usable by individuals with a disability.”

Different accessibility standards can apply to different buildings, depending on their age and the extent to which they have been renovated. New facilities covered by the Act must be made accessible to individuals with disabilities—at least to the extent it's not structurally impractical to do so. But as described below, the Act gives some leeway to owners of structures that were built before federal accessibility requirements were implemented in 1992:

- **Existing structures built before 1992 that have been altered since 1992** must be made accessible to the maximum extent feasible. Alterations are changes that affect a structure's usability [excluding updates to wiring, heating, ventilation, and air-conditioning]. For example, if a doorway is relocated during renovations, the new doorway must be wide enough to meet accessibility requirements.

When alterations are made to a “primary function area,” such as the lobby or work areas of a bank, an accessible path must be provided to the altered area, and the bathrooms, telephones, and drinking fountains serving that area must be made accessible to the extent that all of those changes don’t exceed 20% of the overall cost of the original alteration.

- **For existing structures built before 1992 that haven’t been altered,** physical barriers to entering and using existing facilities must be removed when “readily achievable.” Readily achievable is defined as being able to be carried out without much difficulty or expense. It is determined on a case-by-case basis in relation to the resources available. Typical examples of work that might be required include installing ramps, widening doorways, and installing grab bars in toilet stalls.

Figure OV-1 Enforcement Authority for Accessibility Standards in Buildings Open to the Public				
Type of Building	Status of Building			Enforcement Entity
	Existing, Unaltered	Existing with Additions or Alterations	New	
K-12 School Facility	✓	✓	✓	State Board of Education
State Government Facility	✓	✓	✓	Secretary of Administration
Local Government Facility	✓	✓	✓	Local Government Entity or Designee
Facilities built with private funds that are open to the public (i.e., hotels, restaurants, office buildings, etc.)		✓	✓	Building Inspector or Designee of Governmental Entity
Source: K.S.A. 58-1304				

State law spells out which entities are responsible at the State level for enforcing architectural accessibility requirements.

Figure OV-1 shows these entities and the types of structures they are responsible for. Their roles are described in more detail below. [Responsibility for enforcing the federal Americans with Disabilities Act rests with the U.S. Department of Justice.]

- **The State Board of Education is responsible for enforcing accessibility standards for public school facilities.** The Department of Education contracts with an architect for 15 hours per week to review building plans for K-12 school facilities, including an assessment of compliance with architectural accessibility standards. The plans must comply with these standards before the State Board of Education approves them. The Department doesn’t handle accessibility complaints. Complainants are advised to contact their local school boards or the Office for Civil Rights in the U.S. Department of Education.
- **The Department of Administration is responsible for enforcing accessibility standards for State government facilities, including school facilities under the control of the Board of Regents.** The Department employs a full-time ADA coordinator who helps ensure that all State programs, activities, and services comply with State accessibility requirements. The coordinator reviews accessibility issues for new structures and renovations in conjunction with the Division of Facilities Management, and receives and investigates complaints about building accessibility and other types of discrimination based on disability. The coordinator’s role can include such varied tasks as advising the Secretary of State’s Office on architectural accessibility

issues involved in implementing the Help America Vote Act, and helping prepare the State Fair accessibility self evaluation/transition plan.

- **Local governments are responsible for enforcing accessibility standards in all local government facilities, as well as all new and renovated buildings open to the public.** They may use their building inspectors or code enforcement staff to enforce these requirements. Small entities without dedicated staff of this type may refer issues to the city or county attorney. Cities and counties individually determine how they will respond to complaints.

Although both State and federal accessibility laws grant rights to disabled customers of private businesses, **Figure OV-1** shows that State law doesn't make any entity in the State responsible for enforcing accessibility standards in older, unaltered, privately funded facilities. Individuals who feel these types of facilities are not in compliance have recourse under federal law. These individuals can file a complaint with the U.S. Department of Justice, sue the owner of the facility, or request an injunction.

The Attorney General's Office is responsible for overseeing enforcement of the Architectural Accessibility Act. The 1991 Legislature assigned the Attorney General responsibility for overseeing enforcement of the Kansas Architectural Accessibility Act. The Office's stated goal is to "promote and assist in voluntary compliance with the law and avoid the need for litigation, while ensuring that individuals with disabilities are afforded equal opportunities to public accommodations and local and state governmental services through enforcement of the Act."

According to the Attorney General's website, "because of the gravity of the issue of accessibility for individuals with disabilities, and to carry out the Attorney General's statutory oversight responsibilities, the Attorney General shall:

1. respond to complaints of failure to comply with the act by referring complaints to appropriate enforcement agencies, providing technical assistance when requested as time and resources permit;
2. provide information on all changes to Kansas statutes regarding architectural accessibility, applicable standards and appropriate interpretations to all governmental entities responsible for enforcement of the act; provide technical assistance and information to [the] same entities who request such assistance as time and resources permit;
3. provide technical and legal information through seminars and other speaking engagements as deemed appropriate by the Attorney General;

4. provide on-site inspections, evaluations and technical assistance when warranted, subject to the Attorney General's approval;
5. provide as much information and technical assistance as is feasible regarding privately owned or leased facilities."

The website also states that "staffing is insufficient to perform all of the above desired functions; therefore, each function is being responded to in the order of current need."

Entities that violate the Act may be subject to injunctions and civil penalties. The Attorney General—as well as the State and local entities that are responsible for enforcing the Act—can ask the district court for an injunction to restrain a person, corporation, or partnership from violating the standards established by the Act. Under these circumstances, the court can order the owner to alter a facility to bring it into compliance.

Entities that willfully violate an injunction or court order are liable for civil penalties in an amount determined by the court. The Attorney General, as well as a city, county, or district attorney, can sue for reasonable expenses and investigation fees.

What Does the Attorney General's Office Do To Oversee Enforcement of State Accessibility Laws, and Are Complaints Being Adequately Resolved at the Local Level?

ANSWER IN BRIEF: *In 1993 the Attorney General's Office received funding for an additional 1.25 staff to carry out its responsibility for overseeing enforcement of the Kansas Architectural Accessibility Act. Those resources have been reduced over time; currently about one-fourth of a staff person's time is devoted to overseeing enforcement of the Act. Our work in this audit focused on the Office's handling of written complaints regarding accessibility. Its actions related to the complaints we reviewed weren't always timely or thorough. Documentation in the files showed that most complaints reportedly resulted in changes to facilities' accessibility, but those files didn't always contain enough information for the Office to know whether those changes were sufficient. These and other findings are discussed in the sections that follow.*

The Attorney General's Office Received Additional Funding In 1993 To Carry Out Its Oversight Enforcement Responsibilities

The 1991 Legislature made the Attorney General responsible for overseeing enforcement of the Kansas Architectural Accessibility Act. According to Office records, the Attorney General requested at least one additional attorney to "assist with this task of ensuring that literally every public building and facility in this state meet appropriate standards." Those records outlined essentially the same oversight duties as described in the Overview—providing information on changes in the law, responding to complaints, providing training and technical assistance, and performing on-site inspections. Filing civil actions against individuals or entities that failed to comply with the Act also was contemplated.

Additional staffing wasn't authorized until fiscal year 1993, when the Office received funding for an additional quarter-time Assistant Attorney General and a full-time architect, who was to be "loaned" to the Office from the Department of Administration's Division of Architectural Services. A program write-up prepared by the Office at the beginning of fiscal year 1993 indicated it didn't have enough staff to carry out all the functions noted above, but that when staffing levels and expertise increased, the Office anticipated becoming more active in on-site inspections, litigation, and work with privately owned facilities. (The Office's involvement to-date with lawsuits related to accessibility is described on the next page.)

The Office's staff resources devoted to overseeing enforcement have been reduced over time because of decreased need and budget cuts. The Office contracted with the Department of Administration for the loan of a full-time architect from fiscal years

1993 through 1996. The architect responded to questions from the public, attorneys, and local governments about accessibility requirements, and provided technical assistance and training as needed. Beginning in fiscal year 1997, that contract was reduced to half-time because of decreased need and resources. The Office's contract was phased out entirely by the beginning of fiscal year 2003.

Attorney General's Office's Involvement with Civil Actions Related To Architectural Accessibility

Wendy's Settlement Agreement

The Office participated in a national effort to bring Wendy's International restaurants into compliance with State and federal accessibility requirements. Wendy's International includes all restaurants owned, leased, or operated, but not franchised by Wendy's International, Inc. In Kansas, all such restaurants were located in the Kansas City metropolitan area.

An Assistant Attorney General was a member of the Federal-State Task Force that negotiated with Wendy's International to remove architectural barriers. Members of the Task Force participated in telephone conferences and conducted on-site inspections to identify architectural barriers. The attorney estimated he spent one hour per week for at least a year working on this Task Force.

The Task Force entered into a settlement agreement with Wendy's International in August 1998. The settlement agreement required Wendy's International to modify or remove customer queues and other barriers, modify prototypes for future restaurants, and notify all current and future owners of franchises of their duty to comply with federal and State accessibility requirements. Because Kansas was a member of the Federal-State Task Force, it was awarded \$5,000 as part of this settlement.

Tennessee v. Lane

Staff from the Office wrote an amicus brief in support of Lane that was filed in November 2003 with the U.S. Supreme Court. In May 2004, the Court decided in favor of Lane and people with disabilities, ruling that Tennessee could be sued for damages under Title II for failing to provide access to the courts. Kansas Attorney General officials estimated that two attorneys spent about 125 hours researching, drafting, and preparing the brief.

Chaffin v. Kansas State Fair Board

Several disabled people filed a lawsuit against the State Fair Board alleging violations of accessibility standards. The Office defended the Fair Board in the case. As part of their work, Office attorneys helped make the decision to hire a team to conduct an ADA self evaluation and transition plan for the State Fair in January 2004. Officials estimate several staff spent approximately 400 hours on the case. About 50 of those hours were spent working with the firm hired to help with the self evaluation and transition plan.

Currently, the Office has an attorney assigned one-quarter time to accessibility issues. And although the architect returned to the Department full-time in fiscal year 2003, she continues to receive calls about accessibility requirements, and the Office refers technical questions to her on occasion.

A bill introduced in the 2005 session would add more staff to help oversee enforcement of State accessibility standards. The bill was introduced at the request of the Commission on Disability Concerns, whose mission is to promote a higher quality of life for people with disabilities by recommending policy changes to State laws and programs. The bill proposes to strengthen the Attorney General's oversight of State accessibility enforcement by requiring it to appoint

an additional assistant attorney general and appoint or contract for the services of other people as necessary.

The accompanying fiscal note estimated costs of \$172,000 in the first year and \$160,000 in subsequent years to hire an additional litigation attorney and an architect. An Office official we talked with said the focus of these new positions—if authorized—most likely would be on promoting and assisting in voluntary compliance with the law and avoiding the need for litigation.

The Office attorney assigned to oversee enforcement of accessibility standards on a part-time basis primarily handles questions and complaints. That attorney's activities related to the Office's responsibility for overseeing enforcement of the Act currently focus on the following:

- **responding to questions from the public, attorneys, and local governments.** For example, recent phone logs show numerous calls about accessibility requirements—such as whether an in-home hair salon has to meet ADA requirements, how the number of handicapped spots required in a parking lot is determined, what the role of the Attorney General's Office is in enforcing accessibility, and requesting technical information about building a pool in a new hotel.

The attorney also receives many calls about disability issues not related to accessibility. For example, several people claimed they were being discriminated against because they had a disability, one person alleged a disabled neighbor was being abused and neglected, and another caller reported that her disabled client's personal care attendant allegedly stole from her bank account. The attorney typically refers these callers to the agencies that are likely to have responsibility for these issues.

Finally, some callers have specific complaints about accessibility. The attorney generally asks them to send in a written complaint. In all, the Office's budget records indicate they received 72 inquiries in Fiscal Year 2005.

- **receiving and reviewing written complaints, and referring complaints that appear to be violations of State law to the entities responsible for enforcing accessibility requirements.** Given its responsibility for overseeing enforcement of the Act, the Office doesn't investigate complaints itself, but sends them on to the State or local agency responsible for enforcing the Act to investigate. In calendar year 2002, the Office received a total of 7 written complaints. That number increased to 25 in 2003, but by 2004 and 2005 the number of written complaints decreased to 14 and 10, respectively.

As with the disability-related inquiries the Office receives, not all complaints deal with accessibility issues. For example, we

saw written complaints about non-disabled people parking in handicapped-accessible parking spaces, and disabled individuals alleging wrongful eviction.

The assigned attorney estimated she spends about 5-10% of her time on inquiries and questions, and about 5-10% of her time receiving, reviewing, and referring complaints. In all, officials estimate they spent about \$12,000 in salary costs for the quarter-time position assigned to architectural accessibility in fiscal year 2005, plus about \$2,700 in overhead. In addition to handling inquiries and complaints, officials told us staff attend meetings of the Commission on Disability Concerns, and have been involved in efforts to secure funding to address accessibility issues in the Memorial Building, where the Office is located.

***Our Work in This
Audit Focused on the
Office's Handling Of
Written Complaints***

The focus of this limited-scope audit was on the Attorney General's handling of written complaints. We reviewed all 12 written complaints the Office had received in the 18 months between July 2004 and the end of 2005 that fell under the authority of the State Architectural Accessibility Act.

These complaints most frequently alleged a lack of parking signs, entrances that weren't accessible, restroom doors that were too narrow, and counters that were too high. During that same time, the Office received four other written complaints that weren't related to architectural accessibility. For example, one alleged a community college wasn't making sufficient accommodations for a student with Attention Deficit Disorder, and another reported that a State vehicle was illegally occupying a handicapped-accessible parking spot.

As part of its oversight role, the Attorney General's Office has a standard process for handling complaints to help ensure they are satisfactorily resolved. That process can be summarized as follows:

- all complainants are asked to submit the complaint in writing. When a written complaint is received, staff first determine whether the situation described could be a violation of the Architectural Accessibility Act. Complaints must pertain to specific buildings and problems; if a complaint doesn't contain enough information to allow it to be investigated, the Office will request additional information from the complainant.
- the assigned attorney identifies the city, county, or State agency responsible for enforcing accessibility requirements pertaining to the building(s) being complained about, then mails a standardized letter and a copy of the complaint to that agency. The letter requests an investigation of the complaint and a response within 60 days.

- when the response comes in, the attorney reviews it to see if there are any obvious problems with the way the law has been interpreted. If nothing obvious is spotted, the attorney sends the complainant a copy of the investigating agency's response, unless the investigating agency has already done so. If the complainant isn't happy with the response, officials told us, they assume he or she will contact them again. Because the Office doesn't investigate complaints itself, this feedback loop can be an important part of the oversight process.

***The Office's Actions
Related to the Written
Complaints We Reviewed
Weren't Always
Timely or Thorough***

Figure I-1 on page 13 summarizes the 12 written complaints we reviewed. We noted a number of problems with the way the Office handled these complaints, as described below:

- **one complaint letter didn't identify a specific building, but it took the Office five months to send a follow-up letter asking for additional information.** The complainant didn't respond back.
- **three-fourths of the complaints weren't referred to the investigating agency for more than 30 days after they were received.** The Office has no set time frame for referring complaints to enforcement agencies, so we looked to see how many took longer than 30 days, which seemed to us to be a reasonable amount of time for forwarding a complaint. For the 8 cases that took longer than 30 days to refer, the lag time between receipt and referral ranged from 34 to 150 days; the average was 82 days. We didn't see anything in the files to indicate why these would have taken more than 30 days to refer.
- **for three complaints, the Office didn't take appropriate action when the investigating agency failed to report back to it.** Two complaints had simply fallen through the cracks. The investigating agencies' responses were overdue by more than nine months when we reviewed the complaints, but the Office hadn't followed up with those agencies. When we pointed out this problem the attorney immediately called the agencies, and both said they'd send a response. As of three weeks later:
 - ▶ one responded with insufficient information and the Office wrote back requesting more details
 - ▶ the other had not yet responded in writing

In the third case, the local agency's response was four months overdue before the Office sent out another letter requesting a response within two weeks. The local agency didn't respond for six weeks.

- **in two cases, there's no indication in the file that the complainant received a copy of the investigating agency's response.** In the two cases where the Office sent the investigating agency's response to the complainant, one response was sent out 21 days after it came in, and the other 39 days. We also noted that the Office doesn't routinely notify complainants of the option of responding back to the Office if they weren't satisfied with the

complaint's resolution. As noted earlier, because the Office doesn't investigate complaints itself, soliciting this feedback could be a useful part of the oversight process.

***Most Complaints
Reportedly Resulted in
Some Changes to
Facilities' Accessibility***

Because of the limited scope of this audit, we reviewed the responses the Office received for the written complaints we examined, but we didn't visit the sites or try to independently verify that the modifications reported by State and local government officials actually had been made. Our assessments are based on information those officials provided to the Attorney General's Office.

The responses generally described what the State or local entity discovered during its investigation, and the actions taken to bring the structure into compliance with accessibility requirements. The last column of **Figure I-1** summarizes the changes that building owners or operators reportedly made in response to the complaint investigation. As the figure shows:

- **two complaints weren't found to be valid.**
- **four apparently resulted in all or some items cited in the complaint being addressed.** At Bottom \$ Surplus, for example, all complaints were addressed; the owners installed a ramp and added marked handicapped-accessible parking. At the Chinese Chef, the city responded that the owner addressed or attempted to address all complaints that were originally made. The owners added a sign for their unmarked handicapped-accessible parking, repaired sidewalks to create an accessible path, added signs and remodeled the floors, doors, and fixtures in the restrooms, and added a lower counter. The restaurant didn't change the ramp entrance or the urinal height, citing excessive costs. Although the ramp didn't meet exact ADA standards, the city building inspector determined it was usable.
- **two responses didn't indicate whether any changes were made, but neither facility was subject to enforcement under the State Act.** As shown in Figure OV-1, State law doesn't make any entity in the State responsible for enforcing ADA standards in older, unaltered facilities built solely with private funds. In these cases, city inspectors can review the facility and recommend changes, but the city has no enforcement authority. That's what happened with the Taco Tico in Parsons. According to the response provided, the City recommended that the owners change the ramp because it was too steep, and add signs to unmarked handicapped-accessible parking, but concluded that interior changes to the restrooms and counters would be too costly. [For older, unaltered buildings, physical barriers to entering and using such facilities must be removed when "readily achievable," or when changes can be made without much difficulty or expense.] The response didn't say whether any changes had been made. In such cases, the complainants' recourse if the problem is not addressed is to file a complaint with the Department of Justice or seek remedies through the federal courts.

Figure I-1 Types of Accessibility Complaints Reviewed, and Their Resolution All Accessibility Complaints Submitted to Attorney General's Office from July 2004 through December 2005														
	Facility	Nature of Complaint										Resolution		
		Entrance Not Accessible	Accessible Parking but Missing Signs	Restrooms Not Accessible	Counter too High	No Accessible Parking	Existing Ramp Adequate	Sidewalk too Steep	No Van Accessible Parking	No Elevator	No Access to Outside		Sidewalk Protrusion	Path of Travel Not Accessible
1	State Security Hospital -- Larned									X				All Problems Reportedly Fixed? Complaint not valid. Temporary problem during construction.
2	City of Salina --Street Parking --City-County Building --Sidewalk on Bridge --Public Buildings	X						X X	X					Complaint not valid. All facilities were within standards.
3	Bottom \$ Surplus -- Montgomery County	X	X											Yes
4	Runyan's Video Store -- Fredonia										X			Yes
5	Chinese Chef -- Parsons	X	X	X	X							X		All problems addressed, but some not fully to standards.
6	Pizza Hut -- Fredonia	X	X	X	X		X							Exterior: Yes Interior: Can't tell from information provided
7	Taco Tico -- Parsons		X	X	X		X							No enforcement agency assigned under State law. City investigated and made recommendations to the owner, but no information on what owner did.
8	Office Building -- Coffeyville	X				X								No enforcement agency assigned under State law. City did not pursue.
9	Home Bank and Trust -- Severy	X				X								Response too vague. The Office requested additional information.
10	Pizza Hut -- Neodesha		X	X	X									City response 9+ months overdue at time of audit fieldwork.
11	Lincare -- Parsons					X								City response not due until mid-April 2006.
12	Unidentified Facilities -- Florence												X	Complaint didn't identify specific building(s) so not investigated.

Source: Attorney General's Accessibility Complaint Files

Source: Attorney General's Accessibility Complaint Files

- **the investigating agencies hadn't submitted complete responses yet for three complaints at the time our fieldwork ended.** One wasn't due until mid-April, one hasn't submitted a written response, and one has been asked to provide more information.
- **one complaint didn't provide specific building information, so it wasn't referred for investigation.** That complaint alleged the city of Florence has ignored building safety and integrity, fire suppression, and inaccessibility of facilities.

The Attorney General's Office can't always tell from the information agencies send back whether complaints were resolved in accordance with State law. To effectively carry out its responsibility for overseeing enforcement of the State's accessibility laws, the Attorney General's Office needs to ensure that the enforcement agencies it refers complaints to are appropriately responding to those complaints. When the Office initially refers a complaint, it doesn't know what kinds of changes may be required. That's because accessibility standards vary with the age of the building, the extent to which it has been renovated, how expensive it would be to make the changes requested, and whether other accommodations are being offered in place of structural changes.

To know whether the local agency actually has enforcement responsibility under State law and, if so, the extent to which changes must be made to bring buildings into compliance, the Office needs to know when a building was built, and the extent of any renovations made after the Americans with Disabilities Act took effect in 1992. To know whether the complaint was adequately addressed, the Office needs to know the changes the investigating agency said were needed, and the extent to which those changes were made.

We found that the Attorney General's Office doesn't require—so it doesn't always get—the kind of information it would need to know whether cases are subject to enforcement under State law and whether any changes made are sufficient. At the end of our audit fieldwork, the Office had received responses for nine of the 11 cases they'd referred to an agency to investigate. Those responses varied widely in the level of detail provided. Some agencies submitted pages of detailed documentation. Others only identified which problems had been fixed, and provided a rationale for the ones that were not. One response was too vague to let us—or the Attorney General's Office—know what actually had been done. Here's the full text of the response:

"This letter is per your letter dated February 24, 2005 regarding an accessibility complaint at Pizza Hut in Fredonia, KS. The city of Fredonia has looked at the accessibility complaint and discussed the matter with Ralph Anthony from the Southeast Kansas Independent Living (SKIL) office who made the complaint on behalf of disabled and handicapped citizens in Fredonia with Pizza Hut.

On March 8, 2005, I met with the general manager of the Fredonia Pizza Hut and explained how she could resolve the problem. Pizza Hut agreed that the ashtrays by the doors would be moved, which has been completed. They also are in the process of ordering handicap signs as required under ADAAG 4.6.4. The interior of Pizza Hut has two issues that Pizza Hut is aware of and they are working on those compliance issues.

The City of Fredonia believes that the accessibility complaint has been and/or is being addressed by Pizza Hut."

Even when the investigating agency's response more fully describes the actions taken (such as in complaint #5 on *Figure I-1*), the Office can't know whether these changes bring the building into compliance with State law because it doesn't have information about the age of the building and date and extent of renovations.

Conclusion

The Attorney General's Office uses the quarter-time assistant attorney general assigned to oversee enforcement of the Kansas Architectural Accessibility Act primarily to respond to questions, receive and review complaints, and refer them on to the appropriate agencies for investigation and possible enforcement action. If the Legislature wants the Office to take a more proactive or aggressive role in conducting on-site inspections or litigating cases, the resources currently authorized for this function likely would need to be increased. Regardless of whether its role is expanded, the Office's actions related to handling written complaints need to be improved in several areas to help ensure that complaints about accessibility issues are being appropriately addressed.

Recommendations

1. To ensure that written complaints it receives regarding architectural accessibility issues are addressed in a timely manner, the Attorney General's Office should do the following:
 - a. forward complaints to enforcement agencies within 30 days of receipt, or document reasons why that could not be accomplished (such as seeking additional information from complainants).

- b. follow-up promptly with enforcement agencies that don't respond within the Office's 60-day timeframe.
- 2. To help ensure that structures comply with the Kansas Architectural Accessibility Act, the Attorney General's Office should do the following:
 - a. direct enforcement agencies to include information in their responses to complaints referred to them by the Office that identifies when the structure was built and the extent of renovations after 1992. Office staff can use that information to better determine whether the enforcement agency's response was appropriate.
 - b. direct enforcement agencies to send a follow-up report on any required changes that were not completed by the time the response was submitted.
 - c. send a letter to each complainant after the response has been received, indicating they should notify the Office if the response is not satisfactory. A copy of the enforcement agency's response should be included if it has not already been provided to the complainant.
 - d. for complaints about older, unrenovated structures that are outside the enforcement authority assigned in the State Act, notify the complainant of the option to pursue the issue through the federal system.

APPENDIX A

Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on February 3, 2006. The audit was requested by Senators Umbarger and Morris.

Office of the Attorney General: Reviewing the Office's Role in Ensuring Compliance with State and Federal Accessibility Law

The Americans with Disabilities Act (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. At the State level, K.S.A 58-1301 et seq. mandates that government buildings and other public facilities in Kansas shall be accessible. Various entities may have a role in ensuring ADA compliance. K.S.A. 58-1304 mandates that accessibility in school facilities will be enforced by the Department of Education, and accessibility in State government facilities by the Secretary of Administration (in practice, the State's ADA Coordinator). State law further mandates that local units of government are responsible for ensuring accessibility of local-government facilities. The Attorney General is charged with overseeing enforcement of the law's provisions.

For issues involving places of public accommodation and commercial facilities (Title III of the ADA), the State may offer advice, referral, or technical support, but has no direct enforcement authority unless the enterprise is contracting with the State. For example, the State has responsibility for ensuring ADA compliance by Medicaid contractors, sellers of Lottery tickets, and so forth. Even in those situations, the State's role is limited to ensuring that the State services (Medicaid services, lottery tickets) are accessible, not that all aspects of the contractor's operation are accessible.

Reportedly, the Attorney General's Office devotes only a part of one staff member's time to accessibility issues. As a result, the Office's role is limited to tracking complaints and referring complainants to local officials or others for possible action.

Recently, a bill was introduced that would require the Attorney General to hire an additional assistant attorney general, and appoint or contract for other staff as necessary, to enforce the provisions of K.S.A. 58-1301 et seq. Legislators have expressed interest in knowing what actions the Office currently takes when it receives a complaint, and whether compliance is achieved as a result of those actions.

A performance audit in this area would address the following questions:

1. What State resources are devoted to overseeing compliance with State and federal accessibility laws? To answer this question, we would review budgets and other Office documents, and interview officials as necessary to determine what resources currently are devoted to accessibility compliance issues.
2. What actions does the Office take to ensure compliance with the accessibility provisions of State law? To answer this question, we would review available documentation related to a sample of recent complaints to determine the nature of the complaint, and what actions the Office took to address the problem. We would perform other testwork as required.
3. To what extent are accessibility complaints being resolved at the local level? For a small sample of the complaints reviewed in Question 2, we would contact the local building officials involved. If the complaint was referred to the locality by the Attorney General's Office, we would determine how the case was resolved. If the Attorney General became involved because the complaint was filed but wasn't handled satisfactorily at the local level, we would determine what actions the local officials took, and why the Office had to get involved.

Estimated completion time: 200 hours

APPENDIX B

Agency Response

On March 30, 2006 we provided copies of the draft audit report to the Attorney General's Office. Its response is included as this Appendix.

The agency generally concurred with the report's findings, conclusions, and recommendations. We made some minor corrections and clarifications to the draft audit report that didn't affect any of our findings or conclusions.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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April 14, 2006



Barbara J. Hinton, Legislative Post Auditor
Legislative Division of Post Audit
800 S.W. Jackson Street, Suite 1200
Topeka, Kansas 66612-2212

Dear Ms. Hinton:

I have reviewed the draft copy of the completed audit, *Office of the Attorney General: Reviewing its Role in Overseeing Enforcement of State Architectural Accessibility Laws*, and offer the following comments in response.

I am pleased that the Legislative Post Audit Committee authorized this audit and that the audit findings support what Attorney General Stephan, Attorney General Stovall and I have consistently expressed since 1991 when the Architectural Accessibility Act's "oversight" role was first placed upon the Attorney General's Office: If "a more proactive or aggressive role in conducting on-site inspections or litigating cases" is desired, "the resources currently authorized for this function likely would need to be increased."¹

As shown in the draft copy of the completed audit report,² in fiscal year 1993 the Office was given a quarter-time FTE and funding for an assistant attorney general, as well as funding to contract with the Department of Administration for the services of a full-time architect, to handle the "oversight" function under the Act. In tight budget years, Attorney General Stovall was forced to make decisions regarding staff and service reductions; one of those reductions resulted in phasing out the contract for the Department of Administration architect, thus leaving only the quarter-time attorney from fiscal year 2003 forward.³

I am also pleased that the draft copy of the completed audit report highlights accomplishments the Office has been able to achieve despite the limited resources given the Office for the "oversight" role. I am proud of our successful litigation efforts and other actions we have taken to help ensure accessibility of public accommodations and government buildings and programs.⁴ One of my assistant attorneys general has recently

¹Draft Audit Conclusion, page 15.

²Draft Audit Report, page 7.

³*Id.* at page 8.

⁴*Id.* at pages 8, 10.

completed a three-day ADA training seminar in St. Louis, gathering ideas and information that will be useful in formulating new and perhaps better ways to assist enforcement entities with their responsibilities under the law.

Finally, I am pleased that the completed draft audit report reflects that 100% of the written complaints received by my Office were handled in some manner, and that most of them resulted in improvements to the facilities complained of.

Nevertheless, there is more to be done and I welcome the opportunity to be "more proactive and aggressive," if that is the express desire of the Legislature and the disabled community. I also recognize that my Office can improve its current written complaint processing as suggested by the draft report.

Recommendations and Responses

1. "To ensure that written complaints it receives regarding architectural accessibility issues are addressed in a timely manner, the Attorney General's Office should do the following:
 - a. "forward complaints to enforcement agencies within 30 days of receipt, or document reasons why that could not be accomplished (such as seeking additional information from complainants)."

I agree with this recommendation and will incorporate it into the written Office policy on handling of ADA-related complaints.

I note that the less-than-30-days time frame has been the Office's unwritten policy for some time. Upon receiving the audit's findings regarding our timeliness of forwarding complaints, I asked staff to review the months of my administration not covered by the audit. Our review, as set forth in detail in the attached table, reflects that during the first 19 months of my administration, initial action on 15 written complaints was taken within 0-7 days, one took 17 days, one took 20 days and one took 26 days. Thus, during that time period, all written complaints we received were forwarded to what was believed to be the enforcement agency well within the 30-day recommended time frame.

The difference between response time the first 19 months of the administration and the 18 months covered by the audit is, in part, the result of transition in the position handling such complaints and being short-staffed at the time; the assistant attorney general assigned that responsibility for the latter 18 months took it on while simultaneously having to devote approximately half of her time to a complicated

litigation case and other matters from her previous position as well as learning the various responsibilities of her new position. All but one of the complaints that we took more than 60 days to forward appear to have been bundled together and dispatched at the same time, as she got to that portion of her duties. In an effort to avoid this happening again, a number of non-accessibility related responsibilities have been shifted to other attorneys in the division until the workload evens out. My staff have also begun to open written accessibility complaints as files, rather than treating them as correspondence, so that they are more readily distinguishable as such and for more efficient tracking.

- b. "follow-up promptly with enforcement agencies that don't respond within the Office's 60-day timeframe."

I agree with this recommendation and will incorporate it into the written Office policy on handling of ADA-related complaints.

This too has been an unwritten policy of the Office during my administration. As shown in the attached table, with few exceptions during the 19 months shown, each time no response was received within 60 days of our having forwarded a complaint, a follow-up letter was sent to the enforcement agency. One of the ways we will follow through with this recommendation is to reinstate a tickler system on each complaint file.

- 2. "To help ensure that structures comply with the Kansas Architectural Accessibility Act, the Attorney General's Office should do the following:

- a. "direct enforcement agencies to include information in their responses to complaints referred to them by the Office that identifies when the structure was built and the extent of renovations after 1992. Office staff can use that information to better determine whether the enforcement agency's response was appropriate."

I agree with this recommendation and will include such directions in the letter that accompanies the forwarded complaint.

I note, however, that the current statutes do not give my Office specific authority to require certain responses from enforcement agencies so this action will likely be directory as opposed to mandatory.

- b. "direct enforcement agencies to send a follow-up report on any required changes that were not completed by the time the response was submitted."

I agree with this recommendation and will incorporate it into the written Office policy on handling of ADA-related complaints.

Again, absent specific statutory authority giving my Office authority to place such requirements on enforcement entities, this will likely be directory as opposed to mandatory.

- c. "send a letter to each complainant after the response has been received, indicating they should notify the Office if the response is not satisfactory. A copy of the enforcement agency's response should be included if it has not already been provided to the complainant."

I agree with this recommendation and will incorporate it into the written Office policy on handling of ADA-related complaints.

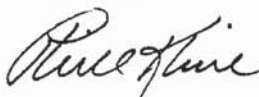
Again, this has been the unwritten policy of this administration as evidenced by the attached table.

- d. "for complaints about older, unrenovated structures that are outside the enforcement authority assigned in the State Act, notify the complainant of the option to pursue the issue through the federal system."

I agree with this recommendation and will incorporate it into the written Office policy on handling of ADA-related complaints. I have also directed my staff to include such a statement in the letter that accompanies the final response to the complainant.

I thank you and your staff for your professionalism and cooperation in bringing these matters to my attention and giving me an opportunity to address them. The result should be a better system of handling written complaints within the parameters of the resources my Office has been provided to do so.

Sincerely,



Phill Kline
Attorney General

PK:JLM:jm
enclosure

Date Complaint Receive	Facility	City	Nature of Complaint	Date Referred to Local Enforcement	Days Between Complaint Received/ Action Taken	Date of Local Response	Days Between AG Action/ Local Response	Date Response Sent to Complainant	Days Between Local Response/Response Sent to Complainant
2/24/03	Bacani Plaza Casey's General Store Johnson's General Store Pump-n-Pete's Unified School District No. 484	Fredonia Fredonia Fredonia Fredonia Fredonia	parking and lottery retailer	3/3/03 Lottery 3/3/03 city of Fredonia	6 days	3/19/03 - L 4/1/03 - L 3/28/03 - L 3/4/03 - L 3/6/06 - L	13 days 28 days 27 days 1 day 3 days	See June 11 letter in table	
3/5/03	Attorney General's Office	Topeka	TDD phone	N/A		3/5/03	0 days	N/A	N/A
3/8/03	Shawnee Mission Open MRI	Overland Park	Parking	3/10/03	2 days				
3/6/03	Osco Drug Store	Kansas City	discrimination because of disability	3/13/03 Human Rights Comm.	7 days				
3/21/03	McDonalds	Parsons	doors not accessible	4/15/03 Parsons City Attorney	26 days				
5/29/03	Kansas Turnpike	Topeka	doors not accessible	6/5/03	7 days	see 8/19 entry below			
6/11/03	Dept. of Adm.	Topeka	did not receive health screening because disabled	6/11/03 letter to complainant clarifying complaint 6/17/03 to State ADA	0 days 6 days				
6/11/03	Bacani Plaza Casey's General Store Johnson's General Store Pump-N-Pete's	Fredonia	parking & lottery access accessible parking parking & lottery access parking & lottery access	referred back in March, 2003				7/9/03 letter to Ralph Anthony, SKIL, informing him of action taken	
8/15/03	Hoisington City Hall	Hoisington	inaccessibility to mobility impaired person	8/18/03 9/2/03	3	8/29/03 10/3/03	11	9/2/03 needed additional info closing file by letter dated 10/6/03	4 days 3 days never heard from complainant with add't information
8/19/03	Kansas Turnpike	Topeka/ Lawrence	doors too heavy in service areas	N/A old complaint handled in June/03	N/A	8/19/03	75	8/21/03	2 days
9/9/03	Sedgewick Co. Detention Facility	Wichita	non-conviction data	9/10/03	1			9/10/03 does not fall under KAAA referred to KBI	n/a

9/15/03	New Beginnings Enterprises, Inc.	Needlesha	parking/signage	9/15/03	0	10/8/03 10/20/03 1/5/04 1/31/04 2/4/04	23 5 13 26	n/a wrong local entity - resent 10/15/03 n/a wrong local entity/not city limits- resent 10/23/03 follow-up letter to county entity/12/23 co. att. letter to violator letter to AG 2/4/04	0 days from receiving co. attorney letter
Not sure postmark 10/1/03	James P. Davis Hall @ Wy. Co. Lake	Wyandotte Co.	parking, steps, uneven terrain	10/20/03-Co. Att. 10/20/03-Wy. Co. Parks and Rec. Com. 12/23/03-followup	approx. 17	12/26/03 8/15/05	3 days completed work letter	12/29/03	3 days
11/18/03	city council meetings/city of Topeka	Topeka	public comment segment	10/18/03 12/23/03 follow-up to 12/18 letter	0 days 5 days	12/18/03 12/26/03	60 days 8 days	1/2/04	8 days 1/4/04 response from complainant - responded by letter dated 1-8-04 (4days)
11/20/03	University of Kansas	Lawrence	accom. in classroom	11/24/03 - KU 11/24/03 - complainant	4 days	2/2/04	70 days	2/3/04	1 day
11/26/03	Old Country Buffet	Shawnee	parking and signage	11/26/03 city att.	0 days	1/26/04	60 days	1/28/04	2 days response from complainant 2/13/04 & 3/19/04 responded 3/24/04 (5 days) complainant response 3- 30/04 responded 3/31/04 (1 day)
12/8/03	Lake Chaparral	Linn Co.	bath house not accessible	12/9/03 co. att. 12/9/03 complainant 2/10/04 followup 3/16/04 followup	1 day 7 days	3/9/04 3/31/04	approx. 90 days 15 days	n/a entity co'd complainant 3/31/04	n/a complainant responded 4/5/04
12/15/03	Stratford Place	Overland Park	bathroom doors	12/15/03 city att. 12/15/03 complainant 2/17/03 follow up	0 days 0 days	2/26/04	73 days	3/4/04	6 days
2/4/04	Dollar General Store	Fredonia	parking/signage	2/4/04 city att.	0 days			complainant sent letter on 2/18/04 - matter resolved	n/a
4/12/04	Kiowa Co. Greensburg Memorial Hospital	Greensburg	sidewalks	4/12/04 city att. 4/13/04 complainant	0 days 1 day	6/3/04 6/4/04	52 53	6/7/04	3 days
4/12/04	Pennyworth Sales	Columbus	parking/signage	4/16/04 city att.	4 days	6/16/04	62 days		

5/07/04	City of Junction City	Junction City	sidewalks, curbs	5/11/04 city att. 5/11/04	4 days	7/7/04	62 days	7/13/04	6 days
5/6/04	Ks. Law Enforcement Training Center	Kansas University	courses/classes	5/7/04 state ADA 5/7/04 complainant	1 day 1 day	7/27/04 8/25/04	81 days 109 days		
5/26/04	Oaklawn Sunview Senior Center	Wichita	doors/entrance	5/26/04 city att. 5/26/04 complainant 6/7/04 resent to co. att. 6/16/04 response to co. att	0 days 0 days 12 days 8 days	6/2/04 6/8/04 6/23/04	7 days 2 days 7 days	6/28/04	5 days
7/6/04	Bottom \$ Surplus	Caney	parking/no access to bldg./stairs	7/12/04	6 days				
7/20/04	Highland Comm. College	Wamego	not proper accommodations when taking class	8/9/04 state ADA 8/9/04 complainant	20 days	12/13/04	127 days	cc'd complainant on 12/13/04 letter from DOA	