

## State's Consumer Chief Attacked As a Weak Protector of the Public

By FRANCES CERRA

The executive director of the New York State Consumer Protection Board, Rosemary Pooler, has come under sharp criticism for allegedly failing to use the board's resources to affect significantly utility regulation, consumer legislation



Associated Press

Rosemary Pooler

or public consciousness of consumer issues.

The criticism has come from a variety of sources, including representatives of consumer groups, government officials, present and former employees of the board and state legislators. Some of these people had actively supported the appointment of Mrs. Pooler by Governor Carey in January 1975, while others had welcomed it.

Although the consumer protection board has functioned since its creation in 1970 with such acknowledged structural weaknesses as the lack of subpoena power, the agency's critics say that Mrs. Pooler has failed to use the powers and resources that the board does have to take a leadership role in consumer problems.

In an extensive interview, Mrs. Pooler defended her stewardship of the agency. "Overall," she said, "I think we have produced a respectable body of work." A just-released report for the period from April 1, 1975, through March 31, 1976, detailed the agency's achievements. In a letter of transmittal to the Governor that

prefaced the report, Mrs. Pooler said she believed the board had established "a high level of professional service to the public, the Governor and the Legislature."

The board is charged with representing the consumer point of view in matters handled by other state agencies, and, as necessary, Federal and local agencies; with drawing up consumer legislation and lobbying for its passage; with servicing local consumer complaint agencies and private groups; and with raising awareness of consumers issues through educational and other efforts.

According to Philip Schrag, an attorney who used to be Consumer Advocate for the New York City Department of Consumer Affairs, "Mrs. Pooler has done a reasonably good job, but she got no support from the Governor." Mr. Schrag has worked recently as a consultant to the board.

### Held an Excellent Choice

Mrs. Pooler was considered an excellent choice when the Governor appointed her because she was both a politician—a Democratic member of the Syracuse City Council—and a recognized consumer advocate. For a year, she had served as the regional coordinator of the New York Public Interest Research Group, which in 1974 issued a scathingly critical report on the board.

Now the disappointment of her previous supporters is so great that some, including Donald Ross, the executive director of the Public Interest Research Group, believe that she should be removed from her administrative duties and serve simply as a spokesman, if she and her top aides are to remain with the agency at all. Other than Mr. Ross, the persons who shared this view did not want to be named because of political or personal considerations.

Sources outside the Governor's office, but close to him politically, said that Mr. Carey was dissatisfied with Mrs. Pooler's performance and was looking for a replacement. A spokesman for the Governor, however, officially denied the report.

The State Consumer Protection Board, with a 1976-1977 budget of \$932,000, was established with few statutory powers. Efforts to augment those powers began under its first executive director, Betty Furness.

Miss Furness eventually resigned in frustration when these efforts were unsuccessful. Since then, the only significant additional power the agency was given was the ability to intervene formally in utility cases handled by the Public Service Commission.

Praise for the board's work came from Donald Rubin, who represents the Hospital and Medical Care Committee of the New York City Central Labor Council on matters involving hospital reimbursement rates, among other things. "The board joined with us in actions against Blue Cross and Blue Shield, and used materials that we prepared in the city all over the state," said Mr. Rubin.

Critics of the board, such as Mr. Ross, say that they are keenly aware of the limitations of the board's powers but nevertheless believe that under Mrs. Pooler the board has not lived up to its responsibilities. "The quality and quantity of work produced, with all its professional staff, is sadly wanting," said Mr. Ross.

Criticisms of Mrs. Pooler's leadership also include aspects of her practices as chief administrator, which have disillusioned her staff and led, it is contended, to a serious breakdown in morale.

During the past several months, eight of the board's professional staff members have quit. The entire professional staff consists of about 20 persons. The most recent one to leave was Eileen Hoats, the third highest ranking official on the board. Miss Hoats, who used to be executive director of the Consumer Assembly, a private consumer organization in New York, was responsible for legislative affairs and coordination of the board's New York office.

### 'Not Possible To Operate'

"I quit because the agency could not function as an advocate for consumers," said Miss Hoats. "It couldn't because of its inherent lack of power, and because the staff's morale had sunk to a point where it could not be reversed, except possibly by a complete change in leadership. The staff is angry, frustrated and upset, and it was not possible to operate in that atmosphere."

The one area in which the board has been granted formal power to intervene in the actions of another state agency is utility cases. Edward Berlin, a Public Service Commission commissioner, said: "It is difficult to find any instance in which the board's participation in utility cases has made a positive difference to consumers above and beyond that provided by the commission staff." (The staff is charged with presenting consumer-oriented evidence.)



Mr. Berlin was appointed by the Governor because of his strong consumer and environmental credentials, among them his work for the Environmental Defense Fund.

The report issued by the board says that evidence it presented in utility cases was responsible for saving the state's consumers \$122 million.

Asked for details on that assertion, John Esposito, general counsel to the board, said that \$90 million of that amount was saved in the most recent New York Telephone rate case. He explained that the utility had asked the commission for a rate of return of 14 percent, while the commission's staff argued for 11.6 percent. The board presented testimony that 11 percent was sufficient. The commission decided on 12 percent.

"Usually the commission compromises in that kind of situation by coming in with a decision midway between what the staff asks and what the company asks," said Mr. Esposito. "We think that by being six-tenths of a percent lower than the staff we influenced the commission to decide on a lower rate than they otherwise would have."

Asked to comment on that statement, Mr. Berlin said it is "totally erroneous to say that the commission ever simply splits the difference between what the utility asks for and what the staff or other parties recommend."

In the areas of consumer legislation and advocacy, the board's report lists scores of bills it "prepared," and several subjects about which it presented testimony or gathered information. Among the bills were attempts to reform the state's credit laws, allow generic prescribing of prescription drugs, require fresh dating on perishable foods and remove prohibitions against the advertising of eyeglasses and prescription drugs.

James Lack, Suffolk County's Commissioner of Consumer Affairs and an attorney who was on the staff of the board under Miss Furness, said: "The vast majority of proposals mentioned in the report have been around for many years or were suggested by other agencies."

The one set of hearings mentioned in the report that attempted to develop new information on a consumer problem dealt with leases. One of those who testified was Mark Siegel, a Democratic Assemblyman from Manhattan who had introduced a bill on the subject.

"After the hearings, John Esposito was supposed to go over the bill with me to make any changes they thought necessary, and we were going to try to turn it into a Governor's program bill," said Mr. Siegel. "But he never met with me and never explained why."

Asked to explain, Mr. Esposito said the Siegel bill "went beyond what we thought could be passed."

Question of Originality

On the question of the originality of the legislation mentioned in the report, Mrs. Pooler said: "It's what you do with ideas that have been around that's important. We didn't write the Freedom of Information Law, but we were the first state agency to bring such a suit [against the State Education Department for access to dropout and placement records of private vocational schools]. We didn't originate time-of-day metering for electric utilities, but we saw the potential in it and argued aggressively for it."

After the last legislative session ended, Mrs. Pooler said she was discouraged by the Legislature's inaction on bills advocated by her agency. She added that she intended to rethink the agency's goals. During the recent interview she was asked to define those new goals.

"In the future," she said, "we're going to put less emphasis on lobbying, and much more on information to support legislation, because we have to show some hard statistics to get legislation passed. You can't tell legislators to support something just because it is right."

She added that "the office is really jumping now, and we're involved in some very exciting things."

Interviews with four present or former staff members in addition to Miss Hoats yielded a very different picture of the internal atmosphere of the agency. These persons said morale had suffered because of a lack of direction for their efforts and the absence of any clear-cut, long-term goals. They reported that sometimes they would be put to work on a project — be it a draft of new legislation, a utility matter, or a health-related project—and would complete as much as they could without getting further instructions. Then they would attempt to reach Mrs. Pooler by telephone or by memo, and would get no response for weeks at a time.

During the summer, they said, when she was a delegate to the Democratic convention and while she was teaching a two-week course at Syracuse University, she returned very few phone calls from her office. The staff members asked for anonymity out of fear of retaliation.

Some of these staff members, who acknowledged that they were idealists and that they had expected to be part of a crusade in the public interest, said they were incensed by what they regarded as Mrs. Pooler's abuses of the prerequisites of her office, which they conceded might not be unusual among public officials.

Many said that she had her personal chauffeur drive down from Albany to meet her at La Guardia Airport after she had flown from Albany to New York. The chauffeur, Richard Michaels, confirmed that he did this about once a week and sometimes stayed overnight at the Taft Hotel, at state expense, if she remained in the city for more than a day.

Mrs. Pooler denied that she ever used her chauffeur just to take her to her Manhattan office from the airport when she had flown in from Albany, and said she usually made the trip by car. As for responding to staff memos and phone calls, she said that she had never delayed long but that the board's having two offices created "logistical problems." She also defended her teaching job at Syracuse University as a legitimate consumer-education activity.

As for the staff's morale, she said the nature of the board's work created "a high frustration level" and demanded "real commitment and long hours; there are some people who can't take that indefinitely."

K  
L  
g  
to  
is