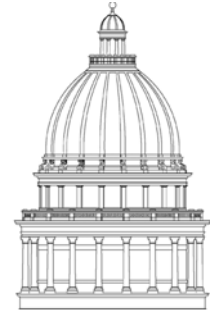


Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

**REPORT NUMBER ILR 2012-C
February, 2012**



**Survey of
University of Utah Legal Counsel Staffing**

A limited survey of attorney staffing levels within Pacific Athletic Conference (PAC) universities having both a medical school and a hospital suggests that the University of Utah's (U of U's) Office of General Counsel (OGC) may have more attorneys for its size than its counterparts have. In addition to staffing levels, it was our intent to provide salary comparison data which could indicate whether OGC salaries seem reasonable. Some salary data was gathered, but not enough could be gathered in this survey to enable a reasonable comparison. The data we gathered is provided for information, but we draw no conclusions.

Attorney staffing levels may be worthy of a more detailed review. However, if these staffing levels are reviewed, we believe they should be reviewed system wide. While the U of U may have too many attorneys, other Utah higher education institutions may have too few. The U of U's General Counsel indicated that OGC attorneys sometimes assist other Utah higher education institutions with legal matters. In addition, any further review would be unlikely to result in significant savings of state funds since, according to the OGC's General Counsel, only 20 percent of OGC funding comes from state sources.

According to the U of U's General Counsel, the OGC was created in 1991 to provide nonlitigation services to the U of U. Prior to 1991, the Utah Attorney General's office was providing legal support to the

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U of U with less than one full-time equivalent (FTE) attorney. The Attorney General agreed that the U of U required more legal assistance and that those attorneys should be employed by the U of U. (Since 1991, two other institutions, Utah State University and Weber State University, have also obtained their own on-site legal counsel.)

The OGC employs 13.75 attorney FTEs. This number includes both the General Counsel and the Deputy General Counsel. Approximately 7.5 attorneys are devoted to medical services such as the U of U hospital and ARUP Laboratory. The remaining 6.25 attorneys focus on general university work such as employment law, real estate issues, and intellectual property issues. In addition to the on-site OGC attorneys, the Utah Attorney General's office provides approximately .3 full-time support attorneys to the U of U for general university matters. Further, the OGC attorneys do not litigate; instead, U of U litigation is handled by the Utah Attorney General's Office. (For example, the Attorney General's office supplies two attorney FTEs for U of U hospital collection litigation services, a service the OGC is statutorily prohibited from performing.)

OGC funds are estimated to be around \$3.1 million for fiscal year 2012; for fiscal year 2011, funds were \$3 million. The OGC General Counsel reports that approximately 80 percent of OGC funding comes from non-appropriated sources generated by business operations of various U of U units (for example, the U of U Hospitals and Clinics, the U of U Medical Group, and ARUP). The remaining 20 percent comes from state sources. The OGC's budget does not capture all direct OGC expenses. Specifically, some standard benefits (for example, some medical and dental benefits and retirement benefits) are not accounted for in the OGC's budget; these expenses are accounted for elsewhere within the U of U's accounting system and paid for with state funds. If these standard benefit expenses and the funds to cover them were added to the OGC's budget, we estimate a total OGC budget of \$3.4 million. As a result, the state percentage of OGC funds would be greater than 20 percent.

Approximately 7.5 of the 13.75 OGC attorneys are devoted to the hospital and other medical services.

The OGC General Counsel reports that around 80 percent of OGC funding comes from non-state-appropriated sources generated by U of U business operations.

OGC Staffing May Merit Review

The OGC may have too many attorneys given the amount of revenue the U of U receives and the number of students the U of U

instructs. On the other hand, the number of OGC attorneys appears reasonable given the number of individuals the U of U employs. While two of the three comparisons point to the possibility of excess attorneys within the OGC, more work would be necessary across the higher education system to determine if this possibility is, in fact, the case.

When assessing staffing levels, the Office of the General Counsel within the University of California system uses the following three ratios:

- Revenue dollars to attorneys
- Students to attorneys
- Employees to attorneys

These ratios seemed reasonable to us. It makes sense that as revenue and people increase, the need for attorneys increases. The OGC General Counsel believes that, of the three measures, revenue dollars to attorneys and employees to attorneys are the most valid. We collected relevant information from the following PAC institutions:

- Stanford University
- The University of California at Los Angeles (UCLA)
- The University of Southern California (USC)
- The University of Washington

These PAC universities were selected because they are similar to the U of U. They all have medical programs and university-affiliated hospitals and their general counsel offices provide legal services to the hospitals. Figure 1 shows the revenue-to-attorney ratio comparison among the five universities.

We collected comparative information from four PAC institutions having both a medical program and a university-affiliated hospital.

The OGC may have too many attorneys for the revenue the U of U receives.

Figure 1 U of U’s Revenue-to-Attorney Ratio Is the Lowest. The U of U has the lowest revenue dollars per attorney of the five universities compared.

University	FY 2010 Revenue (In Thousands)	Staff Attorneys	Revenue Dollars per Attorney (In Thousands)
Utah	\$ 2,787,785	14*	\$ 198,419
Washington	3,831,067	15	255,404
So. California	3,129,148	10	312,915
Los Angeles	4,791,297	13.2**	362,977
Stanford	5,784,939	12.1	478,094
Average***			352,348

* Includes .3 Attorney General FTEs devoted to this office.
 ** Includes 5.2 Board of Regent attorney FTEs devoted to this office.
 *** Excludes Utah.

Source: Office of the Legislative Auditor General

This low revenue-to-attorney ratio suggests that the OGC may have more attorneys than justified for the revenue the U of U receives. For example, if the OGC’s revenue ratio matched the average revenue dollars per attorney, then the OGC would have close to 8 attorney FTEs rather than 14.

Next, Figure 2 shows the student-to-attorney ratio comparison among the five universities.

The OGC may have too many attorneys for the number of students being taught at the U of U.

Figure 2 U of U’s Student-to-Attorney Ratio Is the Second Lowest. The U of U has the second lowest number of students per attorney of the five universities compared.

University	FY 2010 Students *	Staff Attorneys	Students per Attorney
Stanford	19,535	12.1	1,614
Utah	30,819	14**	2,194
Washington	42,451	15	2,830
Los Angeles	38,157	13.2***	2,891
So. California	36,896	10	3,690
Average****			2,756

*Includes undergraduate and graduate.
 **Includes .3 Attorney General FTEs devoted to this office.
 ***Includes 5.2 Board of Regent attorney FTEs devoted to this office.
 ****Excludes Utah.

Source: Office of the Legislative Auditor General

As with the revenue-to-attorney ratio, this ratio suggests that the OGC may have more attorneys than justified by the number of students being taught at the U of U. If the OGC's student-to-attorney ratio matched the average, then the OGC would have about 11 attorney FTEs instead of 14.

Finally, Figure 3 shows the employee-to-attorney ratio comparison among the five universities.

Figure 3 U of U's Employee-to-Attorney Ratio Is in the Middle of the Group. The U of U has the third fewest number of employees per attorney of the five universities compared.

University	FY 2010 Employees *	Staff Attorneys	Employees per Attorney
Stanford	12,614	12.1	1,042
So. California	15,121	10	1,512
Utah	23,000	14	1,637
Washington	29,804	15	1,987
Los Angeles	29,000	13.2 ***	2,197
Average****			1,685

The OGC may have a reasonable number of attorneys for the number of U of U employees.

*Includes faculty and administration.

**Includes .3 Attorney General FTEs devoted to this office.

***Includes 5.2 Board of Regent attorney FTEs devoted to this office.

****Excludes Utah.

Source: Office of the Legislative Auditor General

This ratio suggests that the number of OGC attorney FTE's are reasonable. If the OGC's employee ratio matched the average employees per attorney, then the OGC would have around 13.5 attorney FTEs rather than 14.

Two of the three reviewed ratios support the possibility that the OGC may be overstaffed. Determining whether this assessment is accurate would require a workload analysis and a consideration of additional factors, for example:

- Use of external counsel
- Service quality among the institutions

Also, as noted earlier, the OGC's General Counsel reports that 80 percent of the OGC's funding comes from non-appropriated sources.

Therefore, a reduction in OGC attorneys may not result in state savings, but U of U funds would be released for other purposes.

Reasonableness of OGC Salaries Is Unknown

As previously noted, adequate comparative salary data could not be obtained in the time available. Consequently, we could not determine if OGC salaries seem reasonable. In order to make that determination, more time would need to be devoted to a salary survey. However, as with staffing, if 80 percent of the OGC's funding comes from non-state-appropriated sources, then a reduction in OGC salaries may not result in significant state savings, but would release University funds for other purposes.

We sought salary data from these three PAC 12 state institutions having medical schools and hospitals:

- The University of Washington
- The University of Arizona
- The University of California at Los Angeles

The University of Arizona's legal counsel staff is not completely comparable to Utah's OGC because Arizona's general counsel attorneys do not provide legal advice to the university's hospital. Although both Washington's and Arizona's legal counsel staff indicated that they would provide salary data, neither did so in the time available. We did obtain institutional salary data from the University of California at Los Angeles. We also collected data from the University of California's Board of Regents' General Counsel's Office, whose attorneys provide support to the institutions in the university system. In addition, we collected data from the Utah Attorney General's Office.

Figure 4 presents the salary data collected for the General Counsel position.

Ultimately, neither the University of Washington nor the University of Arizona provided requested salary data.

Figure 4 Data Collected for the General Counsel Position. In the data collected, salaries vary from \$416,000 to \$104,405.

Institution	FY 2011 Salary	Years Employed by Office	Years since Bar Passed	Number of Attorneys in Office
University of Utah	\$283,450	21	40	12.75
UCLA	265,500	3	N/A	7
Ca Board of Regents	416,000	5	25	49
Utah AG's Office	104,405*	11	27	225

*This salary is statutorily established as a percentage of the Governor's salary.

Source: Office of the Legislative Auditor General

As shown above, two factors might support a comparatively higher salary for the U of U General Counsel; these factors are the number of years employed by the OGC (all of which were as the General Counsel) and overall legal experience (years since the incumbent passed the bar exam). One factor, size of office, might not support a comparatively higher salary.

Figure 5 presents the salary data collected for the Deputy General Counsel position.

Figure 5 Data Collected for the Deputy General Counsel Position. In the data collected, salaries vary from \$280,000 to \$148,530.

Institution	FY 2011 Salary	Years Employed by Office	Years since Bar Passed
University of Utah	\$193,340	17	22
UCLA	235,000	4	N/A
Ca Board of Regents	280,000	28	34
Utah AG's Office*	148,530	7	24

*This position is occupied by two individuals. The information presented is based on averages.

Source: Office of the Legislative Auditor General

The U of U Deputy General Counsel position data has two factors, years employed at the OGC and overall legal experience (years since the bar exam was passed), which might support a comparatively higher salary.

Summary

Two of the three comparisons suggest that the OGC may have too many attorneys. To determine if this suggestion is correct, more work, including a workload analysis, would be necessary. We do not know if OGC salaries are reasonable. Again, more time would be needed to conduct a comparative salary survey. However, as noted earlier, the OGC's General Counsel reports that 80 percent of the OGC's funding comes from non-appropriated revenue. If this statement is accurate, then a reduction in OGC attorneys and/or salaries may not result in state savings.

Agency Response



February 24, 2012

Members

Legislative Audit Subcommittee

University of Utah Response

We appreciate the analysis provided by the Legislative Fiscal Auditors and the opportunity to respond to the information presented. The Report provides interesting comparisons between legal staffing at the Office of General Counsel at the University of Utah (“OGC”) and legal staffing at four PAC 12 schools – the University of Southern California, the University of California at Los Angeles, Stanford University, and the University of Washington. The comparisons in the Report utilized three metrics – total university revenue per attorney, total students per attorney, and total university employees per attorney. On these three measures, the OGC ranked first, second, and third respectively in staff size. One conclusion of the Report is that staffing in the OGC “may merit review.”¹ As discussed below, the very different approaches to providing legal services among these five universities, and universities nationally, make meaningful comparisons difficult.

One difficulty inherent in the metrics considered in the Report is the inability to account for differences in the utilization of outside counsel. Different schools for various reasons choose to perform various legal tasks “in-house” (i.e. with staff attorneys) or “outside” (i.e. with private outside law firms). Legal advice from private law firms is much more expensive.² Consequently, the OGC has chosen to perform relatively more legal tasks in-house rather than by employing outside counsel. For example, the OGC devotes 1.5 attorneys to immigration work associated with recruitment of highly specialized international faculty. None of the comparison schools performs immigration work in-house. Seven years ago, an OGC lawyer went through lengthy and extensive retraining to perform approximately 95% of the employee benefits and taxation services previously performed by outside counsel. The results of an “in-house” staffing model are significant. In 2010, UCLA paid outside counsel a total of \$11,133,592.³ That same year, Stanford’s budget for legal services—in-house and outside counsel—was \$31,700,000.⁴ In comparison, OGC paid \$927,186 for outside counsel services in 2010.⁵

¹ The Report draws no conclusions about salary levels in the OGC although it does note that the salaries of the OGC General Counsel and the OGC Deputy General Counsel fall in the mid-range of the salaries used by the Report for comparison.

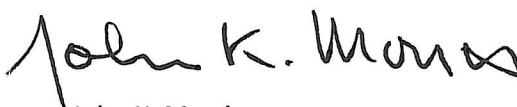
² Outside counsel with specialized expertise typically charge from \$300 to \$500 or more per hour.

³ Annual Report of University of California Legal Expenses for Outside Counsel FY2010. <<http://www.ucop.edu/ogc/>>.

⁴ Stanford University Budget Plan 2010/2011. <<http://www.stanford.edu/dept/pres-provost/budget/plans/BudgetBookFY11.pdf>>.

The OGC uses a free market based system for determining staff size. Instead of staff size being determined by the availability of state funds, staff size is determined through negotiations with University units that require substantial legal services.⁶ Mission critical units engaged in activities that require substantial legal services—including the Hospitals and Clinics, the Medical Group, ARUP, and the Technology Commercialization Office—negotiate with the OGC to cover the amount of in-house attorney resources needed each year. These units use their own revenues to pay OGC attorneys. The OGC's staff size is a direct response to the demand for legal services by these units.

Again, we appreciate the perspective provided by the Auditors and will consider it as part of our ongoing commitment to meeting the needs of the University of Utah.



John K. Morris

Vice President and

General Counsel

⁵ Even these outside counsel figures are difficult to compare because it is not clear whether they include total institutional costs or only those costs paid through the general counsel offices.

⁶ As noted in the Report, approximately 20% of the OGC's revenues come from state support. The other 80% is provided by these University units.