

**Review of Legal Counsel Personnel
in the Attorney General's Office
and other Executive Branch Agencies**

July 17, 2001

**A Report to the Executive Appropriations Committee
Of the Utah State Legislature**

**Prepared by
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Executive Summary and Findings

Summary

During the 2001 General Legislative Session, questions were raised in the Executive Offices and Criminal Justice Appropriations Subcommittee concerning the number of practicing attorneys employed by the Executive Branch agencies and the Office of the Attorney General. In light of budget increases being requested by the Attorney General, the subcommittee wanted to have a better understanding of the relationship between the Attorney General staff attorneys and agency staff attorneys. In response to those questions, the Executive Appropriations Committee directed the Office of the Legislative Fiscal Analyst to report on this issue. Specifically, the Analyst will report on the number, basic workload and funding of employees with "Attorney Position Titles" (requiring a juris doctorate degree) in the office of the Attorney General and other Executive Branch agencies. Following is an overview of the findings.

Findings

How many licensed attorneys are employed by the Office of the Attorney General and how is the work load divided?

The Attorney General's Office employs 195 practicing attorneys. They are allocated among divisions within the Office as follows:

Executive	3
Appeals	16
Criminal	18
Commercial Enforcement	14
Child & Family Support	24
Children's Justice	4
Child Protection	35
Education	9
Environment	9
Litigation	22
Natural Resources	12
State Agency Counsel	18
Tax & Revenue	<u>11</u>
Total	<u>195</u>

What are the funding sources for the Office of the Attorney General?

The Legislature appropriated \$32 million to the Attorney General's Office for

FY 2002. General Funds accounted for \$18.5 million; Federal Funds amounted to a little more than \$1 million; Dedicated Credits of about \$11.1 million; Restricted Funds of a little more than \$1.1 million; and Transfers of \$157,000, for a total of \$32,004,700.

FY 2002, salaries for attorneys in the Attorney General's office is \$13,034,300, exclusive of benefits.

What are the statutory provisions for services rendered by the Office of the Attorney General?

The Attorney General's legal authority is in Utah Code 67-5-5, and summarized as follows:

Except where specifically authorized by the Utah Constitution, or statutes, no agency shall hire legal counsel, and the attorney general alone shall have the sole right to hire legal counsel for each such agency.

Where the Legislature has provided by statute for separate agency counsel, no such counsel may act as an assistant attorney general nor as a special assistant attorney general unless the attorney general shall so authorize.

Unless he hires such legal counsel from outside his office, the attorney general shall remain the sole legal counsel for that agency.

If outside counsel is hired for an agency, then the costs of any services to be rendered by this counsel shall be approved by the attorney general before these costs are incurred.

The attorney general shall approve all billing statements from outside counsel and shall pay the full costs of this counsel unless the agency by legislative appropriation or other form receives the equivalent cost. The attorney general may then bill the agency for the services.

How many incumbents with "Attorney Position Titles" are employed in Executive Branch Agencies and Higher Education Institutions apart from the Attorney General's Office, and how are they funded?

There are 46 employees currently in State agencies and institutions. Funding sources for these positions are generally consistent with the overall funding mix of the agency or institution. (As noted on Appendix A).

FY 2002 salaries, exclusive of benefits, for the 36 state agency attorneys was \$2,234,600. Total salaries for the 10 Higher Education attorneys was not

available at the time of writing.

What is the legal services workload for agency and institution attorneys?

Legal services rendered and the amount of time devoted to purely legal issues varies from position and agency. Generally, legal expertise is provided as a portion of the total services rendered by the employee to his or her employer/agency. In some cases incumbents provide legal services based on Memorandums of Understanding with the Attorney General's Office.

Agency managers maintain that legal advice provided by these incumbents varies from the traditional sense. They find it valuable to their individual agencies to have legal counsel in addition to the formal representation in administration and court proceedings provided by the Office of the Attorney General. Agencies and institutions do not believe there is duplication. Rather, they believe they can justify in-house counsel on the basis of need, in addition to the services provided by the Office of the Attorney General.

Recommendation

The Analyst has drawn no conclusions relative to what constitutes the appropriate number of attorneys or workload levels. However, it is recommended that the Appropriations Subcommittee for Executive Offices and Criminal Justice, in the 2002 interim, review this issue in further detail. Specifically, there should be a focus on whether the hiring of agency and institution attorneys conflict with current statute relating to the Attorney General's responsibility for hiring legal counsel. (Note: It appears that 53b-2-106 gives Higher Education Institutions authority to hire counsel.)

In addition, there should be a review of workloads to determine if, in fact, the Attorney General's Office cannot respond to the needs of agencies and institutions. It appears this issue may have been driving the necessity of agencies hiring in-house counsel.

There should also be a review of general management of Statewide legal services to see if there is value in a more centralized structures-perhaps moving in-house agency counsel under direct supervision of the Attorney General.

Appendix A

Table 1

**Incumbent In-House Counsel Positions (a)
Executive Branch of Utah State Government**

July, 2001

Agency Name or Institution	Total # of In-House Counsel Incumbents By Agency
Department of Commerce	6
Governor's Office	1
School & Institutional Trust Lands Administration	2
Department of Human Services	4
Department of Environmental Quality	5
Tax Commission	2
Department of Health	4
Community and Economic Development	1
Human Resource Management	1
Alcoholic Beverage Control	1
Utah Department of Transportation	1
Department of Natural Resources	1
Public Service Commission	1
Insurance Department	1
Labor Commission	2
Department of Workforce Services	3
University of Utah (b)	8
Weber State University (b)	1
Utah State University (b)	1
Total # of In-House Counsel Incumbents	46

(a) Requiring a Juris Doctorate.

(b) Data provided by the Office of the Attorney General to the Executive Offices and Criminal Justice Appropriations Subcommittee, Utah State Government, Salt Lake City, Utah, January/February 2001.

Sources: Department of Human Resource Management and Legislative Fiscal Analyst's Office, Utah State Government, Salt Lake City, Utah, July 2001.