

**Attorney General's Office:
Assignment of Attorneys
and Contracting for
Legal Representation**

November 2002

Management Audit Committee

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Wyoming Legislative Service Office

EXECUTIVE SUMMARY

Attorney General's Office: Assignment of Attorneys and Contracting for Legal Representation

Program Evaluation Division

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Purpose

The Attorney General's Office (Office) is a critical element of state government, involved in most if not all of the state's business. The Attorney General, through the assistant attorneys general he supervises, represents the state in all legal actions and provides legal advice to elected and appointed state officers. In requesting a review of how the Office provides this legal representation, the Management Audit Committee focused on the following issues.

- To maintain consistency in the state's legal position, the Attorney General must be able to direct all assistant attorneys general. Does having dispersed office arrangements and almost one-half of the attorneys funded by other agencies affect the Attorney General's ability to provide centralized state legal services?
- Professional licensing boards are among the state entities represented by the Attorney General. Do the boards receive and pay for this representation in a uniform way?
- The Attorney General routinely contracts with private attorneys for some state representation. What is the level of this contracting, and is it done in a fair and cost-effective manner?

Background

Appointed by the Governor and approved by the Senate, the Attorney General in turn

appoints assistant attorneys general necessary to efficiently operate the Office. State entities may request assignment of attorneys, but only the Attorney General has authority to employ legal counsel for the state.

The Office has 60 attorneys (not including the Attorney General) and 20 administrative/support positions. The entire Office staff is organized into five divisions, each headed by a deputy. Personnel costs dominate the Office's budget: For the FY '03-'04 biennium, the cost to fund Office personnel will total \$10.6 million. Approximately \$4 million of this comes from other agencies, to fund 29 of the 60 attorneys supervised by the Attorney General.

Results in Brief

We found that Office practices in the areas of assignment of attorneys to agencies, board representation, and use of outside counsel have evolved ad hoc. Now, more deliberate, planned approaches are needed. In several areas, we suggest better record-keeping systems and more data analysis, to inform management decisions and improve accountability.

Principal Findings

The Office's diffused funding and dispersed locations undermine its centralization. The Office has a centralized organizational structure, but it is one that depends on supervisors, who often lack time to supervise. Further, the Office's reliance on other agencies to fund nearly half its attorneys inhibits the Attorney General's

flexibility to allocate the state's legal workload. It also affects the Attorney General's ability to control the number of attorneys available for the state's legal representation. However, experts say having some attorneys with offices in the agencies they represent poses more risks to attorney independence than the diffused funding. We recommend that the Attorney General enhance supervision to maintain a centralized office, and take steps to locate all attorneys with their supervisors and division colleagues.

Statute requires the Attorney General to represent professional licensing boards and provides funding for this representation. However, the statutory funding mechanism is inflexible and will not cover increased costs. The mechanism directs 50 percent of each board's interest income to the Office. Currently, two assistant attorneys general provide most of the board representation. Boards contribute even if they do not use Office attorneys; a few do not. Officials report that overall, the boards' demands for legal services are steadily increasing, beyond what the two assigned attorneys can provide. Further, officials say that interest earnings have not been sufficient to fund the attorneys, and estimates show earnings are declining. The mechanism's long-term adequacy needs to be assessed, with a consideration of its capacity to meet increasing costs for legal services. We recommend that the Legislature and the Attorney General explore alternatives for funding the boards' legal representation.

The Attorney General has initiated needed management changes to workers' compensation representation. Since 1991, the Office has contracted with private counsel to defend Workers' Compensation Division decisions regarding benefits in contested cases. Contracts have gone to a small number of attorneys or firms on an individually negotiated flat fee basis, requiring them to

handle all cases in their geographic areas. Payments were not based on either hours or volume of cases worked. Over time, this approach resulted in attorneys receiving inequitable compensation for the work performed. During our research, the Office ended many long-term contracts and started requiring more accountability in new ones.

The Attorney General's Office has decreased the level of contracting for tort defense. The Wyoming Governmental Claims Act requires the state to defend public employees who are sued while acting within the scope of their employment. The Office has assigned attorneys for this defense, funded by the State's Self Insurance Program. While in-house attorneys have handled most cases, the Office also contracts for defense, for various reasons. Successive Attorneys General held the goal of reducing this contracting, to save money. The sustained effort, combined with a full complement of experienced in-house tort attorneys, has resulted in minimal tort defense contracting. However, we recommend that the Attorney General monitor defense needs and not rule out contracting when necessary.

Agency Comments

The Attorney General agrees with the report's recommendations, and states that the Office is already addressing many of the issues. For example, the Office is cross-training more attorneys to handle licensing board prosecutions, and renegotiating workers' compensation representation contracts. The Attorney General notes that enhancing Office supervision and consolidating its many physical locations to achieve greater centralization will require additional funding from the Legislature.

Copies of the full report are available from the Wyoming Legislative Service Office. If you would like to receive the full report, please fill out the enclosed response card or phone 307-777-7881. The report is also available on the Wyoming Legislature's website [a legisweb.state.wy.us](http://legisweb.state.wy.us)

Recommendation Locator

Chapter	Page Number	Recommendation Summary	Party Addressed	Agency Response
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2	25	The Legislature and Attorney General's Office should explore alternatives for funding the boards' legal representation.	Legislature Attorney General	Agrees
3	34	The Attorney General's Office should continue to develop oversight systems and gather performance data on Workers' Compensation contracting.	Attorney General	Agrees
4	47	The Attorney General's Office should maintain the option of contracting for tort defense	Attorney General	Agrees

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INTRODUCTION

Scope and Acknowledgments

Scope

W.S. 28-8-107(b) authorizes the Legislative Service Office to conduct program evaluations, performance audits, and analyses of policy alternatives. Generally, the purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

In January 2002, the Management Audit Committee directed staff to undertake a review of the Attorney General's Office with respect to how it provides legal representation. We focused our research on the following questions:

- How is the Attorney General's Office organized and funded? How many attorneys do other agencies fund and house, and does this affect the Attorney General's ability to control and direct the state's legal position?
- Do the boards and commissions receive and pay for their legal representation in a uniform way?
- Is contracting for workers' compensation representation equitable among contractors, as well as cost-effective?
- What is the level of contracting for representation of government officials and employees in tort cases, and is it necessary to contract for this representation?

Acknowledgements

The Legislative Service Office expresses appreciation to those who assisted in this research, especially the Attorney General and his staff, as well as two former Attorneys General and a former deputy. We also received assistance from the Department of Administration and Information, the State Auditor's Office, and the Workers' Safety and Compensation Division. In addition, we gratefully acknowledge advice on best practices received from James E. Tierney, former Maine Attorney General who consults nationwide with offices of attorneys general.

Background

Attorney General's Office

Statutes Establish A Wide Range Of Responsibility

W.S. 9-1-601 through 9-1-610 establish the role of the state's Attorney General in providing legal advice and representation to state and local government. That role is generally to represent the state in all actions brought by or against the state, and to provide legal advice to elected and appointed state officers. In addition to this general direction, nearly 300 separate statutory references give specificity as to how the Attorney General participates in the state's operations.

Only the Attorney General can employ state legal counsel.

By statute, the Governor appoints the Attorney General, with the consent of the Senate. In turn, the Attorney General has authority to appoint assistant attorneys general necessary for the efficient operation of the office. Statute provides that agencies, commissions, and institutions may request the Attorney General to assign them attorneys, but only the Attorney General has authority to employ persons as legal counsel for state entities.

An Office Within An Agency of the Same Name

The Attorney General's Office is about 18 percent of the Attorney General agency, in terms of costs.

Wyoming's Attorney General has broader responsibilities than providing legal representation and advice. The Attorney General's *Office* is also an agency that encompasses the Division of Criminal Investigation (DCI), the Wyoming Law Enforcement Academy, the Peace Officer Standards and Training Commission, and the Victim Services Division as well as the Law Office. The Law Office (Office) is the division within the overall agency that provides legal services, and is the focus of this report. From a budgetary perspective, the Office represents about 18 percent of the total agency.

Office Funding and Personnel Are Not Consolidated

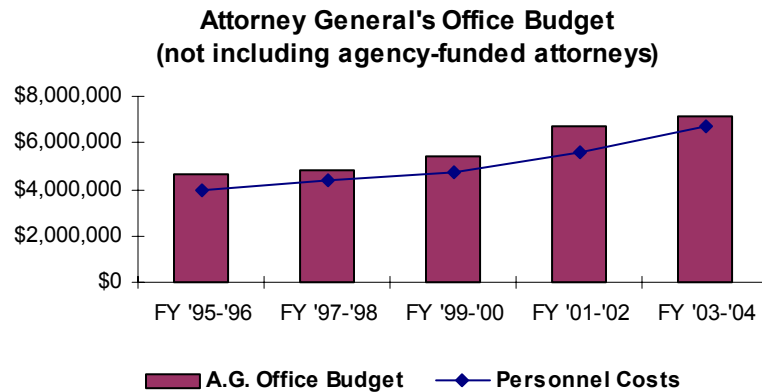
The Office’s budget request, within the total Attorney General agency request, does not represent the total cost and personnel dedicated to the state’s legal representation. Instead, other agencies fund nearly one-half of the attorneys that make up the Attorney General’s Office, and actually hold the positions for just over one-third of them.

Attorney General Supervises 60 Attorneys, But Does Not Budget for Them All

There are 60 attorneys, or assistant attorneys general, under the Attorney General. However, the Office’s budget accounts only for the Attorney General and 39 attorneys, and receives transfers from different agencies’ budgets to fund some of them. Another 21 attorneys under his supervision, also designated as assistant attorneys general, are funded and counted as positions by other agencies. Chapter 1 provides more detail on this arrangement, and how it came about.

Personnel costs dominate the Office’s budget.

The Office’s budget also includes 20 administrative positions, some of which serve the entire Attorney General agency. Positions, both attorney and administrative, funded through the Attorney General’s Office are predominantly supported by the General Fund. As the chart below indicates, the Office’s budget has gradually increased since the FY ‘95-‘96 biennium, with personnel costs dominating the expenses.



Source: LSO analysis of Attorney General budgets.

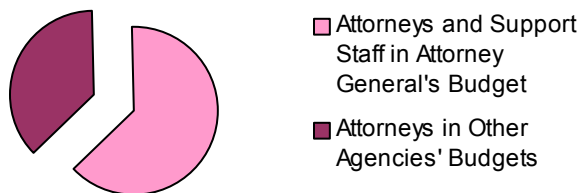
This chart does not include costs of the Medicaid Fraud Control Unit, which is organizationally a part of the Office but has a separate budget. The federal government requires states to establish these units to receive Medicaid payments, and funds them at 75 percent.

Positions Funded in Other Agencies Increase Cost of Attorney General's Office

\$4 million in funding for attorneys is in other agencies' budgets.

For the current biennium, other agencies have budgeted approximately \$4 million to fund assistant attorneys general. Combining this figure with the cost of the personnel, both attorneys and support staff, claimed by the Office (\$6.6 million) brings the total cost of personnel under the Attorney General to approximately \$10.6 million for the FY '03-'04 biennium.

Attorney General Personnel Costs, FY '03-'04



Source: LSO analysis of Attorney General Data

Office Is Organized Into Five Divisions

Statute envisions the Office having two deputies, one for civil affairs and one for criminal affairs. However, over the years, Attorneys General have gradually added deputies as divisions were created to more effectively manage the Office: Now, there are five divisions, each headed by a deputy.

All attorneys, including those funded by agencies, are organized into the Office's divisions.

All of the attorneys under the Attorney General's supervision, including those funded by the agencies, have been organized into the following five divisions: Civil, Criminal, Tort Litigation, Water and Natural Resources, and Administrative Law. The divisions are further divided into at least two sections, headed by supervising attorneys.

Administrative Law, created in 1999, is the newest division. It provides representation to many state agencies and commissions, including Administration and Information, Education, Transportation, Game and Fish, and the Community College Commission. Officials told us the division was created to divide the Civil Division, which had become unwieldy in size.

The Divisions are Administrative Law, Civil, Tort Litigation, Criminal, and Water and Natural Resources.

The Civil Division represents several agencies and boards conducting state business and services, including the Departments of Health, Family Services, State Lands and Investments, and the Board of Equalization and Public Service Commission. The Criminal Division is primarily responsible for criminal appeals in the Wyoming Supreme Court, and other criminal litigation involving prisoners. It also represents state agencies with related functions, such as the Department of Corrections and DCI.

The Tort Litigation Division includes attorneys advising all state officials in matters of employment and personnel law, and representing the Department of Employment. Attorneys in this division defend Worker's Compensation appeals in the Supreme court. The division also houses attorneys defending the state and its employees in civil suits, as Chapter 4 explains in more detail. The Water and Natural Resources Division provides legal advice and representation to state agencies and state officials in environmental and water issues.

Focus of This Report Limits the Scope of Attorney General Office Activity Reviewed

We looked at controls, processes, and data, not at the content of legal work.

In assigning this report, the Management Audit Committee requested that we review three areas: the assignment of attorneys to agencies, the Attorney General's representation of boards and commissions, and the Office's use of outside counsel. Our preliminary work indicated that researching these areas would lead us to the Civil, Administrative Law, and Tort Divisions, and to the Office's core administrative staff. Further, the scope of our inquiry limited our research to a very specific, mostly administrative review of controls, processes, and data, and not to the content of the work done in each of these divisions.

Attorney General Use of Outside Counsel

Cost information on special litigation provides a broader picture of Attorney General contracting.

We discuss in subsequent chapters contracting that has been incorporated into Office practices over time, such that it is routine. These two areas are worker's compensation and tort defense. We did not review contracting for legal services in other areas for which the Attorney General makes and monitors contracts. These include special litigation, such as school finance and water rights cases. However, we requested from the Office basic cost information about this contracting so we could provide a broader picture of Attorney General contracting for legal services.

Through 2002, \$1.9 million was spent on legal fees and expenses.

School Finance Litigation Contracting Costs

Through the Attorney General's Office, the state has contracted for defense of litigation against it, related to the constitutionality of the funding system under which school districts receive revenues. Between 1997 and 2002, the state spent \$1.9 million on school finance litigation legal contractors. This amount was divided between two firms, for attorney fees and miscellaneous expenses such as phone, copies, and travel. The Legislature has funded this litigation through special appropriations to the Attorney General's Office.

North Platte and Big Horn River legal costs total \$2.8 million, 1997-2002.

Water Litigation Contracting Costs

For many years, the state has been involved in litigation before the U.S. Supreme Court, Nebraska v. Wyoming, commonly known as the North Platte litigation. The Legislature has funded this litigation mainly through special appropriations from water development accounts. The Attorney General's Office has managed and directed this litigation, but relied heavily upon private attorneys. Information from the State Auditor's Office shows that the two firms identified by the Office as contracting for this work together received approximately \$2.4 million between 1997 and 2002. This amount includes attorney fees and miscellaneous expenses.

The state also has long been involved in adjudication of the water rights in the Big Horn River System. Payments to the firm with which the Attorney General has contracted for this litigation, for both fees and expenses, totaled approximately \$462,000 between 1997 and 2002, according to State Auditor data.

***Natural Resource
Policy Account funds
litigation to modify
federal policies.***

In addition, the Attorney General contracts with firms to litigate in response to federal natural resource policies that may affect the state. Currently, the state is involved in litigation to modify federal policies addressing snowmobile use in Yellowstone National Park, roadless areas in national forests, and vaccination of elk for brucellosis. Funding for this legal work comes from the Natural Resource Policy Account created by the Legislature in 1999. Between 2001 and 2002, two firms received a total of \$161,359 for their work on two of these issues.

The state, through the Attorney General's Office, also has on-going contracts with two firms to collect mineral royalty taxes. These are contingency-fee based contracts. W.S. 9-1-603 (b) gives the Attorney General authority, with the Governor's approval, to retain qualified practicing attorneys to prosecute fee-generating suits for the state, if expertise in a particular field is desirable.

**Some State Legal Contracting Does Not Involve
the Attorney General's Office**

Other state agencies contract for legal services, but not necessarily through the Attorney General's Office. Agencies contract with or pay attorneys for such work as representing children in permanency hearings, serving as hearing officers in administrative proceedings, representing claimants in workers' compensation hearings, and providing Medicaid over-payment recovery and third-party subrogation.

**Some Agency Attorneys Are Not
Directed by the Attorney General**

***State agencies
employ 14 attorneys
who do not report to
the Attorney General.***

The scope of our study included the Attorney General's assignment of attorneys to represent agencies, and boards and commissions. By statute, the Attorney General has the sole authority to employ persons as attorneys for state agencies, commissions, and institutions. However, we found evidence that there are attorneys working for agencies who do not also work for the Attorney General.

There are 14 attorneys not under the Attorney General's supervision working for 7 state agencies and commissions. This does not include the 50 attorneys employed by the Public Defender's Office and the Office of Administrative Hearings, which must be separate from the Attorney General to avoid legal conflicts of interest. Nor does it include persons who are attorneys, but who are not classified as attorneys in their work for the state.

The Attorney General retains the right to represent the state in court.

The Attorney General is aware that some agencies employ attorneys to serve as general or staff counsel. In these cases, the Attorney General reserves the right to represent the state in court. For example, the Public Service Commission, Board of Equalization, and Insurance Department employ attorneys but the Attorney General must appoint them "special assistant attorneys general" before they can represent their agencies in court.

CWAG Report Provides Guidance

Conference of Western Attorneys General (CWAG) reviewed Office in 2001, at Attorney General's request.

Late in 2001, at the request of the recently-appointed Attorney General, a review team from the Conference of Western Attorneys General (CWAG) completed an overall review of the Office. While the CWAG report's general conclusion was that the Office "needs no fundamental course corrections," it made many recommendations to improve operations. As we conducted our research, many Office responses to these recommendations were underway.

The authors of the CWAG report have knowledge of attorney general office operations and practices based on professional experience, and their report provided valuable insight. Thus, although that report was much broader in scope than this report, we considered it as expert opinion in areas that applied to our study's focus.

We Discuss the Need for More Planned Approaches

A recurring theme in CWAG recommendations was the Office's need to revamp traditional ways of operating to become more formal, with more emphasis on reporting and supervision. We

found this general theme in the three areas we reviewed as well. The Office's practices in the areas of assignment of attorneys to agencies, representation of boards and commissions, and use of outside counsel appear to have evolved on an ad hoc basis, without formal planning. In the following chapters, we discuss how the Attorney General's Office needs to take a more deliberate approach to practices in these areas.

CHAPTER 1

Diffused Funding Challenges Centralization of Attorney General's Office

Like most states, Wyoming has sought to centralize its legal representation in the Attorney General's Office (Office). The benefits of a centralized office are maintaining consistent legal advice, and facilitating the efficient use of legal resources. We found many policies, procedures, and management structures that support centralization in the Wyoming Attorney General's Office.

However, the Office's reliance on funding from multiple agencies, and the location of some attorneys outside of Attorney General's offices, undermine its centralization foundations. We recommend that the Attorney General continue current efforts to strengthen Office centralization, especially by dedicating more resources to supervision, to overcome the challenges posed by the Office's diffused funding.

National Trend To Centralize State Legal Services Within Attorney General Offices

Since 1990, an overwhelming majority of attorneys general have endorsed maintaining a single source of legal services both to ensure unified legal advice and to make the most efficient use of state legal resources. As far back as 1971, the National Association of Attorneys General (NAAG) adopted resolutions that the Attorney General should have the sole authority to employ counsel and represent the state in litigation, and to supervise all state legal staff.

Only the Attorney General should employ counsel and litigate on behalf of the state.

A few states allow agencies to retain their own counsel and set individual legal policies. Under this scenario, which Idaho followed until 1995, state agencies have their own attorneys, hire their own private counsel, and occasionally sue one another. Currently, some large states allow agencies to employ in-house counsel for non-litigation matters, to enable agencies to comply with increasing volumes of state and federal regulations. But it

remains a standard that only the Attorney General litigates on behalf of the state, to protect the interests of the state as a whole.

Wyoming Office’s Organization, Procedures, and Policies Focus Upon Centralization

We found management controls covering these legal services (see box).

Over the years, Wyoming Attorneys General have implemented organizational structures and policies to set the Office on a centralized course, with the objective of providing consistent legal advice. We reviewed these policies, procedures, and organizational plans, as well as extensively interviewed Office managers about them. Specifically, we looked to see what controls cover

2001 Attorney General Statistics	
Contested Cases:	2,733
Informal Opinions/Letters of Advice:	1,470
Formal Written Opinions:	1
Contract/Bond/Lease Reviews:	7,209
Rule Reviews:	99
Reviews of Pre-filed Bills:	539
Session Bills Tracked:	161
Reviews of Enacted Laws:	216
Source: Attorney General figures	

the legal services the Office provides (see box). From our research, we concluded that centralization controls are in place.

Attorney General Processes Aim to Control Contested Cases

The Office has supervisory and review processes in place to ensure consistency in state legal policy developed through litigation or contested cases. Office litigation includes any case pending before a court of law, an administrative hearing body, or contested case hearing officer. In these cases, Office attorneys present arguments that support appealed agency actions.

Written policies make it clear that the Attorney General controls litigation.

The Office’s written policies make the Attorney General’s control of litigation explicit. For example, one policy states, “when a controversy reaches the hearing or litigation phase, it is controlled by the Office,” although the preference is to act in full agreement and cooperation with its agency clients. Policies also advise that critical and controversial decisions require more front-end input from Attorney General Office supervisors.

Attorney General Lacks Control of Litigation in Two Areas

Attorney General does not actively supervise some contract counsel.

The scope of our research included Attorney General contracting for private counsel and the Office's representation of professional boards and commissions. Some of the litigation that occurs in these areas does not appear to have the same Attorney General control as other state litigation. With workers' compensation defense, Office involvement has been limited to sporadic review and monitoring of cases handled by contractors. With respect to boards and commissions, the Office has not supervised the private attorneys with whom three boards contract for legal representation and prosecution of license holders.

Office Has Extensive Review of Formal Opinions and Legal Advice

CWAG said process was too elaborate.

The Office's procedures for ensuring that its opinions and advice meet the centralization standard of consistency are apparently more than adequate. The Attorney General requires one point of review clearance for opinions requested by agency heads, legislators, and county attorneys. In its findings, the review team from the Conference of Western Attorneys General (CWAG) said that the Office's process for advising client agencies was too elaborate and time-consuming for routine advice. The report recommended that the Attorney General relax and decentralize the provision of routine advice and most informal opinions.

Written Guidance in Place for Contracts and Rules

By statute, the Attorney General must approve all state contracts.

From the statistics reported to the Legislature, reviewing contracts is a significant body of work for the Office. Officials say that while the volume of contracts passing through the Office for review is high, the time dedicated to that work is not proportionally as high. W.S. 9-1-403(b)(v) mandates that every contract for services must be in writing and approved by the Attorney General. In 1996, the Office put considerable effort into ensuring uniformity in state contracts by developing an extensive contract manual, updated in 2000. The Office has also produced a manual of written guidance for drafting administrative rules.

Organizational Structure Sets Up a Foundation for a Centralized Office

The Office has an organizational structure of divisions, sections, deputies, and supervisors, connected through a series of weekly meetings. This structure offers the opportunity for the Attorney General and all staff attorneys to communicate, and for the Attorney General to monitor for continuity in the Office's legal advice.

Supervisors Key to Centralized Structure, But They Have Limited Time to Supervise

Office officials acknowledged that many of the supervisors carry full workloads and do not always have enough time for supervisory duties. This is critical because Office officials say they rely upon supervisors to ensure consistency in legal advice. Supervisors are at the section level, where attorneys share related assignments, to the extent possible. Deputies also directly supervise staff attorneys when there are no section supervisors.

The Office faces developing its supervisory capability to meet expectations.

The role of supervisors in keeping the office centralized has evolved. We learned that former Attorneys General established the supervisory structure in part to create career opportunities for attorneys. Now, Office officials see supervisors as integral to a unified law office, but acknowledge obstacles to their ability to supervise. CWAG recommended that the role of supervisors be redefined and made explicit, to emphasize developing and assisting other attorneys rather than maintaining heavy workloads. The report also noted the need for training in this area. Thus, the Office faces developing its supervisory capability to meet current expectations.

Diffused Funding and Dispersed Offices Decentralize the Office

While Office organizational structures and policies provide the foundation for a centralized office, there are also some decentralizing features. These are its diffused funding, and the attorneys' dispersed offices. The Attorney General expert with whom we consulted said in terms of maintaining an independent and centralized office, having attorneys stationed in the agencies is more troublesome than having the agencies fund them.

Other Agencies Fund Nearly Half the Attorneys

Some agencies transfer funding and positions to the Office for attorneys; others keep them in their own budgets.

The Attorney General relies on other agencies for funds to support 29 of the Office’s attorneys. Of the 60 attorneys under the Attorney General’s supervision, 21 are counted as positions and funded by fourteen other agencies. Also, while the Office counts another 8 attorneys as its positions, different agencies transfer funding into the Office budget for their salaries and benefits.

Agencies Funding 29 Attorneys	
A&I: 7	Employment: 5
DEQ: 3	Health: 2
WYDOT: 2	Corrections: 2
Audit: 1	Revenue: 1
DFS: 1	Game & Fish: 1
State Lands & Investments: 1	
Oil & Gas Commission: 1	
Water Development Office: 1	
DCI (within AG agency): 1	

For the attorneys covered by the Office’s budget, the General Fund provides the primary source of funding. The agencies that carry attorneys in their budgets fund them with a variety of revenues, including the General Fund, federal grants, special revenue funds, and internal funds.

Diffused funding is common among attorney general offices.

This funding arrangement is not unusual among attorney general offices in the nation. In fact, NAAG used to track attorneys in offices throughout the country according to how many were paid by the attorney general, and how many by other agencies. NAAG has not updated this information since 1990. However, the expert we interviewed said that a 50/50 payment division is about normal.

Office Attorneys Do Not Have Centralized Offices

The attorneys in the Office work in 14 different locations spread throughout seven buildings in Cheyenne. Most attorneys have offices either in the Capitol or Herschler Buildings, and most work in groups that include other members of their divisions, as well as their supervisors.

Some attorneys have offices in the agencies they represent.

However, at least ten attorneys have offices within the agencies that fund them, and are thus physically separated from their supervisors and colleagues. Some of these attorneys have two offices, one with their divisions, and one in the agency. Three attorneys are stationed in two agency locations in Casper.

Diffused Funding, Dispersed Offices Challenge Office Centralization

Attorney General Office officials and experts both indicated that the diffused attorney funding and dispersed office locations challenge centralization. The following paragraphs describe some of the ways in which these features work against both maintaining consistency in legal advice and actions, and making the most efficient use of the state's legal resources.

Difficulties in Supervising and Controlling Allocation of Attorneys' Time

Agencies have pulled attorney funding because they did not get expected dedicated services.

Office managers face challenges in allocating work among attorneys because agencies that pay attorneys expect those attorneys to work exclusively on their behalf. To respond to the Office workload, however, deputies need the flexibility to assign agency-funded attorneys work that is outside the scope of their client agencies' activities. Office managers say this has been difficult to do because some agency heads object. Agencies have even gone so far as to pull their funding of attorney positions when they did not receive the dedicated services they expected. In addition, some agencies fund their attorneys with federal funds that require attorney time be used for specified purposes.

The Attorney General has addressed this issue by writing to agency heads, telling them that while their work receives priority from those attorneys they fund, deputies will allocate additional work when necessary. Agencies do not fully cover the overhead costs of the attorneys they fund, a cost the Office estimates at 40 percent of salary and benefits, to cover supervision, support staff, training, and supplies. Further, the Attorney General reminded agency heads that statute gives him authority to direct all assistant attorneys general.

Now, Office managers are reportedly assigning attorneys work unrelated to their funding agencies. If federal funding prohibits such work during the time it covers, affected attorneys must work additional hours.

Attorney General Unable to Control Attorney Numbers

Attorney positions are vulnerable to cuts and turnover.

The Attorney General also reported that attorneys, uncertain about the funding of their positions, sometimes decide to leave the Office. Further, agency heads can reclassify vacant positions once held by attorneys, or place the positions at such a low priority that the Governor or the Legislature eliminates their funding. This leaves the Attorney General unable to control the number of attorneys available to do the state's legal work.

Agency Funding and Offices Create Risk for Agency Capture

A common assumption about the practice of agencies funding attorneys is that "agency capture" will occur. This concept is usually described as attorneys losing their independent, law-based perspective and instead advocating the positions of the agencies that fund them.

Although attorney independence has not been affected, the risk is high when agencies house attorneys.

Those we interviewed differed as to whether or not this is occurring within the Office. All Attorney General officials with whom we spoke repeatedly emphasized being watchful for this, as well as the importance of supervision and mentoring in avoiding it. We concluded that the Office has adequate controls in place to guard against agency capture.

The CWAG review team reported seeing few instances in which there appeared to be a threat to the independence and competence of Office attorneys' legal advice. However, the report commented that the risk of attorneys losing their independence is highest when attorneys are both hired with agency funds and stationed full-time at the agencies. The report concluded that the Office should address this risk.

Agency-Funding of Attorneys Initiated to Provide More Legal Representation

The practice of having state agencies fund attorneys began around 1987, according to former Office officials. This happened over the years, as agencies requested more legal representation than the Attorney General had resources to provide. To meet both the need for services and the statutory requirement that only the Attorney General can appoint attorneys to represent the state, officials made agreements in which the agencies provided the positions and funding, and the Attorney General hired and supervised the attorneys.

Agencies have funded most of the 18 attorneys added to the Office since 1990.

Through this approach, agencies have funded most of the 18 attorneys added to the Office since 1990. Of these attorneys, the Office budgets for eight, and agencies fund and count as employees ten.

Attorney General officials would prefer to have all attorneys in the Office's budget. However, they say the practice of placing them in agency budgets has continued because the agencies are more successful at getting authorization for the positions. For example, they say, in the last legislative session, the Office requested 7 additional positions and received none. In contrast, the Legislature funded the Department of Audit request for a minerals tax attorney, who will serve as an assistant attorney general under the Attorney General's Office.

Agencies may have added attorneys by reclassifying existing positions, not by requesting them from the Legislature.

However, the Legislature may not have authorized all of the attorney positions in the agencies. State personnel rules allow agencies to reclassify existing positions, with Administration and Information (A&I) Human Resource Division approval. We found that the state does not maintain records that would show whether a position has been reclassified over time, so it is not possible to determine which of the 18 attorney positions added since 1990 were authorized by the Legislature, and which were created in this manner.

Dispersed Offices A Result of Lack of Space

Officials say the stationing of some attorneys in offices in the agencies is a simply a response to lacking a single facility adequate to house them all, while also acknowledging that agency heads often welcome the easy access. At the request of A&I, the Attorney General managers have prepared specifications for a facility that would house the entire Office. A&I will use these specifications as part of its overall planning, and work towards meeting the Office's needs as funding and opportunities arise.

Recommendation: The Attorney General should enhance supervision to support a centralized office.

The Attorney General has taken several steps to bolster the foundations already in place to ensure that the Office operates as a unified source of legal representation for the state. These include instituting formal weekly meetings between all levels of management and staff, formally communicating to agency heads that only the Attorney General directs the attorneys, and implementing more detailed logging systems for opinion requests and litigation schedules.

Consolidated funding is less critical than adequate supervision and a shared location.

Devoting increased resources to supervision and mentoring will be important to enhanced centralization. The Office has also taken some steps in this area, but officials acknowledge that many deputies and supervisors carry important legal responsibilities that can easily trump their supervisory work. The expert sources we consulted for this report indicated that supervision is vitally important in coordinating the state's legal work and in seeing that the state is consistently represented. In order for the Attorney General's Office to realize the full potential of the supervisory structure in place, supervisors must also have good management training.

Attorneys general in some states have worked toward funding consolidation to ensure office independence and coordination. However, from what we learned, doing this is not critical as long as adequate supervision and a shared location exist. The Office

***The Attorney General
should locate all
attorneys with their
supervisors.***

has prepared specifications for a facility that would house the entire staff. An intermediate step to total office co-location would be to house all attorneys, or as many as possible, in offices with their supervisors and division colleagues, full-time. This essentially would be a “satellite office” model, which may suit the Office best anyway, because of some ethical conflicts of interest inherent in the divisions’ work. The Office is close to this situation now, and should work with A&I to make the necessary changes, so that attorneys can move out of the agencies.

***The Attorney General
should report total
size and cost of the
Office, including
attorneys funded by
other agencies.***

If funding of attorneys is to remain spread throughout the agencies, the Attorney General will need to ensure the support of executive branch leadership in recognizing Attorney General authority to direct all assistant attorneys general. The Attorney General reports this support now, but it is likely a message that will need repeating as administrations change. Also, with funding and positions for the Office diffused, the Attorney General needs regularly to report the total size and cost of the Office in one document, either an annual report or budget narrative. This would enable the Legislature to maintain a better understanding of the state’s legal resources.

CHAPTER 2

Funding Mechanism for Board Representation Is Inflexible and Will Not Cover Increased Costs

Statutes require the Attorney General to provide professional licensing boards and commissions (boards) with legal representation, both in contested cases and by providing legal advice. The Office has assigned two staff attorneys to provide board representation, and most of the 30 boards analyzed in this chapter use the services of these two attorneys. However, some boards use other Attorney General staff and a few have opted to contract with private attorneys. All 30 boards pay for Attorney General representation, whether they make use of it or not.

To pay for representation, the Legislature established a fund that receives half the interest earned on each board's licensing revenue. The boards' combined demands for legal services are increasing beyond what the two attorneys can provide, yet too little revenue flows into the fund to cover the cost of additional representation. The Attorney General has taken some steps to alleviate the workload, but other alternatives, including possible statutory changes, need to be explored. Alternatives range from restricting the use of limited staff resources to leveraging more funding for legal services.

Statutes Require Attorney General Representation of Boards

Attorneys provide boards with two types of legal services.

Several statutes require the Attorney General to provide legal services, both advisory and prosecutorial, to professional licensing boards. W.S. 16-3-102(c) in the Wyoming

Advisory representation includes reviewing contracts and proposed rule changes, writing Attorney General opinions, defending boards when they are sued, and appellate work.

Prosecutorial services include assisting with pleadings, conducting investigations, drafting the charging documents, and prosecuting disciplinary cases before boards.

***Wyoming
Administrative
Procedure Act
requires the Attorney
General to represent
licensing boards.***

Administrative Procedure Act requires the Attorney General to furnish assistance to all state agencies on the preparation of rules. W.S. 16-3-112(c) allows a board to request assistance from the Attorney General when a contested case arises. In addition, W.S. 9-1-608(b) provides that no board may hire an attorney to represent the state without written appointment by the Attorney General. Since boards issue or renew approximately 20,000 licenses per year and their members may not be experts in the law, they need legal advice when carrying out functions such as investigating complaints and suspending and revoking licenses.

Boards serve both the public and license holders

The state's interest in representing boards relates largely to consumer protection, and stems from a desire to protect the public from unscrupulous and unqualified practitioners. In numerous sections, Title 33 directs boards to enforce the standards of their professions. Thus, consumers can turn to boards with questions and an expectation that appropriate action will be taken with regard to complaints.

***Wyoming Supreme
Court has held that a
professional license
is a protected
property right.***

The state also has an interest in the rights of license holders. The Wyoming Supreme Court has held that professional licenses are a crucial means of making a living, and that a license is a protected property right with substantial private interest. Consequently, the state seeks to ensure that license holders receive fair treatment in any board action against them, such as suspensions and revocations.

**Attorney General Has Modified the Way
Boards Get Legal Representation**

For many years, responsibility for representing boards was spread among numerous attorneys in the Office; they had other priorities and often saw this work as a secondary assignment. In 1996, the Office assigned two attorneys to perform that work exclusively, and the Legislature established a statutory funding mechanism to pay for them out of the interest generated on boards' accounts. The two attorneys shared the workload, providing a range of legal services to most of the boards.

Office assigns one attorney to prosecute, and the other to advise.

Two Wyoming Supreme Court decisions in 2001 changed the way the Office provides legal representation. The decisions focused on the necessity of providing impartial representation for licensing boards, both in practice and appearance. Although its practices were not questioned, the Office reinforced the “ethical wall” between functions by assigning one attorney to prosecute cases and the other to advise boards. Further, to preclude interaction between the two, they were assigned to separate divisions, with different supervisors and offices.

Boards Receive Legal Representation, But Not Just From the Attorney General's Office

Thirty boards are entitled to receive Attorney General services, but fewer do.

Thirty occupations and professions have boards that pay for and receive, or are entitled to receive, legal representation from the Attorney General's Office. W.S. 33-1-201 and 202 require these boards to pay half the interest generated on their individual enterprise (operating) accounts into a fund dedicated to the costs of representation. However, some of the boards do not use the Attorney General services that could be available to them. In addition, the Attorney General's Office is not the only provider of legal representation to the 30 boards. (*See Appendix B, Title 33 Board and Commission Legal Representation*)

- Twenty-four of the 30 boards pay into the fund and receive representation from two full-time attorneys in the Office whose salaries are paid out of the fund.
- One other board uses Attorney General staff for advisory representation, but also contracts with a private sector attorney for prosecutorial legal services.
- Three boards pay into the fund and receive Attorney General representation, but from three different attorneys in the Office whose primary assignments are to represent larger agencies. The fund pays part of one of these salaries.
- Two boards are not, for the most part, served by the Attorney General's Office, although they pay into the

fund and by virtue of that fact, could presumably call upon the Attorney General for full representation. These two boards contract with private attorneys for legal services and pay for them independently.

Boards Have Legal Representation Regardless of Ability to Pay

Under this funding arrangement, the amounts of interest the 30 boards pay into the fund vary widely, depending on factors such as membership size and frequency and cost of re-licensing. By statute, each board sets its own license fee amounts and boards cannot charge their members more than it costs to operate. Since the fund's inception in 1996, the interest contributions from individual boards have ranged from \$1,625 to \$138,282. *(See Appendix C, Board Contributions)*

A few boards under-write most of the costs of Attorney General representation.

A benefit of this funding mechanism is that boards receive the legal representation they need without regard to the amount each has paid into the fund. For example, when a contested case arises, the Office attorney assigned to prosecute cases can set aside disproportionate resources to address the matter, regardless of the size of the board's past contributions to the fund.

However, payment into the fund and consumption of legal services are not necessarily proportional. Just a few boards under-write most of the costs of representation. For example, since the fund's inception, four boards with large memberships have contributed 42 percent of the revenue flowing into the fund. By contrast, ten small boards paid in less than \$10,000 apiece, or 7 percent of the total, during that period.

Sharing the Cost of Representation Benefits Small Boards

Since the funding mechanism ensures adequate representation regardless of the amount contributed, the present arrangement works to the smaller boards' advantage. Based on the amounts they have paid into the fund, most small boards could afford very little legal representation if they were required to pay by the

hour. For example, we estimate that at a rate of \$45 per hour for in-house (Attorney General) legal counsel, six of the boards paying into the fund could have purchased an average of less than two hours of legal service per month. This small amount of representation might not suffice if a contested case arose.

More boards would contract with outside counsel, but Attorney General wants to keep contracting at a minimum.

Although the current funding mechanism helps ensure that the boards' representation needs are a priority for the Attorney General's Office, some boards chafe at the limitations the system imposes. Some that have sufficient funding want to contract with outside counsel, rather than use the two board attorneys. For economy and effectiveness reasons, the Attorney General's Office believes it is important to keep such contracts to a minimum, even though a change in this policy might ease the workloads of the two attorneys.

Office Lacks Data on Use of Attorney Time by Each Board

No records to show which boards use the most legal services.

Neither the Attorney General's Office nor the boards themselves keep time records to show which boards make heaviest use of legal services. The Office states that a few boards absorb the vast majority of the two attorneys' time. However, it does not keep attorney time records by board, believing that from an accounting perspective, that would be unnecessary since the funding comes from one source. As a result, it cannot supply precise information about which boards use the most services and what the trends in use have been.

Since information on attorney time expended per board was not available, the Office gathered other data from the boards, such as the number of suspensions and revocations assisted with and the number of meetings attended. These numbers give only a general indication of which boards take the most attorney effort, and the Office reports weaknesses in consistency among board reports, so we made limited use of the information.

Heavy Workloads Lead to Request for More Staff

Governor denied FY '03-'04 request for more board attorneys.

The Attorney General's Office and other executive branch officials report that overall, the boards' demands for legal services are steadily increasing. The Office points to a rise in the number of letters of advice written, contested cases staffed, and contract and rule reviews performed in 2001. The Office requested two additional positions in its FY '03-'04 budget request, but the Governor denied the request. The Attorney General has described the attorneys' present workload as "excessive and unworkable." The Office's strategic plan says it will continue to pursue additional positions to meet the representation needs of the licensing boards.

Payment Mechanism Does Not Cover All Costs at Present, and May Not Support Growth in Those Costs It Does Cover

More boards pay into the fund than use the services of the two attorneys, which means the fund is not covering the full cost of providing representation to boards. At present, three of the 30 boards hire private counsel and make few or no demands on the two staff attorneys. Another three boards receive part-time representation from three different assistant attorneys general; only part of one of those salaries is charged to the fund.

Even with some boards funding their own legal costs, the fund is barely keeping up with the draw on it.

If the costs of services for all 30 boards were attributed to the fund, the income stream would be insufficient to cover total costs. Similarly, if all boards turned to the two attorneys assigned to this work for legal representation, the resulting workload would be overwhelming.

Currently, the fund is barely keeping pace with the draw on it. The Department of Administration and Information (A&I) administers the fund; it transfers money to the Attorney General's budget to cover salary and benefit costs of the two attorneys, partial costs for a third, and certain other support costs.

Annual interest earnings have ranged from \$112,912 to \$145,488; costs, from \$120,364 to \$153,242.

In its six years of existence, the most interest earnings the fund has generated in one year is \$145,488 and the least is \$112,912. However, in recent years (FY '98 - '01), annual charges to the fund have ranged from \$120,364 to \$153,242. Thus, the fund's income stream has not always been sufficient to cover expenditures, and its cash balance, which was \$102,469 at the end of FY '02, has been slowly decreasing.¹

According to A&I officials, the fund will fall short of covering estimated costs of these attorneys in FY '03. With the steep decline in interest rates experienced during 2001 and 2002, even previous earning levels may not be sustained. In addition, any future increased salary, benefit, and support costs for the two attorneys will further draw down the fund's balance.

Recommendation: The Legislature and Attorney General's Office should explore alternatives for funding the boards' legal representation.

The statutory funding mechanism that pools half of the boards' interest to pay for legal representation was not necessarily developed with an eye to its ongoing ability to cover expanding costs. Nevertheless, it has been successful for several reasons: not all costs of legal representation have been charged to it, not all boards that pay for Attorney General services use them, interest rates have produced adequate returns, and the two attorneys have been able to manage heavy caseloads.

Attorney General could research options and make recommendations.

Currently, however, several of these circumstances are changing. With declining interest rates, increasing demand for services, and no statutory means of generating more money to pay for additional staff, the system is facing new pressures. In light of changing conditions, the Legislature needs to assess the long-term adequacy of the funding mechanism. To assist in that effort, it can request the Attorney General's Office to bring forward research and recommendations on various options.

¹ Should a shortfall occur, the executive branch can, with the Governor's approval, transfer funds through the "B-11" process.

Some possibilities are discussed below.

Attorney General is already taking steps to improve board expertise and ration use of legal services.

Some Alternatives Call for Management Changes

One approach would involve some rationing by the Office of the boards' use of legal services, coupled with a directed effort to improve board expertise. Both are underway: the two attorneys no longer routinely attend board meetings and instead, encourage the boards to submit lists of concerns and issues for attorney review prior to meetings, or to phone in questions that come up during meetings. Also, the Office is working to increase board expertise by offering member training sessions and developing a manual for use in conducting investigations. Further management initiatives may be possible.

Alternatively, the Attorney General could allow more boards that can afford it to contract for outside counsel at their own expense. This would have the advantage of reducing the workloads of the two attorneys, although we expect the Office would need additional staff to supervise and coordinate these contractors in order to maintain consistency and integrity in the state's legal position. Under this scenario, all boards currently paying into the fund for legal representation would continue to do so.

Fundamental Changes Require Statutory Amendment

Legislature could increase interest percentage earmarked for legal representation.

To generate increased funding for additional staff, the Legislature could raise the percentage of funding earmarked for the boards' legal representation. To do this, the Legislature could amend the professions and occupations statute (Title 33) to increase the 50 percent to a higher figure. However, this would decrease the boards' operating income and also might be only a stopgap measure, should interest rates remain low and the demand for services continue to increase. The Legislature could also designate new sources of funding for additional positions.

Another option would be to abandon the current system and institute an "enterprise model" of charging each board directly for the Attorney General legal services it uses. While this approach has intuitive appeal, the Legislature would need to amend the Wyoming Administrative Procedure Act (Title 16) so boards could be treated differently than agencies in this regard.

Options requiring boards to pay for the legal services they use may prompt them forego seeking preventive advice.

Also, numerous current and former executive branch officials note that under such a system, boards might be unduly concerned with costs and might choose to forego needed legal advice at the early stages of a problem. This creates potential for subsequent and larger legal difficulties if problems are not caught early, and illustrates the “preventive aspect” of providing adequate representation, which is difficult to quantify.

A variation on this approach would involve hiring attorneys as at-will-employee-contractors and billing the cost of their services to the individual boards. However, the Attorney General cautions that private sector attorneys may lack critically important expertise in administrative law. Also, this and the previous approach may be premature since data does not exist to show the frequency with which some small boards with little revenue may require a large number of hours of representation. The Office recently began requiring the two attorneys representing boards to track their time, and presumably will begin building a database of that information.

Funding board representation from the General Fund would give the Legislature control over costs.

Finally, some states deposit licensing fees directly into the General Fund, and appropriate General Funds to the boards for their operations. The theory behind this approach is that licensing boards exist to protect the public, and General Funds are appropriately used for that purpose. While the Legislature may not wish to move fully in this direction, it could consider depositing the 50 percent of interest earned on boards' accounts into the General Fund and then appropriating funding for board representation to the Attorney General's Office. This approach has the advantage of giving the Legislature more direct knowledge of and control over the cost of the boards' representation.

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CHAPTER 3

Contracting For Workers' Compensation Representation Has Begun to Receive Needed Management Attention

Workers' compensation representation is one area in which the Attorney General's Office (the Office) routinely contracts with private attorneys. Wyoming statutes require the Office to represent the Workers' Safety and Compensation Division (the Division) in contested cases. Before 1991, the Office provided this representation in-house, but since then has contracted with private sector attorneys to defend the state in workers' compensation contested claims. The Workers' Compensation Fund, not the Attorney General's Office budget, bears the cost of this representation.

Contract payments have not been based upon volume of work.

Between 1991 and 2002, the Office contracted with a small group of attorneys or firms on an individually-negotiated flat fee basis, requiring them to handle all contested claims filed in their geographic areas. The Office did not base payments to the contractors directly on an accounting of hours or volume of cases worked, and over time, firms received inequitable compensation for the work performed. Further, we found that by only sporadically monitoring these contractors, the Office left this aspect of the state's litigation work less controlled than other state litigation, and less accountable than the Division would like. The Office has begun to address these problems, and needs to continue to expand its management oversight in this area.

For a Decade, the Attorney General's Office Has Contracted Out Workers' Compensation Defense Cases

W.S. 27-14-602(c) requires the Attorney General's Office to provide legal representation to the Workers' Safety and Compensation Division of the Department of Employment in all contested cases. Contested cases arise when interested parties request hearings as to the compensability of an initial injury or claim for medical care, or on denial of an impairment, disability, or death benefit.

Relatively few of the injuries reported to the Division each year generate contested cases. Between 1996 and 2001, the number of injuries reported to the Division remained flat, at about 18,000 per year, while the number of contested cases assigned to contract attorneys averaged about 900. Most contested cases go to the Office of Administrative Hearings, which holds hearings around the state; some go to the Medical Commission. Decisions from these bodies may be appealed to District Court and on to the Supreme Court.

Attorney General switched to contractors because excessive travel led to high staff turnover.

In 1991, due to heavy travel obligations that led to high staff turnover, the Office began contracting with private sector legal firms to represent the state in these matters. The Office assigned cases according to the geographical location in which the claims were filed. The Division paid for the state's representation by funding the costs of contract attorneys plus, eventually, the costs of three staff attorney positions within the Office who, among other duties, handle Workers' Compensation appeals to the Wyoming Supreme Court.

Contract Amounts Were Independently Negotiated, Not Based on Volume of Work

Over the years, the Office for the most part renewed existing contracts and also gradually added new ones, thus retaining a stable group of nine firms around the state. It saw this overall approach as building a cadre of highly experienced firms that could efficiently perform this specialized work.

Higher-paid firms were not necessarily handling more cases than lower-paid firms.

An ad hoc approach to compensating firms, unrelated to the numbers of cases handled, allowed disparities in compensation to develop among contractors. In FY '01, individual firms' payments ranged from \$36,000 to \$99,000; the number of cases assigned per firm ranged from 47 to 154. However, the higher-paid firms were not necessarily handling more cases or working more hours than the lower-paid firms. (*See Appendix D, Payments to Worker's Compensation Contractors.*)

At different times, the Office increased some, but not all, contract payments for these services. It based contract amounts with each firm on a judgment of the firm's competence and experience, on an estimate of hours of service to be performed during the contract period, and on the firm's willingness to contract for a specified amount. Contracts did not tie monthly payment amounts to a uniform hourly rate of pay or to the volume or complexity of cases handled, nor did they allow for adjustments based on the actual number of cases handled or hours worked during a previous period.

Workers' Compensation pays contractors, but does not report payments to the Attorney General.

In addition, the Office and the Division have operated independently of one another in carrying out contract negotiations and payment processing. Firms submit monthly bills claiming the flat contract amount that was negotiated with the Office, plus itemized reimbursable expenses such as phone, copy, and travel costs. As long as these bills fall within contractual parameters, Workers' Compensation pays them and does not report total expenditures to the Office.

The System Has Given Rise to Inequitable Payments

Because contracts were not standardized as to payment methodology, inequities developed in the base contract amounts. The Office acknowledges that some workers' compensation cases require more attorney effort than others, particularly those appealed to District Court. Nevertheless, it has estimated an average of 10 to 12 hours' work per contested case. Using this standard, we reviewed contract amounts and found considerable variation among the nine firms, even when the number of cases referred to them was similar:

- Firms handling similar *numbers of cases* received markedly different base compensation. One firm handled 154 cases and received \$45,000; another handled 139 cases and received \$99,000. Similarly, a firm handled 51 cases for \$36,000, while another with 60 cases received \$79,200.
- In 2001, the Office calculated the average payment *per case* at one firm was \$1,250, while at another it was \$308.

- In a review of four firms, the Office estimated their *hourly pay* ranged from \$37 to \$69.
- In a six year period, one firm's *annual contract amount* increased from \$34,300 per year to \$60,000, while its caseload dropped from 82 to 47.

Assuming equal distribution of complex cases, payments lack equity.

Based on these four measures, and assuming equal distribution of complex cases, we did not see the equity in contracting procedures that would be expected of a governmental entity and that we think most contractors would assume existed. Absent other evidence concerning volume or quality of services, we concluded that the contracts gave some firms inappropriately high or low compensation for work performed.

Some Basic Management Information Is Lacking

The Office and the Division lack management information systems to generate basic expenditure data that can be used for decision making in each agency. For example, we were unable to calculate the total amounts paid to each firm by year. The Office could tell us what the base contract amount was, but neither they nor the Division had data systems in place that could provide actual payment amounts including reimbursable expenses.

Neither the Attorney General nor Workers' Compensation has been able to monitor overall costs.

Overall, this approach has not provided assurances that the state is getting the best possible representation with a reasonable amount of funding. Neither the Office nor the Division has been able to closely monitor and control overall costs for workers' compensation representation, as neither has had complete information.

- The Office's contracting method did not require firms to submit documentation of the volume of efforts made to defend the state's position, such as hours worked per case. Without this data, it would have been difficult to develop a fair and systematic approach to contracting.

- For its part, the Division lacks information that would enable it to allocate the exact cost of legal fees to individual cases. The Division believes charging these costs to an employer's experience rating would allow for more accurate adjustment of employer premiums.

By Contrast, Claimant Attorneys Are Paid By Flat Hourly Rate

Claimant attorneys (those who represent the injured parties in claims against the Workers' Compensation program) are paid according to a different standard, even though they work within the same system. They submit detailed billings to the Office of Administrative Hearings, showing hours worked by case, and are paid a uniform hourly fee of \$60 per hour, an amount that increased to \$90 in November 2002. Similarly, when the Attorney General's Office contracts with tort defense attorneys, it is for a standard hourly rate.

Years of Minimal Oversight Resulted in Weak Accountability

During more than a decade of contracting for workers' compensation representation, the Office tended to look on this work as being largely repetitive and therefore requiring little management guidance. We noted two consequences of this approach.

Contracting arrangements created the appearance of partiality.

First, at least an appearance of partiality was created by the fact that all but one of the nine contracting firms remained in place, the methodology for reimbursing them was unclear and inequitable, and other firms did not have an opportunity to obtain the work. Thus, the Office has not been in a position to systematically evaluate and compare the performance of individual firms: Its ability to make informed judgments about value received has been limited by lack of performance data, and its basis for adjusting reimbursement rates has not been apparent.

There has been minimal Office supervision of the contractors.

Second, the Office provided minimal supervision and oversight of the contractors' performance. Supervision consisted of monitoring the number of cases each firm handled, talking with them by phone, watching their win/loss records, and spot checking work products on those cases appealed to the Wyoming Supreme Court. Thus, it has not applied the same rigorous internal office review process to workers' compensation contractors as it has to others, such as tort contractors.

The Office Has Begun to Correct System Weaknesses

Attorney General has added accountability measures in new contracts.

As we were conducting this research, the Attorney General's Office began to address many of these concerns by ending some long-term contracts and signing new ones; requiring in new contracts that all firms submit monthly statements showing date, duration, and description of services performed, by case name; and by making several personnel changes. As of this writing, the Office continues to implement management changes.

Recommendation: The Attorney General's Office should continue to develop oversight systems and gather performance data on Workers' Compensation contracting.

The Attorney General's Office needs to continue recently-instituted efforts to build systems that provide assurances of both the quality and the quantity of representation being purchased. The reimbursement system needs to be adequate, equitable, and accountable, and a management information system needs to provide useful data to both agencies. Since the Workers' Compensation Fund pays for the representation, the Office should work closely with Division to develop systems that, where possible, satisfy both entities' needs for information. Also, to better manage contractors, the Office should develop guidelines and reporting requirements to apply to these contracting situations.

A final decision on these questions now, however, would be premature. The Office needs to gather baseline data from the new contract reporting requirements in order to make cost projections that may point to a preferable approach. With this information, the Office will also be in a better position to negotiate a series of new contracts that are both cost-effective and equitable.

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CHAPTER 4

Attorney General Contracting for Tort Defense Decreases

The current Attorney General shares with his two predecessors the priority to reduce contracting for the defense of lawsuits against state departments, officials, employees, and local government peace officers. In the past, contract attorneys handled as many as 40 percent of the defense cases. Currently, contract tort defense is at an all-time low (8 percent of pending cases) and the Attorney General has put in place procedures designed to keep contracting at a minimum.

However, the level of pending tort litigation facing the state has also ebbed, and there are no guarantees that will continue. Nor are there assurances that the Office's in-house capability to defend lawsuits will remain strong. Therefore, the Attorney General must see that the Office maintains ready access to adequate defense counsel, even if that involves contracting.

Wyoming Governmental Claims Act Created Need for State Tort Defense

In 1979, the Wyoming Legislature, like those in many other states, modified the doctrine of sovereign or governmental immunity by enacting the Wyoming Governmental Claims Act (W.S. 1-39-101 through 1-39-121). This act sets out how the state and its political subdivisions may be sued. Further, the act provides that when public employees acting within the scope of their duties face liability claims, the governmental entities employing them shall provide their defense.

If public employees are sued while acting within the scope of their duties, the state must provide their defense.

Initially, the state purchased insurance to cover most of the liability exposed by its Governmental Claims Act, and the insurers retained private legal counsel to provide defense of claims as needed. Staff in the Attorney General's Office defended claims in the areas of prisoner and employment litigation, two areas not covered by insurance.

State Insures Itself to Cover Most Liability

By the mid-1980's, the state was no longer able to obtain liability insurance because costs had increased and carriers had exited the market. Thus, in 1986, the Legislature created the State Self Insurance Fund to self-fund the state's liability. The state's risk manager manages the fund through the Department of

Administration and Information (A&I), State Self Insurance Program (SSIP). The program also provides risk management consulting services and training on liability issues to state and local government agencies and employees.

State Self Insurance Program

Statutes: W. S. 1-41-101 – W.S. 1-41-111

Average Annual Claims, 1996-2001: 801

Covered by Self Insurance: auto liability, errors & omissions, general liability, and medical malpractice

Most Costly Category of Claims: errors & omissions, which includes deprivation of constitutional rights, wrongful termination, and employment discrimination

Least Costly Category: medical malpractice

Budget: \$10.1 million (FY '03-'04)

Insurance Costs (including premiums and self-insurance): \$9.1 million (FY '03-'04)

General Fund Appropriation: \$9.1 million

State Self Insurance covers state officials and employees, as well as local government law enforcement officers.

From General Fund appropriations to this fund, the state pays for defense and settlement of liability claims against state government and against state officials and employees. In addition, SSIP covers claims against certified law enforcement officers employed by state and local governments. SSIP also covers U.W. Family Practice Center physicians, including their residencies in other states.

In the beginning, SSIP program officials continued to contract with a small number of private attorneys to defend claims, with the Attorney General's approval. Then, in 1989, the Attorney General determined that hiring in-house lawyers would decrease defense costs, as well as create an advising resource to prevent future lawsuits. In response, the Legislature amended the SSIP statutes in 1989 to authorize it to fund "necessary personnel within the office of the attorney general" to defend claims.

Even With In-House Attorneys, the Attorney General Continued to Contract For Defense

With the funding channeled into the Office's budget from SSIP, the Attorney General created a new Tort Litigation Division, and staffed it first with three, and then eventually, four attorneys and two support positions¹. Even with the dedicated attorneys, Attorney General and SSIP officials found it necessary to continue to contract with private attorneys for some claims defense. SSIP reported payments to contract attorneys, for fees and expenses, reaching a peak of nearly \$700,000 in 1993, the same year law enforcement officer defense costs peaked.

Costs for outside counsel peaked in 1993, at nearly \$700,000.

Office and SSIP managers noted that the early 1990's marked a time when changes in the federal Civil Rights Act and the enactment of the Americans With Disabilities Act increased the kinds of actionable claims against the state, its employees, and law enforcement officers. As of FY '01, the four-year period FY '91-'94 accounted for 44 percent of the SSIP settlements and judgments paid out since program inception in 1986.

Case Specific Factors Create Need For Contract Counsel

Officials in the Office told us that several factors determine whether or not outside counsel will be needed. Having in place an experienced staff of tort attorneys is a major determinant of the Office's in-house capability to handle cases. Officials said there have been years when this expertise was not in place, when the unit was suffering from staff illness and turnover.

Individual employees and officials are often the clients in these cases, not the state.

Also, having multiple defendants in the same case often creates a need to contract. In the tort cases for which SSIP funds defense, the clients are the individuals being sued, not necessarily the state. Plaintiffs sometimes sue state agencies, but they also sometimes sue as individuals all employees they allege to have caused damages. Multiple defendants may have conflicting individual legal interests surrounding the same occurrence. If so, under the Rules of Professional Conduct for Attorneys at

¹ The Tort Division currently includes more attorneys than the four funded by the State Self Insurance Program. Also in the Division are the sections of Worker's Compensation and Employment and Personnel Law.

Law, an attorney in the Attorney General's Office can represent only one defendant, usually the state's interests; others must have counsel from a different law office.

Contracting often occurs when there are multiple defendants with conflicting legal interests in the same tort case.

The Office has also contracted to obtain expertise not available in the Tort Division staff, specifically medical malpractice defense. Those cases occur infrequently, giving the in-house staff little opportunity to develop the expertise to defend them. Under the Governmental Claims Act, the state faces a liability risk of up to \$1 million for all claims arising out of a single occurrence involving a physician it employs.

Finally, the Office contracts for tort defense when suits are filed in other states. Attorneys must be licensed in the states in which they appear in court. Occasionally, claimants, such as Wyoming prisoners incarcerated in other states, will file lawsuits.

Attorney General's Practice Has Been to Keep Private Attorneys on General Contracts

Attorneys with contracts only receive compensation if they handle cases.

Traditionally, the Tort Division and SSIP kept a roster of attorneys or firms throughout the state under general contract for tort defense. In July of 2001, this list included 46 firms, involving 103 attorneys. To be on the roster, attorneys or firms signed a contract obligating them to bear their own liability as independent state contractors, and to not represent clients opposing the state's interests. The contracts' compensation terms included specified hourly rates for attorneys and paralegal staff, a set mileage and copy expense rate, and actual expenses for other costs such as travel, telephone, and postage.

The Office is not obligated to assign cases to firms with general contracts.

The Tort Division automatically renewed these contracts at the end of each year, unless one of the parties chose to terminate. According to Tort Division and SSIP officials, over the years, the Office offered contracts for tort defense to law firms and attorneys upon their request. There was no formal request-for-proposals process. However, the existence of a general contract did not obligate the Office to assign cases to a firm or an attorney.

Contracting For Tort Defense is Sole-Sourced

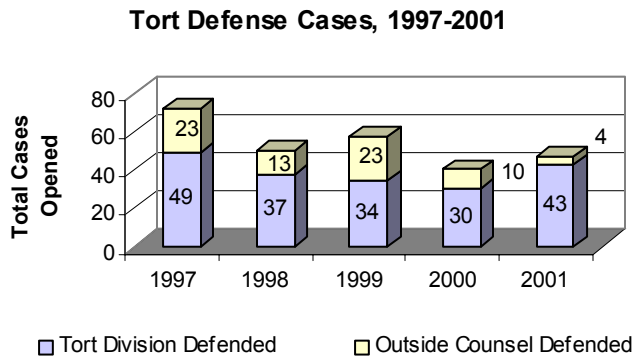
The Attorney General cites A&I rules as the authority to waive the competitive bid process in selecting private attorneys for state tort defense. These rules implement statute, W.S. 9-2-1016 (b)(iv)(C), that authorizes non-competitive contracting when competition is not feasible, as approved by state's purchasing administrator and the Governor.

The Attorney General selects contractors based upon his professional judgment of qualifications.

In the past, the Tort Division Deputy used professional judgment to determine with whom to contract. Several factors went into this determination, including knowledge of contractors' professional reputations and special expertise. The deputy also made efforts to assign cases to contractors that were geographically close to courts in which suits were filed. During the course of our study, this process became more formal. Now, the Tort Division will delineate in a memorandum the need to hire outside counsel and submit names of three possible contractors for the Attorney General's final decision.

Contracting For Tort Defense Has Decreased, as Has the Number of Cases

Both the number of tort cases opened and those assigned to outside counsel have decreased in the period of time included in this analysis, 1997-2001. As the chart below illustrates, the number of tort cases opened fell from a high of 72 in 1997 to 50 or less in most years since then. By 2001, the number of new cases assigned to outside counsel had fallen to 4, or 8.5 percent of the total cases opened.



Source: LSO Analysis of Attorney General Data

Of the approximately 800 claims against SSIP each year, the risk manager says relatively few involve legal counsel. Most, the state risk manager handles like an insurance adjuster, and either denies or settles. Attorneys become involved when claimants file lawsuits, or when the risk manager thinks a claim might evolve into a lawsuit.

Few tort cases actually go to trial.

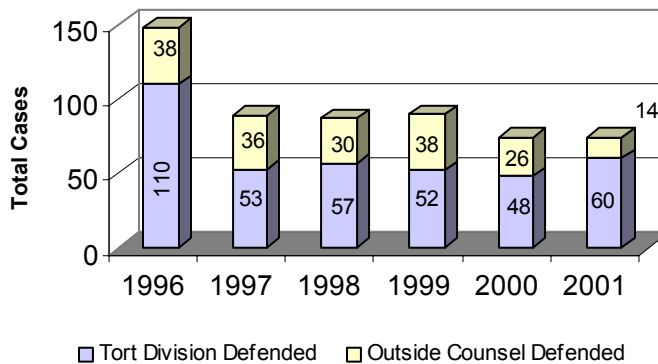
The risk manager also needs the counsel of the Attorney General in order to settle claims for more than \$50,000. W.S. 1-41-106 authorizes the risk manager to settle claims up \$50,000, and up to \$100,000 upon consultation with the Attorney General.² Tort Division and SSIP officials note that few cases actually go to trial: most are settled or dismissed through motions.

Tort Division Attorneys Handle Most Pending Litigation

Litigation cases tend to overlap from year to year. At the end of 1996, the Tort Division had a high number of cases pending at year-end. However, since then, both the numbers of tort cases pending at year-end and the number of those assigned to outside counsel have dropped, as the next chart illustrates.

Since 1996, the number of cases carried over from one year to the next has decreased.

Tort Cases Pending at Year-End



Source: LSO analysis of Attorney General data.

² The Governor must settle claims exceeding this amount, up to the maximum liability limits under the Wyoming Governmental Claims Act. Those are \$250,000 to any claimant for all claims from a single occurrence, or \$500,000 for all claims of all claimants for any number of claims arising out of a single occurrence and \$1 million for negligence of physicians employed by the state.

Suits Brought by Prisoners Generated the Most Contracting

Between 1997 and 2001, suits arising from the claims of persons either arrested or held in jails or prisons dominated the cases for which the Tort Division contracted. The defendants in these cases were either local government law enforcement officers or the Department of Corrections and

its officials and employees. These kinds of cases, according to the Attorney General, often involve multiple defendants, and thus create the need for contract counsel to avoid conflicts.

Contracted Tort Cases, 1997-2001

Issues of 73 Cases Assigned:

- Prisoner Claims: 17
- Excess Force in Arrests: 12
- Employment Issues: 11
- Government Administration: 9
- Jail Conditions: 6
- False Arrest: 4
- Other: 14

Involved Law Enforcement Officers: 31

Number of Contractors: 20

Cases Contracted to Attorneys Located in Cheyenne or Casper: 82%

Source: Attorney General, Tort Division Data

Law enforcement officer cases often involve multiple defendants, and thus require contractors.

From data provided by the Tort Division, the contracting during this period involved 20 different firms or independent attorneys, most located in Cheyenne or Casper. Tort Division officials reported selecting contractors primarily in locations in which there are federal or state courts. Federal courts, located in Cheyenne and Casper, hear cases alleging civil rights violations, such as sexual harassment or excessive force in arrest. Officials also say that tort cases are concentrated in the state's major populations centers, as well as in towns where state institutions are located.

Current Litigation Uses Few Contractors

In late September 2002, the Tort Division reported a total of 61 pending cases: 54 were assigned to in-house attorneys, and 7 to contract attorneys. The seven cases went to outside counsel (five different attorneys) for a variety of reasons. In two cases, in-house attorneys are representing the state, challenging SSIP

coverage of the defendants. Three cases involve law enforcement officers, and one is a medical malpractice case. Most of the cases currently being handled in-house also stem from claims about prison conditions or law enforcement officer actions.

SSIP Costs for Tort Defense Total \$3.4 Million, FY '96-'02

The Attorney General’s tort litigation unit was established to decrease costs for state tort defense. The savings occur because SSIP estimates costs for in-house attorneys at half the rate it pays outside contractors, and also because the in-house group handles approximately double the number of cases that are contracted.

\$2.2 million funded in-house attorneys and \$1.2 million went to contractors.

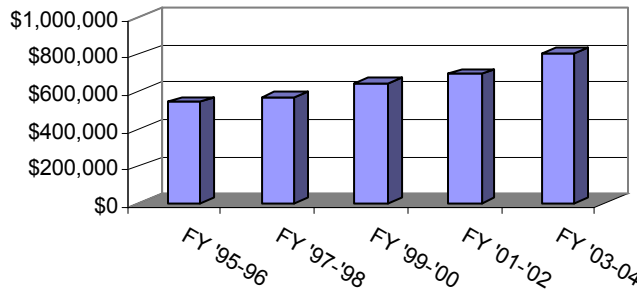
SSIP cost for tort defense totaled \$3.4 million for the period, FY '96-'02. Of this total, approximately two-thirds, \$2.2 million, supported the in-house defense unit in the Tort Division. During the same period, SSIP reports paying approximately \$1.2 million to outside attorneys, in fees and expenses.

In-House Tort Budgets Have Increased

The amount SSIP pays to maintain attorneys in the Attorney General’s Office for tort defense has increased by 48 percent in the last five biennia. In the last biennium, SSIP requested approximately \$800,000 to fund the unit. Over 90 percent of the budget funds personnel, which includes four attorneys and two support positions.

The cost to fund in-house tort defense has increased by 48 percent since FY '95-'96.

SSIP Budget for In-House Tort Defense



Source: State Self Insurance Program Budget Requests, Dept. of A&I

In-house Attorneys Cost and Defend Twice As Much As Outside Contractors

In most of the years reviewed, in-house attorneys handled twice as many cases as contractors.

Funding for in-house attorneys has been roughly double the funding for outside attorneys during the period reviewed for this study. A basic analysis of cases opened during this same period shows that, in most years, in-house attorneys also handled at least twice the number of cases as were assigned to contractors (see page 41). The exception was 1999, when in-house attorneys handled only 1.5 cases to every case that was contracted.

The hourly rate used to calculate in-house attorney costs is half what contractors earn.

For actuarial purposes, SSIP uses a \$45 per hour rate to calculate defense costs for cases handled by the Tort Division attorneys. At current salaries and benefits, the \$45 per hour covers the attorneys' salaries, leaving approximately 31 percent for supervision, administrative support, litigation expenses, and other overhead. This is less than the Office's 40 percent estimate for overhead, and the risk manager indicates that the hourly rate may need adjustment to better reflect actual costs.

State Self Insurance Program tracks legal defense costs to better estimate cost of risk.

In contrast, SSIP contracts for tort defense pay outside attorneys \$90 per hour, up recently from \$85 an hour. SSIP also reimburses contractors for actual expenses, and pays lower amounts to associate attorneys and paralegals. Tort Division officials report having set this rate, and say that there are no statutes or A&I rules that direct or limit it. This flexibility has been valuable in the rare cases where the Tort Deputy has needed to pay more in order to get necessary representation, such as for medical malpractice. Although the \$90 rate has turned away some contractors, officials say there are qualified attorneys who will accept it.

SSIP tracks the hourly-rate cost of legal defense, whether provided in-house or by contract attorneys. It does this to better estimate the cost of risk for insurance purposes, and also because by statute, it shares costs with local governments for defense and settlement to \$10,000 in cases involving law enforcement officers. The in-house tort attorneys have tracked their hours since 1997 for this purpose.

Contract Legal Costs Continue Until Cases Close

Because it operates like an insurance company, SSIP attributes legal as well as settlement costs to the years in which incidents giving rise to claims occur. Since cases for past years are still open, SSIP cannot give final figures for the costs of legal counsel in each year for the period FY '96-'02. Instead, it reported what has been paid to date, in attorney fees and expenses, to contractors. This total is \$1,257,982, distributed among 17 firms.

Attorney General Has Reduced the Number of Attorneys Under General Contract

Many firms and attorneys that formerly held general contracts for state tort defense are no longer positioned to get that work. In the last year, the Attorney General reported sending written notices canceling 28 of these general contracts. The canceled firms were located in 15 different towns throughout the state. The Attorney General winnowed the list of attorneys, eliminating those who had not defended cases for the state and those who put themselves in conflict with the state by suing it. Under the Attorney General's current policy on outside counsel, a conflict by one member of a firm disqualifies the entire firm.

Attorney General's adherence to a strict policy on conflict of interest eliminated some attorneys.

The Attorney General has chosen to maintain open contracts with some attorneys throughout the state so that the Office can respond to suits within the required 20-day filing period. At present, 17 firms or attorneys have active contracts to take tort defense work from the state; 7 of them have active cases and the rest have open, general contracts. Attorneys with active contracts are located in five in-state and two out-of-state cities. All private attorneys now handling cases must comply with the Litigation Management Guidelines, which the Tort Division and SSIP use to actively monitor contracted cases.

Sustained Attorney General Effort Resulted in Less Contracting For Tort Defense

Several factors have come together to reduce contracting for tort defense. The Attorney General realized this long-held goal by putting in place an in-house tort staff with a high level of expertise.

In April 2002, the Tort Deputy put the group's cumulative experience at 80 years. He also noted that the 2001 salary adjustments helped in maintaining a strong in-house staff, and that having the four attorney positions filled was critical.

Attorney General has applied more scrutiny to contracting for tort defense.

Other factors reducing contracting are the steps the Attorney General has taken to make contracting a more scrutinized practice. These include adopting a policy that formalizes the circumstances under which the Office will contract and requires the Attorney General's approval of all contracts. The Attorney General has also instituted a more restrictive conflict of interest policy, and cancelled many general contracts that kept attorneys on "stand-by" for state work.

Recommendation: The Attorney General's Office should maintain the option of contracting for tort defense.

By funding a cadre of experienced tort attorneys in the Attorney General's Office, the state can expect that in-house attorneys will defend most lawsuits brought under the state's Governmental Claims Act or federal civil rights laws. Tort Division attorneys have handled the majority of cases in all the years we reviewed for this study, and the use of contractors has decreased.

Circumstances that create a need for contracting are beyond the Office's control.

However, we learned that circumstances that create a need for the Attorney General to contract for tort defense are largely beyond the Office's control. These include the nature of the suits filed: those with multiple defendants, which have been common, often require contractors to avoid conflicts.

The total number of claims requiring the involvement of counsel is also a factor. We calculated that the number of cases SSIP referred to attorneys decreased by 35 percent between 1997 and 2001, and cases referred to contractors dropped by a similar percentage. There may be a correlation between the two levels, and there is no assurance that the total level of cases will not increase.

There are no assurances that the Office can retain a high level of in-house tort defense expertise.

Further, attorney expertise is a main determinant of the Office's in-house capacity, and there are no assurances that it will remain at its current high level. Tort officials report that with most in-house attorneys carrying 13-15 cases, the group is close to its saturation point. They say tort defense is grueling work and that burn-out has been a problem in the past. The current tort attorneys already receive the highest salary the state offers for non-supervising attorneys, so it will be difficult for the Office to retain those who want higher compensation.

In light of these factors, the Attorney General must balance the commitment to reducing contracting with its responsibility to ensure the state can respond to lawsuits filed against its departments or employees. The Attorney General has implemented policies and procedures to ensure that contracting for tort defense will be a last resort. The winnowed list of preferred contractors limits the Office's ready access to attorneys throughout the state. With such high reliance upon the Office capacity to defend tort cases, the Attorney General will need to carefully monitor tort defense levels to ensure that the state's resources remain adequate.

Conclusion

Bifurcated Funding and Responsibilities Pose Accountability Challenges to the Attorney General

The loosely related topics reviewed in this report (centralization of the Attorney General's Office, how the Office provides legal representation to licensing boards, and its methods of contracting for private counsel in workers' compensation and tort cases) are operational matters that, in most cases, are receiving active management attention from the Office. The few problems we identified do not necessarily share the same causation, nor lend themselves to the same solutions.

Multiple sources of funding and scattered offices do not support overall office centralization.

By allowing agencies to fund their legal representation, the Attorney General and the Legislature together have created a funding arrangement that meets immediate needs. However, multiple sources of funding and scattered officing arrangements do not work to support overall office centralization, a principle that has to do with ensuring a unified and consistent legal position for the state. To address these matters, the Attorney General needs to take steps to ensure that supervision is in place, and that attorneys are not isolated from their supervisors and peers.

Board representation funding mechanism is tenuous.

As to board representation, the Attorney General should document use patterns by board, and present the Legislature with options for meeting expanding demands for legal services. Further, the existing funding system has benefits, but it is a tenuous system for the long term. The Legislature may wish to re-vamp it, based on research and recommendations from the Attorney General's Office.

Because of its authority to contract privately for tort and worker's compensation representation, the Office has a special obligation to monitor contractor performance and account for expenditures. It is clear that the Attorney General must use professional judgment in making decisions, and some legal matters involve confidentiality. Nevertheless, the Office needs to look for more opportunities to inject accountability and

We suggest more analysis of information to guide management decisions and provide accountability.

monitoring in the contracting it does. The Attorney General has stated an intention to develop more policy in managing outside counsel, and we urge him to include equitable compensation for routine contracts when making these adjustments.

In several areas, we suggest better record-keeping systems and more data analysis, to inform management decisions and provide the basis for accountability. In addition, because the volume and complexity of future tort and workers' compensation cases are unknown, we believe it is important for the Office to retain some flexibility to contract for services. This discretion should be exercised under circumstances dictated by the Attorney General's professional judgment.

Dividing responsibility between the Office and agencies weakens overall accountability.

The Attorney General has responsibility for millions more dollars of the state's legal work than is represented in the Office's budget. This includes, as discussed in this report, the assistant attorneys general and contract counsel paid by other agencies. To this point, the Attorney General has focused on managing the legal aspects of this work, and has left the financial accounting to the agencies that pay for it. While this approach accomplishes the central Attorney General responsibility of maintaining consistency in the state's legal position, it does not allow Office managers and state policy makers to monitor costs along with results.

To address this situation, the Attorney General might first investigate whether or not it is feasible to transfer funds into the Office budget so he can have more complete control and oversight over the Office's work. If the complexities of state government budgeting will not allow this, it is essential that the Office and its associated agencies develop systems together, or that one or the other step forward, to provide comprehensive program oversight. Continuing this bifurcated system poses risks to overall accountability.



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November 8, 2002

Honorable Randall Luthi
Wyoming State Representative
Chairman, Management Audit Committee
c/o Wyoming Legislative Service Office
213 State Capitol
Cheyenne, Wyoming 82002

Re: Agency Response to the Confidential Final Draft of a Program Evaluation Report entitled "Attorney General's Office: Assignment of Attorneys and Contracting for Legal Representation," dated October 29, 2002

Dear Chairman Luthi:

Thank you for the opportunity to respond to the program evaluation report (the "Report"). I also thank the LSO program evaluation team for their work. They performed their duties with dispatch and courtesy. The auditors were thoughtful, thorough, and professional.

The Report's commentary and recommendations comport with the steps that this Office has taken since I have been Attorney General. They also reinforce the conclusions and recommendations of another report we requested and received last fall from an independent evaluation team from the Conference of Western Attorneys General (CWAG). I was heartened to see that the two independent evaluators have reached many of the same conclusions I have. This is a well-run and efficient law office, reflecting the dedication and devotion of many of the best lawyers in the State of Wyoming. As with any organization, of course, there is always room for improvement, and we welcome the opportunity to work with the LSO staff, your Committee, and the Legislature to develop solutions to address the Report's recommendations.

Representative Randall Luthi
November 8, 2002

Upon appointment to this Office I began a vigorous effort to build on the efforts and accomplishments of my predecessors. Previous administrations had done much work to improve the law office, including development of manuals to assist agencies in preparing contracts and promulgating rules, and refinement of an office manual on policies and procedures. They had also worked to counter the effects of agency capture and overcome the burdens of an office funded by and housed in many agencies, in addition to the usual general fund resources.

In these past months, we have built upon that previous work and made further strides. In several places in the Report, the team notes that some improvements were underway or implemented during the evaluation period. Indeed, there were many more improvements taking place elsewhere in the law office during that same period, as the preparatory work was completed and the improvements brought into full effect. This necessary work to improve the law office and make our operations more efficient and cost-effective continues every day.

The Report, I believe, will assist this improvement process greatly. I hope it will be read in conjunction with the CWAG report for a fuller understanding of the work that yet needs our attention. However, in the areas of board and commission representation, workers' compensation representation, tort defense representation, and centralization of legal services the Report provides the Committee and the Legislature with a very helpful evaluation.

The Background Chapter. The Report begins with an overview of the entire Office of the Attorney General and notes matters related to the evaluation that exceeded the team's scope of review. The team's summary is accurate, and we agree with it generally. There are a few items, however, that the Committee should note:

ω *Divisional Structure.* The Report notes that the law office is divided organizationally into five divisions: Administrative Law, Civil, Criminal, Tort Litigation, and Water and Natural Resources. There is technically a sixth division B Administration B which is headed by the Chief Deputy Attorney General and is largely the "main office" that provides support to the law office and to the other Office administrative divisions (the Division of Criminal Investigation, the Peace Officer Standards and Training Commission, the Wyoming Law Enforcement Academy, the Division of Victim Services, and the Governor's Planning Council on Developmental Disabilities). I recommend that the Committee consider sponsoring corrective legislation to update the provisions of W.S. 9-1-607(a) to reflect that the Attorney General may appoint a chief deputy and additional deputies as he determines necessary.

ω *Narrow Scope.* The scope of the team’s review was finely drawn. The law office division of this Office is only one part of a much larger law enforcement agency. The Report notes that the law office comprises only 18% of the Office’s budget, although it further notes that this figure does not include assistant attorneys general paid by other agencies, nor those paid from the separate school finance and water litigation budgets. The Report duly notes that its evaluation did not include these other expenditures. One could erroneously conclude that the Report is a “snapshot” of the entire law office. It is not. I know that the Committee understands the necessarily specific scope of the evaluation and the resulting Report, but others should be as aware of this inherent limitation in the Report. As I have noted above, the CWAG report provides a broader picture of the law office’s operations, although even that report is itself limited.

***Chapter 1 B Recommendation:* “The Attorney General should enhance supervision to support a centralized office.”**

I could not agree more. I welcome the opportunity to discuss at length with the Committee and other members of the Legislature how we can improve the law office, particularly by centralizing for greater accountability and efficiency. We expect to continue to work closely with the Department of Administration and Information to consolidate our many physical locations into fewer, and perhaps even one, location. In the next few weeks, the Division of Victim Services will be consolidated with most of the Tort Litigation Division on the first floor of the Herschler Building’s west wing. This effort, as it moves on to include other parts of the Office, will improve operational and supervisory efficiency and minimize the risks of “agency capture.” Of course, these type of moves require adequate funding.

With consolidation will come a greater ability to centralize the law office’s delivery of legal services directed by statute. Many centralizing procedures are already in place. As the Report notes, I have worked to make clear to agencies that this Office must always preserve the supervision and oversight of attorneys paid through their budgets, including the Attorney General’s discretion to allocate other work as necessary to those attorneys. I have reminded the funding agencies that funding does not mean control over the attorney’s work product or time, absent special circumstances such as federal funding. I believe agency directors are now aware that this Office also incurs costs to mentor, supervise, train, house, and provide support services and equipment for attorneys whose salaries and benefits are funded by other agencies. I have also required that all, including agency-funded, attorneys devote a significant part of their time to working in the physical space of the Attorney General’s Office, if such space is available. This encourages the independence that is the hallmark of exemplary legal service and reduces the risk of “agency capture.” This Office has instituted weekly

Representative Randall Luthi
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meetings, as the Report notes, which encourage the collegiality of a private-sector law office and allow us to bring to bear the collective experience of our many seasoned, experienced lawyers to the concerns and problems of our clients. Other such private-sector law office procedures have been implemented.

Just as a private-sector client should expect a wide range of experience from its law firm, our clients deserve the full range of legal expertise of the entire law office to be available to address their legal needs. We look forward to working with the Legislature to further centralize the law office.

Another of the Report's underlying recommendations is to decrease the caseload carried by supervisors so that they can spend more time supervising and mentoring. I agree, but achieving this goal will require additional attorneys to take over the supervisors' caseloads. The process of taking more work in-house and reallocating workloads more evenly throughout the Office, without adding attorneys, has meant that the existing staff has been working at full efficiency and beyond. Many of our attorneys and staff are already regularly working overtime to meet these challenges; this is to be expected from time to time of professionals, but when it become a regular situation, we know the Office eventually will suffer lowered morale and increased turnover.

I asked in the last budget cycle, my first with the Office, for additional staff attorney positions to make the Report's recommendation possible, without success. We have renewed our requests for the additional positions and funding implicitly recommended in the Report. We hope for greater success in the upcoming legislative session.

Chapter 2 B Recommendation: "The Legislature and Attorney General's Office should explore alternatives for funding the boards= legal representation."

Again, I could not agree more. The primary concern is that the existing funding source B one-half of interest accruing on licensing fees B generates too little revenue to fully support the two existing attorney positions. The Report is correct in concluding that something must be done, and we welcome a dialogue to finding a solution. As the Report notes, the solution will likely require statutory changes. We would be happy to work with LSO staff to craft appropriate legislation.

I do note, however, that the alternatives suggested in the Report are ones that we have considered and found lacking, for the same reasons noted in the Report, i.e., allowing well-funded licensing boards to contract for outside counsel through this Office or independently, legislation to increase this Office's 50% portion of the interest earned on licensing fees, leg-

Representative Randall Luthi
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islation to divert other revenue streams to increase funding of board representation, legislation to institute an “enterprise model,” and legislation to return all licensing fees to the general fund and fully fund their representation needs entirely from the general fund. I continue to believe that there is a solution that is workable and can be met reasonably. This Office is ready to lend any assistance to further these essential goals.

In addition, some aspects of the Report have become dated. For example, since April 2002, the prosecution function for licensing boards has been transferred to the Personnel Section of the Tort Litigation Division. Two attorneys in the Personnel Section, including the section supervisor, will be cross-training to handle prosecutions of licensing board disciplinary matters and spread this work among more than one attorney. The licensing board attorney who was previously assigned exclusively to prosecute these matters will in turn assume some responsibility for personnel matters. All attorneys handling contested licensing cases have kept detailed time records since April, broken down by licensing board served and by case or matter. These records are kept in a database to permit flexibility in analyzing and reporting the data. A similar time-keeping database has been developed for the attorney in the Civil Division who handles the day-to-day advisory function for the licensing boards. In all, the Office is already well along the road to implementing the recommendations from the Report. We expect that, as the information in the timekeeping databases grows, we will be better able to effect the longer-term recommendation to analyze usage of law office resources on a board-by-board basis.

Chapter 4 B Recommendation: “The Attorney General should maintain the option of contracting for tort defense.”

I agree wholeheartedly with the Report’s recommendation. I ask the Committee’s indulgence, however, to address the recommendation in Chapter 4 before I address the recommendation in Chapter 3.

This Office has worked very hard over the past several years to improve the efficiency and accountability of the tort defense aspects of the law office. As with any substantial improvements, they can work only when given time to develop and become part of the working environment. The successful strategies developed for this practice area are now being applied to the workers’ compensation practice.

I agree with the Report’s evaluation of the tort defense practice area. We know that there is a great benefit that accrues from developing, training, and retaining an experienced, seasoned staff of tort defense lawyers. The Report correctly concludes that expertise is the key to our ability to minimize the need for contract attorneys, and that expertise translates

Representative Randall Luthi
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directly into the ability to do more work for less cost to the State. The times when turnover and illness were highest were also the times when the Office's need to turn to contract attorneys was the greatest.

The Report concludes that our existing tort defense staff is reaching the burn-out point, working "close to its saturation point." The recent market pay increase of salaries has gone a long way to reduce our turnover, just as that legislative initiative was in part designed to do. The tort defense practice area is not unique in the Office on this count; the Criminal Division has carried an increasingly heavily burden of appellate cases, which the Chief Deputy and I have worked diligently to reduce, both by workload reallocations to other attorneys in the law office and by very selective and temporary use of contract attorneys. In fact, this experience with the Criminal Division reflects the law office's ability to implement precisely what the Report recommends B strategic use of contract attorneys on a limited basis to address temporary workload issues.

As the Report recommends, the Office has taken huge steps to restrict use of contract attorneys to the barest minimum. If current conditions hold (low turnover, competitive salaries, no upsurge in federal-law based claims, etc.), then the current usage of contract attorneys should be sustainable at a 10% or so threshold. Of course, as the Report notes, circumstances directing increased need for contract attorneys are largely outside the Office's control.

Chapter 3 B Recommendation: "The Attorney General should continue to develop oversight systems and gather performance data on Workers' Compensation contracting."

I agree with the Report's recommendation. As in the other Report recommendations, we have been working for some time to address the same concerns as those identified in the Report. An audit report is of necessity a static document, and cannot account for changes which were beginning to occur and continue to occur in this Office as pertains to Workers' Compensation.

In responding to the recommendation in Chapter 4 of the Report, I noted our success in reducing, to historically low levels, usage of contract attorneys for tort defense. I discussed our tort defense practice area first, because it highlights the approaches we have used successfully and are now applying to the workers' compensation practice area. We have seen steady improvement in the tort defense practice area because we have been working on it for some time. Improvement in the workers' compensation practice area has only just begun,

and improvements will take some time to begin to bear fruit. Our time line, however, should be much shorter, as we draw upon experience gained from the tort defense practice area.

Six of the nine workers' compensation representation contracts have been or are being renegotiated under a new contract form, and the remaining three will be replaced with new firms under the new contract form. As the Report recommends, the new contract specifies an hourly fee schedule and requires the attorneys to report their time monthly in a standardized format to the Office and to the Workers' Compensation Division of the Department of Employment.

The contracts also require adherence to new billing and reporting guidelines. The guidelines require the attorneys to provide, to the Workers' Compensation Division and to this Office, disclosure statements describing the issues and, when applicable, identifying witnesses and exhibits proposed to be called or used at the hearing. The guidelines also establish new thresholds for pre-approval of certain expenditures, adding to the Office's ability to oversee and account for the cost of these contract attorneys.

In some instances, our work in this area predates the team's evaluations. Before we could properly reduce the number of open or dormant contracts, we first had to inventory them. We also developed office-wide databases of all contract attorneys and of all attorneys representing clients actively suing the State. It would be imprudent to enter into workers' compensation representation contracts (or any others) with firms that were already representing clients suing the State in other matters. Developing the information into a usable form took several months, a process that began last summer and continued into the winter. After completing this process, we determined to terminate some contracts when our new data-matching process disclosed conflicts of interest, ending the unseemly situation of paying a firm to help us while at the same time it was suing the State on behalf of another client.

After many months of preparation, we have begun actively implementing these changes. We will maintain the high quality of service we have contracted for in the past and also regularize the compensation system to one that is more equitable and lends itself to greater oversight. This has been and will continue to be a dynamic process that will increase the information base available to us and the Workers' Compensation Division. Firms serving under the new contracts will know both the standards and expectations by which their performance will be judged, and we will be better able to effectively oversee and supervise their efforts for greatest benefit to the State. As information from these changes develops, we will be periodically reevaluating the benefits of maintaining contracts with each firm and gaining the ability to better predict workers' compensation defense costs.

Representative Randall Luthi
November 8, 2002

Conclusion: “Bifurcated Funding and Responsibilities Pose Accountability Challenges to the Attorney General.”

We agree. The Report offers several suggestions to remedy this situation, and I look forward to talking with the Committee on strategies for accomplishing them.

I have been encouraged by the care and consideration taken by the LSO program evaluation team in researching and delivering its Report. I agree generally with all of its recommendations, and I am eager to begin the discussion to realize some or all of the recommendations.

The Office has already undertaken much of the hard work to getting there, but where funding and creation of positions is needed, our efforts alone have not proven to be enough. This has led the Office to the point where over one-third of the attorneys are on the budgets of agencies that have historically had greater success with the budget process than has this Office.

The burden of providing legal services will only get heavier. Most new statutes, whether state or federal, add increasing responsibilities on our state agencies, board, and commissions. State statutes that require contested case hearings or add parties to litigation increase the number, length, and complexity of the resulting litigation. As the legal demands increase upon State government, so do the demands on the Office of the Attorney General, which must advise and represent the numerous agencies, boards and commissions, county and district attorneys, elected state officials, and the legislature. Creation of new boards and commissions and addition of new programs to existing agencies add greater burdens on the system. Funding for the new laws is usually provided for in the legislation, but the hidden costs of additional space requirements and additional legal needs are almost never considered. Five years ago, the Wyoming Statutes contained about 160 provisions expressly requiring the services of the Attorney General's Office; today, the Report numbers them at nearly 300.

The mechanism for funding attorneys to meet these increased challenges has required the assistance of other agencies. But for that aid, this Office would be even less able to meet the State's legal needs in-house. That other agencies have been successful in garnering the needed funding and positions indicates a legislative desire to fund legal needs in context of agency needs.

The better course is to place those positions and funding where it properly belongs, in the agency charged with supervising, mentoring, and training the State lawyers. I agree with

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the courses and alternatives suggested by the Report to achieve the overall goal of increasing accuracy in budgeting and accounting for the legal needs of the State.

We stand ready to work with the Committee, the LSO staff, and the Legislature to bring these goals to fruition. Thank you for your consideration.

Sincerely,

Hoke MacMillan
Attorney General

APPENDIX A

Selected Statutes

Included Statutes

Attorney General Statutes (<i>excerpts</i>)	A-2
Statute Mandating Attorney General Review of Contracts	A-5
Statute Mandating Attorney General Representation of Workers' Compensation	A-5
Wyoming Administrative Procedure Act (<i>excerpts</i>)	A-6
Title33: Board Legal Representation Funding Mechanism	A-8
Wyoming Governmental Claims Act (<i>excerpts</i>)	A-9
State Self Insurance Program (<i>excerpts from authorizing statutes</i>)	A-14
Statutes Authorizing Non-Competitive Contracting for Professional Services	A-18
42 U.S.C. Section 1983, Civil Action for Deprivation of Rights	A-19

Attorney General Statutes, W.S. 9-1-601 - 9-1-638 (excerpts)**9-1-601. Appointment; term; removal; special assistant for legislative affairs; qualifications.**

(a) The attorney general of the state of Wyoming shall be appointed by the governor with the advice and consent of the senate in accordance with W.S. 28-12-101 through 28-12-103 and may be removed by the governor as provided in W.S. 9-1-202.

(b) If a newly elected governor appoints an attorney general to take office prior to or during the legislative session next following the governor's election, the newly appointed attorney general designee shall become a member of the attorney general's staff to serve as a special assistant to the governor for legislative affairs. When the legislative session adjourns the attorney general's term of office shall terminate.

(c) Prior to his appointment, the attorney general shall have been a practicing attorney for at least four (4) years. At the date of appointment, he shall be in good standing in the courts of record of this state and shall be a resident and elector of the state.

9-1-602. Vacancy in office.

In case of a vacancy in the office of attorney general the governor shall appoint a qualified person to fill the vacancy in accordance with the provisions of W.S. 28-12-101(b).

9-1-603. Duties generally; retention of qualified practicing attorneys; matters in which county or state is party or has interest; assistance to county and district attorneys in felony trials.

(a) The attorney general shall:

(i) Prosecute and defend all suits instituted by or against the state of Wyoming, the prosecution and defense of which is not otherwise provided for by law;

(ii) Represent the state in criminal cases in the supreme court;

(iii) Defend suits brought against state officers in their official relations, except suits brought against them by the state;

(iv) Represent the state in suits, actions or claims in which the state is interested in either the Wyoming supreme court or any United States court;

(v) Be the legal adviser of all elective and appointive state officers and of the county and district attorneys of the state;

(vi) When requested, give written opinions upon questions submitted to him by elective and appointive state officers and by either branch of the legislature, when in session;

(vii) Effective July 1, 2000, serve as the designated agency to administer the governor's planning council on developmental disabilities. A memorandum of understanding shall be executed by and between the designated agency and the

governor's planning council, which shall incorporate the provisions of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6024.

(b) With the approval of the governor the attorney general may retain qualified practicing attorneys to prosecute fee-generating suits for the state if expertise in a particular field is desirable.

(c) Upon the failure or refusal of any district or county attorney to act in any criminal or civil case or matter in which the county, state or any agency thereof is a party, or has an interest, the attorney general may, at the request of the board of county commissioners of the county involved or of the district judge of the judicial district involved, act on behalf of the county, state or any agency thereof, if after a thorough investigation the action is deemed advisable by the attorney general. The cost of investigation and the cost of any prosecution arising therefrom shall be paid out of the general fund of the county where the investigation and prosecution take place. The attorney general shall also, upon direction of the governor, investigate any matter in any county of the state in which the county, state or any agency thereof may be interested. After investigation, the attorney general shall submit a report of the investigation to the governor and to the district or county attorney of each county involved and may take such other action as he deems appropriate.

(d) When requested by a county or district attorney, the attorney general may assign a member of his staff who is experienced in trial work and in the prosecution of criminal cases to assist in the prosecution of a felony.

9-1-604. Office in state capitol building; private practice prohibited; exception.

The attorney general shall keep an office in the state capitol building, shall not open an office elsewhere and shall not engage in any private practice except to consummate business pending at the time of his appointment if not in conflict with the duties of his office.

9-1-605. Approval of public securities and official bonds; water rights proceedings; investigation of misconduct of county official; report to governor; commencement of action.

(a) The attorney general shall examine, pass upon and approve:

- (i) Public securities before permanent funds of the state are invested in them;
- (ii) Official bonds executed by state officers.

(b) Under the direction of the governor the attorney general shall institute and pursue proceedings to maintain the state's and its citizens' rights in the waters of interstate streams.

(c) Upon representation to the governor of misconduct or malfeasance in office or the commission of a crime by any county officer in the state and if the governor believes the ends of justice demand or the matter will not be properly investigated and prosecuted by the sheriff and by the district attorney of the county, the governor may direct the attorney general to investigate the case.

(d) Upon completion of the investigation, the attorney general shall report the results of the investigation and his recommendations to the governor. If the governor and the attorney general determine that the attorney general should institute a criminal or civil action, the attorney general shall commence the action. The attorney general shall have the authority and duty vested in district attorneys in this state.

9-1-606. "State official"; defense thereof in civil suit; reimbursement of state.

(a) For the purposes of this section, "state official" means the head of any state agency or an elected state executive official.

(b) When any state official is sued for an official act in a civil lawsuit not involving a tort action governed by W.S. 1-39-104, the attorney general shall provide defense counsel from the attorney general's office or by contracting with private counsel at state expense.

(c) If the judgment in the lawsuit finds the state official was acting outside the scope of his employment, the state official shall reimburse the state for all expenditures made in his defense.

(d) This section shall not be construed to limit the right or obligation of the state to defend any state employee.

9-1-607. Deputy attorneys general; appointment; qualifications; term; duties; certificate of appointment and oath of office.

(a) The attorney general may appoint two (2) deputies, one (1) for civil affairs and one (1) for criminal affairs. Each deputy shall be a member of the Wyoming bar in good standing and shall serve at the pleasure of the attorney general. Each deputy shall have the qualifications and perform the duties required by the attorney general.

(b) When a deputy is appointed the attorney general shall file in the office of the secretary of state a certificate of appointment and the official oath of office of the deputy. The deputy shall not perform any official act until the certificate has been filed.

9-1-608. Assistant attorneys general.

(a) With the approval of the governor, the attorney general may appoint assistant attorneys general necessary for the efficient operation of his office. Each assistant attorney general shall be a member in good standing of the Wyoming bar and shall serve at the pleasure of the attorney general. The assistants shall act under the direction of the attorney general and his deputies. The attorney general, his deputies or his assistants may appear in any courts of the state or the United States and prosecute or defend on behalf of the state. An appearance by the attorney general or his staff does not waive the sovereign immunity of the state.

(b) With the approval of the governor the attorney general may appoint special assistant attorneys general for any purposes. A person shall not be employed as an attorney or legal counsel by any department, board, agency, commission or institution of the state, or represent the state in that capacity, except by the written appointment of the attorney general.

(c) At the request of any state department, board, agency, commission or institution, the attorney general may assign special assistant attorneys general to the department, board, agency, commission or institution.

9-1-609. Salary of deputy attorneys general.

The deputy attorneys general shall receive an annual salary determined by the personnel division.

9-1-610. Administrative and clerical personnel.

Subject to the rules of the personnel division, the attorney general may employ administrative and clerical personnel necessary for the efficient operation of his office.

Statute Mandating Attorney General Review of Contracts

9-1-403. State auditor; duties; prohibited acts; powers; investigative subpoenas.

(b) The state auditor shall not draw warrants:

(v) For payment on a contract for professional consultant or other services unless the agency has certified that the contract for the services has been reduced to writing before the services are performed, and that the contract is in compliance with procedures of the attorney general, is approved by the attorney general, and is filed with and approved by the department of administration and information. For payment on a contract for professional or other services entered into by the department of transportation, filing of the contract with and approval by the department of administration and information and approval by the attorney general is not required, however the attorney general shall first review the contract if the contract is over twenty thousand dollars (\$20,000.00);

**Statute Mandating Attorney General Representation of
Workers' Safety and Compensation Division**

27-14-602. Contested cases generally.

(a) A hearing examiner designated by the office of administrative hearings created by W.S. 9-2-2201 shall conduct contested cases under this act in accordance with this section.

(b) Upon receipt of a request for hearing from the division as provided in W.S. 27-14-601(k)(v), the case shall be determined by a hearing examiner in accordance with the law in effect at the time of the injury as a small claims hearing or as a contested case hearing subject to the following:

(ii) All other requests for hearing not specified under paragraph (b)(i) of this section shall be conducted as a contested case in accordance with procedures of the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure as applicable under rules of the office of administrative hearings. The hearing examiner designated by the office

of administrative hearings shall render a decision in a contested case within thirty (30) days after the close of the record. If the contested case is heard by the hearing panel created pursuant to W.S. 27-14-616(b)(iv), the panel shall render a decision within forty-five (45) days after the close of the record;

(iii) Appeals may be taken from the decision rendered in any small claims hearing or contested case hearing by any affected party to the district court as provided by the Wyoming Administrative Procedure Act;

(iv) Hearings under this section shall be held at a location mutually convenient to the parties, as determined by the hearing officer. If the injury occurs at a location outside Wyoming, the hearing shall be held in the county in which the employer's principal place of business is located, unless the hearing officer determines a different location is more convenient to the parties;

(v) Any hearing conducted pursuant to this section involving multiple sites may be conducted through audio or video conferencing at the discretion of the hearing officer or hearing panel.

(c) All written reports, claims and other documents filed with the division shall be considered as pleadings in the case. The attorney general's office shall represent the division in all contested cases. The hearing examiner has exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable under this act. Except as otherwise specified in this subsection, all court costs shall be paid from the worker's compensation account if the judgment is in favor of the employer or the division. If judgment is against the employer and the employer contested the claim without being joined in the contest by the division, the court costs shall be paid by the employer. When the employer or division prevails, the court costs shall not affect the employer's experience rating. If judgment is against a health care provider, the court costs shall be paid by the health care provider.

Wyoming Administrative Procedure Act, W.S. 16-3-101 - 16-3-115 (excerpts)

16-3-101. Short title; definitions.

(a) This act may be cited as the "Wyoming Administrative Procedure Act".

(b) As used in this act:

(i) "Agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, a county, city or town or other political subdivision of the state, except the governing body of a city or town, the state legislature, the University of Wyoming and the judiciary;

(ii) "Contested case" means a proceeding including but not restricted to ratemaking, price fixing and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but excludes designations under W.S. 9-2-1022(h)(i);

(iii) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(iv) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;

(v) "Local agency" means any agency with responsibilities limited to less than statewide jurisdiction, except the governing body of a city or town;

(vi) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party;

(vii) "Person" means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency;

(viii) "Registrar of rules" for state agency rules means the secretary of state. "Registrar of rules" for local agency rules means the county clerk of the county in which the rule is to be effective;

(ix) "Rule" means each agency statement of general applicability that implements, interprets and prescribes law, policy or ordinances of cities and towns, or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(B) Rulings issued pursuant to W.S. 16-3-106; or

(C) Intraagency memoranda; or

(D) Agency decisions and findings in contested cases; or

(E) Rules concerning the use of public roads or facilities which are indicated to the public by means of signs and signals; [or]

(F) Ordinances of cities and towns; [or]

(G) Designations under W.S. 9-2-1022(h)(i).

(x) "State agency" means any agency with statewide responsibilities;

(xi) "This act" means W.S. 16-3-101 through 16-3-115.

16-3-102. General rulemaking requirements; assistance of attorney general.

- (a) In addition to other rulemaking requirements imposed by law, each agency shall:
- (i) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available in connection with contested cases;
 - (ii) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;
 - (iii) Make available for public inspection all final orders, decisions and opinions.
- (c) In formulating rules of practice as required by this section, each agency may request the assistance of the attorney general and upon request the attorney general shall assist the agency or agencies in the preparation of rules of practice.

16-3-103. Adoption, amendment and repeal of rules; notice; hearing; emergency rules; proceedings to contest; review and approval by governor.

- (a) Prior to an agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy, the agency shall:
- (i) Give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency for advanced notice of its rulemaking proceedings and to the attorney general, the secretary of state's office as registrar of rules, and the legislative service office if a state agency. The agency shall submit a copy of the proposed rules, in a format conforming to any requirements prescribed pursuant to subsection (f) of this section, with the notice given to the legislative service office. The notice shall include:

16-3-112. Contested cases; presiding officers; qualifications; powers; outside personnel; hearing officers.

- (c) In all contested cases to the extent that it is necessary in order to obtain compliance with W.S. 16-3-111 the agency (excepting county and municipal agencies and political subdivisions on the county and local level) may request the office of the attorney general to furnish to the agency such personnel as may be necessary in order for the agency to properly investigate, prepare, present and prosecute the contested case before the agency. The attorney general upon the receipt of the request shall promptly comply with same with no charge being made against the requesting agency's appropriation other than for travel and per diem expenses.

Title 33: Board Legal Representation Funding Mechanism Statute**33-1-201. Fees generally.**

- (a) Except as otherwise specifically provided by statute, a board or commission authorized to establish examination, inspection, permit or license fees for any profession or occupation regulated under this title or under title 23 shall establish those fees in accordance with the following:

(i) Fees shall be established by rule or regulation promulgated in accordance with the Wyoming Administrative Procedure Act;

(ii) Fees shall be established in an amount to ensure that, to the extent practicable, the total revenue generated from the fees collected approximates, but does not exceed, the direct and indirect costs of administering the regulatory provisions required for the profession or occupation under this title;

(iii) The board or commission shall maintain records sufficient to support the fees charged.

33-1-202. Disposition of fees and interest.

(a) Except as otherwise specifically provided by statute:

(i) All fees and monies received and collected by the boards or commissions under this title and under W.S. 11-25-105(d), 21-2-802(d) and 23-2-414(d) shall be deposited into the state treasury and credited to each board's or commission's respective account as created by statute;

(ii) The interest on all fees and monies collected by the boards or commissions under this title and under W.S. 11-25-105(d), 21-2-802(d) and 23-2-414(d) shall be credited as follows:

(A) An amount equal to the first fifty percent (50%) of the interest earned from the previous year shall be deposited into an account within the enterprise fund to be used to fund legal services provided to the boards and commissions by the attorney general; and

(B) The remainder of the interest shall be deposited in each board's or commission's respective account as created by statute.

Wyoming Government Claims Act, W.S. 1-39-101 - 1-39-121 (excerpts)

1-39-101. Short title.

This act shall be known and cited as the "Wyoming Governmental Claims Act".

1-39-102. Purpose.

(a) The Wyoming legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the doctrine of governmental immunity and is cognizant of the Wyoming Supreme Court decision of *Oroz v. Board of County Commissioners* 575 P. 2d 1155 (1978). It is further recognized that the state and its political subdivisions as trustees of public revenues are constituted to serve the inhabitants of the state of Wyoming and furnish certain services not available through private parties and, in the case of the state, state revenues may only be expended upon legislative appropriation. This act is adopted by the legislature to balance the respective equities between persons injured by governmental actions and the taxpayers of the state of Wyoming whose revenues are utilized by governmental entities on

behalf of those taxpayers. This act is intended to retain any common law defenses which a defendant may have by virtue of decisions from this or other jurisdictions.

(b) In the case of the state, this act abolishes all judicially created categories such as "governmental" or "proprietary" functions and "discretionary" or "ministerial" acts previously used by the courts to determine immunity or liability. This act does not impose nor allow the imposition of strict liability for acts of governmental entities or public employees.

1-39-103. Definitions.

(a) As used in this act:

(i) "Governmental entity" means the state, University of Wyoming or any local government;

(ii) "Local government" means cities and towns, counties, school districts, joint powers boards, airport boards, public corporations, community college districts, special districts and their governing bodies, all political subdivisions of the state, and their agencies, instrumentalities and institutions;

(iii) "Peace officer" means as defined by W.S. 7-2-101, but does not include those officers defined by W.S. 7-2-101(a)(iv)(K);

(iv) "Public employee":

(A) Means any officer, employee or servant of a governmental entity, including elected or appointed officials, peace officers and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(B) Does not include an independent contractor, except as provided in subparagraph (C) of this paragraph, or a judicial officer exercising the authority vested in him;

(C) Includes contract physicians in the course of providing contract services for state institutions;

(D) Includes individuals engaged in search and rescue operations under the coordination of a county sheriff pursuant to W.S. 18-3-609(a)(iii) and the provisions of W.S. 1-39-112 shall apply for purposes of damages resulting from bodily injury, wrongful death or property damage caused by their negligence while acting within the scope of their duties;

(E) Includes any volunteer physician providing medical services under W.S. 9-2-103(a)(iii).

(v) "Scope of duties" means performing any duties which a governmental entity requests, requires or authorizes a public employee to perform regardless of the time and place of performance; and

(vi) "State" or "state agency" means the state of Wyoming or any of its branches, agencies, departments, boards, instrumentalities or institutions;

(vii) "Year 2000 date change" means the change from calendar year 1999 AD to 2000 AD and associated date computations including the proper recognition of the year 2000 as a leap year;

(viii) "This act" means W.S. 1-39-101 through 1-39-121.

1-39-104. Granting immunity from tort liability; liability on contracts; exceptions.

(a) A governmental entity and its public employees while acting within the scope of duties are granted immunity from liability for any tort except as provided by W.S. 1-39-105 through 1-39-112 and limited by W.S. 1-39-121. Any immunity in actions based on a contract entered into by a governmental entity is waived except to the extent provided by the contract if the contract was within the powers granted to the entity and was properly executed and except as provided in W.S. 1-39-121. The claims procedures of W.S. 1-39-113 apply to contractual claims against governmental entities.

(b) When liability is alleged against any public employee, if the governmental entity determines he was acting within the scope of his duty, whether or not alleged to have been committed maliciously or fraudulently, the governmental entity shall provide a defense at its expense.

(c) A governmental entity shall assume and pay a judgment entered under this act against any of its public employees, provided:

(i) The act or omission upon which the claim is based has been determined by a court or jury to be within the public employee's scope of duties;

(ii) The payment for the judgment shall not exceed the limits provided by W.S. 1-39-118; and

(iii) All appropriate appeals from the judgment have been exhausted or the time has expired when appeals may be taken.

(d) A governmental entity shall assume and pay settlements of claims under this act against its public employees in accordance with W.S. 1-39-115, 1-41-106 or 1-42-107.

1-39-105. Liability; operation of motor vehicles, aircraft and watercraft.

1-39-106. Liability; buildings, recreation areas and public parks.

1-39-107. Liability; airports.

1-39-108. Liability; public utilities.

1-39-109. Liability; medical facilities.

A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any public hospital or in providing public outpatient health care.

1-39-110. Liability; health care providers.

(a) A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of health care providers who are employees of the governmental entity, including contract physicians who are providing a service for state institutions, while acting within the scope of their duties.

(b) Notwithstanding W.S. 1-39-118(a), for claims under this section against a physician employed by the state of Wyoming based upon an act, error or omission occurring on or after May 1, 1988, the liability of the state shall not exceed the sum of one million dollars (\$1,000,000.00) to any claimant for any number of claims arising out of a single transaction or occurrence nor exceed the sum of one million dollars (\$1,000,000.00) for all claims of all claimants arising out of a single transaction or occurrence.

1-39-111. Repealed by Laws 1986, ch. 89, § 3.

1-39-112. Liability; peace officers.

A governmental entity is liable for damages resulting from tortious conduct of peace officers while acting within the scope of their duties.

1-39-113. Claims procedure.

(a) No action shall be brought under this act against a governmental entity unless the claim upon which the action is based is presented to the entity as an itemized statement in writing within two (2) years of the date of the alleged act, error or omission, except that a cause of action may be instituted not more than two (2) years after discovery of the alleged act, error or omission, if the claimant can establish that the alleged act, error or omission was:

(i) Not reasonably discoverable within a two (2) year period; or

(ii) The claimant failed to discover the alleged act, error or omission within the two (2) year period despite the exercise of due diligence.

(b) The claim shall state:

(i) The time, place and circumstances of the alleged loss or injury including the name of the public employee involved, if known;

(ii) The name, address and residence of the claimant and his representative or attorney, if any; and

(iii) The amount of compensation or other relief demanded.

(c) All claims against the state shall be presented to the general services division of the department of administration and information. Claims against any other governmental entity

shall be filed at the business office of that entity. In the case of claims against local governments the claim submitted need not be acted upon by the entity prior to suit.

1-39-114. Statute of limitations.

Except as otherwise provided, actions against a governmental entity or a public employee acting within the scope of his duties for torts occurring after June 30, 1979 which are subject to this act shall be forever barred unless commenced within one (1) year after the date the claim is filed pursuant to W.S. 1-39-113. In the case of a minor seven (7) years of age or younger, actions against a governmental entity or public employee acting within the scope of his duties for torts occurring after June 30, 1979 which are subject to this act are forever barred unless commenced within two (2) years after occurrence or until his eighth birthday, whichever period is greater. In no case shall the statute of limitations provided in this section be longer than any other applicable statute of limitations. In the absence of applicable insurance coverage, if the claim was properly filed, the statute shall be tolled forty-five (45) days after a decision by the entity, if the decision was not made and mailed to the claimant within the statutory time limitation otherwise provided herein.

1-39-117. Jurisdiction; appeals; venue; trial by jury; liability insurance.

(a) Original and exclusive jurisdiction for any claim under this act shall be in the district courts of Wyoming. Appeals may be taken as provided by law.

(b) Venue for any claim against the state or its public employees pursuant to this act shall be in the county in which the public employee resides or the cause of action arose or in Laramie county. Venue for all other claims pursuant to this act shall be in the county in which the defendant resides or in which the principal office of the governmental entity is located.

(c) The right to a trial by jury is preserved.

(d) If a governmental entity has elected to purchase liability insurance under this act, the court, in a trial without a jury, may be advised of the insurance.

1-39-118. Maximum liability; insurance authorized.

(a) Except as provided in subsection (b) of this section, in any action under this act, the liability of the governmental entity, including a public employee while acting within the scope of his duties, shall not exceed:

(i) The sum of two hundred fifty thousand dollars (\$250,000.00) to any claimant for any number of claims arising out of a single transaction or occurrence; or

(ii) The sum of five hundred thousand dollars (\$500,000.00) for all claims of all claimants arising out of a single transaction or occurrence.

State Self Insurance Program, W.S. 1-41-101 - 1-41-111
(excerpts from authorizing statutes)

1-41-101. Legislative findings and intent.

The legislature recognizes that certain liability insurance policies of the state of Wyoming have been cancelled, that no responsive bids have been received and that there exists a need to develop a method to handle claims brought under the Wyoming Governmental Claims Act and arising under federal law. The legislature declares that the appropriate remedy is to create an account for self-insurance of the state and to provide for a loss prevention program. It is the intent of the legislature that the self-insurance account shall be operated on an actuarially sound basis. The legislature further declares that its intent is that the availability of commercial liability insurance coverage shall be explored considering the possibility that the insurance industry can provide coverage in the future that is less expensive than the costs of providing a loss prevention program and paying for claims out of the self-insurance account.

1-41-102. Definitions.

(a) As used in this act:

(i) "Division" means the general services division of the department of administration and information;

(ii) "Final money judgment" means any judgment for monetary damages after all appropriate appeals from the judgment have been exhausted or after the time has expired when appeals may be taken;

(iii) "Local government" means as defined by W.S. 1-39-103(a)(ii);

(iv) "Peace officer" means as defined by W.S. 7-2-101, but does not include those officers defined by W.S. 7-2-101(a)(iv)(K);

(v) "Public employee" means any officer, employee or servant of the state, provided the term:

(A) Includes elected or appointed officials, peace officers and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation, including volunteer physicians providing medical services under W.S. 9-2-103(a)(iii);

(B) Does not include:

(I) An independent contractor except as provided in subparagraph (C) of this paragraph;

(II) A judicial officer exercising the authority vested in him; or

(III) Any local government employees or officials including county and prosecuting attorneys.

(C) Includes contract physicians in the course of providing contract services for state institutions.

(vi) "Risk manager" means the manager of the risk management section of the general services division of the department of administration and information;

(vii) "Scope of duties" means performing any duties which the state requests, requires or authorizes a public employee to perform, or which the University of Wyoming or a local government requests, requires or authorizes a peace officer to perform, regardless of the time and place of performance;

(viii) "State" or "state agency" means the state of Wyoming or any of its branches, agencies, departments, boards, instrumentalities or institutions but does not include the University of Wyoming except as provided by W.S. 1-41-110(b);

(ix) "Self-insurance account" or "account" means the account created by W.S. 1-41-103;

(x) "This act" means W.S. 1-41-101 through 1-41-111.

1-41-103. Self-insurance account; creation; authorized payments.

(a) There is created the state self-insurance account within the earmarked revenue fund. The account shall be in such amount as the legislature determines to be reasonably sufficient to meet anticipated claims. In addition to any legislative appropriation, the account shall include all authorized transfers of monies to the account, all income from investments of monies in the account and payments by insurance or reinsurance companies. The account may be divided into subaccounts for purposes of administrative management. Appropriations to the account shall not lapse at the end of any fiscal period.

(b) The self-insurance account shall maintain sufficient reserves for incurred but unpaid claims as well as incurred but unreported claims.

(c) Expenditures shall be made out of the self-insurance account for the following claims which have been settled or reduced to final judgment:

(i) Claims brought against the state or its public employees under the Wyoming Governmental Claims Act, provided any amount up to two thousand five hundred dollars (\$2,500.00) paid for or in defense of each claim involving an automobile, physical damage, a settlement or adverse judgment shall be reimbursed to the self-insurance account by the state agency, from its existing budget, against which the claim is brought or which employs the public employee against whom the claim is brought;

(ii) Claims against the state or its public employees, or a state judicial officer exercising the authority vested in him, arising under 42 U.S.C. 1983 or other federal statutes, which the state has obligated itself to pay under subsection (e) of this section, provided any amount up to two thousand five hundred dollars (\$2,500.00) paid for or in defense of each claim resulting in settlement or adverse judgment shall be reimbursed to the self-insurance

account by the state agency, from its existing budget, against which the claim is brought or which employs the public employee against whom the claim is brought;

(iii) Claims against a peace officer employed by the Wyoming state board of outfitters and professional guides, the University of Wyoming or a local government brought under the Wyoming Governmental Claims Act, provided:

(A) The act or omission upon which the claim is based has been determined by a court or jury to be within the peace officer's scope of duties;

(B) The indemnification for the judgment shall not exceed the limits provided by W.S. 1-39-118; and

(C) Any amount up to twenty thousand dollars (\$20,000.00) paid for or in defense of each claim shall be paid on a dollar for dollar matching basis from the fund and from the University of Wyoming or the local government employing the peace officers; and

(D) Any amount up to twenty thousand dollars (\$20,000.00) paid for or in defense of each claim against a peace officer employed by the Wyoming state board of outfitters and professional guides shall be paid by the board.

(iv) Claims against a peace officer employed by the Wyoming state board of outfitters and professional guides, the University of Wyoming or a local government arising under 42 U.S.C. 1983 or other federal statutes, provided:

(A) Any amount up to twenty thousand dollars (\$20,000.00) paid from the account for or in defense of each claim shall be paid on a dollar for dollar matching basis from the fund and from the University of Wyoming or the local government employing the peace officer;

(B) Any amount up to twenty thousand dollars (\$20,000.00) paid for or in defense of each claim against a peace officer employed by the Wyoming state board of outfitters and professional guides shall be paid by the board; and

(C) The conditions and limitations of subsection (e) of this section apply to all claims under this paragraph.

(v) Claims against contract physicians brought under the Wyoming Governmental Claims Act or federal law, provided:

(A) The contract physician is unable to procure medical malpractice insurance coverage up to the limits specified in W.S. 1-39-110(b) or 1-39-118(a) as applicable;

(B) The liability of the state shall not exceed limits specified in W.S. 1-39-118(a) except as the limitation may be increased by W.S. 1-39-110(b) both reduced by the amount of the contract physician's malpractice insurance coverage applicable to such claim; and

(C) The claim arises from services performed by the contract physician for a state institution.

(d) Expenditures may also be made out of the self-insurance account for:

(i) Expenses related to claims under subsection (c) of this section;

(ii) Costs of purchasing services, including loss prevention, risk and claims control, and legal, actuarial, investigative, support and adjustment services; and

(iii) Costs of insurance or reinsurance premiums consistent with market availability;

(iv) Administrative expenses incurred by the division under this act including the cost of necessary personnel within the office of the attorney general, as may be mutually agreed upon by the risk manager and the attorney general, to handle claims arising under this act.

(e) The state shall defend claims against its public employees, or a state judicial officer exercising the authority vested in him, arising under 42 U.S.C. 1983 or other federal statutes, subject to the following conditions:

(i) The state shall defend and, to the extent provided by paragraph (v) of this subsection, indemnify any of its public employees against any claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the scope of duty;

(ii) Repealed by Laws 1988, ch. 50, § 2.

(iii) If any civil action, suit or proceeding is brought against any public employee of the state which on its face falls within the provisions of paragraph (i) of this subsection, or which the public employee asserts to be based in fact upon an alleged act or omission in the scope of duty, the state shall appear and defend the public employee under an automatic reservation of right by the state to reject the claim unless the act or omission is determined to be within the scope of duty;

(iv) Any public employee of the state against whom a claim within the scope of this subsection is made shall cooperate fully with the state in the defense of the claim. If the state determines that the public employee has not cooperated or has otherwise acted to prejudice defense of the claim, the state may at any time reject the defense of the claim;

(v) Unless the act or omission upon which a claim is based is determined by the court or jury to be within the public employee's scope of duty, no public funds shall be expended in payment of the final judgment against the public employee;

(vi) Nothing in this subsection shall be deemed to:

(A) Increase the limits of liability under W.S. 1-39-118 for claims brought under the Wyoming Governmental Claims Act;

(B) Affect the liability of the state itself or of any of its public employees on any claim arising out of the same accident or occurrence; or

(C) Waive the protection of the state or its public employees from liability where immunity has not been specifically waived.

Statutes Authorizing Non-Competitive Contracting for Professional Services

9-2-1016. General services division.

(a) As used in this section:

(i) "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration;

(ii) "Services" means the furnishing of labor, time or effort by a contractor to an agency. The term does not include employment agreements;

(iii) "Supplies" means:

(A) All property, including but not limited to, furniture, fixtures, stationery, printing, paper, fuel and equipment of every kind required for use in the offices, service and functions performed by agencies, and for repairing, heating and lighting the state buildings; and

(B) Insurance and bonds from licensed Wyoming agents as required.

(b) For the purpose of this subsection the term "agencies" does not include the University of Wyoming, community college districts, or school districts. It does not include the department of transportation except as to paragraphs (xi), (xii) and (xiii) of this subsection. The department through the general services division shall:

(i) Adopt rules governing the procurement, management, control and disposal of all supplies and services required by agencies. The rules shall establish standards and procedures which promote fair and open competition. No agency shall procure supplies or services except in compliance with the rules adopted by the department;

(ii) Adopt standard forms and procedures for regulating the procurement of supplies or services required by agencies;

(iii) Adopt a uniform commodity classification system designating the quality, material and brand of supplies or services required by agencies;

(iv) Adopt standard forms and procedures providing that bids or contracts for supplies or services shall be awarded through the use of competitive sealed bidding, competitive negotiation, noncompetitive negotiation or small purchase procedures as hereafter provided:

(A) Bids or contracts for supplies or services in excess of seven thousand five hundred dollars (\$7,500.00) shall be made by competitive sealed bidding when the configuration or performance specifications, or both, are sufficiently designed to

permit award on the basis of the lowest evaluated price as determined in accordance with objective, measurable criteria set forth in the invitation for bids, and when available sources, the time and place of performance, and other conditions are appropriate for the use of competitive sealed bidding;

(B) Whenever the administrator determines in writing that the use of competitive sealed bidding is not feasible or practical, contracts for supplies or services may be made by competitive negotiation;

(C) Contracts may be made by noncompetitive negotiation only when competition is not feasible, as determined in writing prior to award by the administrator and approved by the governor or his designee;

(D) Bids or contracts for contractual services, consulting services, and special projects and services, for the purpose of hiring professionals, consultants or contracted services in an amount exceeding one thousand five hundred dollars (\$1,500.00) by an agency require the approval of the governor or his designee prior to state commitment;

42 U.S.C. Section 1983

Sec. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United State or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX B

Title 33 Board and Commission Legal Representation

Most boards use Attorney General legal services, but all contribute 50 percent of their interest to fund it.

	Pay 50% of annual interest for A.G. representation as required by W.S. 33-1-202(a)	Represented by two A.G. Office attorneys	Represented by other A.G. Office attorneys or private counsel
1	Board of Architects and Landscape Architects	<input checked="" type="checkbox"/>	
2	Board of Barber Examiners	<input checked="" type="checkbox"/>	
3	Board of Chiropractic Examiners	<input checked="" type="checkbox"/>	
4	Board of Cosmetology	<input checked="" type="checkbox"/>	
5	Board of Dental Examiners	<input checked="" type="checkbox"/>	
6	Board of Embalming	<input checked="" type="checkbox"/>	
7	Board of Professional Geologists	<input checked="" type="checkbox"/>	
8	Board of Hearing Aid Specialists	<input checked="" type="checkbox"/>	
9	Mental Health Professions Licensing Board	<input checked="" type="checkbox"/>	
10	Board of Nursing	<input checked="" type="checkbox"/>	
11	Board of Nursing Home Administrators	<input checked="" type="checkbox"/>	
12	Board of Occupational Therapy	<input checked="" type="checkbox"/>	
13	Board of Examiners in Optometry	<input checked="" type="checkbox"/>	
14	Board of Outfitters and Professional Guides (W. S. 23-2-414(d))	<input checked="" type="checkbox"/>	
15	Professional Teaching Standards Board (W.S. 21-2-802(d))	<input checked="" type="checkbox"/>	
16	Board of Physical Therapy	<input checked="" type="checkbox"/>	
17	Board of Registration in Podiatry	<input checked="" type="checkbox"/>	
18	Board of Psychology	<input checked="" type="checkbox"/>	
19	Board of Radiologic Technologist Examiners	<input checked="" type="checkbox"/>	
20	Real Estate Commission	<input checked="" type="checkbox"/>	
21	Certified Real Estate Appraiser Board	<input checked="" type="checkbox"/>	

22	Board of Examiners of Speech Pathology and Audiology	<input checked="" type="checkbox"/>	
23	Board of Veterinary Medicine	<input checked="" type="checkbox"/>	
24	Board of Registration of Professional Engineers and Professional Land Surveyors	<input checked="" type="checkbox"/>	
25	Board of Certified Public Accountants◆	<input checked="" type="checkbox"/>	A.G. Office plus private counsel
26	Collection Agency Board		Other A.G. Office attorney
27	Pari-mutuel Commission (W.S. 11-25-105(d))		Other A.G. Office attorney
28	Board of Pharmacy		Other A.G. Office attorney
29	Board of Medicine◆		Private counsel
30	Board of Law Examiners◆		Private counsel

◆ In addition to contributing interest income to the statutory fund, these boards fund legal representation by private counsel through their operating budgets.

APPENDIX C

Board Contributions to Dedicated Legal Services Fund and Contested Cases Opened, FY '96-'01

These are indicators of the boards' abilities to fund legal representation, and their use of it, FY '96-'01.

	Board or Commission	Interest Contribution	Cases Opened
1	Board of Architects and Landscape Architects	12,436.04	2
2	Board of Barber Examiners	4,630.69	0
3	Board of Chiropractic Examiners	11,414.14	6
4	Board of Cosmetology	33,706.93	9
5	Board of Dental Examiners	17,284.80	22
6	Board of Embalming	3,634.50	6
7	Board of Professional Geologists	37,541.51	4
8	Board of Hearing Aid Specialists	4,388.20	0
9	Mental Health Professions Licensing Board	16,299.86	39
10	Board of Nursing	138,281.56	102
11	Board of Nursing Home Administrators	7,409.08	3
12	Board of Occupational Therapy	14,651.19	0
13	Board of Examiners in Optometry	13,265.65	0
14	Board of Outfitters and Professional Guides	15,795.91	34
15	Professional Teaching Standards Board	24,453.96	15
16	Board of Physical Therapy	26,864.18	1
17	Board of Registration in Podiatry	1,625.31	0
18	Board of Psychology	9,146.44	7
19	Board of Radiologic Technologist Examiners	8,059.22	2
20	Real Estate Commission	50,923.15	39
21	Certified Real Estate Appraiser Board	29,092.17	9
22	Board of Examiners of Speech Pathology & Audiology	3,168.41	0
23	Board of Veterinary Medicine	22,967.51	2
24	Board of Registration for Professional Engineers and Professional Land Surveyors	50,743.97	25

25	Board of Certified Public Accountants	35,185.08	14
26	Collection Agency Board	4,158.10	4
27	Pari-Mutuel Commission	14,100.63	N/A
28	Board of Pharmacy	85,002.45	1
29	Board of Medicine	54,487.74	26
30	Board of Law Examiners	9,835.97	N/A
	Total	\$760,554.35	372

Source: Office of State Treasurer and Attorney General data.

APPENDIX D

Payments to Workers' Compensation Contract Attorneys

Worker's Compensation Contractor, District 1; Laramie, Albany Counties						
	1996	1997	1998	1999	2000ⁱ	2001
Cases Referred	188	166	120	120	NA	153
Contract Amount	\$4,320	\$4,320 \$6,000	\$6,000	\$6,000	\$6,000	\$6,000
Annual Totalⁱⁱ	\$51,840	\$61,920	\$72,000	\$72,000	\$72,000	\$72,000
Per case	\$276	\$312/\$434	\$600	\$600	NA	\$471

Attorney or Firm, District 1: Goshen, Platte, Converse, Niobrara Counties						
	1996	1997	1998	1999	2000	2001
Cases Referred	49	62	49	45	NA	51
Contract Amount	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Annual Total	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000
Per case	\$735	\$581	\$735	\$800	NA	\$706

Attorney or Firm, District 2; Sheridan, Johnson Counties						
	1996	1997	1998	1999	2000	2001
Cases Referred	57	50	41	64	NA	50
Contract Amount	\$3,500	\$3,500	\$3,500	\$3,500	\$3,500	\$3,500
Annual Total	\$35,000	\$35,000	\$42,000	\$42,000	\$42,000	\$42,000
Per case	\$614	\$700	\$1,024	\$656	NA	\$840

Attorney or Firm, District 2; Campbell, Crook, Weston Counties						
	1996	1997	1998	1999	2000	2001
Cases Referred	72	90	84	60	NA	114
Contract Amount	\$6,500	\$6,500	\$6,500	\$6,500	\$6,500	\$6,500
Annual Total	\$78,000	\$78,000	\$78,000	\$78,000	\$78,000	\$78,000
Per case	\$1,083	\$867	\$929	\$1,300	NA	\$684

Attorney or Firm, District 3; Fremont County						
	1996	1997	1998	1999	2000	2001
Cases Referred	82	89	68	48	NA	47
Contract Amount	\$2,850	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Annual Total	\$34,200	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000
Per case	\$417	\$674	\$882	\$1,250	NA	\$1,277

Attorney or Firm, District 3; Big Horn, Park, Hot Springs, Washakie Counties						
	1996	1997	1998	1999	2000	2001
Cases Referred	77	98	83	74	NA	60
Contract Amount	\$2,800 \$5,600	\$5,600 \$6,600	\$6,600	\$6,600	\$6,600	\$6,600
Annual Total	\$42,000	\$76,200	\$79,200	\$79,200	\$79,200	\$79,200
Per case	\$434/\$884	\$700/\$803	\$954	\$1,070	NA	\$1,320

Attorney or Firm, District 4; Lincoln, Uinta, Teton, Sublette Counties						
	1996	1997	1998	1999	2000	2001
Cases Referred	95	125	108	120	NA	100
Contract Amount	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600
Annual Total	\$43,200	\$43,200	\$43,200	\$43,200	\$43,200	\$43,200
Per case	\$455	\$346	\$400	\$360	NA	\$432

Attorney or Firm, District 5; Natrona County						
	1996	1997	1998	1999	2000	2001
Cases Referred	178	148	172	117	NA	139
Contract Amount	\$7,500	\$8,250	\$8,250	\$8,250	\$8,250	\$8,250
Annual Total	\$90,000	\$99,000	\$99,000	\$99,000	\$99,000	\$99,000
Per case	\$506	\$669	\$576	\$846	NA	\$712

Attorney or Firm, District 5; Sweetwater, Carbon Counties						
	1996	1997	1998	1999	2000	2001
Cases Referred	152	166	157	140	NA	154
Contract Amount	\$3,450 \$3,750	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750
Annual Total	\$43,800	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000
Per case	\$271/\$297	\$271	\$287	\$321	NA	\$292

Total Annual Contract Payments and Cases						
	1996	1997	1998	1999	2000	2001
Total Payments	\$454,040	\$534,320	\$554,400	\$554,400	\$554,400	\$554,400
Total Cases	950	994	882	788	NA	868
Total Contract Payments, 1996-2001	\$3,205,960					

Source: LSO analysis of Attorney General data.

ⁱ A computer conversion in 2000 resulted in loss of some data for this year.

ⁱⁱ "Annual totals" do not include reimbursement for expenses such as travel, copies, long distance telephone, and court reporter costs.