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# Background

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## Attorney General's Office

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### 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

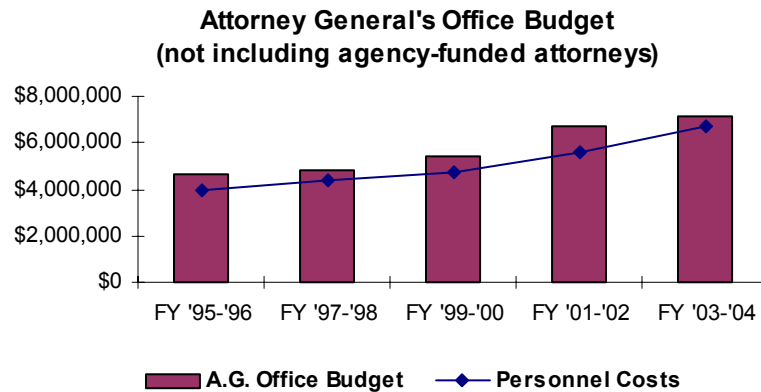
The Office’s budget request, within the total Attorney General agency request, does not represent the total cost and personnel dedicated to the state’s legal representation. Instead, other agencies fund nearly one-half of the attorneys that make up the Attorney General’s Office, and actually hold the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

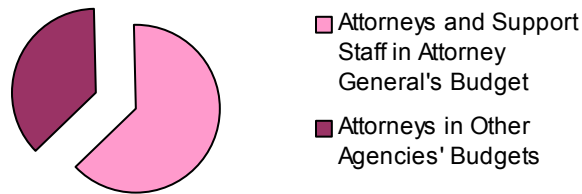
This chart does not include costs of the Medicaid Fraud Control Unit, which is organizationally a part of the Office but has a separate budget. The federal government requires states to establish these units to receive Medicaid payments, and funds them at 75 percent.

### 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 ongoing 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.