



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)