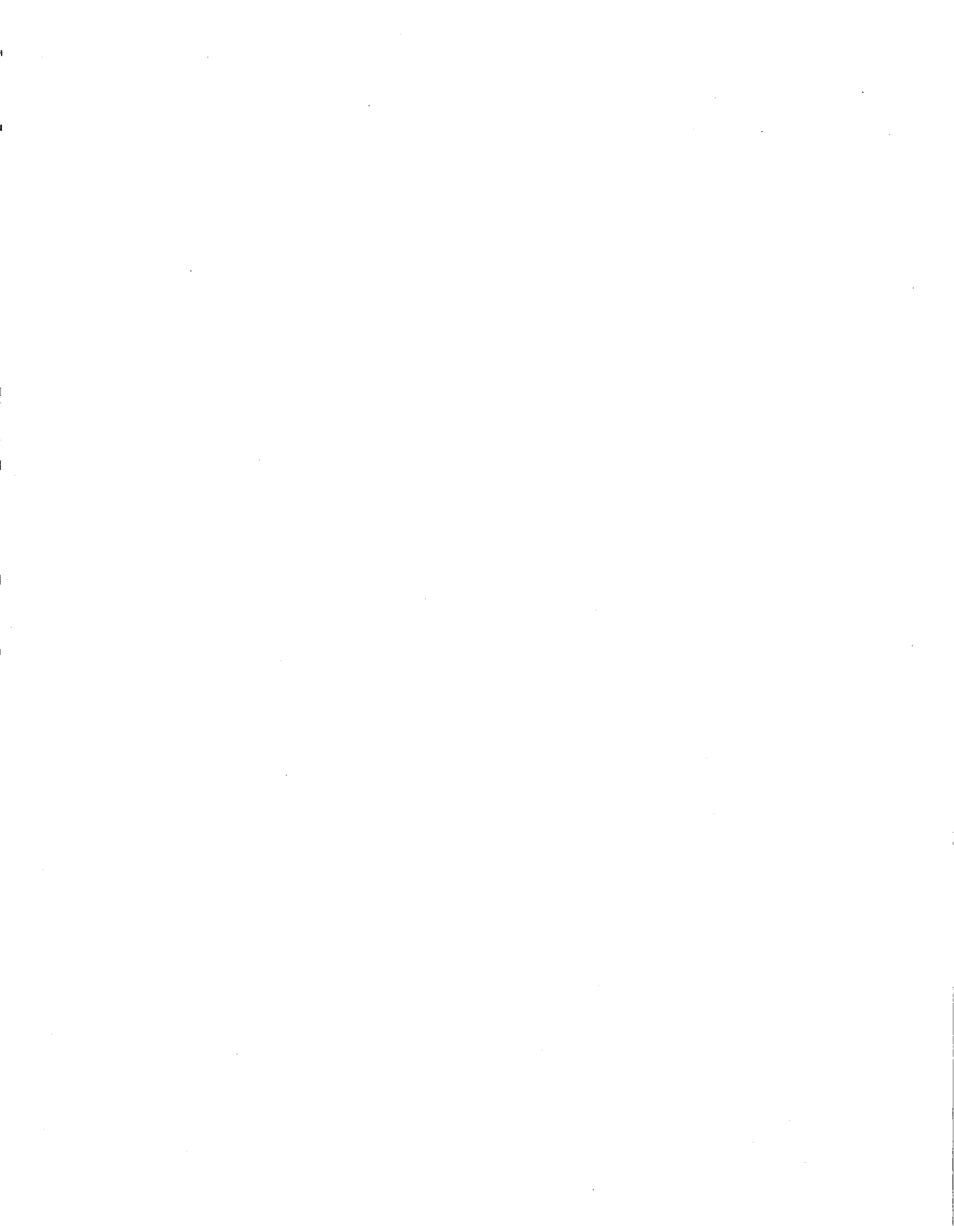


PERFORMANCE AUDIT REPORT

Legal Services for State Agencies

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
February 1988**



PERFORMANCE AUDIT REPORT

LEGAL SERVICES FOR STATE AGENCIES

OBTAINING AUDIT INFORMATION

This audit was conducted by Leo Hafner, Senior Auditor, and Cindy Lash and Curt Winegarner, Auditors, of the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Hafner at the Division's offices.

TABLE OF CONTENTS

SUMMARY OF AUDIT FINDINGS

LEGAL SERVICES FOR STATE AGENCIES

| | |
|-------------------------------------------------------------------------------------------------------------------------------|----|
| What Have the Trends Been In Recent Years In the Number of Attorney Positions Within Each State Executive Agency? | 2 |
| What Methods Did State Executive Agencies Use to Obtain Legal Services During Fiscal Year 1987? | 5 |
| Conclusion | 11 |
| Recommendation | 12 |
| | |
| APPENDIX A: Number and Cost of Attorney Positions in Executive Agencies Fiscal Years 1984 Through 1988..... | 13 |
| | |
| APPENDIX B: Sources of Legal Services Obtained by State Executive Agencies in Fiscal Year 1987..... | 17 |
| | |
| APPENDIX C: Agency Responses..... | 21 |

LEGAL SERVICES FOR STATE AGENCIES

Summary of Legislative Post Audit's Findings

What have the trends been in recent years in the number of attorney positions within each State executive agency? In fiscal year 1984, State executive agencies employed 166 classified and unclassified attorneys. By fiscal year 1988, that number had increased by 55 positions, to 221. More than half the new attorneys employed during the five-year period were hired by the State Board of Indigents' Defense Services and the Department of Social and Rehabilitation Services. These agencies hired additional attorneys primarily to defend indigent clients and to enforce child support laws. The creation of several new agencies such as the Lottery and the Racing Commission also added to the number of attorneys employed by the State.

What methods did State executive agencies use to obtain legal services during fiscal year 1987? Only 32 of 99 executive agencies included in the audit employed staff attorneys. The remaining agencies either contracted with private law firms, used the services of the Attorney General's Office, or used the services of staff attorneys employed by an umbrella agency. Officials from 72 agencies said they used the Attorney General's Office for such things as legal advice, representation in litigation, drafting legal documents, and formal Attorney General's opinions. Officials from 37 agencies reported contracting with outside law firms. Those 37 agencies spent just over \$7 million for contracted services in fiscal year 1987—a 56 percent increase from five years earlier. It appears that some of the services provided by private law firms could be provided more cost-effectively by either agency staff attorneys or the Attorney General's Office.



LEGAL SERVICES FOR STATE AGENCIES

State agencies use legal counsel for many reasons including representation in litigation, drafting contracts or other legal documents, enforcing statutes, rules and regulations, and collecting amounts owed the State. Agencies can obtain needed legal services by one of three methods. They can use the services of the Attorney General's Office, employ attorneys on a full-time or part-time basis, or contract with private attorneys.

In 1987, the Governor directed State agencies to compile an inventory of the type and cost of legal work being done on behalf of the State. The inventory included legal work done by in-house attorneys as well as by outside firms. At that time, the Governor expressed his concerns about the cost of legal work, and the fact that work was not being referred to the Attorney General's Office. He placed a hiring freeze on all vacant staff attorney positions, and also required his approval on all new contracts with outside law firms. The Governor's inventory focused on current staffing levels and did not include institutions under the control of the Board of Regents or the offices of State elected officials.

Legislators have raised similar concerns about legal services obtained by State agencies, questioning where growth has occurred in the number of staff attorneys and in fees paid to private law firms over the last five years, as well as the reasons for that growth. To address these concerns, the Legislative Post Audit Committee directed the Legislative Division of Post Audit to conduct a performance audit of legal services obtained by State agencies. The audit, which included all executive agencies and the offices of elected officials, addressed the following specific questions:

1. **What have the trends been in recent years in the number of attorney positions within each State executive agency?**
2. **What methods did State executive agencies use to obtain legal services during fiscal year 1987?**

To gather information about trends in the number of attorney positions in State agencies during the last five fiscal years, the auditors contacted the Division of Personnel Services. Division officials were unable to provide historical information on either the number of attorney positions or their corresponding salaries. The Kansas Integrated Personnel and Payroll System (KIPPS) does not maintain such historical information. Consequently, the auditors contacted officials at each executive agency to determine whether they had employed any attorneys during the last five fiscal years, and to obtain copies of budget documents detailing the number of attorneys employed each year and the amounts paid for those positions.

To obtain information about how agencies acquire legal services, the auditors reviewed documents from the Governor's 1987 survey of legal work, and discussed the use of staff attorneys, outside firms, and the Attorney General's Office with officials at each agency. They also reviewed available records at the Attorney General's

Office to determine which State agencies appeared to use the Office most frequently. Finally, the auditors reviewed records of expenditures for contracted legal services to determine the magnitude of those expenditures, the types of services provided, and the hourly rates paid to outside attorneys.

In general, the auditors found that about 55 classified and unclassified attorneys have been added to the workforce in State executive agencies in the last five years, or an overall increase of about 33 percent. Although 20 agencies added one or more attorneys to their staff, more than half the increase in the number of positions occurred in just two agencies. The majority of executive agencies do not employ staff attorneys and use the services of the Attorney General's Office or contract with outside firms. Expenditures for outside attorney fees have increased by almost 56 percent during the past five fiscal years, from about \$4.6 million to more than \$7 million. Some of the services that are contracted to outside attorneys appear to be items that could be handled more cost-effectively by either agency staff attorneys or the Attorney General's Office. These and other findings are discussed in this report.

What Have the Trends Been In Recent Years In the Number of Attorney Positions Within Each State Executive Agency?

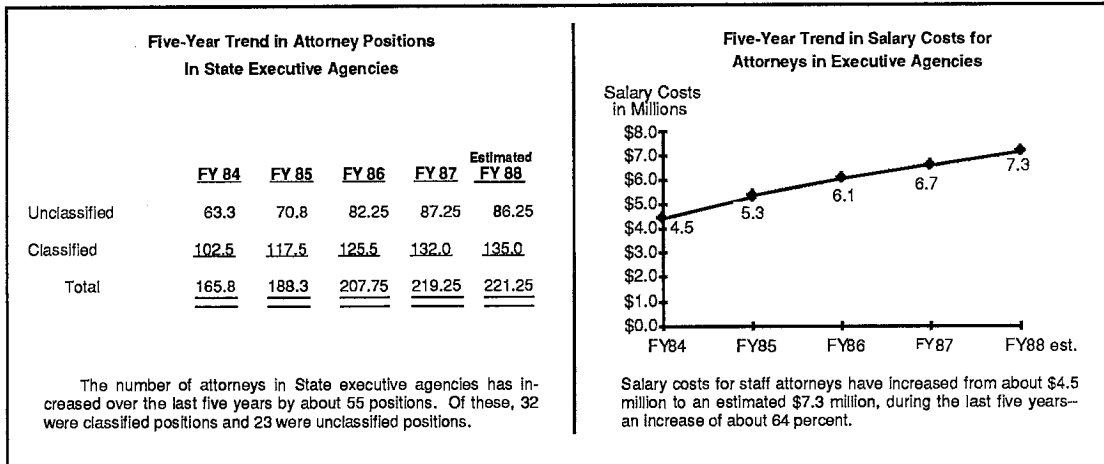
To answer this question, the auditors contacted each executive agency to determine whether they employed attorneys during any of the last five fiscal years. The auditors asked agencies that employed attorneys to forward copies of budget documents detailing the number and types of attorney positions and the wages paid to those attorneys in each of those years. The auditors also summarized the budget documents and asked agency officials to verify the accuracy of those summaries.

In their analysis, the auditors primarily considered only those positions with the title of attorney, counsel, chief counsel, assistant attorney general, or the like. In addition, several agencies such as the Civil Rights Commission, the Corporation Commission, the Department of Human Resources, and the Department of Social and Rehabilitation Services employ attorneys to fill positions of hearing officer, administrative law judge, and appeals referee. The auditors included these positions in their count of attorneys. Not included in the count of attorneys were agency or division heads who happen to be attorneys, attorneys filling non-legal positions such as management analysts, and law clerks.

The Number of Attorneys Employed in the Executive Branch of State Government Has Increased by About 33 Percent in Five Years

Within the last five years, 35 executive branch agencies employed one or more attorneys on a full- or part-time basis. During that time, agencies added about 55 attorney positions. In fiscal year 1984, there were 165.8 classified and unclassified attorney positions in the executive branch of State government. By fiscal year 1988, that number had increased to 221.25. Salary expenditures for those positions during

the same time-period increased nearly 64 percent, from \$4.5 million to \$7.3 million. The charts below show the total number of classified and unclassified attorneys in executive branch agencies and the corresponding salary expenditures in each of the last five fiscal years.



Appendix A provides a listing of all executive agencies employing attorneys and the amounts paid for those positions for each of the last five years.

Most of the increase in attorney positions has been concentrated in just two agencies. Those agencies are the State Board of Indigents' Defense Services and the Department of Social and Rehabilitation Services. Together they account for more than half the total increase in attorney positions. The table on the next page shows changes in the number of attorney positions employed by State executive agencies between fiscal years 1984 and 1988

As the table shows, the State Board of Indigents' Defense Services added a total of 17 attorney positions to its staff over the last five years. Of those positions, 10 resulted from the addition of a Public Defender's Office in the 18th Judicial District in Wichita, and six were from the creation of an Appellate Defender's Office. The other position was added to handle increased caseloads in the 8th Judicial District (Dickinson, Geary, Marion, and Morris Counties).

The Department of Social and Rehabilitation Services added almost 14.5 positions to its staff. All but three of those attorneys were added in the area of child support enforcement; child support caseloads nearly doubled between 1978 and 1986, from about 55,900 to 96,400. Also, the 1985 Legislature passed legislation affecting the need for new attorneys in two ways. First, it enacted certain provisions of federal law requiring the Department to use attorneys to file income withholding orders against people who do not pay child support. Second, it transferred responsibility for nearly all interstate support cases from county and district attorneys to child support enforcement staff at the Department of Social and Rehabilitation Services. The other three attorney positions added within the Department included one for the Division of Mental Health and Retardation Services and two for the legal services section.

**Increases or Decreases In the Number of Attorneys
Employed by State Executive Agencies
During the Last Five Fiscal Years**

| | <u>Attorneys FY 1984</u> | <u>Attorneys FY 1988</u> | <u>Net Change</u> |
|--------------------------------------------|------------------------------|------------------------------|-----------------------|
| AGENCIES WITH INCREASES | | | |
| State Board of Indigents' Defense Services | 10.0 | 27.0 | 17.0 |
| Department of Social & Rehab. Services | 24.8 | 39.25 | 14.45 |
| Corporation Commission | 16.0 | 19.0 | 3.0 |
| Department of Transportation | 7.5 | 10.0 | 2.5 |
| Department of Revenue | 14.0 | 16.0 | 2.0 |
| Insurance Department | 6.0 | 8.0 | 2.0 |
| Department of Human Resources | 25.0 | 27.0 | 2.0 |
| Department of Administration | 4.0 | 6.0 | 2.0 |
| Board of Agriculture | 2.0 | 4.0 | 2.0 |
| Racing Commission (a) | 0.0 | 2.0 | 2.0 |
| Department of Health & Environment | 3.5 | 5.0 | 1.5 |
| State Board of Healing Arts | 1.0 | 2.0 | 1.0 |
| Department of Commerce (b) | 0.0 | 1.0 | 1.0 |
| Kansas State University | .5 | 1.5 | 1.0 |
| Osawatomie State Hospital | 0.0 | 1.0 | 1.0 |
| State Board of Regents | 1.0 | 2.0 | 1.0 |
| State Board of Tax Appeals | 2.0 | 3.0 | 1.0 |
| Department of Education | 1.0 | 2.0 | 1.0 |
| Topeka State Hospital | 0.0 | 1.0 | 1.0 |
| Lottery (a) | <u>0.0</u> | <u>1.0</u> | <u>1.0</u> |
| Subtotal | 118.3 | 177.75 | 59.45 |
| AGENCIES WITH DECREASES | | | |
| Department on Aging | 1.0 | 0.0 | -1.0 |
| Fire Marshal | 1.0 | 0.0 | -1.0 |
| Kansas Public Employees Retirement System | 1.0 | 0.0 | -1.0 |
| Attorney General's Office | 25.0 | 24.5 | -0.5 |
| Department of Corrections | <u>2.5</u> | <u>2.0</u> | <u>-0.5</u> |
| Subtotal | <u>30.5</u> | <u>26.5</u> | <u>-4.0</u> |
| Total | <u>148.8</u> | <u>204.25</u> | <u>55.45</u> |

(a) New agency within the last five years.

(b) Formerly the Kansas Department of Economic Development, which had no attorneys.

Other agencies that added several attorney positions during the period included the Corporation Commission and the Departments of Revenue and Transportation. Officials at the Corporation Commission indicated that increased bankruptcy filings by oil and gas operators, more appeals brought on by the severance tax legislation, an increase in the number of rate applications, and legal assistance needed to enforce mined-land regulations were some of the specific reasons why the Commission added three attorney positions. The Commission said it intends to permanently reduce its legal staff by four positions beginning in fiscal year 1989. The positions added to the Department of Revenue were authorized for bingo enforcement and the Severance Tax. Department of Transportation officials indicated that their staff was increased

because of a dramatic increase in litigation brought about by the Tort Claims Act, which became effective in 1979. Department officials said they did not have to employ additional attorneys for several years after the passage of the Act because it took some time for caseloads to increase as people became aware of the Act's existence and how to use it.

Newly created agencies also accounted for some of the growth in the number of attorneys employed by the State. As shown in the table, two agencies that did not exist in fiscal year 1984 now employ attorneys. Those agencies are the Lottery and the Racing Commission.

Several agencies employ fewer attorneys than they did five years ago. The budget documents for five agencies show a decrease in the number of attorney positions employed. The Department on Aging and the Public Employees Retirement System each eliminated one attorney position and no longer employ any attorneys. The Department of Corrections and the Attorney General's Office each show a decrease equivalent to a half-time attorney position. Budget documents for the Fire Marshal also show a decrease. In this particular case, however, there was no actual decrease because the position was simply transferred to the Attorney General's budget, even though the attorney works full-time for the Fire Marshal. That position is included in the number of attorneys employed by the Attorney General.

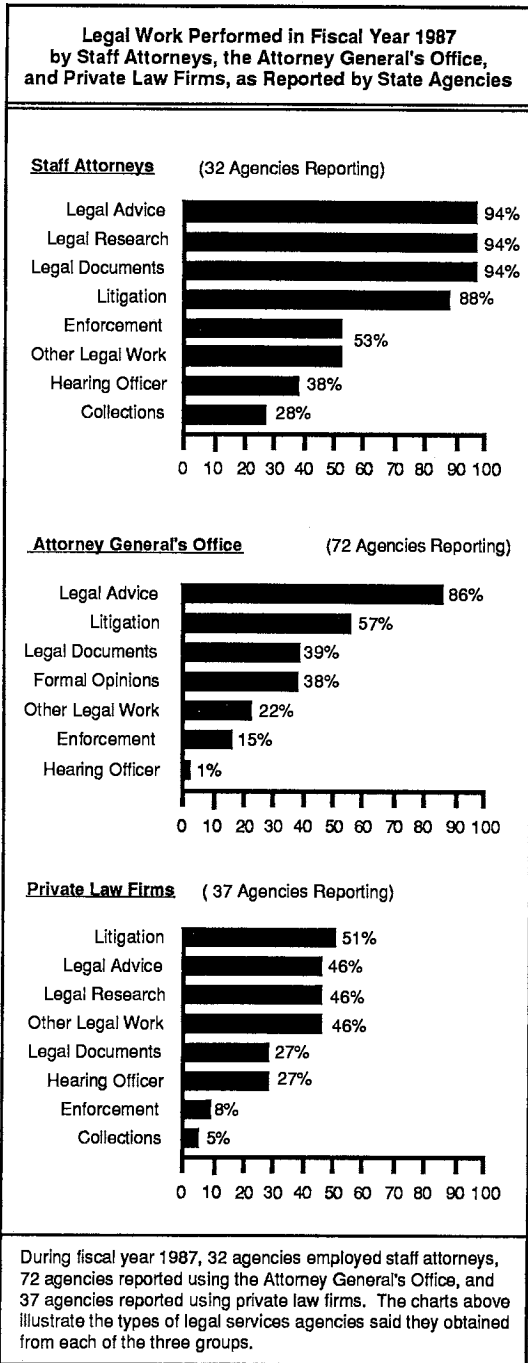
What Methods Did State Executive Agencies Use to Obtain Legal Services During Fiscal Year 1987?

To answer this question, the auditors reviewed documents agencies submitted as part of an inventory of legal work done by the Governor's Office in 1987. In addition, they contacted officials from each executive agency to determine whether they employed legal staff, contracted with outside attorneys, or used the Attorney General's Office for their legal needs. Auditors asked agency officials what types of services they obtained from each of these sources, and what factors determined which source of legal services they use. From available records in the Attorney General's Office, the auditors determined which agencies received services such as representation in litigation or formal Attorney General's opinions. Finally, the auditors reviewed trends in expenditures for contracted legal work with outside attorneys, and on a sample basis reviewed vouchers for such services to determine the types of work performed and the hourly rates paid to those attorneys.

In general, the auditors found that most of the executive branch agencies do not employ attorneys and rely on the services of the Attorney General's Office or contract with outside legal counsel. Expenditures for contracted legal work have risen by 56 percent, from about \$4.6 million to more than \$7 million during the last five fiscal years. Four agencies accounted for almost 85 percent of those expenditures. Some agencies contract for legal work that might be performed more cost-effectively by staff attorneys or the Attorney General's Office. These findings are discussed in the sections that follow.

Most Executive Agencies Have No Legal Staff And Use the Attorney General's Office or Private Law Firms For Their Legal Services

Only 32 of 99 agencies the auditors contacted employed staff attorneys in fiscal year 1987. An additional 20 agencies such as State hospitals, correctional facilities, and universities were able to use the services of staff attorneys employed by an umbrella agency, such as the Board of Regents, the Department of Corrections, or the



Department of Social and Rehabilitation Services. A total of 72 agencies said they used staff from the Attorney General's Office one or more times during fiscal year 1987. Finally, based on information obtained from the State's central accounting system and agency officials, the auditors determined that 37 agencies contracted with outside firms for legal services that year. Appendix B shows which sources of legal services each agency used during fiscal year 1987.

The auditors asked agency officials to indicate generally what types of legal services they obtained in fiscal year 1987. The accompanying charts summarize this information for each of the three sources of legal services.

Depending on the type of agency, the legal services provided by in-house staff attorneys varied. In smaller agencies like the Racing Commission, staff attorneys provided more generalized services, such as drafting and reviewing legal documents, providing general legal advice, and representing the agency in lawsuits. More specialization occurred in larger agencies. For example, the Department of Social and Rehabilitation Services has a legal section that serves the needs of the Department and the institutions it supervises. It also has attorneys who do specialized work in areas like child support enforcement and fraud and recovery.

Agency officials said they used the Attorney General's Office for such

things as general legal advice, representation in litigation, and drafting or reviewing legal documents. In addition, 27 agencies said they obtained one or more formal legal opinions from the Attorney General. (Records at the Attorney General's Office show that 45 formal opinions were issued at the request of executive agency officials in fiscal year 1987.) Less common types of assistance included helping agencies with enforcement activities and helping with administrative hearings.

In addition, the litigation division of the Attorney General's staff represented 40 executive agencies in 267 cases and the criminal division represented three agencies in 227 criminal cases during the year. Nearly half the cases handled by the litigation division were bankruptcy actions in which a university was trying to recover student loans. Another 16 percent were administrative hearing actions in which a regulatory board, such as the Board of Nursing, brought action against one of the people it regulated. The remainder included a variety of civil cases in which a State agency was either the plaintiff or the defendant. All but four of the 227 cases handled by the criminal division were civil rights or habeas corpus cases filed by prisoners against the Department of Corrections or the Kansas Parole Board. The remainder were filed against the Governor's Office.

The Attorney General's staff does other work for State agencies such as reviewing administrative rules and regulations and giving general legal advice. However, because of the general nature of these duties and the types of records maintained in the Attorney General's Office, the auditors could not quantify the extent of such services.

Agencies hired outside attorneys in fiscal year 1987 to provide both generalized and specialized legal services. Although 37 agencies contracted with outside firms for legal services in fiscal year 1987, four agencies did most of this contracting—the Insurance Department, the State Board of Indigents' Defense Services, the University of Kansas Medical Center, and the Attorney General's Office.

- The Insurance Department hired private attorneys to represent the State in lawsuits involving the Health Care Stabilization Fund and the Workers' Compensation Fund.
- The State Board of Indigents' Defense Services hired attorneys to defend persons who had been declared indigent by the courts.
- The Attorney General's Office primarily contracted for specialized legal expertise for a water rights case involving Kansas and Colorado.
- The University of Kansas Medical Center hired private collection attorneys to collect unpaid bills the Center's billing office had been unable to collect.

Most of the other 33 agencies told the auditors they hired attorneys to represent them in litigation, conduct legal research, provide legal advice, or perform specialized tasks such as giving legal aid to clients and university students, and drafting regulations, and statutes.

**Executive Agencies Spent More Than \$7 Million
In Fiscal Year 1987 On Contracted Legal Work,
Some of Which Could Be Done More Cost Effectively
By Staff Attorneys or the Attorney General's Office**

The State's central accounting system shows that over the last five fiscal years, executive agencies' expenditures for contracted legal work increased by 56 percent, from about \$4.6 million in fiscal year 1983 to more than \$7 million in fiscal year 1987. This figure is nearly equal to the amount spent for staff attorneys in all State agencies combined in that fiscal year. In fact, the increase in costs to hire outside attorneys has paralleled the increase in costs associated with in-house staff attorneys. The table on the facing page shows agencies' contracted expenditures for fiscal year 1987.

As the table shows, the Insurance Department, the State Board of Indigents' Defense Services, the Attorney General's Office, and the University of Kansas Medical Center accounted for about 85 percent of total fees paid to private law firms during 1987. The remaining 31 agencies spent amounts ranging from \$48 to about \$200,000. The auditors found hourly rates paid to private attorneys for routine services ranged from \$35 to \$90 per hour. The most frequent hourly rates appeared to be \$50 to \$60 per hour.

Asked why they used outside counsel rather than staff attorneys or the Attorney General's Office in fiscal year 1987, some agencies indicated these State resources were not available when needed or could not reasonably handle all of their legal workload. For example, officials of the Board of Healing Arts said they hired private attorneys as hearing officers because neither the Board's members nor the Attorney General's staff had adequate time to preside over lengthy disciplinary hearings. A number of agencies also indicated it was necessary to hire private attorneys to obtain the level of experience or expertise they needed. For example, Department of Transportation officials said they hired a private attorney because that attorney knew more about transportation laws and procedures than anyone on the Attorney General's staff.

Other reasons agency officials offered for using private attorneys included the desire for continuity on cases handled by former staff attorneys, the need for out-of-State representation, conflicts of interest on the part of in-house attorneys or the Attorney General's staff, statutory requirements for independent private counsel, and failure to consider the Attorney General's Office as a possible resource.

To determine whether it might be more cost effective to hire additional staff attorneys in certain agencies or increase the size of the Attorney General's Office rather than contract for legal services, the auditors reviewed a sample of contracted expenditures for fiscal year 1987. Their review showed that several agencies, including the Insurance Department and some regulatory boards, may be able to achieve significant savings in legal costs if the State hired more staff attorneys and reduced the number of contracts with private law firms.

**Executive Agencies' Contracted Expenditures for
Private Attorneys That Were Paid in Fiscal Year 1987 (a)
As Recorded In the State's Central Accounting System**

| <u>Agency</u> | <u>Fiscal Year 1987 Expenditures for Private Attorneys</u> | <u>Percent of total</u> |
|------------------------------------------|--------------------------------------------------------------------|-----------------------------|
| Attorney General's Office | \$761,925 | 10.4% |
| Board of Exam. of Hearing Aid Dispensers | 75 | 0.0 |
| Board of Healing Arts | 8,118 | 0.1 |
| Board of Indigents' Defense Services | 1,625,959 | 22.2 |
| Board of Optometry Examiners | 4,655 | 0.1 |
| Board of Pharmacy | 23,756 | 0.3 |
| Board of Technical Professions | 22,308 | 0.3 |
| Consumer Credit Commissioner | 1,263 | 0.0 |
| Corporation Commission | 22,290 | 0.3 |
| Dental Board | 50,395 | 0.7 |
| Department of Administration | 57,008 | 0.8 |
| Board of Agriculture | 203,304 | 2.8 |
| Department of Education | 58,712 | 0.8 |
| Department of Revenue | 6,614 | 0.1 |
| Department of Social and Rehab. Services | 183,216 | 2.5 |
| Department of Transportation | 344,765 | 4.7 |
| Emporia State University | 5,359 | 0.1 |
| Fish and Game Commission | 17,679 | 0.2 |
| Governor's Office | 16,865 | 0.2 |
| Highway Patrol | 5,247 | 0.1 |
| Insurance Department | 3,036,870 | 41.5 |
| Kansas Neurological Institute | 48 | 0.0 |
| Kansas State University | 10,690 | 0.1 |
| Kansas Technical Institute | 200 | 0.0 |
| Office of Securities Commissioner | 1,242 | 0.0 |
| Kansas State Penitentiary | 140 | 0.0 |
| Pittsburg State University | 10,925 | 0.1 |
| Public Disclosure Commission | 9,607 | 0.1 |
| Real Estate Commission | 13,399 | 0.2 |
| Secretary of State's Office | 1,790 | 0.0 |
| Topeka State Hospital | 198 | 0.0 |
| State Treasurer's Office | 8,520 | 0.1 |
| University of Kansas | 7,423 | 0.1 |
| University of Kansas Medical Center | 786,672 | 10.8 |
| Wichita State University | <u>3,750</u> | <u>0.1</u> |
| Total (for 35 agencies): | <u><u>\$7,310,985</u></u> | <u><u>100.00%</u></u> |

(a) The data shown in this table are expenditures reported under "object code 272, professional fees for attorneys" in the State's central accounting system. Two agencies—Kansas Technical Institute, and Topeka State Hospital—indicated the expenditures reported for them were inaccurately coded as attorney fees. Four agencies not included in the table—the Board of Regents, the Commission on Civil Rights, the Department of Health and Environment, and the Public Employees Retirement System—indicated they made expenditures for attorney fees that do not appear under object code 272.

The Insurance Department may be able to save nearly \$200,000 by hiring staff attorneys to defend the Workers' Compensation Fund. The Fund was created to encourage employers to hire handicapped workers by relieving an employer of

liability for workers' compensation claims resulting from an employee's previous injury or disability. To be relieved of the liability, the employer must show he or she had prior knowledge of the injured employee's pre-existing condition. The employer must also prove that the new injury was caused or contributed to by the pre-existing condition. The extent of the Fund's liability is determined during the regular workers' compensation case hearing conducted by the Division of Workers' Compensation. If the pre-existing condition is determined to be a contributing factor, an appropriate share of the compensation or medical award is ordered to be paid from the Fund.

Claims against the Fund have grown dramatically in recent years. In fiscal year 1987, the Department spent about \$2 million on contracted attorneys and expert witnesses to defend claims against the Fund. The Department estimated the cost to defend these claims with staff attorneys rather than contracted attorneys in fiscal year 1987 would have been about \$1.74 million, exclusive of the cost of expert witness fees. Even with expert witness costs added in, it appears that the Department may be able to save approximately \$200,000 by using staff attorneys rather than contracting with law firms.

Insurance Department officials indicated to the auditors that defending claims against the Fund requires the use of attorneys with expertise in the effects of various types of injuries. They are concerned that if staff attorneys were hired, such expertise would be lost, resulting in more awards to plaintiffs and larger amounts being paid out of the Fund. However, the Department of Administration has recently hired a staff attorney to defend workers' compensation claims filed by State employees. These claims were previously defended exclusively by intermittent attorneys paid on an hourly basis. Department officials indicated to the auditors that they are pleased with the results of this change. Also, based on five months of actual experience, the Department estimates it will save in excess of \$80,000 annually by using the staff attorney. Hence, it appears that staff attorneys can develop the expertise needed to defend such claims.

During fiscal year 1987, the Dental Board spent more than \$50,000 with a single law firm for counsel and representation in litigation. One of the firm's attorneys provided general legal counsel. A second attorney represented the Board in litigation. The hourly rate charged by the firm was \$75 for attorneys and \$28 for legal assistants. A review of vouchers totaling \$50,395 showed that the firm charged the Board \$43,174 for 618 hours of legal work and \$7,231 for expenses. The number of hours of legal work billed by the firm is roughly equivalent to about one-third the number of hours a full-time attorney would work for the State, but the amount paid is about equal to the salary and benefits paid for a full-time Attorney IV position in the classified State service. Thus, it appears that the Dental Board is paying nearly three times as much for its legal services as it would if additional staff attorneys were hired by the State.

The Board of Technical Professions spent more than \$22,000 for contracted legal assistance similar to the type of assistance the Attorney General's Office

provided to other boards in fiscal year 1987. The Board's contract with its attorney states that he will assist the Board in investigating, preparing, and filing charges against persons alleged to have violated statutes governing the regulation of various technical professions, and that he will defend the Board in any actions filed against it. The Attorney General's Office provides these same services for the Boards of Nursing and Behavioral Sciences.

The Board of Technical Professions spent \$22,307 on legal services in fiscal year 1987. Of that amount, \$18,488 was for attorney's fees for 317 hours of legal work. For the amount the Board paid, a half-time Attorney II could have been hired to serve the legal needs of the Board and that half-time attorney would still have had about 500 hours available to provide legal services to some other agency. The Board reported that it sought assistance from the Attorney General's Office, but was told the Office did not have sufficient resources to meet the Board's needs.

Several other boards and commissions also contracted with private legal firms for hearing officers, legal advice, preparation and filing of complaints, and defense of the board or commission. Like the two boards described above, none of these entities required enough legal service for a full-time staff attorney. However, it appears that the legal needs of several of these boards could be consolidated, and that new positions could be added to the Attorney General's staff to serve the needs of these agencies more cost-effectively.

Conclusion

Many agencies contract with private attorneys for the same types of legal services that staff attorneys and the Attorney General's Office provide for other agencies. One reason agencies gave the auditors for contracting for legal work was that the Attorney General's Office did not have the resources to serve their needs. As the examples presented in this report show, some agencies could achieve significant savings by changing the way they obtain legal services. To investigate all the possible areas where savings could occur was not within the scope of this audit. However, the examples point to the need for a thorough evaluation of agencies' use of contracted legal services, emphasizing agencies' potential to meet their legal needs by adding staff attorneys or by using the resources of the Attorney General's Office.

Recommendation

To ensure that State agencies obtain necessary legal services at the lowest cost, the Department of Administration, with the assistance of the Attorney General's Office, should do the following:

- a. review the legal needs of each executive agency and determine the most economical method for effectively meeting those agencies' needs.
- b. provide the Legislature with recommendations for a staffing plan that would meet those legal needs in the most cost-effective manner.

APPENDIX A

Number and Cost of Attorney Positions in Executive Agencies Fiscal Years 1984 through 1988

| <u>Agencies</u> (a) | Number of Attorney Positions and Salary Costs | | | | | Est. <u>88</u> |
|------------------------------------------|-----------------------------------------------|-----------------|-----------------|-------------------|-----------------|-------------------|
| | FY: <u>84</u> | <u>85</u> | <u>86</u> | <u>87</u> | | |
| Administration, Department of (b) | 4 \$ 119,194 | 4 \$ 132,612 | 4 \$ 143,582 | 5.5 \$ 166,616 | 6 \$ 208,783 | |
| Aging, Department on | 1 16,760 | 1 25,068 | 1 22,800 | 1 13,037 | 0 0 | |
| Agriculture, Board of | 2 66,492 | 2 71,772 | 4 126,764 | 4 133,625 | 4 131,837 | |
| Attorney General | 25 687,490 | 25 725,769 | 23 727,082 | 23 719,151 | 24.5 730,015 | |
| Bank Commissioner | 1 13,344 | 1 30,984 | 1 30,702 | 1 28,717 | 1 28,717 | |
| Civil Rights, Commission on (c) | 4 117,102 | 4 131,447 | 4 133,514 | 4 151,711 | 4 153,846 | |
| Commerce, Department of | 0 0 | 0 0 | 0 0 | 1 1,841 | 1 30,192 | |
| Corporation Commission (d) | 16 383,449 | 19 507,241 | 20 507,853 | 19 534,303 | 19 591,277 | |
| Corrections, Department of | 2.5 74,823 | 2.5 70,163 | 2.5 76,511 | 2.5 74,342 | 2 66,612 | |
| Education, Department of | 1 32,464 | 1 42,388 | 1 35,000 | 2 58,785 | 2 65,980 | |
| Fire Marshal | 1 23,166 | 1 25,068 | 1 27,636 | 1 22,760 | 0 0 | |
| Healing Arts, Board of | 1 23,401 | 2 56,740 | 2 58,512 | 2 60,053 | 2 64,964 | |
| Health and Environment, Department of | 3.5 94,923 | 3.5 113,753 | 5.5 153,967 | 5.5 157,572 | 5 160,970 | |
| Human Resources, Department of (e) | 25 786,577 | 25 778,227 | 25 822,457 | 25 893,927 | 27 983,064 | |
| Indigents' Defense Services, Board of | 10 232,077 | 20 469,747 | 26 658,807 | 27 716,585 | 27 778,044 | |
| Industrial Reformatory | 1 23,782 | 1 23,980 | 1 25,534 | 1 26,448 | 1 28,096 | |
| Insurance Department | 6 116,757 | 6 170,345 | 7 197,527 | 8 216,129 | 8 268,192 | |
| Kansas Bureau of Investigation | 1 24,594 | 1 26,492 | 1 27,863 | 1 30,324 | 1 30,807 | |

Number of Attorney Positions and Salary Costs

| <u>Agencies</u> | <u>FY:</u> | <u>84</u> | <u>85</u> | <u>86</u> | <u>87</u> | <u>Est.</u> <u>88</u> |
|----------------------------------------------------------|------------|-----------------------|-----------------------|-----------------------|-----------------------|--------------------------|
| Kansas Lottery | | 0 \$ 0 | 0 \$ 0 | 0 \$ 0 | 0 \$ 0 | 1 \$ 35,851 |
| Kansas State Penitentiary | | 1 25,824 | 1 26,422 | 1 28,212 | 1 29,779 | 1 30,612 |
| Kansas State University | | 0.5 24,990 | 0.5 27,510 | 1.5 74,508 | 1.5 76,524 | 1.5 79,428 |
| Larned State Hospital | | 1 30,540 | 1 24,842 | 1 29,606 | 1 31,380 | 1 32,344 |
| Osawatomie State Hospital | | 0 0 | 0 0 | 0 0 | 1 6,233 | 1 30,070 |
| Public Employees Retirement System | | 1 26,076 | 1 27,478 | 0 0 | 0 0 | 0 0 |
| Racing Commission | | 0 0 | 0 0 | 0 0 | 0 0 | 2 44,782 |
| Regents, Board of | | 1 41,250 | 2 68,356 | 2 61,443 | 2 71,667 | 2 78,008 |
| Revenue, Department of | | 14 327,699 | 15 393,426 | 15 452,090 | 16 480,562 | 16 528,327 |
| Secretary of State | | 1 30,576 | 1 36,192 | 1 38,892 | 1 35,112 | 1 35,112 |
| Securities Commissioner | | 2 62,082 | 2 67,020 | 2 72,360 | 2 74,532 | 2 78,990 |
| Social and Rehabilitation Services, Department of (f)(g) | | 24.8 656,677 | 28.8 784,577 | 38.25 1,040,172 | 41.25 1,287,147 | 39.25 1,377,011 |
| Tax Appeals, Board of | | 2 48,285 | 2 54,984 | 2 58,318 | 3 84,912 | 3 89,364 |
| Topeka State Hospital | | 0 0 | 0 0 | 1 24,207 | 1 31,380 | 1 32,469 |
| Transportation, Department of | | 7.5 223,543 | 10 262,912 | 10 293,828 | 10 313,628 | 10 352,651 |
| University of Kansas | | 3 94,894 | 3 107,727 | 3 115,557 | 3 119,765 | 3 124,593 |
| University of Kansas Medical Center | | 2 <u>55,689</u> | 2 <u>63,200</u> | 2 <u>67,200</u> | 2 <u>69,505</u> | 2 <u>73,212</u> |
| Total Positions | | 165.8 | 188.3 | 207.75 | 219.25 | 221.25 |
| Total Salaries | | \$ 4,484,520 ===== | \$ 5,346,442 ===== | \$ 6,132,504 ===== | \$ 6,718,052 ===== | \$ 7,344,220 ===== |

Footnotes to Appendix A

(a) In addition to the agencies listed above, the Adjutant General has one attorney paid entirely from Federal funds. The position was first authorized in fiscal year 1985.

(b) Total salaries do not include the following amounts paid to intermittent attorneys to defend Worker's Compensation claims: FY84= \$65,574 FY85= \$108,622 FY86= \$134,521 FY87= \$184,972
FY 88 (first six months)= \$32,299

| | | | | | |
|-----------------------------------------------|-------------|-------------|-------------|-------------|------------------|
| (c) Includes unclassified hearing examiners : | <u>FY84</u> | <u>FY85</u> | <u>FY86</u> | <u>FY87</u> | <u>FY88 est.</u> |
| Positions | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| Salaries | \$28,652 | \$41,460 | \$43,920 | \$45,240 | \$45,690 |

| | | | | | |
|----------------------------------------------|-------------|-------------|-------------|-------------|------------------|
| (d) Includes unclassified hearing examiners: | <u>FY84</u> | <u>FY85</u> | <u>FY86</u> | <u>FY87</u> | <u>FY88 est.</u> |
| Positions | 1.8 | 2.0 | 3.0 | 2.0 | 2.0 |
| Salaries | \$44,688 | \$49,195 | \$50,200 | \$49,894 | \$54,216 |

| | | | | | |
|--------------------------------------------------|--------------|--------------|--------------|--------------|------------------|
| (e) Includes the following classified positions: | <u>FY 84</u> | <u>FY 85</u> | <u>FY 86</u> | <u>FY 87</u> | <u>FY88 est.</u> |
| Appeals Referees-- Positions | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| Salaries | \$57,030 | \$61,608 | \$61,908 | \$63,552 | \$65,827 |
| Admin. Law Judges-- Positions | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| Salaries | \$239,305 | \$245,240 | \$274,827 | \$280,945 | \$326,655 |

(f) Total salaries do not include the following amounts paid to intermittent attorneys: FY84= \$167,817
FY86= \$58,607 FY87= \$85,076 FY88 est.= \$23,443

(g) Includes the Division of Mental Health and Retardation Services



APPENDIX B

Sources of Legal Services Obtained by State Executive Agencies in Fiscal Year 1987

| <u>Agency</u> | <u>Employed staff attorneys</u> | <u>Had access to another agency's attorneys</u> | <u>Used the Attorney General's Office</u> | <u>Contracted with private attorneys</u> |
|----------------------------------------|-----------------------------------------|-------------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------|
| Abstracters' Board of Examiners | | | x | |
| Accountancy, Board of | | | x | |
| Adjutant General Department | | | x | |
| Administration, Department of | x | | x | x |
| Aging, Department on | x | | x | |
| Agriculture, Board of | x | | x | x |
| Animal Health Department | | | x | |
| Arts Commission | | | x | |
| Attorney General's Office | x | | na | x |
| Banking Department | x | | x | |
| Barber Examiners, Board of | | | x | |
| Behavioral Sciences Regulatory Bd. | | | x | |
| Bicent. of U.S. Constitution, Comm. on | | | | |
| Capital Area Plaza Authority | | | | |
| Civil Rights, Commission on | x | | x | x |
| Commerce, Department of | x | | x | |
| Conservation Commission | | | x | |
| Consumer Credit Commissioner | | | x | x |
| Corporation Commission | x | | x | x |
| Correctional Institution at Lansing | | x | | |
| Correctional-Voc. Training Center | | x | | |
| Corrections Ombudsman Board | | | x | |
| Corrections, Department of | x | | x | |
| Cosmetology, Board of | | | x | |
| Credit Unions, Department of | | | x | |
| Crime Victims Reparations Board | | | x | |
| Dental Board | | | x | x |
| Education, Department of | x | | x | x |
| Emporia State University | | x | x | x |
| Fire Marshal's Office | x | | | |
| Fish and Game Commission | | | x | x |
| Fort Hays State University | | x | x | |
| Governor's Office | | | x | x |
| Grain Inspection Department | | | x | |
| Grants to WWII Veterans | | | | |
| Healing Arts, Board of | x | | x | x |
| Health and Environment, Dept. of | x | | x | x |
| Hearing Aid Disp., Board of Examiners | | | x | x |
| Highway Patrol | | | x | x |
| Historical Society | | | x | |

| <u>Agency</u> | <u>Employed staff attorneys</u> | <u>Had access to another agency's attorneys</u> | <u>Used the Attorney General's Office</u> | <u>Contracted with private attorneys</u> |
|---------------------------------------|---------------------------------|-------------------------------------------------|-------------------------------------------|------------------------------------------|
| Human Resources, Department of | x | | x | |
| Indigents' Defense Services, Board of | x | | x | x |
| Industrial Reformatory | x | x | x | |
| Insurance Department | x | | x | x |
| Kansas Bureau of Investigation | x | | x | |
| Kansas Lottery | | | x | |
| Kansas Neurological Institute | | x | | x |
| Kansas State Penitentiary | x | x | x | x |
| Kansas State University | x | x | x | x |
| Kansas Technical Enterprise Corp. | | x | x | |
| Kansas Technical Institute | | x | | |
| Kansas, Inc. | | | x | |
| Larned State Hospital | x | x | x | |
| Lieutenant Governor's Office | | | | |
| Mortuary Arts, Board of | | | x | |
| Norton State Hospital | | x | | |
| Nursing, Board of | | | x | |
| Optometry Examiners, Board of | | | | x |
| Osawatomie State Hospital | x | x | | |
| Park and Resources Authority | | | x | |
| Parole Board | | | x | |
| Parsons State Hosp. and Trng. Ctr. | | x | | |
| Pharmacy, Board of | | | x | x |
| Pittsburg State University | | x | x | x |
| Public Broadcasting Commission | | | | |
| Public Disclosure Commission | | | | x |
| Public Employees Retirement System | | | x | x |
| Racing Commission | | | | |
| Rainbow Mental Health Facility | | x | | |
| Real Estate Commission | | | x | x |
| Reception and Diagnostic Center | | x | | |
| Regents, Board of | x | | x | x |
| Revenue, Department of | x | | x | x |
| Savings and Loan Department | | | x | |
| School for the Deaf | | x | | |
| School for the Visually Handicapped | | x | x | |
| Secretary of State's Office | x | | x | x |
| Securities Commissioner | x | | x | x |
| Social and Rehab. Services, Dept. of | x | | x | x |
| Soldiers Home | | | x | |
| State Fair Managers, Board of | | | x | |
| State Library | | | x | |
| State Treasurer's Office | | | x | x |
| Tax Appeals, Board of | x | | | |
| Technical Professions, Board of | | | x | x |

| <u>Agency</u> | <u>Employed staff attorneys</u> | <u>Had access to another agency's attorneys</u> | <u>Used the Attorney General's Office</u> | <u>Contracted with private attorneys</u> |
|-------------------------------------|-----------------------------------------|-------------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------|
| Topeka State Hospital | x | x | x | |
| Transportation, Department of | x | | x | x |
| Univ. of Kansas Medical Center | x | x | x | x |
| University of Kansas | x | x | x | x |
| Veterans Affairs, Commission on | | | x | |
| Veterinary Examiners, Board of | | | x | |
| Vocational Education, Council on | | | | |
| Water Office | | | x | |
| Wheat Commission | | | | |
| Wichita State University | | x | x | x |
| Winfield State Hosp. and Trng. Ctr. | | x | | |
| Youth Center at Atchison | | x | | |
| Youth Center at Beloit | | x | | |
| Youth Center at Topeka | | x | | |
| Totals (out of 99 agencies): | 32 | 27 | 72 | 37 |

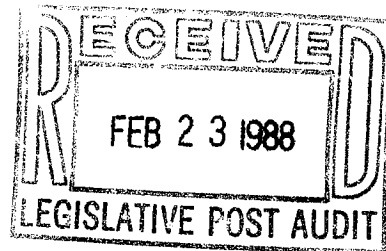


APPENDIX C

Agency Responses

On February 15, 1988, copies of the draft audit report were sent to the Department of Administration, the Insurance Commissioner, the Attorney General, the Board of Dental Examiners, and the Kansas State Board of Technical Professions for review and comment. Those written responses are included in this appendix.

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION

State Capitol
Topeka 66612-1572
(913) 296-3011

H. Edward Flentje, *Secretary*

February 22, 1988

Meredith Williams
Legislative Post Auditor
Legislative Division of Post Audit
109 W. 9th, Suite 301
Mills Building
BUILDING MAIL

Dear Meredith:

I am writing in follow-up to your February 15 letter which transmitted the draft audit report on legal services for state agencies.

On balance, I believe the report is a good analysis. We will continue our reviews of the utilization of legal services for state agencies. Your audit report will be useful in pursuing ways in which to achieve savings by changing the way state agencies are obtaining legal services.

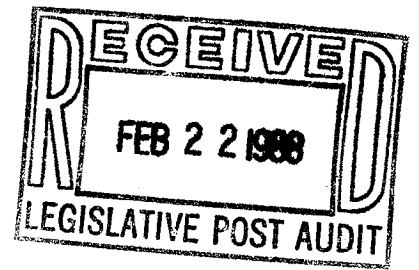
Thank you for the opportunity to respond to your draft report.

Sincerely,

A handwritten signature in cursive script, appearing to read "H. Edward Flentje".

H. Edward Flentje
Secretary of Administration

HEF:mkr



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

February 22, 1988

Meredith Williams
Legislative Division of Post Audit
109 West 9th, Suite 301
Topeka, Kansas 66612-1285

Dear Mr. Williams:

Thank you for the opportunity to comment on your draft audit report, Legal Services for State Agencies. I commend you and your staff for your quick but thorough review of state legal services.

I concur with your conclusions and will lend the assistance of my office to an in-depth review of how the state can more efficiently be provided with necessary legal services. I have long maintained that through consolidation of legal services in large part under the state's chief legal officer, the Attorney General, we can increase efficiency, lower costs and provide better and more consistent services. In fact, in this year's budget process I proposed the same. (See attached Issue Paper No. 3, Consolidation of Legal Services, July 15, 1987.) This, of course, can only be accomplished after complete study and the authorization and funding of additional positions to my staff. Further, consideration should be given to instituting, at least for certain agencies with non-General Fund revenue sources, a billing system for legal services to reduce the burden on the General Fund.

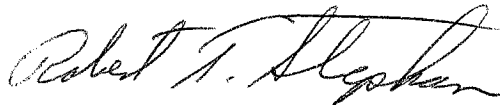
As is pointed out by the audit, I do not have the resources today to take on significant new duties without increased staff and funding. I also would comment on a statement attributed on page 8 of the draft report to Department of Transportation officials that it was necessary to contract with a private attorney for transportation law

services because my office lacked the expertise. With rare exception for certain legal specialties, this office will build the expertise in-house to handle any legal needs of the state if proper staffing and funding are authorized. Where it is determined the state is not best served by building such expertise in-house, I believe the state's chief legal officer, the Attorney General, should make that decision.

Finally, I believe it is necessary to elaborate on the figures provided on page 9 of the draft report as to contract legal services attributable to my office in Fiscal Year 1987. Of the \$761,925 spent by this office under the object code for contracts with attorneys, \$651,448 was spent on the Kansas v. Colorado water litigation. Of that total, only \$68,338 was for payment of attorneys fees. The remainder was for expenses, in large part the payment of engineers, hydrologists, historians and economists who are providing expert assistance in the case and whose bills were channelled through the attorney's contract.

In summary, I concur with the Post Audit draft report, stand ready to assist in developing and implementing a plan for consolidation of legal services and commend the Division of Post Audit for its work.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL

RTS:crw

Attachment

Issue Paper No. 3
Submitted by Attorney General Robert T. Stephan
July 15, 1987

CONSOLIDATION OF LEGAL SERVICES

I. In order to promote greater efficiency, economy and consistency in legal services for the State of Kansas, state legal services should be consolidated to the greatest extent possible under the Office of Attorney General.

II. Over the last 20 years, legal services to Kansas government have experienced tremendous growth. During that time, however, conditions have been such that these legal services evolved in a decentralized manner. Attorney positions or contract legal services exist in nearly every agency of state government. The Office of Attorney General has, at least in the last 10 years, remained relatively stable in its size. Thus, today most attorneys in state government are employed outside of the jurisdiction of the Attorney General. Presently, there are only 27 attorneys in the state system under the control of the Attorney General, while there appear to be over 200 attorneys employed in other agencies. Still more contract attorney work is performed for the state outside of the attorney general's jurisdiction. Expertise and duties are duplicative among agencies. With attorneys under the control of many different agencies, conflicts in legal advice and opinions are frequent. Costs of providing legal services are much greater than necessary. Through consolidation there would be economic benefits to the state in eliminating duplicative services and in developing greater expertise in particular areas of the law. Legal advice and recommendations would become more consistent and procedures for provision of legal services would become more standardized. This office also would be able to develop even a more professional litigation team to represent the state in court in litigation rather than the current practice of this office representing the state in some matters while agency counsel represents the state in other matters. A division of hearing officers could be established for administrative hearings and a group of prosecutors before administrative agencies could be developed to streamline the administrative hearing process. Greater fiscal accountability also could be achieved through a billing process to be established by the Office of Attorney General, particularly to bill fee-fund agencies for legal services provided to those agencies.

III. Options are many in how to implement and how far to implement the consolidation of legal services. They range anywhere from leaving things as they are today to complete

consolidation in a justice department under the control of the Attorney General with there being many levels of consolidation in between. Rather than even suggest exactly what level of consolidation might be appropriate, it perhaps makes the most sense to establish a task force between this office and the governor's office, possibly appointing an attorney from the private sector to also be a part of that task force, to explore means of consolidation and levels of consolidation. A number of states already have gone through this process and may be used by the task force as models for consolidation. Recommendations on implementation could be brought forward to the Governor and to the Attorney General from such a task force.

IV. It is our recommendation that such a task force of perhaps five persons be established. The Governor and Attorney General would appoint two staff members each and agree on appointment of one attorney who is from the private sector.

V. Without having a specific proposal on the table, it is impossible to say what the fiscal impact of such a consolidation might be. Generally, it is our belief consolidation would provide for economy in provision of legal services, reducing the number of attorneys needed by the state. Further, fee fund agencies could be charged for services provided.

VI. Whether legislative action, an executive reorganization order or some other form of action is required to implement a plan of consolidation, is a matter which would have to be determined dependent upon any option to be pursued. A program would indeed require the cooperation of the legislature in changing funding structures.

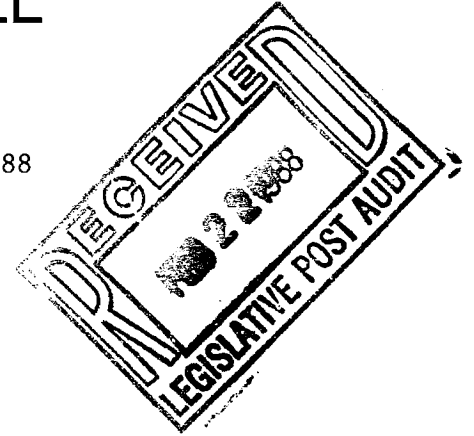
VII. There would be no agency of state government which would not feel the impact of such consolidation.



FLETCHER BELL

COMMISSIONER OF INSURANCE

February 19, 1988



Mr. Meredith Williams
Legislative Post Auditor
109 West 9th, Suite 301
Mills Building
Topeka, KS 66612-1285

Dear Mr. Williams:

We have reviewed the draft copy of the audit report, Legal Services for State Agencies, and appreciate having the opportunity to respond to it.

I wish to respond specifically to statements appearing on pages 9 and 10 of the report which indicate the Insurance Department may be able to save approximately \$200,000 by hiring staff attorneys to defend the Workers' Compensation Fund.

In my opinion, workers' compensation is a highly specialized area of law that requires expertise not only as to procedure but also in the terms of effectively evaluating highly complex medical issues and determining the compensable value of certain injuries. This can be substantiated by the fact that the Workers' Compensation Fund sees the same defense and plaintiff's attorneys in case after case. Although the Fund could potentially achieve a savings strictly in the cost of defending cases by employing in-house attorneys, I am convinced that by sacrificing the level of expertise that our outside attorneys possess, any savings in defense costs would be lost in additional claim payments made by the Fund. During the current fiscal year, claim payments from the Workers' Compensation Fund will exceed \$18 million. Even an increase in claim payments as small as one percent would offset the projected savings which your report indicates the Fund could possibly save by hiring staff attorneys.

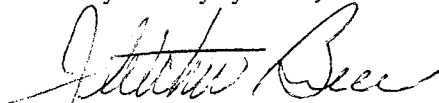
Mr. Meredith Williams
February 19, 1988
Page 2

Your report also makes the conclusion that since the Department of Administration was able to save approximately \$35,000 in a five month period by hiring an additional attorney rather than using outside counsel to defend workers' compensation claims filed by state employees that in-house attorneys can develop the expertise needed to defend such claims. A closer look at the information provided to your staff by the Department of Administration reveals this savings was strictly in the area of wage expense. The report fails to disclose if the Department of Administration was able to win a greater percentage of their cases during this five month period with the use of the new staff attorney or the effect this change had on claim payments. Additionally, I think a greater time period is needed to accurately assess if the change to in-house counsel by the State Self-Insurance Fund will prove to be a cost effective method of defending workers' compensation claims.

I am certain there are attorneys we could hire who, over time, would develop the expertise needed to successfully defend the Workers' Compensation Fund. Yet, we are also certain that while those attorneys gained this experience, the Fund would lose a greater number of cases and claim payments would rise even faster than they presently do. In addition, once those attorneys attained the level of expertise required by this Department it is quite possible we would lose them due to the state's inability to match salaries offered to attorneys by private industry.

Again, I appreciate having the opportunity to respond to the draft copy of your report. If I can be of further assistance during the audit, please let me know.

Very truly yours,



Fletcher Bell
Commissioner of Insurance

FB:1bas
5116rn

AUBREY A. GENTRY, D.D.S.
PRESIDENT
1428 S. 32ND STREET
KANSAS CITY, KANSAS 66106-2192
TELEPHONE NO. (913) 677-1509

STATE OF KANSAS



BUSINESS OFFICE
KANSAS DENTAL BOARD
4301 HUNTOON, SUITE 4
TOPEKA, KANSAS 66604-1996
TELEPHONE NO. (913) 273-0780

NORMAN G. GIEBLER, D.D.S.
VICE PRESIDENT
3009 HALL
HAYS, KANSAS 67601-1897
TELEPHONE NO. (913) 625-3117

BOARD OF DENTAL EXAMINERS

MARIANNE SPANO
OFFICE SECRETARY

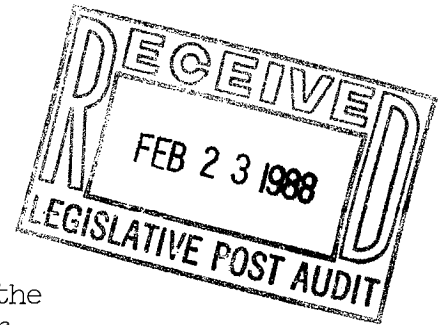
CYNTHIA G. BARRETT, R.D.H.
SECRETARY-TREASURER
3115 W. 20TH
TOPEKA, KANSAS 66604-3239
TELEPHONE NO. (913) 357-6693

February 19, 1988

BOARD ATTORNEY
H. PHILIP ELWOOD
215 E. 6TH
TOPEKA, KANSAS 66603-3999
TELEPHONE NO. (913) 233-0593

PHYLLIS WATKINS
BOARD MEMBER
643 INDIANA
LAWRENCE, KANSAS 66044-2329
TELEPHONE NO. (913) 842-8794

Legislative Division of Post Audit
Meredith Williams
109 West 9th, Suite 301
Mills Building
Topeka, Kansas 66612-3792



L. THANE FRAZIER, D.D.S.
BOARD MEMBER
109 W. MAIN STREET
LYONS, KANSAS 67554-1927
TELEPHONE NO. (316) 257-5104

Dear Mr. Williams,

This letter is in response to the draft of the performance audit report, Legal Services for State Agencies.

The information in the audit report in reference to the dental board appears to be accurate. However, I wish to restate the Board's concern with the continuity and the availability of its legal counsel. The Board has retained the same law firm for many years and feels that the representation has been excellent. In the past twelve years, the Board has been involved in several legal actions which have carried over a long period of time. The members of the dental board feel it is imperative to the function of the Board that legal counsel maintain that continuity and be available for all of the shared responsibilities.

Thank you for your attention.

Sincerely,

Cynthia G. Barrett
Cynthia G. Barrett, R.D.H.
Secretary-Treasurer

CGB/ms

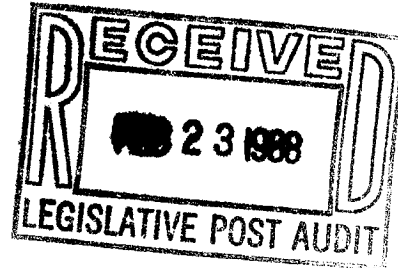


KANSAS STATE BOARD OF TECHNICAL PROFESSIONS

(913) 296-3053

Suite 507, Landon State Office Building 900 Jackson Street Topeka, Kansas 66612-1214

February 23, 1988



Meredith Williams
Legislative Post Auditor
109 W. 9th, Suite 301
Mills Building
Topeka, KS 66612-1285

RE: Legal Services for State Agencies

Dear Mr. Williams:

I am in receipt of the draft copy of the completed performance audit report regarding the above captioned subject.

The Board of Technical Professions wishes to reiterate the concerns that the Board has had in the past in this matter. The Board of Technical Professions believes that it has successfully fulfilled its legislative mandate to effectively protect the public due to the expertise gained by the private attorney the Board has employed for the past ten years.

The Board is concerned about the implication of any direction that may be taken by the Legislature that would not provide for full legal services to the Board of Technical Professions.

For the Board,

A handwritten signature in cursive script that reads "Betty L. Rose".

Betty L. Rose
Executive Secretary

BLR:pa

