



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

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To the Co-Chairs and Ranking Members of the Joint Justice System Appropriations Subcommittee, the Director of the Legislative Services Agency and the Interim Director of the Department of Management:

This report is submitted pursuant to the Justice Systems Appropriations bill for FY10 (S.F. 475), which contains the following provision:

“c. The department [of justice] shall cooperate with the auditor of state in preparing a report detailing recommendations for reimbursement moneys, including recommendations for appropriating such reimbursement moneys. The auditor of state shall provide the report to the co=chairpersons and ranking members of the joint appropriations subcommittee on the justice system, the legislative services agency, and the department of management by December 15, 2009.”

The report was prepared with the assistance and cooperation of the Attorney General’s Office.

Current System of Agency Reimbursements to the Attorney General’s Office

The Attorney General’s Office (Office) receives reimbursements from several sources - client agencies, internal funds and various grants. Based on the language of this provision, it appears the Legislature intended the report to focus on reimbursements from the Office’s client agencies and whether client agency reimbursements should be discontinued in lieu of funds being appropriated directly to the Office from the General Fund.

A list of agency reimbursements to the Office is attached. Agency reimbursements for FY10 are expected to total approximately \$11.7 million, which is approximately 50% of the Office’s total budget for FY10. The amount of agency reimbursements has increased over the last several years. The bulk of this increase is attributable to increased reimbursements from the Department of Human Services (DHS) for Office attorneys to fill vacancies in the Child Support Recovery Unit, which occurred after many county attorneys decided not to provide this service to DHS.

1. **Types of Reimbursement Agreements.** The Office has three basic types of agency reimbursement agreements. The first type of agreement is used primarily with large agencies, such as the Department of Human Services, the Department of Transportation and the Department of Revenue. Under these agreements, the Office and the agency cooperatively determine the number of attorneys necessary to perform needed services and the Office provides staff dedicated to the work of the agency. The Office periodically bills the agency for the costs to provide legal services to the agency. Billings include salaries and benefits paid and other costs, such as computers, travel and litigation. The agency then reimburses the Office for the costs billed, based on the documentation submitted with each billing.

The second type of agreement is used with mid-sized agencies, such as the Department of Public Safety, the Board of Regents and the Division of Banking. Under these agreements, the Office and the agency cooperatively determine the number of attorneys necessary to perform needed services and the Office assigns specific employees to an agency. The Office bills the agency for the salary and benefits of the assigned employees, and sometimes for other out-of-pocket expenses, in accordance with a contract negotiated between the Office and the agency. The agency reimburses the Office for the billed costs. Overhead costs of the Office are not billed to agencies under this type of agreement.

The third type of agreement is used with smaller agencies, such as the Department of Education, the Iowa Finance Authority and the Department of Elder Affairs. Under these so-called "flat-fee" agreements, agencies reimburse the Office for the salary and benefits of a portion of an attorney's (or several attorneys') time. The Office is reimbursed for out-of-pocket expenses in about one-half of these contracts but is not reimbursed for overhead costs under this type of agreement. Attorney time is based on reasonable estimates maintained on a quarterly basis and the agreements are modified annually to reflect changes in work load. For example, the reimbursement from the Underground Storage Tank (UST) Board will be reduced this fiscal year from approximately \$107,000 to approximately \$67,000 because the UST program is winding down and less Office staff time is needed. On the other hand, reimbursement from the Department of Public Health will increase approximately \$66,000 this fiscal year to account for one-half of an attorney FTE which will be dedicated to a new e-health initiative paid for by federal grants.

Beyond these reimbursement agreements, the Office often provides additional necessary legal services to agencies without reimbursement. An example is the Iowa Lottery and the Touchplay litigation. The Lottery annually reimburses the Office for one attorney FTE. However, when the Legislature terminated the Touchplay program and litigation ensued, the Office assigned several attorneys to handle the litigation, which lasted for more than two years. The Office did not bill the Lottery for this substantial amount of extra attorney time.

2. **Authority and Accountability.** The Office is granted explicit statutory authority to seek reimbursement from several agencies, including the following: (a) Department of Revenue - Iowa Code section 13.5 (b) Department of Human Services - Iowa Code section 13.6 (c) Department of Transportation - Iowa Code section 307.23 and (d) Department of Public Safety - Iowa Code section 80.1.

The Office is implicitly granted authority to seek agency reimbursements through the following provisions of law: (a) The Office's basic and, with few exceptions, exclusive authority and responsibility to prosecute and defend actions involving the state and state officers in court and other tribunals, (b) the Office's basic authority to enter into contracts and agreements and (c) the Office's authority to expend reimbursement money as annually authorized by the Legislature through appropriation language. For FY10, this is done pursuant to section 39 of HF 820, which states "Federal grants, receipts, and funds and other nonstate grant, receipts, and funds . . . are appropriated to the department of justice for the purposes set forth in the grants, receipts, or conditions accompanying the receipts of the funds . . ."

The Office is held accountable for this system of agency reimbursements in several ways. First, the Office has provided the Legislature with a list of its reimbursements (similar to the one attached) since at least 1995. Second, as discussed above, agency reimbursements are negotiated annually and all reimbursement agreements are approved by the head of the respective agency. Finally, the State Auditor's office annually audits the Office, has access to all of the Office's reimbursement agreements and carefully scrutinizes a number of agreements.

Alternatives to Current System of Agency Reimbursements to the Office

Several alternatives to the current system of agency reimbursements to the Office were discussed in preparing this report.

1. **Appropriate Reimbursement Money Directly to Office.** A question to be addressed in the report mandated by the Legislature is whether reimbursement money should be appropriated directly to the Office. While appropriating reimbursement money directly to the Office could give the Legislature greater control over Office finances, there are three main arguments against direct appropriation rather than continuing to allow the Office to receive reimbursement money:

First, a set General Fund appropriation does not give the Office, or its client agencies, the flexibility to adjust to changing workloads. Currently, the Office and agencies cooperate in gauging needs and making modifications, when necessary.

Second, there would be less transparency and accountability since the Office would receive a set appropriation, regardless of the amount of Office staff time dedicated to agencies or the current needs of agencies.

Third, the bulk of agency reimbursement money is not derived from the General Fund. Most reimbursement money is derived from federal funds, licensing fees and dedicated funds (such as the Road Use Tax Fund). One notable exception is the reimbursement from the Department of Revenue, which is derived from the General Fund appropriation to the Department. Replacing reimbursement money with a General Fund appropriation would result in a reduction of current General Fund monies available for other purposes.

2. **More Express Authority.** One alternative to the current system of reimbursement would be for the Legislature to authorize a reimbursement system for the Office similar to that used by the Auditor of State's Office. Under Iowa Code section 11.5B, the Auditor of State is specifically authorized to bill stated agencies and agencies receiving federal funds for services provided those agencies or the federal funds received by agencies.

If applied to the Office, the advantages of this system would include the following: (a) the Legislature, not the Office, would determine whether an agency should pay the Office for legal work and (b) named agencies would not be able to refuse to reimburse the Office for necessary legal work, thereby enhancing stability and certainty in budgeting from year-to-year.

The disadvantages of this system include the following: (a) If the Legislature did not include an agency on the list, there would be a strong presumption the Office could not seek an agency reimbursement, nor could an agency voluntarily agree to a reimbursement and (b) this system would lessen the flexibility to address changes in the legal needs of an agency. A relevant example was cited above concerning the Department of Public Health's new e-health initiative. If Public Health was not on the statutory list, there could be a question whether it could use new federal money for the initiative to pay for Office attorneys to provide legal services. Although this system would clarify which agencies are required to reimburse the Office, it does not address issues such as the amount of the reimbursement, selection of attorneys and control of legal representation. These matters are currently negotiated by the Office and agencies when agreements are annually prepared.

3. **Fee-for-Service.** Another system of reimbursement for the Office would be the model utilized by the Department of Administrative Services for the services it provides to state agencies. This system is basically a fee-for-service. The Office would be authorized to charge agencies for documented costs it incurred in providing required legal services to the agency (such as litigation). The Office would also be authorized to charge agencies for documented costs it incurred in providing legal services voluntarily requested by an agency.

The advantages of this system include the following: (a) The Office's reimbursement would be more directly tied to the actual services provided because the Office would need to better document time and resources expended and (b) agencies would have more flexibility to negotiate with the Office with respect to legal services which the Office is not required to perform.

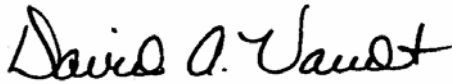
The disadvantages of this system include the following: (a) Attorneys and others in the Office would be required to keep detailed time records which would increase administrative burdens, (b) agencies might not seek needed legal advice knowing "the meter would be running" and a bill for legal services would follow and (c) with respect to required legal services (such as litigation), agencies would have great uncertainty in budgeting. A relevant example was cited above with respect to the Lottery and the Touchplay litigation. Under a fee-for-service model, the Lottery would have incurred substantial and unbudgeted litigation costs

incurred by the Office over several fiscal years.

Recommendation

The current system of agency reimbursements for the Office is not perfect. On a yearly basis, there are probably some agencies which pay somewhat too much and some which pay somewhat too little. However, averaged over several years, the amount of agency reimbursements may be a fairly accurate reflection of the costs borne by the Office for the benefit of the reimbursing agencies. In addition, the Office and agencies annually negotiate agreements and make changes when necessary.

Considering the severe budget problems faced by the Office and all other agencies, this is not a particularly good time to implement major changes in how the Office is funded and how agencies will pay for legal services. Instead of advocating changes at this time, the Auditor of State believes the Attorney General's Office should be provided the opportunity to investigate alternatives to the current system of reimbursements and recommend a change if deemed appropriate. The Office of Auditor of State would be pleased to review those recommendations after they have been prepared.



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Auditor of State



Warren G. Jenkins, CPA
Chief Deputy Auditor of State

Report on Attorney General's Office Reimbursements

December 15, 2009

Page 5

**ATTORNEY GENERAL REIMBURSEMENTS
AGENCIES, FUNDS, BOARDS, INTERNAL FUNDS, GRANTS**

| Agency Name | Actual 05 | Actual 06 | Actual 07 | Actual 08 | Actual 09 | Budget 10 |
|--------------------------------|------------------|------------------|------------------|-------------------|-------------------|-------------------|
| Transportation | 1,066,529 | 909,880 | 919,369 | 988,794 | 1,133,688 | 1,188,773 |
| Human Services | 2,850,639 | 3,217,444 | 3,838,948 | 4,492,911 | 5,149,096 | 5,243,300 |
| Public Health | 118,092 | 122,247 | 168,274 | 281,091 | 381,494 | 348,752 |
| Inspect & Appeals | 310,978 | 152,706 | 167,298 | 434,854 | 497,632 | 478,493 |
| Revenue | 576,229 | 604,720 | 654,437 | 703,504 | 724,873 | 732,690 |
| Public Safety | 111,478 | 114,885 | 124,923 | 138,646 | 151,086 | 147,536 |
| Banking | 132,361 | 118,602 | 119,812 | 130,737 | 135,657 | 131,461 |
| Insurance | 227,792 | 237,370 | 228,854 | 245,324 | 263,220 | 183,871 |
| Civil Rights | 103,809 | 109,002 | 113,658 | 123,234 | 129,849 | 127,261 |
| Alcoholic Bev Div | 131,059 | 132,819 | 128,290 | 128,606 | 128,562 | 75,000 |
| College Aid Comm | 160,290 | 80,388 | 86,602 | 92,449 | 97,289 | 97,288 |
| Treasurer (Uncl Prop) | 12,000 | 12,000 | 12,000 | 12,000 | 12,000 | 12,000 |
| Treasurer (TSA) | 315,433 | 503,138 | 452,210 | 435,652 | 360,152 | 300,000 |
| Treasurer (2nd Injury Fund) | 50,000 | 50,000 | 50,000 | 150,000 | 150,000 | 150,000 |
| Treasurer (I-Jobs) | - | - | - | - | 13,384 | - |
| Credit Union Div | 25,000 | 25,000 | 25,000 | 25,000 | 25,000 | 25,000 |
| Lottery | 109,031 | 50,320 | 102,961 | 238,319 | 142,641 | 118,260 |
| DAS/General Services | 61,243 | 50,148 | 50,125 | 54,317 | 54,388 | 50,000 |
| DAS/GS Vehicle | 30,000 | 30,000 | 30,000 | 30,000 | 30,000 | 30,000 |
| DAS/Personnel (Work Comp) | 242,000 | 242,000 | 242,000 | 242,000 | 242,000 | 400,000 |
| DAS/la Technology Dept | 60,091 | 60,148 | 60,098 | 60,108 | 60,114 | 60,000 |
| IA Comm Network | 66,130 | 56,569 | 71,482 | 78,258 | 85,132 | 51,995 |
| Racing & Gaming | 20,431 | 20,725 | 20,376 | 20,286 | 20,696 | 20,000 |
| Education | 17,312 | 16,666 | 17,171 | 15,463 | 15,397 | 15,000 |
| Economic Development | 20,267 | 25,280 | 20,110 | 20,074 | 20,876 | 20,000 |
| DED - Vision Iowa | 15,272 | 15,039 | 15,637 | 15,283 | 15,404 | 15,000 |
| Educ Examiners | 50,152 | 22,103 | 21,169 | 25,074 | 26,633 | 25,000 |
| Public Safety (HIDTA) | 370,158 | 288,306 | 309,609 | 356,713 | 376,071 | 393,187 |
| Judicial | 3,250 | - | - | - | - | - |
| Judicial - Ct Cost Refunds | 4,314 | 3,281 | 3,763 | 3,886 | 3,606 | 4,000 |
| la Workforce Development | - | - | - | - | 36,885 | 30,000 |
| Executive Council | 200,000 | - | - | - | - | - |
| Consumer Advocate | 25,172 | 25,172 | 25,776 | 25,938 | 25,605 | 25,172 |
| Secretary of State | - | 2,818 | 2,712 | - | - | - |
| Regents-UNI | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 |
| Regents | 266,887 | 263,753 | 367,056 | 372,995 | 468,192 | 360,538 |
| Natural Resources | 30,000 | 30,000 | 30,000 | 30,000 | 30,000 | 30,000 |
| la Finance Authority | 26,717 | 25,141 | 25,189 | 25,637 | 25,530 | 25,000 |
| la National Guard | 146,885 | 34,007 | 30,053 | 30,104 | 30,117 | 30,000 |
| Emergency Management | 15,000 | 16,950 | 15,323 | 30,000 | 30,000 | 30,000 |
| Elder Affairs | - | - | - | 20,281 | 20,785 | 20,000 |
| IPTV | - | - | - | 4,800 | 4,800 | 4,800 |
| Vocational Rehab | - | - | - | - | - | 40,000 |
| OEI - Power Fund Board | - | - | - | - | - | 25,000 |
| Corrections-IFI & Other | 25,556 | 170,995 | 27,445 | 984 | - | - |
| Columbia University | - | - | 34,954 | 51,525 | 49,981 | 20,660 |
| Misc. Law Enforcement Receipts | 33,055 | 38,499 | 39,184 | 44,728 | 49,947 | 25,500 |
| Iowa County Atty Association | 37,104 | 43,711 | 46,647 | 53,454 | 40,448 | 54,780 |
| Total | 8,087,717 | 7,941,830 | 8,718,516 | 10,253,027 | 11,278,229 | 11,185,317 |

| Fund Name | Actual 05 | Actual 06 | Actual 07 | Actual 08 | Actual 09 | Budget 10 |
|----------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Grain Indemnity Fund | 60,000 | 60,000 | 60,000 | 60,000 | 72,600 | 72,600 |
| Pesticide Fund | - | - | - | 2,828 | 1,953 | 3,000 |
| UST Fund | 154,108 | 106,396 | 105,982 | 106,822 | 106,208 | 106,877 |
| Total | 214,108 | 166,396 | 165,982 | 169,650 | 180,760 | 182,477 |

| Board Name | Actual 05 | Actual 06 | Actual 07 | Actual 08 | Actual 09 | Budget 10 |
|--------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Commerce Boards | 55,252 | 60,702 | 129,926 | 126,554 | 122,945 | 119,500 |
| Medical Examiners | 43,555 | 46,053 | 66,631 | 128,867 | 107,926 | 105,000 |
| Pharmacy Examiners | 64,250 | 64,506 | 65,188 | 64,552 | 64,679 | 63,170 |
| Nursing Board | 14,229 | 26,474 | 24,867 | 24,178 | 24,092 | 24,000 |
| Dental Examiners | 19,106 | 19,131 | 19,114 | 20,744 | 26,278 | 19,068 |
| Fair Board | 10,049 | 10,052 | 10,028 | 10,059 | 10,058 | 10,000 |
| Electricians | - | - | - | - | - | 20,000 |
| Total | 206,440 | 226,919 | 315,753 | 374,954 | 355,978 | 360,738 |

Report on Attorney General's Office Reimbursements

December 15, 2009

Page 6

| Internal Funds | Actual 05 | Actual 06 | Actual 07 | Actual 08 | Actual 09 | Budget 10 |
|-----------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Ia Cons Cred Fund | 247,002 | 245,000 | 240,788 | 245,462 | 245,692 | 245,000 |
| Elderly Iowan Fund | 420,241 | 93,702 | 286,996 | 52,904 | 667,255 | 756,000 |
| Consumer Ed Fund | 534,073 | 597,138 | 907,038 | 829,073 | 1,136,556 | 1,254,784 |
| Victim Comp Fund | 171,556 | 178,418 | 156,331 | 64,892 | 162,974 | 167,877 |
| Antitrust Fund | 166,848 | 142,109 | 159,667 | 160,627 | 147,569 | 155,301 |
| Environmental Fund | - | - | - | - | 10,849 | - |
| Mylan Funds | 1,033 | 35,865 | 216,979 | 141,969 | - | - |
| Salton/Cy Pres Funds | 49,207 | 15,794 | 1,324 | 33 | - | - |
| Forfeiture Fund | - | - | - | 300,000 | 349,883 | 300,000 |
| Total | 1,589,959 | 1,308,026 | 1,969,121 | 1,794,961 | 2,720,778 | 2,878,962 |

| Grants | Actual 05 | Actual 06 | Actual 07 | Actual 08 | Actual 09 | Budget 10 |
|-----------------------------|------------------|----------------|----------------|----------------|----------------|----------------|
| Commerce-One Call | 10,065 | 15,931 | 15,903 | 8,938 | 6,278 | 6,000 |
| VAWA | 72,000 | 73,000 | 75,000 | 68,650 | 69,370 | 76,099 |
| DOJ Financial Crimes | 59,931 | - | - | - | - | - |
| Rural Domestic Violence | 334,631 | - | - | - | - | - |
| Child Advocacy | 5,698 | - | - | - | - | - |
| NHTSA Odometer | 6,884 | - | - | - | - | - |
| COPS Grant | 209,120 | 194,410 | 10,838 | - | - | - |
| Emergency Management CIPA | 19,835 | - | - | - | - | - |
| Sears Grant | 12,577 | - | - | - | - | - |
| Tobacco Enforcement | 357 | - | - | - | - | - |
| Tobacco Enf Calls | 683 | 756 | 857 | - | 803 | - |
| IA Co Atty Case Mgmt - CJIS | - | - | - | 69,628 | - | - |
| Gov's Traffic Safety Bureau | 158,847 | 161,470 | 165,778 | 181,218 | 177,510 | 195,000 |
| ODCP - Drug Grant | 24,085 | 18,000 | 17,000 | 15,357 | 19,926 | 20,901 |
| ODCP - Drug/Children Grant | 104,991 | 107,298 | 81,284 | 115,707 | 116,199 | 3,267 |
| Total | 1,019,704 | 570,865 | 366,660 | 459,497 | 390,086 | 301,267 |

| | | | | | | |
|--------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| GRAND TOTAL | 11,117,928 | 10,214,036 | 11,536,033 | 13,052,089 | 14,925,831 | 14,908,761 |
|--------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|