



INTERNAL AUDIT

City Attorney's Office – Analysis of In-house vs. Outsourcing

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Authorization

I have conducted an audit of the City Attorney's Office analyzing the cost effectiveness of In-House Services vs. Outsourcing. This audit was conducted under the authority of Resolution #2013-46 and in accordance with the Annual Audit Plan approved by the League City, City Council.

Objective

The objective of this audit is to determine if there is an advantage of proceeding with an In-house City Attorney vs. continuing the current practice of Outsourcing the function.

Scope and Methodology

I conducted this audit in accordance with Generally Accepted Government Auditing Standards except this audit function has not had an external peer review. Those standards require that I plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. I believe that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

This audit deals primarily with the inputs (hours expended and dollars spent) to Legal Services provided the city. It does not dwell on the outputs (quantity of services provided by the attorney) and outcomes (accomplishment or results of a program) of Legal Services provided. Those were found to be elusive as there is no database to tally the total work produced or the total amount of litigation prevented. This was true of other cities as well.

This audit sampled four months of invoices for the Ross Banks and Gregg & Gregg firms. The months were October 2012, February 2013, June 2013 and September 2013. However, for calculations in the report the entire FY13 was used.

Throughout this report *assumptions* were made. They will be noted in the report.

Background

Throughout its history, League City has had a variety of different entities provide Legal Services. Anecdotal evidence suggests League City has had an in-house City Attorney twice and has had two different outside entities. A City Attorney provides a vital function to all departments of the city. It is important that service is efficient, effective and economical. Of late, Ross Banks was City Attorney through February 2007. Gregg & Gregg then served as City Attorney from February 2007 through June 2009, when Ross Banks was again named City Attorney. Currently, Ross Banks provides Basic and Litigation Services and Gregg & Gregg serves as

Municipal Court prosecutor. An attorney for Ross Banks charges \$185 per hour and a Paralegal charges \$65 per hour. An attorney for Gregg & Gregg charges \$125 per hour.

Program Analysis

This cost-effectiveness study details the going-away costs (those costs the city will no longer have) and the coming-in costs (those costs the city will now be responsible for) of having an in-house City Attorney. The difference found will determine quantitatively the best decision. A few qualitative aspects will also be noted later.

Quantitative Analysis

Table 1 – Go-Away Costs							
	FY07	FY08	FY09	FY10	FY11	FY12	FY13
Ross Banks	\$132,960	\$3,135	\$81,698	\$386,809	\$430,116	\$762,603	\$493,425
Gregg & Gregg	\$239,252	\$349,959	\$317,160	\$72,127	\$72,422	\$93,605	\$114,211
Total	\$372,212	\$353,094	\$398,858	\$458,936	\$502,538	\$856,208	\$607,636
Population	76,700	79,300	81,300	83,560	85,300	87,400	90,300
Cost per Capita	\$4.85	\$4.45	\$4.91	\$5.49	\$5.89	\$9.80	\$6.72
% of Operating Budget	.55%	.45%	.41%	.50%	.55%	.93%	.63%
Source: City's Financial System and Comprehensive Annual Financial Report. Calculations by Internal Audit.							

The above table gives the go-away costs of the Outsourced City Attorney; that is, those costs no longer the responsibility of the city. It *assumes* that the lawsuits worked on would also be worked on by an in-house City Attorney with the exception of other Outside Counsel that was used in addition to the above. Also the firm of Linebarger & Goggan is not included in the above because the *assumption* is that we would continue with them with an in-house attorney. The above does not include lawsuit settlements.

It should be stated that in looking through a sample of invoices (Ross Banks and Gregg & Gregg) for a four-month period of time, numerous attorneys and support personnel are being used. Ross Banks showed six attorneys (firm has a total of 10 attorneys), one legal assistant and a law clerk and Gregg & Gregg showed four attorneys (firm has a total of 5 attorneys). For an in-house City Attorney to be

feasible it must function with multiple attorneys and support personnel. To get a better idea this audit shows information from other like cities.

The following table provides some idea of the coming- in costs associated with an In-House City Attorney's Office.

Municipality	Population	City FTE**	Legal FTE	Legal Budget	Cost per Capita	% of Oper. Budget
Pasadena	152,281	1,030	8	\$1,043,850	\$6.85	.65%
	1 City Attorney	1 First Assistant City Attorney	3 Assistant City Attorneys	2 Senior Legal Assistants	1 Administrative Coordinator	
Galveston	48,444	692	6	\$582,060	\$12.02	.60%
	1 City Attorney	2 Assistant City Attorneys	1 Prosecutor	1 Legal Assistant	1 Legal Secretary	
Missouri City	69,774	318	4.5	\$575,388	\$8.25	.70%
	1 City Attorney	1 First Assistant City Attorney	2 Assistant City Attorneys	1 Part-Time Employee		
Sugarland	84,511	642	5	\$653,122	\$7.73	.38%
	1 City Attorney	1 Deputy City Attorney	2 Assistant City Attorneys	1 Legal Secretary		
Pearland*	99,800	633	5	\$575,274	\$5.76	.39%
	1 City Attorney	1 Deputy City Attorney	2 Assistant City Attorneys	1 Legal Secretary		
Baytown	73,413	800	6	\$736,534	\$10.03	.44%
	1 City Attorney	1 First Assistant City Attorney	2 Assistant City Attorneys	1 Admin. Assistant	1 Senior Administrative Support Specialist	

College Station	96,603	836	9	\$962,379	\$9.96	.45%
	1 City Attorney	4 Assistant City Attorneys	1 Legal Assistant/ Office Manager	2 Legal Assistants	1 Legal Secretary	
Bryan*	77,321	816	6	\$703,515	\$9.10	.21%
	1 City Attorney	4 Assistant City Attorneys	1 Legal Assistant			
Waco	127,148	1,564	11	\$1,281,248	\$10.07	.63%
	1 City Attorney	6 Assistant City Attorneys	3 Legal Secretaries	1 Property Manager		

*Budget Excludes Prosecutor

**FTE = Full-time Equivalent = Unit of Workload for an employee in a way that makes all workloads comparable. For example, in the audit report Missouri City's budget book shows 4.5 Legal FTE's. Also note that they have one part-time employee. That one part-time employee accounts for .5 or 1/2 of a full-time employee's workload; thus the term full-time equivalent.

Source: Comparative City's Budget Books. Calculations by Internal Audit.

Additional Statistics are as follows:

Table 3 – Additional Statistics for Comparative Cities					
	Average Cost Per Legal FTE	Attorneys Per City FTE	Legal FTE's Per Population	Average Cost Per Available Hour (Entire Legal Staff)	Average Cost Per Available Hour (By No. of Attorneys)
Pasadena	\$130,481	1/129	1/19,035	\$62.73	\$100.37
Galveston	\$97,010	1/115	1/8,074	\$46.64	\$69.96
Missouri City	\$127,864	1/71	1/15,505	\$69.16	\$69.16
Sugarland	\$130,624	1/128	1/16,902	\$62.80	\$78.50
Pearland	\$115,055	1/127	1/19,960	\$55.31	\$69.14
Baytown	\$122,755	1/133	1/12,235	\$59.02	\$88.53
College Station	\$106,931	1/93	1/10,734	\$51.41	\$77.11
Bryan	\$117,253	1/136	1/12,887	\$56.37	\$67.65
Waco	\$116,477	1/142	1/11,559	\$56.00	\$88.00

Source: Budget Books of Comparative Cities and Calculations by Internal Audit

The average cost per available hour (By Entire Legal Staff) (By No. of Attorneys) is fixed because the number of hours is fixed at 2,080 per year for each employee. It should be noted that the cities that have in-house legal services have a Fixed Cost. Those that do not have an in-house Legal Function have a Variable Cost. The characteristic of a variable cost is that on a unit basis the cost is fixed (e.g., \$185/hr.) but the total varies depending on workload. The characteristic of a fixed cost is that in total the cost is certain. The unit cost would be variable. For example, if we assume the total Legal Services Budget is \$600,000 and the total outputs are the completion of 1,000 requests for a year than the unit cost is \$600. If the output is the completion of 2,000 requests for a year than the unit cost is \$300. Under the Fixed Cost approach it is imperative to maximize outputs to lower the unit cost. The question becomes, which is better: a fixed cost or variable cost? Some cities that use the Variable Cost (outsourced) approach for Legal Services are listed in the following table:

Table 4 – Cities with Outsourced Legal Services			
Municipality	Population	Citywide FTE	Legal Budget
League City	90,300	545	\$510,000
Allen	88,103	723	\$340,000
Richardson	100,450	997	\$468,000
Flower Mound	65,000	551	\$1,236,695
Woodlands	100,670	434	\$712,000
Source: Budget Books and Inquiries by Internal Audit			

Fixed costs generally are more risky than variable costs. Fixed costs need to be paid no matter what, whereas variable costs are paid only when used. In a study of hours worked by the Outsourced Attorneys for League City, it was found that their FTE would total approximately two FTE employees. As mentioned earlier a total of six attorneys, one legal assistant and a law clerk were used by Ross Banks and four attorneys were used by Gregg & Gregg during the sampled period. The two FTE's would not guarantee that the expertise needed will be available but rather there might be a requirement to outsource the actions. Also, one must look at the demand for the services. League City is growing at a projected rate of 3 percent per year. Greater population can create greater demand for Legal Services. It would appear that League City's Legal Services will increase in the future.

Additional Costs of In-House Attorneys and Support

- 1) From the IT side there are one-time charges and recurring charges. The *assumption* here is 5 FTE's. They are as follows:

One-Time

Phones = \$2,000

Laptops = \$7,500

iPads = \$2,000

Recurring

Network Card = \$200 per month

Phone Allowance = \$500 per month

2) From the Facilities side:

Does not appear to be an issue since towards the end of 2014 there will be employees moving out of this building.

Qualitative Analysis

Knowing that the city is charged for usage of the Outsourced services on an hourly basis may make an employee reluctant to seek legal assistance. The employee may fear that their supervisor may rebuke them for calling. This can be a disadvantage to the City. The question may prevent a potential litigious situation.

Another factor to consider in this category is availability of the Legal Services. In-House legal services would be available immediately since they would be housed on City property. This contrasts with Outsourced Legal Services which would not always be available for face-to-face meetings. However, it should be known that the current Outsourced legal services has an attorney that lives a few blocks away from City Hall and can meet within a very short time frame.

In an informal survey of League City employees that utilize the Outsourced legal services, the majority is indifferent to an in-house attorney and is pleased with the current service.

Overall Conclusion

- 1) If the City desires to have an in-house attorney consideration should be given to a complete staff of attorneys. This is substantiated by the comparison cities study and past experience.
- 2) For fiscal years 10, 11 and 13, the going-away costs average \$523,037. FY12 was excluded as it appears to be an anomaly because of a particular lawsuit. Additionally, the budget for FY14 predicts Legal Services to be \$510,000. The coming-in costs for a 4.5 – 6 person office average \$636,776 (includes Galveston, Missouri City, Sugarland and Baytown). Therefore, from a quantitative standpoint the city should retain its outsourced City Attorney. To ensure the City is getting the best value, consideration should be given to proceed with a Request for Proposal.
- 3) The City needs to have a process in place to identify and accumulate outputs/outcomes from whoever the City Attorney is.
- 4) The City should continue to monitor the costs for outsourced services as the demand for legal services may dictate a change to a fixed cost structure.

ADDITIONAL CONSIDERATION

A hybrid approach was discussed at the Finance Committee meeting in which one attorney would be hired as a full-time employee to oversee the Legal Function and outsource on an as-needed basis. It should be noted that during this audit no arrangement such as that was found in municipal government. This discussion was not voted on by the Committee.

MANAGEMENT RESPONSE

City management has reviewed the draft audit report 201401. This response is prepared in accordance with Chapter 2, Article IV, Division 3, Section 2-216 of the Code of Ordinances. "The department must respond in writing specifying agreement with audit findings and recommendations or reasons for disagreement with findings and/or recommendations, plans for implementing solutions to identified problems and a timetable to complete such activities."

The draft report (page 6, draft dated 12/6/13) lists four findings:

- "If the City desires to have an in house attorney consideration should be given to a complete staff of attorneys."
- "... from a quantitative standpoint the city should retain its outsourced City Attorney."
- "The City needs to have a process in place to identify and accumulate outputs/outcomes from whoever the City Attorney is."
- "The City should continue to monitor the costs for outsourced services as the demand for legal services may dictate a change to a fixed cost structure."

As a follow up to these draft conclusions/recommendations, staff suggests that the decision to bring the City Attorney function in-house or continue to outsource that activity falls under the Council's purview. Staff is aware of successful models using either methodology. In moving forward staff is prepared to assist the Council with alternatives including but not limited to:

1. Continue the existing month to month arrangement with Gregg and Gregg (municipal prosecutor) and Ross Banks (general legal services).
2. Negotiate contract extensions with the existing firms.
3. Solicit proposals (RFPs) for legal services. We would anticipate this type of process to take 8 to 12 weeks to develop/evaluate proposals and get them to the Council for consideration. This could be accomplished in advance of development of the FY 2015 budget.

4. Work to develop a plan to transition some or all of the legal services to in-house in association with the development of the FY 2015 budget.

Regarding development of a process to identify and accumulate outputs/outcomes from the City Attorney, some of this information is likely already available. Staff is ready to assist City Council and the City Attorney with performance measurement. This might include tracking and reporting of outputs such as number of resolutions and ordinances drafted, number of contracts reviewed, etc.; analyzing billings to identify the number, type and nature of issues the Attorney is working on and develop a system to report the outcomes; or researching other cities and professional groups for best-practices examples of performance measurement in the municipal legal field.

CITY ATTORNEY RESPONSE

The City Attorney (Ross Banks) finds no issue with the City Auditor's analysis or conclusions and appreciates the efforts he has put into this assignment. The City Attorney stands ready to assist the City Council and Staff in meeting its goals as they relate to the delivery of legal services.