



Survey Regarding the Employment Status of Montana's City Attorneys

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Introduction

During a meeting of Montana's mayors in May, 2006, questions arose regarding the employment of city attorneys. It appears that there is wide disparity between municipalities in regard to salaries, benefits, contracts, availability and level of service. In addition, it became evident that a number of jurisdictions were unaware of the requirements of 7-4-4602 MCA which prescribes a two year appointment for city attorneys.

The mayors asked the Local Government Center if it could conduct a statewide survey to provide information about the big picture concerning city attorneys across the state. We are fortunate to have a class of Montana State University sociology students available to conduct the survey under the direction of Dr. Steven Swinford, who teaches classes on survey design, to assure the survey is methodologically sound and the results are accurate. The survey was sent to all 129 city clerks and a remarkable 101 surveys were returned. We thank the city clerks for taking the time to complete the questionnaire because without their assistance the gathering of this information would not have been possible.

Methodology

Surveys were sent to 129 municipalities in May 2006. A total of 101 surveys were returned by late July for a 78.3% completion rate. The survey instrument (attached at end of report) consisted of a 1-page front/back sheet with a mix of open-ended and forced-choice answer formats. Discrepancies in the number of valid answers from table to table are accounted for by surveys not completely filled out or by the skipping of particular questions. The data analysis in this report is limited to descriptions of the trends found in the data. The discussion below follows the format of the original survey and brief descriptions of the patterns revealed in the tables are described.

To allow for comparisons within each Montana League of Cities and Towns (MLCT) class level, all analysis are broken down by MLCT class level. The "total" column in the tables can be interpreted as the "statewide" average. The tables are embedded within the discussion of the results, hopefully making it easier to find data being described.

Results

Table 1 displays the breakdown of full and part time city attorneys in Montana, broken down by MLCT class level. The basic trend is that larger municipalities are more likely to employ full time city attorneys than are smaller municipalities. In fact, no town represented among the returned surveys employed a full time city attorney. Overall, 12 percent of the city attorneys in Montana are full time employees of a municipality.

Table 1. City Attorney Employment Status by MLCT Class Designation.

<u>Employment</u>	<u>MLCT Class Level</u>			<u>Town</u>	<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Full Time	86%	60%	8%	0%	12%
Part Time	14%	40%	92%	100%	88%
Number of cases	7	5	38	47	97

The average number of hours worked by city attorneys is shown in Table 2. The basic trend is that larger municipalities, specifically those in class 1 and 2, work what could be considered “full time” (40 hours a week). For class 3 cities the workload decreases to approximately a half-time position, although some reported their city attorney worked 40 hours a week. Finally, at the Town level, the average suggested about a half-day of work on city business per week. The average across the state of 12.84 hours should be interpreted cautiously given the clear differences among cities on the amount of work required by a city attorney.

Table 2. Average hours worked a week by City Attorneys by MLCT Class Designation.

<u>MLCT Class</u>	<u>Average Weekly Hours</u>	<u>Minimum</u>	<u>Maximum</u>
1	42.5 (6)	40	50
2	37.5 (4)	20	50
3	15.52 (23)	0	40
Town	3.55 (29)	0	20
Overall Average	12.84 (62)	0	50

The next table shows the different employment statuses of the city attorneys in Montana. The larger municipalities are more likely to hire city attorneys as city employees while smaller municipalities lean more toward the contracted employee model. The contracted services model was not widely employed and, when used, was confined to smaller municipalities. The “other” category included city attorneys hired as needed, paid a retainer, volunteer/pro bono, and elected.

Table 3. City Attorney Employment Status by MLCT Class Designation.

<u>Employment</u>	<u>MLCT Class Level</u>			<u>Town</u>	<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
City Employee	71%	60%	24%	18%	26%
Contract Employee	14%	40%	63%	64%	59%
Contracted Services	0%	0%	8%	8%	7%
Other	14%	20%	8%	20%	15%
N	7	5	38	50	100

Table 4 shows the average length of service of city attorneys at each MLCT class designation. Evidently city attorneys in Class One cities view their career as city attorney as a long term profession while city attorneys in smaller jurisdictions provide legal services as a short term supplement to their private practice.

Table 4. Average length of service of City Attorneys by MLCT Class Designation.

<u>MLCT Class</u>	<u>Average Service</u>	<u>Minimum</u>	<u>Maximum</u>
1	19.8 (6)	5	32
2	4.8 (5)	1	10
3	11.3 (35)	1	56
Town	8.4 (39)	1	30
Overall Average	10.2 (85)	1	56

In Table 5, the results to the question “Does your city/town appoint or reappoint your city attorney every two years as set forth in statute?” are displayed. The statewide results show that half of the municipalities have such a policy in place. The use of a two-year reappointment procedure is more common among smaller municipalities as well.

Table 5. Reappoint City Attorney Every Two Years by MLCT Class Designation.

<u>Reappoint</u>	<u>MLCT Class Level</u>			<u>Town</u>	<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Yes	14%	0%	73%	43%	50%
No	86%	100%	27%	57%	50%
N	7	5	37	47	100

Table 6 shows whether benefits are provided to city attorneys by MLCT class designation. The larger municipalities, who also tend to consider their city attorney as a city employee, are more likely to provide benefits. Smaller municipalities tend not to provide benefits and, as seen in Table 3, also favor the contracted employee model.

Table 6. Benefits Provided to City Attorney by MLCT Class Designation.

<u>Benefit</u>	<u>MLCT Class Level</u>			<u>Town</u>	<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Any Benefit	86%	80%	37%	15%	32%
No Benefits	14%	20%	63%	85%	68%
N	7	5	38	48	98

Table 7 shows the specific benefits provided to city attorneys across the state, broken down by MLCT class level. The overall pattern, consistent with the data shown in Table 6, is that Class 1 and 2 municipalities tend to provide standard benefits like retirement, insurance, travel funds, and support for continuing education. At the Class 3 and Town MLCT classifications the benefits are provided for a minority of city attorneys, with support for travel being the most common benefit. As for the “other” benefits provided, some examples mentioned on the surveys were the purchasing of law books (including the latest MCA), equipment and supplies, travel to council meetings, car allowance, expenses to attend annual MLCT conference, and purchase of fidelity bond and liability insurance.

Table 7. Specific Benefits Provided to City Attorney by MLCT Class Designation.

<u>Benefit</u>	<u>MLCT Class Level</u>			<u>Town</u>	<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Retirement	86%	80%	18%	6%	20%
Health Insurance	86%	60%	11%	2%	14%
Life Insurance	71%	60%	3%	2%	10%
Travel Funds	86%	80%	32%	6%	26%
Continuing Education	71%	60%	26%	4%	20%
Other	14%	20%	8%	4%	7%
N	7	5	38	48	98

The data in Table 8 show whether or not the municipalities pay a city attorney a retainer to remain on call. The larger municipalities do not use this model, thus confining the analysis to the Class 3 and Town levels. A majority of the Class 3 cities use the retainer model while about a third of the Towns use this type of contract.

Table 8. Pay City Attorney Retainer to remain on call by MLCT Class Designation.

<u>Pay Retainer</u>	<u>MLCT Class Level</u>			<u>Town</u>	<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Yes	0%	0%	66%	35%	43%
No	100%	100%	34%	65%	57%
N	7	5	38	48	98

The data in Table 9 show that the hiring of independent counsel is a common practice at every MLCT class level except among Towns. No data was collected in the survey that would allow for the identification of specific situations where private counsel is used.

Table 9. Does municipality ever use independent counsel by MLCT Class Designation.

<u>Use Independent Counsel</u>	<u>MLCT Class Level</u>			<u>Town</u>	<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Yes	100%	80%	66%	34%	54%
No	0%	20%	34%	66%	46%
N	7	5	38	47	97

Table 10 shows the responses to the question “If your city attorney has a private practice is there a process in place to address a possible conflict of interest?” Overall, 41 percent of municipalities have such a policy in place. Note that only 76 of the 101 municipalities responding to the survey have valid data on this question though. Several surveys had written comments to this question that indicated that their city attorneys were employed as city employees, thus private practice was not permitted. In other cases several responding parties simply indicated that they were not sure if conflict of interest policies were in place in their municipality. Because of the part-time nature of the city attorney’s work in smaller municipalities, it is important to note that among Class 3 cities and Towns that a majority of these entities do not have conflict of interest policies in place.

Table 10. Municipality has conflict of interest policy by MLCT Class Designation.

<u>Policy</u>	<u>1</u>	<u>MLCT Class Level</u>		<u>Town</u>	<u>Total</u>
		<u>2</u>	<u>3</u>		
Yes	50%	25%	53%	32%	41%
No	50%	75%	47%	68%	59%
N	2	4	32	38	76

The data in Table 11 suggest that attending commission meetings was a common practice in all municipalities except for in Towns. It is worth noting that 75% of towns conduct their public meetings without the benefit of legal counsel during the meeting.

Table 11. City Attorney Attend commission meetings by MLCT Class Designation.

<u>Attend</u>	<u>1</u>	<u>MLCT Class Level</u>		<u>Town</u>	<u>Total</u>
		<u>2</u>	<u>3</u>		
Yes	86%	60%	68%	25%	48%
No	14%	40%	32%	75%	52%
N	7	5	38	48	98

Table 12 shows data on whether or not the city attorney writes ordinances for the municipality. This appears to be a common practice in cities but not used frequently among Towns. Several respondents noted that their city attorney does not actually write the ordinances but rather reviews the ordinances written by others.

Table 12. City Attorney writes ordinances by MLCT Class Designation.

<u>Attend</u>	<u>1</u>	<u>MLCT Class Level</u>		<u>Town</u>	<u>Total</u>
		<u>2</u>	<u>3</u>		
Yes	71%	80%	76%	33%	55%
No	29%	20%	24%	67%	45%
N	7	5	38	48	98

City attorneys commonly review all or some of the contracts entered into by municipalities in Montana, as seen in the data in Table 13. The interesting thing to note here though is that almost a quarter of Montana municipalities do not have a city attorney reviewing their contracts.

Table 13. City Attorney reviews contracts for municipality by MLCT Class Designation.

<u>Reviews Contracts</u>	<u>1</u>	<u>MLCT Class Level</u>		<u>Town</u>	<u>Total</u>
		<u>2</u>	<u>3</u>		
All	86%	60%	68%	44%	57%
Some	14%	20%	11%	29%	20%
None	0%	20%	21%	27%	23%
N	7	5	38	48	98

Salary Data

The data collected on salary or financial compensation was collected in a variety of formats because the agreements were known to vary widely across the state. No salary data was collected for Class 1 and Class 2 cities because the city attorney is considered a full time position. Thus, the data presented here represents on Class 3 cities and towns.

Class 3 cities reported the following monthly figures:

- \$550 month
- \$550 a month
- \$600 a month
- \$856 a month for civil work and \$60 hour for criminal work
- \$1040 a month plus expenses
- \$1305 a month and \$65 an hour over 10 hours per month
- \$1500 a month
- \$1500 a month
- \$1500 a month plus prosecuting attorney contract for \$1230 a month
- \$1637.38 month
- \$2000 a month
- \$2000 a month
- \$2250 month
- \$2420 a month
- \$2500 a month
- \$2560 per month
- \$4075 per month
- \$4501.51 a month plus \$100 per hour up to 55 hours per month and \$100 hour district court litigation
- \$4583.33 per month plus \$125 hour for additional litigation (not city court)
- \$5250 a month
- \$6500 a month plus copies and office expenses

Class 3 cities reporting an hour rate only, reported:

- \$75 hour for criminal cases, \$85 civil cases or general questions
- \$250 an hour plus \$160 hour for preparing ordinances, resolutions, and city court
- \$175 an hour
- \$80 per hour

Towns reported the financial compensation data below:

\$50 month

\$135 per month for monthly meeting plus per hour for extra work

\$200 per month base fee

\$400 a month

\$465 a month for up to 8 hours plus \$60 an hour if base exceeded

\$491.70 a month

\$500 a month plus travel

\$1300 a month

\$100 an hour

\$125 a hour

\$100 base fee (did not specify time period)

\$250 base fee (did not specify time period)

\$1000 base fee per year plus hourly (no dollar figure given)

\$1800 base fee plus hourly rate for special projects

\$1750 per quarter base fee plus \$112.50 per hour if base exceeded
bills us for mileage and hourly services rendered

Closing Remarks

Throughout this report we refrained from making policy recommendations. Instead, the purpose of this report is to present data previously unavailable to municipalities. The interpretation and application of the findings to specific situations is left to municipal managers. The Local Government Center staff is available to assist with specific questions about the results presented in this report.