



WISCONSIN LEGISLATIVE COUNCIL

DISTRICT ATTORNEY FUNDING AND ADMINISTRATION

225 Northwest
State Capitol, Madison

November 10, 2006
10:00 a.m. - 12:30 p.m.

[The following is a summary of the November 10, 2006 meeting of the Special Committee on District Attorney Funding and Administration. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Gundrum called the meeting to order and the committee recited the Pledge of Allegiance. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Mark Gundrum, Chair; Sen. Carol Roessler; and Public Members Professor John Blakeman, Adam Gerol, Jeff Greipp, Scott Horne, Craig Knutson, Larry Lasee, Stuart Morse, and Judge David Resheske.

COMMITTEE MEMBER EXCUSED: Rep. Louis Molepske.

COUNCIL STAFF PRESENT: Don Dyke, Chief of Legal Services, and Larry Konopacki, Staff Attorney.

APPEARANCES: Terry C. Anderson, Director, Legislative Council Staff; Timothy Baxter, Crawford County District Attorney, President, Wisconsin District Attorney's Association; Catherine White, Shawano County Assistant District Attorney, President, Association of State Prosecutors; and Timothy Hawks, Hawks Quindel Ehlke & Perry, S.C., Attorney for Association of State Prosecutors.

Opening Remarks

Terry C. Anderson, Director of the Legislative Council, welcomed the committee and introduced the Legislative Council staff members assigned to work with the committee. He discussed

rules for voting and described the process of reimbursement of expenses. He noted that the committee's meetings will be recorded and available on the Internet.

Introduction of Committee Members

Chair Gundrum introduced himself, welcomed the committee, and noted that he is looking forward to open discussion and fresh ideas regarding District Attorney (DA) funding and administration. He then asked that the committee members identify themselves and provide a brief description of their interest and involvement in the committee's subject area.

Description of Materials Distributed

Memo No. 1, Overview of District Attorney Funding and Administration (October 25, 2006)

Larry Konopacki briefly described the background memorandum on DA funding and administration. Mr. Konopacki explained that the information contained in the two tables relating to trends in the number of prosecutor positions and funding for those positions is based on numbers created to serve as the base, or starting point, at the beginning of each biennial budget cycle.

Presentations by Invited Speakers

[Note: The documents referred to by the speakers are posted on the committee's Internet site.]

Timothy Baxter, Crawford County District Attorney, President, Wisconsin District Attorney's Association.

DA Baxter began his remarks by acknowledging there is no perfect solution to the problems in the DA funding and administration program, but that he and the Wisconsin District Attorneys Association (WDAA) see a need for improvement. DA Baxter noted that the most important thing to remember about the DA program, at the state level, is that the entire appropriation is made up of personnel; there are no paper and pencils in the budget to eliminate when cuts are made.

DA Baxter explained that a separate prosecutors' council was proposed at the same time that the state took over employment of prosecutors. This and similar ideas have been discussed at various times since, including one proposal in which the Governor would have the power to appoint all of the board members. At the time, prosecutors preferred a system in which they elect their own representatives to the board.

DA Baxter said that the WDAA would support the creation of a prosecutors' board structured to allow prosecutor control of appointments. The WDAA would prefer that such a board be a "stand alone" agency with an executive director and staff, to serve as an advocate for DA needs in state government. This board also could be responsible for training and education for prosecutors and management of technology issues in DA offices. The WDAA would also be open to including others on the board such as public members and legislators. DA Baxter concluded his remarks by noting that under the current system, DAs do not have sufficient separation from the executive branch and need more representation in Madison.

Chair Gundrum thanked DA Baxter for his comments and noted that he could see value in the idea of a separate oversight board. He also explained some of the political realities of making a change at this time.

Catherine White, Shawano County Assistant District Attorney, President, Association of State Prosecutors and Timothy Hawks, Hawks Quindel Ehlke & Perry, S.C., Attorney for Association of State Prosecutors.

Timothy Hawks provided the committee with a handout titled “ADAs Who Left 2000-Present.” Mr. Hawks provided the committee with information on the historical collective bargaining process between the state and prosecutors as a backdrop for the issues before the committee. As a result of what Mr. Hawks sees as failures by the state to provide a career-based compensation plan that allows DA offices to be competitive with respect to retaining prosecutors, there has been a great deal of turnover in recent years. This turnover has resulted in loss of experience and an “experience gap” which could result in a significant decrease in overall experience as older prosecutors retire from service.

Mr. Hawks also stated that prosecutors have experienced disproportionate layoffs in recent years due to the lack of a “buffer” in their all-personnel budget, including statewide layoffs of two or more days for each prosecutor in 2003 and narrowly avoiding cuts in 2005. Mr. Hawks said that the Association of State Prosecutors (ASA) would support a statutory change that shields prosecutors from across-the-board funding cuts for state agencies. Mr. Hawks concluded his prepared remarks by emphasizing that there is no independent spokesperson who speaks for the prosecutors in state government.

Assistant District Attorney (ADA) Catherine White commented on how forced changes in staffing in smaller offices are magnified and that it must be a priority to retain experience in the prosecutorial ranks. Prosecutors are simply too busy to stay involved in the everyday operations of the Legislature and administrative agencies who impact their function. They need help from a more independent body.

Discussion of Committee Assignment

Chair Gundrum opened the floor to issues that the committee members wanted to share, and said that as this process moves forward he hopes that members will be sure to bring any comments in the direction of the committee or the ideas being worked on to his attention.

Senator Roessler commented that she has found the contact from individual DAs, ADAs and Deputy DAs to be very good over the years, and that she valued this direct form of contact. She questioned whether a separate spokesperson as individual prosecutors. Senator Roessler also noted that if there was funding to support the changes, she would like to see all aspects of the state court system taken off of the property tax rolls, including courts, DAs, and public defenders.

ADA Jeff Greipp noted that there are cost savings that can be realized by retaining experienced prosecutors because experienced people can handle a larger caseload.

Senator Roessler, who serves as Co-Chair of the Joint Legislative Audit Committee, provided a brief overview of the audit of the DA allocation formula being conducted by the Legislative Audit

Bureau and the recent request by the WDAA for an expansion of the scope of that audit, and asked that questions about the audit be directed to Kate Wade at the Audit Bureau at (608) 266-2818.

DA Scott Horne suggested that the committee might be able to hear from someone on the Public Defender Board at the next meeting. The Chair agreed.

Stuart Morse said that there are advantages in having the DA function administered by the Department of Administration (DOA). There is a good support network that is not readily visible externally, such as human resources staff, training, and other functions. If a change is made, it would only work if the new entity is not rendered ineffective by lack of support staff. Mr. Morse identified some weaknesses in the DOA model, including the subordinate role to overall DOA policy and priorities and the inability to criticize budget decisions in public forums such as the Joint Committee on Finance.

Mr. Hawks offered to provide information he has received on the DA systems in other states.

Judge Resheske explained past efforts to create a separate board like a "prosecutors' council." He explained that these proposals were modeled on judicial administrative districts, with prosecutors elected to the position of regional chief, with the ability to shift some resources within the region as needed. DA Horne recognized this kind of flexibility as a benefit to individual counties. Mr. Morse noted that this is a delicate issue when dealing with 71 separate locally-elected constitutional offices.

The committee also discussed the "reserve judge" programs and the use of the private bar for overflow in the case of public defenders, and the difference between these systems and the special prosecutor model for DAs. Judge Resheske reiterated that these models can only be applied to a certain degree before the issue of 71 elected officials makes comparability difficult. ADA Greipp also pointed out that overflow management by the private bar may result in loss of important local accountability. ADA Larry Lasee said that it is important to have a legitimate, effective auditing system for caseload management that includes a means of constant evaluation and adjustment with changing practices and a legislative requirement that the state fully staff DA offices with prosecutors.

Mr. Morse, Judge Resheske, and others agreed that any caseload model must take into account the number of courts in a county and the number of judges hearing cases in which DAs are involved. ADA Greipp noted that an extremely important time factor is the time spent on cases in which a charge is never filed.

Plans for Future Meetings

The next meeting of the Special Committee will likely be on a Friday in mid-December. Members are asked to contact Don Dyke or Larry Konopacki at the Legislative Council at (608) 266-1304 as soon as possible if they cannot attend on certain days.

Adjournment

The meeting was adjourned at 12:45 p.m.

LAK:ksm