

(As of February 20, 2001)

**Section 3-107. Organization of Council; Officers; Rules; Meetings; Employees --**

1. The council shall meet in the council room at the city hall for its organization at twelve o'clock meridian on the second day of January of every odd-numbered year or on the next business day if the second day be a Sunday or a holiday. At the meeting, the council shall elect one of its councilmembers as chair and presiding officer of the council. It shall also elect one of its councilmembers as vice-chair who shall act as the presiding officer in the event of the chair's absence or disability. The council shall appoint a presiding officer pro tempore from its own members in the event of the absence or disability of both the chair and the vice-chair. All councilmembers shall have the right to vote in the council at all times. A majority of the entire membership of the council shall constitute a quorum and, except as otherwise provided, the affirmative vote of a majority of the entire membership shall be necessary to take any action.

2. The council shall adopt rules governing its officers and employees, the organization of committees and the transaction of business.

3. The council shall keep a journal of its proceedings in which the ayes and noes shall be entered as required by this charter or at any other time upon the demand of any member.

4. The council may suspend, without pay for not more than one month, any member for disorderly or contemptuous behavior in its presence, upon an affirmative vote of at least two-thirds of its entire membership. The presiding officer or the council may, by a majority vote, expel any other person who is guilty of disorderly, contemptuous or improper conduct at any meeting.

5. The council may authorize the employment of special counsel to represent it, upon the affirmative vote of at least two-thirds of its entire membership.<sup>6</sup> Any such authorization shall specify the compensation, if any, to be paid such special counsel, and the council shall make an appropriation therefor.

6. The presiding officer of any committee of the council or a majority of the committee may expel any person who is guilty of disorderly, contemptuous or improper conduct at any committee meeting.

7. The council may establish an office of council services and create such positions therein as it deems necessary to assist it in the exercise of its legislative power. The council shall fix the salaries of such positions by ordinance. Funds appropriated for such salaries shall be allotted by, and the persons holding such positions shall be appointed by and serve under the direction of, the presiding officer of the council. Staff shall be appointed in a manner consonant with the merit principles set forth in Section 6-1102 of this charter, but shall not otherwise be subject to the provisions of Chapter 11 of Article VI of this charter, pursuant to Section 6-1104 of this charter.

The council may authorize attorneys within the office of council services to represent it in court litigation where the dispute is with the Executive Branch and where the corporation counsel may represent the Mayor or officers of the Executive Branch. In the event that attorneys within the office of council services should be authorized to represent the city council, those staff

<sup>6</sup>Following charter revision, power of council to retain special counsel to represent it was enlarged from one exercisable only for a matter presenting a real necessity for such employment to one exercisable without express limitation. City Council v. Sakai, 58 Haw. 390, 570 P.2d 565 (1977).

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attorneys shall be deemed to have the status of "special counsel."

8. The council shall hold regular meetings and shall meet at least once each month. All meetings of the council shall be open to the public, and every vote taken by the council shall be by open ballot. Any councilmember who has a direct personal financial interest in any matter on which a vote is taken may abstain from voting after declaring the conflict of interest. The council shall adopt rules governing abstention from voting. With the exception of consultations with the corporation counsel on claims where premature public disclosure of information would adversely affect the city's interest and consultation with its own counsel or staff, all council committee meetings shall be open to the public.<sup>7</sup> The council may adjourn to any meeting place, provided notice of the time and place of the meeting is published at least three days prior to such meeting in a daily newspaper of general circulation in the city, and notice is also given to all councilmembers at least three days prior to the meeting.

9. The council shall, prior to making its decisions on confirmations, hold public hearings on the appointees of the mayor. (*Reso. 78-277, 83-357 and 84-197; 1992 General Election Charter Amendment Question No. 7; 1998 General Election Charter Amendment Question No. 8(III)*)

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<sup>7</sup>Municipal charter permitted city council to confer with corporation counsel on existing or potential claims where premature public disclosure would adversely affect city's interest; council is not required to wait until claim is actually asserted before attorney-client privilege attaches. Hui Malama Aina O Ko'olau v. Pacarro, 4 Haw. App. 304, 666 P.2d 177 (1983).

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### **Section 4.02. Term, membership and qualifications.**

(a) If all assemblymen are elected from single member districts, the term of an assemblyman is two years. If some or all assemblymen are elected from multi-member districts, the term of an assemblyman is three years.

(b) A candidate for the office of assemblyman:

- (1) Shall be a qualified voter of Anchorage; and
- (2) Shall be a resident of the district from which he/she seeks election for at least one year immediately preceding the election.

(c) An assemblyman shall remain a resident of Anchorage and of the district from which elected while in office.

(d) The assembly shall be the judge of the election and qualification of its members. A qualified voter may appeal to superior court for review of a decision of the assembly under this section.

(e) A person who has served on the assembly for three consecutive terms may not be reelected to the assembly until one full term has intervened.

(AO No. 90-86, prop. 3, 10-2-90; AO No. 90-94, prop. 4, 10-2-90)

### **Section 4.03. Compensation.**

The compensation of assemblymen shall be fixed by the commission on salaries and emoluments.

### **Section 4.04. Presiding officer, meetings and procedures.**

(a) The assembly shall elect annually from its membership a presiding officer known as "chairman." The chairman serves at the pleasure of the assembly.

(b) The assembly shall meet in regular session at least twice each month. The mayor, the chairman of the assembly, or five assemblymen may call special meetings.

(c) The assembly by ordinance shall determine its own rules and order of business, including provisions for reasonable notice to the public and to all assemblymen of regular and special meetings. The assembly shall maintain a journal of its proceedings as a public record.

(d) Voting shall be by roll call, electronic device or other public method as defined by assembly rule. The votes of all assemblymen shall be recorded.

(e) Six members of the assembly shall constitute a quorum; however, a smaller number may recess from time to time and compel the attendance of absent members as prescribed by assembly rule.

(AO No. 79-140, prop. 10, 10-2-79)

### **Section 4.05. Clerk.**

The assembly shall appoint a municipal clerk and prescribe the duties of that office. The clerk serves at the pleasure of the assembly.

### **Section 4.06. Staff.**

Pursuant to ordinance, the assembly may engage such legal counsel, other professional advisors and staff as it requires in the execution of its legislative functions.

### **Section 4.07. Ombudsman.**

There is established in the legislative branch of the municipality the office of ombudsman. The ombudsman is appointed by the assembly and serves at the pleasure of the assembly. The term of office, powers and duties of the ombudsman shall be prescribed by ordinance. The jurisdiction, power and duties of the ombudsman include acts and omissions of employees and agents of the school district, as well as employees and agents of the municipality.

(AO No. 90-87, prop. 5, 10-2-90)

**State law reference**—Ombudsman, AS 24.55.320, 24.55.330.

## **ARTICLE V. THE EXECUTIVE BRANCH\***

### **Section 5.01. The office of the mayor.**

(a) The executive and administrative power of Anchorage is vested in the mayor. The mayor is elected at-large for a three-year term.

**\*State law reference**—Executive power, AS 29.20.220.

**2.20.055 Municipal clerk's office.****A. Organization.**

1. The municipal clerk's office is established by Charter sections 4.05 and 4.06. The municipal clerk's office shall consist of the following divisions, with the duties and responsibilities as set out hereinafter, in the Charter, and elsewhere in the Anchorage Municipal Code, or as may be established by the presiding officer of the assembly:
  - a. *Municipal clerk.* The duties of the municipal clerk are set out in section 2.20.050.
  - b. *Deputy clerk: Boards, licensing and administration.* The general duties shall consist of agenda control, document control, minutes, licensing and administration.
  - c. *Deputy clerk: Elections and budget.* The general duties shall consist of conducting municipal elections, assisting in municipal and utility budget review.
  - d. *Assembly attorney.* The general duties shall consist of providing legal advice to the assembly, drafting ordinances, resolutions and memoranda and other working documents, conducting legal research and providing opinions to the assembly and assisting the municipal clerk as directed by the presiding officer of the assembly.
2. All positions in the municipal clerk's office shall be classified as executives under section 3.30.172.
3. **Appointments.**
  - a. Appointment of the municipal clerk shall be subject to the approval of the assembly, the municipal clerk serves at the pleasure of the assembly, pursuant to Charter section 4.05.
  - b. The assembly attorney shall be selected by the presiding officer, and confirmed by the assembly.

**4. Notwithstanding section 3.30.172C.:**

- a. The municipal clerk shall hire the deputy municipal clerks, in consultation with the presiding officer, subject to confirmation by the assembly;
- b. Except for deputy municipal clerks, the municipal clerk may appoint assistants or other personnel necessary to carry out the provisions of this chapter, in consultation with the presiding officer, within the assembly-adopted budget for the municipal clerk's office.
- c. The assembly attorney may appoint an assistant or other personnel necessary to carry out the provisions of this chapter, in consultation with the presiding officer, within the assembly-adopted budget for the municipal clerk's office.
- d. Each quarter, the municipal clerk and assembly attorney shall report the names and annual salary of each executive, if any, hired in the previous quarter.

**B. Duties and responsibilities:**

1. To provide administrative and logistical support to the assembly and to its individual members, the municipal clerk shall assign the duties and responsibilities set forth below, as appropriate, in consultation with the presiding officer, to staff members within the four divisions described above to best accomplish the tasks assigned.
2. The duties and responsibilities of the four divisions are generally described as follows, but shall, in addition, consist of those additional duties and responsibilities as may be assigned by the presiding officer or as are set forth in other sections of the Code.
  - a. To prepare ordinances, resolutions, memoranda and other working papers to support of the activities of

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# PASS IT ON

THE NEWSLETTER OF THE AMERICAN BAR ASSOCIATION'S GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION

## Emerging Trends: Legislative Attorneys in State and Municipal Legislatures

By David Raatz

In state and municipal government, legal disputes between the executive and legislative branches are almost inevitable. In most jurisdictions, a single government law department is charged with advising and representing both branches. Obviously, this creates the potential for conflicts of interest.

Because the chief law officer is typically either an executive-branch appointee or an elected official, some legislative bodies occasionally perceive a lack of responsiveness, loyalty, or objectivity within the government law department. Consequently, state and municipal legislatures often seek guidance from their own staff counsel, generally known as legislative attorneys.

At the state level, legislative attorneys are universally accepted as key components of the legislative process. The high volume of time-sensitive legislative drafting and legal research demanded by most state legislatures makes in-house counsel mandatory. In recognition of the prevalence of legislative attorneys, the National Conference of State Legislatures (NCSL) has created a Legal Services Staff Section. Useful information produced by the section is accessible through the NCSL website at <http://www.ncsl.org>.

In several states (including Colorado, Florida, Louisiana, Minnesota, Oregon, and New Mexico), legislative attorneys are empowered to litigate against the executive branch. Exercising this authority can obviate the need for costly outside counsel.

Legislative attorneys are not as common in county or city governments. Even legislative bodies in some large municipalities (including the city of Los Angeles, city and county of San Francisco, and the city of Seattle) continue to rely exclusively on executive-branch lawyers. City councils

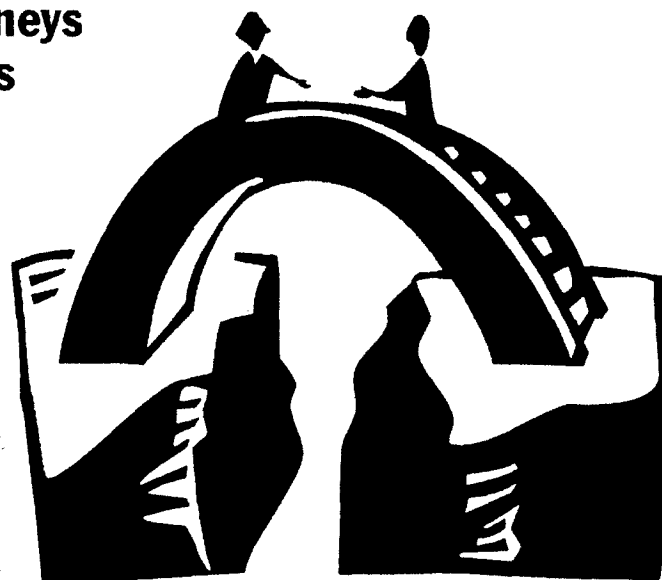
and other municipal legislatures, however, appear increasingly interested in employing legislative attorneys.

In a familiar refrain, Atlanta City Council President Robert L. "Robb" Pitts told the *Fulton County Daily Report* (Sept. 22, 2000): "Theoretically, there is a dual reporting system, meaning that the city attorney reports to the City Council and the mayor. Rarely has that happened . . ." As a possible solution, Pitts proposed creating an Office of the Legislative Counsel, through which legislative attorneys would provide direct legal services to the City Council.

The Boston City Council implemented a similar plan, debuting the position of Counsel to the City Council on January 1, 2000. The *Boston Herald* (Feb. 18, 2000) editorialized against this "mischief" and asserted that lawyers within the corporation counsel's office should continue to perform all legal services for the City Council:

And because these are able lawyers, there is no reason to believe their advice wouldn't be objective. . . If councilors believe maintaining their "independence" is contingent on bringing their own attorney on board, things have reached a pretty sorry state of affairs.

The new position was also attacked on legal grounds. Exactly four months after the office's origin, a judge found that the City Council's initiative likely violated the city charter by usurping executive authority. *Boston City Council v. Menino*, 12 Mass.



L. Rep. 194 (Mass. Super. Ct., May 1, 2000).

The Honolulu City Council avoided similar legal questions by successfully proposing a charter amendment that expressly grants legislative attorneys the authority to litigate against the executive branch. Although the power has been sparingly exercised, it places the City Council in a strong

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### WHAT'S THE DIVISION DOING FOR YOU?

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## MESSAGE TO THE MEMBERS



**David J. DeVries,**  
**Chair, 2000-2001**

The Government and Public Sector Lawyers Division is an affinity organization. The primary bond among our members springs from our common experience as public lawyers more than from identity with a specific body of substantive law. Indeed, the subject matter of our members' practices varies widely; it is difficult to think of a practice area which is not represented in our Division.

Our emphasis on service to individuals rather than a particular field of law can be seen in the special projects and programs we are planning and those which are ongoing.

We are planning a Public Law Office Management Conference to be held in San Antonio in April, 2002. A call for proposals for this conference may be found on page 5. The conference will present practical information on such topics as training, case management, and alternative work arrangements. We will address a number of substantive law issues such as equal employment opportunities, diversity, personnel evaluations, and other employment law matters. The third component will be an extensive examination of technology in all its iterations and aberrations.

Our project to examine the burden of law school tuition loans continues. We have had a number of other ABA entities express interest in our efforts, and we expect this subject to have high visibility during the 2001-2002 ABA year.

The third item for your consideration is the Division's contribution to the ABA Commission on Evaluation of the Rules of Professional Conduct (formerly Ethics 2000). Please see the article on page 6 in this newsletter about Model Rule 1.11. Proposed changes to this rule governing lawyers' successive government and private employment have been controversial. Our Division, the State and Local Government Law Section and the Administrative Law and Regulatory Practice Section have been leading the discussions with Commission members to ensure that any changes in the rule will not adversely affect the operations of government agencies or the ability of a government lawyer to represent his or her clients.

Finally, we continue to work on the subject of multi-jurisdictional practice, a topic which has important implications for many government and public sector lawyers. Please see the box on page 7 to find out how you can express your views to the ABA's MJP Commission.

Any member who would like to be more active in the Division and who has an interest in any of these projects is welcome to participate. You may call me directly or communicate with our wonderful staff in the Washington, DC office. —D

### Emerging Trends

*continued from page 1*

position in its dealings with the administration. The legislative attorneys also have been profitable for the city. Based on their advice, City Council members in 1998 successfully challenged the executive branch's interpretation of a lease of oceanfront municipal property, ultimately earning \$10 million for the city. In addition, legislative attorneys played key roles in the enactment and defense of legislation establishing the City Council's primacy in most legal settlements, thereby helping to significantly reduce litigation costs. *Harris v. De Soto*, 911 P2d 60 (Haw. 1996).

In other municipalities, legislative attorneys do not have litigation authority. For example, the Albany (NY) Common Council, Montgomery County (MD) Council, and Maui County (HI) Council all employ legislative attorneys to staff committees, draft bills and reports, and conduct legal research, not to litigate. But simply provid-

ing legislators with a reliable source of independent legal research can be just as important as courtroom advocacy. In 1995, a legislative attorney reported to the Maui County Council that her research revealed that the county administration did not possess the unilateral authority to hire outside counsel, despite executive-branch lawyers' assurances that the longstanding practice was appropriate under the county charter. Her "second opinion" was later unanimously recognized by the Supreme Court of Hawaii as the right one (after the County Council, upon her recommendation, hired a respected law professor to litigate the case). *Maui County Council v. Thompson*, 929 P2d 1355 (Haw. 1996), *reh'g denied*, 936 P2d 191 (1997).

Some critics contend that the very presence of legislative attorneys undermines the chief law officer's authority and provokes unnecessary intra-governmental

strife. Others, including many executive-branch lawyers, acknowledge that legislative attorneys can identify and help resolve legal issues before they become problems. Observers also recognize the benefits accruing from legislative attorneys' expertise in parliamentary procedure and legislative drafting.

Legislative attorneys have assumed an expanded role and more prominent function in governments seeking to ensure the separation of powers. Whether this trend translates to other municipalities remains to be seen. —D

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<sup>1</sup> Courts afford government law departments wide latitude with respect to potential conflicts. See, e.g., *State v. Klattenhoff*, 801 P2d 548 (Haw. 1990). Some legislators, however, are not as tolerant.

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