

A. F. Sumner
Attorney General
of Mississippi
Chairman
Patton G. Wheeler
Executive Director



1516 Glenwood Avenue
Raleigh, North Carolina 27608
Telephone 919 832 0356

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Exchange of Personnel Among Attorney Generals' Offices

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INTRODUCTION

For many years public personnel specialists have been interested in the exchange of personnel between public agencies and between government and the private sector. In 1956, Congress passed an act to provide for the exchange of employees of the United States Department of Agriculture and employees of state political subdivisions or educational institutions to aid in the dissemination of agricultural information and techniques.¹ In 1959, the Committee of State Officials on Suggested State Legislation of the Council of State Governments proposed that the scope of the 1956 act be broadened to permit all federal agencies to exchange employees with state and local governments. The Council proposed a Model State Employee Interchange Act for state legislatures to adopt.² The Civil Service Commission also recommended the broadening of the federal legislation. These recommendations were finally followed in 1971, when Congress adopted the Intergovernmental Personnel Act of 1970 (IPA).³

As a result of the IPA, the Council of State Governments has revised its Model Act and renamed it the State Temporary Intergovernmental Assignment Act. The new Model Act reflects many of the provisions of the IPA.⁴

Attorneys General have also become interested in the exchange of personnel. Many have reflected upon the need for short-term technical assistance; This becomes especially important in areas where Attorneys General are starting new programs--antitrust, consumer protection, etc. Offices with new programs could benefit from the advice and assistance of employees of offices with existing programs.

The Committee on the Office of Attorney General directed its staff to review possible mechanisms for facilitating the exchange of expert personnel among Attorneys General's offices. A questionnaire circulated by COAG did not identify any substantial numbers of such exchanges that were currently taking place. This report, therefore, gives an overview of legislation relating to intergovernmental personnel exchange and discusses some of the potential problems and prospects for administering such an exchange. Topics that are covered in this report are: types of exchange; advantages and problems in the exchange of personnel; the Intergovernmental Personnel Act; the Model State Temporary Intergovernmental Assignment Act; national organizations offering expert assistance; current practice in the office of Attorney General; and mechanisms for the exchange of personnel between Attorneys General's offices.

TYPES OF EXCHANGE

For the purposes of this report an exchange of expert personnel will be considered to have occurred when one or more employees of a governmental agency are transferred to another governmental agency for the purpose of either giving or receiving technical assistance or training.⁵ The various types of exchange may be distinguished on the basis of the length of the exchange, the exchanged employee's status with his original employer during the exchange period, the direction of the exchange, and the participating governmental agencies.

The exchange of personnel between governmental agencies may be either temporary or permanent. Temporary exchanges involve the assignment of an employee of one governmental agency to another for a period of generally less

than two years. At the end of the exchange period, the employee returns to his original employer. Attorneys General would probably be more interested in very short-term exchanges, of one or two weeks, or even less, because of the problems in releasing staff for longer periods.

An alternate form of exchange occurs when an employee of one governmental agency accepts a permanent appointment with another agency. Such permanent exchanges make it possible for governmental agencies to acquire the talents of employees who are experienced in dealing with uniquely governmental problems. The agency does not have to bring someone in from the private sector and teach that person the nuances of government. Public employees thus become mobile which is good for government and for the employee. Permanent exchanges, however, raise questions that are beyond the scope of this report, which concentrates on temporary exchanges.

In addition to length of time, exchanges may also be distinguished on the basis of the status of the exchanged employee with his original employer during the exchange. Typically, exchanged employees are considered to be either "on detail" or on a leave of absence. When an employee is "on detail," he is considered to have the same rights, salary, and benefits he has when working at his regular job. The only difference is that he is working in another agency and is under the supervision of an official of another agency. An employee who, during the exchange period, is considered to be on a leave of absence is governed by the same personnel provisions of his agency as if he were on leave for any other reason. The only difference is that an exchanged employee on leave of absence without pay from his original agency is paid by the recipient agency. He may receive a supplement to his salary if his compensation in the recipient agency is lower than his normal compensation.

A third way to distinguish exchanges is on the basis of the direction of the exchange. Employees of one governmental agency may be brought into another agency for the purpose of receiving assistance or training. Alternatively, an employee of a governmental agency who is particularly knowledgeable or experienced in an area may be sent to another agency in order to offer technical advice and assistance or to provide training. A final method is for two or more agencies to swap employees.

Finally, exchanges may be distinguished on the basis of the participants. For the Attorneys General, the most likely agencies with whom they might participate in exchange programs would be other agencies in their own states, Attorneys General in other states, the federal government, and colleges and universities.

ADVANTAGES

Obviously, interest in the exchange of personnel among Attorneys General's offices is based on the assumption that certain advantages are likely to accrue.⁶

Perhaps the chief advantage of exchanging personnel is that new techniques are brought into the office. This is particularly true when a recipient agency is tackling a problem the exchanged employee has already faced in his original agency. The exchanged employee is then able to draw upon

his experiences to the benefit of the agency he is visiting. For example, an Attorney General establishing a Consumer Protection Division could probably benefit from the advice and assistance of a person in charge of a similar division in another Attorney General's office who would know how to set up complaint handling mechanisms. In the antitrust area, an office establishing such a program could benefit from the advice and assistance of someone experienced in conducting antitrust investigations. An alternative would be for the Attorney General starting a new program to send some of his employees to another office for a short period. By actually participating in an on-going program, the exchanged employees cultivate a real appreciation for the problems they are likely to encounter in their own state.

Another advantage in exchanging expert personnel is the creation of a climate of cooperation, understanding, and goodwill between the participating agencies. Within a state, the exchange of personnel between the Attorney General's office and other state and/or local agencies can be valuable. For example, the California Department of Justice has found it helpful to send attorneys into local district attorney's offices to give them some trial experience. They also bring attorneys in the district attorney's offices into the Attorney General's office to give them some appellate experience.⁷

Finally, the exchange of personnel provides the opportunity for individual development. Exchanged employees encounter new problems, have different experiences, and are often forced to utilize their skills in unique ways. The employee is given the opportunity to sharpen his skills and to become more flexible in the kinds of tasks he is capable of performing. The employee's original agency benefits from this development process. An employee who has developed his skills and abilities and has found new ways to put them to use is of greater value to his employer.

PROBLEMS

In spite of these advantages, there are also problems associated with the exchange of personnel. First, Attorneys General may question their ability to participate in an exchange program due to the absence of specific statutory authorization for them to do so.

A second problem has to do with the availability of expert staff for exchanges. In some new areas, there may be only a few individuals on Attorneys General's staffs who can truly qualify as experts. Even when they are available their commitments to their own office may make any significant period of absence impossible. Also, an attorney may be involved in litigation that restricts his travel to that which will not conflict with the court calendar.

A third problem has to do with the employee's status during the exchange period. Without specific statutory provisions to the contrary, the employee may be subject to loss or suspension of pension benefits, seniority, sick leave, and other merit system benefits. The employee who is on exchange may also lose the opportunity for a promotion. Also, the employee may find that he must absorb most, if not all, of his travel, moving, and other relocation expenses because no provision exists to reimburse him.

Finally, Attorneys General may be reluctant to participate in an exchange program for fear that good attorneys who are exchanged will somehow

be "pirated" by other offices and for fear that the operation of their own office will be unduly disrupted. As to the first fear, it can only be noted that permanent exchange is not normally the intention of the program and it is unlikely that an employee who is truly contented with his work will be tempted away. If the employee leaves it is probably an indication of a general dissatisfaction that was there before the exchange. Ultimately, the employee would have left anyway.

As to the latter fear, the disruption of work is likely to occur on both sides of the exchange. The sending agency obviously will be short an employee. It is likely that the employee they are missing is a key individual and one of the most knowledgeable. This obviously will hurt operations and work must be rescheduled. For the recipient agency, having an exchanged employee will be similar, in a number of ways, to having a newly-hired employee. The exchanged employee will be unfamiliar with the state and with office organization and operations. Of necessity, there will be a period of adjustment. In spite of these problems, the advantages of the exchange should make the process worthwhile. The period of disruption of work is a price that the participating agencies are paying for the exchange program.

INTERGOVERNMENTAL PERSONNEL ACT

In order to overcome some of the procedural problems, Congress has enacted the Intergovernmental Personnel Act and the Council of State Governments has proposed that states adopt a Model State Temporary Intergovernmental Assignment Act. This legislation is examined in the next two sections.

An important piece of federal legislation affecting the exchange of expert personnel between states and the federal government is the Intergovernmental Personnel Act of 1970.⁸ Title IV of this Act provides for the temporary assignment of personnel between the federal government and state and local governments and institutions of higher education. The Act provides that on request from, or with the concurrence of, a state or local government, and with the consent of the employee concerned, the head of an executive agency may arrange for the assignment of an employee of his agency. The assigned employees are to engage in work of mutual concern to the federal agency and the participating state or local government, and work that will be beneficial to both. The Act goes on to address such issues as length of assignment, pay, and protection of the assigned employee's fringe benefits.

Under the Act, an employee of an executive agency assigned to a state or local government may be considered "on detail to a regular work assignment in his agency" or "on leave without pay from his position in the agency." Regardless of whether an employee is "on detail" or "on leave without pay," the assigned employee may or may not receive reimbursement for travel depending upon the particular arrangement made between the executive agency and the state or local government. For any employee "on leave without pay," if the rate of pay he receives in the state or local government is less than that he would have received had he not been assigned, then the employee is paid the difference by the executive agency. Such an employee is also entitled to annual and sick leave at the same rate as if he had continued in

his regular assignment. He is also entitled to a continuation of his group insurance; to credit the period of assignment toward periodic step-increases, retention, and leave accrual purposes; and, upon payment of the amount he normally would have paid, to count the period toward retirement and to participate in the retirement and disability fund.

An employee of a state or local government who is assigned to an executive agency, may be considered "on detail" to the executive agency or may be appointed in the executive agency without regard to the provisions governing competitive service. An employee who is given an appointment is considered an employee of the executive agency for the assignment period with certain exceptions. An employee who is "on detail" to an executive agency is not entitled to pay from the agency, but is considered to be an employee of the agency with certain exceptions.

Travel expenses, a per diem allowance, and/or relocation expenses are payable out of the appropriations to the executive agency for a federal, state or local employee who is assigned. Payment of these expenses is not allowed, however, until the employee agrees, in writing, to complete the life of the assignment or one year, whichever is shorter.

MODEL LEGISLATION: STATE TEMPORARY INTERGOVERNMENTAL ASSIGNMENT ACT

The State Temporary Intergovernmental Assignment Act is an important piece of model legislation. Recommended in the Council of State Governments 1975 Suggested State Legislation,⁹ the Act modifies the Model State Employee Interchange Act first carried in the Program of Suggested State Legislation for 1962. If enacted, the State Temporary Intergovernmental Assignment Act would:

1. authorize participation in programs of temporary assignment;
2. limit individual assignment to two years; with an option for extending the assignment an additional two years;
3. provide for two types of assignment -- (a) on detail to regular work assignments of the sending agency, or (b) in a status of leave of absence from their positions in the sending agency;
4. protect the salary and benefits of employees on detail;
5. protect the rights, benefits, etc. of employees who are on leave of absence, such absence to be without pay except as the employees are qualified to receive annual leave or other leave with pay;
6. not require the receiving agency to assume responsibility for travel and transportation expenses;
7. provide for adjustment of the salary of an employee on leave of absence so that his rate of pay is the same as would have been received without the temporary assignment -- the sending agency would make up the difference;

8. protect the assigned employee's insurance and other benefits during the assignment period;

9. provide for the sending agency to reimburse the employee for travel and other costs of relocation if the assignment lasts a minimum number of months; and,

10. provide similar protection as the above to employees of other governments temporarily assigned to state agencies.

EXISTING STATE LEGISLATION

At least three states have legislation respecting the exchange of personnel. Two of these, Iowa and Wisconsin, have statutes practically identical to the Model State Temporary Intergovernmental Assignment Act.¹⁰ Iowa, however, limits the length of the exchange to 12 months during any 36-month period instead of two years as in the model act. Wisconsin provides for its employees to be "on detail" during the exchange period. Employees may not be on leave.

Finally, California authorizes the "temporary loan on assignment of State employees within an agency or between agencies or jurisdictions for not to exceed two years for the purpose of training."¹¹ Temporary assignments, where the employee is considered to be on detail, must be approved by the State Personnel Board. Interjurisdictional loans or assignments may take place if the following conditions are met:

1. the assignment is of benefit to the state and is for training purposes;
2. the other participating jurisdiction is governmental in character (including public colleges and universities);
3. no layoff of state personnel is necessary;
4. a written statement of the conditions of the assignment is prepared and approved by the appointing authorities, and,
5. any necessary authorization for funds or travel are obtained from the appropriate authorities.¹²

CURRENT PRACTICES IN ATTORNEYS GENERAL'S OFFICES

A 1974 management questionnaire which was sent to the fifty-four Attorneys General's offices solicited information on current practices in respect to the exchange of expert personnel. The questionnaire contained the following item: Does your office participate in any personnel exchange program with other governmental agencies? If yes, please provide a brief description of the program." Of the forty-two jurisdictions responding to this question, thirty-five indicated that they did not participate in such a program. Telephone contacts with the seven states responding in the affirmative revealed that some of these responded as they did because they misinterpreted the question. One state, for example, that used student work study students, had

reported this as a personnel exchange program. Another state reported that state police investigators occasionally worked out of the Attorney General's office because of the convenience of certain records. They were not "assigned" to the Attorney General, however, and the situation appeared to be simply a matter of convenience.¹³ Only two of these seven states appeared to have programs that might qualify as exchange programs. These were California, and to a lesser extent North Carolina.

California has a program in which appellate attorneys are placed in the office of a district attorney for a period of six months. Attorneys from the district attorneys office are placed in the Attorney General's office for the same period. The Attorney General's staff receives trial experience and the district attorney's people get to do some appellate work that, it is felt, makes them more conscious of errors in the original action.¹⁴

North Carolina over the last two or three years has sent attorneys to military bases within the state to conduct seminars for military legal personnel on consumer protection and domicile residency. They have had members of the Judge Advocate Generals' staff from such bases come to the Attorney General's office for one to two weeks to study the handling of consumer complaints.¹⁵

Perhaps part of the reason for the failure of Attorneys General to exchange personnel is the lack of knowledge of national organizations that could assist in setting up such programs. There are three such organizations identified in the next section.

NATIONAL ORGANIZATIONS OFFERING EXPERT ASSISTANCE

In addition to the Committee on the Office of Attorney General, there are two other national organizations which potentially can offer expert assistance to the Attorneys General. These are the Council of State Governments and the Criminal Courts Technical Assistance Project at the American University.

The Council of State Governments

Two programs of the Council of State Governments, funded primarily by grants from a variety of federal agencies, are applicable. These are the Technical Assistance Program and the Interstate Consulting Clearinghouse.¹⁶

The Technical Assistance Program provides a small staff of attorneys--Ph.D's, and CPA's, most with some state government experience--which compile and maintains information on developments in state government programs and policies in such areas as consumer protection, natural resources, personnel programs, law enforcement, planning, transportation, social services, legislative services, environmental matters, etc. Services provided by the Technical Assistance Program include staff research and on-site visitation if necessary. These services are provided to the states without charge.

The Interstate Consulting Clearinghouse provides assistance in the identification and acquisition of individual consultants who are usually state government employees. The transportation and maintenance expenses of the consulting team, plus a per diem fee, equal to their normal salary plus 15 percent, is borne by the state requesting the service.

The Criminal Courts Technical Assistance Project, Institute for Studies in Justice and Social Behavior, The American University Law School, Washington, D.C.

The objective of the LEAA-funded Technical Assistance Project is to provide expert advisory services to state and local courts, prosecutor offices (including Attorneys General), agencies providing defense services to indigent defendants, and criminal justice planning agencies.¹⁷ This is carried out through two means. First, the Technical Assistance Project makes available the personal services of appropriate consultants. They now have access to 150-200 consultants in a wide variety of areas. These include representatives from such organizations as the National Center for Prosecution Management, the National Center for State Courts, the Institute for Court Management, and the American Judicature Society. Consultants are available for short-term assistance (up to 10 days normally).

As a second service, the Technical Assistance Project provides documentation and dissemination of technical assistance experiences for their potential utility in other jurisdictions. Examples of assistance provided by the Courts Technical Assistance Project include guidance in developing a statewide legal information system in the State of Utah, updating and expanding statewide legal research facilities for the West Virginia State Supreme Court, and a management study of the Oklahoma Attorney General's office.

The National Association of Attorneys General, Committee on the Office of Attorney General

The Committee on the Office of Attorney General provides staff services to NAAG and its committees in such areas as management, environmental control, organized crime control, antitrust, consumer protection and correctional services. It also serves as a clearinghouse for exchanging expertise by conducting meetings and disseminating information through publications.

COAG publishes numerous reports on problems of interest to the Attorneys General. It also prepares and distributes newsletters in the areas of anti-trust, charitable trusts and solicitations, consumer protection, correctional services, environmental control, organized crime, and welfare rights. The newsletters and reports also direct attention to significant developments in the various offices and promote the exchange of information.

COAG also conducts workshops and training conferences. In 1974, meetings were held on charitable trusts, consumer protection, environmental control, organized crime, and prisoner rights; and in 1973, on management. The ability of such meetings to contribute to the exchange of personnel is illustrated by the experience of the five regional organized crime meetings in 1974. For example, the Chief of Wisconsin's Antitrust Division spoke at all five meetings, thus making his expertise widely available.

DEVELOPING MECHANISMS FOR EXCHANGE PROGRAMS

Several issues must be addressed by the Attorneys General should they desire to undertake the exchange of personnel among their offices. These are: (1) the need for appropriate state legislation, (2) agreement on the procedures for exchanging personnel, and (3) the coordination of programs.

State legislation would help provide a clear authority for the Attorneys General to participate in exchange programs. It would also help settle issues concerning such matters as employee rights and benefits during the exchange, reimbursement of expenses, etc. The Model State Temporary Intergovernmental Assignment Act proposed by the Council of State Governments is concerned with such issues.

In addition to obtaining the passage of appropriate legislation, the Attorneys General should also reach agreement among themselves concerning the procedures to be followed during an exchange. NAAG may wish to address such issues as:

1. the advisability of written agreements between the participating offices;
2. the status of employees during the exchange;
3. the supervision of exchanged employees;
4. evaluation of the results of exchanges;
5. maximum lengths of exchanges;
6. the obligation of offices to provide assistance; and,
7. the communication of the results of exchange efforts.

Regardless of how these issues are resolved, any operating exchange program must have the capability of identifying experts, identifying needs of the offices, and matching the experts with the offices needing their services. Essentially, the Attorneys General require a coordinating group to provide staff services to the exchange program. Such a staff could survey the offices to identify needs, compile lists of available experts and assist offices in establishing an exchange program. Such a group could formalize procedures for the exchange of personnel adopted by NAAG and serve as a clearinghouse for the dissemination of information on exchange programs.

These staff services might be provided by the Committee on the Office of Attorney General. Specifically, its staff might take the following steps to implement a program of personnel exchange:

1. The Attorneys General would be asked, through a national survey, to nominate individuals capable of providing expert assistance in such areas as environmental control, consumer protection, organized crime control, anti-trust, etc. This would include individuals within their own offices as well as individuals in other offices.
2. COAG would review its own publications to compile a list of individuals who have been active in these various areas and/or have participated in, and made significant contributions to, COAG sponsored meetings and seminars.
3. COAG would contact individuals recommended as experts to seek permission to include their names on availability lists. COAG would also

seek information such as their background and qualifications, the frequency with which they would be available, the maximum length of time they could offer another office, special procedures required by their home state for releasing them from their duties, and other pertinent information concerning their availability.

4. COAG would compile and publish information on the exchange program. This would include a general description of the nature and purposes of the program. It would also include a discussion of NAAG's position on such issues as written agreements between participating parties, employee status during the exchange, the supervision of employees on exchange, the recommended maximum lengths of exchange, obligation of offices to offer assistance, etc. Finally, COAG would publish a list of available experts together with a statement concerning their background and experience, areas of expertise, and any limiting or qualifying factors concerning their availability.

5. COAG staff would serve as exchange coordinator(s) to assist offices in locating experts, making the initial contact, and settling the details of the exchange. They would also keep the list of experts up-to-date, compile data on the number and types of exchanges taking place and analyze any problems that develop.

6. COAG would attempt to obtain funding to assist in planning and executing such exchanges.

Any program that was initiated should, of course, be subject to continuing review and reevaluation. It should also be sufficiently flexible to respond to changes in the fifty-four Attorneys General's staff capabilities and need for expertise.

FOOTNOTES

1. P.L. 918, 84th Congress, 2nd Session.
2. This **Model** Act first appeared in the Council of State Governments' PROGRAM OF SUGGESTED STATE LEGISLATION FOR 1962, 45-61.
3. P.L. 91-648; 84 Stat. 1909-1929; USCA 42 §§ 4701-4722.
4. Council of State Governments, 1975 SUGGESTED STATE LEGISLATION, 85-89 (1974).
5. This discussion suggested by Jay Atwood, INTERCHANGE OF PUBLIC PERSONNEL: PROGRESS, PROBLEMS AND PROSPECTS, 2-3 (1963); the Intergovernmental Personnel Act, supra note 3; and the State Temporary Intergovernment Assignment Act, supra note 4.
6. See Jay Atwood, supra note 5 at 4-9.
7. Telephone interview with Jack Winkler, Chief Assistant in the Criminal Law Division, Department of Justice, State of California, December 13, 1974.
8. Supra note 3.
9. Supra note 4.
10. IOWA CODE §§ 28D.1-28D.8; WIS. STAT. ANN. § 16.24.
11. CAL. GOV. CODE, 19369.
12. CAL. CODE tit. 2, § 427.
13. Telephone interview with Deputy Attorney General Martin Glazer, Kentucky Department of Law, December 12, 1974; and telephone interview with Deputy Attorney General John Benoit, Maine Department of Attorney General, December 16, 1974.
14. Supra note 7.
15. Telephone interview with Assistant Attorney General Donald Davis, North Carolina Department of Justice, December 31, 1974. Also see, the National Association of Attorneys General, Committee on the Office of Attorney General, ATTORNEY GENERALS' LEGAL SERVICES TO MILITARY FORCES, 13-14 (1974).
16. Telephone interview with H. Clyde Reeves, Director, Technical Assistance Program, Council of State Governments, December 17, 1974.
17. Interview with Bill Trencher, Research Associate, and Caroline Cooper, Technical Assistance Specialist, Courts Technical Assistance Project, The American University, Washington, D. C., July 23, 1974.