



Public Safety Building  
312 East Fifth Street  
Muscatine, IA 52761-4294  
(563) 263-9922 Voice/TT  
Fax (563) 288-0964

---

**POLICE DEPARTMENT – A NATIONALLY ACCREDITED LAW ENFORCEMENT AGENCY**

January 14, 2020

Muscatine City Council

During recent City Council meetings there have been discussions regarding replacing the city attorney. I noted a comment about the potential to change the way misdemeanor cases are handled in Muscatine. Currently, the Brick Gentry firm handles civil matters and the Muscatine County Attorney's Office handles the criminal matters. The agreement with the County Attorney's office has been in place since 2014.

There are three areas I would like to highlight. The Muscatine Police Department believes the current engagement with Muscatine County Attorney has been critical in prosecution of criminal simple misdemeanor cases. This arrangement has served the community well and we would recommend no changes be made to this agreement.

Issues to consider:

1. Cost

The City of Muscatine and the Muscatine County Attorney's Office operate per a Memorandum of Understanding (MOU), which has been effect since July 2014. The county provides services for the police department for a fee of \$40,000 for each year.

The \$40,000 is a fair price to pay for all the work we do with the county attorney's office in prosecution of simple misdemeanors. If we were to hire another attorney to handle these cases, it would cost well over the \$40,000 to handle the caseload. It would not be cost effective for the city to cancel this MOU. At the last council meeting, there were two bids for city attorney that were well over \$200+ an hour.

The cost of litigation can be expensive. Defendants are entitled to demand jury trials for all simple misdemeanors. The County Attorney does not charge us additional for prosecuting a jury trial. If we were to pay an hourly rate, the cost for a jury trial could easily exceed \$1000.00 per case, in addition to time billed for preparation.

This working arrangement allows us to file city charges for all simple misdemeanor cases. In doing so, this allows the city to average \$170,000 revenue annually. If we were to hire another

**"I remember Muscatine for its sunsets. I have never seen any  
on either side of the ocean that equaled them" — Mark Twain**

lawyer to handle all city affairs, it may put us in a situation to file state charges, thus losing revenue each year. Those cases having to be made as state charges could result in extra Overtime (OT) expense because the officers may have to attend the court proceedings for the state charges as well as a second time for any other charges, again not cost effective for the city.

The county attorney's office has worked with us to help cut back on OT as much as possible. Prior to this arrangement, all city cases were held on Thursday mornings. Since we have hired the County Attorney, they are able to schedule our matters either Thursday morning or Friday afternoon. This has helped to lessen overtime by scheduling court when officers are working. We paid 480 hours of court OT last year. This includes all court OT, but I would estimate that 60-70% of these were simple misdemeanor cases.

## 2. Expertise

Not all lawyers are versed in criminal prosecution as each have their own expertise. Criminal law and municipal law are not the same. When we looked at this originally it made sense to have this agreement in place, as this is what the county attorney's office does, criminal law.

## 3. Convenience for Defendants

In having, the county attorney handle all the cases it is a one-stop shop for defendants. When multiple charges are filed, the county attorney's office can handle them all instead of potentially needing more than one attorney to handle the roles. The prosecuting attorneys will not be the same person. The trials will be on separate days and time. This is not fair to the defendant, nor is it cost effective.

For example, a person is arrested for Operating While Intoxicated. They ran a stop sign and have an open container of alcohol. Currently we charge the OWI as a State charge and the Failure to Obey Stop Sign and Open Container tickets as city charges. The County Attorney has the authority to negotiate all of the charges. If the person pleads guilty to the tickets, the city makes the revenue. If the person wants a trial on the tickets, the County Attorney will prosecute those along with the Operating While Intoxicated.

If we went to a system where the County Attorney no longer represented the city, we would have two options. First, we could stop writing citations as city charges and write them all as state tickets. The County Attorney would still be able to negotiate the entire case including having a jury trial on the tickets, but the city would no longer get any revenue.

The other option is to keep writing the citations as city charges. The County Attorney would no longer have the authority to negotiate the citations. A person would have to speak with two separate prosecutors. If the person wanted a trial on the citations, the city attorney would have to prosecute. They could no longer have everything handled in one trial because there can only be one prosecutor in a trial. In both scenarios, the city is still paying officers to be in court.

In closing, I hope to continue to keep the current system in place as it has worked very well and will continue to do so. It would be hard to transition to another lawyer to handle these cases and have the same relationship that we have built with the county attorney's office. It benefits not only the police department, but also everyone involved, including the defendants. I hope you take a long hard look at this and continue to keep this positive working relationship in place.

Respectfully submitted,

Chief Brett Talkington  
Muscatine Police Department

## Memorandum

---

January 14, 2020

**TO:** Greg Jenkins, Interim City Administrator

**FROM:** Stephanie Romagnoli, Human Resources/Risk Manager  
Nancy Lueck, Finance Director

**SUBJECT:** City Attorney Services

We agree it is, from time to time, prudent to consider new options for service providers, but do not believe this is the best time to issue an RFP for a new city attorney. Our intent with this memo is to detail our concerns for making this change at this time, and to provide the Council background and information to assist the Council in their decision making process.

Our concerns for making this change at this time follow

÷

1. The current caseload of the city attorney could make a transition expensive, and in some cases may not be possible at this stage of the litigation.
2. Given the relationship between the City Attorney and the City Administrator we believe any transition should not be started until such time as the new City Administrator is in place.

3

. When considering the position of City Attorney, it is necessary to be aware of the multiple specialties required to meet the needs of an entity such as the city of Muscatine. Areas of particular concern are labor law, civil/contract law and prosecutorial law.

During the summer of 2010, Bill Sueppel, the City's very long time labor attorney retired. An RFP process was conducted and Matt Brick was selected as the City's labor attorney. This arrangement has worked very well. Having Brick Gentry representing Muscatine through multiple contract negotiations has provided valuable continuity due to their history in the Muscatine processes. Having an attorney who has been involved in several years of negotiations provides the benefit of understanding the organization and the intent of the contract language when interpretation questions arise.

Shortly after Brick Gentry was appointed as Labor Attorney, long time City Attorney Harvey Allbee retired. The City conducted a second RFP process and the Brick Gentry firm was selected to provide these services as well.

As Council was informed last week, there are a number of open cases in which the firm is currently engaged. In addition to Matt Brick's services, the City has established relationships with other attorneys in the firm who provide expertise in other areas of the law. These areas

include experience with the DNR (particular specialty in the landfill), issues related to collections, experience in contracts and related litigation, property acquisition and real estate transactions, and ATE related issues. Again, we believe there is benefit to staff and to the City for continuity in these areas.

As staff members, we agree that from time to time it is prudent to consider options for professional services. However, given the number of open cases – some of them with potentially high liability for the City, the amount of time it would take a new attorney to become familiar with these cases, and the benefit some continuity would provide to staff right now, we respectfully recommend that Council postpone going through an RFP process for attorney services at least until the conclusion of the City Administrator search.