

LEGAL DIVISION
Steven R. Schwab, City Attorney

The City Attorney has two primary responsibilities. First, he is the legal advisor to the City Council, the City Manager, Department Heads, and employees on all matters relating to the City. During 2003, the Legal Department issued numerous legal opinions on all phases of the City's operation. Secondly, the City Attorney is responsible for all petty misdemeanor, ordinance, and misdemeanor violations occurring within the City of Albert Lea. The prosecution of those offenses in 2003 resulted in approximately \$100,000.00 of fines and costs being remitted to the City Treasury.

The civil workload during 2003 included many varied projects on behalf of the City. These projects included leases for the water tower, collection work on several loan files, acquisition of easements for the new Wal-Mart store, dealing with legal issues over property for the new bike trail, and a condemnation action. The City Attorney's office was also involved with the sale of numerous lots that the City had acquired through tax forfeiture or other means. In addition, there were several lots that were donated to the City of Albert Lea. The City Attorney's office handled all of those closings.

In 2003, there was a very slight decrease in the number of DUI arrests being handled by the City Attorney. The total cases handled in 2003 were 82 misdemeanor cases, which was a slight decrease from the prior year. This is probably explained because of a change in the law. The legislature recently changed the law to provide that any refusal to test is a gross misdemeanor offense. Those cases are now handled by the County Attorney's office. However, there was still a large amount of cases involving illegal consumption while operating a motor vehicle. This offense applies to individuals 18 to 20 years of age who are operating a motor vehicle after having consumed any amount of alcohol. This provision and offense carries with it a license revocation and suspension and, as such, is generally litigated by defense counsel because of civil and criminal penalties. Because of the severe consequences of these types of charges, the City Attorney's office was involved in presenting a drinking and driving seminar to local high school students.

During 2003, the Albert Lea Police Department was very aggressive in having compliance checks for both tobacco and alcohol in the City of Albert Lea. There were multiple checks done and, as a result, individuals were prosecuted for the illegal sale of tobacco and alcohol in the City of Albert Lea. The City Attorney's office gets involved in the criminal charges with regards to tobacco and also the civil penalties for both license holders of tobacco and alcohol. This process includes negotiating civil penalties and/or closings as a consequence of the illegal sales. In November, 2003, six (6) different locations failed the tobacco compliance checks and were subject to civil penalties. This additional money is remitted to the City of Albert Lea. It is used to cover the cost of the compliance checks.

As in past years, 2003 was a busy year in the drafting of formal criminal complaints. The Legal Department drafted a total of 420 formal complaints. Those complaints included miscellaneous charges such as DUI, assault, school bus stop arm violations, theft, and numerous other traffic offenses. This amount is less than prior years because of a new policy adopted by the City. During 2003, the City Council adopted a check diversion policy. Hundreds of bad check complaints are now being handled outside the court system and, as such, do not require formal criminal complaints. This is seen as a benefit to the City, the court system, and the merchant. During 2003, the City Attorney received and reviewed approximately 1,802 police reports. It should be noted that in many of those reports the police officers did not issue tickets, or citations, and the matter would be referred to the City Attorney for the drafting of formal criminal complaints. This number of 1,802 police reports is a significant increase from the prior year.

The City, in 2003, continued its aggressive stance with regards to dilapidated property in the City of Albert Lea. At any given time the City Attorney's office is pursuing three or four property owners in an effort to require them to either demolish or repair the property. The City Attorney's office would draft an agreement which would allow the property owner to consent to the City demolishing the property and assessing the cost to the lot. The City Attorney's office has taken those cases that are contested to the Albert Lea City Council and subsequently to District Court. There is a matter pending at the present time in District Court that will result in

a civil trial on the demolition of a residence. It is believed that this is going to be an ongoing and an ever-increasing part of the City Attorney's responsibility. The City Attorney's office works closely with the Engineer's office in obtaining estimates for the demolition and following up to make sure that the demolition is done and the costs are properly assessed to the lot.

An additional function of the City Attorney's office is the reviser of ordinances. This involves working closely with the City Clerk's office in the drafting of new city ordinances. During 2003, there were several new ordinances drafted for the City Code. Those ordinances included a ban on leaf burning, an ordinance for a brew pub for a new restaurant in town, and the new 2:00 a.m. closing license which was passed by the State legislature. The City Attorney has also served on various committees involving proposed changes to the ordinances. At the present time there is a committee that wants to make all restaurants in Albert Lea smoke free. No ordinance has been adopted at this point and the matter is still under consideration.

As usual, 2003 was a busy year in the handling of certain civil forfeitures. These forfeitures relate to vehicles that are being forfeited to the City of Albert Lea as a result of a DUI charge. At any given time the City Attorney's office has several such forfeitures pending. Much time and effort was spent on forfeiting these vehicles to the City of Albert Lea. Because of a change in the law, a portion of the proceeds are now directed to the City Attorney's office for prosecution purposes. A portion of those proceeds have been used for the training of the Crime Victim Witness Coordinator position that is shared with Freeborn County. This individual assists victims of crime occurring in Freeborn County. It is anticipated that forfeitures will continue to be a large part of the Legal Department's workload.

Lawsuits involving the City of Albert Lea are generally handled by the League of Minnesota Cities Insurance Trust. However, during the year 2003, the City Attorney's office got involved with several minor lawsuits that were filed in Conciliation Court in Freeborn County. Some of those lawsuits relate to individuals who are attempting to stop the forfeiture process referred to above and other lawsuits involved individuals suing the City for various reasons. With regards to the Conciliation Court actions the City Attorney handles the matter directly rather than forwarding it to the League of Minnesota Cities Insurance Trust. With regard to the cases that are forwarded to the Trust for representation, the City Attorney's office works as a contact person for those lawsuits.

One of the primary civil matters handled by the City Attorney's office in 2003 was working with the Charter Commission. Despite prior years when the Charter Commission had little or no activity, there was substantial activity for the Charter Commission in 2003. Numerous changes were proposed to the Albert Lea City Charter. The Charter Commission requested legal assistance from the City Attorney's office in reviewing those proposed changes. Recommendations and advice were given to the Charter Commission from the City Attorney's office. The Charter Commission subsequently rejected all of the proposed changes to the Charter based partly on the advice from the Albert Lea City Attorney.

Because of conflicts that occur, cities will request assistance from other cities with regards to legal matters. The City Attorney for Albert Lea assisted the City of Rochester on a case in which a Rochester police officer was charged with a crime. That case subsequently went to jury trial. The City Attorney for Albert Lea also assisted the City of Austin in a case involving a dispute or a disagreement between two Austin city employees. A legal opinion was rendered by the City Attorney in that case as well. The advantage of this is that cities do not hire outside counsel and assist each other when these conflict of interest cases arise.

A large amount of the City Attorney's time is spent in District Court. During 2003, the City Attorney had over 500 scheduled court trials. That does not include sentencings, orders to show cause hearings, jury trials, and arraignments. It is not uncommon for the City Attorney to be in court four or five (4 or 5) times per week. With pending budget cuts, both the State Public Defender's office and the County Court Administration system are looking at reducing its numbers of employees. Given that and the increasing number of criminal cases, it is certainly going to be a challenge for all of the parties involved to process and deal with all of the criminal cases on a timely basis.

In the past, the City Attorney has always been the attorney for both the Albert Lea Port Authority and the Albert Lea Housing Authority. During 2003, the Albert Lea Housing Authority was separated from direct contact with the City of Albert Lea. As such, the Housing Authority no longer obtains legal assistance or advice from the City Attorney. At the end of 2003, the Port Authority was in the process of being reorganized as a separate entity as well. It remains to be seen whether or not the City Attorney will be provided legal assistance to the Port Authority in 2004. During 2003, the City Attorney did provide legal assistance to the Port Authority with regards to collection actions, condemnation, and issues involving the reorganization.

The report for 2003 would not be complete without a reference to a very unusual criminal case that was prosecuted by the City Attorney's office. This case related to a situation where an individual kept and maintained a tiger at his residence. The case involved criminal charges and a subsequent forfeiture of the tiger. It was a time consuming case but resulted in a conviction of the individual and the removal of the tiger to a sanctuary.

Lastly, in addition to the work referred to above, the Legal Department was involved in some community activities for the benefit of the City. These activities included serving on the Tenth District Bar Association Ethics Committee to handle complaints against attorneys. The City Attorney's office also worked closely with the Crime Victims' Crisis Center and its Family Violence Focus Group. The City Attorney's office routinely handles training with regards to the Crime Victims' Crisis Center and the Women's Resource Center. This training is very important since it allows the proper filing of Orders for Protection and Harassment Restraining Orders subsequently resulting in easier prosecutions for the City of Albert Lea.