

Auditor: \$300 payments for legislative staff unconstitutional

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SANTA FE – State Auditor Brian Colón has warned the Legislature that a plan to issue \$300 payments to legislative staffers who worked in the Capitol this year is unconstitutional.

In an interview, Colón said his office alerted the legislative branch of government that the state Constitution prohibits giving extra compensation to a public servant after services are rendered.

“I’ve got to hold everybody accountable when it comes to the law,” Colón said.

His objection focuses on legislation passed in this year’s 60-day session – Senate Bill 439, which calls for a one-time \$300 “compensation adjustment” for staffers working in the Capitol during the COVID-19 public health emergency.

The bill is set to take effect later this month, and the money would be paid out after that. Up to \$165,000 would be drawn from the Legislature’s cash balances to cover the payment.

Raúl Burciaga, director of the Legislative Council Service, said he has no discretion to halt the payments. The legislation was passed by lawmakers and signed into law by Gov. Michelle Lujan Grisham, he said.

“It’s been duly enacted,” Burciaga said.

Sen. George Muñoz, a Gallup Democrat and chairman of the Senate Finance Committee, said the legislation was intended as a gesture of thanks to staff members who put up with weekly nasal swabs, strict social distancing and mask requirements, and extra security procedures to work during the session.

But he also added that legislators had no intention of violating the law.

New Mexico held 60-day and special legislative sessions this year that ran from January to March, before vaccines were widely available to the general public.

“I know they deserve something,” Muñoz said of the staff.

Colón said auditors have also warned other public bodies that were planning payments that would violate the state Constitution.

Albuquerque Public Schools, for example, halted a plan to provide \$1,000 bonuses to full-time employees. Superintendent Scott Elder said last month that the district was still reviewing a way to comply with the law while getting extra pay to employees.

The constitutional provision at issue prohibits enacting a law “giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made.”

The Constitution, however, doesn’t necessarily prohibit providing extra pay for current work, such as paying employees to participate in a training seminar or something similar.

Colón said some public bodies in New Mexico have found ways to pay employees without violating the Constitution.

But unconstitutional payments, he said, could result in audit findings and/or a referral to an oversight agency or prosecutors.

“We will hold the entity accountable and will take appropriate action,” he said.