

N.M. Const. Art. IV, § 27

*** Constitution current with all amendments.***

Michie's TM Annotated Constitution of New Mexico
of New Mexico ADOPTED JANUARY 21, 1911

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Constitution of the State
Article IV Legislative Department

Sec. 27 [Extra or increased compensation for officers, contractors, etc.]

No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution.

Annotations

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Generally.

Because the payment of an annuity under a new government retirement system pursuant to former § 10-602, 1941 Comp. to participants who had been retired under an old system was supported by consideration in the form of additional contributions by the participants, it did not violate [N.M. Const., art. IV, §§ 27 and 31](#), or [N. M. Const., art. IX, § 14](#), which, prohibited the payment of gratuities to public servants, the appropriation of funds to charitable organizations not controlled by the state, or the pledging of credit in aid of any private enterprise. [State ex rel. Hudgins v. Public Employees Retirement Bd., 1954-NMSC-084, 58 N.M. 543, 273 P.2d 743, 1954 N.M. LEXIS 1162 \(N.M. 1954\).](#)

Statute which operated to increase or diminish the compensation of county officers, when the state auditor reclassified the several counties of the state resulting in a reduction in salaries for the county officers, was unconstitutional and void under [*N.M. Const., art. IV, § 27. State ex rel. Gilbert v. Board of Comm'rs, 1924-NMSC-001, 29 N.M. 209, 222 P. 654, 1924 N.M. LEXIS 47 \(N.M. 1924\).*](#)

Where the legislature appropriated in Laws 1917, ch. 28, § 1, additional funds for additional work completed in translating the state code, it did not violate the constitutional prohibition under N.M. Const. art. 4, § 27 against the payment of extra compensation for completed work. [*State ex rel. Sedillo v. Sargent, 1918-NMSC-042, 24 N.M. 333, 171 P. 790, 1918 N.M. LEXIS 45 \(N.M. 1918\).*](#)

Construction.

N.M. Const., art. IV, § 27, is plain and emphatic; the words used are apt, direct, and construe themselves. It positively forbids increasing or diminishing the compensation of any officer during his term of office. [*State ex rel. Gilbert v. Board of Comm'rs, 1924-NMSC-001, 29 N.M. 209, 222 P. 654, 1924 N.M. LEXIS 47 \(N.M. 1924\).*](#)

District court properly concluded it did not have to review the municipal court's pretrial dismissal for an abuse of discretion because when a party raises a municipal court's ruling before the district court on appeal, the district court must consider, de novo, the merits of the motion preserved below and rule accordingly; since the district court declined to conduct a de novo review, it was directed to make an independent determination, de novo, of the merits of any pretrial motions raised. [*City of Farmington v. Pinon-Garcia, 2013-NMSC-046, N.M., City of Farmington v. Piñon-Garcia, 2013-NMSC-046, 311 P.3d 446, 2013 N.M. LEXIS 380 \(N.M. 2013\).*](#)

De novo review.

District court properly concluded it did not have to review the municipal court's pretrial dismissal for an abuse of discretion because when a party raises a municipal court's ruling before the district court on appeal, the district court must consider, de novo, the merits of the motion preserved below and rule accordingly; since the district court declined to conduct a de novo review, it was directed to make an independent determination, de novo, of the merits of any pretrial motions raised. [*City of Farmington v. Pinon-Garcia, 2013-NMSC-046, N.M., City of Farmington v. Piñon-Garcia, 2013-NMSC-046, 311 P.3d 446, 2013 N.M. LEXIS 380 \(N.M. 2013\).*](#)

Extra compensation.

Arbitrators did not exceed their powers by issuing awards that the State contended required an unconstitutional retroactive salary increase for the unions' employees in violation of this provision because the remedies mandated by the arbitrators were not "extra compensation" for services performed in 2009 but compensation that the employees were entitled to and would have received were it not for the State's violation of the agreements with the unions. [*State v. AFSCME, Council 18, 2012-NMCA-114, 291 P.3d 600, 2012 N.M. App. LEXIS 83 \(N.M. Ct. App. 2012\),*](#) *aff'd*, [*No. 33792, 2013 N.M. Unpub. LEXIS 8 \(N.M. May 30, 2013\).*](#)

Governmental powers.

Defendant had the right to appeal the district court's on-record review of the DWI conviction because this provision vests the New Mexico Court of Appeals with jurisdiction to hear appeals from a district court's on-record review of a metropolitan court decision, and [*39-3-3 NMSA 1978*](#) provides defendants with a right to appeal to the court of appeals and invoke that grant of jurisdiction. [*State v. Carroll, 2015-NMCA-033, N.M. 2013 N.M. App. LEXIS 110, 346 P.3d 372, P.3d \(Ct. App. Oct. 21, 2013\).*](#)

Jurisdiction.

Defendant had the right to appeal the district court's on-record review of the DWI conviction because this provision vests the New Mexico Court of Appeals with jurisdiction to hear appeals from a district court's on-record review of a

metropolitan court decision, and [39-3-3 NMSA 1978](#) provides defendants with a right to appeal to the court of appeals and invoke that grant of jurisdiction. [State v. Carroll, 2015-NMCA-033, N.M. 2013 N.M. App. LEXIS 110, 346 P.3d 372](#), P.3d (Ct. App. Oct. 21, 2013).

Pension benefits.

Where a statutory pension plan was adopted after the employee's retirement, he was not entitled to receive a pension under the statute; [N.M. Const. art. VI, § 27](#), which prohibited giving extra compensation after services were rendered, prohibited the retroactive application of the pension statute to the employee. [State ex rel. Sena v. Trujillo, 1942-NMSC-044, 46 N.M. 361, 129 P.2d 329, 1942 N.M. LEXIS 44 \(N.M. 1942\)](#).

Purpose.

Both [N.M. Const. art. IV, § 27](#) and [N.M. Const. art. X, § 1](#) are intended to preclude arbitrary variations in compensation that might harass and cripple county officers by reducing their compensation during their service or bestow an unmerited increase. [State ex rel. Haragan v. Harris, 1998-NMSC-043, 126 N.M. 310, 968 P.2d 1173, 1998 N.M. LEXIS 407 \(N.M. 1998\)](#).

Salary.

Bonus provision in an arbitrator's award for a public employee collective bargaining agreement, which amounted to a retroactive wage, violated the public policy set forth in this section, applicable not only to public officers but to all public employees, and [N.M. Const. art. IX, § 14. Nat'l Union of Hosp. & Health Care Emples. Dist. No. 1199 N.M., AFL-CIO, CLC v. Bd. of Regents of the Univ. of N.M., 2010-NMCA-102, 149 N.M. 107, 245 P.3d 51, 2010 N.M. App. LEXIS 92 \(N.M. Ct. App.\)](#), cert. denied, [149 N.M. 64, 243 P.3d 1146, 2010 N.M. LEXIS 500 \(N.M. 2010\)](#).

Salary increases.

Mid-term salary increases granted to county officials pursuant to [4-44-12.3 NMSA 1978](#) violated the prohibition against increasing or diminishing a public official's compensation during his or her term of office contained in [N.M. Const. art. IV, § 27. State ex rel. Haragan v. Harris, 1998-NMSC-043, 126 N.M. 310, 968 P.2d 1173, 1998 N.M. LEXIS 407 \(N.M. 1998\)](#).

Opinion Notes

OPINIONS OF ATTORNEY GENERAL

Applicability.

An interpretation of 4-44-12.3B NMSA 1978 permitting an increase of county commissioner salaries during their terms of office would violate the [N.M. Const., Art. IV, § 27](#) restriction on salary changes during a public officer's term. 1994 Op. Att'y Gen. No. 1994-9, decided prior to the amendment of [4-44-12.3 NMSA 1978](#) by acts [1999, ch. 228, § 1](#).

Extra responsibilities not assumed by all councilors would not qualify as additional duties imposed upon the office of city councilor. Therefore the salary of an individual council member may not be increased even if that member personally undertakes extra duties while in office. 1987 N.M. Op. Att'y Gen. No. 1987-5.

The responsibility for an employee's share of his contribution to a retirement benefit plan must ultimately remain with the employee, whether he pays in one lump sum or reimburses the employer who advances the contribution on

the employee's behalf. An employee may not be relieved of the obligation to pay that which should have been paid for pension benefits he will receive. 1979-1982 N.M. Op. Att'y Gen. No. 243.

Compensation.

The governing body of a municipality may increase the compensation paid to a municipal judge during his term of office only if it also defines additional duties of the office. An increase in salary during the term for which the judge was elected would not be justified because of increased costs of living or an anticipated increase in the amount of work to be done by the judge pursuant to his ordinary duties. 1979 N.M. Op. Att'y Gen. No. 79-27.

Employees.

New Mexico Const., art. IV, § 27, does not permit retired municipal employees to take advantage of an ordinance that allows employees to convert sick leave to vacation leave. 1988 N.M. Op. Att'y Gen. No. 1988-40.

Officers' salaries.

[Sections 4-44-4 through 4-44-12 NMSA](#) 1978 violated N. M. Const., art. IV, § 27, insofar as they authorized salaries for elected county officers which were greater than those previously fixed by law. 1983 N.M. Op. Att'y Gen. No. 83-1.

Retroactivity.

The New Mexico school for the deaf may apply a sick leave buyback policy that permits retiring employees to receive compensation for accrued sick leave to hours of sick leave accrued prior to the implementation of the policy. 1988 N.M. Op. Att'y Gen. No. 1988-73.

Judges who retired before Laws 1987, ch. 241 became effective may not receive a cost-of-living increase to their retirement annuities pursuant to such law. 1988 N.M. Op. Att'y Gen. No. 1988-66.

Salary.

As to whether the administrative office of the courts may legally use an appropriation to it to pay the magistrates specified in the appropriation more than they are entitled to receive pursuant to 35-1-36.1 and former [35-1-36.2 NMSA 1978](#), the New Mexico courts would hold that the appropriation does not violate either of the provisions of [N. M. Const., art. IV, § 16](#). They would probably decide that it does not violate [N. M. Const., art. IV, § 27](#). However, the New Mexico courts would be quite likely to determine that the appropriation does violate [N. M. Const., art. III, § 1](#) and [N. M. Const., art. IV, § 18](#), and they clearly would rule that it violates [N. M. Const., art. IV, § 24](#), and that it is therefore invalid. 1983-1986 N.M. Op. Att'y Gen. No. 193.

Subject to applicable law or charter, the governing body of a municipality may enact an ordinance to increase the salary of its members, but members serving during the term in which such an ordinance is enacted cannot benefit from the increase during that term. 1979-1982 N.M. Op. Att'y Gen. No. 245.