

August 31, 2026

The Honorable Dianna Luce
New Mexico District Attorney Association
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Via e-mail and U.S. Mail
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Re: Attorney General Guidance on District Attorney Employment of Legislators

Dear President Luce:

This office writes to provide comprehensive guidance on the employment of sitting legislators by district attorneys' offices. We do so because recent public reporting suggests that, in at least one instance, this office's prior opinion has been read more broadly than intended, to permit placing a sitting legislator in a standing, compensated staff position. This letter is meant to clear up that misunderstanding and to give every office in New Mexico a clear, workable rule to apply going forward.

The confusion appears traceable to a narrow opinion this office issued in 2024, resolving the discrete question whether a sitting legislator's appointment as a *special* assistant district attorney, limited to single, specified cases, violates the separation-of-powers doctrine of Article III, Section 1 of the New Mexico Constitution. *See N.M. Att'y Gen. Op.* 2024-04. That opinion answered only the question asked, and its reasoning rested entirely on features unique to the special-prosecutor role: it is case-specific, temporary, and, critically, does not make the appointee an employee of the district attorney. Nothing in that opinion authorizes, and this office has not otherwise authorized, the different arrangement in which a sitting legislator is hired into an *ongoing* position within a district attorney's office, however that position is titled or its duties described. This guidance draws that line explicitly so that it is not missed again. In short: a sitting legislator may not hold a standing position, however titled, in a district attorney's office, but may serve, on the narrow terms set out below, as a special prosecutor appointed to a specific case or matter.

I. No Legislator May Be Compensated for State Service, and No State Officer May Pay a Legislator for It

NMSA 1978, Section 2-1-3 (1977), enacted in 1943, provides:

It is unlawful for any member of the legislature to receive any compensation for services performed as an officer or employee of the state, except such compensation and expense money as he is entitled to receive as a member of the legislature.

NMSA 1978, Section 2-1-4 (1977), also enacted in 1943, imposes the mirror-image obligation on the state officers who might otherwise employ a legislator:

It is unlawful for any officer of the state of New Mexico to pay to any member of the legislature compensation for services rendered the state of New Mexico as an officer or employee thereof except such compensation and expense money which such member is entitled to receive as a member of the legislature.

These statutes have been on New Mexico's books for more than eighty years, and their meaning, at least as it bears on the question at hand, is largely well settled.

II. These Statutes Squarely Cover Assistant District Attorneys

To determine whether these statutes reach assistant district attorneys, we look to established canons of statutory construction. The “primary goal in interpreting a statute is to give effect to the Legislature’s intent[,] . . . look[ing] first to the words chosen by the Legislature and the plain meaning of the Legislature’s language.” *State v. Duhon*, 2005-NMCA-120, ¶ 10, 138 N.M. 466 (internal quotation marks and citation omitted). “When the language in a statute is clear and unambiguous, [courts] give effect to that language and refrain from further statutory interpretation.” *Id.* If there is any ambiguity, the statute should be construed “according to its obvious spirit or reason.” *State v. Gutierrez*, 2023-NMSC-002, ¶ 22 (internal quotation marks and citation omitted).

Applying that plain language, Section 2-1-3 bars a member of the Legislature from receiving compensation for state employment beyond the legislator’s own legislative pay, and Section 2-1-4 bars a state officer, such as a district attorney, from paying a legislator for services rendered to the State in that capacity, again beyond the legislator’s legislative pay. To the extent either provision required further interpretation on the points relevant here, this office and the courts have already supplied it. *See State ex rel. Stratton v. Roswell Indep. Schs.*, 1991-NMCA-013, ¶ 24, 111 N.M. 495 (“Persuasive weight is given to long-standing interpretations of a doubtful or uncertain statute by the administrative agency charged with administering the statute.” (internal quotation marks and citation omitted)).

Courts and prior Attorneys General agree: no legislator may receive compensation as a state employee, and no state officer may employ a legislator for pay. This office said as much in 1957, concluding that Sections 2-1-3 and 2-1-4 “only pertained to legislators who are officers or employees of the state.” *N.M. Att’y Gen. Op.* 57-11. In 1977, it explained that the statutes originally barred a sitting legislator from assuming state-employee duties only during their “term of office.” The Legislature later removed that limitation, leaving the bar in place until the legislator resigns their seat. *N.M. Att’y Gen. Op.* 77-25. It applied the same rule to university employees in 1990 and

to professors and staff at other state educational institutions in 1991, since they too are “employees of the state” who may not receive “compensation for services rendered the state except that compensation allowed to legislators.” *N.M. Att’y Gen. Op.* 90-21; *N.M. Att’y Gen. Op.* 91-05. The courts agree with the plain reading of that general proposition. Although the Court of Appeals disagreed with the attorney general’s ultimate conclusion that professors and staff of state educational institutions are state employees within the meaning of Sections 2-1-3, -4, the Court nonetheless relied on the settled notion that state employees are “precluded from serving as members of the Legislature concurrently with their . . . employment.” *See Roswell Indep. Schs.*, 1991-NMCA-013, ¶¶ 10, 55.

Our conclusion follows directly from the statutory language and the authorities above. That an assistant district attorney (ADA) is a state employee is likewise well established. *See, e.g., N.M. Att’y Gen. Op.* 41-3866; *N.M. Att’y Gen. Op.* 2024-04. As such, ADAs may not receive payment for their service as an ADA while simultaneously serving as a legislator. *See* §§ 2-1-3, -4.

III. Assistant District Attorneys Are Also State Officers, Which Triggers a Separate, Constitutional Bar

An ADA, however, is not only a state employee. As this office has recently concluded, an ADA is generally considered a state *officer* as well, the kind of officeholder the Constitution calls a “civil officer.” This is because district attorneys, as law officers of the state and counties, “delegate[] to [ADA]s the duties imposed by law upon or required of the district attorney.” *N.M. Att’y Gen. Op.* 41-3866; *see also N.M. Att’y Gen. Op.* 2024-04 (“[A]n [ADA], who is employed by, acts on behalf of, and exercises the authority of the district attorney, is a public officer.” (citing *N.M. Att’y Gen. Op.* 62-98)). We therefore turn to the question of whether our Constitution’s prohibition against a legislator being appointed to a civil office in the state extends to ADAs. *See* N.M. Const. art. IV, § 28.

N.M. Constitution Article IV, Section 28 states:

No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the state, nor shall he within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term; nor shall any member of the legislature during the term for which he was elected nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term.

This office has previously opined that this prohibition applies “*only* to civil offices and not to state employment.” *N.M. Att’y Gen. Op.* 77-25 (emphasis added). However, because an ADA is considered a civil officer, “a duly elected member of the Legislature may not be appointed to the office of assistant district attorney.” *N.M. Att’y Gen. Op.* 41-3866; *see also N.M. Att’y Gen. Op.* 2024-04 (“A legislator . . . cannot serve as an assistant district attorney.”). Both our Constitution

and Sections 2-1-3, -4 independently preclude a current legislator from simultaneously serving as, or being paid for service as, an ADA.

IV. The Special Assistant District Attorney Is a Narrow and Different Consideration

We address special ADAs separately because the appointment differs in kind, not just degree. This office previously concluded that “[a] special assistant district attorney is not an employee of the appointing district attorney” and “does not displace the prosecuting attorney from his or her constitutional office” (alteration, internal quotation marks, and citation omitted), and that, therefore “a private attorney’s isolated exercise of district attorney authority while serving as a special assistant district attorney and a legislator *does not violate the separation of powers doctrine in Article III, Section 1 of the New Mexico Constitution.*” *N.M. Att’y Gen. Op.* 2024-04 (emphasis added). However, as part of that analysis, this office did not consider the question of whether a special ADA may receive compensation for such service under Sections 2-1-3, -4. *See id.*

In 1945, this office briefly analyzed what appears to be a similar question and concluded that

an attorney retained by the State on a fee basis would be an employee of the State, and if such attorney is a member of the state Legislature, [they] would, therefore, be prohibited from receiving any compensation as an employee of the State, except such compensation and expense money as [they are] entitled to as a member of the Legislature.

N.M. Att’y Gen. Op. 45-4710. But it is unclear what factual scenario was being considered from the context of that opinion, which references entering into an attorney-client relationship with the State serving as client. *See id.*

Conversely, here, the special ADA relationship does not resemble an attorney-client relationship with the State serving as a client. Rather,

[a] special assistant district attorney is *not* an employee of the appointing district attorney. The special prosecutor appointment is for a single matter: “Any person so appointed shall have authority to act only in the specific case or matter for which the appointment was made.” [NMSA 1978, §] 36-1-23.1 [(1984)]. With respect to that specific case or matter, a special assistant district attorney “steps into the shoes” of the district attorney and exercises “the same power and authority” as the district attorney. [*State v.*] *Surratt*, 2016-NMSC-004, ¶ 30.

N.M. Att’y Gen. Op. 2024-04 (emphasis added).

The Court of Appeals has itself recognized that the phrase “employee of the state” is ambiguous, noting that “difficulty . . . lies in the confusion of what the legislature meant by using the phrase ‘employee of the state,’” and determining “that the phrase used is ambiguous.” *Roswell Indep. Schs.*, 1991-NMCA-013, ¶ 10. That ambiguity bears directly on the question here: whether a

special ADA may be compensated for that service while simultaneously serving as a legislator. This office has not previously addressed that question, and we resolve it here. Although Section 2-1-3 bars compensation for services performed as an “employee of the state,” service as a special ADA does not fall within that category: as this office has already concluded above, a special ADA is not an employee of the district attorney, but instead retains their role as a private attorney.

It follows that Sections 2-1-3, -4 do not preclude compensating a special ADA who is simultaneously serving as a legislator.

This exception is nonetheless narrow, and district attorneys’ offices should not use the special-ADA appointment as a vehicle for engaging a sitting legislator to perform work that, in substance, resembles that of a regular employee. Structuring what amounts to ongoing employment as a series of special appointments, in order to sidestep the prohibitions discussed above, is strongly discouraged.

V. That Narrow Exception Does Not Extend to Standing Employment, No Matter How the Position or Its Duties Are Described

This is where the analysis above has recently been misapplied. The special-ADA exception rests on the legal character of that specific role (case-specific, temporary, and not an employment relationship at all), not on how much prosecutorial authority the appointee happens to exercise in practice. A district attorney’s office may not recreate, in substance, an ongoing staff position and then treat the constitutional and statutory bars as inapplicable because the legislator’s assigned duties are limited, for example, to intake, screening, or other functions that fall short of appearing in court or otherwise formally exercising the district attorney’s authority.

The prohibition attaches to the position itself: to being a state employee under Sections 2-1-3 and 2-1-4, and to being a civil officer under Article IV, Section 28. A sitting legislator hired into a standing position in a district attorney’s office is both, regardless of which particular tasks that legislator is or is not asked to perform.¹ Narrowing a legislator-employee’s duties may be a sensible precaution in other contexts, but it does not cure a violation of Sections 2-1-3, -4 or Article IV, Section 28 of our Constitution: the violation lies in the employment relationship itself, not in any specific act taken during it. Our 2024 opinion, and the discussion of it above, should not be read, by analogy, extension, or otherwise, to authorize any form of standing legislator employment in a district attorney’s office.

¹ This office previously communicated with a member of the Legislature regarding whether the constitutional separation-of-powers doctrine, as analyzed in *N.M. Att’y Gen. Op.* 2024-04, prohibits a legislator from filling a district attorney’s office staff position that does not exercise the authority of the district attorney. Applying the indicia-of-public-office analysis underlying that opinion, this office concluded that it does not. However, that response addressed only the constitutional separation-of-powers question and did not address the independent statutory prohibitions of Sections 2-1-3 and -4 discussed in this guidance.

VI. Guidance Going Forward

Our 2024 opinion addressed a narrow question, and its reasoning may, in good faith, have been read more broadly than intended. This guidance is meant to resolve that uncertainty comprehensively and going forward, so that district attorneys' offices can apply it directly rather than seek a case-by-case advisory opinion from this office on individual arrangements. Any district attorney's office currently employing a sitting legislator in a capacity other than a special assistant district attorney appointment properly confined to a specific case or matter under Section 36-1-23.1, should treat that arrangement as unlawful and correct it without delay.

Violations of Sections 2-1-3 and 2-1-4 carry both criminal and civil consequences. However, in light of the fact that the analysis in *N.M. Att'y Gen. Op. 2024-04* may have been misinterpreted by either members of the Legislature or the district attorneys, this office does not intend to pursue criminal or civil sanctions against individuals for arrangements entered into before the date of this letter based on an honest misunderstanding of our 2024 opinion. That said, this forbearance should not be construed as license to continue an existing arrangement that violates the law. As noted above, any noncompliant arrangement must still be corrected without delay.

We trust that this guidance resolves any ambiguity left by our 2024 opinion on special prosecutor appointments, *N.M. Att'y Gen. Op. 2024-04*, and clarifies that any professional engagement with members of the Legislature must conform to the narrow exception outlined above. This office is obligated to enforce the law as set out here against any future noncompliance. We hope, however, that this guidance makes such enforcement unnecessary.

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