Recommendations Near, State Pay Commission Constitutionality Questioned

November 14, 2016 | by Brendan Birth
Recommendations Near, State Pay Commission Constitutionality Questioned http://www.gothamgazette.com/index.php/state/6622-recommendations-

Heastie, Cuomo, Flanagan (photo via Governor's Office)

Recommendations on potential salary increases for Governor Cuomo and members of the state Legislature are due Tuesday, but constitutional questions hang over the effort to increase legislative and executive chamber pay.

The New York State Commission on Legislative, Judicial, & Executive Compensation is at the center of the issue and an ongoing legal battle over the validity of the process it was put in charge of through 2015 legislation. Created as part of the April 2015 budget package, the commission is charged with making recommendations for salaries for the legislative, judicial, and executive branches of state government. The recommendations are due Tuesday, November 15, and will become law for the new year, when the next, largely unchanged class of state legislators takes office, unless they are modified or voted down by the current Legislature.

Raises for state legislators -- state Senators and Assembly members currently make a base salary of $79,500 -- would be the first since 1999. But the nature of this process has been questioned, with disagreement over whether this method of increasing salaries is allowed under the New York State Constitution because of the delegation of such power to the commission, which the law states will now convene every four years.

The budget "created the commission and it gave it the force of law," according to James Coll, the founder ChangeNYS.org (http://chanagenys.org/), an adjunct professor at Hofstra University, and the plaintiff in a court case challenging the constitutionality of the commission. "Which means that the commission gets to write the law, and the way that I read the New York State Constitution, those who are given the power to create laws are the Legislature, who have a veto or approval by the governor, or override the governor's veto, and that is the only way it should pass."

Coll sued the commission, Gov. Cuomo, and the state Legislature. His arguments were dismissed in New York State Supreme Court in Nassau County, but he has appealed to the Appellate Division of the New York Supreme Court.

On behalf of the defendants, Attorney General Eric Schneiderman's Motion to Dismiss argued against Coll on two grounds.

First, the motion argued that Coll's "deep concern" does not provide him the standing to sue. In the motion's eyes, "standing to sue requires the plaintiff to allege not only that he has an injury in fact that is distinct from any injury of the general public, but also, that he is within the zone of interests protected by the statute or constitutional provision at issue." Furthermore, as the motion says that Coll's injury is "identical to any alleged injury suffered by the general public, as well as speculative," Coll's "deep concern" did not provide him adequate standing to sue.

Second, the motion concluded that the commission is constitutional, on multiple grounds: that Coll did not
prove the unconstitutionality of the commission beyond a reasonable doubt, that this commission was not an improper delegation of legislative authority, that the provisions cited by Coll “do not support his contentions,” and that “other states’ similar compensation statutes have been upheld” by the United States Supreme Court.

New York State Supreme Court Justice George R. Peck agreed with Schneiderman’s motion and dismissed the case in a three-sentence statement. In finishing his statement, Peck wrote, “Although this court has a financial interest in the outcome of this case, recusal is not necessary because every New York State Supreme Court Justice would have the same interest.”

As Coll appeals, government officials dismiss the validity of his case, but other experts think that he raises some very important questions on the constitutionality of the pay commission.

“I think it’s an intriguing argument. It could go either way. And I think a close reading of the constitution with specific provisions could lead you to a conclusion that an affirmative vote is needed,” said Gerald Benjamin, a dean and political scientist at SUNY-New Paltz, hitting on one key aspect of the pay commission’s larger structure: that its recommendations become law unless voted down. “But the courts have been respectful of the Legislature, so it’s hard to predict how the Court of Appeals will ultimately decide on this,” Benjamin said.

Provisions of the New York State Constitution, like Article 3, Sections 13 and 14 (https://www.dos.ny.gov/info/constitution/article_3_legislature.html), outlining how laws should be enacted and how bills should be passed, and Article 7, Section 7 (https://www.dos.ny.gov/info/constitution/article_7_state_finances.html), outlining when money can’t “be paid out of the state treasury or any of its funds,” could, in Benjamin’s opinion, be interpreted in a way that puts the constitutionality of the commission into doubt.

The commission was created as part of the budget agreement among Governor Andrew Cuomo, a Democrat, and the leaders of the state Senate, which is controlled by Republicans, and the state Assembly, which has a Democratic majority. The commission has met five times publicly this year to hear testimony and discuss its jurisdiction and factors into its recommendations, and it will meet once more on November 15th, the day recommendations are due.

The commission has seen public infighting and canceled meetings, and it has been the subject of squabbling between Cuomo and legislative leaders. Cuomo made multiple comments tying the commission’s recommendations to the Legislature taking certain actions, including on timely budgets and campaign finance reform, and indicating that he believes pay raises should be accompanied by government ethics reforms. Cuomo wants to see a limit or ban on legislators’ outside income, which is currently unlimited.

In a statement to Gotham Gazette about the constitutionality of the commission, Abbey Fashouer, a spokesperson for Cuomo, said that “the court has already squarely rejected constitutional challenges to the pay commission.”

Gov. Cuomo has been relatively quiet on the commission of late. He remarked (http://www.nystateofpolitics.com/2016/09/cuomo-coy-on-legislative-pay-raise/) several weeks ago that,“Once the commission finishes, they will submit their findings, their opinion, their record. And then I’ll have an
opinion that I'll state, informed by the commission. But the purpose of the commission is to advise me on that question."

Assembly Speaker Carl Heastie’s office supported the commission in a recent public statement, calling it necessary “in order to remove politics from the decision making process in determining appropriate salary structures in our government.”

Neither Heastie’s office nor the office of Senate Majority Leader John Flanagan returned requests for comment for this story.

Both Coll and Benjamin disapprove of Heastie’s desire to remove politics, and therefore the people who elect lawmakers, from the decision-making process. Coll believes that this removal of elected officials from the decision-making is unconstitutional.

***

by Brendan Birth for Gotham Gazette

Follow @GothamGazette

Read more by this writer. (index.php/contact/1436)
About Us (http://www.gothamgazette.com/index.php/about)
Contact Us (http://www.gothamgazette.com/index.php/about/80-contact-us)
Advertise (http://www.gothamgazette.com/index.php/advertise)
Newsletters (http://gothamgazette.com/index.php/eye-opener)
Archive (/index.php/all-topics)

Gotham Gazette is published by Citizens Union Foundation (http://www.citizensunion.org/) and is made possible by support from the Robert Sterling Clark Foundation, the John S. and James L. Knight Foundation, the Altman Foundation, the Fund for the City of New York and donors to Citizens Union Foundation. Please consider supporting Citizens Union Foundation's public education programs. Critical early support to Gotham Gazette was provided by the Charles H. Revson Foundation, Rockefeller Brothers Fund and the Alfred P. Sloan Foundation.

SUPPORT
GOTHAM GAZETTE
MAKE YOUR YEAR-END TAX-DEDUCTIBLE DONATION TO CITIZENS UNION FOUNDATION TODAY!
CLICK HERE TO SUPPORT OUR TEAM OF DEDICATED JOURNALISTS - YOUR SOURCE FOR IN-DEPTH NEWS AND ANALYSIS, THE EYE-OPENER, AND MORE.

(https://www.citizensunionfoundation.org/secure/donate/)

Subscribe to our mailing list

* indicates required

Email Address

First Name

Last Name

Zip Code

Gotham Gazette Newsletters

The Eye-Opener

Subscribe