

1 HOUSE BILL 351

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Rod Montoya

5
6
7
8
9
10 AN ACT

11 RELATING TO THE ATTORNEY GENERAL; AMENDING AND ENACTING
12 SECTIONS OF CHAPTER 8, ARTICLE 5 NMSA 1978; LIMITING THE
13 AUTHORITY OF THE ATTORNEY GENERAL TO ENGAGE NON-EMPLOYEE
14 COUNSEL.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 8-5-4 NMSA 1978 (being Laws 1933,
18 Chapter 21, Section 4) is amended to read:

19 "8-5-4. EMPLOYMENT OF LEGAL ASSISTANCE FOR STATE
20 AGENCIES.--No compensation shall be allowed to any person for
21 services as an attorney [~~or counsellor~~] to any department of
22 [~~the~~] state government, or the head thereof, or to any state
23 board or commission, except in cases specially authorized by
24 law [~~but special legal assistance may be employed by the~~
25 ~~attorney general under his direction and control at a~~

.216225.2

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~reasonable compensation in any pending action or proceeding to~~
2 ~~protect the interest of the state, with the consent and~~
3 ~~approval of the governor upon showing made by the attorney~~
4 ~~general that his department cannot for reasons stated perform~~
5 ~~such services. The costs of such special legal assistance~~
6 ~~shall be paid by the department out of which such suit or~~
7 ~~proceeding originated]."~~

8 SECTION 2. A new section of Chapter 8, Article 5 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] LIMITATION ON NON-EMPLOYEE COUNSEL.--

11 A. Except as otherwise specifically provided by
12 law, all legal services of the attorney general shall be
13 performed exclusively by:

14 (1) an employee of the office of the attorney
15 general;

16 (2) an employee of another New Mexico
17 governmental entity as may be provided by law; or

18 (3) an employee of a federal governmental
19 entity pursuant to an agreement between the attorney general
20 and that federal governmental entity.

21 B. Except as otherwise specifically provided by
22 law, the sole source of compensation paid to employees of the
23 office of the attorney general for performing legal services on
24 behalf of the state shall be from legislative appropriations.

25 C. In any case in which the attorney general is

.216225.2

1 authorized under law to contract with, hire or engage a person
2 other than a person described in Paragraphs (1) through (3) of
3 Subsection A of this section to perform legal services on
4 behalf of the state, the sole consideration for those legal
5 services shall be a set monetary amount bargained for in an
6 arm's length transaction between that person and the attorney
7 general, stating under what authority the attorney general
8 enters into the contract.

9 D. Only persons described in Paragraphs (1) through
10 (3) of Subsection A of this section shall perform legal
11 services on premises occupied or leased by the attorney
12 general.

13 E. Nothing in this section shall prohibit the
14 attorney general from:

15 (1) entering into a settlement agreement with
16 a defendant arising from a case litigated or prosecuted by a
17 federal governmental entity, local governmental entity or an
18 attorney general in another state or United States territory;
19 or

20 (2) employing and providing office space to an
21 unpaid intern assisting in performing legal services; provided
22 that the intern does not possess a current license to practice
23 law in this or any other state or any United States territory."