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Top judge, state bar president hail court's pay ruling; local lawmaker takes issue with it

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Jim O'Hara / The Post-Standard

By

Syracuse, NY - The former head of the state Senate Judiciary Committee who has supported judicial pay raises took issue with today's Court of Appeals' decision that the state's failure to grant judges a raise was unconstitutional.

"It's certainly not a constitutional crisis, in my mind," state Sen. John DeFrancisco, R-Syracuse, said of the pay dispute.

DeFrancisco said he agrees judges deserve a pay raise and he agrees with the majority in today's decision that the issue of a judicial pay increase should be considered on its own merits.

But he took issue with the court's conclusion that lawmakers had not done anything to address the issue. The state Senate voted on the issue previously and the Assembly opted not to bring the issue to the floor for a vote, he said.

New York State Chief Judge Jonathan Lippman said the court ruling vindicates the longstanding position that the judiciary is a co-equal branch of state government and must be treated as such while leaving the ultimate decision to the Legislature.

"But make no mistake, the Legislature is now obligated under the court's declaration to consider judicial salaries on the merits. The court also makes clear - and this is critically important - that whether the Legislature has met its constitutional obligations in this regard is subject to the continued scrutiny of the court, and that the court 'expect(s) appropriate and expeditious legislative consideration,'" Lippman said in a webcast to the state's judges.

But DeFrancisco said there remains a question about what the court might mean by requiring the legislature to "consider" the issue. He maintained lawmakers had considered the issue and not granted a pay raise. He also noted the court decision did not include any specific order for lawmakers to do anything.

DeFrancisco said the court decision appears to be lobbying lawmakers to grant a pay raise "or else." It's the "or else" of that that concerns him and raises questions about the court violating the same Separation of Powers Doctrine by intruding on the Legislature's authority, he added.

In a video conference with judges across the state, Lippman hailed the decision as a victory, albeit not a complete one in terms of getting the judges what they wanted.

"We are cognizant of the state's fiscal situation, but that does not detract one iota from the fact that judges have not received so much as a single cost of living adjustment in more than 11 years," he said.

Although a member of the Court of Appeals, Lippman did not participate in the decision because he was a plaintiff in one of the lawsuits under consideration by the court.

State Supreme Court Justice James Tormey III, the administrative judge for the local Fifth Judicial District, was circumspect in his reaction to the court decision.

"The decision speaks for itself. The issue is the separation of powers," he said, declining any further comment.

New York State Bar Association President Michael E. Getnick of Utica said the court ruling was a step in the right direction in terms of getting appropriate pay for the state's judges.

"Hopefully, the decision will be received by our State government as an impetus to break the logjam that has prevented any salary adjustment over the past 11 years," he said in a written statement. "An independent, well-functioning judicial system, accessible to all citizens, is a cornerstone of our democracy, and judges are indispensable to the delivery of justice in our society."

Getnick noted the NYSBA supports the establishment of a commission to regularly review the salaries of officials in all three branches of state government.

"After all that we have been through, we have every right to have our spirits lifted by this landmark decision of the highest court of our state," Lippman said. "There is clearly still much work ahead, but today we have taken a significant and meaningful step forward toward just and equitable compensation for the judiciary."

DeFrancisco called the decision "extremely controversial and difficult to justify."

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