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Large temporary pay raise for acting Niagara DA Brenner

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LOCKPORT – A large but temporary pay raise is on tap for Acting Niagara County District Attorney Theodore A. Brenner, but the amount was set in Albany.

A County Legislature committee voted Monday in favor of a measure that would schedule a public hearing for June 21 on setting the district attorney's pay at \$183,400 a year, retroactive to April 1.

A state law says that district attorneys must earn the same salary as County Court judges, and this year's state budget increased judges' pay from \$152,500 to \$183,400, effective April 1.

The judges are paid by the state, while district attorneys are paid by the county. In effect, a DA's salary is an unfunded state mandate.

County Attorney Claude A. Joerg said the raise would have gone to Michael J. Violante if he hadn't resigned March 21. But now, Brenner, named by Violante as his top-ranking deputy, is the recipient.

There was some internal discussion of whether Brenner, who was earning \$115,484 as deputy DA, was eligible for a pay increase at all. Research by Assistant District Attorney Thomas H. Brandt concluded that he was.

"There is a New York State Comptroller's opinion that talks about other county officers, like county attorney or treasurer," Brandt said. "It states that if the person who acts in place of the original officer acts with all the powers of the original officer, then he's entitled to the pay of the original officer."

Joerg said he thinks a local law with a public hearing is needed to adjust the salary, and that would have been the case even if Violante were still in office. "You're not supposed to give elected officials a midterm increase without a public hearing," Joerg said.

Brenner's pay raise will be retroactive to March 22, the day after Violante resigned. He will receive 10 days' worth of the difference between his original salary and the \$152,500 Violante was earning, followed by a jump to the \$183,400 annual rate, retroactive to April 1.

When Brenner ceases to be acting DA, either because Gov. Andrew M. Cuomo appoints a replacement or the winner of the November election is sworn in, he goes back to his former salary, Joerg said.

Brandt said despite the raise, the county still is saving money because there is one less person on the staff than there was before Violante resigned.

The winner of the November election for a four-year term as DA will be paid \$183,400 in 2017.

Caroline A. Wojtaszek, a former prosecutor now serving as law clerk to County Judge Sara Sheldon, is the only announced candidate. She has been endorsed by the Democratic and Independence parties, and received the Republican endorsement Thursday.

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