



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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AG-02-18

**OPINION OF THE ATTORNEY GENERAL
OF THE NAVAJO NATION**

October 1, 2018

**The President's Line Item Veto to Navajo Nation Resolution
No. CS-68-18, Approving the Navajo Nation Fiscal Year 2019
Comprehensive Budget, Is Timely and Valid**

The Attorney General is the Chief Legal Officer of the Navajo Nation (the "Nation") and issues this Opinion pursuant to her authority under 2 N.N.C. § 1965(A). No adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government who follows the advice contained in this Opinion.¹

I. ISSUE PRESENTED

Is the financial line item veto exercised by President Russell Begaye (the "President") on September 21, 2018 to Navajo Nation Resolution No. CS-68-18, *Approving the Navajo Nation Fiscal Year 2019 Comprehensive Budget* ("CS-68-18" or the "Resolution"), timely and valid?

II. SHORT ANSWER

Yes. The President's line item veto to CS-68-18 is timely and valid. The Speaker of the Navajo Nation Council (the "Speaker") is required to certify and submit to the President for his consideration a true and correct copy of the comprehensive budget resolution and exhibits pursuant to 12 N.N.C. § 840(C). The President did not receive a true and correct copy of the comprehensive budget resolution from the Speaker until September 17, 2018. It is not clear that the 10-day period for exercising Presidential vetoes applies to the President's line item veto authority, but assuming *arguendo* that it does, the President had until September 27, 2018 to exercise his line item veto. Thus,

¹ This Opinion relies on the laws of the Navajo Nation on the date this Opinion was issued. If the Navajo Nation Council amends any of the laws relied on or the Navajo Nation Supreme Court issues a relevant opinion, the advice contained in this Opinion will need to be revised accordingly.

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the President's line item veto to CS-68-18 exercised on September 21, 2018 is timely and valid.

III. ANALYSIS

A. FACTUAL BACKGROUND

On September 10, 2018, the Speaker certified and submitted to the President CS-68-18 along with its exhibits and attachments, which included the amendments made by the Navajo Nation Council (the "Council") to the draft legislation (the "Council Amendments").

On September 17, 2018, the President issued a Memorandum to the Speaker ("President's Memorandum"), returning CS-68-18 and requesting that the Office of the Speaker correct the Resolution. Attached as **Exhibit A**. The President's Memorandum identified multiple errors in the Resolution, stated that the errors required corrective action by the Speaker's Office before the President could take final action on the budget, requested that the legislation be re-submitted with correct information for final review and action by the President, and requested additional days to "thoroughly review the corrected and complete legislative packet."

In one error, there was a discrepancy of \$1 million where the Resolution did not match the Council Amendments to the Executive Branch carryover, and legislative intent was not clear. The second error was that Exhibit I-1 (Condition of Appropriation No. 1 - Updating Plan of Operation) was not attached as a formal exhibit to the September 10 certified Resolution, though it was provided for in the Council Amendments.

Previously, when errors were identified by the President in a certified resolution, the President would send the defective legislation back to the Speaker, and the Speaker would return the corrected legislation to the President, along with a memorandum, and the President's 10-day window to sign or veto legislation would begin anew when the corrected legislation was re-submitted. Following this course of conduct, on September 17, 2018, the Speaker issued a Memorandum to the President in response to the President's Memorandum (the "Speaker's September 17 Memorandum"). Attached as **Exhibit B**. The Speaker's September 17 Memorandum clarified that the legislative intent of Council Amendment #19 was for the Executive Branch to receive a carryover of \$2,500,000, and provided Exhibit I-1 as an attachment. The Speaker also approved

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the President's request for an additional two days to complete the President's review of the Resolution.

The President exercised his line item veto to CS-68-18 by Memorandum to the Speaker dated September 21, 2018. The President has now requested that the Attorney General provide a legal opinion on the timeliness and validity of the President's line item veto to CS-68-18.

B. THE SPEAKER'S SEPTEMBER 17 MEMORANDUM CONSTITUTES A RE-CERTIFICATION OF THE COMPREHENSIVE BUDGET RESOLUTION AND EXHIBITS FOR THE PRESIDENT'S CONSIDERATION WITHIN THE MEANING OF 12 N.N.C. § 840(C); AND THE PRESIDENT'S SEPTEMBER 21 VETO TO CS-68-18 WAS MADE WITHIN 10 DAYS OF THAT CERTIFICATION AND IS THUS TIMELY AND VALID

The Appropriations Act, at 12 N.N.C. § 840(C), provides, "The Speaker of the Navajo Nation Council shall certify the resolution of the Navajo Nation Council adopting and approving the annual Navajo Nation comprehensive budget, and shall forward the certified resolution and exhibits to the Navajo Nation President for consideration, pursuant to 2 N.N.C. § 1005(C)(10)." The President's enumerated power pursuant to 2 N.N.C. § 1005(C)(10) provides, "The President shall have the following enumerated powers: . . . Sign legislation passed by the Navajo Nation Council into Navajo law within 10 calendars days after the certification of the legislation by the Speaker or Speaker Pro Tem."² The President has final action authority on the comprehensive budget resolution after certification by the Speaker. 12 N.N.C. § 840(C). The President's line item veto authority is not subject to override by the Council. 2 N.N.C. § 164(A)(17).

The Speaker's September 10 certification of the Resolution states:

I, hereby, certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 21 in favor and 00 opposed, on this 04th day of

² As noted above, it is not clear that the President must exercise his line item veto authority within 10 days because the line item veto authority was vested in the President by the Navajo People through an Initiative. As this question does not need to be resolved to reach a conclusion on the validity of the President's line item veto of the Resolution, this question is reserved for separate analysis and opinion.

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September 2018.

Resolution, p.7.

Black's Law Dictionary defines "certification" as:

1. The act of attesting; esp., the process of giving someone or something an official document stating that a specified standard has been satisfied. 2. The state of having been attested. 3. An attested statement; esp., an official document stating that someone is allowed to do a certain job, that something is of good quality, etc.

Black's Law Dictionary (10th ed. 2014). *Black's Law Dictionary* defines "attest" as "1. To bear witness; testify" and "2. To affirm to be true or genuine; to authenticate by signing as a witness." *Id.*

The Navajo Nation Supreme Court has discussed the Navajo principle of "Words are Sacred," particularly when spoken by a Navajo leader. The Court stated as follows:

[W]ords are sacred. A leader must always speak the truth and has a responsibility to communicate it to the people, Naat'áanii éí t'áá'aaniígóó yáłti' doo t'óó áníida éí biniinaa éí bidine'é yíł ahidéélt'i'go yich'í yáłti' dóo yíł ahidiits'a'. When words are said, they must be meant. The People must be able to hold the Navajo Nation Council to the whole of its words, not simply a portion thereof. The holdings in question have broad application and apply not only to Title II but to all Navajo Nation laws that impact checks and balances, separation of powers, accountability to the People, acknowledgement of the People as the source of Navajo Nation governmental authority, ..., and service of the anti-corruption principle.

Office of the Navajo Nation President and Vice-President v. Navajo Nation Council (Shirley v. Morgan), 9 Nav. R. 372, 374 (Nav. Sup. Ct. 2010) (citations omitted).

The Speaker's obligation to certify and submit to the President the comprehensive budget under 12 N.N.C. § 840(C) necessarily requires that the certified resolution and exhibits are the true and correct copies of the resolution and exhibits considered and approved by Council. A "certification" is the act of

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attesting, especially the practice of giving an assurance as to the genuineness and correctness of an official document. The purpose of certifying resolutions is reflective of the Navajo principle that words are sacred, and act as checks and balances between two branches of our government.

Indeed, failing to present the President with a true and correct copy of the comprehensive budget resolution and exhibits would deprive the President of the line item veto authority vested in him by Initiative of the Navajo People in 2009, and thus would be unlawful. Additionally, it would fail to acknowledge the Navajo People as the source of Navajo Nation governmental authority. While the President arguably has only 10 days to consider the budget resolution, the Speaker has no limitation on the period within which he must certify the budget resolution and its exhibits. The statutory clock does not begin ticking until he certifies the resolution and its exhibits, and he has the ability, as in prior instances, to correct what he has presented to the President so that the President may properly exercise his veto authority. And so, when mistakes happen and the Speaker must make a correction to the legislative packet that he has submitted to the President, the clock is reset.

The Resolution the Speaker certified on September 10 was not a true and correct copy of the comprehensive budget resolution and exhibits because it contained at least two errors, one of which was a substantive error of \$1 million related to the Executive Branch carryover. The Speaker's September 17 Memorandum corrected this error by clarifying the legislative intent and resolving the conflicting language between the Resolution and Amendment #19. The Speaker's September 17 Memorandum also corrected the failure to submit Exhibit I-1 as a formal exhibit to the Resolution by attaching the true and correct Exhibit I-1. The Speaker further approved the President's request for an additional two days, from September 20 to September 22, 2018, within which the President could return the Resolution.

With these corrections, the Speaker's September 17 Memorandum constitutes a re-certification of the true and correct version of the resolution and exhibits for CS-68-18 within the meaning of 12 N.N.C. § 840(C). The President is entitled to rely on the words of Speaker under the Navajo "Words are Sacred" principle, both as to the truth and correctness of the Resolution content and with respect to the additional time within which the President could exercise his veto authority. Additionally, if the 10-day rule applies to the line item veto authority, the President had 10 days from the date of receiving the true and correct copy of the

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Resolution (September 17) to exercise his veto authority pursuant to 2 N.N.C. § 1005(C)(10). The President's line item veto exercised on September 21, 2018 was thus both timely and valid.

V. CONCLUSION

The Speaker has an obligation under 12 N.N.C. § 840(C) to certify and submit to the President the true and correct copy of the comprehensive resolution and exhibits. The Resolution certified by the Speaker to the President on September 10 contained errors and was not a true and correct copy of the comprehensive budget resolution and exhibits. The President did not receive a true and correct copy until September 17, when Speaker issued his September 17 Memorandum making the necessary corrections to the resolution and exhibits for CS-68-18. Accordingly, the Speaker's September 17 Memorandum constitutes a re-certification of CS-68-18 within the meaning of 12 N.N.C. § 840(C). The President's statutory 10-day period to consider legislation under 2 N.N.C. § 1005(C)(10) began on September 17, 2018 and so the President's line item veto exercised on September 21, 2018, was timely and valid.

NAVAJO NATION DEPARTMENT OF JUSTICE



Ethel B. Branch, Attorney General



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM

TO: Honorable LoRenzo Bates, Speaker
23rd Navajo Nation Council

FROM: [Signature]
Russell Begaye, President
THE NAVAJO NATION

DATE: September 17, 2018

SUBJECT: RETURN OF LEGISLATION NO. CS-68-18

The Office of the President and Vice President is returning Legislation No. CS-68-18, Relating to Budget and Finance Committee, Naabik'iyati' Committee and the Navajo Nation Council; Approving the Navajo Nation Fiscal Year §§ 820 (1) and 860 and CF-07-11, to the Office of the Speaker for correction.

After reviewing Legislation No. CS-68-18, the legislation itself is problematic as it contains multiple errors that impact the legislative intent and integrity of the document. These errors require corrective action by the Office of the Speaker before final action can be taken by the Office of the President and Vice President.

First, the signed legislation denotes a conflict in the Executive Branch carryover allocation. See Page 4, Section 2(F)(1)(a), which records an incorrect Executive Branch carryover of \$2,500,000. Amendment #19, 23rd Navajo Nation Council Action Report, Fourth Year 2018, denotes two conflicting provisions that simply cannot coexist as written. Amendment #19 (1) states,

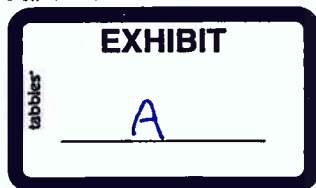
On page 5, line #0 9, insert bullet point and new language under subsection "a)" as follows:

a. a) "Executive ~~\$2,500,000~~ \$1,500,000

The Division of Community Development shall receive priority allocation of \$1,372,958 to cover chapter official stipend of the 110 Chapters of the Navajo Nation."

However, Amendment #19 (3) states,

- 3. Page 5, line 7, unstrike \$4,500,000
Page 5, line 9, unstrike \$2,500,000
And rescinding Budget and Finance Committee Amendment #2 from August 21, 2018 agenda.



The amendment on its face is problematic and the intent of the Council is unclear. The amendment as written is unachievable.

Second, the signed legislation lacks a key attachment: Exhibit I(1). While this exhibit *is* included in the original, proposed legislation, the exhibit is absent in the final legislation submitted to the Office of the President and Vice President. In order for the document to be complete, Exhibit I(1) must be included in the final legislation.

We respectfully request for clarification and ask that the legislation be re-submitted with the correct information for final review and action by the Office of the President and Vice President. In addition, we ask that additional days be provided to our office so that we may thoroughly review the corrected and complete legislative packet.

Please contact Arbin Mitchell, *Executive Staff Assistant*, at (928)-871-7248 with your questions and requests for clarification. Thank you.


cc: Russel Begaye, *President*
Jonathan Nez, *Vice President*



23rd Navajo Nation Council

MEMORANDUM

To : Honorable Russell Begaye, President
THE NAVAJO NATION

From : 
Honorable LoRenzo C. Bates, Speaker
23rd NAVAJO NATION COUNCIL

Date : September 17, 2018

SUBJECT : **NAVAJO NATION COUNCIL RESOLUTION CS-68-18**

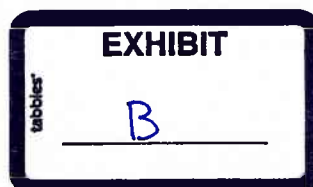
In response to the two items of concern in your memorandum dated September 17, 2018, the Navajo Nation Council provides the following clarifications:

1. The legislative intent for Amendment #19 was to reinstate the Executive Branch's carryover to \$2,500,000. In order to facilitate this intent, the overall amount would need to be \$4,500,000. In our meeting this morning, the group came to consensus that the Executive Branch carryover will be \$2,500,000.
2. Exhibit I-1 was included in the packet submitted to Office of the President/Vice President. The document was placed in the wrong section. Attached is another copy of Exhibit I-1, which was also distributed during the meeting this morning.
3. Regarding your request for "additional days to be provided", the Office of the Speaker approves your request for two days. The resolution shall be returned no later than 3:00 PM, Saturday, September 22, 2018. Office of Legislative Services will make arrangements to have someone receive the signed resolution.

Please contact Pete Ken Atcitty, Chief of Staff, at (928) 871-6358 with any questions or clarifications. Thank you.

COPIES:

Pete Ken Atcitty, Chief of Staff, Office of the Speaker
Levon Henry, Chief Legislative Counsel, Office of Legislative Counsel
Tom Platero, Executive Director, Office of Legislative Services



**Condition of Appropriation No. 1
Updating Plan of Operation**

- A. Legislative Branch – Office of the Speaker
 - Office of Legislative Counsel
 - Office of Navajo Government Development
 - Election Administration Office
 - Navajo Board of Election Supervisors
 - Black Mesa Review Board
 - Office of the Auditor General
 - Navajo/Hopi Land Commission
 - Commission on Emergency Management
 - Eastern Navajo Land Commission
 - Office of the Eastern Navajo Land Commission
 - Navajo Nation Human Rights Commission

- B. Judicial Branch – Administration Office of the Courts

- C. Executive Offices – Office of the President/Vice President
 - Navajo Nation Washington Office
 - Navajo-Hopi Land Commission Office
 - Office Hearing and Appeals
 - Office of Miss Navajo Nation
 - Executive Protection Services Program
 - Office of the Public Defender
 - Department of Veterans Affairs & Agency Offices

- D. Office of the Controller/Administration/Financial Services
 - Property Management Department
 - Navajo Nation Permanent Fund
 - Credit Services Home Loan Program
 - Credit Services Personal Loan Program
 - Scholarship Plan for Finance and Accounting

- E. Fixed Cost – Annual Audit OOC
 - Insurance Premium DGS
 - Office Machine/Furniture/Building Maintenance OOC
 - FMIS OOC
 - Hopi Partitioned Land Rental NHLCO
 - Indirect Cost Plan OMB
 - Investment Fees OOC
 - FMIS Fixed Cost Maintenance Service OOC
 - Lease Cost – Large Equipment OOC
 - NN Integrated Justice Judicial
 - Litigation DOJ

F. Office of Management & Budget

G. Division of General Services – Administration

Insurance Services Department
ISD – Safety & Loss Control
ISD – Risk Management Program
ISD – Employee Benefit Plan
ISD – Worker's Compensation Program
Records Management Department
RMD – Duplicating Services Program
Navajo Transit System Fixed Routes Services

H. Division of Human Resources – Office of Navajo Women & Families

Navajo Occupational Safety & Health Administration
Navajo Office of Vital Records & Identification

I. Division of Public Safety – Department of Emergency Medical Services

J. Department of Justice – Office of the Attorney General

Navajo – Hopi Legal Services Program
Office of the Prosecutor of the Navajo Nation
Juvenile Justice

K. Department of Dine Education – OSERS Food Service Vending Program

OSERS Tuba City Laundry
OSERS Navajo Nation Trust Fund Handicapped Services
Office of Dine Standards, Curriculum & Assessment
Navajo Traditional Apprenticeship Project
Office of Dine School Improvement
Navajo Nation Board of Education

L. Division of Economic Development – Administration

Business Regulatory Department
Project Development Department
PDD – Tourism Department
PDD – Tourism Department/Parks & Recreation
Small Business Development Department & 6 RBDOS
Support Services Department
Real Estate Department
Karigan Professional Office

M. Navajo Gaming Regulatory