



NAVAJO NATION DEPARTMENT OF JUSTICE
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AG-01-17

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

February 5, 2017

Proper Amendment of the Minimum Fund Balance

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

President Russell Begaye has requested a formal Attorney General Opinion on whether the Navajo Nation Council (the "Council") properly waived the Minimum Fund Balance of the Navajo Nation Undesignated, Unreserved Fund Balance ("UUFB") when it approved the appropriation of \$242,576.08 from the Minimum Fund Balance for disaster relief services for Navajo Nation Chapters. Council approved this expenditure in Resolution No. CJA-04-17: Waiving 12 N.N.C. §§820(E), 820(F) and 820(L) Relating to the Designation of Recurring and Non-Recurring Revenues and Operating Expenses and Use of the Unreserved, Undesignated Fund Balance for Recurring Expenses; Waiving 12 N.N.C. §820(J) Regarding Maintenance of the Minimum Fund Balance; and Approving Supplemental Funding from the Minimum Fund Balance of the Unreserved, Undesignated Fund Balance in the Amount of \$242,576.08 for the Navajo Nation Chapter for Disaster Relief Services.

II. SHORT ANSWER

With respect to the Minimum Fund Balance, Resolution No.

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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CJA-04-17 (the "Resolution") suffers two legal insufficiencies: (1) it does not properly amend the Minimum Fund Balance of the Nation, and (2) the attempted waiver of 12 N.N.C. § 820(J) was not statutorily authorized.

III. ANALYSIS

The Appropriations Act, 12 N.N.C. § 800 *et. seq.*, provides for the establishment of a Minimum Fund Balance reserve for the Nation at 12 N.N.C. § 820(J), as follows:

J. Establishment of Reserves. For the General Fund, the Minimum Fund balance for Unreserved, Undesignated Fund balance shall be maintained at not less than ten percent (10%) of the Navajo Nation's General Fund Operating Budget for the prior fiscal year, excluding expenditures for Capital Improvement projects as determined by the Controller. **The Minimum Fund balance may be amended only by two-thirds (2/3) vote of the full membership of the Navajo Nation Council.** . . .

12 N.N.C. § 820(J) (emphasis added).

Council, in enacting the Appropriations Act, established the Minimum Fund Balance to protect the Nation from unforeseen events that might abruptly stop the flow of funds to the Nation and thereby interrupt Navajo Nation governmental operations and the provision of services to the Navajo people by the Navajo Nation government. Originally the Minimum Fund Balance was established and maintained at a level that would cover 6 months of the Nation's operating expenses. A subsequent amendment to 12 N.N.C. § 820(J) reduced the Minimum Fund Balance to 10 percent of the Nation's General Fund operating budget.

Section 5 of the Resolution purports to waive 12 N.N.C. § 820(J) with the following language:

The Navajo Nation Council hereby waives 12 N.N.C. §820(J) with regard to the maintenance of the Minimum Fund Balance in the Unreserved, Undesignated Fund Balance for the Navajo Nation Chapters for disaster relief services.

However, as the plain language of Section 820(J) suggests, Council retained for itself only limited means for making changes to the Minimum Fund Balance. That is, it only authorized an amendment to change the Minimum Fund Balance requirement approved by an affirmative vote of 2/3 of the full Council. Council did not reserve for itself the right to waive the Minimum Fund Balance

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requirement. As our Supreme Court made clear in Nelson v. Initiative Committee, "no waiver may be implied" with respect to Title 12 or any of its provisions. No. SC-CV-03-10, slip op. at 10 (Nav. Sup. Ct. January 4, 2011).


There is also no other provision in the Appropriations Act, of Title 12, or of Navajo Nation law that authorizes the Navajo Nation Council to "waive" the statutory requirement of establishing and maintaining the Minimum Fund Balance, or authorizing general waivers of any aspect of the Appropriations Act. Instead, where waivers are allowed, Council specifically authorized them in the Appropriations Act. "[P]olicies and procedures regarding spending must first be statutorily authorized before they may be deemed valid." Id. at 20. Here there is no such statutory authority to waive the Minimum Fund Balance. Instead there is a strict limitation on how the Minimum Fund Balance can be changed. In the absence of a statutorily authorized waiver of Section 820(J), the attempt by Council to approve such a waiver in Resolution No. CJA-04-17 fails.

The proper means for making the change Council sought would have been an amendment to Section 820(J) approved by a 2/3 vote of the full Council. Insofar as the Minimum Fund Balance is below the required 10 percent minimum, the required minimum must be restored as soon as possible from funds available within the UUFB, as the Minimum Fund Balance is the required minimum reserve that must be maintained within the UUFB.

IV. CONCLUSION

The attempted waiver of the Minimum Fund Balance, set forth in 12 N.N.C. § 820(J) was not proper as it was not authorized by Navajo Nation statute.

NAVAJO NATION DEPARTMENT OF JUSTICE



Ethel B. Branch, Attorney General