



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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AG-01-18

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

April 26, 2018

**Budget Resolutions, Including Legislation 0042-17, Require Final
Action by the Navajo Nation President**

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

Does the Navajo Nation President (the "President") have authority for final action on Legislation No. 0042-17 (defined below) after certification by the Speaker of the Navajo Nation Council (the "Speaker")?

II. SHORT ANSWER

Yes. The President has final action authority on all budget resolutions, including Legislation No. 0042-17, after certification by the Speaker, pursuant to 2 N.N.C. § 1005(C)(10) and 12 N.N.C. § 840(C). The Navajo Nation Council ("Council"), in enacting Legislation No. 0042-17, "designated" funds to be deposited in the Síhasin Fund, which constitutes an act of appropriation, and as such Legislation No. 0042-17 constitutes a budget resolution. Legislation 0042-17, like all budget resolutions, requires final action by the President.

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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III. ANALYSIS

A. FACTUAL BACKGROUND

1. CD-68-14, Establishing The Síhasin Fund.

On December 27, 2014, the Speaker certified passage of, and on December 31, 2014, the President signed into law, Navajo Nation Resolution No. CD-68-14, *Enacting "The Navajo Nation Trust Settlement Act of 2014" By Amending Title 12 Of The Navajo Nation Code And Establishing "The Síhasin Fund" to Include Settlement Monies Received From The United [sic] States Through Settlement Of Navajo Nation v. United States, No. 06-945L, And Those Monies Received Through Future Settlement Or Judgement Of Other Litigation Brought Against The United States For Its Failure To Ensure That The Navajo Nation Receives All Funding Owed To It Via The United States' Trust And Fiduciary Responsibilities To The Navajo Nation ("Resolution CD-68-14")*. Resolution CD-68-14 authorizes two categories of funds to be added to the Síhasin Fund, as follows:

"Additional deposits, **when duly designated**, may be made to the [Síhasin] Fund from the net proceeds of settlement or judgment awards of other litigation brought against the United States concerning its failure to ensure that the Navajo Nation received all funds due and owing under the United States' trust obligations and fiduciary duties."²

"The Navajo Nation Council may make **additional appropriations** to the Fund from any other sources of revenue that become available to the Navajo Nation."³

2. The Ramah Settlement Funds.

In 1990, various Indian Tribes filed *Ramah Navajo Chapter et al. v. Sally Jewell* ("Ramah") in the United States District Court for the District of New Mexico. The *Ramah* case was a class action lawsuit against the Department of the Interior ("DOI") to recover contract support costs that the Bureau of Indian Affairs did not pay to Indian tribal government class members from 1994 through 2013 as required by the Indian Self Determination and Education Assistance Act. On September 16, 2015, the parties in the

² CD-68-14, codified at 12 N.N.C. § 2501(A) (emphasis added).

³ CD-68-14, codified at 12 N.N.C. § 2501(C) (emphasis added).

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Ramah case entered into a Final Settlement Agreement that required DOI to pay the class members. The court in *Ramah* designated the Navajo Nation's share of the settlement as \$58,413,809.36. On or about November 16, 2016, the Office of the Controller received the Nation's *Ramah* settlement funds, and the Controller currently holds the *Ramah* settlement funds in the General Funds Miscellaneous Holding Account.

3. Legislation No. 0042-17, Designating The *Ramah* Settlement Funds Be Deposited In The *Síhasin* Fund.

On April 17, 2018, Council passed Legislation No. 0042-17, *Designating That The Net Proceeds Received From The United States Through Settlement Of Navajo Ramah Chapter et al. v. Jewell, No. 90-CV-957 (D.N.M.), Be Deposited In The Síhasin Fund Pursuant To CD-68-14 And 12 N.N.C. § 2501* ("Legislation No. 0042-17"), which states in pertinent part as follows:

"The 2014 Act⁴ mandated that the net proceeds and earnings thereon received by the Navajo Nation from the settlement of *Navajo Nation v. United States*, No. 06-945L, and that, **when duly designated**, the net proceeds of settlements or judgement awards of other litigation(s) brought against the United States concerning its failure to ensure that the Navajo Nation received all funds due and owing under the United States' trust obligations and fiduciary duties, **be deposited into the Síhasin Fund ...**"⁵

"The Navajo Nation Council hereby determines that the *Navajo Ramah Chapter, et al., v. Jewell* settlement award to the Navajo Nation meets the criteria of 12 N.N.C. § 2501 and that the net proceeds from such settlement are **eligible for deposit** in the *Síhasin* Fund."⁶

"As anticipated and intended by the 22nd Navajo Nation Council during their adoption of CD-68-14 and the 2014 Act, the Navajo Nation Council

⁴ The Navajo Nation Trust Settlement Act of 2014, enacted pursuant to CD-16-14, which also established The Navajo Nation *Síhasin* Fund, codified at 12 N.N.C. § 2501.

⁵ Legislation 0042-17, Section Two, *Findings*, Subsection C (emphasis added).

⁶ Legislation 0042-17, Section Two, *Findings*, Subsection K (emphasis added).

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further determines that it is in the best interests of the Navajo Nation and the Navajo people **to designate that the net proceeds** of fifty-eight million four hundred thirteen thousand eight hundred nine dollars and thirty-six cents (\$58,413,809.36) awarded to the Navajo Nation in the settlement of *Navajo Ramah Chapter, et al., v. Jewell*, No. 90-CV-957 (D.N.M.), **be deposited in the Sihasin Fund** pursuant to CD-68-14 and 12 N.N.C. § 2501 and used for the purposes set forth in the 2014 Act and 12 N.N.C. §2501 et seq.”⁷

“The Navajo Nation Council approves and **designates** that the net proceeds of fifty-eight million four hundred thirteen thousand eight hundred nine dollars and thirty-six cents (\$58,413,809.36) awarded to the Navajo Nation in settlement of *Navajo Ramah Chapter, et al., v. Jewell*, No. 90-CV-957 (D.N.M.), **be deposited and added to the Sihasin Fund.**”⁸

B. LEGAL BACKGROUND

The Navajo Nation Code defines an “appropriation” as “**the legislative act of designating funds**, excluding externally restricted funds, **for a specific purpose** in accordance with the applicable budgeting principles, policies and procedures contained in [the Appropriations Act].”⁹ A budget resolution is defined as “a resolution passed by the Navajo Nation Council appropriating funds pursuant to [the Appropriations Act].”¹⁰ An appropriation outside of the comprehensive budget cycle is a supplemental appropriation amending the annual comprehensive budget resolution,¹¹ and must be approved through a budget resolution.

⁷ Legislation 0042-17, Section Two, *Findings*, Subsection L (emphasis added).

⁸ Legislation 0042-17, Section Three, *Approving and Designating*, Subsection A (emphasis added).

⁹ 12 N.N.C. § 810(A) (emphasis added).

¹⁰ 2 N.N.C. § 110(C).

¹¹ 12 N.N.C. § 820(L).

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The Appropriations Act requires that budget actions by Council be certified by Council resolution and be forwarded to the President pursuant to 2 N.N.C. § 1005 (C)(10).¹² Accordingly, the President exercises final action authority on all budget resolutions.¹³

In addition, the President generally has the power to veto legislation passed by the Council, and line-item vetoes are not subject to override by the Council.¹⁴ The failure to send a budget resolution to the President for his approval and potential line-item veto would unlawfully deprive the President of the line-item veto authority vested in him by the Navajo people.

Thus, all budget resolutions appropriating funds of the Navajo Nation government must be submitted to the President for final action in order for those resolutions to be valid and to lawfully facilitate the appropriation of Navajo Nation funds.

IV. CONCLUSION

Council, in enacting Legislation No. 0042-17, "designated that the net proceeds" awarded to the Navajo Nation in settlement of the *Ramah* case "be deposited in the Sihasin Fund." The Council's legislative act in Legislation No. 0042-17 of designating the *Ramah* settlement proceeds to be deposited from the General Fund into the Sihasin Fund constitutes an act of appropriation.¹⁵ A resolution passed by Council appropriating funds constitutes a budget resolution.¹⁶ Thus, Legislation 0042-17 is a budget resolution appropriating funds from the Navajo Nation General Fund to the Sihasin Fund.¹⁷ Legislation No. 0042-17 authorizes a supplemental

¹² Opinion of the Attorney General of the Navajo Nation, AG-05-10, December 8, 2010 ("the budget policies and procedures set out in [the Appropriations Act] include the requirement that budget actions by the Council must be certified by Council resolution and shall be forwarded to the Navajo Nation President 'pursuant to 2 N.N.C. § 1005(C)(10)'"). See 12 N.N.C. § 840(C). See also, Opinion of the Attorney General of the Navajo Nation, AG-02-16, July 5, 2016.

¹³ See, e.g., Navajo Nation Resolution Nos. CF-24-18, CF-25-18, CF-26-18, CS-49-16, and CS-57-17.

¹⁴ 2 N.N.C. § 164(A)(17).

¹⁵ 12 N.N.C. § 810(A).

¹⁶ 2 N.N.C. § 110(C).

¹⁷ A question has been raised as to whether Resolution CD-18-14 has already appropriated the *Ramah* settlement funds to the Sihasin Fund such that Legislation 0042-17 is not a new appropriation requiring final action by the Navajo Nation President. Resolution CD-18-14 authorized future appropriations to be made to the Sihasin Fund when "duly designated" for deposit in the Sihasin Fund or when "made eligible" for such deposit pursuant to a legislative act of Council (i.e., a budget resolution), but Resolution CD-18-14 did not itself constitute the act of a contemporaneous appropriation of the *Ramah* settlement funds into the Sihasin Fund. Thus, Resolution CD-18-14 does not constitute an appropriation of the *Ramah* settlement funds into the Sihasin Fund.

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appropriation and serves as an amendment to the comprehensive budget resolution. All budget resolutions require final action by the President, and so Legislation 0042-17 must be presented to the President for final action and will be subject to the President's line-item veto authority.

NAVAJO NATION DEPARTMENT OF JUSTICE



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