



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

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AG-02-17

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

March 30, 2017

**Proper Use of the Síhasin Fund for Infrastructure Projects**

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.<sup>1</sup>

**I. ISSUE PRESENTED**

I believe it necessary to issue a formal Attorney General Opinion on the question of what constitutes a valid infrastructure project eligible for use of the Síhasin Fund, given the volume of projects being considered for use and expenditure of the Síhasin Fund in general, and the Twin Arrows Travel Center in particular.

**II. SHORT ANSWER**

The Síhasin Fund Statute, 12 N.N.C. § 2501, *et seq.*, expressly limits the allowable uses of the Síhasin Fund to the planning and development of regional infrastructure and for educational opportunities, and imposes a preference for leveraged use of the Fund in connection with the infrastructure and educational purposes of the Fund. Infrastructure to support economic community development is authorized by the Síhasin Fund Statute. However, there appears to be an incorrect assumption that

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<sup>1</sup> 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.

**Opinion of the Attorney General of the Navajo Nation**

No. AG-02-17

March 30, 2017

Page 2

the funding of economic development projects themselves, even when they do not constitute infrastructure, is allowable pursuant to the Síhasin Fund Statute. However, economic and community development projects themselves do not constitute the allowable "infrastructure in support of economic and community development" unless they first meet the definition of infrastructure under the laws of the Navajo Nation.

**III. ANALYSIS**

The Síhasin Fund Statute expressly limits the allowable uses of the Síhasin Fund to planning and development of regional infrastructure and for educational opportunities, with a preference for leveraged use of the Fund in connection with the infrastructure and educational purposes of the Fund. Infrastructure to support economic and community development is authorized by the Síhasin Fund Statute, but unless an economic development project meets the definition of "infrastructure" as established under Navajo law, the direct funding of economic development projects is not an authorized use of Síhasin Fund proceeds. However, the Síhasin Fund Statute could be amended to allow for the direct funding of economic or community development projects.

**A. ALLOWABLE USES OF THE SÍHASIN FUND**

The Síhasin Fund Statute, 12 N.N.C. § 2501 *et. seq.*, expressly provides for the following limited authorized uses of the Síhasin Fund:

§ 2502. Purpose

- A. The purposes of this Fund are to provide financial support and/or financing for:
  - 1. the planning and development of regional infrastructure supporting economic and community development, including housing, within the Navajo Nation; and
  - 2. educational opportunities for members of the Navajo Nation.
  
- B. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund shall be favored over direct funding in whole.

12 N.N.C. §2502.

Opinion of the Attorney General of the Navajo Nation

No. AG-02-17

March 30, 2017

Page 3

**B. THE DEFINITION OF "INFRASTRUCTURE" UNDER NAVAJO LAW**

The meaning of "infrastructure" is well defined and consistent, both under Navajo law and with respect to the generally accepted understanding of "infrastructure" in the United States. Two major canons of statutory construction are relevant to this analysis. These canons are the Plain Meaning Rule and *In Pari Materia*.

The Plain Meaning Rule in general provides that when construing the express language of a statute, the starting point is the language of the statute itself, and if the language of the statute is plain and unambiguous, it must be applied according to its terms. The Supreme Court of the Navajo Nation has stated that the Court will apply a statute's plain language when that language is clear. Begay v. Chief, 8 Nav. R. 654 (Nav. Sup. Ct. 2005). Further, the Navajo Nation Supreme Court has stated, "In matters involving statutory interpretation, we initially look to the language of the statute and attempt to decipher a meaning from the words it uses.... Thus an unambiguous statute is enforced according to its terms." PC&M Construction v. Navajo Nation, No. A-CV-05-93, slip op. (Nav. Sup. Ct. August 26, 1993), citing Johnson v. Dixon, 4 Nav. R. 108 (Nav. Sup. Ct. 1983); and Navajo Nation Division of Natural Resources v. Spencer, 5 Nav. R. 109 (Nav. Sup. Ct. 1986).

*In Pari Materia* is a rule of statutory interpretation that provides in general that laws of the same matter, on the same subject, referred to by other statutes, or statutes in the same field, are to be construed with one another, with the intent to promote uniformity and predictability in the law. The Supreme Court of the Navajo Nation has stated, "This Court has always followed the rule of *Pari Materia* [sic] in regard to resolutions and that the laws of Title 7, Navajo Tribal Code and the law of Title 17, Chapter 5 must be construed in reference to each other." Navajo Nation v. Jones, 1 Nav. R. 14 (Nav. Sup. Ct. 1971). The Navajo Supreme Court further stated, "We have stated that '[o]ur Navajo Nation laws must be read comprehensively and in combination.'" Navajo Housing Authority v. Johns, No. SC-CV-18-10, slip op. (Nav. Sup. Ct. September 10, 2012), citing In the Matter of Frank Seanez, No. SC-CV-58-10, slip op at 10 (Nav. Sup. Ct. January 25, 2011).

Here, in interpreting the Síhasin Fund Statute under the Plain Meaning Rule, the word "infrastructure" is clear and unambiguous. The Síhasin Fund Statute expressly provides for the allowed use of the Fund for "regional infrastructure supporting economic and community development." The Síhasin Fund Statute does not expressly

Opinion of the Attorney General of the Navajo Nation

No. AG-02-17

March 30, 2017

Page 4

provide for direct use of the Fund for economic and community development projects themselves.

Further, under the *In Pari Materia* Rule, one looks to the ways in which the word "infrastructure" is defined and used in other areas of Navajo law. Here, the relevant areas of Navajo law fall within or relate to the field of Fiscal Matters, all of which are addressed in Title 12 of the Navajo Nation Code. Specifically, the relevant Navajo legal definitions for "infrastructure" are found in the Bond Financing Act and the *Capital Improvement Projects Guidelines, Policies and Procedures* (which derive from the Appropriations Act). The Síhasin Fund Statute itself is also found in Title 12. In interpreting the Síhasin Fund Statute under the *In Pari Materia* Rule, consistent with the definition of "infrastructure" in other areas of Navajo fiscal law, the meaning of the word "infrastructure" in the Síhasin Fund Statute is clear and unambiguous.

As an initial matter, the Navajo Nation Appropriations Act provides for the management of the Nation's public funds and finances according to sound principles consistent with Generally Accepted Accounting Principles ("GAAP"). 12 N.N.C. § 800(B).<sup>2</sup> As a government, in complying with GAAP, the Nation follows the guidance of the Government Accounting Standards Board ("GASB"). Pursuant to GASB and GAAP, "infrastructure" has a special meaning. Specifically,

*Infrastructure assets are long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams, and lighting systems. Buildings, except those that are an ancillary part of a network of infrastructure assets, should not be considered infrastructure assets . . ."*

Para. 19 of Statement No. 34 of the Governmental Accounting Standards Board: Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments. Accordingly, to remain consistent with GAAP, and in compliance with the Appropriations Act, the Nation must use the above definition of "infrastructure assets."

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<sup>2</sup> The Appropriations Act of the Navajo Nation Code, 12 N.N.C. § 800, et seq. governs the use of all Navajo Nation public funds, including the Síhasin Fund.

Opinion of the Attorney General of the Navajo Nation

No. AG-02-17

March 30, 2017

Page 5

In compliance with that dictate, the Nation has explicitly incorporated the widely accepted and GASB-derived meaning of "infrastructure" into its Code in The Bond Financing Act, which provides, in language substantially similar to GASB Statement No. 34, as follows:

Infrastructure Assets. Are long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams and lighting systems. Buildings, except those that are an ancillary part of a network of infrastructure assets, should not be considered.

12 N.N.C. § 1310(F)(7).

The Navajo Nation also comports with GAAP by using a definition of "infrastructure" in its *Capital Improvement Projects Guidelines, Policies and Procedures* that reflects the same general understanding of the meaning of infrastructure as articulated in GASB Statement No. 34:

Infrastructure: The basic facilities, services, and installations needed for the functioning of a community or society, such as transportation and communication systems, water and power lines, and public institutions including schools, post offices and prisons.

Section III(M) of TCDCJY-77-99, Transportation and Community Development Committee Resolution, *Approving the Newly Revised Capital Improvement Projects Guidelines Policies and Procedures; Capital Improvement Projects Guidelines, Policies and Procedures.*

In sum, in the simplest of terms, "infrastructure" under the Nation's fiscal laws has a well-established meaning of a long-lived capital asset or network of infrastructure assets developed for the purpose of providing direct public benefit. This meaning applies both under the Plain Meaning Rule, as well as under the *In Pari Materia* Rule, because "infrastructure" has both a well-established meaning in the U.S., and also has a well-established and consistent meaning under the Nation's fiscal laws, and those meanings are consistent with each other. A travel center privately owned by an enterprise,<sup>3</sup> a for-profit venture by a for-profit

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<sup>3</sup> The Twin Arrows Travel Center will be owned and managed by Navajo

**Opinion of the Attorney General of the Navajo Nation**

No. AG-02-17

March 30, 2017

Page 6

entity, does not fall within the scope of a capital asset developed for the purpose of providing direct public benefit. Instead, the public must pay to access the benefits of the travel center, and those payments will enrich the Enterprise, with no guarantee of enriching the public. Additionally, the development of a travel center is not the development of a building or buildings that are an ancillary part of a network of infrastructure assets.<sup>4</sup> Accordingly the Twin Arrows Travel Center cannot be considered an infrastructure asset under Navajo law.

Indeed, any legislation seeking to authorize use of the Síhasin Fund for the purpose of planning or developing regional infrastructure in support of economic and community development must ensure that the approved project is actually an infrastructure project and not simply an economic or community development project. That is, unless and until the Síhasin Fund Statute is amended to provide for such direct use. Such amendment would require a 90 percent vote of the full membership of the Navajo Nation Council and signature by the President pursuant to 12 N.N.C. § 2508.

**C. LEVERAGED USE ALONE DOES NOT SATISFY THE REQUIREMENTS FOR USE OF THE SÍHASIN FUND**

The allowable purposes of the Síhasin Fund are to provide financial support and/or financing for the planning and development of regional infrastructure in support of economic and community development, and for educational opportunities. The Fund should also be used for leveraging of funds in connection with the infrastructure and educational purposes of the Fund. However, pursuant to the plain language of the Síhasin Fund Statute—which in Section 2502(A) sets forth the two allowable uses of the Fund and in Section 2502(B) grants a preference for leveraged use of the fund over direct funding—the use of the Síhasin Fund for leveraging purposes, such as match funding and loans, still requires confirmation that the leveraged funds are to be used for allowable purposes under the statute. That is, the funds must be used for the planning and development of regional infrastructure or for the provision of educational opportunities. The mere fact that Síhasin Funds are used for leveraging, such as through providing matching funds or loans, does not alone meet the requirements of the Síhasin Fund Statute. The underlying project must first qualify as serving

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Nation Gaming Enterprise.

<sup>4</sup> The Travel Center will include a convenience store, gas station and trucker service station.

Opinion of the Attorney General of the Navajo Nation

No. AG-02-17

March 30, 2017

Page 7

an infrastructure or education purpose pursuant to 25 N.N.C. § 2502(A).

**IV. CONCLUSION**

The Síhasin Fund Statute expressly provides that the Síhasin Fund is to be used for the limited uses of providing financial support and/or financing for planning and development of regional infrastructure and for educational opportunities. The Fund may be used for leveraging, but only in connection with the infrastructure and educational purposes of the Fund. Further, funding of infrastructure to support economic development is authorized by the Síhasin Fund Statute, but funding of an economic development project that does not fall within the definition of "infrastructure" under Navajo law is not an authorized use of Síhasin Fund proceeds. This limitation could be eliminated through a properly approved amendment to the Síhasin Fund Statute by a 90 percent vote of the full Council and approving signature of the President.

NAVAJO NATION DEPARTMENT OF JUSTICE



Ethel B. Branch, Attorney General