



THE NAVAJO NATION

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Navajo Attorney General Louis Denetsosie determines Navajo Council may not override line item veto authority

WINDOW ROCK, Ariz. – Navajo Nation Attorney General Louis Denetsosie has determined that the Navajo Nation Council may not lawfully override the Presidential line item veto that was authorized by Navajo voters.

“There can be no dispute that the Budget Line Item Veto is now valid Navajo law,” Mr. Denetsosie said in a July 9 legal opinion.

“Navajo voters, by approving the Initiative, enacted law that authorizes the Navajo Nation President to exercise budget line item veto authority. Furthermore, this same law also prohibits the Navajo Nation Council from overriding the Navajo Nation President’s budget line item vetoes.”

On June 24, Navajo Nation President Joe Shirley, Jr., exercised the new presidential authority for the first time to line out four appropriation items that would duplicate spending that has already been allocated.

The line item veto saved the Nation more than \$5.6 million in spending from the Department of Justice Contingency Management Fund that has already been obligated as a reserve fund to cover probable legal liabilities of the Navajo Nation.

The spending legislation, CJN-25-10, sponsored by Council Delegate Young Jeff Tom, would have given funding directly to chapters for public employment, summer youth employment, chapter housing discretionary funding, a chapter post office, as well as a half a million dollars to the Council Speaker’s discretionary fund.

However, a June 22 analysis of the legislation by the Office of Management and Budget reported that the Council had made supplemental appropriations of more than \$87.3 million in FY 2009, with more than \$56.2 million going to chapters for public employment, summer employment, scholarships, winter emergencies, stipends for officials, and community projects.

“Navajo voters, by approving the initiative, enacted law that authorizes the Navajo Nation President to exercise budget line item veto authority. This law also prohibits the Navajo Nation Council from overriding the President’s budget line item vetoes.”

– Navajo Nation Attorney General Louis Denetsosie

Of that, OMB reported that as of April 30 chapters had a unspent balance of \$38.1 million, including \$3.1 million for public employment, and \$948,000 for summer youth employment, making Mr. Tom’s legislation unnecessary and its purpose questionable.

In addition, the Navajo Department of Workforce Development reports that it has ARRA funding to use for public employment that new recipients are not applying for.

The OMB analysis found that continuing to spend money through Mr. Tom’s legislation would worsen the Nation’s \$22 million budget deficit.

In his opinion, Mr. Denetsosie said that the Navajo Nation Supreme Court held in its May 28 ruling in *Nelson v. Initiative Petition Committee* that the results of the December 15, 2009 special initiative election was “valid and proper.”

The Court noted that because no challenges to the line item veto election result were filed with the Office of Hearings and Appeals, the initiative became law upon passage.

The initiative election was approved by a majority of Navajo voters by a vote of 24,568-to-16,944. That constituted more than 59 percent of the voter turnout.

Consequently, the Court ordered the Navajo Board of Election Supervisors to certify the election results, which it did on June 4.

This was the first time the Navajo People themselves enacted new Navajo Nation law through the initiative process.

As a result, Mr. Denetsosie said, the Council “no longer has the authority to override the Navajo Nation President’s budget line item vetoes pursuant to the Budget Line Item Veto Initiative that was approved by Navajo voters on December 15, 2009.”

In his analysis, the Attorney General found that when approved by the vote of the People, the entire text of an initiative becomes law. Once the Navajo Election Administration accepts a completed petition, he said, the text of the initiative cannot be changed.

“The ballot language is intended simply to give a descriptive summary of the text of the initiative,” Mr. Denetsosie said. “This means that the entire text of an initiative is not required to be printed on the ballot.”

The Navajo Nation Election Code recognizes that an initiative ballot will have only a summary of the proposed initiative, he said. However, four copies of the complete text of the initiative are to be available at polling places for voters to review.

Navajo Election Administration Director Edison Wauneka confirmed to Mr. Denetsosie that the complete texts of the initiative language were at each polling place in accordance with the law.

The initiative text language states:

1. The Navajo Nation President is authorized to exercise line item veto over budget items contained in the annual Navajo Nation Comprehensive Budget or supplemental appropriations approved by the Navajo Nation Council; and
2. The budget line items which the Navajo Nation President vetoes are not subject to override by the Navajo Nation Council; and
3. The Navajo Nation President’s budget line item veto authority becomes effective immediately; and
4. The Initiative may be repealed or amended by the initiative process only.

The Navajo Nation Election Code further states that approved initiatives “shall be binding and have the effect of law.”

On July 18, 2008, the Supreme Court reiterated that “the Navajo People have the inherent authority reserved to them to enact laws. The People’s laws are superior to the statutory laws enacted by the Council, and the referendum/initiative processes are modern acknowledgements of this authority.”

Consequently, initiatives approved by the People enact law that is superior to Navajo Nation Council-enacted law.

The proposed legislation to override the President’s line item veto, No. 0388-10, which is also sponsored by Mr. Tom, “ignores the fact that the Navajo Nation Council can no longer override Presidential vetoes of budget line items,” the Attorney General said.

“Prior to the passage of this Initiative, the Navajo Nation Council routinely exercised its authority to override Presidential vetoes,” he said. “Now, the Navajo Nation Council can no longer lawfully override budget line item vetoes that are duly exercised and specified as such by the Navajo Nation President.

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