



The Navajo Nation Council - Office of the Speaker

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FOR IMMEDIATE RELEASE

Office of Legislative Counsel reveals serious flaws in Attorney General's opinion

"The severe reduction of local representation on the Navajo Nation Council would have a severe and negative effect on the people's right and freedom to choose their leaders. The Attorney General's claims relative to Diné Fundamental Law and its application within this context are misguided." — Frank Seanez, Acting Chief Legislative Counsel

WINDOW ROCK, Ariz. — On May 12, 2008, the Office of Legislative Counsel released legal advice regarding the votes required for amendments to 2 N.N.C. § 102(A), disagreeing with Navajo Nation Attorney General Louis Denetsosie's opinion in AG-02-08.

Copies of the legal advice from the Office of Legislative Counsel were hand-delivered on that date to the Office of the Attorney General, as well as to all Navajo Nation Council Delegates. The Office of Legislative Counsel (OLC) said that President Joe Shirley Jr.'s nation-wide initiative petition that was filed with the Navajo Elections Administration on April 29 and the Attorney General's legal opinion were not discussed with the OLC in their development or its adoption.

The Office of Legislative Counsel found that, "Upon review of the first page of the nation-wide Initiative Petition, it is apparent that there is a most serious error set forth on the petition. The petition's language states that the vote required is a, "Simple majority of the votes cast," but the Office of Legislative Counsel disagrees and says that, "the language is clearly wrong under Navajo Nation law, and it must be changed prior to any circulation of the petition, in order to meet the vote requirement set forth in 2 N.N.C. § 102(A)."

The OLC said that the Attorney General did not answer the question addressed to him regarding the situation, "when the initiative seeks to amend the vote requirement to a majority of all eligible registered voters who cast a vote." Instead, the Attorney General took it upon himself to address the situation on his own by including an answer that stated the number of delegates to the Navajo Nation Council could be reduced by a majority of voters who cast a vote on a referendum matter. The Attorney General's opinion does not address the question posed to him, but it does appear to be consistent only with the petition filed by the President. The OLC drew no conclusion from this coincidence.

The OLC stated that upon their review and analysis, they have concluded that the Attorney General's opinion is unsound and fails to follow Navajo Nation Supreme Court decisions regarding interpretation of the plain language of statutes. The OLC said that, "the Attorney General's opinion is flawed and that the stringent vote requirements of 2 N.N.C. § 102(A) remain in place, regardless of the claim that the referendum is alleged to be an initiative of the Navajo voters under 11 N.N.C. § 404.

The OLC addressed the same matter in 2000, when a similar initiative was considered to amend 2 N.N.C. § 102(A). At that time, the OLC advised the Navajo Board of Election Supervisors and the Navajo Elections Administration relative to these matters when this matter last went to referendum before the Navajo Nation electorate.

At that time, former Attorney General Levon Henry agreed with the legal advice from the OLC and he concurred in a July 7, 2000 memorandum. It is very important to also note that Attorney General Louis Denetsosie did not disagree with the legal advice rendered in 2000 by the OLC and the Office of the Attorney General.

The OLC stated that the Attorney General's opinion is an attempt to substitute his own interpretation of the Diné Fundamental Law in this situation. The opinion states that, "the Attorney General attempts to invalidate through his opinion the law as passed by the Navajo Nation Council. The Attorney General has not been delegated such authority by the Navajo Nation Council, and has no independent source of legal authority for such an action. This attempted invalidation of Navajo law is accordingly outside of the scope of his authority."

On the subject of the Fundamental Law, the OLC stated that, "The severe reduction of local representation on

the Navajo Nation Council would have a severe and negative effect on the people's right and freedom to choose their leaders. The Attorney General's claims relative to Diné Fundamental Law and its application ... are misguided."

Now, the Navajo people elect 88 Council Delegates from 110 chapters. If the President's initiative were passed, then the number of delegates for even the largest chapters would be decreased. The chapters of Crownpoint, N.M., Shiprock, N.M., Fort Defiance, Ariz., Chinle, Ariz., and Toh Nanees Dizi (Tuba City), Ariz. would likely receive only one delegate per chapter, as opposed to the number they elect under the 88 delegate Navajo Nation Council.

However, it is the smaller chapters who would be most severely harmed, as they would be forced to share an election precinct with chapters having much larger voting populations or a much greater number of smaller chapters.

Even if the larger chapters received only one delegate each, this would reduce the number of delegates available for election through the other 105 chapters to only 19.

The OLC stated that the "Attorney General fails to recognize that there are only a few areas in Navajo Nation law or treaty, where the Navajo Nation leadership deemed the provisions so foundational and critical to the stability of the Navajo Nation that it imposed higher than a simple majority public vote requirement to change the provision of law or treaty from the manner duly enacted by the Navajo leadership when it was planning and providing for the current and future needs of the Diné.

By his individual opinion, the unelected Attorney General would allow a simple majority vote of those few who vote in Navajo elections to alter the most central component of the Navajo Nation government, holding of Navajo Nation lands and public funds, at each and every election, with no control to provide the degree of caution and stability contemplated by the Navajo leaders who enacted those provisions of law or treaty for the benefit of all Navajo people — including future generations."

The OLC also stated that, "The Attorney General's use of the term "alternative methods for creating laws" appears to include the concept that these are somehow methods that are exclusive and insular unto themselves, and that no other provisions of Navajo Nation law are relevant to these methods. The Attorney General is simply wrong in this assumption.

The Council did not establish an alternative majority requirement for Section 102(A) by its enactment of the sections of Title 11 dealing with referenda. It is instead clear that the general vote requirements set forth in 11 N.N.C. § 406(A) would have to yield to those other provisions, like 2 N.N.C. § 102(A), wherein the Council established an "other identified amount greater than a majority, of all eligible registered voters who cast a vote."

The Office of Legislative Counsel states that, "The Attorney General ignores the inescapable fact that the participatory democracy of the Diné is protected by the stringent procedural and voting requirements of 2 N.N.C. § 102(A)." The OLC legal advice states, "The Attorney General's claims that Diné Fundamental Laws support his position are weak, especially since the result of the implementation of the Attorney General's opinion would certainly result in a decrease of participatory democracy by the Diné, in a struggle to bring their individual, community, and chapter concerns before the Navajo Nation Council through one of 24 delegates elected from a large, multi-chapter precinct."

The legal advice of the Office of Legislative Counsel "is that the opinion of the Attorney General is not in accord with the statutory and decisional law of the Navajo Nation. The decision of the Attorney General to ignore the plain language of 2 N.N.C. § 102(A), as well as the long-standing legal advice of both the Office of Legislative Counsel and the Office of the Attorney General with regards to the effect of the procedural and vote requirement safeguards set forth in that section is not justified.

The Attorney General's characterization of the intent of the Navajo Tribal Council in passage of 2 N.N.C. § 102(A) is completely unfounded. The Attorney General's analysis of the referendum laws, and in particular the provisions of 11 N.N.C. § 406(A), ignore and fail to give meaning to the laws adopted by the Navajo Nation Council.

As a final matter, the Attorney General's analysis of this matter under the Diné Fundamental Law is superficial, biased, and unwarranted — given the plain language of the statutes."