



# THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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## Navajo Attorney General Louis Denetsosie determines legislation to pay Council delegates' lawyers violates 9 Navajo laws, Initiative

*Council again fails to send legislation to President for signature or veto as required*

**WINDOW ROCK, Ariz.** – Navajo Nation Attorney General Louis Denetsosie has determined that legislation approved by the Navajo Nation Council last month to give delegates \$378,000 for “attorney fee and expenses” violates nine laws and the year-old Line-Item Veto Initiative.

He found that failing to send the legislation – CN-47-10 – to Navajo Nation President Joe Shirley, Jr., for his consideration, signature or veto, violated:

- Title 2 Sections 164(A) and (B).
- Title 2 Sec. 165(B);
- Title 2 Sec. 221.
- Title 2 Sections 1005(C)(10) (11) and (12).
- Title 12 Sections 800 and 840; and
- The Line Item Veto Initiative approved by voters on Dec. 15, 2009.

“The failure of the Navajo Nation Council to forward CN-47-10 to the Navajo Nation President for review violated those Navajo Nation laws that, by statute and initiative, specifically require Presidential review,” the Attorney General wrote in a three-page legal opinion issued Dec. 8.

After the legislation passed, it was certified by Navajo Nation Council Speaker Lawrence T. Morgan but was never sent to the President’s office for consideration as all legislation must.

Because the legislation is subject to a Presidential line-item veto, it could not be overridden by the Council should it now decide to send it to the President and he was to veto it.

Dominic Beyer, director of the Navajo Nation Office of Management and Budget, said today that the allocation of money has not been carried out because of the legal question, which he said is now clear.

*“The failure of the Navajo Nation Council to forward the legislation to the President for review violated those Navajo Nation laws that, by statute and initiative, specifically require Presidential review.”*

– Navajo Nation Attorney General Louis Denetsosie

Although the legislation did not specify how the money would be used, it is believed it was intended to pay lawyers to assist Council delegates with their defense related to the Special Prosecutor’s investigation of the misuse of discretionary funds.

In his analysis, Mr. Denetsosie found the \$378,000 was originally allocated as budget line items in the Personnel General Fund of the Council’s budget. CN-47-10 would amend the original budget line item from the Personnel General Fund to attorney fees and expenses.

Mr. Denetsosie found that the legislation, passed by the Council on Nov. 23, waived an intentionally-restrictive finance law in order to get around a 2002 budget moratorium that was designed to prevent spending from the General Funds Personnel Accounts Savings, which the allocation would have tapped.

Because the 2002 Council Resolution CAP-46-02 prohibits such reallocations from the Personnel General Fund, he stated, the Council waived it.

Mr. Denetsosie said the legislation waived the eight-year-old law, also known as the Classification/Pay Plan, to allow the reallocation from the Personnel General Fund.

However, the law's language states that the Classification/Pay Plan approved "a moratorium on any future proposed Budget Reallocations from General Funds Personnel Accounts Savings, effective immediately."

The Classification/Pay Plan also restricts all branches General Funds Personnel Accounts to be used solely for "administering and maintaining the Classification and Pay Plans by the Department of Personnel Management."

The Attorney General noted that the Classification/Pay Plan is a policy statement, and that the waiver of the Classification/Pay Plan is a policy action. Title 2 Sec. 165(B) states that amendments to existing law are subject to Presidential veto.

The current legislation attempted to amend the Classification/Pay Plan by waiver and, consequently, is subject to Presidential review, the Attorney General said. That review did not happen because the Council bypassed the President.

The Attorney General noted that the Classification/Pay Plan:

- Explicitly and clearly prohibits the Personnel General Fund from being reallocated to other functions and purposes, and
- Restricts the Personnel General Fund solely to administering and maintaining the Classification and Pay Plans by the Department of Personnel Management.

"CN-47-10 could not have been lawfully passed by the Council with CAP-46-02 (the Classification/Pay Plan)

standing as is," Mr. Denetsosie states. "Therefore, the Council waived CAP-46-02 in order to proceed with its attempt to reallocate \$378,000 from Personnel General Fund to a different purpose."

In a Nov. 23 memorandum to the Council, OMB senior Budget Analyst Nanette Francisco warned that the Classification/Pay Plan places a moratorium on any proposed budget reallocation from the general funds personnel accounts.

"Such funds are to be used for the Pay Plan," she said. "Accordingly, this proposed Legislation (0759-10) would waive resolution CAP-46-02 to allow the reallocation of the personnel general funds in the Navajo Nation Council budget, business unit 101001. However, no waiver language is stated in the proposed legislation."

The Attorney General noted that Title 12 Sec. 800 defines fiscal decisions by the government as "important policy decisions" that implement the government's fiduciary duty "to manage finances wisely, and to plan for the adequate funding of services desired by the Navajo People." Accordingly, they are subject to Presidential veto.

Mr. Denetsosie further determined that the line-item veto Initiative empowers the President to veto budget line items in Council budget actions like this one.

"Because CAP-46-02 prohibits such reallocations from the Personnel General Fund, the Council waived CAP-46-02," Mr. Denetsosie stated. "Thus, CN-47-10 is a budget action that amends budget line items – which is exactly a type of budget action over which the Navajo Nation President may exercise budget line item veto pursuant to the Initiative."

He noted that should the President veto CN-47-10, the Council "has no lawful authority to attempt to override the President's veto of CN-47-10."

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