

OPINION OF THE CHIEF LEGISLATIVE COUNSEL

Opinion No. CLC-04-10

Question: Must Navajo Nation Council Resolution which send to referendum proposed changes to Navajo Nation laws be submitted to the Navajo Nation President for concurrence or veto?

Answer: No. The Navajo Nation Council by passage of a resolution sending to referendum proposed changes to Navajo Nation laws refers such proposed changes to the Navajo people. The Navajo Nation Council is not enacting such proposed changes. Such resolutions are not subject to concurrence or veto by the Navajo Nation President.

Discussion

2 N.N.C. § 165 provides that “[a]ll proposed resolutions **enacting new laws, amending existing laws**, or adopting a statement of policy ... are subject to veto by the President of the Navajo Nation, pursuant to 2 N.N.C. § 1005 (C)(10) and (11).” Emphasis provided. Accordingly, if a proposed resolution enacts new laws or amends existing laws, it is subject to veto by the President of the Navajo Nation. The Navajo Nation President has been delegated the authority to “[s]ign legislation passed by the Navajo Nation Council into Navajo law” or “[v]eto legislation passed by the Navajo Nation Council subject to an override of the veto by two-thirds (2/3) vote of the membership of the Navajo Nation Council.”

Resolution CJY-32-10 does not enact new laws or amend existing laws. Rather, it refers to the Navajo people the question of whether to enact new laws or amend existing laws. As noted within the findings of Resolution CJY-32-10, “to ensure the fundamental right and freedom of the Diné to participate in their democracy with an option to choose their leaders in the Navajo Nation courts, and to ensure the people’s trust and confidence in the Navajo Nation Judiciary, **the Diné should have an opportunity to decide through a referendum vote in the 2010 General Election whether Navajo Nation District Court judges and Supreme Court Justices should be elected positions beginning with the 2012 Chapter election.**” Clearly, the Navajo Nation Council is not enacting new laws or amending existing laws by Resolution CJY-32-10, but referring such matters to the Navajo people.

Resolutions which do not enact new laws, amend existing laws, or adopt a statement of policy do not go to the Navajo Nation President for signature into law, or veto. “All resolutions that do not enact new Navajo law, amend existing Navajo law or make a policy statement and are adopted by the Navajo Nation Council shall become effective upon the certification by the Speaker or Speaker Pro Tem of the Navajo Nation Council. Such resolutions are effective upon certification by the Speaker of the Navajo Nation Council.” 2 N.N.C. § 221 (C). This clear language removes Resolution CJY-32-10 from the scope of legislation which must be submitted to the Navajo Nation President for signature into law, or veto. “All resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President's veto.” 2 N.N.C. § 221 (B).

It is unquestionable that the Navajo Nation Council itself has the authority to amend Titles 2, 7 and 11 of the Navajo Nation Code. As set forth in Resolution CD-68-89, “any amendment to the adopted Title Two (2) amendments, and the 1985 Judicial Reform Act, 7 N.T.C., Section 101 et. Seq., shall require two-thirds (2/3) vote of the full membership of the Navajo Tribal Council.” 7 N.N.C. § 852 states clearly, “This Title may be amended by two-thirds (2/3) vote of the full membership of the Navajo Nation Council at a regular session of the Navajo Nation Council, upon favorable recommendation by the Judiciary Committee of the Navajo Nation Council.” However, the Navajo Nation Council chose not to amend Titles 2, 7 and 11. Instead, it referred the matter of such amendments to the Navajo people. “The Navajo Nation Council hereby refers a referendum measure and ballot language to the November 2, 2010 Navajo Nation General Election ballot on the Judicial Elections Referendum Act of 2010.” Resolution CJY-32-10.

The amendment of Titles 2, 7 and 11 is clearly within the area permitted for referenda. “The referendum/initiative procedure which is provided for herein shall apply to matters which are strictly legislative and shall not include matters administrative or executive.” 11 N.N.C. § 401(A). The amendment of Titles 2, 7 and 11 is a strictly legislative matter. Thus, the referendum procedure must be applied to this strictly legislative matter. “Referendum measures may be referred to the people by the Navajo Nation Council where the Council determines by resolution that the people should decide the referendum measure.” 11 N.N.C. § 402 (A). This language is clear, and unambiguous. It is further quite clear that it is the vote of the Navajo people, and not the resolution making the referral of the referendum which has the effect of enacting a new law or amending and existing law. “The vote on a referendum/initiative election shall be binding and have the effect of law.” 11 N.N.C. § 409 (A). Accordingly, Navajo Nation Council Resolution CJY-32-09 did not enact new laws or amend existing laws, and thus was not subject to being sent to the Navajo Nation President to sign into law or veto pursuant to either 2 N.N.C. §165 or 1005.

The provisions of Title 11 are clear relative to the procedure which is to followed relative to a referendum matter. “The Navajo Nation Council shall, by resolution, refer a referendum measure for public vote. The resolution shall place timelines for the election which shall be held at the next regularly scheduled Navajo Nation election (primary, general or Navajo Nation-wide chapter election) if such election is scheduled no sooner than 60 days following the adoption of the resolution OR at a special election to be held no sooner than 60 days and not later than 90 days from the date of the passage of the resolution referring the enactment. The resolution shall provide the language to be placed on the ballot in accordance with 11 N.N.C. § 407(A). Where the language is not clear, the Board of Election Supervisors shall, by resolution, amend the language for clarification purposes only, with language provided or recommended by the Office of Legislative Counsel and the Office of the Attorney General. The Board shall also review the measure to ensure that the measure is not exempt pursuant to § 401. The Council shall direct that funding be identified and made available to conduct the election.” 11 N.N.C. § 403 (A).

The provisions of Resolution CJY-32-10 comply with the terms of 11 N.N.C. § 403 (A). Resolution CJY-32-10 places “timelines for the election which shall be held at the next regularly scheduled Navajo Nation election (primary, general or Navajo Nation-wide chapter election)”, by stating that the referendum matter is to be considered at the November 2, 2010 General Election. Resolution CJY-32-10 complies with the requirement of 11 N.N.C. § 403 (A) that the “resolution shall provide the language to be placed on the ballot in accordance with 11 N.N.C. § 407(A).” Resolution CJY-32-10 provides the official title, descriptive summary, brief statement of legal effect, and referendum ballot question, which remains subject to clarification by the Board of Election Supervisors by resolution. Further, there is no provision of 11 N.N.C. § 403, or anywhere else within Navajo Nation Code, Title 11. Elections, Chapter 2. Referendum/Initiative which requires that a Navajo Nation Council resolution referring a referendum matter be submitted to the Navajo Nation President to sign into law, or veto.

As noted above, the Navajo Nation President could not sign the provisions of Resolution CJY-32-10 into law, as the Navajo Nation Council did not purport to enact new laws, or amend existing laws through passage of Resolution CJY-32-10. Neither could the Navajo Nation President veto Resolution CJY-32-10, as Resolution CJY-32-10 did not in itself enact new laws, or amend existing laws. Finally, it must be noted that the Navajo Nation President in 2 N.N.C. § 1005 (C) does not have the authority to provide “either his concurrence or veto” to a referendum matter referred by the Navajo Nation Council for decision by the Navajo people.

Conclusion

For the foregoing reasons, it is the legal opinion of the Chief Legislative Counsel that Resolution CJY-32-10 is valid. Resolution CJY-32-10 did not enact new laws, or amend existing laws. Instead, it referred these matters to the Navajo people for their decision, in compliance with the relevant provisions of the Navajo Election Code. As a resolution which did not enact new laws, or amend existing laws, Resolution CJY-32-10 was effective upon certification by the Speaker of the Navajo Nation Council. The referendum referred to the Navajo people should be placed on the ballot for consideration at the November 2, 2010 Navajo Nation General Election.

cc: President Joe Shirley, Jr.
Speaker Lawrence T. Morgan
Chief Justice Herb Yazzie
Navajo Nation Council Delegates