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SPECIAL FEATURES

NAVAJO NATION COUNCIL REFORMS

Charles Morris

The Navajo Nation Council passed Resolution CD-68-89 on December 15, 1989, reforming the legislative and executive branches.

RESOLUTION OF THE NAVAJO TRIBAL COUNCIL

Amending Title Two (2) of the
Navajo Tribal Code and Related Actions

WHEREAS:

1. Pursuant to 2 N.T.C., Section 101,¹ the Navajo Tribal Council is the governing body of the Navajo Nation; and
2. Recent controversy involving the leadership of the Navajo Nation has demonstrated that the present Navajo Nation Government structure allows too much centralized power without real checks on the exercise of power. Experience shows that this deficiency in the government structure allows for, invites and has resulted in the abuse of power; and
3. The Judicial Branch has been reorganized by the Judicial Reform Act of 1985, Resolution CD-94-85,² and treating the Judicial Branch as a separate branch of government has proven to be beneficial to the Navajo Nation and has provided stability in the government; and
4. The lack of definition of power and separation of legislative and executive functions have also allowed the legislative body to overly involve itself in administration of programs thereby demonstrating a need to limit the legislative function to legislation and policy

1. Title 2, § 101 of the tribal code, which gives law-making authority to the Council, was amended by this resolution. NAVAJO TRIB. CODE tit. 2, § 101 (1983). The Council's governing authority is now found in NAVAJO TRIB. CODE tit. 2, § 102(a) (1990).

2. The Judicial Reform Act was passed in 1985 by the Navajo Council. See Resolution CD-94-85, NAVAJO TRIB. CODE tit. 7, § 201 (Supp. 1984-1985). This act separated the court system from the Council. The identification for a resolution is C (Council), D (December), -94 (the numerical order of the resolution for that year), and -89 (the year of passage).

decision making and further limit the executive function to implementation of laws and representation of the Navajo Nation; and

5. There is an immediate need to reorganize the Navajo Nation Government by defining the powers of the legislative and executive branches and impose limitations on exercise of such powers; and

6. The number of standing committees of the Navajo Tribal Council has grown to eighteen (18) and some standing committees can be combined and Navajo-Hopi Land Committee moved back to a Commission thereby reducing the number of standing committees to twelve (12) and to provide for a more efficient and responsive committee system; and

7. The reorganization of the Navajo Nation Government as proposed herein is intended to meet the immediate needs of the Navajo People for a more responsible and accountable government and will have no effect on the long-term Government Reform Project which will proceed as authorized and directed from the Navajo Tribal Council; and

8. It is in the best interest of the Navajo Nation that the Navajo Nation government be reorganized to provide for separation of functions into three branches, and to provide for checks and balances between the three branches until the Navajo People decide through the Government Reform Project the form of government they want to be governed by

The foregoing is the introduction to Resolution CD-68-89 by the Navajo Nation Council (Council). This document restructured the Navajo government and ushered in the government's return of responsibility to the Navajo People. As one of America's largest Indian tribes, the Navajos faced corruption and turmoil in the late 1980s. The Navajo government found there was too much power and influence in the Chairman's office.³

The "Title Two" amendments⁴ are a major reform in tribal government. The Title Two amendments outline a division between the legislative and administrative functions of the govern-

3. See Resolution CD-68-89 para. 2.

4. Title II of the Navajo Tribal Code provides for government affairs. The amendments addressed in Resolution CD-68-89 will be found throughout Title II.

ment.⁵ The provisions create new executive and legislative branches of government.⁶ The new executive branch includes the office of the President and Vice President of the Navajo Nation.⁷ This section defines the president's powers and duties and makes him the head of administration for the Nation.⁸ The statute empowers the Navajo Nation council to act as the legislative body for the Nation.⁹ The Council is fully vested with law-making duties.¹⁰ The Act creates the office of the Speaker of the Council to head the Council and direct the Council in legislative sessions.¹¹

The Title Two amendments implement a division of power and a checks-and-balances system of government within the Navajo Nation. With the implementation of the Title Two amendments, the Navajo Nation now has a three-branch government that mirrors the United States system of government. In 1985 the Judicial Branch was separated from the Council by the Judicial Reform Act.¹² The new system of government is not a true image of the United States, but only a highlighted shadow. The Navajo Nation only borrowed what was applicable to their needs in the United States system and kept the part of their existing system which worked for the Nation prior to 1989. Also, the Navajo government added new sections to the government to fit the particular needs of the Navajo People.¹³

5. See NAVAJO TRIB. CODE, tit. 2, § 101 (1989) (provisions defining the two branches). Title 2, §§ 101-109 set forth the powers of the Council as the legislative body. Title 2, §§ 1001-1013 define the powers and duties of the executive branch.

6. *Id.*

7. See *id.* § 1002. The Act provides for the establishment of these offices in the following manner: "(a) There is hereby established the Office of the President and Vice President; (b) There shall be one President of the Navajo Nation. The President shall be elected for a term of five years. . . ." *Id.*

8. See *id.* § 1005(a)-(d) (listing the President's enumerated powers).

9. See *id.* § 101(a). This section provides that "(t)here is hereby established the legislative Branch of the Navajo Nation government. The legislative Branch shall consist of the Navajo Nation Council and any entity established under the Navajo Nation Council." *Id.*

10. Section 102(a) reads, "The Navajo Nation Council shall be the governing body of the Navajo Nation . . ." *Id.* § 102(a).

11. See *id.* § 285(b)(1)-(6) (providing the Speaker's enumerated powers.).

12. See NAVAJO TRIB. CODE tit. 7, § 201 (Supp. 1984-1985). This provision separates the Navajo Supreme Court from the Navajo Council.

13. See NAVAJO TRIB. CODE tit. 2, § 165 (1989) ("All resolutions proposing new laws or amendments of laws shall clearly indicate new language by underscoring the new language and deletion by overstrike and shall refer to appropriate Navajo Tribal Codes titles and sections.").

The Navajo government is a resolution government without a written constitution to define the workings of the government. The Title Two amendments are, however, guidelines for governmental affairs and have the same authority as a written constitution would in another government system.

The Navajo Council is set up in the committee system with twelve standing committees. The eighty-eight delegates of the Navajo Council represent the 110 chapters of the Navajo Nation. Each council delegate may serve on only one of the committees.¹⁴ This provision is the attempt of the Navajo government to make a more responsible and equally representative government.

The Speaker is chosen from the Council for a two year term by his fellow delegates.¹⁵ To qualify as a Council delegate one must be removed from conflicts of interest and outside influences of the Navajo Nation.¹⁶ These provisions reinforce the Navajo tradition of a grass roots government with the true interests of the Navajo People as the main governmental concern. Section 191 of the Title Two amendments denies the Council the power to intrude upon the administrative duties.¹⁷ This provision further defines the division in authority between the legislative and executive branches.

The committees of the Navajo Council are tailored to meet the needs of the Navajo Nation. For example, the amendments enable the Resource Committee of the Navajo Nation to address any land or other resource issue of the Nation.¹⁸ This includes all contracts involving mining operations or land transfers. The Intergovernmental Relations Committee is given authority in matters involving outside governments and their agencies.¹⁹ The Navajo Nation, recognizing their sovereignty and their special relationship to the United States government, saw the need for this committee in order to maintain a close working relationship with other sovereignties.

The Title Two amendments do not pigeonhole all issues to a single committee. Legislation often overlaps into different areas

14. See *id.* § 280.

15. See *id.* § 282(a). This provision makes the Speaker accountable to the Council. "The Speaker of the Navajo Nation Council shall serve in such office at the pleasure of the Navajo Nation Council." *Id.*

16. Sections 103-104 provide for the qualifications and the disqualifications of Council delegates, e.g., a delegate may not be a practicing attorney. *Id.* §§ 103-104.

17. See *id.* § 191. In reference to Council Committee oversight authority, the amendments state that "[t]he Committee oversight shall be limited to legislation and policy decisions and shall not involve program administration." *Id.*

18. *Id.* §§ 691-696.

19. *Id.* §§ 821-825.

and into different committees. The Title Two amendments mandate committees to work together.²⁰ Thus, a minority never makes the law. The entire elected Council of the Nation decides on legislation.

This reform in the Navajo Government was implemented in April of 1990.²¹ A new council took office in 1991, initiating a new system of government with new representatives for the people.

The Navajo Nation has taken on a great challenge, and a hard road lies ahead for their leaders. There are no past procedures or opinions to follow that adequately apply to the Navajo people. Mistakes will be made, but learning will be the ultimate end. Title Two offers new powers for the legislature, but also limitations.²² A foundation for a new system of government has been installed, a system with honor and integrity. One does not have to look to Europe or Russia to watch for positive governmental reforms. The Navajo People have accepted this challenge.

20. *See id.* § 185(f) (“Committees shall coordinate with one another where areas of authorities and responsibilities overlap.”).

21. Though codified in 1989, § (b)(3) of Navajo Resolution CD-68-89 delayed the effective date of the amendments to April 1, 1990.

22. *See* NAVAJO TRIB. CODE tit. 2, §§ 101-1013 (1989). Overall these sections both limit and expand the legislative power when compared to NAVAJO TRIB. CODE tit. 2, §§ 101-1013 (1985).

