

see 15 N.N.C. § 1201 *et seq.*

Chapter 20. [Reserved]

History

Note. The Navajo Nation Diné Language Act enacted by CJY-52-01, July 17, 2001, and previously located at 10 N.N.C. §§ 2201-2206 was renumbered to 10 N.N.C. §§ 52-57 by CJY-37-05, July 19, 2005.

Chapter 21. [Reserved]

History

Note. CJY-37-05, July 19, 2005 deleted previous Chapter 21, American Indian School of Medicine, 10 N.N.C. §§ 2301-2312, which had been enacted by CF-8-77, February 24, 1977.

Chapter 23. [Reserved]

Chapter 26. [Reserved]

History

Note. CJY-37-05, July 19, 2005 deleted previous Chapter 26, Navajo Education Appeals Committee, 10 N.N.C. §§ 2601-2614 which had been enacted by CO-87-94, October 19, 1994.

Title 11

Elections

Chapter 1. Navajo Election Code of 1990

History

See also, notes under individual sections of the Code and applicable rules and regulations separately enacted by the Navajo Board of Election Supervisors.

CAP-13-08, April 25, 2008.

CJA-05-08, January 31, 2008.

CJA-04-08, January 31, 2008.

CO-39-07, October 17, 2007.

CJY-19-07, July 19, 2007.

CAP-15-07, April 19, 2007.

CAP-13-07, April 19, 2007.

CAP-12-07, April 19, 2007.

CF-13-06, February 3, 2006. The Navajo Nation Board of Education Election Act of 2006.

CJA-12-06, January 27, 2006.

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CAP-31-05, April 22, 2005.

CAP-30-05, April 22, 2005.

CJA-05-05, January 28, 2005.

CO-51-04, October 18, 2004.

CO-56-04, October 10, 2004.

CMY-24-04, May 21, 2004.

CAP-15-04, April 22, 2004.

CJY-41-03, July 24, 2003.

CMY-30-03, May 2, 2003.

CAP-12-02, April 8, 2002.

CJA-05-01, January 24, 2001.

CJA-06-01, January 24, 2001.

CAP-41-00, April 21, 2000.

CAP-38-98, April 27, 1998.

CO-64-90, October 19, 1990.

CAP-23-90, April 6, 1990. See Parallel Tables attached to CAP-23-90 to compare prior law with the new Election Code. Also, the 1990 Navajo Nation Election Code contained numerous amendments. In the absence of any underscoring and/or striking of these changes, all prior law and amendment references have been deleted. See CAP-23-90 and attachments to review these notes.

CMY-60-66, May 16, 1966.

Subchapter 1. General Provisions

§ 1. Application of Election Code

"The Navajo Election Code" shall apply to all elections designated by the Navajo Nation Council, or the Navajo Board of Election Supervisors, pursuant to

its authority set out herein.

History

Note (2005). The 1995 publication of the Election Code contained an error in the use of the term "actions." The term was changed to "elections" as it correctly appeared in the 1990 version of the Code.

CAP-23-90, April 6, 1990.

§ 2. Definitions

A. "Board"—The Navajo Board of Election Supervisors, a general description of which appears in Subchapter 17 hereof and 2 N.N.C. § 871 et seq.

B. "Candidate application"—A document upon which one seeks candidacy status for an elective office.

C. "Canvass"—Examining and counting of results at an election.

D. "Challenge"—A challenge to the procedures of an election or signature of a person who purports to be a registered voter and who has signed a nominating petition.

E. "Chapter elections"—Elections held for the purpose of electing Chapter officers, other elected officials, school board members, and/or for voting on a referendum.

F. "Chapter Officials"—The President, Vice-President and Secretary/Treasurer of a certified Chapter, or other officials who may be locally elected based on governing models adopted by the Transportation and Community Development Committee of the Navajo Nation Council pursuant to the Navajo Nation Local Governance Act, 26 N.N.C. § 1 et seq.

G. "Code"—The Election Code of 1990.

H. "Consultation" as used in 11 N.N.C. § 11 shall mean notice of the proposed school board apportionment plan, and an opportunity to comment on the proposed apportionment plan. The Education Committee of the Navajo Nation Council shall allow at least 60 days for person interested to provide comments. Comments received shall be in writing, and maintained by the Division of Diné Education. The Education Committee may, but is not required to, hold hearings at the schools, chapters, communities or agencies affected by the proposed reapportionment plan. To the extent the Education Committee holds hearings on any proposed reapportionment plan, the Education Committee may impose reasonable restrictions including, but not limited to, the length of time witnesses may present testimony.

I. "Continually present"—Being actually physically present within the Navajo Nation or living on Navajo Country in a fixed and permanent home without any significant interruption. An extended absence from Navajo Country in the course of employment or pursuit of trade or business or for purposes as attending school and serving in the military service, is not significant interruption.

J. "Council"—The Navajo Nation Council.

K. "Date of Filing"—See "Filing Date."

L. "Delegate"—The office of or person holding the office of Delegate to or member of the Navajo Nation Council.

M. "District Grazing Committee Member"—A member of the district grazing committee as defined at 3 N.N.C. § 171 et seq.

N. "Elected Officials"—Those officials holding offices of the President of the Navajo Nation, Vice-President of the Navajo Nation, Delegate of the Navajo Nation Council, Chapter officers, other elected officials, the elected members of the Navajo Nation Board of Education and school board members that have been elected or appointed pursuant to this Election Code.

O. "Election Administration"—The Navajo Election Administration which is the administrative office for the Board.

P. "Employer"—Any natural person, association of natural persons, Navajo Nation enterprise, independent contractor, corporation, or other entity, employing one or more members of the Navajo Nation or engaging their services under contract, and any person acting as agent for such person, association of persons, Navajo Nation enterprise, corporation, or other entity.

Q. "Farm Board Member"—A member of a farm board as defined at 3 N.N.C. § 61 et seq.

R. "Felony"—Any offense in any jurisdiction punishable by imprisonment for a term exceeding one year and by forfeiture of individual rights.

S. "Filing"—The act of submitting one's name as a candidate for an election.

T. "Filing Date"—The last day on which one may file as a candidate for an election.

U. "Financial Agent"—A person authorized by a candidate to act for him or her to manage, solicit, accept, disburse, and obligate funds or its equivalent in connection with a political campaign.

V. "General Elections"—Elections held for the purpose of electing the President of the Navajo Nation, Vice-President of the Navajo Nation, elected members of the Navajo Nation Board of Education, and Delegates of the Navajo Nation Council, and/or for voting on a referendum.

W. "Land Board Member"—A member of the board elected for the purpose of administering grazing and resolving problems attendant thereto, and representing one of the Land Management Districts in the Eastern Agency as set out at 3 N.N.C. § 231 et seq.

X. "Local Community School Board"—Members of a Local Community School Board who are elected pursuant to the Navajo Nation Election Code. Local

Community School board members include those members elected to the governing boards of schools operated or funded by the Bureau of Indian Affairs for the education of Navajo children within the Navajo Nation, but does not include members of the school boards for private, parochial and state public schools.

Y. "Member"—Delegate to the Navajo Nation Council.

Z. "Navajo Nation Officials"—The President of the Navajo Nation, Vice-President of the Navajo Nation and Delegates of the Navajo Nation Council.

AA. "Other Elected Officials"—This is the collective term used to designate Land Board, Farm Board, and District Grazing Committee members in each precinct or Chapter.

BB. "Officials"—As used in subchapter 13 hereof this term is used to designate those holding the Offices of President of the Navajo Nation, Vice-President of the Navajo Nation, Delegate of the Navajo Nation Council, Chapter officers, other elected officials, and school board members.

CC. "Permanent Residence"—The place where a person physically lives with the intent to remain for an indefinite period of time. The permanent residence is a person's fixed and permanent home. Permanent means lasting, fixed, stable and not temporary, part-time, or transient. A person cannot have more than one permanent residence at the same time.

DD. "Precincts"—Those polling places designated by § 10 hereof.

EE. "President"—The chief executive officer of the Navajo Nation.

FF. "Primary Candidate"—A qualified candidate who has filed a candidate application and the necessary filing fee to place himself or herself on the ballot of a primary election.

GG. "Primary elections"—Elections held for the purpose of deciding the candidates who will be placed on the ballots of general and chapter elections.

HH. "Speaker of the Navajo Nation"—The presiding chair of the Navajo Nation Council.

II. "Special elections"—Elections called by the Board in the event of a sufficient recall or referendum petition or to fill a vacancy in accord with this Title.

JJ. "Time"—In computing any period of time prescribed or allowed by this Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday recognized by the Navajo Nation. Computations shall be in calendar days.

KK. "Vice-President"—The Vice-President of the Navajo Nation or the Office of the Vice-President of the Navajo Nation.

LL. "Voter"—A voter who is registered on the Navajo Nation roll of registered voters.

MM. "Window Rock"—The community of Window Rock, Navajo Nation (Arizona).

History

CF-13-06, February 3, 2006. The Navajo Nation Board of Education Election Act of 2006. Amended the definitions of Elected Officials at § 2(N) and General Elections at § 2(V).

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005 generally amended the Election Code. Originally, the definition of Special elections was originally erroneously designated as § 2(JJ), but was corrected and placed at § 2(II) to maintain statutory format.

CO-51-04, October 18, 2004. Amended the definition of Chapter Officials at Section 2(F) along with amendments to the Navajo Nation Local Governance Act at 26 N.N.C. §§ 2, 1003 and 2001.

CJY-41-03, July 24, 2003. Terms "Consultation" and "Local Community School Board" added. Beginning at "H," Subsections redesignated. Term "School Board Members" deleted.

Note (2005). Beginning at Subsection "B", all Subsections were properly redesignated pursuant to amendments of CJA-06-01. Also, at Subsection "Q", for grammatical and statutory format purposes, the term "the" was changed to "a".

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

Chapter Officials. See also, Navajo Nation Local Governance Act, 26 N.N.C. §§ 2, 1003 and 2001.

Waiver. By Resolution CO-41-07, October 17, 2007, the Navajo Nation Council waived 11 N.N.C. §§ 2(H), 11(B) and 22(A) for purposes of extending the deadline for Education Committee approval of an apportionment plan for local community school boards to December 31, 2007.

Annotations

1. Continually present or permanent residence

"Regarding the terms '*continually present*' and '*permanent residence*,' " see *Begay v. Navajo Board of Election Supervisors*, SC-CV-27-02 (decided July 31, 2002) (*slip op.*).

2. Local schools

"It is therefore obvious that while the schools remain minimally self-sufficient, they have been inextricably intertwined with the Navajo Nation government and their local Navajo communities from their inception. The Appellant schools have characteristics of both public and private schools;

therefore, we agree with the District Court that the schools are 'local community schools,' or 'other schools' under the meaning of section 2(EE) [now § 2(X)] of the Election Code. We hold that the Election Code applies to the Appellants." *Rough Rock Community School Board, Inc. v. Navajo Nation*, 7 Nav. R. 168, 171-172 (Nav. Sup. Ct. 1995).

§ 3. Elections; election dates

A. General elections shall be held on the first Tuesday of November 2006 and every fourth year thereafter on the Tuesday after the first Monday in November.

B. Chapter elections shall be held on the first Tuesday of November 2004 and every fourth year thereafter on the Tuesday after the first Monday in November.

C. Primary elections shall be held on the first Tuesday which precedes the date of the general election or chapter election by a minimum of 90 days.

D. Special elections shall be held when required.

E. The Board of Election Supervisors is authorized to postpone for a maximum of 60 days any Navajo election for the purpose of printing new ballots required because of changed circumstances.

History

CMY-24-04, May 21, 2004.

CJA-06-01, January 24, 2001.

CO-64-90, October 19, 1990. Section (E) was added by CO-64-90.

CAP-23-90, April 6, 1990

CAP-24-87, April 29, 1987

Annotations

1. Postponement of Elections; resolution review

The Navajo Nation Supreme Court, in *Navajo Nation v. Redhouse*, 6 Nav. R. 305 (1990) declared void an action of the Navajo Nation Council which attempted to amend Subsection (E) in the following manner: "*The Board of Election Supervisors is hereby directed to postpone for a minimum of thirty (30) and a maximum of sixty (60) days any Navajo election for the purpose of printing new ballots required because of changed circumstances*" In *Redhouse*, the Court found that the particular resolution amending this Subsection was not properly reviewed. The Court held that 2 N.N.C. § 164, the provision of Navajo Nation law addressing the review process for proposed resolutions, was "*clearly mandatory rather than directive, and its procedures a condition precedent to the enactment of valid legislation.*"

§ 4. Voting; number of votes

A. Voting shall be by secret pictorial ballot. If a candidate fails to comply with the provisions of 11 N.N.C. § 27, *Ballot Picture*, his or her picture will be deleted from the ballot.

B. Each registered voter shall be entitled to cast one vote for each position that his or her precinct is entitled to elect in the primary, general, and chapter elections; provided, however, that no voter may cast more than one vote for any one candidate.

History

CAP-23-90, April 6, 1990.

Cross References

See also, 11 N.N.C. § 81(E) on appeals.

§ 5. Ballots; official; sample

A. Ballots shall be printed for all elections after all candidates have been certified by the Election Administration to the Board. Ballots shall reflect the names and pictures of certified candidates running for office. Ballots shall be numbered consecutively and provided in blocks to each precinct. A space shall be provided below or on the side of each picture which each voter must fill in or "blacken" to indicate his or her choice.

B. An adequate supply of ballots plainly marked "SAMPLE BALLOT" and printed on a paper of different color from that of the official ballot shall be widely distributed and shall be posted in public places in each precinct in order to acquaint voters with the ballots and with voting procedures.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CAP-23-90, April 6, 1990.

Cross References

See also, 11 N.N.C. § 27.

§ 6. Terms of office; oath

A. The term of office for all offices filled by the general and/or chapter elections shall be four years. The first half of the term of office shall be the first 24 months following the oath of office for that position. The second half of the term of office shall be the remaining term prior to the next oath of office for that position.

B. At each general election all persons elected to the offices of President of the Navajo Nation, Vice-President of the Navajo Nation and Delegate of the Navajo Nation Council shall be installed in office at noon on the second Tuesday after the first Monday of January following their election

and their predecessors' term of office shall expire upon their installation in office.

C. Candidates elected to office in chapter elections shall be installed in office upon taking the oath of office, which shall be administered at the direction of the Board during the first week following the first Saturday in January, and their predecessors term of office shall expire upon their installation.

D. Local Community School Board members shall serve only two consecutive terms.

E. All elected and appointed officials of the Navajo Nation, shall subscribe and swear to the Oath of Office (see Appendix to CAP-23-90). No individual shall serve as an elected official or be permitted to act as an elected official until after certification by the Election Board and an oath of office is taken or administered as prescribed by law. By virtue of an appointment shall not constitute a full term of an appointed member.

History

Note (2005). At Subsection "E", for purposes of clarity and due to several amendments to the Election Code since 1990, "see Appendix to this Code, CAP-23-90" was changed to "see Appendix to CAP-23-90."

CMY-24-04, May 21, 2004.

CJY-41-03, July 24, 2003.

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

CF-29-98, February 10, 1998. Resolve clause portion of this resolution provides: "1. The Navajo Nation Council hereby affirms the current apportionment of the Navajo local community controlled school boards, the Navajo community controlled school boards elected in 1992, 1994 and 1996, and that the 1998 Navajo Nation primary and general elections for school board members shall be conducted based on the current apportionment of the Navajo local community controlled schools, notwithstanding the January 09, 1998, decision of the Supreme Court of the Navajo Nation in case of Rough Rock Community School Board, Inc. v. Navajo Nation, SC-CV-06-94, and the procedures set forth in 11 N. N. C. § 11. 2. The Navajo Nation Council further determines that the terms of the Navajo local community school board members elected in 1998 shall be for a two-year term to allow all school board terms to end in the Year 2000 and in order to allow implementation of a new school board apportionment plan in the Year 2000, notwithstanding the provisions of 11 N. N. C. § 6 (A)."

§ 7. Number of Terms

A. Except as otherwise provided by law, the number of terms a person may hold a Navajo elective office shall be unlimited.

B. Section 7(A) shall become effective in the 1990 general election and 1992 for chapter elections.

History

CAP-41-00, April 26, 2000.

CAP-23-90, April 6, 1990.

Cross References

Regarding Council Delegates, *see also*, 2 N.N.C. § 105(B).

Regarding Office of President and Vice President, *see also*, 2 N.N.C. § 1002(D).

Regarding School Board Members, *see also*, § 6(D) herein.

§ 8. Qualifications for office

A. Qualifications for President and Vice-President are:

1. Must have permanent residence and have been continually physically present within the Navajo Nation as defined in 7 N.N.C. § 254 for at least three years prior to the time of election;

2. Must be a registered voter, a member of the Navajo Nation, and be on the agency census roll of the Bureau of Indian Affairs;

3. Must be at least 30 years of age at the time of general election;

4. Must fluently speak and understand Navajo and read and write English;

5. Must have served in an elected Navajo Nation office, other than the office of school board member, or must have been employed within the Navajo Nation organization;

6. Must not have been convicted of a felony within the last five years;

7. Must not have been convicted of any misdemeanor involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws;

8. Must have unswerving loyalty to the Navajo Nation and must be competent and capable of upholding the oath of office;

9. Candidates elected, who are employed by the Navajo Nation, must resign from such employment before taking the oath of office and shall not be employed by the Navajo Nation during their term of office;

10. Must not have been indicted by a federal grand jury at the time of filing of the candidate application. Any candidate for the Office of the President or Vice-President who is indicted by a federal grand jury subsequent to the filing of the candidate application shall be disqualified; and,

11. Must not if elected, be in the permanent employment of the United States or any state or subdivision thereof; nor be an elected official of the United States or any state or subdivision thereof.

B. Qualifications for Delegate to the Navajo Nation Council:

1. Must be at least 25 years of age on or before the date of the general election;

2. Must be an enrolled member of the Navajo Nation on the Agency Census roll of the Bureau of Indian Affairs;

3. Must not have been convicted of a felony within the last five years;

4. Must not have been convicted of any misdemeanor involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws;

5. Must maintain unswerving loyalty to the Navajo Nation and must be competent and capable of upholding the oath of office;

6. Must be a registered voter in the chapter or precinct from which elected;

7. Candidates elected, who are employed by the Navajo Nation, must resign from such employment before taking the oath of office and shall not be employed by the Navajo Nation during their term of office;

8. Must be able to speak and understand Navajo and/or English;

9. Must not, if elected, serve in any other elected Navajo Nation Office with the exception of the office(s) of the school board(s);

10. Must have permanent residence and been continually physically present within the Navajo Nation as defined in 7 N.N.C. § 254 at least three years prior to the time of election; and

11. Must not be in the permanent employment of the United States or any state or subdivision thereof, or be an elected official of the United States or any state or subdivision thereof, with the exception of service on a school board or elective county office.

C. Qualifications for Chapter Officers

1. Must be a registered voter of the Chapter they seek to represent and be on the census roll of the Bureau of Indian Affairs;

2. Must be 21 years of age at the time of the election;

3. Must not have been convicted of a felony within the last five years;

4. Must not have been convicted of any misdemeanor in any courts involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws;

5. Must have permanent residence and been continually physically present within the Navajo Nation as defined in 7 N.N.C. § 254 at least three years prior to the time of election;

6. Must have an understanding of the Navajo Nation governmental affairs;

7. Must not have been removed from a chapter office within the five years preceding the date of his or her filing for candidacy;

8. Must not, if elected, serve in any other Navajo Nation elective offices, with the exception of the office(s) of school board member(s);

9. Must be a high school graduate or must have a GED Certificate, if the candidate seeks the office of Secretary/Treasurer;

10. Must not allow employment with the Navajo Nation, federal or state governments, or any private organization to interfere with performance of Chapter officer duties; and

11. If a candidate is an employee of the Bureau of Indian Affairs or the Indian Health Services, prior to filing, the candidate shall obtain written clearance from the BIA or IHS stating that there is no conflict of interest for the candidate in the event the candidate is elected as Chapter officer. Clearance shall be provided to Election Administration Office.

D. Qualifications for Other Elected Officials:

1. Qualifications for the Land Board Candidates:

a. Must be a registered voter of the Chapter which the candidate seeks to represent and be on the census roll of the Navajo Nation;

b. Must be at least 21 years of age at the time of filing;

c. Must not have been convicted of a felony within the last five years;

d. Must not have been convicted of any misdemeanor in any court involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within five years preceding the date of the elections. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws;

e. Must be knowledgeable in the maintenance and management of livestock operations;

f. Must be able to speak the Navajo language fluently, and to read and write the English language;

g. Must own transportation for use in carrying out the duties and responsibilities of a Land Board member;

h. Must have a valid driver's license;

i. Must have experience with and knowledge of the complex land status in the Eastern Navajo Area as well as being familiar with the land use policies and procedures of the Navajo Nation and federal and state governments; and

j. Must not, if elected, serve in any other Navajo Nation elective offices, with the exception of the office(s) of the School Board(s). An elected official may run for Land Board if his or her elected office expires prior to his or her taking office as a Land Board member.

2. Qualifications for Farm Board Candidates:

a. Must be an enrolled member of the Navajo Nation;

b. Must be a registered voter of the Chapter to be represented;

c. Must be fluent in the Navajo and English language;

d. Must be at least 21 years old at the time of filing;

e. Must have knowledge and experience of agricultural land use policies and rules and regulations;

f. Must not hold either the Office of Delegate or any Chapter office, unless the term of the office held expires prior to taking office as a Farm Board member;

g. Must not, if elected, serve in any other Navajo Nation elective offices with the exception of the office(s) of the School Board(s);

h. Must not have been convicted of a felony within the last five years; and

i. Must not have been convicted of any misdemeanor in any court involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election laws.

3. Qualifications for District Grazing Committee Candidates:

a. Must be a member of the Navajo Nation;

b. Must be a registered voter of the Chapter which candidate seeks to represent;

c. Must be at least 21 years of age at the time of filing;

d. Should be able to read, write and speak the English language;

e. Must be able to converse fluently in the Navajo language;

f. Must have demonstrated interest or experience in livestock and range management;

g. Must have knowledge of grazing rules and regulations;

h. Must not, if elected, serve in any other Navajo Nation elective offices, including a Navajo Nation Council seat or appointment to any commission, board, committee or office that is an entity of the Navajo Nation or the United States government, with the exception of the office(s) of school board(s);

i. Must not have been convicted of a felony within the last five years; and

j. Must not have been convicted of any misdemeanor in any court involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws.

4. Qualifications for Candidates for School Board:

a. Must not be a member of the Navajo Nation Council.

b. Must be an enrolled member of the Navajo Nation and be on the Agency Census roll of the Navajo Nation Office of Vital Records.

c. Must be a registered voter of the Chapter or Agency he or she will represent, and certify that he or she will remain so registered for the duration of his or her term of office.

d. Must be at least 21 years of age at the time of the election.

e. Must not be an employee or the spouse of an employee of the School on whose board he or she would serve.

f. Must not have a conflict of interest arising from any tribal, state or federal laws regarding his or her employment.

g. Must not have been convicted of a felony.

h. Must not have been convicted of the following misdemeanor crimes:

(1) Any crimes involving elements of deceit, untruthfulness and dishonesty, including but not limited to extortion, bribery, forgery, fraud, theft, embezzlement, perjury, misrepresentation, false pretense, conversion, or misuse of public funds or property;

(2) Any crimes involving the welfare of children, child abuse, or child neglect;

(3) Aggravated Assault or Aggravated Battery;

(4) Any crimes involving the use of intoxicating alcohol or illegal substance abuse including unlawful transport, sales or distribution of controlled substances.

i. Must have fully complied with all orders or sanctions imposed by the Ethics and Rules Committee of the Navajo Nation Council or Courts of the Navajo Nation for any violations of the Navajo Nation Ethics in Government Law.

j. School Board members shall maintain the qualifications stated herein throughout their terms of office.

k. If elected or appointed, the candidate shall serve on no more than one Local Community School Board.

5. Navajo Nation Board of Education.

All candidates for elected membership on the Navajo Nation Board of Education shall meet the following qualifications at the time of filing, and shall maintain all qualifications during their term of elected office:

a. All candidates shall be enrolled members of the Navajo Nation;

b. All candidates shall be at least 25 years of age, at the time of filing;

c. All candidates shall not be delegates to the Navajo Nation Council or a member of a school board of a school operating on the Navajo Nation, or an employee of the Department of Diné Education;

d. All candidates shall have at least a four year academic degree from an accredited college or university;

e. All candidates shall not have been convicted of a felony or of any crime involving child abuse or neglect.

History

CF-13-06, February 3, 2006. The Navajo Nation Board of Education Elections Act of 2006.

Note (2005). For grammatical purposes, the term "*Courts*" changed to "*court*" at Subsections (D) (1) (d), (D) (2) (i), and (D) (3) (j).

CJY-41-03, July 24, 2003.

CJA-06-01, January 24, 2001.

CAP-38-98, April 27, 1998.

CO-64-90, October 19, 1990.

CAP-23-90, April 6, 1990.

Cross References

District Grazing Committees, see also, 3 N.N.C. § 871 *et seq.* and 11 N.N.C. § 240 (CAP-38-98).

Duties and responsibilities of chapter officials, see also 26 N.N.C. § 1001.

Eligibility for Chapter Officer positions, see also, 11 N.N.C. § 247.

Qualifications for Council Delegates, see also, 2 N.N.C. §§ 103 and 104.

Qualifications for President, see also, 2 N.N.C. § 1004.

Annotations

1. Due Process and Equal Protection

"In the present case we decline to find the statute itself void for vagueness. Rather, we follow the approach of the majority in *Howard* and find it vague as applied because the statute could be read in several ways. It was read one way for two candidates, read differently for Appellant, and not read at all for a third candidate. If law is to mean anything, it must be consistent in the way people are treated. In this case, the candidacy definitions were unequally applied." *Begay v. Navajo Nation Election Administration*, No. SC-CV-27-02, slip op. at 10 (Nav. Sup. Ct. July 31, 2002).

The Navajo Supreme Court declared as invalid section 8(D)(4)(i), a statutory provision requiring that school board candidates "[m]ust have demonstrated interest, experience, and ability in Educational Management and must be able to communicate such to the Navajo communities." *Rough Rock Community School et al. vs. Navajo Nation*, 7 Nav. R. 168 (1995). The Court found the term "Educational Management" undefined and declared the section void for vagueness, stating that "statutes which limit political liberty must be based upon reasonable public policy and ... must give the regulating body concrete guidance as to their application." *Rough Rock Community School et al. vs. Navajo Nation*, 7 Nav. R. 168, 174 (Nav. Sup. Ct. 1995).

"[A] statute [11 N.T.C. § 8(A)(5)] limiting elective public office for president and vice president to previously elected officials and employees of the 'Navajo tribal organizations' [is] invalid because it denies due process and equal protection of the law." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319 (Nav. Sup. Ct. 1990).

"A more severe defect in the statute [11 N.T.C. § 8(A)(5)] is it delegates arbitrary authority to the Board of Election Supervisors to exclude candidates and to take the right of judging their qualifications away from Navajo voters. A legislature can set minimum qualifications for public office, particularly those having to do with integrity and honesty, but without a showing of a valid and substantial public interest, arbitrary qualifications are invalid." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 329 (Nav. Sup. Ct. 1990).

"This Section is void for vagueness and denies equal protection of the law." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319 (Nav. Sup. Ct. 1990).

"... [T]he Board of Election Supervisors has selectively applied its powers to decide candidates' qualifications. Had the Board checked all the candidates' qualifications or even a substantial number of the candidates' qualification, this would not be the case." *Deswood v. Navajo Board of Election Supervisors*,

1 Nav. R. 306, 311 (Ct. App. 1978).

"The selective application of the power to disqualify candidates in the Navajo election requires this Court to void any use of the power by the Board of Election Supervisors. To reach any other result would be to take all meaning from the 1968 Indian Civil Rights Act." *Id.*

Note. *Deswood* was decided under previous law wherein the Navajo Board of Election Supervisors held certain powers.

2. Criminal Convictions

"The legislative enactments of which appellant complains are nothing more than an attempt to modernize and streamline Navajo Nation election law, making certain that individuals who judicially are found guilty of corruption in office cannot run for public office." *MacDonald v. Redhouse and Navajo Board of Election Supervisors*, 6 Nav. R. 342, 344 (Nav. Sup. Ct. 1991).

"The Navajo Nation Council chose to make changes in the qualifications of candidates for public office in 1990, and the provisions of the section used to decertify and disqualify MacDonald serve a legitimate Council purpose. That purpose is to assure public confidence in the integrity of the Navajo Nation Government. Thus, the Council 'may decide that persons convicted of certain crimes manifesting moral turpitude are disqualified from holding public office.' Our statutes provide that the disqualification arises upon 'conviction' of one of the listed crimes...." *MacDonald v. Redhouse and Navajo Board of Election Supervisors*, 6 Nav. R. 342, 347 (Nav. Sup. Ct. 1991).

" ... [O]nly individuals who have been convicted of a misdemeanor offense, where neglect, abuse or endangerment of children is an element of the offense, can be disqualified from holding public office as a Navajo Nation Council delegate. Neither the crime of D.U.I., nor that of endangerment, as defined by Arizona law, has injury to a child as an element of the offense." *Howard v. Navajo Board of Election Supervisors*, 6 Nav. R. 380, 383 (Nav. Sup. Ct. 1991).

"The disqualifying offenses against persons in 11 N.T.C. § 8.B.4 are clearly aggravated assault and aggravated battery [not contempt or battery]." *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 364 (Nav. Sup. Ct. 1991).

"The Board's assumption that it has power to decertify elected officials is not supported by a reading of any of the statutory basis for its authority to act." *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 362 (Nav. Sup. Ct. 1991).

3. Retrials not Permitted

Where a candidate for Office of Council Delegate has previously been convicted of "Battery" by a trial court the Navajo Board of Election Supervisors may not look behind the conviction for determining whether an "aggravated assault" occurred justifying disqualification. *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360 (Nav. Sup. Ct. 1991). [Note—*Pioche* was decided under previous law wherein the Board had the authority to conduct quasi-judicial hearings and the authority to disqualify candidates for elective

public office. Now see generally, powers of the Navajo Election Administration and the Office of Hearings and Appeals.]

4. Statutory construction; Judicial Review

"The statute as written is confusing. However, if a confusing statute is applied in a fair and consistent manner, it may not deny liberty interests. Therefore, we must determine whether the statute was applied fairly and evenly." *Begay v. Navajo Nation Election Administration*, No. SC-CV-27-02, slip op. at 6 (Nav. Sup. Ct. July 31, 2002).

Section 8 (B) concerning certain prior criminal convictions is vague, ambiguous and inconsistent. It is saved from invalidity only because it may be reasonably interpreted within the limits of the facts of this case. The court urges the Navajo Nation Council to undertake a revision of the Election Code to give future candidates fair and understandable notice of the prerequisites to their exercise of their liberty right to run for public office. *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 365 (Nav. Sup. Ct. 1991).

"In sum, the law of the Navajo Nation has evolved to recognize the full independence of the courts of the Navajo Nation as a separate branch of the Navajo Nation Government. Navajo law has self-imposed limitations upon the legislative and executive branches, and it recognizes basic and enforceable Navajo human rights. This Court, the Navajo Nation Supreme Court, has been empowered to enforce all these organic laws through the application of the rules of law, equity, and tradition. Following over thirty years of legal evolution, there is now a fully-developed principle of judicial review of Council actions." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 323 (Nav. Sup. Ct. 1990).

"The Navajo word for 'law' is *beehaz'aanii*. While we hear that word popularly used in the sense of laws enacted by the Navajo Nation Council or the United States.... , it actually refers to a higher law. It means something which is 'way at the top'; something written in stone so to speak; something which is absolutely there; and, something like the Anglo concept of natural law. In other words, Navajos believe in a higher law, and as it is expressed in Navajo, there is a concept similar to the idea of unwritten constitutional law." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 324 (Nav. Sup. Ct. 1990).

"Statutes which confer rights grounded upon Navajo Liberties must contain ascertainable standards. That is, they must sufficiently describe standards and requirements for the exercise of the right so that the ordinary person will know what they are and be able to satisfy them." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 327 (Nav. Sup. Ct. 1990).

5. Crimes involving Children

The plain meaning of the statute is that individuals who have been convicted of misdemeanors "involving the welfare of children" for example, "child abuse" or "child neglect," are disqualified. This means at a minimum, that the criminal statute used to charge a defendant must have injury to a child as an element of the offense. The criminal statute must be designed to promote the welfare of children by providing that actions which endanger or compromise a child's

welfare are offenses. The terms of the Election Code clearly do not include situations where children may happen to be present. *Howard v. Navajo Board of Election Supervisors*, 6 Nav. R. 380, 382 (Nav. Sup. Ct. 1991).

6. Ethics law violation

"Since the language at issue [*'Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws; ... '*] was neither in the Election Code [§ 8(B)(4)] as proposed to the Navajo Nation Council nor added during the debate on the Code, as a matter of Navajo law, it simply has no validity. The Board cannot use that language to disqualify candidates from elective office." *Bennett v. Navajo Board of Election Supervisors and Begay v. Navajo Board of Election Supervisors*, 7 Nav. R. 161, 165 (Nav. Sup. Ct. 1995).

7. Residency

"The Court holds that the residency requirement is not a justifiable limitation, and therefore is in irreconcilable conflict with the fundamental rights of voters and candidates." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 7 (Nav. Sup. Ct. August 11, 2006).

"Furthermore, the use of the definition of the Navajo Nation's modern territorial jurisdiction, 7 N.N.C. § 254, to demarcate the land upon which one must reside if he or she desires to run in an election is itself unreasonable." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 7 (Nav. Sup. Ct. August 11, 2006).

"Based on the above, the Court struck the residency provision, and allowed Mr. Lee to run for Navajo Nation President. The effect of that ruling is that the Election Administration may no longer enforce the residency provisions." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 8 (Nav. Sup. Ct. August 11, 2006).

"[I]f the election laws were applied equally as set out in 11 N.N.C. § 8(A), the NNEA should have disqualified all the candidates who do not reside within the Navajo Nation as defined by 7 N.N.C. § 254." *Begay v. Navajo Nation Election Administration*, No. SC-CV-27-02, slip op. at 18 (Nav. Sup. Ct. July 31, 2002) (Concurring Opinion, Justice King-Ben).

Regarding the requirement of *residency* for elective office, see *Begay v. Navajo Board of Election Supervisors*, SC-CV-27-02 (decided July 31, 2002) (slip op.) (Office of Navajo Nation President and Vice President).

8. Validity

"We hold that section 8(D)(4)(I) of the 1990 Election Code is an unreasonable restriction which denies Navajos the right to seek election to Navajo school boards. The Navajo Nation has not shown to this Court that the 'Educational Management' restriction is a reasonable restriction on the Nation's Peoples' political liberty." *Rough Rock Community School Board, Inc. v. Navajo Nation*, 7 Nav. R. 168, 172 (Nav. Sup. Ct. 1995).

"Our review of the official minutes of the Navajo Nation Council session when

the Election Code was adopted shows that the language at issue was not included as part of proposed section 8(B)(4). ...It is clear that no delegate proposed to enact the actual language at issue, but it was nonetheless published by the Board as part of Section 8(B)(4). Since the language at issue was neither in the Election Code as proposed to the Navajo Nation Council nor added during the debate on the Code, as a matter of Navajo law, it simply has no validity. The Board cannot use that language to disqualify candidates from elective office." *Bennett, et al. v. Navajo Board of Election Supervisors*, 7 Nav. R. 161, 164-165 (Nav. Sup. Ct. 1995).

"The election reforms of 1989 and 1990 are not ex post facto laws, made to punish MacDonald, but laws which are well within the competence of the Council and are designed to promote the integrity of public office." *MacDonald v. Redhouse and Navajo Board of Election Supervisors*, 6 Nav. R. 342, 346 (Nav. Sup. Ct. 1991).

9. Disqualification of candidate

"... [T]here was no 'punishment' and thus, there was no bill of attainder in violation of 1 N.T.C. § 3, in the disqualification of MacDonald as a candidate." *MacDonald v. Redhouse and Navajo Board of Election Supervisors*, 6 Nav. R. 342, 345 (Nav. Sup. Ct. 1991).

10. Elected official of the states

"In Navajo thinking, the selection of a person by voters is one of two requirements for a candidate to become a *naat'áanii*. That person must also accept the position, and, to accept, must take an oath to serve the laws of the sovereign government within whose system he or she will serve the people- '*naat'áanii ádee hadidziih.*' Only when a person accepts through an oath will all of the Navajo people say that a person has been properly installed as a *naat'áanii*- '*naat'áanii idl9 bee bitsoosz99.*' In other words, '*Diné binant'ái bee bi'doosz99d.*' or '*Diné binaat'áanii bee bi'doosz99d.*' [...] The oath is absolute, and allows no conflict in loyalty. This requirement of absolute loyalty is reiterated in the Election Code itself, as one of the qualifications for a council delegate is that he or she must 'maintain unswerving loyalty to the Navajo Nation.' 11 N.N.C. § 8(B)(5) (2005). Under these principles, a person may not swear allegiance to obey and serve simultaneously the laws of the Nation and the State of New Mexico. The prohibition is then consistent with our Fundamental Law, and it is not improper for the Election Code to require Tsosie to serve only one government." *In the Matter of the Grievance of: Wagner, and concerning, Tsosie*, SC-CV-01-07, slip op. at 7-8 (Nav. Sup. Ct. May 14, 2007).

§ 9. Apportionment

On or before the first Monday of May, 1975, and every 10 years thereafter, the Navajo Nation Council, with the recommendation of the Navajo Board of Election Supervisors, shall designate the number and location of precincts. All such precincts shall be approximately equal in population.

History

CAP-23-90, April 6, 1990.

§ 10. Election precincts; polling places; delegates

A. The election precincts, polling places and delegates for each election community are designated as follows:

Lechee<COL>1844<COL>1 delegate

K'ai'bii'tó<COL>1936<COL>1 delegate

Ts'ah Bii' Kin/Navajo Mountain<COL>1130/589<COL>1 delegate

Coppermine/Bodaway-Gap/Cameron<COL>629/1733/1162<COL>2 delegates

Tónaneesdizí/Coalmine Canyon<COL>7447/357<COL>4 delegates

Leupp/Tolani Lake/Birdsprings<COL>1534/731/795<COL>2 delegates

Shonto<COL>2229<COL>1 delegate

Oljato<COL>2161<COL>1 delegate

Kayenta/Chilchinbeto<COL>5574/1264<COL>3 delegates

Dennehotso<COL>1512<COL>1 delegate

Tonalea<COL>2347<COL>1 delegate

Hardrock/Pinon<COL>1149/2832<COL>2 delegates

Tachee-Blue Gap/Whippoorwill<COL>1355/1436<COL>2 delegates

Forest Lake/Black Mesa/Tsé Ch'izhí<COL>549/373/866<COL>1 delegate

Chinle<COL>7976<COL>4 delegates

Tselani-Cottonwood/Nazlini<COL>1307/1101<COL>1 delegate

Many Farms/Round Rock<COL>2496/1265<COL>2 delegates

Lukachukai/Tsaile-Wheatfields<COL>1896/1907<COL>2 delegates

Dilcon/Teesto<COL>2115/902<COL>2 delegates

Whitecone/Indian Wells<COL>1288/929<COL>1 delegate

Jeddito/Low Mountain/Steamboat<COL>1210/892/1533<COL>2 delegates

Ganado/Kinlichee<COL>2641/1331<COL>2 delegates

Klagetoh/Wide Ruins/Greasewood Springs/Cornfields<COL>996/1177/1358/811<COL>2 delegates

Houck/Nahat'ádziil/Lupton<COL>1461/1340/918<COL>2 delegates
Oak Springs/St. Michaels<COL>594/5499<COL>3 delegates
Fort Defiance<COL>5203<COL>3 delegates
Sawmill/Red Lake/Crystal<COL>855/2295/760<COL>2 delegates
Naschitti/Tohatchi<COL>1651/1925<COL>2 delegates
Twin Lakes<COL>2187<COL>1 delegate
Coyote Canyon/Mexican Springs<COL>896/1290<COL>1 delegate
Aneth/Red Mesa/Mexican Water<COL>2165/1062/774<COL>2 delegates
Rock Point<COL>1333<COL>1 delegate
Tó {ikan<COL>1238<COL>1 delegate
Beclabito/Gadíí'áhi/Tó K- 'í<COL>804/1050<COL>1 delegate
Teecnospos<COL>1201<COL>1 delegate
Red Valley/Cove<COL>1163/475<COL>1 delegate
Shiprock<COL>7703<COL>3 delegates
Tsé a[náozt'i'i'í<COL>1857<COL>1 delegate
Tsé Daak'áán<COL>1280<COL>1 delegate
San Juan/Nenahnezad/T'iistsoh Sikaad<COL>533/1082/235<COL>1 delegate
Upper Fruitland<COL>2750<COL>1 delegate
Toadlena-Two Grey Hills/Newcomb/Sheepsprings<COL>1037/636/802<COL>1 delegate
Crownpoint/Nahodishgish<COL>2453/379<COL>1 delegate
Standing Rock/Whiterock/Lake Valley Becenti<COL>617/245/215/489<COL>1 delegate
Nageezi/Counselor/Ojo Encino<COL>884/923/670<COL>1 delegate
Huerfano<COL>2172<COL>1 delegate
Pueblo Pintado/Torreón/Whitehorse Lake<COL>412/1727/520<COL>2 delegates
Rock Springs/Tsayatoh/Manuelito<COL>877/690/311<COL>1 delegate
Red Rock<COL>1870<COL>1 delegate
Chichiltah<COL>1607<COL>1 delegate

Churchrock/Bááháál9<COL>2618/949<COL>2 delegates

Iyanbito/Pinedale<COL>1000/1048<COL>1 delegate

Mariano Lake/Smith Lake<COL>846/1027<COL>1 delegate

Littlewater/Casamero Lake/Baca-Prewitt<COL>565/544/853<COL>1 delegate

Thoreau<COL>1309<COL>1 delegate

Ramah<COL>1503<COL>1 delegate

Alamo<COL>1927<COL>1 delegate

Tohajiilee<COL>1559<COL>1 delegate

B. Conflict between Navajo Nation and federal and state polling place

1. General Election—Where a conflict exists between the Navajo Nation and federal or state polling places, the Board shall designate an alternate polling place.

2. Other Elections—Polling places for other Navajo Nation elections shall be in the Chapter Houses pursuant to 11 N.N.C. § 10(A) or as designated by the Board.

History

CJA-08-09, January 29, 2009. Changed the name of Sanostee Chapter to Tsé a[náozt'i'i Chapter.

CAP-13-08, April 25, 2008. Changed the name of Rough Rock Chapter to Tsé Ch'izhí Chapter.

CJA-05-08, January 31, 2008. Changed the name of Kaibeto Chapter to K'ai'bii'tó Chapter.

CJA-04-08, January 31, 2008. Changed the name of Sweetwater Chapter to Tó {ikan Chapter.

CJY-19-07, July 19, 2007. Added the name Tó K- 'í to Gadíí'áhi Chapter to become Gadíí'áhi/Tó K- 'í Chapter.

CAP-15-07, April 20, 2007. Changed the name of Burnham Chapter to T'iistsoh Sikaad Chapter.

CAP-13-07, April 19, 2007. Changed the name of Breadsprings Chapter to Bááháál9 Chapter.

CAP-12-07, April 19, 2007. Changed the name of Inscription House Chapter to Ts'ah Bii' Kin Chapter.

CN-59-06, November 1, 2006. Changed the name of Hogback Chapter to Tsé Daak'áán Chapter.

CJN-50-02, June 5, 2002. The 2002 Navajo Nation Reapportionment Plan utilized 2000 census data compiled by the U.S. Census Bureau. In addition to this census, the 2002 Reapportionment Plan took into account the number of registered Navajo voters residing outside the Navajo Nation. In total, the Plan was based on an apportionment base figure of 171, 289.

CO-66-90, October 23, 1990, added Nahat'ádziil Chapter.

CAP-23-90, April 6, 1990.

§ 11. Composition of School Board; Apportionment for School Board Elections

A. A Local Community School Board shall consist of not less than three nor more than seven members based upon the current adopted apportionment plan.

B. On or before the first Monday of November 2003 and every four years thereafter, the Education Committee of the Navajo Nation Council shall set the size of each Local Community School Board and shall apportion the number of school board seats among the Chapter or Chapters represented in each Local Community School Board. This apportionment shall establish election precincts for each Local Community School Board containing approximately equal numbers of students attending the Local Community School at the time of the apportionment.

C. The apportionment plan shall be developed by the Education Committee with the opportunity for input provided to the Navajo Board of Election Supervisors, parents, local school boards, chapters, school board organizations such as agency school boards, and the Navajo Division of Diné Education, pursuant to 11 N.N.C. § 2(H). The Education Committee may receive input either in writing or through oral testimony.

D. The apportionment plan shall be based at a minimum on the number of students attending from one or more Chapters. Each Local Community School Board shall provide to the Education Committee and the Division of Diné Education current and accurate information regarding the number of students attending the Local Community School for use in development of the apportionment plan by October 2003 and every four years thereafter.

E. The Education Committee shall adopt the apportionment plan and provide the plan to the Navajo Board of Election Supervisors for use in school board elections.

F. A school board member shall be permitted to serve the entire remaining period of his or her duly elected term prior to application of an apportionment plan which would eliminate the school board position held by that school board member.

History

CJY-41-03, July 24, 2003.

CAP-23-90, April 6, 1990.

Cross References

Waiver. By Resolution CO-41-07, October 17, 2007, the Navajo Nation Council waived 11 N.N.C. §§ 2(H), 11(B) and 22(A) for purposes of extending the deadline for Education Committee approval of an apportionment plan for local community school boards to December 31, 2007.

Annotations

1. Consultation

"The concept of consultation requires both a physical presence and an open mind. Because of the lack of discussion in an arena of equality and mutual respect, consultation did not occur." *Rough Rock Community School v. Navajo Nation*, 7 Nav. R. 313, 318 (Nav. Sup. Ct. 1998).

"Navajo common law speaks to consultation as giving participants ample freedom to speak, be heard, and opportunity to present written comments. The Navajo doctrine of *k'e* underlies all transactions between and among Navajos, and it likewise frames our view of consultation under the Election Code. Consultation is far more than giving unilateral testimony under oath for a limited number of minutes. It must encompass complete discussion of Navajo values, concepts, and diversity of opinion in an atmosphere of *k'e* (including equality and respect), ultimately leading to a consensual solution." *Rough Rock Community School v. Navajo Nation*, 7 Nav. R. 313, 317-318 (Nav. Sup. Ct. 1998).

2. Judicial review

" ... [S]ince the apportionment plan was invalid, the District Court had to do something when it was made aware that the Navajo Nation was attempting to conduct elections under a plan that we had declared invalid. In addition, a new event (passage of Navajo Nation Council Resolution No. CF-29-98) affecting the case arose. In light of these events, the District Court correctly ruled that it had the inherent authority to conduct a status review of the case and to grant relief based on the status of the case. That is part of the District Court's inherent power to implement adjudication." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 4 (Nav. Sup. Ct. July 25, 2001).

3. Approval of plans

"It is clear that the Navajo Nation Council has delegated the Education Committee as the appropriate body to finally approve all school board apportionment plans." *Rough Rock Community School Board, Inc. v. Navajo Nation*, 7 Nav. R. 168, 175 (Nav. Sup. Ct. 1995).

§ 12. Rules and Regulations

A. Except for hearing rules of the Office of Hearings and Appeals, the Navajo Nation Board of Election Supervisors shall promulgate rules and regulations necessary and proper to carry out the purposes of the Election Code and shall publish and/or distribute rules and regulations for posting at public places pursuant to Subsection (E) below.

B. Rules and regulations to be considered by Board shall be consistent with the Election Code and other Navajo Nation laws.

C. Rules and regulations shall provide for efficient and consistent administration of Election Code and conduct of elections.

D. Format of rules; filing; distribution:

1. Rules and regulations shall be considered and approved by Board resolutions. Proposed rules and/or regulations shall be clearly stated.

2. Upon adoption copies shall be delivered to the following:

a. The Office of the Attorney General.

b. Office of Legislative Services for distribution to members of the Navajo Nation Council and posting.

c. The Chapter Support Services to be distributed to all Chapters for posting.

d. The President of the Navajo Nation.

E. The adopted rules and regulations shall be filed at the Election Administration Office and this office shall note the hour and date of filing.

F. The rules and regulations shall be available to the public during office hours and upon a payment of a fee.

G. The Election Administration Office shall prepare and publish a listing and index of all current rules and regulations. All rules repealed or rescinded shall be noted.

H. Except for the need to make rules and regulations at the polls on election day, this section shall apply to all rules and regulations developed and approved by the Board.

History

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

See also, 2 N.N.C. § 873(B) (6) and 11 N.N.C. §§ 321(A) (6) and 322.

Annotations

1. Construction and application

"The Board has power to promulgate rules to implement the Election Code." *Arthur, et al. v. Navajo Board of Election Supervisors, et al.*, 7 Nav. R. 340,

344 (Nav. Sup. Ct. 1998).

2. Rules

See generally, *Begay v. Wero*, 4 Nav. R. 104 (Nav. Ct. App. 1983).

§§ 13 to 20. [Reserved]

Subchapter 2. Filing for Elections

§ 21. Candidacy application

A. Candidates for general and chapter elections who meet the applicable qualifications set forth in 11 N.N.C. § 8 must file a candidacy application with the Election Administration. The candidacy application shall include a filing fee. A candidate shall file a candidate application for only one office unless that other office is that of a school board member.

B. The candidate application form shall be in the form specified by the Board and shall contain:

1. The name of candidate as it will appear on the official ballot;

2. A notarized, sworn statement by the candidate that (a) he or she is legally qualified to hold the office; (b) that he or she meets the qualifications set forth in 11 N.N.C. § 8; (c) that his or her candidate application is in the form and manner prescribed by law, and (d) that he or she may be removed as a candidate in the event his or her application contains a false statement;

3. Any convictions for felonies and misdemeanors pursuant to § 8 (A), (B), (C), and (D) within the last five years and the place, date, law violated and circumstances surrounding those convictions; and

4. The name and address of the financial agent of record for the candidate.

C. A candidate application shall be considered public record which shall be kept on file with the Election Administration and copies may be provided at a nominal fee to the public.

History

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

11 N.N.C. § 8(D)(4)(a), Council Delegates and School Board qualifications.

11 N.N.C. § 8(D)(4)(g) and (h), Criminal Convictions and School Board qualifications..

11 N.N.C. § 201, financial agents.

§ 22. Time of filing

A. There shall be a 90-day filing period beginning 180 days prior to a primary election and ending 90 days thereafter. However, for those elective positions which lack a candidate after a primary election has been conducted, candidate applications shall be filed within the filing period set by the Navajo Board of Election Supervisors.

B. For special elections, candidate applications shall be filed pursuant to the special election provisions of this Title.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CJA-05-05, January 28, 2005.

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

Filing extensions, see also 11 N.N.C. § 22.

Waiver. By Resolution CO-41-07, October 17, 2007, the Navajo Nation Council waived 11 N.N.C. §§ 2(H), 11(B) and 22(A) for purposes of extending the deadline for Education Committee approval of an apportionment plan for local community school boards to December 31, 2007.

§ 23. Review of Candidate Application; notice

A. Within 30 days of receipt of a candidate application, the Election Administration shall review, verify and determine, on the face of the candidate application, the qualifications for candidacy. The Navajo Election Administration shall have the authority to determine ineligible any individual who does not meet the qualifications for the office sought.

B. If the Election Administration determines that an individual is not qualified for the position sought, it shall deny the application for candidacy as ineligible. Within 30 days of the submitted application, the Administration shall notify the applicant in writing of the reason for his or her ineligibility and the right to file an appeal to the Office of Hearings and Appeals pursuant to 11 N.N.C. § 341.

History

Note (2005). For purposes of statutory consistency, at Subsection "B," the reference to *"the right to file an appeal to the Board pursuant to 11 N.N.C. § 321(B)"* was changed to *"the right to file an appeal with the Office of Hearings and Appeals pursuant to 11 N.N.C. § 341."* By resolution CJA-06-01, the

responsibility for conducting administrative hearings involving Election Code complaints was transferred to Office of Hearings and Appeals.

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 24. Challenges; appeals

A. The Navajo Election Administration shall hold the candidate applications of all candidates it has certified as eligible for a period of 10 days during which sworn challenges may be filed with the Office of Hearings and Appeals by other applicants for the same position, whether or not such applicants are certified.

B. The form for challenges shall be in the size and style specified by the Office of Hearings and Appeals and shall state the reasons for the challenge.

C. Within five days of the date of filing, the Office of Hearings and Appeals shall review and determine whether or not the challenge meets the requirements of § 24 (B) and whether or not the challenge, if true, would affect the initial determination of eligibility of the candidate challenged.

1.¹ If the challenge, on its face will not change the eligibility of the candidate challenged, the challenge shall be dismissed.

D. If the Office of Hearings and Appeals determines that the challenge meets the requirements of § 24(B) and (C), it shall hold a hearing not less than three nor more than 10 days after its determination that the challenge is valid on its face. The Election Administration shall forthwith mail to the candidate, the party initiating the challenge, and others the Office of Hearings and Appeals may require for a hearing, a copy of the challenge along with notice of time and place of hearing. The notice shall also contain a warning to the candidate that failure to appear at the hearing may constitute just cause for disqualification.

E. Hearings shall be conducted pursuant to such rule and regulations promulgated by the Office of Hearings and Appeals.

F. The party initiating the challenge shall have the burden of proving the allegations contained in the challenge by clear and convincing evidence.

G. The decision of the Office of Hearings and Appeals shall be issued to the party initiating the challenge and the candidate within 10 days of the hearing. Appeal may be made by either party to the Navajo Nation Supreme Court within 10 days of the date of decision. The Supreme Court shall review the appeal no later than 15 days from the date of filing. Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

History

CJA-06-01, January 24, 2001.

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Annotations

1. Standard of review

"The Court's standard of review in OHA's decision is set by statute. Review is limited to 'whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.'" *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 2 (Nav. Sup. Ct. August 11, 2006).

§ 25. Unopposed candidates; candidate withdrawal

A. In the event only one candidate files for a Navajo Nation elective office, he or she shall be placed on the ballot as an unopposed candidate.

B. A candidate who withdraws from the election at any time prior to the printing of the ballots, shall have his or her name removed from the ballot. Any votes cast for the candidate who has withdrawn shall not be tallied.

C. A candidate who withdraws from the election after the ballots have already been printed, but before the election occurs, shall have his or her name remain on the ballot, but the Navajo Election Administration shall inform voters at the polling site that the candidate has withdrawn. Any votes cast for the candidate who has withdrawn shall not be tallied.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 26. Filing Fee

A. Candidates shall remit a filing fee pursuant to the schedule set forth below at the time they file their candidate application:

President.....	\$1,500.00
Vice-President.....	\$1,500.00
Navajo Nation Council Delegate.....	..\$500.00
Chapter Officers.....	..\$200.00
Other Elected Officials.....	..\$200.00
School Board Members.....	..\$200.00

Kayenta Township Commission.....\$200.00

Navajo Board of Election Supervisors.....\$200.00

Board of Education (elected positions.....\$200.00

B. Filing fees shall be non-refundable.

History

BOESD-076-06, December 7, 2006. Navajo Board of Election Supervisors resolution certifying referendum election results increasing election filing fees by amendment to 11 N.N.C. § 26(A).

CAP-22-06, April 20, 2006. Proposed increase in election filing fees referred for referendum vote.

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 27. Ballot picture

A. On date of filing, candidates must present themselves to the Election Administration for the purpose of having a ballot picture taken.

B. Only the photo taken by the Election Administration shall be used on the ballot.

History

CAP-23-90, April 6, 1990.

Cross Reference

See also, 11 N.N.C. § 4(A).

§ 28. Filing; extensions

If no candidate has filed within the time required for filing under this Code, the Board may extend the time for filing for such period as it deems appropriate.

History

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§§ 29 to 40. [Reserved]

Subchapter 3. Primary Elections

§ 41. Primary elections; selection of candidates

A. The primary election ballots for each precinct shall list the candidates for the offices of the President of the Navajo Nation, Navajo Nation Council Delegates, Chapter Offices, and Other Elected Offices and School Board members.

B. If a primary election results in a tie vote among two or more candidates with the highest votes, all candidates with the tie votes shall be placed on the general election ballot.

C. The primary candidates receiving the highest and next highest number of votes for the Office of President, Chapter Officers and other Elected Officers shall be candidates for those offices in the general election.

D. In each election precinct represented in the Council by one delegate, the two candidates receiving the highest number of votes in the primary election shall be candidates for Delegate in the general election. In each election precinct represented in the Council by two Delegates, the four candidates receiving the highest number of votes in the primary election shall be candidates for Delegate in the general election. In each election precinct represented in the Council by three Delegates, the six candidates receiving the highest number of votes in the primary election shall be candidates for Delegate in the general election. In each election precinct represented in the Council by four Delegates, the eight candidates receiving the highest number of votes in the primary election shall be candidates for Delegate in the general election.

E. In each election precinct represented on a school board by one member, the two candidates receiving the highest number of votes in the primary election shall be candidates for the one school board member position in the general election. In each election precinct represented on a school board by two members, the four candidates receiving the highest number of votes in the primary election shall be candidates for the two school board member positions in the general election. In each election precinct represented on a school board by three members, the six candidates receiving the highest number of votes in the primary election shall be candidates for the three school board member positions in the general election, and so forth.

F. The Board shall determine by regulations the number of votes a voter may cast for each of the above offices and positions in the primary and general, or chapter elections.

History

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 42. No primary in special election; write-in candidacies not allowed

A. There shall be no primary election in a special election.

B. All candidates determined eligible by the Navajo Election Administration following review of candidate applications shall be placed on the special election ballot.

C. Notwithstanding authorization in other elections, write-in candidacies shall not be allowed in special elections.

D. The candidate receiving the highest number of votes shall be certified pursuant to provisions herein.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

§ 43. Selection of candidates for Office of Vice-President

A. Candidates for the Office of President chosen in the primary election shall within five days after the primary election each name a running mate for the Office of Vice-President. The names of the candidates for President together with each candidate's selection of a candidate for Vice-President shall be placed on the general election ballot and be voted upon as a single ticket.

B. In the event of the death, resignation, removal or disqualification of the newly-elected President occurring after the General Election and before inauguration, the newly-elected Vice-President shall be deemed the President and be given the oath as such on the day set forth in 11 N.N.C. § 6. The new President shall then appoint a Vice-President pursuant to 11 N.N.C. § 142(A).

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CO-64-90, October 19, 1990, added Subsection (B).

CAP-23-90, April 6, 1990.

§ 44. Death, resignation or disqualification of candidate after primary election

In the event of death, resignation or disqualification of any candidate, who by virtue of the primary election was placed on the general election ballot, except the candidates for the Office of the Vice-President of the Navajo Nation, the candidate who received the next highest votes in the primary election preceding the general election shall automatically be placed as the new candidate on the official ballot in the general election following said primary election.

History

CO-64-90, October 19, 1990.

Cross References

See also, 11 N.N.C. § 208.

§ 45. Death, resignation, removal/disqualification after general election

In the event of the death, resignation, removal or disqualification after the general election of an elected person, a vacancy shall be declared.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CJA-06-01, January 24, 2001.

CO-64-90, October 19, 1990.

§§ 46 to 60. [Reserved]

Subchapter 4. [Reserved]

§§ 61 to 80. [Reserved]

Subchapter 5. Conduct of Elections

§ 81. Polling place supervision; appeal by person not allowed to vote

A. The day before the date of an election, the Chairman of the Board shall call in all chief poll judges for necessary instructions, swearing in, the dissemination of ballots and ballot boxes and/or voting machines to be taken to the polling places for each community in the election precinct.

B. Poll judges shall guard the polls, maintain order, and instruct voters in the techniques of balloting. Poll clerks shall enter each voter in the poll books and shall issue ballots.

C. One poll judge shall be designated by the Board as the chief poll judge for each polling place, and it shall be his or her duty and responsibility to keep custody of and account for all ballots, the ballot box, and the poll books. He or she shall supervise and have supervisory authority over the other judges and poll clerks in guarding the polls, maintaining order and instructing voters.

D. A voter shall vote at the polling place where he or she is registered to vote.

E. Any person who is not allowed to vote may appeal to the Director, Navajo Election Administration immediately.

F. A Navajo Nation police officer shall be present at each polling place during voting hours.

G. Upon an execution of an affidavit for assistance pursuant to § 128(B), a voter may choose any person to assist him or her in marking the ballot. The

assistant shall not attempt to influence the voter in favor of any candidate.

History

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross Reference

Absentee Voting, *see* 11 N.N.C. § 121 *et seq.*

See also, 11 N.N.C. § 328.

§ 82. Voting hours

Voting shall begin at 6:00 a.m. and end at 7:00 p.m. All voters present at the polling place and in line to vote at 7:00 p.m. will be allowed to vote.

History

CO-56-04, October 19, 2004.

CAP-23-90, April 6, 1990.

§ 83. Counting of votes

At the close of the election, the poll judges at each polling place shall tabulate the results of the balloting, seal and lock the ballots, poll books and keys in the ballot boxes, and transmit the results of the balloting to the Election Administration at Window Rock by telephone or radio communication. Every candidate whose name appears on the ballot in the election may have one poll watcher present at all times during the balloting and during the counting of the votes.

History

CAP-23-90, April 6, 1990.

§ 84. Canvass of votes; recount

A. Sealed ballot boxes containing all of the ballots cast in the election, all unused or spoiled ballots, data packs, keys, a written statement of the election results, on a form provided by the Board certified by the poll judges at each polling place, and the list of registered voters shall be forwarded to the Election Administration at Window Rock by each chief poll judge.

B. The Board shall canvass the written statements of election results from each polling place and shall then total the election results.

C. No recount of the ballots of any polling place shall be made unless a candidate whose name appears on the ballot at any such polling place objects. Within 10 days after the election, the candidate must pay to the Navajo Nation

the sum of fifty dollars (\$50.00) for the cost of recounting the election results for the one position in which the candidate was listed on the ballot. The Board may, on its own initiative, conduct a recount of any polling place in which it believes that there may have been substantial irregularity in the voting or counting of the ballots. The Board shall use the chief poll judge to assist in canvassing and recounting ballots.

History

Note (2005). At Subsection (A), for grammatical purposes, "casted" changed to "cast."

CAP-23-90, April 6, 1990.

Annotations

1. Recounts

See generally, *Leslie Tex Begay v. Navajo Board of Election Supervisors*, 2 Nav. R. 120 (Nav. Ct. App. 1979).

§ 85. Certification of election; vote required for election

Not less than 10 days following each election, and at a regular meeting, the Board shall certify the names of all candidates elected in such election.

History

CJA-06-01, January 24, 2001. "[A]nd at a regular meeting" was inserted after the word "election."

CAP-23-90, April 6, 1990.

Cross Reference

See also, 11 N.N.C. § 203(A).

§ 86. Appeal of disputed elections

Disputed elections by any candidate may be appealed to the Office of Hearings and Appeals pursuant to 11 N.N.C. § 341.

History

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

11 N.N.C. § 341.

Annotations

For annotations on disputes, see annotations noted under 11 N.N.C. § 341.

1. "Standing" to File Grievance Limited to Candidates

"In *Fulton v. Redhouse* we held that dissatisfied voters lack standing to bring suit under the election code, because the law limits claims to aggrieved citizens." *Judy, et al. v. White. et al.*, No. SC-CV-35-02, slip op. at 8 (Nav. Sup. Ct. August 2, 2004).

Non-candidates. It [is] clear that a voter does not have standing to complain of a lack of a candidate's qualification. *Tommy C. Begay v. Navajo Board of Election Supervisors & Navajo Election Administration*, 7 Nav. R. 139, 141 (Nav. Sup. Ct. 1995), citing *Fulton*.

"The statute, [...], limits the right to bring challenges to an election that has taken place to aggrieved candidates, and thus excludes an individual voter's right to challenge election results." *Fulton v. Redhouse*, 6 Nav. R. 333, 334 (Nav. Sup. Ct. 1991).

"... [T]he Navajo Nation Council specifically restricted the right to challenge election results to candidates who can show aggrievement, injury or a denial of clear rights." *Fulton v. Redhouse*, 6 Nav. R. 333, 334 (Nav. Sup. Ct. 1991).

The Navajo Nation Council specifically restricted the right to challenge election results to candidates who can show aggrievement, injury, or a denial of clear rights. *Fulton v. Redhouse & Navajo Board of Election Supervisors*, 6 Nav. R. 333, 334 (Nav. Sup. Ct. 1991).

2. Mandatory Procedural Requirements in Election Disputes

Procedure Defects. See *Haskie v. Navajo Board of Election Supervisors*, 6 Nav. R. 336 (Nav. Sup. Ct. 1991).

The procedures established for resolution of election contests and disputes were not intended to be discretionary with the Board. The Tribal Council, for reasons of due process and speeding resolutions of election contests and disputes, intended that these procedures be followed. *Mustach v. Navajo Board of Election Supervisors*, 5 Nav. R. 115, 118 (Nav. Sup. Ct. 1987).

3. Time Computation

See generally, *In The Matter of the Removal of Karl Katenay*, 6 Nav. R. 81. (Nav. Sup. Ct. 1989).

4. Standard of Review in Election Disputes

"After the Board [now the Office of Hearings and Appeals] has held a hearing, it must use a two-step test to reach a decision. The first step is whether the aggrieved party proved the allegations in his or her statement of grievance with clear and convincing evidence. The second step is whether the aggrieved party has overcome the presumption of a valid and proper election, as delineated in the *Johnson* principles. Irregularities that do not affect the

election results or impeach the fairness will not succeed in overcoming the presumption." *Morris v. Navajo Board of Election Supervisors*, 7 Nav. R. 75, 76-77 (Nav. Sup. Ct. 1993).

"1. Election results are presumed to be regular and proper; 2. Irregularities or misconduct in an election which does not tend to affect the results or impeach the fairness of the result will not be considered; 3. Elections will not be set aside unless the facts definitely show such fraud and that there was no fair election; 4. After the election, election provisions are to be seen as directions unless the violations obstructed a free and intelligent vote, affected an essential element of a valid election or an omission of a direction voids the election." *Johnson v. June*, 4 Nav. R. 79, 82 (Nav. Ct. App. 1983). See also, *Navajo Election Commission v. Lancer*, 5 Nav. R. 59 (Nav. Ct. App. 1985).

5. Court Review of Board Decisions Summarily Dismissing Complaint

"This Court cannot determine whether the various claims of the appellant are supported by the facts; nor can it decide whether the recall election was irregular and should be invalidated, as the appellants request. Rather, the sole question before this Court is whether the Board properly determined that the appellants' Statements of Grievance, on their faces, were insufficient for further proceedings." *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 387 (Nav. Sup. Ct. 1991).

6. Complaint Review by the Board for "Sufficiency"

"The words 'on its face' indicate that the preliminary review for sufficiency must be confined to the allegations made by a grievant on the Statement. If the Board is unable, upon such a review, to determine that those allegations necessarily fall short of providing a basis for relief, a summary dismissal of the Statement is inappropriate. That is, if the Board must look to evidence beyond what is proffered by a grievant on the Statement to determine that his or her Statement is insufficient, it clearly does not meet the criteria for dismissal as being a Statement 'insufficient on its face.'" *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 389 (Nav. Sup. Ct. 1991).

Similarities with Motion to Dismiss. See *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 388-389 (Nav. Sup. Ct. 1991).

"Not only is there no authorization in the Election Code for an investigation before a hearing on a grievance, but the 1990 amendments to the Election Code eliminated the authorization for an independent investigation at any point in the grievance review process." *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 390 (Nav. Sup. Ct. 1991).

"A Statement [of grievance] will be sufficient on its face if it specifies which election law was violated, and if it contains enough facts to raise the issue that the election results were not regular and proper. These facts, as they appear in the Statement, must support the allegation that an election law was violated. Finally, the Statement taken as a whole, which shall include all attached documents, must raise a possibility that the election results will be impeached." *Brown v. Navajo Board of Election Supervisors*, 5 Nav. R. 139, 140

(Nav. Sup. Ct. 1987). See also, *Williams v. Navajo Election Commission*, 5 Nav. R. 25, 28 (Nav. Ct. App. 1985).

"The Board has considerable discretion in determining whether a statement is sufficient on its face. Absent a clear abuse of that discretion this Court will not disturb the Board's decision." *Brown v. Navajo Board of Election Supervisors*, 5 Nav. R. 139 (Nav. Sup. Ct. 1987), citing *Johnson v. June*, 79 (Nav. Ct. App. 1983).

"The Commission determines whether the Statement of Grievance sufficiently states a violation of the election law. This means that the grievance must specify what election law was violated. It must also contain sufficient facts that if proven to be true would indeed constitute a violation of the law. Further, under *Johnson* these facts must tend to rebut the presumption that the election was fair and show that but for the violation of the election law the result would have been different." *Williams v. Navajo Election Commission and Board of Election Supervisors*, 5 Nav. R. 25, 28 (Nav. Ct. App. 1985).

7. Frivolous Appeals

"An appeal is 'frivolous' when it is not filed within the time permitted for an appeal; when the appeal is not perfected by the filing of the record or briefs; or when an appeal clearly lacks probable cause. An appeal lacks 'probable cause' when simple legal research discloses that points of law for the appeal are settled under our law or when a party does not have the right to take the appeal." *Tommy C. Begay v. Navajo Board of Election Supervisors & Navajo Election Administration*, 7 Nav. R. 139, 140 (Nav. Sup. Ct. 1995).

8. Recounts

"This Court does not believe that a request for a recount is a dispute contemplated by 11 N.T.C. § 51 [former provision on election disputes]." *Leslie Tex Begay v. Navajo Board of Election Supervisors*, 2 Nav. R. 120, 123 (Nav. Ct. App. 1979).

§ 87. Tie votes in a general election; determination by lot

In the event of a tie vote among two or more candidates in a general or chapter election, upon a recount of votes, the Board shall, in the presence of the candidates, declare by random lot which candidate shall be declared elected.

History

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§§ 88 to 100. [Reserved]

Subchapter 6. [Reserved]

§§ 101 to 120. [Reserved]

Subchapter 7. Absentee Voting

§ 121. Request for application for absentee ballot

A. Requests for applications for absentee ballots may be made with the Navajo Election Administration.

B. The purpose of absentee voting is to encourage every eligible voter to exercise his or her voting right.

History

CAP-15-04, April 22, 2004.

CAP-23-90, April 6, 1990.

Cross References

See also, 11 N.N.C. § 81(G), and applicable rules of the Navajo Board of Election Supervisors.

§ 122. Application; time of filing

A. The form of application for an absentee ballot shall be approved by the Navajo Board of Election Supervisors. This form shall contain and require the name and signature of the applicant, his or her chapter registration, census or social security number and any other information deemed necessary by the Board.

B. Pursuant to rules and regulations of the Board, the application for an absentee ballot shall be witnessed.

C. Applications for absentee ballots made by mail must be physically delivered to the Election Administration not less than 15 days before the election.

D. Where mailed applications are accepted, absentee ballots shall be mailed by Election Administration staff no less than 10 days before the election.

E. Where an applicant delivers an application in person and the application is accepted, delivery of the absentee ballot may be immediate and cast in person up to the Friday before the election.

F. Except as otherwise provided herein, the review and processing of mailed applications for absentee ballot shall be done in accordance with rules and regulations of the Navajo Board of Election Supervisors.

History

CAP-15-04, April 22, 2004.

CAP-23-90, April 6, 1990.

Cross Reference

Regarding Subsection (C) above, *see also*, 11 N.N.C. § 124(E).

§ 123. Delivery in person or mailing of ballot

A. Unless it is evident that applicant is not registered, the Election Administration shall immediately cause the following papers to be delivered in person or mailed to such applicant:

1. A ballot for the proposed absentee voter's chapter;
2. An envelope labeled "Official Ballot Envelope" for the ballot to be put into after the voter has marked it;
3. An envelope with the address of the Board printed on its front, and the envelope containing the ballot shall be placed and mailed or delivered in person to the Office of the Election Administration.

B. No absentee ballot shall be delivered or mailed to any person other than the applicant who is an eligible qualified voter. Each qualified applicant is allowed a ballot. Once an absentee ballot is sent out to applicants, applicant shall not be allowed to vote at his or her polling place. All absentee ballots shall be returned to the Election Administration.

History

CAP-15-04, April 22, 2004.

CAP-23-90, April 6, 1990.

§ 124. Marking ballot; envelope

A. A voter voting by absentee ballot in person shall mark the absentee ballot in a special voting area designated by the Election Administration, and shall fold and seal it in the "Official Ballot Envelope." No person shall watch how the voter marks his or her ballot, unless the voter is marking his or her ballot pursuant to § 128. No person shall attempt to influence the voter in favor of any candidate. The voter shall then place the sealed envelope containing the ballot into the ballot box.

B. Where a voter has received a ballot by mail, a witness shall assure that the person marking the ballot is the eligible qualified voter to whom the absentee ballot is addressed. The witness shall further assure that the voter marked his or her ballot, folded it up and sealed it in the "Official Ballot Envelope." The witness shall not watch how the voter marks his or her ballot, unless the voter requests assistance pursuant to § 128. The witness and/or assistant shall not attempt to influence the voter in favor of any candidate. The voter shall hand the sealed "Official Ballot Envelope" containing the ballot to the witness along with the large envelope.

C. The "Official Ballot Envelope" shall state on its outer side the

chapter of the voter, the Agency, and a statement of the witness that the envelope contains an absentee ballot for a certain polling place and that the vote was cast before such witness on a specified day by the voter requesting and receiving the absentee ballot.

D. The witness before whom the absentee voter voted shall sign his or her name on the envelope. He or she shall then place the envelope in the large envelope and shall seal the same and hand it back to the voter to deliver to the Election Administration. Absentee ballots mailed to the Election Administration Office shall be counted if received by the Friday before the election date at the Election office.

E. Absentee ballots may be cast in person beginning 30 days before election up to the Friday before election date during regular hours at 8 a.m. to 5 p.m. of each business day at any Election Administration Office, or during other hours and days designated by the Board.

F. Subject to approval by the Board, the Election Administration Office may designate polling places, within or outside the Navajo Nation, for absentee voting as a convenience to voters.

G. During absentee ballot voting, it shall be unlawful for candidates or anyone to solicit votes, display or otherwise make accessible any posters, signs, literature, or other forms of campaign whatsoever.

History

CAP-15-04, April 22, 2004.

CAP-23-90, April 6, 1990.

Note (2005). At Subsection (B) above, the term "*marked*" changed to "*marks*" for grammatical purposes and consistency.

§ 125. Duty of Election Administration on receipt of official mailing envelopes

A. Upon receiving an official mailing envelope containing a sealed absentee ballot, the Election Administration shall ensure that the name of the voter, as provided on the outer envelope, is logged as accepted in the absentee ballot registry. If the voter's name appears in the absentee ballot registry as accepted, the Election Administration staff shall immediately deposit the sealed envelope in the designated ballot box. If the registry shows that the application was rejected, the ballot shall be invalidated.

B. The Election Administration shall accept completed official mailing envelopes until 5:00 p.m. on the Friday before the Election day. Any completed official mailing envelope received after that time shall not be honored and shall be invalidated by the Navajo Election Administration.

History

CAP-15-04, April 22, 2004.

CAP-23-90, April 6, 1990.

§ 126. Absentee voter may not vote in person in his or her own precinct

Any person who has voted by an absentee ballot shall not be permitted to vote in person in the election for which he or she has cast an absentee ballot.

History

CAP-15-04, April 22, 2004.

CAP-23-90, April 6, 1990.

§ 127. Counting absentee ballots

Poll officials shall open ballot envelopes and tabulate the absentee ballots with the rest of the ballots cast.

History

CAP-15-04, April 22, 2004.

CAP-23-90, April 6, 1990.

§ 128. Assistance to voter

A. A voter may choose another to assist him or her in marking the ballot upon execution of an affidavit for assistance.

B. The affidavit shall state that the voter seeking assistance is:

1. blind; or
2. physically disabled; or
3. unable to read or write.

History

CAP-23-90, April 6, 1990.

Cross Reference

See also, 11 N.N.C. § 181(G).

§§ 129 to 139. [Reserved]

Subchapter 8. Vacancies

§ 140. Vacancies

A. Subject to provisions of this Section, the Navajo Election Administration is authorized to declare vacancies for elective positions.

B. In the event of the removal or disqualification of an elected official

pursuant to Navajo Nation law or the automatic forfeiture of office by an elected official, pursuant to the *Ethics in Government Law*, the Navajo Election Administration is authorized to declare a vacancy upon receipt of a duly adopted legislation by the Navajo Nation Council or the Ethics and Rules Committee, respectively.

C. In the event of the recall of an elected official, the Navajo Election Administration is authorized to declare a vacancy upon the final certification of the recall petition.

D. In the event of the death of an elected official, the Navajo Election Administration is authorized to declare a vacancy. The Election Administration shall be authorized to obtain a death certificate from an appropriate entity and declare an official vacancy, if deemed necessary.

1. Determination of death may be made upon any of the following:

a. When a death of an elected official is not genuinely disputed in the community he or she represented and that such death is generally known within the community; or,

b. A copy of a death certificate obtained by the Navajo Election Administration; or,

c. A public obituary notice; or,

d. Other reliable and verifiable source of information.

2. Vacancy declarations in the event of death of an elected official shall not be unreasonably withheld.

3. The Navajo Board of Election Supervisors is authorized to enact rules governing vacancy declarations in the event of death.

E. All elected officials and School Board members voluntarily resigning shall submit a notice of resignation in writing to the Navajo Election Administration. Upon receipt of such notice, the resignation shall be effective and the Navajo Election Administration shall be authorized to declare a vacancy.

F. In the event of removal, death, disqualification or resignation of an individual prior to his or her oath of office for a position he or she was elected to, a vacancy shall be declared for such position.

1. If the elected official whose position becomes vacant pursuant to Section 140(F) above was an unopposed candidate, a vacancy shall be declared and the position shall be filled by appointment pursuant to applicable provisions for the particular position.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

Note (2008). This Section on "Vacancies" was moved to § 140 from its original

codification at § 141.

CAP-30-05, April 22, 2005.

Note. For purposes of statutory format, the previous reference to "Section 140(E) above" at § 140(F)(1) was corrected to refer to "Section 140(F) above."

CJA-06-01, January 24, 2001.

§ 141. Vacancy in the Office of the Navajo Nation President/Vice President; succession

A. Should the Office of the Navajo Nation President be declared vacant, the Vice President shall assume the position of President regardless of his or her status as an elected or appointed Vice President. The new successor President shall appoint a new Vice President within 30 days.

B. Should the Office of the Navajo Nation Vice President be declared vacant, the President shall, no later than 30 days after the date of vacancy appoint a new Vice President. Within 10 days of appointment, the Navajo Election Administration shall review the qualifications and certify the new Vice President provided he or she is qualified.

C. If both Navajo Nation President and Vice President positions become vacant simultaneously, resulting in the absence of a Vice President to succeed the position of President, a special election shall be conducted to fill the vacancies whether such vacancies occur within the first or second half of the terms of office. However, if a Navajo Nation General Election is scheduled within 90 days of vacancies being declared, the Speaker of the Navajo Nation Council shall serve as Navajo Nation President and shall complete such term of office. Service by the Speaker as President as provided herein shall not create a vacancy in the Office of the Speaker.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

Note (2008). This Section on "Vacancy in the Office of the Navajo Nation President/Vice President; succession" was moved to § 141 from its original codification at § 142.

Cross Reference

11 N.N.C. §§ 45, 161 and 208, vacancies generally.

3 N.N.C. § 873, District Grazing Committee.

11 N.N.C. § 241 *et seq.*, recall.

§ 142. Forfeiture of office of Navajo local community school board members

A. Navajo local community school board members who fail, without just cause, to attend three consecutive school board meetings, regardless of whether such meetings are regular or special meetings, shall be deemed to have

abandoned their office and such office shall be automatically forfeited, by operation of law.

B. A notarized document certifying the failure of a Navajo local community school board member to attend three consecutive school board meetings shall be filed with the Navajo Election Administration. This written document shall be signed before a notary public by any other member of the same Navajo local community school board, and shall be accompanied by copies of the written notices of the Navajo local community school board meetings not attended. The Navajo Election Administration shall send copies of these documents by first class mail to the Navajo local community school board against whom the forfeiture is imposed along with a notice of the forfeiture, and notice of the right of the Navajo local community school board member to file an election grievance relative to the forfeiture.

C. Upon the filing of the documents referenced in subsection (B), the Navajo Election Administration shall immediately declare a vacancy in the forfeited office of the Navajo local community school board.

D. The vacancy in the office of the Navajo local community school board created by the automatic forfeiture shall be filled in the manner set forth within the Navajo Election Code.

CO-39-07, October 17, 2007. Navajo Nation Local Community School Board Act of 2007.

Note. Previous § 142, entitled, "Vacancy in the Office of the Navajo Nation President/Vice President; succession" was moved to 11 N.N.C. § 141, above.

Subchapter 9. Special Elections

Former Subchapter 9, relating to Appointments and consisting of §§ 161 to 163, was renumbered as Subchapter 10 by CS-55-05, September 2, 2005.

§ 143. Special elections for vacancies during first half of term

Whenever a vacancy is declared for an elected office during the first half of a term of office, with the exception of a vacancy involving the Office of the Navajo Nation President or the Navajo Nation Vice President, the remaining term of the vacant office shall be filled pursuant to special election provisions of this Code.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

§ 144. Temporary appointments pending special elections

A. Whenever there is a vacancy in a Council Delegate position during the

first half of the term of office, at the request of the affected Chapter or Chapters within a precinct, the Speaker of the Navajo Nation Council may select and appoint an interim Delegate from the precinct until the vacancy is filled by special election and the new Delegate takes office. Prior to appointment by the Speaker, the qualifications of the individual recommended shall be reviewed by the Navajo Election Administration and the individual shall be certified only if he or she is qualified.

B. In the event of vacancies and a special election called for the Navajo Nation President and Vice President, the Speaker of the Navajo Nation Council shall serve as Interim President of the Navajo Nation until the vacancies are filled by such election and the new President and Vice President take office. Service by the Speaker as the Interim President shall not create a vacancy in the Office of the Speaker.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

§ 145. Conduct of special elections

Special elections shall be conducted in the same manner as other elections except as follows:

A. There shall be a 14-day filing period upon a declaration of vacancy.

B. Candidate applications for the Offices of the Navajo Nation President and Vice President shall be filed at the same time.

C. Upon the expiration of a filing period, the Navajo Election Administration shall, within five days, review applications filed and determine whether applicants should be certified as eligible for candidacy. An applicant disqualified or otherwise deemed ineligible for office may file a grievance pursuant to 11 N.N.C. § 341.

D. Challenge provisions of 11 N.N.C. § 24 shall apply, except that such challenges, if any, shall be filed within five days of certification of a candidate.

E. In the event of a challenge or a grievance, a special election date shall not be set until after the challenge or grievance is addressed and resolved in accordance with applicable provisions of the Election Code. Once applicable administrative and judicial remedies of the Election Code have been exhausted, the special election, upon public notice, shall be conducted within 60 days thereafter.

F. If there is no challenge or grievance, a special election, upon public notice, shall be conducted within 60 days of the conclusion of the challenge or grievance period.

G. The Navajo Board of Election Supervisors shall adopt rules and regulations on the selection of poll clerks and poll judges for the conduct of special elections.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

§§ 146 to 160. [Reserved]

Subchapter 10. Appointments

Renumbered from Subchapter 9 by CS-55-05, September 2, 2005.

§ 161. Appointments

A. With the exception of a vacancy resulting from recall or involving the President or Vice President, and subject to certification by the Navajo Election Administration, when a vacancy occurs during the second half of an elective term of office, the remaining term shall be filled by appointment as follows:

1. Whenever there is a vacancy in a Council Delegate position, the Speaker of the Navajo Nation Council shall select and appoint a Delegate from the community to complete the remaining term of office. The selection shall be made from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within 45 days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Council Delegate, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Speaker in writing of whether the recommended person meets the qualifications for Council Delegate. The Speaker shall review the candidates for appointment and shall make his or her determination out of those qualified persons recommended. The appointed Council Delegate shall complete the unexpired term.

2. Those vacancies in Chapter Officer positions which have been declared vacant by the Navajo Election Administration, as distinguished from those one time vacancies contemplated by 26 N.N.C. § 1003, shall be filled by appointment by the affected chapter, in the form of a duly adopted chapter resolution. The chapter resolution shall include reference to all those individuals nominated for appointment, in addition to the individual formally recommended. Officials appointed by the Chapter shall complete the unexpired term.

3. Those vacancies in Grazing Committee positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment by the affected chapter, in the form of a duly adopted chapter resolution. The chapter resolution shall include reference to all those individuals nominated for appointment, in addition to the individual formally recommended. Officials appointed by the Chapter shall complete the unexpired term.

4. Those vacancies in School Board member positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment in one of the following ways:

a. By majority vote of the School Board. The selection shall be made by the existing quorum of the school board from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within 45 days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for school board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the school board in writing of whether the recommended person meets the qualifications for school board membership. The School Board shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed school board member shall complete the unexpired term.

b. By the Navajo Board of Election Supervisors. In the event that no quorum of the school board is elected in the chapter election, or if the number of vacancies occurring for any reason results in no quorum of the school board, then the Navajo Board of Election Supervisors shall make the selection from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within 45 days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for school board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter

and the Navajo Board of Election Supervisors in writing of whether the recommended person meets the qualifications for school board membership. The Navajo Board of Election Supervisors shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed school board member shall complete the unexpired term.

5. Those vacancies in Land Board positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment in one of the following ways:

a. By majority vote of the Land Board. The selection shall be made by the existing quorum of the Land Board from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within 45 days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Land Board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Land Board in writing of whether the recommended person meets the qualifications for Land Board membership. The Land Board shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed Land Board member shall complete the unexpired term.

b. By the Navajo Board of Election Supervisors. In the event that no quorum of the Land Board is elected in the chapter election, or if the number of vacancies occurring for any reason results in no quorum of the Land Board, then the Navajo Board of Election Supervisors shall make the selection from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within 45 days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Land Board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Navajo Board of Election Supervisors in writing of whether the

recommended person meets the qualifications for Land Board membership. The Navajo Board of Election Supervisors shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed Land Board member shall complete the unexpired term.

6. Those vacancies in Kayenta Township Commission positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment in one of the following ways:

a. By majority vote of the Commission. The selection shall be made by the existing quorum of the Kayenta Commission from recommendations by Kayenta Chapter which shall recommend three candidates for appointment, in the form of a duly adopted chapter resolution. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Commission membership. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Commission in writing of whether the recommended person meets the qualifications for Commission membership. The Commission shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed official shall meet all the qualifications of the position vacated, including residential requirements, and he or she shall complete the unexpired term.

b. By the Navajo Board of Election Supervisors. In the event that no quorum of the Commission is elected in an election, or if the number of vacancies occurring for any reason results in no quorum of the Commission, then the Navajo Board of Election Supervisors shall make the selection from recommendations of the Kayenta chapter, in the form of a duly adopted chapter resolution. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Commission membership. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Navajo Board of Election Supervisors in writing of whether the recommended person meets the qualifications for Commission membership. The Navajo Board of Election Supervisors shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed Commission member shall complete the unexpired term.

7. Those Farm Board member positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment in one of the following ways:

a. By majority vote of the Farm Board. The selection shall be made by the existing quorum of the farm board from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided proper posting is made of all vacated positions at all affected chapters and; that if no duly adopted chapter resolution is

received from any affected chapter within 45 days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for farm board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the farm board in writing of whether the recommended person meets the qualifications for farm board membership. The Farm Board shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed Farm Board member shall complete the unexpired term.

b. By the Navajo Board of Election Supervisors. In the event that no quorum of the farm board is elected in the chapter election, or if the number of vacancies occurring for any reason results in no quorum of the farm board, then the Navajo Board of Election Supervisors shall make the selection from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within 45 days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for farm board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Navajo Board of Election Supervisors in writing of whether the recommended person meets the qualifications for farm board membership. The Navajo Board of Election Supervisors shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed farm board member shall complete the unexpired term.

8. Those vacancies in Navajo Nation Board of Education positions which have been declared vacant by the Navajo Election Administration shall be filled in the same manner as provided herein for school board members.

B. All officials appointed pursuant to this section shall be required to meet the qualifications for that position as set forth by Navajo Nation law.

C. In the event no chapter resolution recommending an appointment is

submitted to the Navajo Election Administration within time periods established for the submission of such resolutions as provided herein, the Navajo Board of Election Supervisors is authorized to extend, as necessary, such time periods until a vacant position is filled.

D. The Navajo Board of Election Supervisors is authorized to establish, by rules and regulations, reasonable time frames, other than those specified herein, for purposes of implementing the intent of this section.

History

CF-13-06, February 3, 2006. The Navajo Nation Board of Education Election Act of 2006. Added § 161(A) (8).

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CJN-36-05, June 3, 2005.

CAP-31-05, April 22, 2005.

CAP-12-02, April 8, 2002.

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

See also, 11 N.N.C. §§ 45, 208 and 245.

§ 162. Certification of Appointments

A. Those appointed or recommended for appointment shall complete and submit as appropriate all necessary documents required for determining qualifications for office.

B. For an appointment made by a chapter, the chapter shall immediately transmit a copy of its resolution to the Navajo Election Administration, along with documents which show that the appointed individual meets the qualifications for the office he or she is appointed to. The Navajo Election Administration shall within five calendar days review the qualifications of the appointed individual in writing of whether the appropriate qualifications for office are met. If the appointed individual is deemed ineligible for office, he or she shall be notified by the Election Administration. The notice shall include the right to file a Statement of Grievance pursuant to 11 N.N.C. § 341(A).

C. Upon certification, an Oath of Office shall be administered pursuant to 11 N.N.C. § 6(E).

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005.

CJA-06-01, January 24, 2001.

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 163. Challenges; appeals

Challenges may be filed with the Navajo Election Administration regarding the qualifications of an appointed official by other candidates considered for appointment to the same position. Such challenges must comply with the requirements 11 N.N.C. § 24 herein.

History

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Subchapter 11. Campaign Expenses; Contributions

§ 201. Report of designated financial agent; filing; penalty

A. Before any election each candidate, including the candidate for Vice-President, shall file with the Board a report containing the names and addresses of every person authorized as his or her financial agent by or through whom such candidate has expended or proposed to expend money in defraying the expenses of his or her campaign, or a statement that he or she has not authorized and will not authorize any person to act for him or her, but that he or she will in person account for all money or other things of value expended in the interest of his or her candidacy.

B. The candidate shall file with the Board the designation of an agent by the filing date and will be allowed to amend the designation any time prior to the opening of the polls on the day set for the election.

C. Should he or she fail to file such report, he or she is guilty of an offense and shall be assessed a fine of not less than twenty-five dollars (\$25.00) and not more than five hundred dollars (\$500.00).

History

CAP-23-90, April 6, 1990.

Cross Reference

Regarding Subsection (B) above, *see also*, 11 N.N.C. § 21(B)(4).

§ 202. Statement of receipts and expenses; time of filing; preparation and distribution of forms

A. Each candidate whose name appears upon the official ballot in any Navajo Nation election shall, not more than 10 days after the election, file

with the Board a sworn and signed itemized statement of receipts and expenses. The Board shall give the candidate an opportunity to correct any deficiency or error in his or her report. Thereafter the report shall be filed in the Central Records Department of the Navajo Nation and shall be preserved in said office for at least five years during which time it shall be a public record available for inspection and copying.

B. The statement of receipts and expenses shall set forth in detail a complete record of the candidate's receipts and expenditures in money or other things of value and cost thereof, including promises to pay, treats, presents, and favors, either present or future, intended for the purpose of aiding or which could have a tendency to aid his or her success in such election and shall include a like statement for each of the persons named by the candidate in any report filed under 11 N.N.C. § 201, and for any person not so named whom the candidate knows to have made any receipt or expenditure on behalf of his or her candidacy. Actual receipts for expenses shall accompany the statement.

C. A candidate shall not be required to report his or her filing fee.

D. The statement of expenses and the report shall be made upon forms approved by the Board. The Board shall deliver in person or by certified mail a reasonable number of such forms to each candidate.

History

CJA-12-06, January 27, 2006. Amended § 202(A) reducing the filing period from 30 days to 10 days.

Note (2005). At Subsection (A) above, due to a previous typographical error in publication, the term "*Therefore*" was changed to "*Thereafter*." For the same reason, at Subsection (B), the term "*case*" was changed to "*success*."

CJA-06-01, January 24, 2001. By this resolution, the terms "*either general, chapter, or special*" after the word "*election*" in Subsection (A) were deleted.

CAP-23-90, April 6, 1990.

§ 203. Failure to file statement of receipts and expenses; penalty

A. The candidate receiving the highest number of votes in any Navajo Nation election shall not receive a certification of election and shall not be eligible to take office until the statement required by 11 N.N.C. § 202 is filed.

B. A candidate, whether elected to an office or not, who refuses or fails to file the statement required by 11 N.N.C. § 202 is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00).

History

CAP-23-90, April 6, 1990.

Cross Reference

See also, 11 N.N.C. § 85.

§ 204. Report by persons not authorized to expend money for expenses of candidate's campaign; time of filing; form; penalty for failure or refusal to file

A. If any person not named in the candidate's report required by 11 N.N.C. § 201 collects or expends any money or things of value in connection with the candidacy of such candidate in any Navajo election, such person shall within 30 days after such election file with the Board a full and complete report showing all money or other things of value collected and expended by him or her.

B. The form of the report shall be approved by the Board and shall be similar in form to that required of candidates.

C. A person who fails or refuses to sign or to file a report required by this section is guilty of an offense and upon conviction thereof shall be punished by fine of not less than three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00). If such person is not subject to the jurisdiction of the Court of the Navajo Nation, he or she may be fined or expelled from Navajo Nation land (17 N.N.C. § 1901 *et seq.*).

History

CAP-23-90, April 6, 1990.

§ 205. Limitation on expenditure by or on behalf of candidates; radio or television time

A. The following sums shall be the maximum amounts for both the primary and general elections combined which may be expended by or on behalf of any candidate in a primary and general, or special recall or referendum election. When anything of value other than money is expended or used by or on behalf of any candidate, it shall be considered as equivalent to money as its fair cash value. Necessary personal travel or subsistence expenses of candidate and provided by candidate shall not be included in the limitation and need not be reported.

1. For the Office of the President and Vice-President (combined sum) one dollar and fifty cents (\$1.50) for each registered voter.

2. For the offices of Delegate, Chapter Officer, Other Elected Officials and School Board members, four dollars (\$4.00) for each registered voter within the election precinct.

B. Where radio and television time is donated or offered on an equal basis to all qualified candidates for any particular office, the value of such time shall not be included in the above limitation on expenditures but shall be reported by or on behalf of each candidate receiving the same, without assigning any cash value thereof.

History

CJA-12-06, January 27, 2006. Amended § 205(A)(2) increasing the expenditure limit from \$1.50 to \$4.00.

CJA-06-01, January 24, 2001. Subsection (A) amended slightly to reflect that *special elections*, generally, are no longer required for filling vacancies occurring during a term of office. Since this change, vacancies are now filled by an *appointment* process. See generally, 11 N.N.C. § 161 *et seq.*

CAP-23-90, April 6, 1990.

Annotations

1. Federal Law

Regarding federal case law on contributions and expenditures concerning candidates for federal elective office, see generally, *Buckley v. Valeo*, 424 US 1 (1976).

§ 206. Penalty for exceeding campaign expenditure limit

A candidate who expends more money or other things of value than is permitted by 11 N.N.C. § 205 either in person or through agents, or who knowingly permits any other person to expend a sum which when added to the sum expended by such candidates and his or her agents exceeds said limits, is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000), or by imprisonment for not more than six months, or by both such fine and prison term; and in addition he or she shall be barred for five years from holding any elective office of the Navajo Nation.

History

CAP-23-90, April 6, 1990.

Federal Law. The Indian Bill of Rights, 25 U.S.C. § 1302 (7), provides that an Indian Tribe may in no event impose a punishment of more than six (6) months in prison, or five hundred dollars (\$500.00), or both. Section 1302 (7) was amended by Public Law 99-570, § 4217, to allow tribes to impose punishment of up to one (1) year imprisonment or a fine up to five thousand dollars (\$5,000), or both. The Navajo Nation, by *CJA-08-00* has generally amended the general Criminal Code (Title 17) provisions to include the increased penalties allowed.

§ 207. Fraudulent reports; penalty

A candidate who makes any statement or report required by this ordinance and therein knowingly misstates the amount of money given or expended, or fails knowingly to fully disclose the facts as to any gift, promise, treat, reward, favor, or any valuable thing given or expended, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000) or by imprisonment for not more than six months, or by both fine and prison term; and if such person received the highest number of votes in the election, he or she shall not hold the office, and shall be barred for a period of five years

from holding any elective office of the Navajo Nation.

History

CAP-23-90, April 6, 1990.

§ 208. Filling vacancy in office due to disqualification

A. Where any person who has received the highest number of votes for any office is disqualified from holding said office by 11 N.N.C. §§ 206 and 207, prior to the oath of office, the candidate who received the next highest votes shall be sworn in as the elected official for that position pursuant to 11 N.N.C. § 141(E).

B. Where any person who has received the highest number of votes for any office is disqualified from holding said office by 11 N.N.C. §§ 206 and 207, after the oath of office, a vacancy shall be declared by the Navajo Election Administration, and the position shall be filled by appointment pursuant to applicable provisions for the particular position.

History

Note (2005). At Subsection (A) above, for purposes of correcting a typographical error in publication, reference to "section 141(F)" was changed to "§ 141(E)."

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

See also, 11 N.N.C. §§ 45 and 141(E).

§ 209. Contribution by corporations and nonmembers of Navajo Nation; penalty

A. It is unlawful for any corporation or nonmember of the Navajo Nation to make any contribution of money or anything of value for the purpose of campaigning or influencing a Navajo election or for any member of the Navajo Nation to receive such a contribution for such purposes, provided, however, that it shall not be unlawful for a radio or television station to make free time available to any candidate for Navajo Nation Office, provided equal time is made available to all other candidates for the same office.

B. Any person or any non-Navajo Indian married to a Navajo who violates this section shall be guilty of an offense and upon conviction shall be punished by a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000), or by imprisonment for not more than six months or by both such fine and prison term.

C. Any non-Indian who violates this section, shall be fined or expelled from Navajo Nation land by the Government Services Committee according to the procedure set out in 17 N.N.C. § 1901, as amended.

D. Any corporation or nonmember of the Navajo Nation violating this section may upon application of the Attorney General be ordered to show cause before the appropriate Navajo Nation Committee as to why it or he or she should not be barred from receiving any lease, right-of-way, contract, franchise, concession of any character whatsoever thereafter from the Navajo Nation, or excluded from the Navajo Nation. If, upon hearing of such order to show cause, it appears to the appropriate Navajo Nation Committee that the said corporation or person is guilty of violating this section, said corporation or person shall be barred for a period of not less than one year nor more than five years from receiving any lease, right-of-way, contract, franchise, or concession of any character whatsoever from the Navajo Nation.

E. It is the intent of this section to prohibit contribution being made for the purpose of influencing a Navajo election from any source other than members of the Navajo Nation. Violators shall be prosecuted.

History

CAP-23-90, April 6, 1990.

§§ 210 to 220. [Reserved]

Subchapter 12. [Reserved]

§§ 221 to 239. [Reserved]

Subchapter 13. Removal of Officials; Placement of Officials on Administrative Leave; Recall; Filling Vacancy

§ 240. Removal and placement on administrative leave

A. The President, Vice-President and delegate to the Navajo Nation Council are subject to removal for just cause.

1. Just cause include, but shall not be necessarily limited to:

- a. Insanity, when judicially or medically determined.
- b. Conviction by any court of any felony.
- c. Council members failing to attend Council meeting as required by law.
- d. President or Vice-President absent for three consecutive months without permission of the Navajo Nation Council.
- e. Habitual indulgence in alcoholic beverages.
- f. Conviction of any misdemeanor involving deceit, untruthfulness, and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse,

child neglect, aggravated assault and aggravated battery.

g. Breach of fiduciary trust duties to the Navajo People.

h. Malfeasance or misfeasance of office.

2. Such official can be removed by at least two-thirds (2/3) vote of the Navajo Nation Council.

B. The District Grazing Committee Members are subject to removal for just cause.

1. Just cause shall include, but shall not be necessarily limited to:

a. Insanity, when judicially or medically determined.

b. Conviction by any court of any felony.

c. Failure to attend three consecutive District Grazing Committee meetings.

d. Absence for three consecutive months without permission of the District Grazing Committee.

e. Habitual indulgence in alcoholic beverage.

f. Conviction of any misdemeanor involving deceit, untruthfulness, and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery.

g. Breach of fiduciary trust duties to the Navajo People.

h. Malfeasance or misfeasance of office.

2. Such official can be removed by at least two-thirds (2/3) vote of the Navajo Nation Council.

C. The Navajo Nation Council may by majority vote of the Council, place the President, Vice-President or any of its members on administrative leave, with or without pay, where there are reasonable grounds to believe that such official has seriously breached his or her fiduciary trust to the Navajo People and such leave will serve the best interests of the Navajo People.

D. The Navajo Election Administration shall, upon notice and opportunity for response, remove school board members no longer possessing the necessary qualifications for office. Regarding his or her removal, an individual may within 10 calendar days file with the Office of Hearings and Appeals a statement of grievance pursuant to 11 N.N.C. § 341.

E. The Navajo Election Administration shall, upon notice and opportunity

for response, remove Navajo Nation Board of Education members no longer possessing the necessary qualifications for office. Regarding his or her removal, an individual may within 10 calendar days file with the Office of Hearings and Appeals a statement of grievance pursuant to 11 N.N.C. § 341.

History

CF-13-06, February 3, 2006. The Navajo Nation Board of Education Election Act of 2006. Added § 240(E).

CJY-41-03, July 24, 2003.

Note (2005). At Subsection (B)(1)(d), "absensence" changed to "absence" for purposes of statutory consistency.

Also, due to an omission in the 1998 amendments at Subsection (B)(1)(d), and for purposes of clarity, the words "of the" were inserted between "permission" and "District Grazing Committee."

CAP-38-98, April 22, 1998. Subsection on *District Grazing Committee members* was added. The same resolution also provided amendments to 3 N.N.C. § 871 *et seq.* and 11 N.N.C. § 8(B)(4).

CAP-23-90, April 6, 1990.

See also, 3 N.N.C. § 871 *et seq.* and 11 N.N.C. § 8(D)(3).

Annotations

1. Grounds for removal

"Serious allegations of any of the factors given in 11 N.T.C. § 211 [1984-1985 Supp.], combined with some evidence of those allegations, are also grounds for placing a Chairman or Vice Chairman on administrative leave." *In re: Certified Questions II*, 6 Nav. R. 105, 118 (Nav. Sup. Ct. 1989).

§ 241. Officials subject to recall; recall affidavit; recall petition

A. All elected officials may be removed from office if sixty percent (60%) of the registered voters who voted in the last election for the office in question file a petition seeking the official's removal.

B. Any five or more registered voters may begin recall by filing a notarized affidavit constituting themselves as a petitioner's committee which shall be responsible for circulating and filing a recall petition. For recall of a President, Vice-President, Delegate, Chapter Officer, Other Elected Official, or school board member, members of the petitioners' committee shall be registered voters of the Chapter or Chapters, which are represented by the elected official. A single petition is required for each elected official to be removed.

C. The petitioners' affidavit shall contain the names and addresses of

the members of the petitioners' committee, one address to which notices to the committee shall be sent, and the name of the elected official subject of recall.

D. No petition of recall may be circulated or signed until such affidavit is filed with the Election Administration.

E. The petition shall be in the form specified by the Board, and shall allow voter to sign only that portion of the petition designated for the Chapter in which the voter is registered, and shall contain:

1. A general statement of not more than two hundred words setting forth the ground or grounds on which the recall is sought;
2. The name of the official whose recall is sought;
3. The signature, the chapter, and census number of each registered voter who voted in the last election for the office in question; and
4. In the event the voter signs the petition with a thumbprint, the signature of two persons who witnessed the signing, along with the chapter and census number information for each witness.

F. The ground or grounds for recall is for the signing voters, who shall be the sole and exclusive judges of the legality, reasonableness, and sufficiency of the ground or grounds assigned for the recall. The ground or grounds shall not be subject to review.

G. When filed, the petition shall have attached a notarized affidavit of each circulator which shall state that:

1. The circulator personally circulated the petition copy;
2. All signatures were affixed in his or her presence and are to the best of his or her knowledge genuine signatures of registered voters; and
3. Each voter read, or had to read to him or her, and/or translated for him or her the full statement of the grounds or grounds for recall.

H. The payment of, or promise to pay, anything of value for the circulation of a petition or for procurement of any signature shall invalidate the entire petition.

History

CAP-23-90, April 6, 1990.

Cross Reference

11 N.N.C. § 246(A).

Annotations

1. Requisites of recall petition

Responsibility for following requirements in circulation of recall petition rests with recall committee. *Arthur et al. vs. Navajo Board of Election Supervisors, and Thomas*, 7 Nav. R. 340 (Nav. Sup. Ct. 1998).

2. Removal of chapter officials

Under prior statutory provision, it was held that "the procedures established at 2 NTC § 4005 for removal of chapter officials were not intended to be followed at the Board's discretion. [*Mustach vs. Navajo Board of Election Supervisors*, 5 Nav. R. 115, 118.] They function to protect the due process rights of signatories of a removal petition and affected chapter officials." *In re Removal of Katenay*, 6 Nav. R. 81, 84-85 (Nav. Sup. Ct. 1989).

3. Purpose of recall

"Recall provisions are a means through which the public voice their dissatisfaction with their elected officials who are subjected to removal from their elected offices." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 1 (Nav. Sup. Ct. December 21, 2001).

4. Procedures

"Noncompliance with these and other requirements may serve as grounds for challenges, 11 N.N.C. § 243." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 2 (Nav. Sup. Ct. December 21, 2001).

"The procedures in 11 N.N.C. § 241, *et seq.*, require strict adherence to a process free from fraud, misrepresentation, and other improprieties. Assurances are built into the procedures to protect the integrity of the process." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 1 (Nav. Sup. Ct. December 21, 2001).

5. Recall committee

"The burden of knowing and following the laws and rules on the recall process rests with a validly formed recall committee. After all, it is common Diné knowledge that one does not undertake a monumental task, such as the recall of a naat'aanii, without preparation, planning, and understanding the process to accomplish that end." *Arthur, et al. v. Navajo Board of Election Supervisors, et al.*, 7 Nav. R. 340, 345 (Nav. Sup. Ct. 1998).

§ 242. Filing of petition; sufficiency

A. A petition for recall shall be filed with the Navajo Election Administration no later than 180 days after the filing of the affidavit of the committee initiating recall proceedings. Failure to file a petition within this period shall render the recall null and void.

B. After signatures have been obtained, the committee shall file the completed petition with the Election Administration which shall review the petition for sufficiency within not more than 30 days. A petition shall be deemed sufficient when it appears to be signed by the requisite number of

registered voters as set out in 11 N.N.C. § 241(A) and each signatory has complied with the requirements of 11 N.N.C. § 241(E)(3). A petition which is found to be sufficient shall be certified by the Navajo Election Administration.

C. In the event a petition is insufficient, the director shall notify the petitioner's committee of his or her findings and the reasons why the petition is insufficient. The committee may withdraw the petition and within 15 days thereafter, refile the amended petition as an original petition. The 15 day period shall be in addition to the 180-day period set out at 11 N.N.C. § 242(A).

History

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Annotations

1. Construction and application

"NEA's sole responsibility is to certify that 'it appears' that sixty percent of the registered voters who voted in the last election signed the recall petition." *In the Matter of the Recall Challenge by Anderson H. Morgan, Sr.*, No. SC-CV-11-06, slip op. at 3 (Nav. Sup. Ct. May 25, 2006).

"The Election Administration does not have the discretionary function of accepting more than two recall petitions and permitting a recall committee to file names in segments." *Arthur, et al. v. Navajo Board of Election Supervisors, et al.*, 7 Nav. R. 340, 344 (Nav. Sup. Ct. 1998).

"The Election Code and its implementing rules clearly state that a recall committee has only one opportunity to submit additional names upon a finding of insufficiency." *Arthur, et al. v. Navajo Board of Election Supervisors, et al.*, 7 Nav. R. 340, 343 (Nav. Sup. Ct. 1998).

"The law is clear that the first filing of a recall petition is the initial petition and a subsequent filing is an amended petition." *Arthur, et al. v. Navajo Board of Election Supervisors, et al.*, 7 Nav. R. 340, 343 (Nav. Sup. Ct. 1998).

2. Petition defects

"After the Election Administration completes verification of signatures on the initial petition, finds the petition insufficient, and informs the recall committee, the committee has 15 days to cure the defects in the initial petition or refile the petition with additional names." *Arthur, et al. v. Navajo Board of Election Supervisors, et al.*, 7 Nav. R. 340, 343 (Nav. Sup. Ct. 1998).

3. Sufficiency of petition

"A person's attitude is one of subjective interpretation and for an attitude to

ever rise to the level of being judicially reviewable, there must be specific instances of conduct demonstrating the alleged 'attitude'. Appellant's Statements of Grievance do not contain those specific instances and do not show that even one voter failed to cast a ballot because of an election official's improper attitude, much less that the result of the election was changed." *Williams v. Navajo Election Commission and Board of Election Supervisors*, 5 Nav. R. 25, 27 (Nav. Ct. App. 1985).

"Nowhere in the Statements of Grievance filed by the appellant is there any connection made between the publication of the wrong time for the polls to close and failure of any registered voter to vote for appellant. Even more telling, there is not a showing that a single registered voter failed to vote for either candidate because of a belief that the polls closed at 5:00 p.m. rather than 7:00 p.m. Appellant has not overcome the presumption that the election results were regular and proper." *Williams v. Navajo Election Commission and Board of Election Supervisors*, 5 Nav. R. 25, 27 (Nav. Ct. App. 1985).

§ 243. Petition challenges; hearings

A. The Navajo Election Administration shall hold all petitions which have been certified sufficient for a period of 10 days during which time a challenge under oath and notarized may be filed with the Office of Hearings and Appeals by a registered voter.

B. The challenge shall be in a form specified by the Office of Hearings and Appeals and shall state:

1. The names of the signing voters against whom the challenge is lodged; and

2. The ground or grounds of the challenge, which may specifically include violations of 11 N.N.C. § 241(H), and a short statement explaining the ground or grounds of the challenge.

C. Within five days of the date of filing, the Office of Hearings and Appeals shall review the challenge to determine whether or not it meets the requirements of 11 N.N.C. § 243(B) and whether or not the challenge, if true, would cause a change in the sufficiency of the recall petition.

D. If the Office of Hearings and Appeals determines that the challenge meets the requirements of 11 N.N.C. § 243(C), it shall hold a hearing on the challenge not less than three nor more than 10 days after its finding that the challenge is sufficient. The Election Administration shall forthwith mail to the committee, the challenged signing voter, the party or parties initiating the challenge, and others the Office of Hearings and Appeals may require for the hearing, a copy of the challenge along with notice of the time and place of hearing, which notice shall also contain a warning that failure to appear at the hearing shall constitute just cause for removal of the signature(s) from the recall petition.

E. Challenge hearings regarding recall petitions shall be conducted pursuant to rules and regulations established by the Office of Hearings and Appeals.

F. The party or parties initiating the challenge shall have the burden of proving the allegations contained therein by clear and convincing evidence.

G. The hearing decision shall be certified to the party or parties initiating the challenge and the committee within 10 days of the hearing. Appeal may be made by either the committee or the party or parties initiating the challenge to the Navajo Nation Supreme Court within 10 days of the date of decision. A transcript of the hearing shall be filed within 30 days of the filing of Notice of Appeal. The Supreme Court shall review the appeal no later than 30 days from the date of filing of the transcript. Review by the Supreme Court shall be limited to: (1) the sufficiency of the recall petition, exclusive of the ground or grounds of the petition; and (2) whether or not the decision of the Office of Hearings and Appeals is supported by sufficient evidence.

History

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Annotations

1. Procedures

"It cannot inquire into alleged fraud or other improprieties. If the elected official believes improprieties occurred, it is his or her responsibility to file a challenge to specific signatures on the petition." *In the Matter of the Recall Challenge by Anderson H. Morgan, Sr.*, No. SC-CV-11-06, slip op. at 3 (Nav. Sup. Ct. May 25, 2006).

"If the official challenges the petition, NEA holds it pending the outcome of the challenge, and the official must present evidence to OHA." *In the Matter of the Recall Challenge by Anderson H. Morgan, Sr.*, No. SC-CV-11-06, slip op. at 3 (Nav. Sup. Ct. May 25, 2006).

"Once this Court is authorized by statute to review administrative matters, (NRCAP) [Navajo Rules of Civil Appellate Procedure] is applicable so long as these rules comply with the intent of the recall provisions of the [E]lection [C]ode. For example, once it is determined by a party to appeal to this court, he or she is held to not only the recall provisions requirements, but also to applicable sections of the NRCAP, such as Rule 7 as well as other sections of the NRCAP, i.e. Rule 5(b) or Rule 9." (Footnotes omitted) *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 5 (Nav. Sup. Ct. December 21, 2001).

"The procedures in 11 N.N.C. § 241, et seq., require strict adherence to a process free from fraud, misrepresentation, and other improprieties. Assurances are built into the procedures to protect the integrity of the process." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 1 (Nav. Sup. Ct. December 21, 2001).

2. Grounds for challenges

"Noncompliance with these and other requirements may serve as grounds for challenges, 11 N.N.C. § 243." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 2 (Nav. Sup. Ct. December 21, 2001).

3. Time considerations

"We have a duty to point out the importance of complying with statutory timelines. In this case, regardless of the stringent timelines, the (OHA) [Office of Hearings and Appeals] scheduled a hearing six days beyond the required maximum time of 10 days. The hearing should have occurred on or before June 23, 2001. Instead, it was held on June 29, 2001, and not completed for another seven days. The OHA recessed and reconvened on July 6, 2001. The hearing was completed 15 days beyond the time it should have been heard and completed. The recall provisions require that the hearings must be held and completed no later than 10 days from the date of the determination. It is mandatory that the OHA comply with the strict timelines." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 6 (Nav. Sup. Ct. December 21, 2001).

" ... [T]he recall provisions require this court to hear appeals within 30 days. We interpret that to mean a decision must be made within the 30 days when all else is complied with in a timely manner. Here, this Court was convinced that more time was needed by the Appellants to submit the transcripts due to circumstances not in their control. Rule 5(b) of (NRCAP) [Navajo Rules of Civil Appellate Procedure] is applicable here and this court in its application is required to use reasonable discretion. *In Re: Estate of Wauneka*, 6 Nav. R. 63, 64 (1988). While we have discretion to extend timelines in the submission of transcripts, Rule 7, NRCAP, requires this court to give priority to election cases. Given the circumstances of the case, we believe we have met that requirement." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 5-6 (Nav. Sup. Ct. December 21, 2001).

"Sections of the recall provisions set out stringent timelines including when this Court can hear this matter. However, statutory timelines may be waived.... Records submitted to the Court reflect that NEA [the Navajo Election Administration] was unable to submit transcripts to the Appellants so they could meet the time requirements. Appellants, as a consequence, requested of this Court, an extension for submission of the transcripts. ...The Court granted the request.... The extension was fair and reasonable given the circumstances. In addition, neither NEA nor the committee objected or insisted upon a shorter extension. This court concludes that all parties involved, including the NEA, waived their rights to adhere to strict timelines set out in the recall process." *Barton, et al. v. Dilkon Recall Committee*, No. SC-CV-30-01, slip op. at 5 (Nav. Sup. Ct. December 21, 2001).

4. Law governing

"The Navajo Election Code (Title Eleven) governs all appeals of decisions filed by the Navajo Board of Election Supervisors." *Secatero, et al. v. Redhouse, et al.*, 6 Nav. R. 312 (Nav. Sup. Ct. 1990).

5. Standards of review

"The statute places a high burden on the elected official to present to OHA clear and convincing evidence that the petition is insufficient." 11 N.N.C. § 243(F). NEA and OHA do not have that burden. *In the Matter of the Recall Challenge by Anderson H. Morgan, Sr.*, No. SC-CV-11-06, slip op. at 3-4 (Nav. Sup. Ct. May 25, 2006).

"*Johnson [v. June]*, 4 Nav. R. 79 (1983)] sets forth standards for the court to apply when reviewing the actions of the Board in matters of election dispute. These standards follow the theories that election results are presumed to be regular and proper and that the contestant must overcome that presumption by showing that the alleged misconduct or irregularity was of such a nature that the outcome of the election was changed or fair election prevented." *Williams v. Navajo Election Commission and Board of Election Supervisors*, 5 Nav. R. 25, 27 (Nav. Ct. App. 1985).

§ 244. Special recall elections; resignation; ballot

A. When a petition is certified sufficient by the Navajo Election Administration or in the event of a challenge, the Office of Hearings and Appeals' decision is sustained by the Navajo Nation Supreme Court, the Administration shall set a date for the special recall election and shall notify the committee and the official whose recall is sought that the petition has been certified and that it has set the date for a special recall election to be held not less than 30 days from the date of final certification. If a general or chapter election is set within 90 days of date the petition is finally certified, the special recall election shall be held during the general or chapter election.

B. Except in a recall involving the President or the Vice-President of the Navajo Nation, if the official whose recall is sought offers his or her resignation prior to the recall election, the election shall be canceled and a vacancy shall be announced.

C. Special elections arising from a recall petition or a vacancy caused by a resignation resulting from a recall petition shall be conducted pursuant to the provisions herein and rules and regulations of the Board. Resignations resulting from recall shall be official when accepted by the Navajo Election Administration. The name and picture of the official sought to be recalled shall be printed on the official recall election ballot.

D. A vacancy in office sought to be recalled shall be deemed to exist on final certification of the recall petition. Candidates, other than the official sought to be recalled, shall, within 14 days of certification of the recall petition, file their candidate applications and filing fees. The Election Administration shall determine the qualifications of each candidate within five days of filing and certify those qualified.

E. Special recall elections shall be determined by plurality votes; there shall be no run-off elections.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act of 2005. Amended § 244(B).

CJA-06-01, January 24, 2001.

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 245. Officials pro tem

A. If the date is set for a recall election for the Office of President of the Navajo Nation, he or she shall relinquish his or her Office and the Vice-President shall assume and exercise the office of the President.

B. If a recall special election is set for any other elective office, such offices shall be filled or remain vacant pursuant to the provisions of § 161(B) and (C).

History

CAP-23-90, April 6, 1990.

§ 246. Limitation on recall petition

A. No recall affidavit shall be filed against any official until he or she had held office for a minimum of 180 days.

B. If an official subject to recall wins the recall election, he or she shall continue to serve throughout the term for which he or she was elected.

History

CAP-23-90, April 6, 1990.

§ 247. Ineligibility of removed official

Any official who resigns or is removed pursuant to this subchapter shall be ineligible to run for any Navajo Nation elective office for a minimum of eight years from the date of resignation or the date of the recall election.

History

CAP-23-90, April 6, 1990.

Cross Reference

See also, 11 N.N.C. § 8(C) (7), qualifications for Chapter Officer positions.

§§ 248 to 260. [Reserved]

Subchapter 14. [Reserved]

§§ 261 to 280. [Reserved]

Subchapter 15. Voter Registration

§ 281. Eligibility of voters; residency; change in voter registration

A. All persons who are enrolled on the Agency Census roll of the Bureau of Indian Affairs as members of the Navajo Nation shall be eligible to vote in Navajo Nation elections after they have reached the age of 18 years, provided they comply with the voter registration requirements set forth in 11 N.N.C. § 282.

B. A voter's residence shall be determined as that place in which a person's habitation is fixed and to which, whenever he or she is absent, he or she has the intention to return.

C. Any Navajo person living outside the Navajo Nation shall be considered a resident eligible for registration and voting if he or she is a member of a Chapter or is otherwise eligible for absentee voting under 11 N.N.C. § 121.

D. A change in registration from one Chapter to another can only be made by transfer of registration from the old Chapter to the new Chapter using the form specified by the Board. No transfer of registration will be allowed within 30 days before any election.

1.¹ Upon registering within a new chapter, one is not qualified to vote or be a candidate for any office in a particular chapter until the Election Code provisions have been fully complied with.

E. All members of the Navajo Nation who have relocated as a result of the Navajo-Hopi Land Dispute shall remain eligible to vote in Navajo Nation elections in accordance with the provisions of this Code. Such persons upon presenting adequate proof of relocation to the Board may vote by absentee voting procedure before election or by appearance in person on the designated election day at the Election Administration in Window Rock. Until relocation, Navajo persons residing upon Hopi Partitioned Lands shall be eligible to vote at their designated Chapter.

History

CAP-23-90, April 6, 1990.

§ 282. Registration form; appeal

A. A voter registration roll listing each registered voter by Chapter shall be maintained by the Board at the Election Administration in Window Rock. The Board shall keep the register open, subject to the provisions of Subsection (A)(1) below, during regular business hours, beginning 10 days after each general, chapter or special election and continuing until 30 days prior to the next primary, general or chapter election or in the event of a special election, until the date the Board declares a vacancy.

1.¹ In the event of a disputed election, the Board may extend the number of days during which voter registration is closed following an election from 10 days to no more than 30 days. The Board may apply its

discretion regarding this period during which voter registration is closed to any one, some, or all Chapters, depending upon the number of Chapters affected by the election dispute.

B. While the register is open, any unregistered member of the Navajo Nation, upon proving to the Election Administration and any registrar that he or she possesses the qualifications specified in 11 N.N.C. § 281 shall be permitted to register.

C. Such registrar shall issue to those registered in the above period a copy of the registration bearing the name of voter, voter's date of birth, home address, polling place at which they will be permitted to vote and other pertinent information.

D. The voter's registration form shall be in triplicates, each bearing identical information. Registrars shall retain two copies, and one shall be given to the voter. At the close of the registration period, an alphabetically arranged list of all persons registered to vote in each Chapter shall be prepared and processed by computer and shall be certified by the Board.

History

CAP-23-90, April 6, 1990.

§ 283. Cancellation of registration

The Board shall examine the poll lists containing the names of all Navajo voters who voted in the last general and chapter elections. Any registered voter who did not vote in the general and chapter elections consecutively shall be notified by the Election Administration that he or she will be removed from the poll if he or she does not respond by card provided to him or her within 30 days. The registration of persons so notified who do not respond within the 30 days provided will be canceled and their names shall be removed from the roll of registered voters. The Chairperson of the Board shall indicate on the canceled registration the date of cancellation and the reason for cancellation. Notice by regular mail shall be sent to every voter who has had his or her name canceled from the register of voters. All voters whose registration has been canceled must re-register as set forth in 11 N.N.C. § 282 in order to vote in a primary, a general and chapter election.

History

Note (2005). "Chairman" changed to "Chairperson."

CAP-23-90, April 6, 1990.

§§ 284 to 300. [Reserved]

Subchapter 16. [Reserved]

§§ 301 to 320. [Reserved]

Subchapter 17. Election Officials

§ 321. Board of Election Supervisors—Powers and duties

A.¹ The general powers and duties of the Board of Election Supervisors are:

1. To administer, implement and enforce the Navajo Election Code.
2. To supervise generally all tribal elections.
3. To compile information regarding elections, and distribute and educate the Navajo public to include printing and publishing the election Code and procedures in pamphlet form and distribution to all certified chapter officials, candidates, poll officials, and registrars.
4. To hear all election disputes to include the powers to subpoena witnesses.
5. To make Board and Administration policy decisions.
6. To establish rules and regulations, and interpret the Election Code consistent with Navajo Nation laws.
7. To obtain and maintain uniformity in the application of the Election Code and operation of the Election Office.
8. To develop and recommend to the Navajo Nation Council all apportionment plans for election purposes, with the exception of school board apportionment plans, which shall be developed and adopted by the Education Committee of the Navajo Nation Council for use in school board elections.
9. To hire and maintain direct authority over the Director of the Election Administration Office and confirm the hiring of the Deputy Director and maintain general supervision over all election staff to carry out authority vested in the Board.
10. To develop and submit separate annual budget for the Board and the Election Administration to include devising and managing a revolving account utilizing filing, penalty and resignation fees for special election costs in addition to the annual appropriation for this category.
11. To coordinate with the county, state and federal election agencies efforts, including seeking and obtaining from various governmental entities and private organizations funding and support to carry out the duties and responsibilities set out in the Election Code.
12. To establish subcommittees and delegate to them the authority to certify elections, and to make rules and regulations not inconsistent with the Election Code.
13. To initiate recounts of ballots, where necessary.
14. To maintain the Election Administration Office and staff

independent under its supervision with the Intergovernmental Relations Committee.

15. To maintain such staff and consultants including legal counsel as may be provided for in the annual Navajo Nation Budget of the Board.

16. To recommend the withdrawal of land for the establishment of a building facility which is to be separate from other entities and convenient to the public and to request funding from the Navajo Nation to erect such a public building for the operation of the Election Office.

17. To procure necessary supplies, services, equipment and furniture purchases and to enter contracts through the tribal process.

18. To delegate authority to the Election Office not inconsistent with the Election Code.

19. To bring action as deemed necessary and proper for the enforcement of the Election Code through the Attorney General and report said violations/offenses to the Ethics and Rules Committee, where necessary.

20. To prepare instructions for registration drive and conduct Navajo Nation elections.

21. To instruct and advise the chapter officers, poll officials and chapter registrars as to the proper methods of performing their duties as prescribed by the Election Code.

22. To report possible Navajo Election Code offenses to the Attorney General and the Ethics Office of the Navajo Nation and recommend such action as is deemed necessary and proper for the enforcement of the Election Code.

History

CJY-41-03, July 24, 2003.

Note (2005). Regarding Subsection (A)(4) above, the Navajo Board of Elections Supervisors no longer possesses the authority to hear and decide election disputes. CJA-05-01. Also, concerning Subsection (A)(11), "organization" changed to "organizations" for purposes of statutory format.

CJA-06-01, January 24, 2001.

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross Reference

See also, 2 N.N.C. § 871 et seq.

With respect to the Board's authority over the Director, Navajo Election

Administration, as referenced above at Subsection (A)(9), *see also*, 2 N.N.C. § 877 (powers and duties of Director and staff).

§ 322. Authority to make rules and regulations

Except for hearing rules of the Office of Hearings and Appeals, the Board of Election Supervisors shall have the authority to make and enforce rules and regulations not inconsistent with this chapter concerning any matter within the jurisdiction of such board. Such regulations shall have the force and effect of laws of the Navajo Nation.

History

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross Reference

See also, 2 N.N.C. 873(B)(6) and 11 N.N.C. § 12.

§ 323. Composition; election

A. The Navajo Board of Election Supervisors shall consist of ten members, all of whom shall be elected pursuant to Subsection (B) below. All members shall be residents of the Agency they seek to represent.

B. Candidates for the Board of Election Supervisors shall file candidate applications on an Agency-wide basis pursuant to a procedure not inconsistent with §§ 21-42. In addition, each candidate:

1. Shall meet qualification requirements under this section.

2. Must not hold the position of any Navajo Nation elective office, as covered by the Election Code, including a School Board member position nor be a candidate for an elected office other than the position of a Board of Election Supervisors. Winners at the Primary Election shall consist of candidates receiving the four or two highest votes from the District(s) within an Agency. These four or two top candidates shall be placed on the General Election Ballot for Agency election. The two or one candidate(s) receiving the highest votes shall be the winner(s) and shall represent the Agency on the Board of Election Supervisors.

C. The Chairman of the Navajo Board of Election Supervisors shall be selected by the Board from among the members of the Board.

D. The Officers will be selected by members of the Board.

History

Note (2005). At Subsection (B), for grammatical purposes, "a" changed to "an."

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross Reference

Concerning Subsection (A) above, *see also*, 2 N.N.C. § 872(A).

§ 324. Qualifications

A. Board members shall not have been convicted of a felony or any misdemeanor involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery. Board members must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Nation Ethics in Government or Election Laws.

B. Board members must not be biased and shall be in a position to initiate nonpartisan measures to urge and facilitate each person's right to vote for his or her choice of candidate.

C. Must be 30 years of age.

D. Must be a registered voter of a chapter within the agency that he or she will represent.

E. Must be able to understand and speak Navajo and English and write the English language.

F. Must be aware of the Navajo Nation government.

History

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 325. Term of office

A. The terms of office of the members of the Navajo Board of Election Supervisors shall be for four years from date of installation. Elected Board members shall be entitled to take office 10 days after certification of the election.

B. The Board members shall serve until their terms expire, they resign, or are removed. The terms shall be staggered consistent with term expiration periods in 1990 and 1992.

History

CAP-23-90, April 6, 1990.

§ 326. Vacancies within second half of term of office

A. A vacancy occurring on the Board of Election Supervisors within the second half of a term of office shall be filled by appointment by majority vote of the Agency Council for the agency within which the vacancy exists. The selection shall be made from recommendations by the chapters within the agency affected, in the form of duly adopted chapter resolutions. Each chapter may recommend one candidate for appointment. The Agency Council shall review the candidates for appointment and shall make its determination out of those recommended. The person appointed to fill any such vacancy must be a registered voter of a chapter from within the same agency of his or her predecessor, and shall serve until the normal expiration date of the term he or she has filled.

B. All Board members appointed pursuant to this section shall be required to meet the qualifications for the position as set forth at 11 N.N.C. § 324 herein and he or she must be a registered voter of a chapter from within the same agency of his or her predecessor.

C. Appointments pursuant to this section are subject to certification by the Navajo Election Administration as set forth at 11 N.N.C. § 162.

History

CS-55-05, September 2, 2005. The Navajo Nation Special Elections Act. Amended § 326(A).

CJA-06-01, January 24, 2001.

CAP-23-90, April 6, 1990.

§ 327. Removal

Members of the Board of Election Supervisors may be removed from office only in accordance with section 241 *et seq.*, except where a Board member has accumulated four consecutive unexcused absences, in which case, the Board may request his or her resignation or recommend his or her removal in accordance with section 241.

History

CAP-23-90, April 6, 1990.

§ 328. Registrars; poll clerks; poll judges

A. The Board of Election Supervisors, acting upon the recommendation of the Chapter organization, shall appoint such registrars, poll clerks, and poll judges to conduct elections at the various chapters.

1. There shall be at least two poll clerks at each poll who shall receive a sixty-five dollars (\$65.00) per day stipend during elections and forty dollars (\$40.00) per day for training sessions.

2. There shall be at least two poll judges at each poll, one of whom shall be designated as the chief judge. Each poll judge shall

receive sixty-five dollars (\$65.00) per day stipend during elections and forty dollars (\$40.00) per day for training sessions.

3. When deemed necessary by the Board of Election Supervisors, the number of poll clerks and judges may be increased for any polling site.

B. No person whose spouse, parent, child, brother, sister, or grandparent is a candidate on the ballot shall serve as poll clerk or poll judge within that precinct or chapter. At the discretion of the Board, a poll clerk or poll judge may be disqualified or transferred to another precinct to avoid any disputes.

C. A chapter's recommendation for appointment of poll judges and poll clerks must be in the office of the Board of Election Supervisors at least 30 days before a general or chapter election.

History

CO-56-04, October 19, 2004.

CAP-23-90, April 6, 1990.

Cross Reference

See also, 11 N.N.C. § 81.

§§ 329 to 340. [Reserved]

Subchapter 18. Administrative Election Code Complaints and Hearings

§ 341. Office of Hearings and Appeals

A.¹ The Office of Hearings and Appeals shall have the authority to implement procedures in resolving disputes pertaining to elections as follows:

1. Within 10 days of the incident complained of or the election, the complaining person must file with the Office of Hearings and Appeals a written complaint setting forth the reasons why he or she believes the Election Code has not been complied with. If, on its face, the complaint is insufficient under the Election Code, the complaint shall be dismissed by the Office of Hearings and Appeals.

2. If the complaint is not dismissed, the Office of Hearings and Appeals shall conduct a hearing within 15 days thereafter to determine if the allegations in the complaint are true and are supported by the law. At the hearing, the complainant and respondent may appear in person or through legal counsel. Except otherwise provided by law, the complainant shall have the burden of proving the allegations contained in the statement of dispute by clear and convincing evidence.

3. The Office of Hearings and Appeals shall issue a written determination within 10 days after the hearing on each complaint. At the conclusion of a hearing, the Office of Hearings and Appeals may issue a

preliminary oral determination or request briefs from the parties by a specified date.

4. A party who wishes to appeal from a decision of the Office of Hearings and Appeals must file a Notice of Appeal with the Supreme Court of the Navajo Nation within 10 days after the decision is made. Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

History

CJA-05-01, January 24, 2001.

Cross References

Appeals generally, see 7 N.N.C. § 801 *et seq.* and the *Navajo Rules of Civil Appellate Procedure*.

Annotations

1. "Standing"

Non-Candidates. "It [is] clear that a voter does not have standing to complain of a lack of a candidate's qualification." *Tommy C. Begay v. Navajo Board of Election Supervisors & Navajo Election Administration*, 7 Nav. R. 139, 141 (Nav. Sup. Ct. 1995), citing *Fulton*.

"[T]he Navajo Nation Council specifically restricted the right to challenge election results to candidates who can show aggrievement, injury, or a denial of clear rights." *Fulton v. Redhouse and Navajo Board of Election Supervisors*, 6 Nav. R. 333, 334 (Nav. Sup. Ct. 1991).

"By the terms of the statute, the Board cannot be 'a party' who can appeal its own decision." *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 303 (Nav. Sup. Ct. 1990).

2. Mandatory Procedural Requirement In Election Disputes

"Because we require that final appealable decisions be written on paper, it is not possible to file an unwritten court or administrative agency final decision with this Court. It necessarily follows that it is not possible to have a tape recording of an oral decision 'certified' to meet the requirements of Rule 7. [...] The April 8, 1999 oral decision given from the bench does not satisfy Rule 7 of the Navajo Rules of Civil Appellate Procedure. Therefore, it cannot be used for computing the time period for filing this notice of appeal. [...] ... [T]he written final Board decision was signed on April 12, 1999. The time for appeal started to run from that date." *Gishey v. Begay, Jr.*, 7 Nav. R. 403, 405 (Nav. Sup. Ct. 1999).

"Given the principle of law that election requirements are mandatory prior to an election but 'directory only' following one, candidates must immediately assert their complaints within the ten (10) day period allowed by the statute or waive them." *Haskie v. Navajo Board of Election Supervisors*, 6 Nav. R. 336,

340 (Nav. Sup. Ct. 1991).

"We therefore hold that under 11 N.T.C. § 407 [now amended], if the tenth calendar day falls on a weekend or a holiday, then the appeal can be filed on the next working day which is not a weekend or holiday." *In re: Removal of Katenay*, 6 Nav. R. 81, 83 (Nav. Sup. Ct. 1989).

In a case decided prior to the Office of Hearings and Appeals assuming Election Code hearing functions, the Navajo Supreme Court held: "[T]he procedures established for resolution of election contests and disputes were not intended to be discretionary with the Board. The Tribal Council, for reasons of due process and speeding resolutions of election contests and disputes, intended that these procedures be followed." *Mustach v. Navajo Board of Election Supervisors*, 5 Nav. R. 115, 118 (Nav. Sup. Ct. 1987).

3. Pre-Election complaints; rule-making authority

"The Board has interpreted this statute [11 N.N.C. § 321(B)(1) now 11 N.N.C. § 341(A)(1)] to mean that if a candidate knows of an Election Code violation before an election, he or she must take action within 10 days of such an incident rather than do so after the election. Given the reasons behind the rules on statutory interpretation of election laws, the Board's interpretation makes sense. 2 N.N.C. § 873(B)(6) and 11 N.N.C. § 321(A)(6) both empower the Board to interpret the Navajo Election Code consistent with Tribal laws." *Haskie v. Navajo Board of Election Supervisors*, 6 Nav. R. 336, 339 (Nav. Sup. Ct. 1991).

4. "Sufficiency" review

"The words 'on its face' indicate that the preliminary review for sufficiency must be confined to the allegations made by the grievant on the Statement. If the Board is unable, upon such a review, to determine that those allegations necessarily fall short of providing a basis for relief, a summary dismissal of the Statement is inappropriate." *Secatero v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 389 (Nav. Sup. Ct. 1991).

"In a case decided prior to the Office of Hearings and Appeals assuming Election Code hearing functions, the Navajo Supreme Court held: 'This Court cannot determine whether the various claims of the appellants are supported by the facts; nor can it decide whether the recall election was irregular and should be invalidated, as the appellants request. Rather, the sole question before this Court is whether the Board properly determined that the appellants' Statement of Grievance, on their faces, were insufficient for further proceedings.'" *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 387 (1991).

"Review of Complaint. Concerning 11 N.N.C. § 321(B)(1) [now 11 N.N.C. § 341(A)(1)], the words 'on its face' indicate that the preliminary review for sufficiency must be confined to the allegations made by a grievant on a Statement. If the Board [now the Office of Hearings and Appeals] is unable, upon such a review, to determine that those allegations necessarily fall short of providing a basis for relief, a summary dismissal of the Statement is inappropriate. That is, if the Board [now the Office of Hearings and Appeals] must look to evidence beyond what is proffered by a grievant on the Statement

to determined that his or her Statement is insufficient, it clearly does not meet the criteria for dismissal as being a Statement 'insufficient on its face.' " *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 389 (Nav. Sup. Ct. 1991).

"Similarities with Motion to Dismiss. For similarities between the 'sufficiency' requirement of 11 N.N.C. § 341(A)(1) and those to be considered by a court when approached with a motion to dismiss," see *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 388-389 (Nav. Sup. Ct. 1991).

"Investigations. Not only is there no authorization in the Election Code for an investigation before a hearing on a grievance, but the 1990 amendments to the Election Code eliminated the authorization for an independent investigation at any point in the grievance review process." *Secetaro et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 390 (Nav. Sup. Ct. 1991).

Discretion of the Board. In a case decided prior to the Office of Hearings and Appeals assuming Election Code hearing functions, the Navajo Supreme Court held: "The [Election] Board has considerable discretion in determining whether a statement is sufficient on its face. Absent a clear abuse of that discretion this Court will not disturb the Board's decision." *Brown v. Navajo Board Election Supervisors*, 5 Nav. R. 139, 140 (Nav. Sup. Ct. 1987).

"A Statement [of grievance] will be sufficient on its face if it specifies which election law was violated, and if it contains enough facts to raise the issue that the election results were not regular and proper. These facts, as they appear in the Statement, must support the allegation that an election law was violated. Finally, the Statement taken as a whole, which shall include all attached documents, must raise a possibility that the election results will be impeached." *Brown v. Navajo Board of Election Supervisors*, 5 Nav. R. 139, 140 (Nav. Sup. Ct. 1987). See also, *Williams v. Navajo Election Commission*, 5 Nav. R. 25, 28 (Nav. Sup. Ct. 1985).

5. Statutory Construction

"Both of these statutes [2 N.T.C. § 873(B)(6) and 11 N.T.C. § 321(A)(6) (now amended)] limit the Board discretion to interpret the Navajo Election Code of 1990 by requiring that such interpretations be consistent with Navajo Nation law." *Howard v. Navajo Board of Election Supervisors*, 6 Nav. R. 380, 381 (Nav. Sup. Ct. 1991).

"The statute assumes that the board [now the Office of Hearings and Appeals] has not exceeded its powers in interpreting the Election Code, and that the facts are sufficient to support a legally correct decision." *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 365 (Nav. Sup. Ct. 1991).

6. Standard of Review in Election Disputes; Burden of Proof

"After the Board [now the Office of Hearings and Appeals] has held a hearing, it must use a two-step test to reach a decision. The first step is whether the aggrieved party has proved the allegations in his or her statement of grievance with clear and convincing evidence. The second step is whether the aggrieved party has overcome the presumption of a valid and proper election, as

delineated in the *Johnson* principles. Irregularities that do not affect the election results or impeach the fairness will not succeed in overcoming the presumption." *Morris v. Navajo Board of Election Supervisors*, 7 Nav. R. 75, 76-77 (Nav. Sup. Ct. 1993).

"The Board is guided in its decision-making process by the burden of proof and must use a two-step test to reach a decision. The first step is whether the aggrieved party has proved the allegations in his or her statement of grievance with clear and convincing evidence. The second step is whether the aggrieved party overcame the presumption of a valid and proper election. Irregularities that do not affect the election results or impeach the fairness will not succeed in overcoming the presumption." *Morris v. Navajo Board of Election Supervisors*, 7 Nav. R. 75, 76 (Nav. Sup. Ct. 1993).

"The 1990 Election Code also imposes a burden of proof on the aggrieved party, which is to present clear and convincing evidence to prove the allegations in his or her statement of grievance." *Morris v. Navajo Board of Election Supervisors*, 7 Nav. R. 75, 76 (Nav. Sup. Ct. 1993).

"[T]his court applies the following standards to election disputes: 1. Election results are presumed to be regular and proper; 2. Irregularities or misconduct in an election which does not tend to affect the results or impeach the fairness of the result will not be considered; 3. Elections will not be set aside unless the facts definitely show such fraud and that there was no fair election; 4. After an election, election provisions are to be seen as directions unless the violations obstructed a free and intelligent vote, affected an essential element of a valid election or an omission of a direction voids the election." *Johnson v. June*, 4 Nav. R. 79, 82 (Nav. Ct. App. 1983).

7. Supreme Court jurisdiction and review

"The Navajo Nation Supreme Court has jurisdiction over appeals from decisions of the Navajo Board of Election Supervisors." *Morris v. Navajo Board of Election Supervisors*, 7 Nav. R. 75, 75 (Nav. Sup. Ct. 1993).

"The 1990 Election Code limits this Court's scope of review to whether the Board's decision is supported by sufficient evidence in the record." *Morris v. Navajo Board of Election Supervisors*, 7 Nav. R. 75, 76 (Nav. Sup. Ct. 1993).

In a case decided prior to the Office of Hearings and Appeals assuming Election Code hearing functions, the Navajo Supreme Court held: "This Court cannot determine whether the various claims of the appellants are supported by the facts; nor can it decide whether the recall election was irregular and should be invalidated, as the appellants request. Rather, the sole question before this Court is whether the Board properly determined that the appellants' Statement of Grievance, on their faces, were insufficient for further proceedings." *Secatero et al. v. Navajo Board of Election Supervisors*, 6 Nav. R. 385, 387 (Nav. Sup. Ct. 1991).

The statute assumes that the board has not exceeded its powers in interpreting the Election Code, and that the facts are sufficient to support a legally correct decision. *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 365 (1991).

"While the Board does have statutory discretion to interpret election laws, such discretion is limited, and the Navajo Nation Supreme Court has appellate jurisdiction to review whether the Board acted within its statutory discretion." *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 364 (Nav. Sup. Ct. 1991).

" ... [T]his Court will refrain from deciding issues that are properly within the authority of the Board to decide. This Court can only review the Board's decision on a properly filed appeal." *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 304 (Nav. Sup. Ct. 1990).

"An administrative agency cannot certify a question to this Court because that would violate separation of powers principles as well as their own powers." *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 304 (Nav. Sup. Ct. 1990).

8. Frivolous Appeals

"An appeal is 'frivolous' when it is not filed within the time permitted for an appeal; when the appeal is not perfected by the filing of the record or briefs; or when an appeal clearly lacks probable cause. An appeal lacks 'probable cause' when simple legal research discloses that points of law for the appeal are settled under our law or when a party does not have the right to take the appeal." *Tommy C. Begay v. Navajo Board of Election Supervisors & Navajo Election Administration*, 7 Nav. R. 139, 140 (Nav. Sup. Ct. 1995).

§§ 342 to 360. [Reserved]

Subchapter 19. Penal Provisions

§ 361. Bribery of electors

It is unlawful to give or promise any money or other thing of value to any person for the purpose of influencing said person to vote or refrain from voting at any Navajo Nation election or to vote for any particular candidate at such election; or to give, cause to give, or promise to be given, any money or other thing of value to any person with intent that any part of said money or thing of value shall be used for bribery in connection with any Navajo Nation election; or to knowingly give or cause to be given, any money to any person as reimbursement for money or other things of value expended by such person in whole or in part for bribery at any Navajo Nation election; provided, however, that it shall not be unlawful for any candidate personally or by agent to provide transportation to the polls to any voter.

History

CAP-23-90, April 6, 1990.

§ 362. Coercion of elector

It is unlawful to make use of force, or to request another person to use or threaten force, in order to influence any person's vote in any Navajo Nation election or to prevent any person from voting in any Navajo Nation election.

History

CAP-23-90, April 6, 1990.

§ 363. Intimidation of Navajo employees by employer

A. It is unlawful for any employer to threaten a Navajo employee with dismissal from employment, reduction of pay, loss of seniority, transfer, or less favorable working conditions, for the purpose of influencing such employee to vote or to refrain from voting or to vote for any particular person, in any Navajo Nation election.

B. It is unlawful for any employer to attempt by any means whatever upon his or her place of business to influence the vote of any Navajo employee beyond the employer's personnel policies.

C. It is unlawful for any employer to attempt to prohibit, limit or restrict the political activities of any Navajo employee beyond the employer's personnel policies.

D. As used in this section, the term "employer" means any natural person, association of natural persons, Navajo Nation enterprise, independent contractor, corporation, or other entity, employing one or more members of the Navajo Nation or engaging their services under contract, and any person acting as agent for such person, association of persons, Navajo Nation enterprise, corporation, or other entity.

E. No Navajo Nation employee shall utilize Navajo Nation work time, Navajo Nation funds, Navajo Nation property and other Navajo Nation employees for campaign purposes. A person running for any elected office shall do so on his or her own time. Violation shall warrant an investigation and appropriate action.

History

CAP-23-90, April 6, 1990.

§ 364. Interference with or corruption of election officer

It is unlawful for any person to offer to give a bribe to the Chairman or any member of the Board of Election Supervisors of the Navajo Nation or to any registrar appointed by the Board of Election Supervisors of the Navajo Nation or any poll judge or any poll clerk or Special Election Supervisor; or to influence or attempt to influence any of said officers in the performance of their official duties by means of force, or threat, or promise of any nature.

History

CAP-23-90, April 6, 1990.

§ 365. Violation of duty by election officers

It is unlawful for any Chairman or members of the Navajo Board of Election Supervisors, any registrar appointed by the Board of Election

Supervisors or any poll judge or poll clerk or Special Election Supervisors to knowingly and willfully fail or neglect to perform any duty under any part of this chapter in the manner prescribed by this chapter or to accept any money or other thing of value from any candidate or from anyone acting or purporting to act on behalf of any candidate.

History

CAP-23-90, April 6, 1990.

§ 366. Illegal registration or voting

It is unlawful for any person, knowing he or she does not possess the qualifications for eligibility to vote in Navajo Nation election, to register or attempt to register to vote in such Navajo Nation election, or to vote in such election; or for any person who is not registered as a voter of the Navajo Nation to vote or attempt to vote in any Navajo Nation election; or for any registered voter to vote in any precinct except the one he or she is registered as belonging to.

History

CAP-23-90, April 5, 1990.

§ 367. Penalties

A. Any Navajo or non-Navajo Indian married to a Navajo who shall violate any section of this subchapter shall be guilty of a misdemeanor as an offense against the Navajo Nation and upon conviction hereof shall be sentenced to imprisonment for not more than six months or to a fine of not more than one thousand two hundred dollars (\$1,200), or to both such imprisonment and fine.

B. Any non-Navajo who shall violate any section of this subchapter may be fined or expelled from Navajo Nation land by the Government Services Committee according to the procedure set by 17 N.N.C. § 1901, as amended, provided, however, that if any person is charged with an offense under this subchapter on the ground that he or she is not a Navajo Indian, the Court shall receive any evidence offered on behalf of the Nation that such person has registered to vote or has voted in a Navajo Nation election, and if the Court finds that such person has so registered or has voted, he or she shall be conclusively presumed to be a Navajo Indian, and the Court shall have jurisdiction to try his or her case and to execute its sentence upon him or her.

C. Any association, corporation, or other entity which shall violate any section of this subchapter shall be ordered to show cause before the Economic Development Committee and the Transportation and Community Development Committee why it should not be barred from receiving any lease, right-of-way, contract, franchise, or concession of any character whatsoever thereafter from the Navajo Nation. If, upon hearing of such other to show cause, it appears to the Economic Development Committee and the Transportation and Community Development Committee that the said corporation is guilty of violating such section, said association, corporation or other entity shall be barred for a period of not less than one year nor more than five years from receiving any lease, right-of-way, contract, franchise, or concession of any character

whatsoever from the Navajo Nation.

History

CAP-23-90, April 6, 1990.

§ 368. Severability

If any provision of this Code or any rule and regulation adopted hereunder or the application thereof to any person or circumstance is held invalid, the remainder of this Act and of the rules and regulations adopted hereunder or the application of such provision to other persons or circumstances shall not be affected thereby.

History

CAP-23-90, April 6, 1990.

§ 369. Effective date

The effective date of the Code shall be immediately upon approval of the Code by the Navajo Nation Council unless specific effective dates are set out in specific provisions of the Code.

History

CAP-23-90, April 6, 1990.

§ 370. [Reserved]

Chapter 2. Referendum/Initiative

§ 401. Referendum/initiative matters, exemptions

A. 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. Laws preserving peace, public health or safety and any laws determined and declared by the Navajo Nation Council to be of emergency nature shall be excluded from the referendum/initiative process. Yearly appropriations for a fiscal year budget shall also be exempt from the referendum/initiative process.

B. Use of trust funds, issuance of bonds, acquisition of property, acquisition of public utilities, the granting, extension, or enlargement of public utility franchise and rate regulation, tax measures against the Navajo Public for support of the government and public institutions, and ordinances or comprehensive plans for zoning shall not be exempted from the referendum / initiative process.

History

CMY-30-03, May 2, 2003.

CAP-23-90, April 6, 1990.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

§ 402. General

A. 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.

B. Referendum measures may be referred by a Chapter Resolution to the registered voters of the Chapter within that Chapter Area. Such measure must affect that Chapter only.

C. Initiatives may be placed on a ballot by petition of the registered voters.

1. Registered voters may petition to place a Navajo Nation initiative on the ballot of a general or special election.

2. Registered voters of a particular chapter may petition to place a chapter initiative on the ballot of that particular chapter's chapter election or special chapter election called specifically for an election on the initiative.

D. A referendum measure/initiative cannot be legally adopted except in conformity with the requirements of the Election Code set forth herein.

History

CMY-30-03, May 2, 2003.

CAP-23-90, April 6, 1990.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

§ 403. Referendum measures referred by the Navajo Nation Council and Chapters

A. 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.

B. A chapter may by resolution refer a measure for vote of registered voters within the chapter(s) which fall within the scope of the measure. The resolution shall place timelines on the election of the measure which shall be at the next regularly scheduled chapter election if such election is scheduled no sooner than 60 days following adoption of the resolution OR at a special chapter election to be held no sooner than 60 days and no 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 it is not exempt pursuant to § 401. The chapter shall make funding available to conduct the election.

C. Where a resolution refers to a future referendum election based upon a specific event, the Navajo Nation Council shall upon a foreseen or planned event refer the measure by resolution.

History

CMY-30-03, May 2, 2003.

CAP-23-90, April 6, 1990.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

§ 404. Initiatives by petition of registered voters

A. Registered voters may petition to place an initiative on a Navajo Nation general or special election ballot where the scope of the initiative affects the entire Navajo Nation and is not limited to a chapter or chapters. Registered voters may petition to place an initiative on a chapter OR special chapter election ballot where the initiative's scope is limited to the chapter or chapters. An initiative election shall be at the next regularly scheduled Navajo Nation or chapter election if scheduled no sooner than 60 days from the date of the Board's final certification of the initiative petition or at a special initiative election to be held no sooner than 60 days and not later than 120 days from the date of the Board's final certification of the initiative petition, subject to the conditions on special initiative elections set forth herein.

1. Where the registered voters, through a Petition Committee, seek to conduct an initiative election as a special election, independent of any regularly scheduled Navajo Nation or chapter election, the Petition

Committee shall provide the Election Administration with a non-refundable cashier's check in the amount of five hundred dollars (\$500.00), in the case of a chapter initiative, or two thousand five hundred dollars (\$2,500), in the case of a Navajo Nation initiative, to cover costs of conducting the special initiative election. The non-refundable cashier's check shall be provided to the Election Administration just prior to final certification of the petition and prior to the election being called by the Board of Election Supervisors pursuant to 11 N.N.C. § 404(B)(14)(c). The Election Administration shall deposit the cashier's check with the Navajo Nation Controller.

2. The Board of Election Supervisors shall not certify any petition nor call for any special initiative election where the Petition Committee fails or refuses to provide the special initiative election funds required by 11 N.N.C. § 404(A)(1).

3. Funds received by the Petition Committee to cover costs of conducting a special initiative election are subject to the restrictions on contributions by corporations and nonmembers of the Navajo Nation set forth at 11 N.N.C. § 209.

4. Each Petition Committee whose initiative appears upon the official ballot in any special initiative election shall, not more than 30 days after the initiative election, file with the Election Administration a sworn and signed itemized statement of receipts in a similar manner to that set forth for candidate expenses in 11 N.N.C. § 202.

5. Legislation adopted by a successful special initiative election shall not take effect until the statement of receipts required by 11 N.N.C. § 404(A)(4) is filed.

B. Petition requirements are as follows:

1. Any eligible registered voter may petition for an election on an initiative consistent with provisions herein.

2. A Petition Committee shall designate itself to draft, circulate, and file the petition. A listing of the name, address, chapter registration, and census number of each member of the Petition Committee and its designated representative shall be filed with the Election Administration prior to circulation of the petition. Only this Committee shall have the power to withdraw the petition.

3. A copy of the petition shall be filed with the Election Administration office before it is circulated for signatures.

4. This filed copy shall be verified by the Petition Committee that the language is the form of language to be used in the petitions thereafter circulated and the Election Administration shall review the scope of the initiative to determine whether it is exempt from the referendum/initiative process pursuant to 11 N.N.C. § 401.

5. Before the petition is circulated for signatures, the Election

Administration shall review the petition for sufficiency. Petitions shall be found sufficient where:

a. Each petition page has the official title of the initiative and a summary of the nature and purpose of the initiative proposed;

b. The petition has attached the full text of the initiative proposed so signers may read the contents. The Election Administration shall notify the filing party that each petition circulated for signature shall have said attachment;

c. Each petition page is numbered;

d. Each page of the petition states a warning clause "*liability may be incurred by unauthorized signing*"; and

e. Each petition must require of the signer, name (in printed form), chapter, census number or social security number, and date.

6. Each proposed initiative must be submitted to the voters as an individual proposal. Two or more proposals addressing separate and distinct legislation shall not be joined in a single petition.

7. The Petition Committee shall be informed that, for verification purposes, petitions must be kept separate according to the five agencies when the initiative is to be addressed to the whole Navajo Nation.

8. The Election Administration Office shall inform the Petition Committee of requirements set forth above.

9. The circulator upon obtaining signatures shall verify by making an oath and subscribing on each page that the signature, mark, or thumbprint obtained are the genuine signature, mark or thumbprint of the person whose name it purports to be and that he or she in fact has witnessed the execution of all the signatures on the page of the petition.

10. Those signatories who cannot write their names shall place their mark or thumbprint in the appropriate place and it shall be signed by a witness who shall also sign his/her name and state chapter registration and census number or social security number.

11. Fifteen percent (15%) of all eligible registered voters shall have signed the petition for an initiative to be placed on a ballot. For purposes of determining the fifteen percent (15%) signature requirement, the total number of eligible registered voters shall be the official number of registered voters, Navajo Nation-wide or for the particular chapter if a chapter initiative, as of the date the petition is first submitted to the Navajo Election Administration.

12. Filing requirements:

a. Petitions for the initiative to be voted upon shall be

filed no later than 90 days before the scheduled election. Filing shall be at the Election Administration office.

b. Where the petition is in response to an enactment by the Navajo Nation Council, petitions shall be filed no sooner than 30 days after enactment and no later than 90 days before the election.

c. A petition must be filed with the Election Administration within 180 days of the date of the Election Administration's determination that the petition was sufficient for circulation pursuant to 11 N.N.C. § 404(B)(3), (4) and (5).

d. Once the petition is filed with the Election Administration, it may not be removed or withdrawn for the purpose of adding or changing information. Petitions removed after filing with the Election Administration shall be rejected.

13. Verification; certification of sufficiency

a. When a petition is filed, the Election Administration Office shall stamp it indicating its receipt, time and a date of receipt, name of person who filed it, names of Petition Committee members and name of official who received it. Once filed and stamped, language and content shall not be changed.

b. The Election Administration staff shall examine, verify and certify the petitions as sufficient before ordering an election. Petitions shall be examined to determine sufficiency as to:

- 1). Name;
- 2). Address;
- 3). Chapter;
- 4). Census number or social security number;
- 5). Registration of voters;
- 6). Authenticity of signatures;
- 7). Witnessing of marks and thumbprint; and
- 8). Whether the requisite number of eligible registered voters signed the petition pursuant to § 404(B)(11).

c. If, within 10 days after the filing, the petition is determined insufficient by the Navajo Election Administration, the examining officers shall set forth reasons for insufficiencies. The Petition Committee representative will be notified by letter within five days of the determination. A hearing shall be granted to determine the validity or sufficiency only if the Petition Committee requests a hearing in writing with the Office of Hearings and Appeals within 10 days of the Election Administration's determination. The Office of Hearings and

Appeals shall set a hearing date to take place within a reasonable time.

d. Upon receipt of a request for hearing and upon a scheduling of a hearing date, all parties shall be notified.

e. The Office of Hearings and Appeals shall have the authority to call witnesses and inquire into the facts to determine authenticity of signatures. Power to call a witness shall include power to subpoena.

f. Notice of Appeal by either party may be made to the Supreme Court within 10 days of a final decision or order issued by the Office of Hearings and Appeals. Review by the Supreme Court is limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

14. Petitions determined valid and sufficient; objections and protests.

a. Once filed, the Navajo Election Administration shall hold the petition for 10 days. If no objections or protests are made within these 10 days, the Election Administration shall certify the petition as sufficient.

b. Objections or protests against a petition determined valid and sufficient are allowed under the following conditions:

1). The protesting or objecting party or parties must be eligible registered voters.

2). Protests and objections must address only the validity and sufficiency of the petitions.

3). Protesting or objecting parties who question the content of the measure, or merely believe measure to be unwise or difficult to execute shall not be allowed a hearing.

4). The protest shall be verified.

5). The protest shall be filed with the Office of Hearings and Appeals within 10 days of the Election Administration's determination. A hearing shall be requested by the protesting party.

6). Notices shall be given to all parties involved immediately by parties objecting or protesting parties.

7). Notice of Appeal by either party may be made to the Supreme Court within 10 days. Review is limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

c. Upon final certification of a petition, the initiative election shall be called by the Board of Election Supervisors.

History

Note (2005). For grammatical purposes, at Subsection (B)(13)(c), "request" changed to "requests."

CMY-30-03, May 2, 2003.

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

Annotations

1. Certified Questions

"Therefore, our appellate authority over OHA [referring to 11 N.N.C. § 404(B)(14)(b)(7)] gives this Court the jurisdiction to hear its certified questions, and *Election Supervisors* is overruled." *In the Matter of Two Initiative Petitions Filed by Navajo Nation President Joe Shirley, Jr.*, No. SC-CV-41-08, slip op. at 3 (Nav. Sup. Ct. July 18, 2008)–(Order of Correction entered July 22, 2008). [See, *In re Navajo Board of Election Supervisors*, 6 Nav. R. 302, 303–304 (Nav. Sup. Ct. 1990).]

2. Verification of signatures

"We interpret this language [§ 404(B)(13)(b)] to read as an affirmative duty on the part of the NEA. To simply remove signatures that otherwise provide valid information because of an illegible signature or a field left blank or incomplete, denies the People the opportunity to add their voice to the democratic process. We interpret the language of the law to mean that the NEA is compelled to use its regulatory due diligence (examine–ná nil9, verify–t'áásh ákót'é, and certify–bik'int'oót'áá[]) in verifying the identity of questionable signers. We find this especially important to the Navajo People, as some elders may struggle with filling out all of the required information, or may make a mistake. [...] We thus rule that errors, which do not demonstrate an intent to defraud the process or are indicative of malice, should not be fatal to the signer." *In the Matter of the Navajo Nation Election Administration's Determination of Insufficiency Regarding Two Initiative Petitions Filed by Navajo Nation President Dr. Joe Shirley, Jr., The Navajo Election Administration v. Dr. Joe Shirley, Jr.*, No. SC-CV-28-09, slip op. at 12–13 (Nav. Sup. Ct. July 30, 2009).

§ 405. Notice of election on a referendum measure or initiative

A. Once an election is set for a referendum measure/initiative, notice shall be published by the Navajo Election Administration.

B. The notice shall contain the date of the election, the official title,

descriptive summary and brief statement of legal effect of the proposed referendum measure or initiative as it will appear on the ballot pursuant to 11 N.N.C. § 407(A). The notice shall also indicate that copies of the complete text of the referendum measure or initiative are available for inspection or purchase (duplication cost only) at the Navajo Election Administration office.

C. Notice is sufficient if published at least once for two successive weeks in a newspaper of reservation wide distribution. The Election Administration may provide other notice as appropriate.

History

CMY-30-03, May 2, 2003.

CJA-05-01, January 24, 2001.

CAP-23-90, April 6, 1990.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

§ 406. Vote required

A. The measure/initiative shall pass if a majority, or other identified amount greater than a majority, of all eligible registered voters who cast a vote, vote for the proposed measure/initiative. Eligible registered voters within this section are not limited to voters who voted in the last election. Only registered voters of the particular chapter conducting a chapter election or special chapter election are eligible to vote on a referendum measure or initiative on that chapter ballot.

B. A resolution or petition shall specifically state that the referendum or initiative must be passed by a majority or other identified amount greater than a majority.

History

CMY-30-03, May 2, 2003.

CAP-23-90, April 6, 1990.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

§ 407. Form of ballot

A. The Navajo Board of Election Supervisors shall prepare the official ballot for a referendum or initiative election in the following manner:

1. The official title of the referendum measure or initiative shall

be printed on the official ballot. The official title of the referendum measure to be voted upon shall be the same as the title referred by the Navajo Nation Council or chapter. The official title of the initiative to be voted upon shall be the same as the title on the petition signed by the registered voters as set forth in 11 N.N.C. § 404(B)(5)(a).

2. A descriptive summary of the referendum measure or initiative shall be prepared by the Board of Election Supervisors, upon recommendation of the Office of Legislative Counsel and the Office of the Attorney General, and printed on the official ballot following the official title. The descriptive summary shall provide the registered voters with an objective and unbiased statement of the purpose and principal provisions of the referendum measure or initiative to be voted on.

3. Following the official title and descriptive summary of the referendum measure or initiative, a brief statement of legal effect shall be printed on the ballot. A brief statement of legal effect shall, in a brief and objective phrase, explain the resulting effect a "yes" or "for" and "no" or "against" vote will have on existing law should the measure/initiative receive a majority of votes cast in that particular manner. The brief statement of legal effect shall be prepared by the Office of Legislative Counsel and the Office of the Attorney General and appear on the ballot as follows:

A "YES" (or "FOR") vote shall have the effect of _____.

A "NO" (or "AGAINST") vote shall have the effect of _____.

4. Below the brief statement of legal effect there shall be printed on the ballot the corresponding words "YES" or "FOR" and "NO" or "AGAINST", as may be appropriate, and a place for the voter to put a mark indicating his/her preference.

5. The Navajo Board of Election Supervisors shall have the final approval authority over the wording of the official title, the descriptive summary and the brief statement of legal effect of the referendum or initiative measures.

B. A minimum of four copies of the complete text of the legislation proposed by the referendum measure or initiative shall be made available in each polling place for the voters to review. Each voter shall be informed by the poll judges and clerks at each polling place that copies of the complete text are available to review in the polling place.

C. Dispute of an official title, descriptive summary or brief statement of legal effect may be determined by hearing before the Office of Hearings and Appeals, pursuant to 11 N.N.C. § 341.

History

CMY-30-03, May 2, 2003.

CAP-23-90, April 6, 1990.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

§ 408. Conduct of elections

A. Polling place supervision; appeal by persons not allowed to vote.

1. Before the date of an election, the Chairperson of the Board shall call in all chief poll judges for necessary instructions, swearing in, and transport of ballot boxes and voting machines to the polling places for each election community.

2. The poll judges shall guard the polls, maintain order, and instruct voters in the techniques of balloting. The poll clerks shall enter each voter in the poll books and issue ballots.

3. One of the poll judges for each polling place shall be designated by the Board as the chief poll judge for his or her polling place, and it shall be his or her duty and responsibility to keep custody of the account for all ballots, the ballot box and the poll books and he or she shall supervise and have supervisory authority over the other judges and poll clerks in guarding the polls, maintaining order and instructing voters.

4. A voter must vote at the polling place where he or she is registered to vote.

5. Any person who is not allowed to vote may appeal to the Board immediately, whose decision shall be final.

6. There shall be a member of the Navajo Nation Police present at each polling place during voting hours.

B. Voting shall begin at 6:00 a.m. and shall end at 7:00 p.m. All voters present at the poll places and in line to vote at 7:00 p.m. will be allowed to vote.

C. Counting of votes. At the close of the election, the election judges at each polling place shall tabulate the results of the balloting, seal and lock the ballot boxes with the poll books and keys in the ballot boxes, and transmit the results of the balloting to the Election Administration at Window Rock by telephone or radio communication. A poll watcher will be allowed at all times during the balloting and during the counting of the votes.

D. Canvass of votes; recount.

1. Sealed ballot boxes containing all of the ballots cast in the election, all unused or spoiled ballots, data packs, keys, a written statement of the election results on a form provided by the Board and certified by the poll judges at each polling place, and the list of registered voters shall be forwarded to the Election Administration at

Window Rock by the chief poll judge.

2. The Board shall canvass the written statements of election results from each polling place and shall then total the election results.

3. No recount of ballots of any polling place shall be made unless within 10 days after the election, a registered voter who voted on the referendum/initiative objects and the Board sees sufficient reason to recount the election results. The Board may, on its own initiative, conduct a recount of the votes of any polling place if it is believed that there may have been substantial irregularity in the voting or counting of the ballots. The Board may use the chief poll judge to assist in canvassing and recounting ballots.

E. Certification of election. Not less than 10 days following an election, the Board shall certify the election results.

F. Appeal of disputed elections.

1. A disputed election shall be appealed in writing within 10 calendar days following the election to the Office of Hearings and Appeals by an eligible registered voter who voted in the referendum/initiative election.

2. The Office of Hearings and Appeals shall issue rules and regulations for the determination of how such disputes shall be handled, and shall, pursuant to such rules and regulations, issue a decision upholding or vacating the disputed election.

3. A decision of the Office of Hearings and Appeals sustaining or vacating a disputed election may be appealed within 10 calendar days to the Supreme Court of the Navajo Nation. The scope of review is limited to whether the Office of Hearings and Appeals' decision is sustained by sufficient evidence on the record.

History

CO-56-04, October 19, 2004.

CMY-30-03, May 2, 2003.

CAP-23-90, April 6, 1990.

Note. Slightly reworded for purposes of clarity. Also, at Subsection (F)(1), for grammatical purposes, "a" changed to "an."

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

§ 409. Effect of referendum/initiative elections

A. The vote on a referendum/initiative election shall be binding and have the effect of law.

B. Legislation adopted by a referendum/initiative election shall be incorporated in, and published as a part of the Navajo Nation Code, or any successor to the Code.

C. Legislation adopted by a referendum/initiative election shall be amended or repealed only:

1. By the outcome of a vote on a subsequent referendum or initiative election concerning the same subject matter as that of the referendum/initiative which originally adopted the legislation; or

2. For a Navajo Nation-wide referendum or initiative election, by three-fourths (3/4) vote of the full membership of the Navajo Nation Council at a regular session of the Navajo Nation Council.

History

CMY-30-03, May 2, 2003.

Cross References

Chapter referendum, see 26 N.N.C. §§ 103, 1003 and 2001 of the *Navajo Nation Local Governance Act*.

Title 12

Fiscal Matters

United States Code

Care and investment of Indian monies, see 25 U.S.C. § 151 *et seq.*

Disbursement of monies to Indians, see 25 U.S.C. § 111 *et seq.*

Use of Navajo Tribal funds on deposit in United States Treasury, see 25 U.S.C. § 637.

Code of Federal Regulations

Financial activities, 25 CFR § 101.1 *et seq.*

Chapter 1. Office of the Auditor General

§ 1. Establishment

There is established the Office of the Auditor General under the Navajo Nation Council.

History