

Opinion No. 71-58

April 23, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Alex G. Martinez New Mexico State Senator 1949 Hopi Santa Fe, New Mexico 87501

QUESTIONS

FACTS

In 1965, Fairchild Camera and Instrument Corporation constructed a facility on the Navajo Indian Reservation outside Shiprock, New Mexico. The business of the plant was the construction of semi-conductors. Fairchild hired Navajo Indians as employees to assemble semi-conductors. From 1965 to present, the number of Indian employees grew to just over 1,000.

Fairchild accomplished two stated purposes in building the plant on an Indian Reservation. Fairchild tapped a heretofore unused labor market. Further, many unemployed individuals were taught a trade.

In 1970, Fairchild met with the Navajo Indians and appropriate Federal agencies to consider the question of building low-cost, multifamily housing units on the Indian Reservation for the Indians' use. Many of the Indians to be so housed were employees of Fairchild at the semi-conductor plant. It was decided to build the low-cost housing units.

The Shiprock Non-Profit Housing and Community Development Corporation was formed. It was incorporated under the laws of the State of New Mexico. Its purpose was to master plan approximately 200 acres on the Navajo Reservation for housing and community developments for the Indians. The members of the Board of Directors were primarily people from Fairchild. However, control of the corporation was divided with 51% to Fairchild and 49% to the Navajo Indians.

Just before the above corporation was formed, the Navajo Indian Tribe entered into a Lease Agreement with Fairchild. The lease term was for 65 years. The Tribe leased to Fairchild 200 acres. This land was to be used for the location of the low-cost housing units. Under the terms of the lease, the lease is to be assigned by Fairchild to the Shiprock Non-Profit Housing and Community Development Corporation. This non-profit corporation would oversee the development of the low-cost housing for the Indians. That is, the nonprofit corporation will act as sublessor, and will rent to the Indians. Through the combined efforts of the Bureau of Indian Affairs and the Federal Housing Administration, funds to construct these low-cost, multi-family housing units were

obtained. The funds available to construct these units were guaranteed by the Federal Housing Administration.

To date, no construction work has been done. However, the date that ground is first broken to begin construction work on the housing units, the Navajo Tribe will assume operating control of the non-profit New Mexico corporation.

None of these low-cost, multi-family housing units will be sold to anyone, including Indians. However, no individuals but members of the Navajo Tribe will be allowed to live in these low-cost housing units. The non-profit corporation which controls the administration of the housing units will be controlled by the Navajo Tribe. The construction will be done solely on the Navajo Indian Reservation.

QUESTIONS

1. Does the Construction Industries Licensing Commission have jurisdiction to require that a New Mexico Contractor's License be obtained regarding the bids, plans, specifications and work done to construct the low-cost housing units?
2. Does the General Construction Board of New Mexico have jurisdiction to inspect and approve or disprove plans, specifications and contracting work done on the Indian Reservation under the above facts?

CONCLUSIONS

1. No.
2. No.

OPINION

{*82} ANALYSIS

In determining that the State of New Mexico has no jurisdiction under its Construction Industries Act it is the opinion of this Office that in relying on the facts above stated, as we must do, it is obvious that the low-cost, multifamily housing units to be constructed on the Navajo Reservation by the Shiprock Non-Profit Housing and Community Development Corporation are for the exclusive benefit of and use by Indians. Therefore, the imposition of State law and the application of our Construction Industries Act would interfere with tribal self-government and/or impair a right granted or reserved by Federal law.

On September 9, 1970 this Office rendered Opinion No. 70-76. That opinion dealt with similar questions but a totally different factual situation. There improvements were to be constructed on Indian land for use by non-Indians and we said that under those circumstances the State of New Mexico had a legitimate interest that had not been pre-

empted by Federal law and there would be no interference with tribal self-government to apply the provisions of our Construction Industries Act. It was also pointed out that:

"We have not been asked, and therefore do not at this time answer the question of jurisdiction over the construction by Indians of such structures as pueblos, hogans and kivas on Indian country for the use or occupancy by Indians. The construction of such structures may well involve basic facets of tribal life and customs, and if so, state jurisdiction in this area would interfere with tribal self-government."

The distinction quoted above does in fact apply here because of the difference in the factual situation.