

July 21, 2004: Concerning the Boys & Girls Club of Navajo, Inc.

Representative Ray Begaye

State of New Mexico

House of Representatives District 4

PO Box 4080

Shiprock, New Mexico 87420

Re: Opinion Request Concerning the Boys & Girls Club of Navajo, Inc.

Dear Representative Begaye:

This office has reviewed the questions raised in your May 27, 2004 opinion request to Attorney General Patricia Madrid regarding the Boys & Girls Club of Navajo, Inc. ("B&GCN"), a private non-profit corporation with fourteen club sites within Navajo Nation tribal lands, and its association with the Navajo Nation tribal government. More specifically, you ask whether (1) the Navajo Nation can take control of the non-profit organization operating on tribal lands, (2) the Navajo Nation government can seize all properties from B&GCN, (3) the Navajo Nation can 'grandfather-in' the employees of B&GCN, (4) the non-profit has any strength over tribal government intervention, (5) the Navajo Nation can transfer grants awarded specifically for B&GCN operations to tribal program purposes and, if not, who can intervene, and (6) to what degree can the State of New Mexico become involved in these matters.

The first five questions relating to the Navajo Nation's authority to act under the circumstances you describe do not implicate any state laws. Thus, we believe these questions may be better addressed to and by the Attorney General for the Navajo Nation Department of Justice.

With respect to your last question, the Charitable Solicitations Act, NMSA 1978, §§ [57-22-1](#) through [57-22-11](#) (the "Act"), authorizes the New Mexico Attorney General to monitor, supervise and enforce the charitable purposes of charitable organizations and regulate professional fundraisers in the state. Within that authority, the Attorney General may conduct investigations to ascertain the conditions of an organization's affairs and to what extent, if at all, the organization fails to comply with the trusts it has assumed or has departed from the purposes for which it was formed. NMSA 1978, § [57-22-9](#). In the event of a failure to comply with its trust or a departure from its intended purpose, the Attorney General may initiate legal proceedings to correct the noncompliance or departure by any remedy available under the common law. Id.

While it is the Attorney General's duty under the Act to protect the interests of all public beneficiaries of charitable organizations within the state, this duty generally is not

sufficient to authorize any action directly against the Navajo Nation. Without the consent of both the nonprofit organization and the Navajo Nation and out of respect for the principles of tribal sovereignty, we are concerned that the Attorney General has no jurisdiction or authority under the Charitable Solicitations Act to protect the assets of an organization operating club sites wholly within the Navajo Nation in New Mexico and three other states.

If we may be of further assistance concerning this or another matter, please let us know. Your request to us was for a formal Attorney General Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are not providing you with Attorney General Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,

Sally Malavé

Assistant Attorney General

Cc: Stuart M. Bluestone, Deputy Attorney General

Regina Begay-Roanhorse, B&GCN Unit Director