



Council hears report on irregularities with COVID-19 testing contract and deliberates emergency removal of Navajo Nation Controller Pearline Kirk during Special Session

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WINDOW ROCK, Ariz. — On Friday, the 24th Navajo Nation Council held a Special Session where a report was presented by Navajo Nation Attorney General Doreen McPaul and Chief Legislative Counsel Dana Bobroff discussing concerns and irregularities with a COVID-19 testing contract between the Navajo Nation Office of the Controller (OOC) and Agile Technologies resulting in a Cease-and-Desist Notice issued by the Navajo Nation Department of Justice (NNDOJ). Ms. McPaul also discussed a Legal Preservation Notice issued to OOC employees and other tribal programs.

After the report by Ms. McPaul and Ms. Bobroff, the Council deliberated emergency Legislation No. 0083-21 to remove Navajo Nation Controller Pearline Kirk as the Controller of the Navajo Nation and to request the Navajo Nation President to immediately appoint an acting Controller.

“We take notice anytime it is brought to our attention that our people’s safety and information has been compromised by anyone,” said Speaker Seth Damon (Bááhaalí, Chichiltah, Manuelito, Red Rock, Rock Springs, Tséyatoh). “We are grateful for the Department of Justice and our Legislative Attorneys for their work to ensure these issues are handled fairly with a holistic understanding.”

Although the Council deliberated until midnight on 0083-21, they did not take final action before the time scheduled for the Special Session expired. Deliberations on 0083-21 as well as further reports will resume during the next Council Session May 19-20.

McPaul reported that a NNDOJ investigation into a Coronavirus Aid, Relief and Economic Security Act (CARES) Funds contract between OOC and Agile Technologies revealed Agile was paid over \$3 million in advance to provide COVID-19 testing using methods not approved for use on the Navajo Nation. Additionally, Agile did not report their test results to tribal health authorities, did not providing contact tracing, and failed to protect personal health information with their test samples. McPaul indicated that when she was informed of the results of the investigation, she immediately issued a Cease-and-Desist Notice to Agile Technologies on May 7, 2021.

McPaul also revealed that the results of NNDOJ’s investigation were shared with federal attorneys stating, “In looking out for the health, safety and welfare of the Nation we issued this notice to immediately stop the testing that was occurring to Navajo Nation employees and the public despite express disapproval from our Health Command Center in December of 2020.”

According to Bobroff, after the Notice to Cease-and-Desist was issued to Agile on on May 7th and information came to light that documents were being removed from the OOC, NNDOJ issued a Legal Preservation Notice on May 12th to the OOC employees and contractors, as well as other tribal programs to ensure that CARES Funds related documents were not lost or destroyed.

During the report, the Council entered executive session to receive more information on the investigation, as well as the Cease-and-Desist Notice and Legal Preservation Notice.

Thereafter, Council Delegate Eugenia Charles-Newton (Shiprock) motioned to hear a report from Kirk before discussion began on 0083-21. However, the Controller was not called to report after other delegates cautioned against hearing a report due to the ongoing investigation.

“Anything said in a public report can be used in the investigation, as well as in judicial proceedings,” added Bobroff before the report was accepted with a vote of 19 in favor and three opposed.

Following the report, 0083-21 was presented to the Council by sponsor Council Delegate Pernell Halona (Coyote Canyon, Mexican Springs, Naschitti, Tohatchi, Bahastl’a’a’) and co-sponsor Edison J. Wauneka (Oaksprings, St. Michaels).

The responsibility of the Navajo Nation Controller is to control and account for all financial activities for the Navajo Nation. The new controller would be appointed by the Navajo Nation President and later confirmed by the Navajo Nation Council.

“Madam Controller serves at the discretion of Council and can be removed without any reason, but it is my belief that the Navajo Nation would be better served if a different person would be appointed as Controller of the Navajo Nation’s matters in light of the recent events,” said Delegate Halona.

Concerns were shared by Council Delegate Carl Slater (Round Rock, Rock Point, Tséch’izí, Lukachugai, Tsaille-Wheatfields) over the sensitive personal health information that has since gone unaccounted for at the hands of Agile Technologies and the Controller. “We have Navajo citizens out there who have lost their information at the hands of the Controller and I feel incredibly let down.”

Other delegates asked for more information regarding communication from the Navajo Nation President, as well as how the removal resolution could affect the current CARES expenditures and future ARPA allocations and expenditures.

Delegate Halona indicated that while he did not know the President’s plans if Kirk was removed, there are people within OOC that could readily take over the Controller position. Halona noted that the focus remained on the investigation and the location and protection of employee’s personal health information and test samples. Halona also noted that the CARES Funds appropriations would not change but investigations would continue on all of OOC’s contracts and sub-contracts.

In response to an inquiry by Council Delegate Vince James (Jeddito, Cornfields, Ganado, Kintichii’, Steamboat), Bobroff explained that the Navajo Nation’s Personnel Policies do not apply to Kirk as she holds a politically appointed at-will position.

Following further discussion on the Navajo Nation’s contracting process, Council Delegate Herman Daniels, Jr., (Ts’ah Bii’ Kin, Navajo Mountain, Shonto, Oljato) motioned to amend 0083-21 to place Kirk on paid administrative leave for 180 days or until the conclusion of the investigation.

Council Delegate Kee Allen Begay, Jr. (Tachee/Blue Gap, Many Farms, Nazlini, Tselani/Cottonwood, Low Mountain) wanted to know how much Kirk would be paid during her proposed 180 day administrative leave. Attorney General McPaul informed the Council that Kirk would continue to receive her annual salary of \$225,014.

Language in the proposed amendment was changed from administrative leave to investigatory leave after Council Delegate Amber Kanazbah Crotty (Cove, Toadlena/Two Grey Hills, Red Valley, Tsé'ahnáoozt'í'í, Sheepsprings, Beclabito, Gad'ii'áhi/Tó Ko'í) said there was no language to indicate why the amendment includes administrative leave.

Council Delegate Charlaine Tso (Mexican Water, Tólikan, Teec Nos Pos, Aneth, Red Mesa) motioned to table the legislation for 14 days over concerns about a lack of consultation with relevant parties and to further review the documentation. However, Delegate Tso's motion's failed and discussion on the legislation continued until time expired at midnight.

"We do need to have a full understanding of what is happening with this legislation considering what this will mean for the Navajo People and a person's career," added Council Delegate Eugenia Charles-Newton (Shiprock).

Delegate Halona stated his opposition to prolonging removal of Kirk saying the federal government is watching the Navajo Nation and the current lack of task delegation within OOC, "I think removing Ms. Kirk is the right decision at this time, the President needs to be able to delegate her authority to continue completing projects and that is not happening right now."

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