

**RESOLUTION OF THE
ETHICS AND RULES COMMITTEE
21st NAVAJO NATION COUNCIL – SECOND YEAR 2008**

**FINDING MR. TONY SECATERO, TO'HAJIILEE CHAPTER PRESIDENT
IN VIOLATION OF THE ETHICS IN GOVERNMENT LAW**

WHEREAS:

1. The Ethics and Rules Committee of the Navajo Nation Council conducts administrative hearings concerning all complaints filed pursuant to the Ethics in Government Law, 2 NNC §3741 et seq.; and,
2. An ethics complaint was filed against Mr. Tony Secatero, Chapter President for the To'hajiilee Chapter. The complaint alleged violations of the Ethics in Government Law, §3745(A), *General Prohibition, Conflicts of Interest*, 2 NNC §3752(A) and (C), *Unauthorized Compensation or Benefit for Official Acts*, and 2 NNC §3753, *Unauthorized Personal Use of Property or Funds of the Navajo Nation*; and,
3. The Navajo Nation Ethics and Rules Committee hereby approves Findings of Fact, Conclusions of Law and Sanctions for Case Number C-2008-04, marked as *Exhibit "A."*

NOW THEREFORE BE IT RESOLVED THAT:

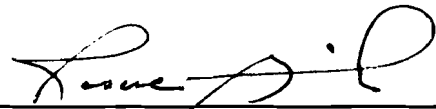
The Ethics and Rules Committee of the Navajo Nation Council, based on the foregoing, hereby orders and imposes the following sanctions:

1. The Respondent shall be removed and disqualified from public elective positions held pursuant to the Navajo Nation Election Code, including the Chapter President and school board member positions;
2. The Respondent shall be ineligible for and disqualified from seeking or holding any Navajo Nation public elective position for a period of five (5) years;

3. The Respondent shall be ineligible for Navajo Nation employment for a period of five (5) years;
4. The Ethics and Rules Office shall ensure that these orders and sanctions of the Ethics and Rules Committee are fully complied with. Should the Respondent fail to comply with sanctions ordered therein, the Committee may impose additional sanctions, including civil penalties.

CERTIFICATION

I hereby certify that the foregoing Resolution was duly considered by the Ethics and Rules Committee of the Navajo Nation Council at a duly called special meeting at Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 07 in favor, 00 opposed, 00 abstained this 21st day of November, 2008.



Roscoe D. Smith, Vice Chairperson
Ethics and Rules Committee
Navajo Nation Council

Motion: Joe M. Lee
Second: Herman Daniels, Sr.

**BEFORE THE ETHICS AND RULES COMMITTEE
OF THE NAVAJO NATION COUNCIL**

The Navajo Nation Ethics and Rules Office,]
Ex Rel., Katherine P. Le Blanc,]
Complainant,]

No. C-2008-04

vs.]

**FINDINGS, CONCLUSIONS OF
LAW AND SANCTIONS**

Tony Secatero,]
Respondent.]

The Ethics and Rules Committee of the Navajo Nation Council conducted a hearing on November 7, 2008 concerning the above-entitled matter filed with the Committee pursuant to the Navajo *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.* The Respondent, Mr. Tony Secatero, was charged by the Navajo Nation Ethics and Rules Office with violating 2 N.N.C. §3745(A), *General Prohibition, Conflicts of Interest*, 2 N.N.C. §3752(A) and (C), *Unauthorized Compensation or Benefit for Official Acts*, and 2 N.N.C. §3753, *Unauthorized Personal Use of Property or Funds of the Navajo Nation*. Upon deliberations, the Committee issues the following Findings of Fact, Conclusions of Law and Sanctions.

I. FINDINGS OF FACT

1. On October 9, 2000, Mr. Tony Secatero, hereinafter the *Respondent*, took an oath of office for the elective position of To'hajiilee Chapter President. *Plaintiff Exhibit F-1*.

He served the full four-year term of office (plus an additional period of time through January 2005 authorized by *CMY-24-04* and *CO-56-04*).

2. On October 9, 2000, Respondent, took an oath of office as a school board member for the To'hajiilee Community School Board. *Plaintiff Exhibit F-2*. He served the full four-year term of office (plus an additional period of time through January 2005 authorized by *CMY-24-04* and *CO-56-04*).

3. On January 6, 2005, Respondent took an Oath of Office as a school board member of the To'hajiilee Community School Board. *Plaintiff Exhibit G-2*. The term of office for this position will end January 2009. 11 N.N.C. §6.

4. On March 9, 2005, Respondent took an oath of office for the elective position of To'hajiilee Chapter President. *Plaintiff Exhibit G-1*. Respondent was sworn into this position to complete an unexpired term, which will end January 2009. 11 N.N.C. §6.

5. According to testimony provided by the Respondent, he is a former federal employee, with formal education, and a writer, with computer programming experience.

6. Concerning the To'hajiilee Chapter, and pursuant to 25 USC §621, the Bureau of Indian Affairs administers a trust account. Regarding this account, the Bureau of Indian Affairs on February 4, 1994 issued the following written statement as to management and disbursement of funds:

In accordance with the past policy of the Bureau of Indian Affairs in its administration of the Canoncito Band's 25 USC §621 trust lands and the monies generated from that land. I will continue to recognize the authority of the

Canoncito Chapter government in controlling the trust funds and lands of the Canoncito Band.

This policy of recognizing Canoncito Chapter government resolutions and officials as official representations and representatives of the Canoncito Band of Navajos, is in line with the approved governmental structure of the Navajo Nation. The federal government has recognized the Canoncito Band of Navajos as landowners, but not as a separate autonomous government and as such, the band is still under the governmental authority of the main Navajo Tribal government.

Thus, until the Navajo Nation Council approves a different local governmental structure for the Canoncito Band or the Band receives recognition as a separate Indian tribe pursuant to 25 CF 83 or I receive instructions to the contrary from the Secretary of the Interior or some higher authority, I shall continue to administer the trust lands and monies of the Canoncito Band with the consent and at the direction of the Canoncito Band by Chapter Resolution and shall continue to work with the elected Navajo Council Delegate and elected Chapter officials as formal representatives of the Canoncito Band of Navajos.

Plaintiff's Exhibit D.

7. Under the trust arrangement authorized by 25 USC §621, hereinafter "Trust Fund," monies generated from administering land included income from grants of rights-of-way.

8. For the period relevant to this case, the Bureau of Indian Affairs, in administering the Trust Fund, recognized the To'hajiilee "Chapter Officials as formal representatives of the Canoncito Band of Navajos." *Plaintiff Exhibit D.* Funds from the Trust Fund were released pursuant to To'hajiilee Chapter resolution. *Id.*

9. For the period relevant to this case, the To'hajiilee Chapter Officials also served as officials for the "Canoncito Band of Navajos" (CBN), as CBN President, Vice President and Secretary Treasurer, respectively (*i.e.*, the same individuals served as chapter officials and as CBN officials). For a period of time, CBN managed Public Law 93-638 funds relative to health administration. In addition to administering this program,

all services performed by the Chapter Officials as CBN officials involved public services to the chapter. These services included health care, education, housing, water development, construction of power lines, "and many other projects." *Plaintiff's Exhibit A*. Under Navajo Nation law, chapter officials are already required to oversee and monitor these activities, matters which are all intended to promote the interests of the community being served. 26 N.N.C. §1001.

10. Respondent, while a Chapter President and a school board member, was paid a salary from the Trust Fund managed by the Bureau of Indian Affairs. See *Plaintiff's Exhibits H and H-1*. The Navajo Nation Ethics and Rules Office submitted as evidence payroll checks issued to the Respondent for the period August 10, 2005 through May 30, 2006. *Plaintiff Exhibits J, J-1, J-2, J-3, J-4, J-5, J-6, J-7, J-8, J-9, J-10, J-11, J-12, J-13, K, K-1, K-2, K-3, K-4, K-5, K-6, K-7, K-8*. Respondent was paid a regular salary from the Trust Fund every two weeks during this period (chapter budgets during this time show that Respondent received a salary of \$25,000 per annum). *Plaintiff's Exhibits A and B*. While receiving this salary, Respondent was also regularly paid from the Navajo Nation for performing the duties as Chapter President for the To'hajiilee Chapter President. This matter of regular compensation payments from the two separate sources is not disputed.

11. Of the three Chapter Officials, only the Respondent was paid a salary from the Trust Fund managed pursuant to 25 U.S.C. §621. Neither the Vice President nor the Secretary Treasurer had a similar payment arrangement for services provided the community (*i.e.*, neither was paid an annual salary from the Trust Fund in addition to

compensation paid them from the Navajo Nation for performing duties as chapter officers).

II. CONCLUSIONS OF LAW

1. Pursuant to the Navajo Nation *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.*, the Ethics and Rules Committee has personal and subject matter jurisdiction herein.

2. For administrative complaints filed pursuant to the *Ethics in Government Law*, 2 N.N.C. §3741 *et seq.*, the burden of proof rests with the Navajo Nation Ethics and Rules Office to show sufficient evidence that a violation has occurred.

3. Pursuant to the Navajo Nation Election Code, a Chapter President:

Must not allow employment with the Navajo Nation, federal or state governments, or any private organization to interfere with performance of Chapter officer duties. 11 N.N.C. §8(C)(10).

Respondent unlawfully accepted income from employment for services he was already obliged to do under Navajo Nation law as an elected official. He should not have accepted the employment arrangement using money from the Trust Fund administered pursuant to 25 USC §621.

4. The fundamental law of the Navajo Nation as to responsibilities of leaders to people they represent provides in part:

A. *It is the right and freedom of the Diné to choose leaders of their choice; leaders who will communicate with the people for guidance; leaders who will use their experience and wisdom to always act in the best interest of the people; and leaders who will also ensure the rights and freedoms of the generations yet to come; and*

B. *All leaders chosen by the Diné are to carry out their duties and responsibilities in a moral and legal manner in representing the people and the government; the people's trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of Dine bi beenahazáanii;....*

1 N.N.C. §203(A) and (B).

5. Elected officials, including chapter officials, are held to a high standard of conduct. The Navajo Nation *Local Governance Act* provides, in relevant part:

Chapter officials shall maintain a high standard of conduct in all Chapter business consistent with Navajo law, Y and the Navajo Nation Ethics [in] Government Law. Chapter officials are prohibited from rendering opinions, directions or decisions contrary to the sound practice of leadership or contrary to the best interest of the Chapter. 26 N.N.C. §1001(H).

Chapter officials must avoid all conflicts or any appearances of conflict in respect to fulfilling their duties and responsibilities as elected officials. As discussed in these findings and conclusions of law, Respondent violated the standard of conduct expected of all chapter officials under Navajo Nation law.

6. Pursuant to the Navajo *Ethics in Government Law*:

No public official or employee shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which is authorized and received in his or her official capacity for performing such duties. 2 N.N.C. §3752(A), Unauthorized Compensation or Benefit for Official Acts.

Chapter Officials, including Chapter Presidents, are compensated in accordance with provisions of the Navajo Nation *Local Governance Act*. 26 N.N.C. §1002. Generally, Chapter Officials are compensated based on meetings attended (regular monthly meetings, planning meetings and special meetings). *Id.* However, attending chapter meetings is not the only function of a chapter official.

7. Pursuant to the Navajo Nation *Local Governance Act*, a Chapter President has various statutory responsibilities to the community he or she is elected to represent. His duties and responsibilities include preparing an agenda for the chapter, presiding over chapter meetings, permitting chapter members equal opportunity to speak on issues, recommending special committees, calling special meetings, ensuring that the Vice President and Secretary Treasurer carry out their duties and responsibilities to the community, working with the Vice President and Secretary Treasurer in ensuring that directives of the chapter are met, making sure that funds are used as authorized, reporting to the Chapter membership, “follow[ing] up with Tribal, Federal and State governments or their agencies on resolutions, ordinances, recommendations, proposals and projects of the Chapter,” carrying out decisions of the Chapter, encouraging and promoting community participation in planning and development, representing the Chapter at meetings when the Chapter has an interest, and advancing the interests of the community. See 26 N.N.C. §1001(B).

8. Chapter officials oversee all programs and projects of the chapter; as public elected officials. They are required to serve, represent and protect the interests of the communities they represent. 26 N.N.C. §1001.

9. Respondent, as an elected public official, violated *unauthorized compensation* provisions of 2 N.N.C. §3752(A) by receiving an income from the Trust Fund established pursuant to 25 USC §621. As a Chapter President, he was already required to represent and provide services to community. Aside the compensation from the Navajo Nation for performing these duties to the community, he should not have accepted compensation

from another source for essentially the same functions. The Ethics and Rules Committee finds no distinction between the type of services performed under the Trust Fund arrangement and those performed as a Chapter Official. The Navajo Nation *Ethics in Government Law* strictly prohibits unauthorized compensation by public officials of the Navajo Nation. 2 N.N.C. §3752(A).

10. Pursuant to the Navajo Nation *Ethics in Government Law*:

No public official ... shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive. 2 N.N.C. §3752(C), Unauthorized Compensation or Benefit for Official Acts.

Similarly, the Respondent violated this section of the Navajo Nation *Ethics in Government Law* by accepting and receiving a salary paid from the Trust Fund established pursuant to 25 USC §621. Navajo Nation and chapter officials cannot accept compensation not properly authorized or compensation for which they are not entitled to receive; additional compensation beyond what is authorized by law is illegal. Respondent agreed to serve as To'hajiilee Chapter President and took an oath to represent the best interests of the community. The interests of the community were not served by the acceptance of additional compensation beyond what is allowed.

11. Pursuant to the Navajo *Ethics in Government Law*:

No public official or employee shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing, their private economic gain or that of any special business interests with which they are associated, before those of the general public, whose paramount interests their office or employment is intended to serve. 2 N.N.C. §3745(A), General prohibitions; Conflicts of Interest.

In addition to this general conflicts of interest provision, public officials must avoid actions, whether or not specifically prohibited by the *Ethics in Government Law*, which could result in, or create the appearance of *using public office for private gain; giving preferential treatment to any special interest organization or person; impeding governmental efficiency or economy; losing or compromising complete independence or impartiality of action; making a government decision outside official channels; or adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation.* 2 N.N.C. §3745(B).

12. Section 3745 was violated by the Respondent when he used his position as Chapter President to receive a salary from the Trust Fund established pursuant to 25 USC §621. *Plaintiff's Exhibit "D."* Because chapter officials served as officers of CBN, he, as Chapter President, was able to receive this salary. No evidence was presented that the employment opportunity was ever extended to the other officers, or to members of the Chapter or the general public. Respondent is held to a high standard of conduct. By accepting employment in an unauthorized manner, he placed his own personal economic interests before those of the community he was obligated to represent.

13. Under the Navajo Nation *Ethics in Government law*, a public official cannot accept money from a source having financial relations with the office or entity he or she represents. The law states:

Except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Ethics and Rules Committee of the Navajo Nation Council, or by other applicable law, no public official or employee shall solicit or accept for himself/herself or another, any gift, including economic opportunity, favor, service, or loan (other than from a regular lending institution on generally

available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:

- A. *Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any governmental office or entity with which the public official or employee is associated or employed; or*
- B. *Conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the public official or employee is associated or employed;*

* * *

2 N.N.C. §3756(A) and (B).

As indicated, Respondent was accepting money in the form of a salary from a trust fund managed by the Bureau of Indian affairs. This Trust Fund served the people represented by To'hajiilee Chapter Officials. Further, according to the Bureau of Indian Affairs, this Trust Fund was to a considerable extent controlled by the Chapter through resolution. Accordingly, Respondent violated sections 3756(A) and (B).

14. Even if the duties perform by the Respondent under the Trust Fund arrangement were somehow distinguishable from his duties as Chapter President, he should not have accepted the employment position under which Trust Funds were used. What the Respondent offered or agreed to do was essentially perform the services of a *consultant* to the Chapter. No evidence was presented that other members of the community were offered the same economic opportunity. Because of his capacity as Chapter President, this was a violation of various conflicts provisions of the Navajo Nation *Ethics in Government Law*, including 2 N.N.C. §§3745, 3749 (notice requirements of governmental contracts) and 3756.

15. Chapter officials are “prohibited from direct involvement in the management and operations of the Chapter administration.” 26 N.N.C. §1001(E). Under the Trust Fund employment, assuming that the Respondent performed duties that were distinguishable from his duties as a chapter official, this nonetheless would have been in violation of the restrictions against officials involving themselves in the daily operations of a Chapter.

16. Respondent was charged by the Ethics and Rules Office for the misuse of Chapter property. This offense in the Navajo Nation *Ethics in Government Law* provides:

No public official or employee shall use any property of the Navajo Nation or any other public property of any kind for other than as authorized and approved for official purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them. 2 N.N.C. §3753.

Because insufficient information was provided as to the charged made under this section, it shall be dismissed.

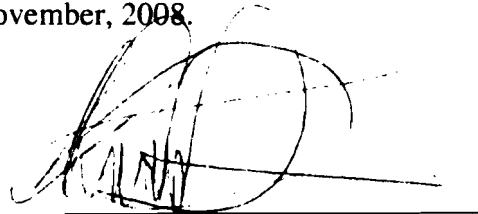
17. The Navajo Nation *Ethics in Government Law* provides “no action shall be brought under this Chapter more than four years after the cause of action has accrued.” 2 N.N.C. §3769. Concerning the complaint against the Respondent, the Ethics and Rules Committee does not have jurisdiction over events alleged in the complaint occurring prior to July 18, 2004.

III. SANCTIONS

The Ethics and Rules Committee of the Navajo Nation Council, based on the foregoing, hereby orders and imposes the following sanctions:

1. The Respondent shall be removed and disqualified from public elective positions held pursuant to the Navajo Nation Election Code, including the Chapter President and school board member positions;
2. The Respondent shall be ineligible for and disqualified from seeking or holding any Navajo Nation public elective position for a period of five (5) years;
3. The Respondent shall be ineligible for Navajo Nation employment for a period of five (5) years;
4. The Ethics and Rules Office shall ensure that these orders and sanctions of the Ethics and Rules Committee are fully complied with. Should the Respondent fail to comply with sanctions ordered herein, the Committee may impose additional sanctions, including civil penalties.

SO ORDERED by the Ethics and Rules Committee of the Navajo Nation Council. Written order dated this 7th day of November, 2008.

A handwritten signature in black ink, appearing to read 'Francis Redhouse', written over a horizontal line.

Francis Redhouse, Chairman
Ethics and Rules Committee
Navajo Nation Council