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ARIZONA ATTORNEY GENERAL

February 13, 1986

The Honorable James Henderson, Jr.  
Arizona State Senator  
State Capitol - Senate Wing  
Phoenix, Arizona 85007

RE: I86-019 (R85-139)

Dear Senator Henderson:

You have asked whether the Navajo "Preference in Employment Act" (NTC Res. CAU-63-85; 15 N.T.C. Ch. 7) and the Navajo "Business Preference Law" (NTC Res. CJY-59-85; 5 N.T.C. §§ 201-218) are applicable to Arizona public school districts located in whole or in part on the Navajo Indian Reservation. Based on the following discussion, we conclude that the public school districts are state government entities, governed by Arizona law, and are not subject to regulation pursuant to the Navajo Tribal preference laws.

We have been unable to find any authority that directly addresses the question of whether a tribe may attempt to impose preference laws upon a state government body operating on an Indian reservation. However, the law articulated by the United States Supreme Court in Rice v. Rehner, 463 U.S. 713, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983) and Morton v. Mancari, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974) provides guidance.

In Rice, the Court observed that power exercised by the tribes pursuant to concepts of tribal sovereignty is dependent upon, and subordinate to, the federal government. 463 U.S. at 719, 103 S.Ct. at 3295, 77 L.Ed.2d at 970. Quoting from United States v. Wheeler, 435 U.S. 313, 323, 98 S.Ct. 1079, 1086, 55 L.Ed.2d 303, 313, (1978) the Court stated:

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The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance.

463 U.S. at 719, 103 S.Ct. at 3295, 77 L.E.2d at 970. (emphasis by the Court.)

Our search of federal law for cases at all pertinent to our inquiry revealed that the question of the application of an employment preference law to a federal government agency was considered in Morton v. Mancari, 417 U.S. 535, 41 L.Ed.2d 290, 94 S.Ct. 2474 (1974). In Morton the court was required to resolve an apparent conflict between two federal statutes,<sup>1/</sup> and did not address the question, confronting us, regarding the tribe's ability to impose a preference law on a state government entity. Nevertheless, the court's holding is instructive because the court clearly limited the validity of the preference law to employment in the Indian service, based upon the unique nature of that agency. Noting that the agency in question, the Bureau of Indian Affairs, had a pervasive governing role over the lives of tribal members, the court likened the Indian service preference to a requirement that a governing body be made up of constituents from the governed group. It was similar, the court said, to the requirement of a senator to be an inhabitant of the state he represents or of a city council member to reside within the city that he governs. 417 U.S. at 554, 94 S.Ct. at 2484, 41 L.Ed.2d at 302. The court, moreover, was careful to state:

Furthermore, the preference applies only to employment in the Indian service. The preference does not cover any other Government agency or activity, and we need not consider the obviously more difficult question that would be presented by a blanket exemption for Indians from all civil service examinations.

Id. at 554, 94 S.Ct. at 2484, 41 L.Ed.2d at 303.

Thus, Morton v. Mancari does not purport to recognize the imposition of preference in employment requirements over federal government agencies other than the Indian service.

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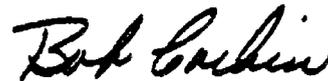
<sup>1/</sup>The conflict was between the Indian Reorganization Act of 1934 (25 U.S.C. § 461) and the Equal Opportunity Act of 1972 (42 U.S.C. §§ 2000e et. seq.)

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Further, the case certainly provides no authority for the assertion of tribal preference requirements over state governmental entities. In fact, we have found nothing in any United States Supreme Court decision that would require state governmental entities or political subdivisions of the state to yield to the jurisdiction of tribal governments. While tribal governmental jurisdiction has been recognized as being applicable to private entities,<sup>2/</sup> the Supreme Court has never held that tribal ordinances may have direct application to the governmental operations of the state.

Public school districts exist as political subdivisions of the State of Arizona. See Ariz. Const., art. XI, §§ 1, 2, 3, and 6; A.R.S. § 15-101(15); Carpio v. Tucson High School District No. 1 of Pima County, 111 Ariz. 127, 524 P.2d 948 (1974).<sup>3/</sup> There is no authority for the assertion of tribal jurisdiction over the political and governmental functions of the state. Therefore, we conclude that the Navajo "Preference in Employment Act" and the Navajo "Business Preference Law" do not apply to public school districts that exist in whole or in part within the exterior boundaries of the Navajo Indian Reservation.

Sincerely,



BOB CORBIN  
Attorney General

BC:IAM:DH:gm

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<sup>2/</sup>See, e.g. Kerr-McGee Corporation v. Navajo Tribe of Indians, \_\_\_ U.S. \_\_\_, 105 S.Ct. 1900, 85 L.Ed.2d 200 (1985) (Navajo tribal taxes apply to non-Indian minimal producer's operations on the reservation.)

<sup>3/</sup>We note that your inquiry pertains to public school districts created under Arizona law and not to independent Indian schools organized under the Navajo Tribal Code. Cf. Ramah Navajo School Board v. Bureau of Revenue, 458 U.S. 832, 102 S.Ct. 3394, 73 L.Ed.2d 1174 (1982).