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Navajo president's smoking ban not enforceable

By FELICIA FONSECA , 04.29.11, 09:15 AM EDT

FLAGSTAFF, Ariz. -- Navajo President Ben Shelly cannot enforce an executive order to ban smoking in public places on the reservation, his spokeswoman said Thursday, easing concerns that an immediate prohibition would jeopardize a \$150 million casino in Arizona.

Shelly signed the order this week, saying he wanted to create a healthier environment for Navajo people who are subjected to second-hand smoke. The tribe's justice department reviewed the order and found that it was legally insufficient, said Shelly spokeswoman Charmaine Jackson. "Right now we're going to hold town halls to see what the Navajo people want," she said. "We want to hear from them first, and then we will move on."

Jackson said Shelly was informed that he could prohibit smoking within the executive branch but not enact a widespread ban. She declined to release the legal review, citing attorney-client privilege. Navajo Attorney General Harrison Tsosie did not return messages left by The Associated Press.

Tribal gaming czar Bob Winter said that the profit projection of the Twin Arrows Casino off Interstate 40 near Flagstaff is based partly on allowing patrons to smoke. If that's prohibited, financing for the project would fall apart. The casino could lose up to a quarter of its expected \$70 million in annual revenue and be at a disadvantage to other tribal casinos that don't restrict smoking. The first phase of construction was scheduled to begin this month.

"We would welcome an opportunity to sit down with the president, explain to him the facts as best as we know them so everybody involved can make an informed decision," Winter said. The Navajo Nation was having the same debate in 2008 when a proposed smoking ban came before the Tribal Council. The ban gained legislative approval but ultimately was vetoed by the then-tribal president. Jackson said Shelly was concerned about casino revenues but declined to comment further.

The Navajo Nation operates two casinos in New Mexico, a state that has only one tribal casino that is entirely smoke-free. Other tribal casinos in Arizona and elsewhere offer smoke-free areas but don't completely prohibit cigarettes, cigars and chewing tobacco. Health advocates applauded Shelly for signing the order. He encouraged employers to enact programs to help people quit smoking.

Enforcement of Shelly's executive order would have been the responsibility of employers or whoever owns or leases the public buildings, according to a copy obtained by the AP. It had a 90-day phase-in period aimed at banning smoking in public places that include hotels, laundry facilities, grocery stores, restaurants and within 25 feet of a public building. It would not have restricted the use of ceremonial tobacco.

Winter said he would push for an exception for casinos if a smoking ban is passed through the Tribal Council or by petition of the Navajo people. Dr. Patricia Nez Henderson, who has advocated for a smoking ban on the Navajo Nation, said that's not what health advocates want but that at least they now have Shelly's support. "The point has been made in standing with the grass-roots (people) in making sure a safe and health working environment is provided for the people," she said. "Either way for us, it's a win-win situation. We know there is someone there at the top of the leadership who is willing who work with us."

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