



The Judicial Council of ASUCR
University of California, Riverside
asucrjustice@ucr.edu

Majority Opinion W18-JR-01
Cortez-Hernandez, Cuenca v. Ayra, Moore, Li

JUSTICE PETER HADDAD delivered the opinion of the Judicial Council:

On March 8, 2018, the petitioners filed a case regarding a veto of fund allocations for the R' Gear program by the defendants. The petitioners raise concerns about the constitutionality of whether or not the executive cabinet has the power to veto allocated funds. The petitioners also raise concerns about the circumstances as to which the veto originally took place. As the case was presented before the council it was broken down into two distinct issues that ultimately would decide the case. The complex nature of this case brought up numerous points that exemplified dysfunction within elements of the ASUCR body, however, it is of the Council's opinion that only the constitutional arguments should be ruled on. Any procedural mishappes that took place should be dealt with internally and resolved hastenly to limit their probability of occuring in the future.

Both cases were accepted by a vote of 5-0-0.

Issue #1: Does the Executive Cabinet of ASUCR have the power to issue a veto without holding an official meeting?

The constitution states in Article IV Section F Subsection 1,

The Executive Cabinet shall have the authority to:

1. *Veto legislation passed by the Senate, provided the legislation did not pass with a unanimous vote of all Senators present. The veto must take place within seven (7) days of the Senate meeting in which the legislation was approved and consist of a majority vote () of the Executive Cabinet.*

It is of the opinion of this council that a vote constitutes deliberation and communication between members of the executive cabinet. In order for this to sufficiently take place a meeting must be called and quorum must be obtained. It is negligent to decide on an action that must be voted on without first meeting and discussing the topic at hand.

Thus, it is of the opinion of this Council that any decision made without specific declaration of a meeting is void. Therefore, the veto of the allocation of funds for R' Gear was not a constitutional action.

The Constitution and Bylaws do not specify any particular procedures for calling meetings of the Executive Cabinet. However, based on testimony it is clear that the Executive Cabinet observes a regular meeting time every week. This meeting which produced the veto was held outside of this time and would be considered a "special meeting" According to Robert's Rules of Order Chapter 16. Robert's Rules of Order suggest that special meetings should not be held unless the governing documents of an organization explicitly allow them.

Chapter 16 Special Meetings

A special meeting (or a called meeting) is a separate meeting of a society held at a time different from the regular meeting. The bylaws must provide guidelines for special meetings. If the organization is incorporated, or if state laws have authority over it, a special meeting provision may be in the corporate charter or the state laws. If an organization's governing documents do not provide for the calling of special meetings, the organization can't hold them.

The bylaws or other governing documents should specify the proper procedures for calling a special meeting, including who can call it, the conditions under which it can be called, and the number of days notice that members must be given. Notice of the time, place, and purpose of the meeting must be sent to all members in advance of the meeting. At a special meeting, members can discuss only the business that was stated in the notification (which is referred to as the call to the meeting). If some emergency business is transacted for which no notice was given, the organization must ratify that business at a regular meeting or at another special meeting.

Chapter 3 of the bylaws, Section 4, item (c) states:

"The Executive Cabinet Meeting requires Executive Branch representatives, Parliamentarian, and Executive Cabinet Secretary to be present throughout the entirety of the meeting."

Although 3 Executive Cabinet members may have been present at the meeting, there was neither the parliamentarian or Executive Cabinet Secretary present.

Since the constitution requires that the veto be brought about by a vote of the Executive Cabinet, it is necessary to gather this vote at a meeting that is pursuant to the governing documents of ASUCR. These meetings need to be reasonably advertised to all members of the Cabinet and have the proper quorum and attendance as specified by the bylaws. Without these conditions being met, meetings can be held which systematically exclude the minority from voicing their opinions and exercising their right to vote.

Issue #2: Does legislation encompass allocation or are they separate actions?

Much deliberation took place when deciding this question. However, the council drew from two main sources to make its decision.

The first source is the Chapter XIX of the ASUCR bylaws Section 2 subsection a(i) and a(ii). This section defines legislation.

Section 2. Definition

(a) All legislation passed by the Senate shall be in the form of an ASUCR Bill or an ASUCR Resolution, and shall be defined as follows,

(i) An ASUCR Bill shall be defined as an amendment to current ASUCR bylaws, an enactment of a proposed bylaw, or a proposal for a constitutional amendment. □

(ii) An ASUCR Resolution shall be defined as an expression of a non-binding position of the Senate.

By this definition, allocations are not included in ASUCR's definition of legislation. This exemplifies that they are separate and distinct actions that must undergo separate and distinct processes as per the definitions provided.

This point is further supported by the ASUCR constitution specifically Article VI Section E Subsection (1b) and (1c)

SECTION E. Powers of the Judicial Branch

1. The Judiciary Branch shall have the expressed explicit authority to:

(b) Review financial allocations as needed to ensure they are made in accordance with the provisions set forth in the governing rules of the Finance Committee. This shall not be meant to construe any jurisdictional authority over the actual substance of allocations, only that the Judicial Council must uphold the guidelines that the Finance Committee sets forth;

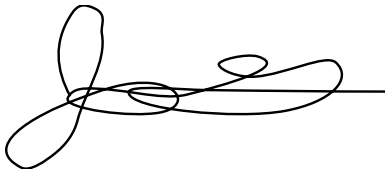
(c) Verify the legality of all approved legislation and any extraneous cases which are brought before the Judicial Council as needed;

In this excerpt the constitution specifically separates the two actions (allocation and legislation) this again supports the idea that allocation and legislation are two separate actions.

The Council recommends further definition of terms found within the legislative process in order to minimize dysfunction and confusion.

The Judicial Council has decided in favor of the petitioners due to the constitutional questions addressed above. The Council is aware of various other points presented in this case, however, it is of our determination that the other points are not constitutional questions but instead procedural problems that arise from miscommunication and disorganization. Effective following the publication of this decision the R' Gear initiative shall be allocated pursuant to the senate vote that took place on March 7, 2018.

Signed,



Chief Justice Jo Gbujama



Vice Chief Justice Matthew Whiles



Justice Peter Haddad



Justice Rume Diamreyan



Justice Starla Carrillo