

ASSOCIATED STUDENTS OF THE UNIVERSITY OF WYOMING

JUDICIAL COUNCIL OPINION

Re: The Interpretation of Article IV, Section 2

The Associated Students of the University of Wyoming ("ASUW"), Judicial Council (the "Council") convened February 13, 1997, in the Wyoming Union to render an interpretation of Article IV, Section 2 of the ASUW Constitution. Specifically, the Council was charged with the duty of determining if Section 2 applies to conduct of an ASUW Senator during his or her term or only to conduct prior to a Senator's election. Article IV, Section 2, reads;

A member of the ASUW shall not be eligible to serve as a representative of the ASUW Executive, Legislative, or Judicial branches if he or she has been found within the previous two years **prior to election** to be guilty of academic dishonesty, forgery, providing false information or other acts which compromise his or her integrity as a student leader and representative of ASUW. (Emphasis added)

Members of the Judicial Council present were as follows:

Stacey Baim
Cody Hartley
Sam Krone
Echo Miller
Julie Yates (Chair)

The following individuals provided written testimony to assist the ASUW Judicial Council:

Theodor Lauer, Professor of Law, University of Wyoming College of Law (opinion Appendix I)

Cerdrick D. Reverand II, Professor of English, University of Wyoming (opinion Appendix II)

Alison Bower, Graduate Student of English, University of Wyoming (suggested rewrite of the provision Appendix III)

OPINION

The Judicial Council unanimously held that the language of Article IV, Section 2 was ambiguous. If ASUW intended to regulate the conduct of a Senator during his or her term, through this provision, the ASUW Senate should amend the provision to reflect such intent.

DISCUSSION

I. The Plain Language of the Provision

The Council analyzed the provision by 1) reading the provision in context with the proceeding and subsequent provisions, 2) examining the tense and choice of verbs used, and 3) studying the sentence structures. Under each method of analysis, the Council reached a different interpretation. Consequently, the Council determined that the provision was, in fact, ambiguous.

A. The Provision in Context with Proceeding and Subsequent Provisions

Article IV, Section 1, lists requirements that must be met by an ASUW Senator prior to their election and during their term in office. Article IV, Section 2, appears only to address events occurring before election. The mere fact that the ASUW Senate chose to separate out the provisions suggests the intent to achieve two different objectives with regard to requirements. One would expect any provision addressing the conduct of a Senator during their term of office would be listed with the other requirements in Section 1.

B. The Tense and Choice of Verbs Used

The choice of “acts which compromise” instead of “acts which would compromise” lends support to the notion that the provision was intend to apply to a Senator’s conduct while in office. The verb tense is in the present and implies current acts which compromise a Senator’s integrity. Conversely, the choice of the verb “eligible” lends support to the notion that the provision was only intended to apply to conduct before a Senator’s election. Webster’s Dictionary defines eligible as “fit to be chosen.” Taking into consideration the definition, the provision seems to only address the fitness of a Senator to be chosen and not to subsequent conduct.

C. The Sentence Construction

Analysis of the sentence structure further sustains the Council’s finding that the provision is ambiguous. The language “. . . two years prior to election to be guilty of academic dishonesty, forgery, providing false information or other acts which compromise his or her integrity as a student leader and representative of ASUW” could be read one of two ways. A reader may consider everything following the “or” to stand alone, unqualified by the “two years prior.” However, a reasonable person may also read the sentence to be a list in which every element is qualified by the “two years prior.”

II Historical Legislative Intent

The Council consulted the legislative history of Article IV, Section 2 in hopes of finding a stated legislative intent as to the application of the provision. The ASUW Senate passed Article IV, Section 2, March 3, 1981, through Senate Resolution #1389. However, the resolution was void of any statements as to the purpose or intended application of the amendment.

III. Current Legislative Intent and Practice

While the Council found it necessary to conclude that the language of Article IV, Section 2 was ambiguous, the Council unanimously felt that the current intent and practice of ASUW has been

to regulate the conduct of Senators. The Council further found that ASUW could exercise its power to regulate conduct of Senators through other means than Section 2 of Article IV.

Article VIII, Section 2, (C) and Section 3, (B) appears to give the Judicial Council the power to make determinations regarding "violations of ASUW rules, regulations, policies, procedures, and or standards governing student conduct or requirements of students who participate in officially approved ASUW programs." (emphasis added). The language seems to allow the Council to review conduct in violation of ASUW policies and standards, some of which may not be listed in the Constitution, but those of which student Senators have notice. The Judicial Council is somewhat uneasy about making a determination regarding the extent of its own power. However, the Judicial Council is of the opinion that if the Council was limited to reviewing only conduct listed in Sections 1 and 2 of Article IV, Article VIII, Section 2 and 3 would have made direct reference to Article IV.

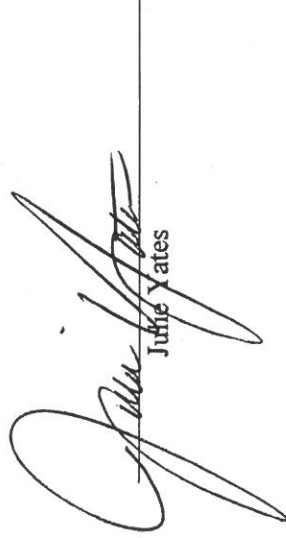
Respectfully Submitted, this 17 day of February, 1997;


Stacey Bain


Cody Hartley


Sam Krone


Echo Miller


Julie Yates

APPENDIX I

13 February 1997

To: Julie Yates

From: Ted Lauer
College of Law

Re: Construction of ASUW Constitution,
Article IV, Section 2

Article IV, Section 2 of the Constitution of the Associated Students of the University of Wyoming provides:

Section 2. A member of the ASUW shall not be eligible to serve as a representative of the ASUW Executive, Legislative, or Judicial branches if he or she has been found within the previous two years prior to election to be guilty of academic dishonesty, forgery, providing false information or other acts which compromise his or her integrity as a student leader and representative of the ASUW.

The question you posed is whether this provision would disqualify a student who, after election, was found "guilty of academic dishonesty, forgery, providing false information or other acts which compromise his or her integrity as a student leader and representative of the ASUW."

Initially, as I do not have the entire ASUW Constitution before me, my assumption is that students are chosen to serve as representatives of the ASUW Executive, Legislative, or Judicial branches by election, as distinguished from being appointed or designated in some other manner.

Looking first to the question of how the provision should be construed -- strictly, as a limitation of rights which students otherwise would enjoy, or liberally, as a remedial measure -- my sense is that Article IV, Section 2 should be construed strictly in favor of the student. That is, no student should be declared ineligible to serve unless that student is clearly made ineligible by the express language of this provision.

Section 2 declares that a student is ineligible to serve if within the previous two years prior to election that student has been found guilty of certain acts. The section thus refers to matters which occur prior to the student's election to the ASUW position. The redundant use of both "previous" and "prior" to qualify the two year period only serves to make this clearer.

From this, the literal meaning of the section is that only if the finding of guilty occurs within two years prior to the student's election does the student become ineligible to serve.

It follows that:

(1) If a student is found guilty of one of the listed acts, that student is ineligible for a period of two years following that finding of guilt to be elected to serve as a representative of the ASUW Executive, Legislative or Judicial branches.

(2) If a student commits one of the listed acts prior to election, but is found guilty only after election, the student's eligibility to serve is not affected by Section 2.

(3) If after a student is elected, that student commits one of the listed acts and is thereafter found guilty, the student's eligibility to serve is not affected by Section 2.

The reason is that Section 2 limits its application to findings of guilt which occur prior to election.

This conclusion is reinforced by the fact that Article IV, Section 1, as amended, expressly sets forth those things which not only make a student ineligible to become an ASUW representative, but also provides that should the student fail during office to meet those qualifications, the student is "automatically disqualified from his or her position." A post-election finding of guilt of one of the acts listed in Section 2, on the other hand, does not expressly disqualify a student from his or her position.

In short, the things which both disqualify a student from election and from continuing to serve after election are found in Section 1. The things which merely disqualify a student from election are found in Section 2.

While the result may not be the one which is deemed most desirable, in my opinion it is the one which the language of the ASUW Constitution requires.

APPENDIX II



Cedric D. Reverand II, Professor
Department of English, Box 3353, Laramie, WY 82071
telephone: 307-766-6452 / e-mail: reverand@uwyo.edu

February 13, 1997

To: Julie Yates
Re: Article IV, Section 2

You asked for an interpretation of this section, specifically with an eye toward determining whether the provision applies to misconduct while a student is serving as an ASUW Senator.

As it reads, the provision would apply to any student who had been found guilty of academic honesty within the previous two years. Whether or not he is an ASUW senator during that period is irrelevant. As long as he is a student, the provision would apply. If he is a senator, the provision applies. If he isn't a senator, the provision applies.

This does mean that a student could be found guilty of academic dishonesty, drop out of school for two years, and return, at which point he could be eligible (I do not know what your other conditions for eligibility are), since his guilt would not have been determined "within the previous two years."

I should add that the last clause, "which compromise his or her integrity as a student leader and representative of the ASUW," severely complicates the issue and undermines what I take to be your intent. Suppose a student had been found guilty of academic dishonesty within the previous two years and had been elected or appointed to one of these branches. Now the Executive Council discovers the guilt and attempts to remove the student. The student can claim that, indeed, he was guilty, but the guilt does not "compromise his or her integrity as a student leader and representative of the ASUW." Since you have established no method of arbitrating that issue, the student would remain eligible. He is guilty, but guilt is not sufficient for him to be declared ineligible; somebody must determine whether that guilt also "compromises his or her integrity," and you have provided no way of making that determination.

I can see two obvious ways of fixing this. First, delete the clause. Actually, delete everything from "or other acts" to the end of the sentence, "Or other acts" is vague. How can a student be found guilty of "other acts"? To put it another way, aren't "other acts" already included in the variety of behaviors covered by "academic dishonesty"? If you were to delete the clause, then a student found guilty of academic dishonesty in the past two years would be ineligible. Period. Automatically. My guess is that this was the original intent of the language.

Or you can leave the final clause, but you would be well advised to write auxiliary language that would spell out how it would be decided that this guilt compromised the student's integrity (i.e., it could be by a majority vote of the Judicial Council, or whatever). This would be more cumbersome, and, of course, it would make it possible for the assigned body to mitigate the consequences of academic dishonesty, which is probably not your intent.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cedric D. Reverand II'.

Cedric D. Reverand II

APPENDIX III

Section 2. A member of the ASUW shall not be eligible to serve as a representative of the ASUW Executive, Legislative, or Judicial branches if he or she has been found within the previous two years prior to election, or at any time after the election, to be guilty of academic dishonesty, forgery, providing false information, or other acts which compromise his or her integrity as a student leader and representative of the ASUW.

Prepared by Alison Bower, UW English Graduate Student, on 13 February 1997.

Alison Bower