

**THE JUDICIAL BRANCH OF
THE STUDENT GOVERNMENT ASSOCIATION OF
THE UNIVERSITY OF TENNESSEE-KNOXVILLE**

AO-2020-03

PER CURIAM

I

Pursuant to Article VI of the Judicial Branch Bylaws, Senators Fahim, Klein, Koontz, and Mucci have called upon this Court to answer the following question:

Is proposed Senate Bill 01-20 to be a set of binding requirements the Election Commission has to follow, or does it merely serve as a suggestion from Senate to Election Commission?

After review, the Court is split as to whether the proposed bill is constitutionally permissible. As such, we publish both opinions

BRYANT, C.J., joined by CASEY, J.

The question then becomes whether the Senate has the power to compel the Election Commissioner to turn over certain documentation related to her promulgation of the Election Packet. Particularly, proposed Senate Bill 01-20 requires the Election Commissioner to turn over essentially all documentation discussing the proposed changes to the Election Packet. As such, the language of the proposed bill raises two interrelated questions: 1) does the Senate have a general subpoena power; and 2) does that power extend to communications by and between the Election Commissioner and Election Commission?

As should be done in all matters of statutory analysis, we first begin with the text of the SGA Constitution. Article IX, section 4a gives the Election Commission sole authority to “establish the Election Rules and Procedures packet.” By contrast, Article IV is silent as to the Senate’s ability to subpoena any documents or act as an investigatory body.

However, there is at least one section of the Senate Bylaws that may support this authority. Article I, Section 1f parallels the United States Constitution in allowing the Senate to “take all actions which shall be necessary and proper for carrying out its functions.” More generally, Article V, Section 3 of the Senate Bylaws contains ethical provisions that govern the actions of each Senator. Among these ethical obligations are

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that each Senator act “in good faith”; be “honest and transparent in their communications . . . with members of the student body”; and “[m]ake every reasonable attempt to view legislation in an unbiased manner.” Article V, Section 4 also contains a litany of provisions requiring Senators to perform due diligence in their capacity as legislators. Violation of these ethical provisions are subject to report, review and, if necessary, appropriate sanctions by the Judicial Branch. *See* Senate Bylaws art. V, § 6.

Subject, then, to these ethical considerations, it would appear that Article I, Section 1f of the Senate Bylaws affords the Senate sufficiently broad latitude to complete the objectives outlined in proposed Senate Bill 01-20. Of course, we also note that, should any dispute ensue, the Senate would likely need to introduce evidence to support its implicit assertion that these subpoenas are “necessary and proper for carrying out its functions.” Such factual determination is not before us, however; our holding is limited to the narrow question of whether the powers granted by this proposed bill exceeds the Senate’s constitutional authority. We hold that it does not.

TURLEY, J., joined by BEDFORD, J.

After review, we have determined that Senate Bill 01-20 is unconstitutional and impermissible due to the lack of inclusion of said power in Senate bylaws nor the SGA Constitution.

Judicial has the authority through the SGA Constitution, Article VIII, § 4 (b) to “To make decisions regarding the Constitutionality of passed legislation”.

That being said, no legislation has been passed yet. However, a request for an advisory opinion on this bill allows the Judicial branch to express whether or not the bill is Constitutional. SEN-01-20 is unconstitutional.

The SGA Constitution, Article IX, § 4 (a) says that the Election Commissioner has the duty “to establish the Election Rules and Procedures packet”. All the changes that the Commissioner makes are up to his/her discretion. Therefore, it is unconstitutional to ask for the Election Commissioner to disclose the involvement of the other election commissioners and involved parties.

The Senate bylaws state in Article I, § 1 (f) that the Senate has the ability “to take all actions which shall be necessary and proper for carrying out its function”. However, Article VIII, § 3 states “The Constitution of the SGA supersedes the authority of the Bylaws”. While the SGA Constitution does not talk about subpoena powers for Senate, neither does the Senate bylaws. I believe that using Article I, § 1 (f) clause as a rationale is respectfully a reach of power. I believe that this power is not prescribed by either the SGA Constitution or the Senate bylaws. If this were to be a power that Senate shall have, it needs to be amended in their bylaws.

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Article V, § 3 of the Senate bylaws, Senator's should act in "good-faith", is limited to the conduct of other Senators. While it is essential that all members of the SGA act in an honest and transparent manner the Senate bylaws are limited to SGA Senate. Article V, § 4 of the Senate bylaws says that Senator's should do their due diligence as their capacity as legislators. While this is important, I do not believe that in this situation subpoenaing transcripts of interactions with parties involved in making the Election Packet is in the authority of that stature. Moreover, the Senate has all rights to amend the Election Packet to what they deem to be acceptable. While their concerns are valid, it should be discussed before approving the Election Packet.

The question proposed by the Senators was "Is this resolution to be taken as binding as requirements the election commission has to follow or just a suggestion from Senate to Election Commission?". As the bill stands, without any other consideration, it would be a requirement of the election commission.

It is hereby determined.