DIE Board Ruling 2012-2

Hearing Details:

Style of Cause: McGinn v. Students' Council/Reinterpretation of Bylaw 0100(19)

Hearing Date: September 27th, 2012

Hearing Number: Ruling # 02 2012/2013

DIE Board Panel Members: Sean Wallace, Chief Tribune

Giselle General, Associate Chief Tribune

Rena Chen, Tribune

Issues:

[1] Is further clarification needed on the definition of "conflict-of-interests" with respect to a student group or organization?

[2] How does Bylaw 0100(19) apply to student groups & organizations that are also Dedicated Fee Units (DFUs)?

[3] How should the Students' Union handle conflict-of-interests that have been retroactively determined?

Relevant Legislation:

[4] From Bylaw 0100(19)

"No member of Students' Council shall vote on a motion relating to a student group or organization of which he/she is a member unless that organization is a faculty association"

[5] From DIE Board Ruling 2012-1(10)

"The Panel's interpretation of the term "relating to" [in Bylaw 0100(19)] is any direct connection between the student group and the motion. Note that this student group or individual in question need not directly benefit from the motion, as the bylaw implies that only an association between the two is necessary"

[6] From DIE Board Ruling 2012-1(11)

"For the purposes of Bylaw 0100 Section 19, there is no distinction between executive and regular membership. Any individual who qualifies as a registered member of a student group relating to a motion may not vote."

Decision:

[7] While Ruling 2012-1 established a necessary relationship between the student organization and motion for there to be a conflict of interest, it did not clearly define the relationship between *the student and the student organization* necessary for there to be a conflict of interest.

[8] Though DIE Board found that *"[a]ny individual who qualifies as a registered member of a student group relating to a motion may not vote,"* it has since been determined that not all student organizations keep updated or complete records of membership, making this criterion insufficient on its own.

[9] The Panel recognizes that a conflict of interest exists where the member is a registered member who is also *closely and directly* involved with the student organization.

[10] Organizations such as APIRG and WUSC are both registered student groups and DFUs. As DFUs require all students to pay a fee with often-limited opt-out methods, according to the previous

DIE board rulings in para 5 and 6, this would establish a direct relationship between every student with the aforementioned organizations. This would cause all of Students' Council to abstain from any motion regarding these types of organizations. The Panel agrees that the intention of Bylaw 0100(19) was not to compel every councilor to abstain from a vote relating to these particular student organizations.

[11] Pursuant to the above consideration, the Panel has determined that membership by payment of a DFU to a student organization is not sufficient to constitute a conflict-of-interests. That is to say, a student who pays his DFU to APIRG and is otherwise not involved with the organization would not be considered closely and directly involved with its interests, and thus would not be in a conflict-of-interest.

[12] The Panel agrees that interpretations made by DIE board are primarily prospective, and have limited retroactive effect in reversing past decisions. However, when an eligible applicant directly challenges a motion's passing based on a bylaw violation to DIE board, the subsequent ruling can impact the motion's standing.

[13] In Hearing 2012-1, the applicant asked for an interpretation of Bylaw 0100(19), and though motion 7C from SC 2012-09 was alluded to in the discussion, it was not directly challenged, and the subsequent ruling was not intended to directly address this motion at the time of passing; however, the applicant in this hearing filed a direct complaint regarding motion 7C from SC 2012-09. Since there is no time limit with regards to when a motion can be challenged, the Panel will still consider the issues raised despite Ruling 2012-1 being published after the motion's passing.

[14] In this hearing, the applicant suggested five members of Students' Council who could have potential conflict of interests, but does not directly challenge that their votes be changed to abstentions. The applicant instead requests that DIE Board clarifies its definition of a conflict-of-interest so that it may be clearer if the relevant voters should have their votes changed.

[15] The Panel agrees that it is within the DIE Board's jurisdiction to retroactively change any number of individual votes if (a) it were successfully determined that a conflict-of-interest existed between the individual(s) and the student group and (b) the motion in question was directly challenged to DIE board for reason of conflict-of-interest. The Panel acknowledges that this has the potential to shift a motion from passing to failing and would have complicated ramifications.

[16] There is no written policy allowing a Students' Council member to retroactively change their vote if they have self-determined a conflict-of-interest. Based on a response submission by one of the accused voters, there is evidence of a willingness to voluntarily change one's vote in the event of a conflict-of-interest.

[17] Since full evidence has not been presented regarding all five accused determining their exact involvement in the student organization(s) referred to in the motion, the Panel is not prepared to rule their votes as abstentions by reason of conflict-of-interests. Any eligible applicant who wishes to challenge these voters by reason of conflict-of-interest may do so subsequent to this ruling.

Recommendations:

[18] The Panel recommends that the Bylaw Committee review Bylaw 0100(19). The Panel has noted that there is currently no updated or complete record of membership in all student

organizations, making it difficult to determine where a conflict-of-interest might exist. Though the Panel defines a conflict-of-interest to exist where a member is *closely and directly* involved with the student organization, this definition would only be solvable by DIE Board on a case-by-case basis if an accused voter challenged their accusation of having a conflict-of-interest.

[19] The Panel also recommends that the Bylaw Committee consider instituting into bylaw a time window in which a motion can be challenged to DIE board. An eligible applicant may currently raise a complaint regarding any motion passed by the SU *at any point in time* on the basis of a conflict-of-interest. This not only has the potential to burden DIE Board resources, but also creates complicated scenarios when considering that a number of motions implement immediate changes to SU infrastructure.

[20] The Panel also recommends that the Bylaw Committee institute a remedial policy that would allow members of Students' Council to retroactively change their vote ***in exceptional circumstances***, such as a conflict of interest *or other bylaw violation*. This would allow accused voters to acknowledge a violation of bylaw and change their vote without requiring a DIE Board hearing. The Panel also recommends that this policy be pursuant to a time window outlined above.