

DIE Board Ruling 2012-2

Style of Cause: Kochikuzhyil v. CAC

Hearing Date: April 8th, 2013

Hearing Number: Ruling # 12 2012/2013

DIE Board Panel Members: Sean Wallace, Chief Tribune

Rena Chen, Tribune

Becky Gormley, Tribune

Background:

[1] This hearing dealt with a complaint regarding an in-camera meeting of the Students' Union Council Administration Committee. As a confidential matter, this ruling will exclude the specific circumstances and instead be directed at the broad principles implicated in the hearing.

Issues:

[2] Is Bylaw 0100 (19) violated where Students' Union councillors vote despite having a personal conflict-of-interests?

[3] Is section 3.24 (Code of Ethics) of the Students' Union Operating Policies violated in similar instances?

[4] What is the appropriate remedy if a violation can be found under either?

Relevant Legislation:

[5] From Bylaw 0100 § 19:

(5) If a councilor has a conflict of interest and votes on a motion in Students' Council or any one of its standing committees

- (a) they will report that immediately to the Speaker of the Association
- (b) if unreported, any member of Students' Council may send a petition to DIE Board within four (4) months or before the conclusion of the session of Students' Council, whichever is longer. Petitions made are subject to Bylaw 1500.

[6] From Students' Union Operating Policies § 3.24

- (b) Employees are expected in all regards to conduct their duties with impartiality, and are required to disclose to their immediate supervisor any situation involving them that is a conflict or an apparent conflict of interest.
...
- (l) Employees who do not comply with any provisions of this Code of Ethics may be subject to disciplinary action, up to and including dismissal.

Decision:

The Panel was unanimous in their decision

[7] The Panel agrees that in instances where a councillor has a perceived or actual personal conflict-of-interests, there is nothing in Bylaw 0100(19)(5) or elsewhere to suggest that said councillor is compelled to vote or abstain.

[8] This is unlike Bylaw 0100(19)(4), where it is explicitly stated that "[n]o 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." Stated otherwise, a councillor **must** abstain on motions relating to student groups of which they are a member, due to a conflict-of-interests.

[9] Without explicit wording in Bylaw 0100(19)(5) compelling a councillor with a conflict-of-interests to abstain, the Panel finds that it is entirely within a councillor's discretion to vote or abstain in these circumstances, subject to other relevant subsections of Bylaw 0100(19).

[10] The Panel also agrees that section 3.24 of the Students' Union Operating Policies does not apply to Students' Union councillors, as they are not employees of the Students' Union. While councillors should generally be guided by similar principles, in particular, the notions of impartiality and good faith, they are not bound by this particular Code of Ethics. This is especially evident in section (I), as dismissal is not an appropriate remedy for councillors.

[11] The Panel acknowledges that there is no stated remedy if a conflict-of-interests is found. As a result, the confidential issue in question is a moot point, as the potential conflict-of-interests did not relate to a student-group motion, and thus the individual would not be compelled to abstain. The Panel elects not to comment on the professionalism of the Council Administration Committee.

Recommendations:

[12] The Panel agrees that the wording of Bylaw 0100(19)(4) is unclear with respect to appropriate courses of action if members of Students' Council have perceived or actual conflicts-of-interests. Subsection (a) directs a degree of responsibility towards the Speaker, presumably to provide (non-binding & impartial) advice as to the best course of action. Subsection (b) allows for complainants to petition DIE Board to objectively determine whether an individual has a conflict-of-interests. However, with the exception of student-group related conflicts, there is no policy

on an appropriate remedy should a conflict-of-interests in fact exist.

[13] While the DIE Board has broad plenary jurisdiction over these issues, it is best left to Bylaw Committee and Students' Council to develop appropriate policy regarding the conduct of its members.