APPEAL

Filed by: Torch Party

Against: Supervisor of Elections

Date Appeal was Heard: October 6, 2013

A. Norat delivers the opinion of the Commission joined by S. Loveless and I. Waldick

T. Thompson recused himself due to a conflict of interest.

L. Hebb abstained as acting Chair.

Mr. Henmy submitted before this Elections Commission an appeal to the Supervisor of Elections' decision to conduct an additional seminar allowing candidates who did not attend one of the two mandatory seminars to attend this 'make-up' seminar in lieu of submitting proof of conflict for missing the previously scheduled seminars, citing a violation of SBS § 710.2 (G).

Following are the facts: Mr. Henmy sought the submitted proof of conflicts by potential candidates for those that did not attend the two mandatory meetings for candidacy and intent to run requirements. Mr. Henmy was orally informed by the Supervisor of Elections after those dates that an additional or 'make-up' meeting would be held and no proof of conflict required if attending the additional seminar.

Mr. Henmy proceeded to file a violation against the Supervisor of Elections for Malfeasance, Misfeasance, and Nonfeasance. The violation was then forwarded to the Elections Commission, to be determined if the decision by the Supervisor of Elections should be sustained or overruled.

Despite claiming that an email was sent to him indicating this additional meeting was being held in lieu of excuses, Mr. Henmy was not able to produce a copy of this email physically or digitally.

Under SBS § 710.2 (G) "Candidates or parties who fail to attend the seminar shall lose their eligibility for office unless they show proof of class conflict or illness." Although § 710.2 (G) does require proof of a class conflict or illness it does not completely address the issue of adding an additional or 'make-up' seminar, or whether both seminars were required.

In reviewing the lengthy and somewhat confusing appeal we first took up the issue of whether under SBS § 710.2 candidates and potential candidates are required to attend both or just one of seminars? It is clear from the language of § 710.2(G) that the requirement of holding two required candidate seminars before deadline of declaration of candidacy is purely procedural in nature, and intended to facilitate inclusion of students in the election process for Student Government.
The commission then turned to address whether the Supervisor of Elections has the power to hold an additional seminar or 'make-up' seminar and forego proof of conflicts for class or illness? In addressing this issue the Commission held that although no power specifically in the Election Code grants the Supervisor of Elections the power to create an additional candidate seminar; SBS §§ 702.3, 703 and 710.3 implicitly give a reasonable amount of discretion to the Supervisor of Elections in accommodating or holding an additional seminar or 'make-up' seminar in lieu of requiring proof class conflicts or illness.

While we are concerned with ambiguity in the Election code with respect to this discretion, it is clear from the policy of the University and the Elections code, weighing on more student inclusion than exclusion of participation in Student Government and the election process, that the Supervisor's decision in good faith to hold an additional candidate seminar and to include anyone that had not attended one of the two meetings required to be held previously was fully within his power and discretion. Had the Supervisor maintained the two regularly required candidate seminars and not held a 'make-up' seminar then there would be cause for violation in not requiring the proof of conflicts.

In Conclusion, we find that potential candidates as well as actual candidates must attend one of the two mandatorily required candidate seminars but not both, and in the event that in good faith the Supervisor of Elections reasonably believes it necessary to hold an additional candidate seminar he shall do so only after properly advertising this opportunity to everyone wanting to participate as a candidate for who it is necessary to attend a candidate seminar, without requiring proof of conflict at the additional candidate seminar.

We hereby OVERRULE Mr. Henmy's appeal, and SUSTAIN the decision by the Supervisor of Elections.

C. Powell and C. Hayes concurring in part and dissenting in part

We dissent from the majority's opinion that the Supervisor of Elections had the statutory authority to create an additional mandatory candidate meeting. Under a close reading of statute 710.2(G), the statute does not give the Supervisor of Elections any power to create meetings beyond the two required by the statute. The Supervisor of Election's argument centered mainly on the premise that if a power is not expressly forbidden by the statutes then that is a power he may exercise. As a matter of policy we disagree with the Supervisor because that precedent could lead to an abuse of power by the Supervisor of Elections and could result in situations of bias and unfairness.

Furthermore, the Supervisor based his action on a conversation with the Chief Justice of the Student Supreme Court in which he asked whether or not he could hold such a meeting based on the statutes. This was improper and the Supervisor should not have based his action on an unofficial interpretation of the statute. When the Supervisor feels the need to clarify or interpret the statutes, he must do so by requesting an advisory opinion from the entirety of the Student Supreme Court, pursuant to section 703(F) of the Student Body Statutes. We find this action improper and bordering on ethical abuse of the Supervisor’s position.

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1 The commission would like to note that § 710.2(G), when referring to Proof of Conflict only refer to student illness or class conflict, making the assumption that traditional or non-traditional undergraduate students do not hold jobs, or other legitimate forms of proof of a conflict.
However, we ultimately feel that this appeal by the Torch party lacked merit since sufficient proof was offered to the Commission that the candidates listed in the appeal did in fact attended at least one of the required meetings. We further agree with the majority that section 710.2(G) should be interpreted to only require candidates to attend one of the required meetings.