

ADVISORY OPINION 2018-AO-02

SUPREME COURT POWERS AND COGS FUNDING PROCESS OF RSO'S

Keller, J. delivers the opinion of the Court as to Part I; Drake, J. delivers the opinion of the Court as to Part II; Lagos, J. delivers the opinion of the Court as to Part III.

Moorhead, C.J. specially concurs.

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This Court has jurisdiction over Advisory Opinions requested by any Senator pursuant to the Constitution of the Student Body Art. IV § 3(C)(5).

On September 14, 2018, this Court received the following request for Advisory Opinion from Senator Peter Singhal:

- I. Are the legislative decisions of COGS, in the form of a [sic] funding (allocation bill), subject to appeal by the Student Supreme Court?
- II. What are the powers, and limits of those powers, of the Student Supreme Court in respect of [sic] a funding decision of COGS, should an appeal of that decision be heard by the Court?
- III. When funds allocated to a Graduate Registered Student Organization ["GRSO"] by a COGS' funding board have been encumbered by the SGA sweeping process, what is the relevant entity that that [G]RSO should approach for reimbursement/re-issuance of said funds?

This Court addresses these questions in turn.

I

In coming to its advisory opinion, this court first looks to the language of Article IX and Article IV of the Student Body Constitution in determining that funding decisions of COGS can be subject to appeal by the Student Supreme Court.

The Student Government Constitution provides that the COGS's A&S fees "shall be allocated to the COGS and shall be administered by the elected representatives in the Congress of Graduate Students." SGA Const. Art. IX, § 2. It is the opinion of this Court that this language should be construed to mean the allocation of COGS's A&S funds is expressly delegated to COGS. Moreover, COGS financial administration must be "consistent with and subject to the Student Body Constitution, SGA Statutes and SGA Finance Code Statutes." SGA Const. Art. IX, § 4. Therefore, we advise that the allocation power delegated to the COGS is not without restriction.

The Supreme Court is limited in its jurisdiction to the powers granted in the Student Body Constitution. This Court has jurisdiction to hear cases and controversies involving the constitutionality of actions by student governing groups and their representatives. The Court has jurisdiction over violations of the Student Body Constitution and Statutes. SGA Const. Art. IV, § 3. It is the opinion of this court that while the power to allocate A&S fees lies in the Legislative Branch, there may be situations in which this Court could have such decisions brought before it in the form of a case or controversy. At this time, this Court advises that legislative decisions of COGS are subject to appeal, however the

appellate power of this court is discretionary. For this Court to speculate on hypothetical instances when this issue could arise would be an improper function of this court.

II

At this time, this Court advises that appellate hearings are subject to petition for a writ of certiorari. While there is no automatic grant or denial of certiorari for funding decisions by COGS, it should be noted that this Court has the power to grant or deny certiorari based on a case-by-case basis. Furthermore, this Court has the power to overturn funding decisions that violate any Federal, State, Local, University and Student Body Statutes laws, if challenged. The Court's power is limited by the law, however. COGS retains the right to make funding decisions as it sees fit, and long as the decision-makers follow procedural and legal rules, this Court lacks the authority, *sua sponte*, to overturn any financial decisions made by COGS. Any possible reversal of a decision by the legislature can only occur when successfully challenged by a student who is not a member of the Judicial Branch.

This Court looks primarily to section 607.1(G) of the Student Body Statutes ("SBS") in coming to its advisory opinion. Section 607.1(G) outlines the way in which COGS will spend money, stating it can "approve the expenditure of monies allocated to the COGS budget, with the authorizing signature of two members of the COGS Executive Committee." Furthermore, COGS must "submit a copy of its budget to the Student Senate detailing its categorical spending in a timely fashion." At this time, the Court advises that it lacks the *sua sponte* power to alter the particulars of a funding decision by COGS. The only way in which a decision of the legislature can be reversed by this Court is if the individual who petitions

this Court can prove by the applicable burden that the decision contains reversible error.

III

This Court looks to section 412, SBS, in determining which entities a GRISO may approach in regard to the redistribution of funds encumbered by the SGA Sweeping Process. We advise that a GRISO may approach any appropriate funding entity, in any of the appropriate outlined manners to seek funds. Put more simply, a GRISO may approach the sweepings committee, COGS, or any other funding board which they are eligible to receive funds from, so long as they follow the requirements of the entity they seek the funds from. *See e.g.* §802.3, SBS.

Section 412.1(A) states that "[m]onies from sweepings may not be allocated by Student Senate, except through one sweepings bill per year." This Court construes the redistribution process to be outlined in Section 412.1(D)(1) which states "[e]ach prospective recipient of monies from Sweepings shall make a request. The Sweepings Committee shall hold hearings during which requests are defended. Each prospective recipient of Sweepings shall have a separate hearing." Section 412.1(D)(3), SBS then states the Sweepings Committee has "the authority to deliberate [sic] monies to requesting and non-requesting prospective recipients. The Sweepings Committee shall also be authorized to deliberate [sic] more or less than the amount requested." The Court construes "prospective recipient," *id.*, at section 412.1(D)(3), to include GRISO's seeking funding as part of the sweepings process.

Moorhead, C.J., specially concurring.

I agree with the Court's proposition that COGS legislative authority is vested in the

above cited constitutional language and that it is subject to appeal, but I write separately to address the seemingly implicit question regarding our check and balance authority, as it appears to me COGS seeks to have the Court contradict itself in hopes of becoming a more autonomous funding board.

The Supreme Court is limited in its jurisdiction to the powers granted under Article IV of the Student Body Constitution. The Court has jurisdiction to hear cases and controversies involving the constitutionality of actions by student governing groups and their representatives, violations of the Constitution and Statutes, and conflicts among student groups, *inter alia*. FSU SGA Const. Art. IV, Section 3(C)(1), *et seq.* While the power to allocate A&S fees rests squarely in the Legislative Branch, there may be situations in which this Court could have such decisions brought before it in the form of a case or controversy, as Justice Keller points out, either in original jurisdiction or as an appeal of an organizations decision. *See e.g.* Sup. Ct. R. P. 5(a) (“The Court can hear appeals of decisions from all lower bodies over which it has jurisdiction, pursuant to the Florida State University Constitution and Statutes”). Since the Court undoubtedly has jurisdiction over COGS, it correctly advised the answer to this question be in the affirmative, that legislative decisions are appealable to the Court, where the action is founded in the Constitution or Statutes. However, because the wording of the first request made may beg the question if the Court may challenge legislative actions, we note that the Court may not *sua sponte* challenge a legislative decision; this ability would do violence to the basic conceptions of the “checks and balance” system among the three branches. However, the answer to the question “can COGS action be challenged by third-parties” is a resounding “yes, of course.” Those who have a good-faith belief

to bring a cause of action based on an act of COGS clearly have standing when their action is correctly plead; it does not suffice that COGS may simply wash its hands of potential liability by saying “we are the legislature and whatever we do is protected by the delegation of authority found in the constitution.” Albeit there are situations in which this Court may find a nonjusticiable issue, however, that does not mean each and every act is subject to deference or some legal protection. *See Baker v. Carr*, 369 U.S. 186 (1962). Moreover, without judicial review the Court would lack the ability to carry out one of its most fundamental and cherished functions, dating back to the earliest days of our nation. *See Marbury v. Madison*, 5 U.S. 137 (1803).

For these reasons, I specially concur.

Engelbrecht, J. took no part in the consideration or decision of this Advisory Opinion.