

Majority Opinion By Council Chair Kaufman

JUDICIAL COUNCIL OF THE ASSOCIATED
STUDENTS OF OREGON STATE UNIVERSITY

Radhika Shah, ASOSU Vice President

INQUIRY TO THE ASOSU JUDICIAL COUNCIL
(No. 18-009.i)

[February 8, 2018]

Radhika Shah, ASOSU Vice President, brought an inquiry before the Judicial Council pertaining to Article IV, Section I of the ASOSU Constitution. Vice President Shah requests an answer to the question *“If someone who is currently in the Senate runs and wins a president/vice president position, are they still able to hold their senate seat? As president and vice president elect, these two do not technically report to the current positions and tend to do their own work, separate from ASOSU daily operations?”*

Article IV, Section I of the ASOSU Constitution states that *“No member of the Executive Branch shall simultaneously hold a position in the Legislative Branch or Judicial Branch of the ASOSU.”*

The Judicial Council identifies two questions central to this inquiry. First, the question of whether the president-elect and vice president-elect are technically office holders within the ASOSU and, secondly, whether such hypothetical offices exist within the Executive Branch.

To address the first question, the Judicial Council does not find any evidence to suggest that the offices of “president-elect” and “vice president-elect” formally exist within the ASOSU Constitution and Statutes. There are no descriptions laid out or powers prescribed to the titles of president-elect or vice president-elect, and the only reference they receive exists within Title XI, Section 29 of the ASOSU Statutes, which states *“Upon official certification of their election, the President-elect and Vice President-elect shall each be eligible for a voluntary stipend of up to 20 hours a week, at the third executive paygrade (EX. 3), for services rendered as President-elect and Vice President-elect of the ASOSU.”* The Judicial Council interprets this section of the ASOSU Statutes to specify only that the ASOSU Congress has set aside funds to be used to pay stipends to the certified winners of the ASOSU election for the offices of ASOSU President and ASOSU Vice President, payable from the time their election is certified until start of the next term of office.

Consequently, the Judicial Council finds that the president-elect and vice president-elect do not hold offices within any branch of the ASOSU by virtue of their election,

and any voluntary stipends taken by them are paid on the basis of their work as administrative staff, existing outside of the structure of government. However, the Judicial Council identifies one substantive difference between the president-elect and vice president-elect, and other administrative staff, who have not traditionally been prohibited from concurrently holding any of the offices established in the ASOSU Constitution and Statutes. That difference is the longstanding precedent of quasi-constitutionally affording the president-elect and vice president-elect the power to nominate and appoint executive officers, prior to the start of their terms and swearing of their oaths of office. This precedent has been affirmed by multiple sessions of the ASOSU Senate, which have seen fit to accept nominations and vote on the confirmation of executive officers selected by the president-elect and vice-president-elect, before the latter have assumed office. The Judicial Council does not see fit to prohibit this practice, but does recognize the potential for constitutional conflicts that it creates; chief among them being the exercise of executive power while also holding office within another branch of the ASOSU. Although not in direct conflict with the letter of Article IV, Section I of the ASOSU Constitution, the Judicial Council holds that allowing an individual in the legislative or judicial branches of the ASOSU to exercise executive power violates the principle of separation of powers established throughout the ASOSU Constitution. The Judicial Council further holds that, within a single branch of government, no individual should exercise the powers of two offices simultaneously, except in the case that holding one office is established as the prerequisite for holding another. Therefore, the Judicial Council requires that any person elected ASOSU President or ASOSU Vice President resign from any other ASOSU office they hold within fourteen academic days of the certification of their election, and before exercising any executive powers in their capacity as president-elect or vice president-elect. This requirement shall not apply to any currently sitting ASOSU President or ASOSU Vice President.