



Unanimous Opinion By Council Chair Sonpatki and Councilor Carmichael

**JUDICIAL COUNCIL OF THE ASSOCIATED
STUDENTS OF OREGON STATE UNIVERSITY**

Dylan Perfect, Member of the Associated Students of Oregon State University

WRIT OF APPEAL TO THE ASOSU JUDICIAL COUNCIL AND FORMAL RESPONSE TO
WRITTEN GRIEVANCE

(No. 24.031.r)

[April 25, 2024]

On February 21, 2024, Dylan Perfect, a student of Oregon State University and Member of ASOSU, filed a Writ of Appeal on Opinion 24.030.i, citing procedural, factual, and practical reasons as the basis for appeal. On February 22, 2024, Mr. Perfect, the petitioner, submitted a written grievance to the Council, identifying what he believed to be a violation of ORS 192.630, 192.640, and 192.660, hereafter referred to as the Oregon Public Meetings Law (OPML). Within 21 days of the petitioner’s written grievance, Chair Sonpatki responded with a “tentative denial” to the violations alleged within, and referred the matter to the full Council, who heard the grievance and Appeal during an open session hearing on April 11, 2024. This Opinion will begin by clarifying the Council’s decision to formally deny the violations alleged in the written grievance, and will follow with an explanation of the Council’s decision to uphold the entirety of Opinion 24.030.i.

I

The petitioner cites three sections of OPML which he believes the Council has violated. He argues that the Council violated ORS 192.640, which requires bodies subject to OPML to notify the public of a hearing with over 24 hours notice through the internet, social media, and other channels publicly accessible; ORS 192.660, which requires bodies subject to OPML to provide public notice of executive session with over 24 hours notice; and ORS 192.630, which prohibits a quorum of a governing body from deliberating or deciding on a matter in private with certain exceptions.

In response, we contend that ASOSU Judicial Council is not a body subject to the Oregon Public

Meetings Law because by definition, the Council is neither a public body nor a governing body. According to the Oregon Attorney General's Public Records and Meetings Manual¹, a public body is:

the state, any regional council, county, city or district, or any municipal or public corporation; or any agency of those entities, such as a board, department, commission, council, bureau, committee, subcommittee, or advisory group. A key indicator of whether an entity is a public body is whether it was created by or pursuant to the state constitution, a statute, administrative rule, order, intergovernmental agreement, bylaw, or other official act. (p. 136-137)

The Council was created by the ASOSU Constitution, which is not a "statute, administrative rule, order, intergovernmental agreement, bylaw, or other official act." On the other hand, Oregon State University as a whole *is* a public body, due to its status as a public university created by Oregon statute. The petitioner raises additional concerns asserting that the Council is a governing body according to the Attorney General's Manual. The Manual¹ defines a governing body to be a:

body that has authority to make decisions for a public body on 'policy or administration.' A body meets this standard if its decision-making authority is equivalent to the authority to exercise governmental power, that is, is integral to the movement of the government in an area where it has the power and authority to act. (p. 137)

Per the Attorney General's definition, the Judicial Council is not a governing body either. The governing bodies within ASOSU are the Senate and the Student Fee Committee (SFC).

According to ORS 352.1052, the Senate and SFC are qualified as governing bodies, and are thus subject to OPML because they are exercising the governmental function of setting the student incidental fee. Their decisions and recommendations are binding on a public body – Oregon State University. The Council, on the other hand, is only interpreting the processes requirements for ASOSU provided in the ASOSU Statutes and Constitution. While Council interpretations are binding on the Senate and SFC, they are not binding on Oregon State University and do not have "decision-making authority [that] is equivalent to the authority to exercise governmental power" (altering the student fee). Per the Attorney General's manual, even though a Council "decides what procedures it will use...it is not vested with the authority to decide the direction in which government will move on an issue of policy." (p. 137-138). While the Council has been delegated responsibility for deciding issues of procedure, it is the SFC and ASOSU Senate who are vested with the authority to decide or recommend the student incidental fee. The Council is therefore not subject to OPML and will not appeal Opinion 24.030.i on the basis of not following OPML during deliberations of this case.¹

¹ https://www.doj.state.or.us/wp-content/uploads/2019/07/public_records_and_meetings_manual.pdf

² https://oregon.public.law/statutes/ors_352.105

II

A

The petitioner's first procedural objection was addressed in §I. His second objection was surrounding the Council's use of the word "should" throughout the Opinion. The Appeal inquires as to whether the Opinion is an advisory opinion or formal injunction as outlined in the ASOSU Constitution (Art. III §A(b)3). In response, we clarify that Opinion 24.030.i is not an advisory opinion, nor is it a formal injunction against the Senate. Rather, Opinion 24.030.i is a decision on the interpretation of the ASOSU Constitution and Statutes, which is a binding opinion based on the authority given to the Council by the ASOSU governing documents (Art. III §A(b)2). It is important to note that use of the word "should" in Council opinions mirrors its presence in real court judgments, including those of the Supreme Court. While the term "should" may suggest a recommendation or suggestion in ordinary language, its inclusion in judicial discourse often implies a directive that carries significant legal weight and is meant to guide future actions.

It should also be noted that Council opinions have and will continue to utilize the word "should," however, this does not relegate an opinion to solely an advisory one nor does it degrade the binding nature of JC opinions.

B

The Appeal also raises factual objections, but after thorough deliberation, the Council decides to uphold Opinion 24.030.i. The appellant cites language from the ASOSU Constitution which had already been considered and discussed at length in the JC hearing for case 24.030.i. See the below excerpts from Opinion 24.030.i for further clarification:

"If the Senate were to amend the monetary value of fee bills during deliberation and subsequently pass them for signature by the ASOSU President, they would be undermining the integrity of the SFC and the purpose of its organization, as established within the ASOSU governing documents and by Oregon state law."

"It is true that the ASOSU governing documents do not explicitly prohibit the Senate from amending the fee bill or introducing separate fee bills. However, the fact that these governing documents do not explicitly confer the Senate with this ability and/or outline a process for this was of particular significance to the Council. Instead, the Mediation Committee process is specifically outlined within Title IV, Section 5 of the ASOSU Statutes for instances in which the Senate requests a substantive monetary or provisional amendment to a fee bill. If the Senate were given ultimate authority in terms of fee bill amendments, the Mediation Committee process would be rendered null and void. With this in mind, the Council made the decision that the Senate should not unilaterally amend monetary values or provisions and should instead defer to the Mediation Committee process described in the Statutes."

The appellant did not provide new information that had not already been considered by the Council, other than testimony of personal disagreement with the interpretations of the ASOSU Constitution and Statutes. The Council thus unanimously voted to maintain the interpretation of the governing documents described in Opinion 24.030.i.

C

Finally, the petitioner offered a practical consideration for the Council in his appeal, arguing that Opinion 24.030.i is inadvisable based upon the assumption that the Opinion renders the fee bill amendments performed by ASOSU Congress in 2019 and 2022 a violation of state law. The petitioner goes on to claim that in the event that Oregon State University were involved in litigation surrounding these fees, Opinion 24.030.i could be used as evidence to support the return of said student fees.

We disagree with this argument, offering an opinion on the contrary.

The role of the Judicial Council is to:

consider any case or controversy brought before it by any member of the ASOSU Student Body pertaining to any parties or institutions, or the actions thereof, under the jurisdiction of this Constitution. (Art. III §A(a))

A case or controversy related to the constitutionality of direct fee amendments by ASOSU Congress was not brought before the Council in 2019 or 2022, therefore the Council was not able to decide on the proper procedure for amendment of the fee recommendation. Moreover, Council decisions have always been and will always be applied prospectively, not retroactively. This is a matter of no ex post facto – a fundamental aspect of legal systems worldwide.

If the Council was constrained in its interpretations by these two fee bill amendments, or by any actions taken by ASOSU Congress in the past, we would be forced to accept an incorrect interpretation of the governing documents because of actions committed before we were able to deliberate on the constitutionality of such actions. That is not how the Council functions. It would be inappropriate and unconstitutional to constrain the Council's ability to interpret governing documents based on the past actions of the ASOSU legislative branch, as we are vested with the "final authority on questions of interpretation" in the present (Art. III §A(a)2.1).