



Majority Opinion By Councilor Carmichael

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

Emerson Pearson, ASOSU Senator

INQUIRY TO THE ASOSU JUDICIAL COUNCIL
(No. 24.037.i)

[July 31, 2024]

On July 5, 2024, Emerson Pearson, ASOSU Senator, brought forth an inquiry before the Judicial Council pertaining to Article II, §C(a)2 of the ASOSU Constitution. She is inquiring as to whether the Student Fee Committee (SFC) may exercise any binding authority in its role as an independent body.

Article II, §C(a)2 of the ASOSU Constitution says:

Independent Bodies shall include any committee or body of advisory or consultative character which resides within the executive branch, but which serves independently from the President. Independent Bodies shall not exercise binding authority.

According to ASOSU Statutes, SFC is an independent body (Title II §1(D)c).

The Council holds that the Student Fee Committee cannot, and does not, exercise binding authority over the ASOSU Senate, ASOSU President, or ASOSU Judicial Council. Traditionally, binding authority is a provision, recommendation, directive, statute, or case that a body must follow. For example, the ASOSU Constitution and Statutes exercise binding authority within the ASOSU Student Government. The ASOSU Senate and President exercise binding authority (not necessarily over each other, but within their official capacities). The ASOSU Judicial Council exercises binding authority over all branches of the ASOSU Student Government, interpreting sections and provisions of our governing documents. This is to say that many groups within

ASOSU Student Government exercise binding authority, but SFC is not one of them. This means the recommendations made by SFC, whether that be to other groups or committees, or contingency and supplementary fund approvals, are not final, and are subject to the approval of respective bodies, such as the ASOSU Senate or the ASOSU President.

When it comes to the student fee-setting process, this recommendation becomes more nuanced. Title IV §5(E) establishes, in great detail, the process which occurs when SFC fee recommendations are voted down by the ASOSU Senate. It establishes the Mediation Committee, comprising of members of the Executive Branch, SFC, and Senate. This committee reviews requested amendments from the Senate and/or the President, and will vote to accept or reject those amendments.

The presence of this committee does not mean that SFC has binding authority. Since all fee bills require final Senate and Presidential approval, SFC does not exercise binding authority. Since SFC are not the ones approving the bills on behalf of ASOSU, they are not exercising binding authority.

It should be clearly noted, however, that the provision in Article I of the Constitution giving the Senate fiscal control does not confer the Senate with the right to directly amend the monetary value of fee bills. The Senate should not directly amend the monetary value of fee bills without going through the Mediation Committee. Title IV, §5(E) of the ASOSU Statutes require the Senate to go through the process of Mediation. The Senate still retains fiscal control during Mediation, however the direct amendment of the monetary value of fee bills by the Senate would circumvent, and violate, Section E.

Historically, barring extraordinarily extenuating circumstances, the Senate has on its own accord sent fee bills to Mediation instead of directly amending them. The Council's Opinion simply finds this practice to be binding.

This conclusion is supported by the Judicial Council's Unanimous Opinion on No. 24.030.i, and bolstered even further in Section II of the Council's Unanimous Opinion on No. 24.031.r.

The Council recognizes the recent amendment of Title IV to add Section 10, which states:

Section 10: Senate Fiscal and Legislative Preemption

- A. The ASOSU Student Senate is vested with all legislative power and fiscal control of the ASOSU Student Government, as provided in Article I (A) of the ASOSU Constitution. In furtherance of this constitutional provision, and additionally as a statutory mandate:
 - a. The Senate is herein explicitly recognized and conferred the ability to introduce, deliberate, amend and vote upon, any form whatsoever of fiscal

legislation.

- b. “Fiscal legislation” as provided in this section includes, but is not limited to, bills requesting the collection of mandatory incidental fees pursuant to ORS 352.105.
- c. In exercising the abilities under this section, the Senate is in no way compelled to limit its deliberations to bills approved by any form of committee or executive body, or mediation with entities thereof; however, this does not prevent the Senate from optionally utilizing such processes, if it chooses to do so.
- d. The provisions of this section, unless accordingly amended or repealed, are to supersede all other statutes that may be construed to conflict with its provisions.”

The Council would normally be compelled to reconsider previous Opinions as Section 10 is new information, however Section E was not stricken from the Statutes during this statutory amendment. The Council’s original Opinion, then, remains valid. This has forced the Council to interpret two conflicting statutes, one which outlines a clear process for the amendment of fee bills, and another which attempts to supersede it, trying to strangle back the power of direct monetary amendment from a provision which has been tested, historically and judicially, and which is now rooted with precedence since February of this year.

The Council hereby strikes Section 10 from the ASOSU Statutes.



Dissenting Opinion By Councilor Paola

Senator Emerson Pearson made an inquiry to the Judicial Council, as to whether or not the ASOSU Student Fee Committee can exercise binding authority. I agree with the majority opinion on this point, the Student Fee Committee, as an independent committee of the Executive Branch (Title IV Section 3 Subsection A) holds no binding authority, as the constitution clearly outlines independent committees may not hold binding authority on any matter.

I dissent, however, from the additional idea (outside the scope of the submitted writ) that the ASOSU Senate must also receive the consent and approval of the ASOSU Student Fee Committee in order to amend fee levels. The ASOSU Constitution was specifically written with the intent of upholding Student Senate power over the incidental fee. Article 1 Section A states, “All legislative power and fiscal control is vested in the ASOSU Student Senate.” This section supersedes anything that may or may not be implied by the ASOSU Statutes, even though nothing as currently written in the ASOSU Statutes implies SFC approval is required for any fiscal legislation. This interpretation has been upheld in previous guidance from OSU’s Office of General Counsel, which was partially included in the Judicial Councils unanimous opinion on No. 24.030.i: “[W]e believe that Senate action to modify fee bills by amendment or separate bill would ultimately be affirmed in court.”

The prior opinion that the majority is choosing to uphold here (No. 24.030.i), which claims the Senate has no authority to amend fee levels, clearly stated, “*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.*” When the Senate responded by clarifying its ability to do so under the governing documents (explicitly the Statutes in this case, as the Constitution is clear in their ability to do so), the council instead decided to just strike the new statutory clause, so they could maintain their original opinion. This was done despite the fact that the newly added Section 10 (Under Title IV of the statutes) clarified that mediation remains an optional process under the new statute and that the provisions of said section which restated the Senate's ability to amend fee levels “*are to supersede all other statutes that may be construed to conflict with its provisions*”. The majority has chosen to accept the premise that the SFC is an independent body, and that independent bodies cannot exercise binding authority as provided in our constitution, and yet chosen to bind the elected Senate to the recommendations of the SFC in the same opinion. To undemocratically nullify a statutory amendment of the legislative branch,

not because it violates the constitution or state/federal law, but because it is inconvenient or we are worried about the impact it could have on a non-mandatory process, is a judicial overreach which imperils the basic democratic nature of the ASOSU.

The job of the ASOSU Judicial Council is not to legislate. It is to interpret our governing documents. I do not believe the majority opinion here represents a careful and impartial review of our governing documents, but rather a decision to legislate because of a fear that granting the fully elected Senate with the power explicitly granted to it in the Constitution ratified by the student body could make the process more frustrating occasionally. I fully believe that an impartial or legal review of the facts of this matter would come to a very different conclusion than was reached by the majority.

Carmichael delivered the opinion of the Council, in which Kerner, Chair Jones, Godfrey, and Fraley joined. Councilor Paola filed a dissenting opinion.