

**THE JUDICIARY OF THE LAW SCHOOL GOVERNMENT
OF THE
WILLIAM S. RICHARDSON SCHOOL OF LAW**

In the Matter of SBA Dues, 2014-2015 Academic Year II

Decided Oct. 22, 2014

Cite as 2014 WSRSL 3

Synopsis by the Judiciary¹

Background: Dean for Student Services Ronette Kawakami and Law School Government (LSG) President Makana Paris requested judicial review of the Executive Board's power to set Student Bar Association (SBA) dues.

Holdings:

- 1) The entire LSG has obligations enumerated by the SBA Constitution. Each branch of the LSG is bound by these obligations and in the event that a branch of the LSG fails to take actions necessary to ensure that the SBA is able to function or that the LSG can carry out these, the other branches may be obligated to act in their stead even if such actions would not normally fall within their ambit under the SBA Constitution.
- 2) Failure to act by one branch of the LSG requiring the intervention of another branch must present a clear risk that the SBA or the LSG would be unable to function. If such intervention does become required, it would be subject to review by the Judiciary.
- 3) Ensuring incoming students have the opportunity to attain full membership in the SBA and to gain the associated privileges is a function of the LSG.
- 4) The Executive Board's increase of entering JD student dues to \$65 was unconstitutional and is abrogated.
- 5) The setting of Advanced JD student dues at \$45 by the Executive Board was consistent with the SBA Constitution.

Opinion by Michener, J., joined by Tumbaga and Batzer, JJ., and joined by Dunford, J. in all parts but Part III-B.

1. During the week prior to the start of orientation for the Fall 2014 semester, both Associate Dean for Student Services Ronette Kawakami and LSG President Anthony Makana Paris requested review of the Executive's decision to set dues for entering students. The requests, which are attached as an appendix to this ruling, were worded differently, but requested review of the same two questions: 1) Can the Executive Board (Executive) raise dues in the face of a Senate vote against increase? 2) Can the Executive set dues for a new type of student in the absence of Senate action?

¹ The syllabus constitutes no part of the opinion but has been prepared by the Judiciary for the convenience of the reader.

2. For the reasons set forth below, we conclude that the Executive's decision to increase dues for incoming JD students was contrary to the SBA Constitution and is hereby abrogated and that the Executive's decision to set dues for AJD students was consistent with the SBA Constitution.²

I. FACTS

3. On April 23, 2014, in the course of considering a motion to increase dues, the Senate voted unanimously to maintain dues as they were, that is \$60 for JD students. *See* SBA Senate Minutes V, April 23, 2014. Then, on July 30, 2014, the Executive unanimously voted to set entering JD student dues at \$65. SBA Exec. Minutes IV(j), Aug. 4, 2014.³ The Executive also voted unanimously to set dues for AJD students at \$45. SBA Exec. Minutes IV(j), Aug. 4, 2014. Fall 2014 was the first time that AJD students were beginning at the Richardson School of Law and, as of the time of the Executive meeting on, the Senate had not acted on AJD student dues.

4. On August 5, 2014 Dean for Student Services Ronette Kawakami, on behalf of the Law School Administration (Administration), contacted the Judiciary for review of the Executive's action in order to prepare orientation materials for the incoming class. On August 6, 2014, LSG President Makana Paris contacted the Judiciary for an opinion on the same issue.

5. On August 17, 2014, the Judiciary issued a brief decision on the matter, *In re SBA Dues, 2014-2015 Academic Year*, 2014 WSRSL 1 (per curiam). This opinion reincorporates that decision to the extent that the decision of August 17, 2014 does not contradict this opinion. Any contradictions between the two will be resolved in favor of this opinion.

II. THE JUDICIARY HAS JURISDICTION

6. Our jurisdiction is defined by the SBA Constitution in part as follows.

Section 5.3.1. The Judiciary must rule only on questions arising under the Constitution of the SBA and the by-laws of the LSG.

7. Here, there was a clear difference of opinion between the elected branches on which LSG branch can set dues, a question arising under the SBA Constitution and LSG by-laws, the latter of which include Executive decisions. Therefore, we have jurisdiction to resolve the questions presented.

III. DISCUSSION

A. OBLIGATIONS FOR EACH BRANCH OF THE LSG

8. The entire LSG has obligations enumerated by the SBA Constitution. *See* SBA Const. § 1.9. Because each branch of the LSG is bound by these obligations, in the event that a branch of the

² We express no opinion however, on the propriety of the value set for dues of AJD students by the Executive.

³ It appears that the Executive began the meeting on July 30, 2014, took a recess, and concluded the meeting on August 4, 2014. The issue of dues was apparently decided before the recess. *See* SBA Exec. Minutes, Aug. 4, 2014.

LSG fails to take actions necessary to ensure that the SBA is able to function or that the LSG can carry out its obligations under Section 1.9, the other branches may be obligated under that section to act in their stead even if such actions would not normally fall within their ambit under the SBA Constitution.

9. We conclude, however, that failure to act by one branch of the LSG requiring the intervention of another branch must not be the result of a mere difference of opinion between branches.⁴ Such a failure to act must present a clear risk that the SBA or the LSG would be unable to function. If such intervention does become required, care must be taken to ensure that any trespass into the domain of another branch of the LSG is limited to the bare minimum needed to address the situation. Any intervention would be subject to review by the Judiciary through standard procedures. *See* SBA Constitution § 5.3.

B. NEITHER LSG GENERAL OBLIGATIONS NOR THE EXECUTIVE'S POWERS AUTHORIZED THE EXECUTIVE TO INCREASE DUES IN THE FACE OF CONTRADICTORY SENATE ACTION

10. In approaching this issue, we looked for a Senate resolution or by-law setting the dues. Had a by-law or resolution been passed, this would have been a simple decision. However, none was. So, we must analyze this issue using our test above.

11. One of the Senate's delegated powers is to set dues. *Id.* § 2.2. That body voted unanimously to "keep the SBA dues as they [were]" on April 23, 2014. SBA Senate Minutes V, April 23, 2014. The Executive, by later setting the dues at a different amount, was avoiding no clear risk that the SBA or the LSG would be unable to function. Nothing indicates that, without the increase, the treasury would go into the red and the LSG would be unable to meet its fiscal obligations nor anything else so dire. The dues were to remain unchanged and they would be collected as usual at orientation by the Treasurer.⁵

12. According to the minutes of the April 23, 2014 Senate meeting, Treasurer Kona Ka'aihue was present and told the Senate that the dues should be increased to account for inflation. Inflation was also the reason cited by the Executive for increasing the dues during its meeting on August 4, 2014. SBA Exec. Minutes IV(j), Aug. 4, 2014 ("The Executive Board increased the traditional dues amount by \$5 for the 1L's to adjust for inflation..."). The Senate, presumably, considered this opinion from the Executive before unanimously rejecting the dues increase.

13. In justifying the raising of SBA dues, the Executive cited Section 4.6.3 of the Constitution. *See* SBA Exec. Minutes IV(j), Aug. 4, 2014. Section 4.6.3 empowers the Executive to state a position of the SBA on an issue requiring a timely response if the Constitution, resolutions, and by-laws do not sufficiently address the issue. The Senate is delegated the power to set dues. SBA Const. § 2.2. The Senate made its position on dues clear with its vote to maintain them as they

⁴ Stated simply, no drama.

⁵ Given the relative informality of the Senate's vote, it may not have been unreasonable for the Executive to think that it was proper to set the dues. However, the Constitution's language requires no by-law or resolution to establish dues, merely that the Senate set them. SBA Const. § 2.2. On this issue then, we must give the Senate wide latitude.

were at the time of the vote. So, by providing the power to set dues to the Senate and the Senate exercising that power via a vote, the Constitution sufficiently addressed the issue and Executive action was not required.

14. The Executive also cited Section 4.4, which defines the roles and responsibilities of the Treasurer. *See* SBA Exec. Minutes IV(j), Aug. 4, 2014. That section delegates many responsibilities to the Treasurer. *See* SBA Const. § 4.4. However, the only responsibility regarding dues is the overseeing of their collection, not setting how much they are. SBA Const. § 4.4.⁶

15. The general obligations of the LSG may necessitate another branch to intervene in certain circumstances should the situation call for it. However, this was not the case here. There was no clear risk the SBA or LSG would be unable to function and it appears that the Executive's action may have been the result of a mere difference of opinion with the Senate. Nor did the powers the Executive cited in acting to increase the dues authorize such action. Therefore, the Executive's action increasing the dues of entering first year JD students was contrary with the Constitution.

C. BOTH LSG GENERAL OBLIGATIONS AND THE EXECUTIVE'S POWERS AUTHORIZED THE EXECUTIVE TO SET AJD DUES

16. The Senate's vote maintaining the dues as they were did not, however address the issue of how much AJD students should pay. AJD students were a new classification of student⁷ at the Richardson School of Law, entering in Fall 2014, so no dues amount had ever been set for them.

17. Membership in the SBA is conferred upon registration. SBA Const. § 2.1. Under Section 2.2 of the Constitution, students do not become full members of the SBA until they pay dues. So, if no dues amount was set for AJD students, they would be without full membership, a main benefit of which is to participate in the LSG. *Id.* § 2.3.⁸

18. Ensuring that incoming students have the opportunity to attain full membership in the SBA is a core function of the LSG. The SBA Constitution calls for creation of a Law School Government that is "representative of student needs." *Id.* pmbl. The basic way that the SBA Constitution provides for this is by allowing each group of students to be represented by a similarly situated student, determined by class year or program. *See id.* § 3.1.

19. AJD students should be able to represent their colleagues and payment of dues is a requirement for that. *Id.* § 2.3. Without dues to pay, an AJD student would not have the

⁶ The Executive also felt that because "the SBA Constitution does not preclude the Executive Board from setting SBA dues" that the Executive could. SBA Exec. Minutes IV(j), Aug. 4, 2014. We do not feel, when a power is explicitly given to one branch, that another may justify its actions with a mere "But it doesn't say we can't."

⁷ From a technical standpoint AJD students are treated as transfer students and administratively are no different than any other JD student. However, AJD students are international lawyers with needs that are not fully encompassed by LLM students who have a shorter program and different admission requirements. *See* International Programs, <https://www.law.hawaii.edu/international-programs-0> (last visited Oct. 21, 2014).

⁸ Also, if the Senate were to set dues for AJD students after the beginning of the semester and then ask the Treasurer to collect dues from the new AJD students, it could create potential ex post facto issues. *See* SBA Constitution § 3.3.6.

opportunity to represent their fellow students. So, the Executive's action in setting the dues for AJD students was properly taken to fulfill the one of the bases for the creation of the SBA Constitution "to create a Law [School] Government...representative of student needs," all students' needs. SBA Const. pmbl.

20. The Executive's action was also authorized under its duty to state the position of the SBA on an issue that requires a timely response if the SBA Constitution, resolutions, and by-laws do not sufficiently address the issue. SBA Const. § 4.6.3. At the time, the Senate had not yet addressed the issue of AJD student dues. A new academic year was about to begin, AJD students were going to be entering, and the Administration needed the information on AJD dues for orientation materials. The situation was such that a timely response was required.

IV. CONCLUSION

21. For the forgoing reasons, we hold that the dues for entering JD students set by the Executive at \$65 is contrary to the SBA Constitution is hereby abrogated and that the setting of AJD student dues at \$45 by the Executive was consistent with the SBA Constitution.

Dunford, J., concurring in part and concurring in the judgment.

22. I fully concur with the court's holdings in this case. I also concur with the bulk of the majority's reasoning. I cannot, however, join in Part III. B. of this opinion, because I would extend slightly more discretion to the Executive under the circumstances of this case (although not enough discretion to alter the outcome). I write separately to explain my reasoning.

23. This is the first case the new Law Student Government (LSG) Judiciary has been asked to address. It stems from actions taken by the Executive during the Senate's recess over the first summer after the new Constitution went into effect. The process of figuring out how our new system works under this new Constitution has gone about as smoothly as we could reasonably expect; unfortunately, we can't reasonably expect that to be very smooth.

24. We are students. We are novices at law and novices at governance. We are operating under the authority of a new SBA Constitution, using new procedures that have not yet been tested. We try our best to avoid mistakes, but we are not always successful. That is part of the process.

25. When the Senate rejected the Executive's request to increase dues, it did so in a way that can (and probably should) be read as intending to leave dues for 2014-2015 set at the same level as in prior years. However, the form of the motion lacked formality. It was not explicit that it would apply to future academic years, and it was not in the form of a by-law or resolution.

26. The possibility for confusion caused by the lack of structure in the Senate action was magnified by the Judiciary's failure to meet its constitutional record keeping obligations. We did not record the Senate action in any form, or report that action to the student body.⁹ Thus, the possibility exists that the President was not fully informed as to the Senate's action.

⁹ It is also not clear if the Senate communicated their action to the President to permit him to decide whether or not to issue a veto; given the form of the Senate's action, it is not clear if a veto was possible.

27. In fairness to the Judiciary, the Senate action was not communicated to us in any form other than through the meeting minutes. In fairness to the Senate, the Judiciary has never asked the Senate to communicate resolutions and bylaws to us in any particular form. At the end of the day, we are all learning through trial and error how to operate our new LSG.

28. The bottom line for me is that this past summer was the first summer the new SBA Constitution has been fully in effect. None of us had prior experience to fall back on, and all of us were (and still are) finding the holes in our knowledge through the time-honored process of falling into them. Under the circumstances, I think it was reasonable for the Executive to err on the side of caution.

29. I agree with the majority's conclusion that the Senate's vote rejecting the dues increase was sufficient, despite its informality, to serve to affirmatively set the dues for the current academic year. I also agree with the majority's conclusion that there was therefore no threat to the continuity of the SBA or the LSG. I do not feel, however, that it was unreasonable for the President to believe that there was such a threat; and given that reasonable belief, I think the President had the discretion to act to fill the perceived gap.

30. I would therefore hold that the President had the discretion to act in the absence of both clear Senate action and clear precedent to prevent a situation from occurring that might plausibly threaten the continuity of SBA or LSG operations. I would also hold, however, that the President's discretion is constrained by the Senate's clear rejection of the proposed dues increase, and that the President was therefore barred from taking action that would contradict that Senate action.

31. For these reasons, I concur in part and concur in the judgment.

Appendix

Subject: Decision regarding the unilateral increase in dues.
From: "Ronette Kawakami" <ronettek@hawaii.edu>
Date: 8/5/2014 12:43
To: <michener@hawaii.edu>
CC: "Elisabeth Steele Hutchison" <esteele@hawaii.edu>, "Katherine Vessels"
<kvessels@hawaii.edu>

Aloha Judiciary:

I am forming the question to the Judiciary based on the Senate's vote that the SBA dues not be increased.

This is not an endorsement of either the LSG President nor the Senate. This is a matter of expediency because the administration must print their materials for the upcoming orientation.

It is my understanding that the SBA Senate voted to not increase SBA dues. It is also my understanding that the LSG President then issued an executive order raising the dues. Thus, the question presented is whether the LSG President has the authority to unilaterally raise the dues on an issue that affects the entire SBA, even after the Senate has voted against it? And if "yes" what is the exact amount?

As previously stated, the administration needs a final answer on this issue so that we may complete our orientation packets.

Aloha,
Dean K.

cid:image003.jpg@01CE2FE9.8A8DB030
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Appendix

Subject: Aloha -- Advisory Opinion Request
From: Anthony Paris <parisa@hawaii.edu>
Date: 8/6/2014 13:51
To: Thomas Michener <michener@hawaii.edu>

Aloha Justices:

I hereby request an Advisory Opinion on the following questions in light of the Executive Board action on SBA Dues on Wednesday, August 5, 2014:

- (1) Are the SBA dues amount set under the SBA Board of the SBA 2011 Constitution still in affect?
- (2) Can the Executive Board set SBA dues when the Senate has yet to enact a by-law setting the dues?

Please find the formal request for an Advisory Opinion attached. Thank you for your time and consideration.

Sincerely,

Makana

--

Anthony Melvin Makana Paris
President of the Student Bar Association

J.D./M.B.A. Candidate
William S. Richardson School of Law & Shidler College of Business
University of Hawai'i at Mānoa

Attachments:

Advisory Opinion Request 8.6.14.pdf 11.1 KB
LSG Executive Board Minutes.Draft 8.5.14.doc 62.0 KB