



July 2, 2024

Dear DaNae Estabine, Evanna Dominic, Zakariya Ahmed, and Walker Haber,

Below you will find the recommendation and opinion of the appeals panel.

I. Background.

This matter involves an appeal of the decision of the Student Elections Commission (hereinafter “Commission”) by the Ad Astra Coalition.

Before the April student election, Ad Astra filed a complaint with the Commission. The complaint alleged that the OneKU Coalition had violated the Student Elections Code by using outside resources to participate in the election, thereby triggering the Code’s mandatory disqualification remedy for this violation. In a decision issued after the election had occurred, the Commission held that OneKU had not violated this campaign finance regulation and it certified OneKU’s Presidential and Vice-Presidential candidates – Zakariya Ahmed and Walker Huber respectively -- as the winners of the election.

The Constitution of the Student Senate purports to give the Student Senate Constitutional Court exclusive jurisdiction over appeals of the Commission’s decisions. Constitution of the Student Senate, Title IV, Article 3, Section 2. Acting in my capacity as Judicial Board Chair, I ruled in May that this provision in the Constitution of the Student Senate is invalid. It conflicts with University Senate Rule and Regulation (hereinafter “USRR”) 6.4.10.2, which gives the Judicial Board appellate jurisdiction over the Commission’s decision, and was not enacted in conformity with the procedures set forth in the University Senate Code for amending University Senate Rules and Regulations.

In that same May decision pursuant to my authority as Judicial Board Chair under USRR 6.7.4.1, I dismissed without an appeals hearing Ad Astra’s challenge to the composition of the Commission. I held that Ad Astra was entitled to an appeals hearing on its argument that the Commission lacked substantial record evidence for its finding that OneKU had not violated the Student Elections Code’s campaign finance regulations.

II. Summary of the Disposition.

The appeals hearing on the issue described above was held on Monday, July 1. The Presidential and Vice-Presidential candidates of the Ad Astra Coalition – DaNae Estabine and Evanna Dominic respectively – appeared for the appellant. The aforementioned Presidential and Vice Presidential candidates of OneKU appeared for appellee. Both the appellant and appellee had an opportunity to make opening and closing statements and to answer questions posed by the appeals panel.

After deliberating privately, the appeals panel unanimously concludes that the Commission lacked the substantial evidence required by USRR 6.7.3.3 for its finding that OneKU did not violate campaign finance regulations by using outside resources to participate in the election. In our view, the only reasonable conclusion that the record supports is that OneKU did violate the Student Election Code's campaign finance regulations. Another way to put this same conclusion is that the Commission's finding that OneKU did not violate those regulations is arbitrary and capricious within the meaning of USRR 6.7.3.4 because it "lacks a plausible explanation of the connection between the facts found and the recommendations made." Because the only reasonable conclusion to be drawn from the record is that OneKU violated campaign finance regulations, we do not view as warranted any further proceedings in the Commission on the issue of whether a violation occurred. As the Commission itself recognized, the Student Elections Code requires disqualification of OneKU candidates for the campaign finance violation that occurred here.

III. Explanation.

Under the Student Elections Code, Presidential and Vice-Presidential Candidates are allotted \$1,000 total to spend on campaigning. Constitution of the Student Senate, Title VI, Article V, Section 3. This same provision goes on to prohibit candidates "from utilizing outside funding or resources to participate in the Student Senate Election." The very next sentence reads: "A candidate who is found in violation of this regulation, will be immediately disqualified and barred from further participation in the election where this violation occurred."

In its complaint against OneKU filed with the Commission before the election occurred, Ad Astra alleged that OneKU rented the Pine Room in the Hawk, free drinks including beer were on offer to all Hawk patrons who entered that room, and that OneKU was campaigning there by, inter alia, handing out campaign materials. Although the University Senate Code and USRR require an adversarial hearing at which the parties present, examine, and cross-examine witnesses and present other evidence, see University Senate Code Article XII, Section 2 & USRR 5.2.2.c., the Commission undertook to investigate facts on its own and took "testimonials" from witnesses and the parties. It rendered its decision based upon its own fact investigation rather than upon evidence presented by the parties at an adversarial hearing.

On April 7th, OneKU sent an email to the Commission in which it denied that Mr. Ahmed had rented the Pine Room: "[T]here is an accusation that we, particularly Zakariya, paid for a room and tab and put it under Evan Winden's name. We can go ahead and confirm that he did not do any of the above – there should be an email sent to the Elections Commission clarifying the details of this from a manager." Mr. Ahmed arranged for Eden Hadley, a manager at the Hawk, to send an email to the Commission that same day, which stated: "Nobody rented out the Pine Room last Tuesday night at all, it was public the whole night. In regards to the keg, we had old inventory that we were giving away to everybody. Typically we do this on Friday afternoons, but we had one keg lying around that we decided to give out."

Evidently unbeknownst to Mr. Ahmed and Ms. Hadley due to the way the Commission collected evidence, the Commission a few days earlier on April 4th had received copies of text messages Evan

Winden had received from, and sent to, Mr. Ahmed. Mr. Ahmed, who addressed Mr. Winden colloquially as “Boss man”, wrote: “If I get a keg at the Hawk tn [tonight] would people come? And could I put it under your name?” He explained, “I need a name to put it under. I’ll pay. It would just look sus[picious] if it was me like I’m paying cash and everything.” Mr. Ahmed concluded by urging Mr. Winden to “bring ur whole house” to the Hawk event. In fact, as the Commission found based upon the evidence submitted by Mr. Winden and by the Events Manager at the Hawk, the Pine Room was rented out in Mr. Winden’s name and beer was served free there to all comers. Testimonials submitted by numerous persons reported, and the Commission found, that OneKU engaged in campaign activities in the Pine Room.

Not to put too fine a point on it, Mr. Ahmed and Ms. Hadley, whom Mr. Ahmed solicited to file a testimonial, lied to the Commission. Mr. Ahmed’s texts to Mr. Winden, which he did not realize the Commission had, represent the most direct and persuasive evidence of what occurred: His own admission that he sought to pay for a keg at the Hawk to attract students, including Mr. Winden’s “whole house”. Based upon this powerful admission, as well as the evidence corroborating it, we conclude that the only reasonable view of the evidence is that Mr. Ahmed arranged to rent the Pine Room in Mr. Winden’s name; in consideration for the rental the Hawk made free beer available to those who entered the Pine Room; OneKU engaged in campaign activity in the Pine Room; and OneKU and Mr. Ahmed in particular lied to the Commission in OneKU’s April 7 filing.

In the appeals hearing, Mr. Ahmed maintained that he had not rented the Pine Room because it was open to all Hawk patrons, not just those affiliated with OneKU. We find this effort to engage in gamesmanship with the term “rent” to be wholly unpersuasive. The term “rent” is not an obscure legal term of art. It is commonly used and well understood in ordinary parlance to mean paying a sum to a property owner for the temporary right to use the property. Contrary to OneKU’s knowingly false April 7 submission, that is what happened here. The fact that OneKU made the Pine Room accessible to all Hawk patrons does not somehow negate the conclusion that Mr. Ahmed rented the Room through Mr. Winden. Indeed, the right to make the Room accessible to all rather than restricting its use was one of the rights that the OneKU’s rental of the room purchased. Further, the room’s accessibility to all Hawk patrons helps to establish rather than undermines a finding that OneKU used outside resources for campaign purposes. One of the obvious and principal purposes of campaigning involves persuading persons who are not already supporters to vote for the coalition’s candidates. This purpose *requires* that campaign events be open rather than restricted to those who have a preexisting coalition affiliation.

The Commission effectively recognized that Mr. Ahmed had lied to the Commission about his rental of the Pine Room through Mr. Winden, although it hedged this recognition and declined to follow it to its only logical conclusions. The Commission’s decision declares, “*If it is actually true (as juxtaposed against the preponderance of the evidence standard) that One KU misled the Elections Commission about the nature of the room rental, that further muddling of the evidence and the subsequent use of the close of the voting period to pressure the elections commission into a hasty decision is . . . reprimandable.*” (Emphasis added).

Although the Commission found that Mr. Ahmed had rented the Pine Room through Mr. Winden and had engaged in campaign activities there, the Commission found that OneKU had not used outside funds to campaign. It reasoned that the room itself did not constitute “an actual benefit that One KU could utilize to enhance their participation in the Student Senate Election”. Although the provision of free drinks, in its view, would constitute such a benefit, the Commission concluded that the evidence did not support a finding that by a preponderance of evidence that such free drinks were provided.

We are inclined to agree with Ad Astra that the room rental by itself constituted “an actual benefit” that gave OneKU a campaign advantage. While Ad Astra members had to vie for attention in space the Hawk always treats as public, OneKU had a dedicated space and had a right to, inter alia, set up tables on which campaign literature or buttons were available. We ultimately do not need to decide whether the room by itself gave OneKU a potential advantage such that its rental used outside funds to participate in the election. The rental of the room paid for by OneKU, *plus the inducement of free liquor for patrons to enter the room*, certainly establishes use of outside funds which gave OneKU an advantage and which qualifies as a campaign expenditure.

Although it explicitly addressed whether the OneKU’s rental fee was used to pay for mixed drinks of Hawk patrons, the Commission did not directly address whether the free beer was connected with that fee. To reach the conclusion that the free beer on offer in the Pine Room was unconnected with OneKU’s rental and had not in essence been paid for by OneKU, the Commission would have to make all of the following findings:

- Although Mr. Ahmed’s text to his friend Mr. Winden began by expressing a desire to buy a keg at the Hawk and said nothing about renting space there, Mr. Winden in fact rented space at the Hawk and did not arrange for the purchase of a keg.
- Although Ms. Hadley’s email was untruthful in its assertion that no one had rented the Pine Room, it accurately reported that the Hawk’s decision to offer free beer in the Pine Room was not in consideration of OneKU’s rental of that room.
- The Hawk’s decision to offer free beer on the Tuesday OneKU rented the Pine Room rather than on Friday afternoons, which Ms. Hadley characterized as the usual day and time the Hawk offers unsold beer inventory for free, was merely coincidental and was unrelated to OneKU’s rental fee.
- The Hawk’s decision to place the free beer in the Pine Room rather than in the areas the Hawk always treats as public was merely coincidental and was unrelated to the rental fee Mr. Ahmed agreed to pay through Mr. Winden.
- The Hawk has a practice of violating K.S.A. 41-2640(a)(1), which prohibits bars from offering free beer.

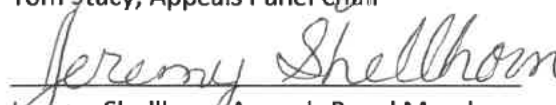

Any one of these findings would be implausible. All of them together blink reality. We readily acknowledge that our standard of review is limited. But the limitations on our review set forth in USRR 6.7.3 do not mean that our review is a rubber stamp. We easily conclude that any finding that the free beer on offer in the Pine Room was unconnected to OneKU’s rental fee could not be made by a reasonable factfinder with due regard for the contrary evidence. USRR 6.7.3.3 accordingly requires that the Commission’s decision be set aside.

In addition to the considerations enumerated above, our conclusion is reinforced by two additional points. First, the Commission did not explicitly find that the free beer in the Pine Room was unconnected with the rental fee Mr. Ahmed agreed to pay through Mr. Winden. In this respect, the Commission's decision can be seen as arbitrary and capricious for "entirely fail[ing] to consider an important aspect of the problem" USRR 6.7.3.4. Second, the deference owing to the Commission's findings is diminished by the unusual nature of its process, which departed from the adversarial hearing required by the University Senate Code and the USRR. USRR 6.7.3.3 states, "The appeals panel should bear in mind the superior opportunity of the hearing panel to judge the credibility of witnesses." However, the Commission did not hear the testimony of witnesses, who were examined and cross-examined by the parties, and therefore did not observe witness demeanor and responses to unexpected and sometimes hostile questions. It merely received short written statements of witnesses and second-hand written accounts, usually in the form of emails.

We appreciate that the Commission may have been reluctant to find a violation of the prohibition against use of outside funding for election purposes because it triggers the Student Election Code's mandatory remedy of disqualification. If the Commission had acted on Ad Astra's complaint before the election and had found a violation, the Election Code would have required the disqualification of OneKU's slate of candidates. The result would have been the election of Ad Astra's Presidential and Vice-Presidential candidates, who would have been the only qualified candidates on the ballot. The result can be no different respecting a violation of the outside funding prohibition occurring before the election but found to exist after the election has occurred.

Instead of disqualification, the Commission opted for the less extreme remedy of reprimanding OneKU. Disqualification is an extreme remedy, to be sure. But if the Commission is uncomfortable with this remedy, the answer is to recommend changing the Election Code to furnish the Commission with a menu of potential remedies rather than resist the only reasonable conclusion that the evidence supports. While disqualification may be an unjustifiably harsh remedy in some cases, we seriously doubt that this is one of them. As we have noted, Mr. Ahmed lied to the Commission and, we surmise, enlisted Ms. Hadley to participate in the lie. Lying in a political process perhaps may be relatively common and unsurprising. But it is intolerable to lie in an adjudicatory proceeding in a university dedicated to the search for the truth.

 
Tom Stacy, Appeals Panel Chair

 
Jeremy Shellhorn, Appeals Panel Member

 
Michael Wray, Appeals Panel Member