



**General Counsel Opinion
GC 2017-003
October 5, 2017**

Questions Presented

SGA General Counsel has been requested to provide an opinion on the following questions:

- I. Were the procedures for nominations in Congressional Bill NO. 980907 done in violation of University of Oklahoma Student Government Association Code Annotated?**
- II. Are these positions part of the Executive Branch?**
- III. Are the appointment of Kaylee Rains-Saucedo and Carrie Pavlowsky in violation of University of Oklahoma Student Government Association Code Annotated?**
- IV. Does the lack of an open and competitive process deny student members of participation rights?**

Answer & Analysis

Congressional Bill NO. 980907 ("Bill") provided an act advising and consenting members for consideration of the University Presidential Search Committee ("Committee"). The Bill included four students, Cameron Burleson (SGA Vice President), Kaylee Rains-Saucedo (SGA Undergraduate Student Congress Chair), Carrie Pavlowsky (Graduate Student Senate Chair), and Mackenzie Coplen (Student Bar Association President), to be nominated for consideration of membership to the University of Presidential Search Committee.

- I. Were the procedures for nominations in Congressional Bill NO. 980907 done in violation of University of Oklahoma Student Government Association Code Annotated?**

Petitioner believes that the procedures for nominations in Congressional Bill NO. 980907 was done in violation of University of Oklahoma Student Government Association Code Annotated ("Code Annotated"). Petitioner believes that the procedure was done in violation of the Code

Annotated because under the Code Annotated, “All appointments to High Offices shall be made through an open and competitive application process.”¹ To address whether the procedures for nominations in Congressional Bill NO. 980907 was done in violation or not, we must address two issues before we can decide that. The first issue to address is whether these four students are being appointed to this position. The definition of appointed is “by, through, or as a result of an appointment.”² While the definition of nominated is “to propose (someone) for appointment or election to an office.”³ Here, the four students mention in the Bill are not being appointed to the positions for the Committee, but rather they are only being nominated. There is a clear distinction between being appointed and being nominated; the four students are not guaranteed the position as would be the case for an appointment. These students are merely being considered to be a part of the proposed Committee. If these students were intended to be appointed, the Bill would have stated that they were being appointed as has been the case in appointment bills. Moreover, these students cannot be appointed because it is ultimately the Board of Regents’ who appoint members from the nominees selected by the student governance organization to the Committee.⁴

However, if these four students were being appointed to the positions in the Committee, we need to address the second issue of whether these positions are considered a High Office Position. We must determine this before examining whether the procedures for nomination in the Bill violates the Code Annotated. The Code Annotated provides a specific list of the positions that are considered to be High Offices. The Code Annotated states that “the high legislative offices of the SGA shall be as follows: Chair of Undergraduate Student Congress; Vice Chair of Undergraduate Student Congress; Secretary of Undergraduate Student Congress; Ways and Means Committee Chair of Undergraduate Student Congress; Chair of Graduate Student Senate; Vice Chair of Graduate Student Senate; and Secretary of Graduate Student Senate,”⁵ and “the high executive offices of the SGA shall be as follows: SGA President; SGA Vice President; the SGA President's chief of staff; Departmental Directors; SGA General Counsel; SGA Associate General Counsels; Election Chair; and Election Board,”⁶ and “the high judicial offices of the SGA shall be as follows: Members of the Student Superior Court; and Members of the Student Parking Appeals Board,”⁷ and “the high legislative offices of the programming branch shall be as follows: CAC Chair.”⁸ Nowhere in the Code Annotated does it state any other position as a High Office position. We believe that Congress intended this to be an exhaustive list because they specifically drafted and enacted an act with the purpose to “change and clarify which offices count as high offices and preclude other SGA involvement.”⁹ If Congress had intended this to be an incomplete list, they would have stated otherwise. Therefore, we believe that this is not an appointed High Office positions.

Since this is not an appointed High Office Position, there is no need for an open and competitive application process required by the Code Annotated.

¹ SGA Code Annotated Title I Ch. 2 Sec. 9.

² Dictionary definition of appointed.

³ Dictionary definition of nominated.

⁴ Regents’ Policy Manual for The University of Oklahoma Sec. 1.4

⁵ SGA Code Annotated Title I Ch. 2 Sec. 7(a).

⁶ SGA Code Annotated Title I Ch. 2 Sec. 7(b).

⁷ SGA Code Annotated Title I Ch. 2 Sec. 7(c).

⁸ SGA Code Annotated Title I Ch. 2 Sec. 7(d).

⁹ Congressional Bill No. 920306, Senate Bill NO GF14-04, High Office Clarification Act of 2014.

II. Are these positions part of the Executive Branch?

The Code Annotated state that “the Student President, Student Vice President, SGA General Counsel, and any SGA officer that is elected in a SGA sponsored election and/or receives a SGA stipend and is not otherwise designated as a member of the Legislative or Judicial Branch, shall be considered a member of the Executive Branch.”¹⁰ Based on that provision of the Code Annotated, Petitioner believes that these positions are a part of the Executive Branch. We agree with Petitioner that these positions are a part of the Executive Branch but for different reasons than Petitioner’s. First, The Board of Regents sent out a letter outlining a request for four (Norman campus) student nomination to be submitted. These nominees are to be selected by the student governance organization.¹¹ So this is a task that has been delegated to SGA. Second, “the Student President shall represent the SGA on all official occasions and coordinate all student activities and services.”¹² Last, “The Student President shall have the power, with the advice and consent of the Legislative Branch, to nominate and appoint all officers of the SGA not otherwise provided for.”¹³ Since the Board of Regents had delegated a task to SGA, the SGA President’s duty is to represent the SGA for that task and it is within the SGA President’s power to nominate these students with the advice and consent of the Legislative Branch. Since it is not stated specifically, it is only reasonable that these positions would fall under the Executive Branch since these nominated students will be representing the SGA and that they were also nominated by the SGA President.

Petitioner also argues that because these are Executive Branch positions and based on absence of specific rules of procedure, those which have stood the test of time are the appropriate ones to guide in deciding the proper way to handle a particular situation¹⁴, that these positions should have had a competitive application process. Petitioner gave an example of how the Parking Board was ruled to be an inferior court and not High Office, this is due to traditional absence of rule. Petitioner further argues that the nominations should follow the same tradition as selection of past parking judges and have a competitive application process. The petitioner’s argument is flawed because the Parking Board is not a High Office because the Code Annotated did not list it as so. Further, there is not an absence of rule of procedure when it is within the powers of the SGA President to nominate and appoint various SGA positions. We also reiterate that since these positions are not appointed High Office Positions, there is no need for a competitive application process.

III. Are the appointment of Kaylee Rains-Saucedo and Carrie Pavlowsky in violation of University of Oklahoma Student Government Association Code Annotated?

Petitioner believes that Kaylee Rains-Saucedo and Carrie Pavlowsky are in violation of the Code Annotated because “no person serving in the legislative or executive branches shall simultaneously serve in a high office of any branch other than the one in which they serve.”¹⁵ We disagree with Petitioner because as we stated above, these positions are not appointed High

¹⁰ SGA Code Annotated Title III Ch. 1 Sec. 2.

¹¹ Regents’ Policy Manual for The University of Oklahoma Sec. 1.4

¹² SGA Code Annotated Title III Ch. 2 Sec. 8.

¹³ SGA Code Annotated Title III Ch. 1 Sec. 7(a).

¹⁴ SGA Code Annotated Title I Ch. 1 Sec.3.

¹⁵ SGA Code Annotated Title I Ch. 2 Sec. 7.

Office Positions. Therefore, Kaylee Rains-Saucedo and Carrie Pavlowsky did not violate the Code Annotated.

IV. Does the lack of an open and competitive process deny student members of participation rights?

The Code Annotated states that “students classified as undergraduates may participate in all levels of government, except Graduate Student Senate.”¹⁶ Petitioner believes that since there was a lack of an open and competitive process for positions in the Committee, the students have been denied of their rights to participate in all levels of government. We want to address that the Committee is a part of the Board of Regents and not a part of any of the three branches. Therefore, the students are not denied their rights.

This is the opinion of the General Counsel.

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¹⁶ SGA Code Annotated Title I Ch. 1 Sec. 2(a).