

MEMORANDUM

TO: The Chief Justice & the Justices of the Judicial Council of the University of Central Florida Student Government

FROM: Senator Joshua Scriven – College of Sciences Seat 1, the Student Senate of the University of Central Florida Student Government

DATE: Friday, January 13, 2012

RE: Request for an Official Opinion from the Judicial Council of the University of Central Florida Student Government regarding *EXECUTIVE ORDER - AUTHORIZING THE A&SF BUSINESS OFFICE TO CEASE PROCESSING OF FAO ALLOCATION 44-23*

As our civilization has moved away from dynastic and imperial rule, we have come to our present understanding of enlightened and superlative government as subsisting in democracy. The type of government recognized in the U.S. is republican one consisting in a division of powers. Now, it must be realized that all powers that exist, exist in the people. It is the people that consent to the diminution of their liberties in order that a more peaceful and stable state is secured.

Such, therefore, is the power of government: a grant. The Constitution of the Student Body of the University of Florida lays out that legislative authority lies with the senate (Article II), the judicial with the Judicial Council (IV), and the executive and any others with the Study Body President (III).

EXECUTIVE ORDER - AUTHORIZING THE A&SF BUSINESS OFFICE TO CEASE PROCESSING OF FAO ALLOCATION 44-23 was issued by the Executive on December 14, 2012.

The executive has sought support for its actions under Article III, Section 1, which notes: “all executive powers and those powers not specifically granted herein to other branches of Student Government shall be vested in the Student Body President, assisted by the Student Body Vice President, and such other administrative officers as the President shall appoint to effectively carry out the business of the Student Government Association.”

This clause may not be construed to say that every power imaginable must be granted herein and that of those powers not allocated to the others, the executive has full reign. What it is a division and allocation of granted powers and must be seen as a way for student government to effectively execute its powers (as a collective) when a particular power that it possesses has not been allocated in writing to a branch. Another way of looking at it is to ask the question: “has the power to cease the distribution of water or paper been granted to the Judicial Council or to the Student Senate?” The answer would, of course be “no.” The simple fact that a power has not been granted to one of two branches, does not make for it to be automatically assumed by the another. It must evidently, exist as a power, before it can be allocated as a power.

Now the Constitution has reserved for the Senate and its committees alone, the authority to expend funds through allocations.¹ This process of expenditure is laid out in law as initiated through the presentation of requests by students to the committee with jurisdiction over funding.

After such initiation, the power of deliberation is exercised by the senators in committee and on the senate floor. After the same has occurred, an allocation is a valid authorization for the removal of funds from the competent

¹ Article II Section 5(H): The Student Senate Shall Allocate all student funds, as provided by Statutes.

accounts to be processed by the A&SF Business Office and its staff.

As laid out in 800.18A, it is the Senate that possesses the right to allocate funds from the Office Supply Account, Registration and Travel Account, and the Senate Working Fund Account. Current legislation states that the interests of the student body regarding the allocation of funds are represented by the Senate.²

Are there limits on this power? Yes, Senate has imposed a limit on the amount of unilateral funding it is allowed to process in law. Firstly, the CRT Committee's are detailed in 805.1C and the FAO Committee's is found in 805.2C. Secondly, should those funding limits be exceeded, for every amount over the limit, Senate (in full convention) deliberates separately the amounts in excess.

Now, we may wonder why is this the case? Why not provide for the summation of all that lies in excess and deliberate on that? It is to be understood that the law as it is written, perceives a competency within Senate (just as in other branches decisions are made that are not reviewed by the others). This competency is a financial one and finds its limits in the aforementioned 805.1C and 805.2C. It is only beyond this, the law perceives the need to include the executive branch. This in fact is the nature of the separation of powers.

Even of those powers named and granted specifically to the executive, specifically, the Presidential veto,³ their use is limited in scope and application. It cannot be legally permissible for the Executive to conceal an overextension of its veto power or any other power with the use of a term that in all other instances exists as a specified power with constitutional limits. If this is the case, then the Executive need not bother itself with vetoes or any other limited powers, but could exercise boundless tyranny through the use of an executive order. If the Executive is allowed to stop processing on the funding of an allocation what prevents it from stopping the processing of funding authorized by bill? If this is the case, the obvious must be declare: that there is no need for the veto power as it exists and that there is no need for the Student Senate. I will not quote from any of the infinite pages of American legacy, which speak out against not only tyranny in actuality, but also in potentiality. This body should we be reminded, however, that history has time and again shown that a tyranny should not be trusted to mend and sustain its own fetters. It is this proper and responsible mistrust that, again, is in fact the nature of the separation of powers.

Now, the law is clear throughout that powers of the executive (collectively and individually) are neither limitless nor infinite and that the Senate does possess the power of review. Specifically, the Senate is allowed to review and override the vetoes of the Student Body President⁴ and the Senior Student Affairs Officer.⁵ It is therefore, also clear that, within the Study Government, it is Senate, and not the Executive that has the final review over funding processes.

To conclude the more theoretical and fundamental portion of my argument, I will now turn to the most practical. As stated earlier, a power must possess existence as a prerequisite for its bestowal. Now, in Article II, Section 5N the law clearly states that among the powers of the Student Senate, there exists the power to “enact, by a majority vote, special acts requiring action by individuals or groups responsible to the Student Government Association.” Therefore, the power to compel action by the A&SF Business Office

² 800.6(A) – The Student Senate shall be responsible to the Student Body of the University of Central Florida for representing the Student Body’s best interests and when allocating funds or approving budgets.

³ Article III Section 3(D): The President shall Sign or veto all measures passed by the Senate within ten (10) school days of passage from the Senate. No action by the Student Body President in ten (10) school days shall constitute approval of the measure by the Student Body President.

⁴ Article II, Section 5K

⁵ Article IV, Section 2B3; Article II, Section 5M

seems to be a legislative power defined in law and allocated in law.

According to Article IV, Section 3B., the Judiciary possesses “Judicial Review, the power to examine legislative and executive acts. Acts brought to the attention of the council may be declared to be unconstitutional by majority concurrence.

Also, within the same article, Section 3C., it has the authority to exercised in “the hearing of cases involving student disputes or violation of University regulations, the Constitution of the Student Body of the University of Central Florida, Student Body Statutes, and acts.

I, Joshua Scriven, Senator for the College of Sciences Seat 1, feel that the Executive, through the invention of executive order powers (via *EXECUTIVE ORDER - AUTHORIZING THE A&SF BUSINESS OFFICE TO CEASE PROCESSING OF FAO ALLOCATION 44-23*) has offended the dignity of the Student Senate and has exceeded its constitutional authority in violation of the Constitution of the Student Body of the University of Florida. I therefore request that the Judicial Council exercise its authority as outlined in Article IV and hand down an official ruling on the following questions.

Please note, that the questions contain subtleties that require that they be answered as distinct and separate inquiries.

- 1) May the Study Body President take on a power that is at once undefined, unmentioned, and in effect limitless, which he may at times refer to as an "executive order"?
- 2) If “executive orders” are permissible, may the Student Senate exercise its review power over an executive order that explicitly prevents it from exercising its financial prerogatives?
- 3) If “executive orders” are permissible, is it befitting the dignity accorded by law to the Student Senate, for the Executive to exercise veto incapable of senatorial override through executive order?
- 4) Did the issuance of the *EXECUTIVE ORDER - AUTHORIZING THE A&SF BUSINESS OFFICE TO CEASE PROCESSING OF FAO ALLOCATION 44-23* by the Executive serve as a violation of the Constitution of the Student Body of the University of Central Florida, Student Body Statutes or Senate Rules and Procedures.
- 5) Did the compliance of the A&SF Business Office with the *EXECUTIVE ORDER - AUTHORIZING THE A&SF BUSINESS OFFICE TO CEASE PROCESSING OF FAO ALLOCATION 44-23* result in a violation of the Constitution of the Student Body of the University of Central Florida, Student Body Statutes or Senate Rules and Procedures.

Part two – A valid argument which if accepted even further solidifies the validity of senatorial response. Also, a few other senators presented more inquiries that I thought to include in addenda to my previous request. It has not been included in the Official Inquiry and therefore will not be answered by the Justices. Should time permit, it may be brought before the Justices as well. It is as follows:

What is a “veto”?

“Lat. I forbid. The veto-power Is a power vested in the executive officer of some governments to declare his refusal to assent to any bill or measure which has been passed by the legislature. It is either absolute or qualified, according as the effect of its exercise is either to destroy the bill finally, or to prevent its becoming law unless again passed by a stated proportion of votes or with other formalities. Or the veto may be

merely suspensive. See *People v. Board of Councilmen* (Super. Buff.) 20 N. Y. Supp. 51." - <http://blackslawdictionary.org/veto/> (Black's Law Dictionary 2nd Edition).

Veto "(vee-toh), n.[Latin "I forbid"] 1. A power of one governmental branch to prohibit an action by another branch;" <http://es.scribd.com/doc/43881950/Black-s-8th-Law-Dictionary> (Black's Law Dictionary 8th edition)

Overridden veto. "A veto that the legislature has superseded by again passing the vetoed act, usu. by a supermajority of legislators. In the federal government, a bill vetoed by the President must receive a two-thirds majority in Congress to override the veto and enact the measure into law."

<http://es.scribd.com/doc/43881950/Black-s-8th-Law-Dictionary> (Black's Law Dictionary 8th edition)

Allocations and bills are both types of measures that Senate passes.

Article III, Section 3D states that a power of the President is to, "Sign or veto all measures passed by the Senate within ten (10) school days of passage from the Senate. No action by the Student Body President in ten (10) school days shall constitute approval of the measure by the Student Body President."

Because an allocation is a measure, it would seem therefore that the President is allowed to veto an allocation.

It would also seem that because the President does not usually affix his signature to allocations, his inaction constitutes approval of the measure.

In this case (which the president has deemed to call an executive order), the president has acted; he has issued what is for all intent and purpose is a veto.

In that case, Article II, Section 5K grants the senate the power to, "override a veto by the Student Body President by a two-thirds (2/3) vote of the Senate."

Now, all common sense and logic must declare that because the president has issued a veto, the name he chooses to give it notwithstanding, his veto is subject to the override of the Student Senate.

Possible inquiries for Official Ruling:

- 1) May an officer of the Student Government give any of his/her powers a different name and subsequently free that power from those limits imposed by law?
- 2) Is the Student Body President permitted to stop the processing of funding (e.g. funding through allocations, funding through bills, funding through the Activity and Service Fee Budget, etc.) that have been authorized by the law written and contained in the Constitution of the Student Body of the University of Central Florida, Student Body Statutes or Senate Rules and Procedures and allocated for the use of such entities as Registered Student Organizations, Senate Working Fund, Senate Retreat, Student Legal Services Salaries and Benefits, Volunteer UCF's Knight-Thon, etc?
- 3) Is the Student Body President permitted to initiate processing of funding (e.g. funding through allocations, funding through bills, funding through the Activity and Service Fee Budget, etc.) that have not been authorized by the law written and contained in the Constitution of the Student Body of the University of Central Florida, Student Body Statutes or Senate Rules and Procedures and allocated for the use of such entities as Registered Student Organizations, Senate Working Fund, Senate Retreat, Student Legal Services Salaries and Benefits, Volunteer UCF's Knight-Thon, etc?

The Office of the
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EXECUTIVE ORDER

AUTHORIZING THE A&SF BUSINESS OFFICE TO CEASE PROCESSING OF FAO ALLOCATION 44-23

WHEREAS the Student Government Association of the University of Central Florida has the responsibility to best serve the students within the aforementioned university, adhering to Florida Statutes, the Constitution of the Student Body, and Student Body Statutes. FAO Allocation 44-23 for the Mobile Innovation Club intends to allocate \$1,000.00 for the following items: Club Banner, Banner Design, Cloud Servers and Storage, iPod Touch 8GB (iOS), .org Domain Purchase, Kindle Fire (Android), and Apple iOS Developer Program.

According to Florida State Statute 1009.24, Section (10), Subsection (b):

The student activity and service fees shall be expended for lawful purposes to benefit the student body in general [...]

According to Title VIII: The Finance Code, Section 800.2 states:

All Student Government Agents administrating, allocating, and/or overseeing the allocation of A&SF funds are required to do so in accordance with all local, state, and federal laws and all university regulations and policies.

According to Title VIII: The Finance Code, Section 800.7 (B) states that the A&SF Business Office shall:

B. Be responsible for the oversight of property purchased through A&SF funding;

According to Title VIII: The Finance Code, Section 800.18 (D) (2) (Student Senate Accounts) states:

2. The expense must be of benefit to the Student Body of the University of Central Florida;

According to Title VIII: The Finance Code, Section 801.3 states:

The Student Government Comptroller shall serve as a liaison between Student Government and those organizations receiving funds from A&SF. The Comptroller shall investigate the improper use of these funds by those organizations and shall report these improprieties to the Student Body President.

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STUDENT BODY PRESIDENT

Other considerations into this Executive Order were Title VIII: The Finance Code, Section 800.11 (Property Control)

According to the Constitution of the Student Body of the University of Central Florida, Article III, Section states:

All executive powers and those powers not specifically granted herein to other branches of Student Government shall be vested in the Student Body President, assisted by the Student Body Vice President, and such other administrative officers as the President shall appoint to effectively carry out the business of the Student Government Association.

NOW, THEREFORE, by virtue of the authority vested in me as President of the Student Government Association of the University of Central Florida, I hereby authorize and direct the Activity & Service Fee Business Office to cease processing of FAO Allocation 44-23. Several of the items listed in the allocation are not in the best interest of the Student Body due to they are in violation of Florida State Statute 1009.24, Section (10), Subsection (b), as well as to Title VIII: The Finance Code, Section 800.18 (D) (2). I come to this conclusion based on the idea that several of the items such as the iPod Touch 8GB, Kindle Fire, Cloud Servers and Storage and Apple iOS Developer Program will not be housed in A&SF funded facilities, and will not be accessible to all students. In fact only a select group of students will have access to these items, not all students. The fact that these items will not be accessible to all students is in clear violation of Florida State Statute as well as our own Student Body Statutes. In addition, considering the A&SF Business Office is responsible for the oversight of all property purchased by A&SF funding, it would be near impossible to track these items due to the fact they will not be housed under any A&SF funded facilities.

Another issue that has come into play is the idea of what these are being used for is to essentially fund an educational program at the University of Central Florida. While as a student, I sympathize with the programs being cut, certain programs not having appropriate funding and how other universities have programs we may not have, but it is not in the best interest of the Activity & Service Fee to be funding educational programs or supplementary ways of funding for them. This allocation is nothing more than a proxy way of filtering funding over to a third-party educational program. The A&SF is not designed, nor meant, to be funding for issues of this matter. There are other fees such as the Technology Fee or E&G funds that go to programs like this, where they are the appropriate methods of funding. If we continue to go down this road, we would put ourselves open and liable to start funding the front desk staff of the Library or equipment for the Film Department, etc.

In general, funding for these types of items, which the student body in general will not have access to, is not in

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the best interest of the student body and should not receive funding from the Activity & Service Fee. In recent times, funds have gone towards purchasing highly desirable items that have no controls or way to track them. This is in violation of multiple places in statutes, as well as the fact that we cannot maintain these items. If organizations wish to purchase these sorts of items on their own out of their own dues, I would say that would be more appropriate. Then, let the A&SF funds go towards supplementing the RSO, instead of willing it into existence. By the continuing logic of the FAO committee, we could purchase video games for a video gaming club, or flat screen, plasma televisions for a T.V. club. Again, these types of purchases can and will walk away, leaving the A&SF and the student body to pick up the tab. The Activity & Service Fee is a student fee which every student pays and should have the ability to utilize the purchased materials, however, the items listed in FAO allocation 44-23 will only be used by a small, select group of students for programs the A&SF should not be spent for, with no way of tracking them whatsoever. It is for the reasons mentioned above that I authorize and direct the Activity & Service Fee Business Office to cease processing of FAO Allocation 44-23.

Matthew M. McCann
Student Body President
University of Central Florida
December 14, 2011

UCF STUDENT GOVERNMENT ASSOCIATION

The Office of the
STUDENT BODY PRESIDENT

To: Matthew McCann, Student Body President

CC: Adam Brock, Student Body Vice President
Wesley Jones, Speaker of the Senate
Anthony King, Pro Tempore
Ashley Tinstman, Public Relations Coordinator
Michael Preston, SGA Advisor

From: Cortez J. Whatley, Attorney General

Date: December 23, 2011

Subject: Official Opinion Regarding Executive Orders

I, Attorney General Whatley, in accordance with the Constitution and Statutes of the Student Body of the University of Central Florida hereby refer the following opinion to President McCann, and all other interested parties:

Inquiry:

Accordingly, the following question is to be examined:

1. Does the Student Body President have the authority to issue Executive Orders?

Considerations:

Title IV, Chapter 402.1 of the Student Body Statutes:

- I. “The Attorney General shall be the legal advisor to the President, and shall hand down opinions of the Constitution of the Student Body, Student Body Statutes, and rights and responsibilities to any member of the student body who shall, in writing, request such opinion.”

Article III, Section I of the Constitution of the University of Central Florida:

- II. “All executive powers and those powers not specifically granted herein to other branches of Student Government shall be vested in the Student Body President, assisted by the Student Body Vice President, and such other administrative officers as the President shall appoint to effectively carry out the business of the Student Government Association.”

The Office of the
ATTORNEY GENERAL

Examination:

The issue being examined in this opinion is in regards to the power and scope of the Executive Branch. The answer to the simple question of whether or not the Executive Branch has the authority to issue an Executive Order or Act is yes. The Constitution grants that power in the first section of Article three. The clause states, “All executive powers and those powers not specifically granted herein to other branches of Student Government shall be vested in the Student Body President...” An official Executive Order or Act would essentially be a power not specifically granted by the Constitution or Student Body Statutes.

Official Opinion:

It is the opinion of the Office of Attorney General that the Student Body President has the authority to issue Executive Orders or Acts.

Addendum:

Since the issue in question is of an act that is uncommon, it is the obligation of this office and in the best interest of the Student Government Association that an addendum section be added to this opinion.

While the Constitution does give the Student Body President the authority to issue Executive Orders, it is an action that should be used sparingly. In order for the Executive Branch to not overstep its boundaries and tip the delicate scale of checks and balances, an act of this nature must not be abused. The intention behind an Executive Order must fall in line with the Constitution or Student Body Statutes or be issued to address an emergency, redress a problem, or correct a wrong. The Constitution of the University of Central Florida as well as its Student Body Statutes were written in accordance with democratic principles, and an abuse of this unique power will result in more of a dictatorial type of governance. It would be wise for the current administration and all future administration to exercise this power only when it is absolutely necessary and in the best interest of the student body.