Legal Opinion E 01-13

May 30, 2001

Dear Dean Stewart:

I'm writing in response to your request for further clarification of our opinion E 01-09. In particular, you have asked whether the student government of a community college district may impose more stringent eligibility requirements for the student trustee than those identified in Education Code section 72023.5.

In Legal Opinion E 01-09 we opined that a district governing board may not impose eligibility requirements for a student trustee more stringent than those mentioned in section 72023.5. You have explained that, at Mendocino College, the student trustee is considered an officer of the student body organization and is a member of the student senate. You have also explained that the constitution of the student organization sets forth eligibility requirements for student body officers which are more stringent than those set forth in statute and that the governing board of the district accepts these rules with respect to the election of the student trustee. Thus, your question is whether the governing board may permit the student body organization to impose eligibility requirements for the election of student trustees which go beyond those set forth in section 72023.5. We think not.

First, Education Code section 76060 authorizes the governing board of a community college district to permit the students of the colleges of the district to establish one or more student body associations. (Ed. Code, § 76060.) These student body associations are authorized to "conduct any activities, including fundraising activities, as may be approved by the appropriate college officials." (Id.) Thus, the student body association is established by action of the governing board of the district and may act only as college officials so authorize. Therefore, it is evident that the student association cannot exercise any power which the governing board itself does not possess. Since we held in Opinion E 01-09 that a governing board may not impose more stringent eligibility requirements on student trustees, it follows that the student association is similarly constrained.

Second, section 72023.5 does not mention the associated student body organization as having any role in the election of student trustees. By contrast, that section does give the governing board certain powers with respect to controlling the election of student trustees, although not the specific power to establish higher eligibility standards. It seems highly improbable that the Legislature would have intended to confer such a power on the student association, which it did not even mention, while denying it to the governing board which is given enumerated powers in this area.

Third, it is worth noting that there is a basic difference between section 72023.5 and section 76060. Section 72023.5 is mandatory--the governing board must provide for a student trustee.
On the other hand, section 76060 says only that the governing board "may" recognize a student body association. Thus, in order to conclude that student body organizations may set higher eligibility standards for student trustees, we would have to infer that when it adopted section 72023.5, the Legislature meant to say that "a student body association, if one has been recognized by the governing board, may increase these eligibility requirements, but the governing board itself cannot do so." We decline to stray so far from the plain meaning of the statute.

Finally, we do not believe this analysis is altered by the fact that, at Mendocino College, the associated students and the governing board have agreed that the student trustee is also an officer of the student body organization and a member of the student senate. Education Code section 76061 provides that:

"§ 76061. Requirements for service as officer in student government.

A student who is elected to serve as an officer in the student government of a community college shall meet both of the following requirements:
(a) The student shall be enrolled in the community college at the time of election, and throughout his or her term, with a minimum of five semester units, or its equivalent.
(b) The student shall meet and maintain the minimum standards of scholarship prescribed for community college students by the community college district."

We observe that this provision was added to the Education Code by Assembly Bill 1914 in 1984 (Stats. 1984, ch. 599). As noted in Legal Opinion E 01-09, this was the same piece of legislation which added identical eligibility requirements for student trustees to section 72023.5. Since we conclude that the Legislature did not intend either governing boards or student associations to have the power to increase eligibility requirements for student trustees, it would be remarkable if identical language in section 76061 were intended to have a different meaning absent an explicit provision conferring such a power on the associated students.

Moreover, even if section 76061 did permit the student association to set higher standards for election of student body officers, this would not permit the student association to make those higher standards applicable to the election of a student trustee. Having held that section 72023.5 does not permit the student association to impose higher standards for election of the student trustee, we must reject the notion that it could circumvent this prohibition by the simple expedient of defining the student trustee as an officer of the student association. This does not mean that the governing board and the student association may not agree to have the student...
trustee serve as an officer of the student association, but such an arrangement cannot have the effect of imposing higher eligibility standards for election of the student trustee.

I hope this information addresses your questions.

Sincerely,

Ralph Black
General Counsel

RB:sj

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