# ASUCI JUDICIAL BOARD

**"All Judicial authority of ASUCI shall be vested in the Judicial Board. The Judicial Board's authority shall extend to all judicial cases arising under the [ASUCI] Constitution; the various by-laws of ASUCI; all official actions of the Executive Officers, Legislative Council Members, and ASUCI Commissioners; and any matters delegated to the Judicial Board by the Legislative Council"**

***JUDICIAL RULING ON R49-81***

**Chair Seena Forouzan delivers the unanimous opinion of the Court.**

Upon reviewing ASUCI legislation on Tuesday, April 8th, 2014, the ASUCI Judicial Board has found fault with Resolution 49-81, "Regarding the Hiring of the New Payroll Position" (R49-81). The Board therefore issues this ruling regarding the resolution.

## I. Executive Director Relationship To Executive Cabinet and Legislative Council

Three clauses in particular guide our review of the legislation in question. Article IV, Section B, Item 2 states in pertinent par that Legislative Council is responsible for "Appropriating all ASUCI fee income…" Article VII stipulates that the Executive Director (hereinafter referred to as the ED) is the "administrative head of ASUCI" and, as such, is responsible for the "direction…and operations of ASUCI."[1] However, despite the latitude given to the ED, the Constitution also creates a relationship of verticality between the ED and the Executive Cabinet: "[the ED] shall also be responsible to the Executive Cabinet for the proper and efficient operation of the auxiliary enterprises, and *the employment of all personnel who support the ASUCI"* (emphasis added).[2] Section C of Article 7 provides the ED with the following powers: "recommending to the Executive Cabinet, policies for the administration of ASUCI operations, *staffing* (emphasis added)*,* facilities, and auxiliary enterprises…[3]being responsible for the appointment and removal of ASUCI staff employees, providing, *at the request of the Legislative Council* (emphasis added), all information pertaining to any personnel action.[4]"

## II. Clauses I and II – On Things Symbolic and Constitutional

In assessing the Constitutionality of clauses I and II of R49-81, the Judicial Board finds them to be permissible yet purely symbolic. Article XII of the ASUCI Constitution, aptly named Student Rights, provides students "freedom of investigation and expression." Clause 1 (hereinafter C1) states that Legislative Council and Executive Cabinet "call for the halt of hiring a payroll position;" Clause 2 (hereinafter C2) asks the professional staff to "find an alternative method to

[1] ASUCI Constituion, Article VII, Section A
[2] *Id.*
[3] *Id.* at Section C, Item 2
[4] *Id.* at Item 9.

improve the function and effectiveness of ASUCI" as opposed to hiring a new staff member.[5] Both statements are well within the Councils rights of free expression as well as a valid expression of the oversight concern that both branches of government are legitimately and Constitutionally empowered to have. However, it needs to be understood that neither clause carries any force other than the normative weight that accompanies such declarations. This is to say, that while the clauses are permissible they do not actually halt the hiring of the payroll position or require the professional staff to find an alternative method.

## III. Clause III – On Things Neither Symbolic Nor Unconstitutional

Article VII, Section C(9) grants the Legislative Council the authority to request the Professional Staff consult the Council prior to the hiring of a new position; the Executive Cabinet derives its authority from Article VII, Section A and Section C(2). Article VII, Section C(5) articulates most directly the joint ability for both branches to make such a request: "being responsible to provide, at reasonable notice, any information pertaining to the functioning of the ASUCI, upon the request of the Legislative Council or Executive Cabinet." The results of the consultation, however, need only guide the pro-staff not make up the substance of their decision.

## IV. Clause IV – On Things Impermissible

The only existing branch of government that has any oversight over the actual hiring of pro-staff is the Executive Cabinet.[6] For Legislative Council to require legislation to be passed prior to the hiring of a staff member is to execute the oversight powers granted to the Executive Cabinet. In other words, it is to infringe upon the separation of powers proscribed by the ASUCI Constitution.[7] However, this ruling should not be read to say that the Executive Cabinet possesses the power to require a position be endorsed a priori to its creation. While oversight is a central aspect of the Executive Cabinets relationship with the Executive Director, this Board does not interpret the clause so broadly as to create powers that are not explicitly in place. While the Cabinet can require a consultation and while Legislative Council can require information, neither branch can require a position be contingent upon their support. However, both branches can affect the creation of such positions in different ways. It is not the duty of this Board to educate either branch on which of their powers allow them to create or bar professional staff positions; it is only our duty to say what powers do not permit them to do so.

[5] R49-81
[6] A power that, as described above, is limited to consultation
[7] Article III, Section B

## V. Concluding Remarks (or, On Things With No Clever Titles)

Professional Staff may proceed with the hiring of a payroll position. In the future, Professional Staff must first consult the Legislative Council and the Executive Cabinet prior to hiring a position; positive feedback from the Council and the Cabinet are not requirements for the Professional Staff to hire such a position. Support from neither branch is necessary in the creation of a position – Legislative Council reserves the duty to affect hiring through different means as does the Executive Cabinet.

**IT IS SO ORDERED**

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| Oluwatobi Agbelemose, Vice Chair | Christopher Barclay, Justice |
| Seena Forouzan, Chair | Annette Lee, Justice |
| Myron Lozano, Justice | Kevin Tanaka, Justice |