

STUDENT GOVERNMENT ASSOCIATE SUPERIOR COURT

MONLUX V. SGA
(IN RE GC 2017-003)

OCTOBER, 2017

CHIEF JUSTICE Bourland delivered the unanimous opinion of the Court. JUSTICE Kimani and JUSTICE Gustafson took no part in these proceedings.

Petitioner David Monlux challenges portions of the SGA General Counsel’s October 5, 2017 opinion, GC 2017-003.¹ The General Counsel found: (1) the student positions on the University Presidential Search Committee (“Search Committee”) are not “high offices” as that term is defined in the SGA Code Annotated (“Code”); (2) the positions on the Search Committee are part of the SGA Executive Branch; (3) the nominations of Kaylee Rains-Saucedo, Chair of the Undergraduate Student Congress, and Carrie Pavlowsky, Chair of the Graduate Student Senate do not violate the Code; and (4) the process by which the nominated students were selected did not violate the Code.² Petitioner asks this Court reverse parts 1, 3, and 4 of the General Counsel’s opinion.³ We AFFIRM that the positions on the Search Committee are not high offices. Therefore, we AFFIRM that there was no Code violation in the nomination and selection process. We AFFIRM the General Counsel’s opinion that the positions on the Selection Committee will be members of the Executive Branch. We REVERSE, however, the General Counsel’s opinion as it relates to Chairs Rains-Saucedo and Pavlowsky.

¹ Official Record, 5.

² Official Record, 1.

³ Official Record, 36. The General Counsel agreed with Petitioner that the positions on the Search Committee should be considered a part of the Executive Branch, albeit for different reasons. We consider part 2 of the General Counsel’s opinion all the same as it is important to our overall analysis.

This appeal's history is quite public. After President Boren announced his intent to resign following the completion of the school year, the Board of Regents announced the creation of the University Presidential Search Committee. The Regents informed SGA President Baker that the Search Committee would include one undergraduate and one graduate student from the Norman campus and asked President Baker to send the Regents a list of four possible candidates by October 9.⁴ President Baker selected Kaylee Rains-Saucedo, Chair of the Undergraduate Student Congress; Carrie Pavlowsky, Chair of the Graduate Student Senate; Cameron Burleson, SGA Vice President; and Mackenzie Coplen, Student Bar Association President.⁵ President Baker authored Bill 980907, seeking the advice and consent of the Legislative Branch in the nomination of these four students.⁶ Several students, including Petitioner, took issue with the lack of an application process for the student body so that all might have a chance of serving on the Search Committee.⁷ Petitioner challenged the procedural and substantive legality of 980907 to the General Counsel, resulting in GC 2017-003.⁸

I

We first consider whether or not the student positions on the Search Committee should be considered high offices. The General Counsel found they were not because the Code sections listing out the various high offices appear to be exhaustive and there is no indication the drafters intended otherwise.⁹ We agree.

⁴ Official Record, 8.

⁵ Official Record, 9.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Official Record, 2.

The Code lists out the high offices for each branch.¹⁰ Each subsection uses the same language to list out that branch's high offices: "The high [branch] offices of the SGA shall be as follows"¹¹ Nothing in the lists of high offices indicate an intent by the drafters to leave room for additional high offices. Without such evidence, we must assume the drafters intended the list to be exhaustive.

We are sympathetic to Petitioner and others who say the student positions on the Search Committee are very important—they are absolutely right. The opportunity to help select the next President of the University is an honor that should not be taken lightly. But the importance of the position does not make the position a high office for purposes of the Code. Accordingly, we affirm the General Counsel's opinion that these positions are not high offices.

II

Because we affirm the General Counsel's opinion that these positions are not high offices, Petitioner's challenge to part 4 of the GC 2017-003 is moot. The Code provides detailed rules and procedures for nominating and appointing high officers.¹² The only requirement found in the Code for all other officers not provided for in the Code is that the President receive the advice and consent of the Legislature.¹³ The Petitioner believes that, in the absence of rules and procedures for appointing or nominating other officers and positions, the Court should impute the requirements for appointing or nominating high officers onto all appointments and nominations. This we decline to do. While the rules and procedures for appointing and nominating a high officer may, in truth, be a wise and apt policy for nominating and appointing all other officers, the Code

¹⁰ SGACA tit. I, ch. 2, § 7(a) (Legislative high offices); § 7(b) (Executive high offices); § 7(c) (Judicial high offices); § 7(d) (Programming high offices).

¹¹ *Id.* §§ 7(a)–(d).

¹² *Id.* § 9.

¹³ SGACA tit. II, ch. 2, § 7(a).

does not require it. The Court will not legislate from the bench by requiring the President to adhere to policies and procedures not mandated by the Code. Therefore, no Code provision was violated when President Baker selected four students to be nominated to the Search Committee with the advice and consent of the Legislature.

III

We next consider the General Counsel's opinion that those selected for membership on the Search Committee will, in fact, become members of the Executive Branch. The General Counsel's reasoning aligns with the Court's. The Board of Regents delegated a task to the SGA and to President Baker. The SGA President has a duty to represent the SGA "on all official occasions"¹⁴ The SGA President has the right and duty to represent the SGA in completing the task assigned to him. Furthermore, the SGA President has the power to, "nominate and appoint all officers of the SGA not otherwise provided for" with the advice and consent of Congress.¹⁵

President Baker has nominated these four students to serve on the Search Committee. Those selected will, therefore, be "officers of the SGA not otherwise provided for."¹⁶ As "officers," those selected must fall somewhere within the SGA structure. The positions most naturally fall into the Executive Branch because the President, as head of the Executive Branch, is nominating the students for the positions. Therefore, those selected by the Regents will become members of the Executive Branch.

IV

Finally, we consider whether Kaylee Rains-Saucedo and Carrie Pavlowsky, as high officers in the Legislative Branch, simultaneously serve on the Search Committee. The General Counsel

¹⁴ *Id.* § 8.

¹⁵ *Id.* § 7(a).

¹⁶ *Id.*

argued that high officers of a branch may not serve simultaneously as high officers of a second branch. Because the position on the Search Committee is not a high office, the General Counsel reasoned, Chairs Rains-Saucedo and Pavlowsky would not violate the separation of powers provision in the Code by serving in both positions simultaneously. We find the General Counsel misinterpreted SGACA title I, chapter 2, section 7. Accordingly, we hold Chairs Rains-Saucedo and Pavlowsky cannot simultaneously serve in their respective Legislative high offices and on the Search Committee.

There is substantial confusion in the papers submitted to the Court concerning the meaning of section 7, the text of which is as follows: “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.”¹⁷ Broken down, this section essentially means: “If a person is serving in the legislative or executive branch, then that person cannot hold high office in a different branch at the same time.” A representative in Congress cannot serve as a Superior Court Justice (high office of the Judicial Branch), Vice President of SGA (high office of the Executive Branch), etc. This rule could also be stated in the inverse: The Vice President of SGA cannot be a representative in Congress. Both statements mean the exact same thing. Therefore, the rule broken down above also means: “If a person holds a high office in *any* branch, then that person cannot serve in a *different* branch at the same time.” Put more simply, a person cannot be *both* a high officer in a branch *and* simultaneously serve in a different branch (as a high officer or otherwise). The General Counsel misinterpreted and misapplied section 7. It does not matter if the positions on the Search Committee are or are not high offices.

The following graphic may prove helpful:

¹⁷ SGACA tit. I, ch. 2, § 7.

	HO Leg.	Leg.	HO Exec.	Exec.	HO Jud.	HO Prog.	Prog.
HO Leg.	XXX	YES	NO	NO	NO	NO	YES
Leg.	YES	XXX	NO	YES	NO	NO	YES
HO Exec.	NO	NO	XXX	YES	NO	NO	YES
Exec.	NO	YES	YES	XXX	NO	NO	YES
HO Jud.	NO	NO	NO	NO	XXX	NO	YES
HO Prog.	NO	NO	NO	NO	NO	XXX	YES
Prog.	YES	YES	YES	YES	YES	YES	XXX

To be clear, this is not a matter of interpretation; it is a matter of taking the language of the Code provision at its face. There is no second interpretation of the section—this is the plain meaning of an albeit difficult Code provision. The separation of powers was a vital component in the creation of our federal government; the drafters of our Code Annotated and Constitution recognized the importance of separation of powers as well. We acknowledge the title of the section reads “Concurrent Service in High Offices.” But the language of the Code does not prohibit *only* simultaneously serving in high office in multiple branches (although that would certainly violate the Code). The Code prohibits serving as a high office in one branch and serving in another branch. Because the positions will ultimately be under the Executive Branch, no high officer of any branch (other than the Executive Branch) may serve on the Search Committee. Kaylee Rains-Saucedo and Carrie Pavlowsky are high officers of the Legislative Branch. They cannot, therefore, simultaneously serve on the Search Committee.

V

The Court expresses no opinion as to the wisdom of President Baker’s choice of nominees or his handling of the nomination process. The Court does not believe students’ rights were violated given the lack of procedures put in place for such a situation. Some members of this Court believe President Baker did what was necessary in light of the time constraints, others believe there

may have been a better way. Our opinions, however, are irrelevant because, legally speaking, President Baker has done nothing wrong.

The Court understands the effect of this ruling: Kaylee Rains-Saucedo and Carrie Pavlowsky cannot be selected by the Regents and retain their respective high offices. The Court does not require, nor does it necessarily recommend the SGA re-write its nominating legislation to exclude these two high officers. As far as the Court is concerned, Chairs Pavlowsky and Rains-Saucedo can decide whether they want to retain their position in the Legislature or accept the position on the Search Committee. One thing is clear, however: they cannot serve in both. The Court charges President Baker and the General Counsel with enforcing this ruling should either Kaylee Rains-Saucedo and Carrie Pavlowsky be selected for the Search Committee.

Our holding today should not be read too broadly. Our holding today is merely that the separation of powers provision in the Code forbids serving as a high officer in one branch while simultaneously “serving in the legislative or executive branch,” and that serving on the Search Committee constitutes serving in the Executive Branch. Our decision today does not broadly define what it means or does not mean to “serve in the legislative or executive branch.” SGA includes every student on campus and encompasses every student organization. It is possible that there are groups SGA supports that are not necessarily part of one of the branches. The question warrants consideration through the proper channels.