

Office of the Attorney General
Official Opinion

TO: Elida Miller, *ASNMSU Vice President*

FROM: Devon Harrison, *ASNMSU Attorney General*

DATE: June 19th, 2024

Subject:

Clarification of the Legality of Business College Senator Appointment (Spring 2024 Semester).

Applicable Bylaw:

ASNMSU Bylaws:

5-2-6. COUNCIL SHALL BE INFORMED OF VACANCY

When a vacancy or pending vacancy occurs in the ASNMSU Senate, the President of the ASNMSU Senate shall, in writing and within five (5) business days, inform the Presiding Officer or Advisor of the College Council of the College of the available position:

- A. That a vacancy has occurred, or will occur, in the ASNMSU Senate in the representation of their respective College Council; and
- B. That the College Council may select an interim ASNMSU Senator from the membership of the College Council to serve the remainder of the unexpired term; and
- C. Of the qualifications for holding the Office of ASNMSU Senator; and
- D. Of the provisions of the ASNMSU Senate Vacancy Act for appointing an interim ASNMSU Senator.

5-2-7. VALIDITY OF APPOINTMENT

For an appointment of an interim ASNMSU Senator to be considered valid by ASNMSU, the College Council of the College of the vacated position must:

- A. Approve each appointment by a majority of a quorum of the college council membership in accordance with the College Council’s Constitution and Bylaws:
 - 1. The approved interim ASNMSU Senator must submit to the ASNMSU Vice President the Qualification Check Release Form to be sworn in.
- B. Submit to the ASNMSU Senate a written statement by the NMSU Dean of the College Council certifying that the body making the appointment is a College Council within the meaning of the ASNMSU Senate Vacancy Act; and
- C. Submit to the ASNMSU Senate a written statement signed by the Presiding Officer and the Advisor of the College Council certifying that the College Council of the vacated position has appointed a member of the College Council to the Office of ASNMSU Senator in accordance with the provisions of the ASNMSU Constitution and the provisions of the ASNMSU Senate Vacancy Act.

College Council Bylaws:

1-7-3. APPOINTMENT OF ASNMSU SENATORS In the event that there is a vacancy in a college’s ASNMSU Senate delegation, each council may appoint a replacement senator to serve out the remainder of the unexpired term in accordance with Section 5-2-7 of the ASNMSU Law Book.

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G. Each council shall announce a Senate vacancy to their college at least one (1) week prior to appointing a senator to fill the vacant seat.

The Business Council Bylaws:

SECTION 7. The council retains the right to unseat any voting member, officer, or organization according to the following criteria:

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C. The Council may also unseat any voting member, Officer, ASNMSU Senator, or organization, due to a lack of confidence, by a three-quarter (3/4) majority vote of the members present, provided the members present, during a regular meeting, representing a quorum and where the person, or organization, has been notified two (2) weeks prior to the vote.

Opinion Rendered:

In response to the inquiry regarding the legality of the Business College Senator's appointment for the Spring 2024 semester, there are significant procedural concerns that require examination.

According to ASNMSU Bylaw 5-2-6, the President of the ASNMSU Senate is obligated to notify the Presiding Officer or Advisor of the College Council within five (5) business days of a Senate vacancy. However, it remains unclear whether this notification was fulfilled, a matter that should be verified by the current ASNMSU Vice President.

Additionally, College Council Bylaw 1-7-3 G specifies that any Senate vacancy must be officially announced to the college community at least one week before the appointment. It has been discovered that this requirement was not met, contrary to the stipulation in Article 3, Section 7 of the Business Council Bylaws, which mandates a two (2) weeks' notice period.

Further investigation reveals no record of such notification on the College of Business Senators' Canvas page for Spring 2024. This discrepancy indicates a failure to comply with all relevant Bylaws (ASNMSU, Business Council, and College Council Bylaws).

Therefore, due to these procedural lapses, the appointment lacks legal validity. It is recommended that the appointment of the new Business Senator be revoked to allow for a fair and proper election process. This action would enable the current candidate to participate in the election, alongside other eligible students from the College of Business.

Should the appointment of the new Business Senator not be rescinded and if the executive branch of ASNMSU chooses to proceed, legal action may be considered as an enforcement measure. This approach could establish a precedent for ensuring adherence to procedures by various college councils, thereby reducing instances of delayed or missed notifications.

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