



The Associated Students of New Mexico State University

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Office of the Attorney General

Official Opinion

TO: Caia Ortiz, *ASNMSU Chief of Staff*

FROM: Ruben Morales Jr. *ASNMSU Deputy Attorney General*

Rahaf Ben Ali, *ASNMSU Attorney General*

DATE: September 18th, 2025

TITLE: “Interpretation of ASNMSU Bylaws on Presidential Appointment Authority and Senate Confirmation”

Subject:

1. Concern Attorney General Office wants to address: In 1-3-3, it is claimed that elections are held for both Senators AND Executive Officers. It is also stated that the ASNMSU Senate shall judge the elections of ALL ASNMSU elected officials, with the authority to delegate said authority.
2. What is the intention of bylaw 1-4-4?
3. Are ASNMSU members appointed by the President required to be confirmed by the Senate?

Applicable Federal Law:

“U.S. Constitution Article II, Section 2, Clause 2:



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He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

Applicable Bylaws:

"1-3-3. POWERS AND DUTIES

The Senate of the ASNMSU shall have the authority to pass all legislation necessary and consequent to any provision of this Constitution. No money shall be drawn from the treasury except as a consequence of appropriations made through the bylaws. The Senate of the ASNMSU may levy such fees as may be necessary to support the ASNMSU upon the consent of the ASNMSU. The Senate of the ASNMSU shall have the sole power to initiate impeachment proceedings against any individual holding a position of trust and confidence under the ASNMSU on allegation of nonfeasance or misfeasance by a three-fourths (3/4) majority vote of those present and voting. The Senate of the ASNMSU shall have the sole power to try any member of the judiciary in matters of alleged nonfeasance, misfeasance, and, if guilt is found by a three-fourths (3/4) majority vote of those present and voting, to remove such a person from office. The times, places, and manner of holding elections for Senators and Executive Officers of the ASNMSU shall be prescribed by the Senate of the ASNMSU. The Senate of the ASNMSU shall be the judge of the elections, returns, and qualifications of all elected officials of the ASNMSU and may delegate these duties as prescribed through the bylaws.

1-4-4. APPOINTIVE POWERS

The President of the ASNMSU shall have the authority to nominate and/or with the consent of the ASNMSU Senate, appoint members of the ASNMSU to fill executive offices as may be established through the bylaws. The Senate may, through the bylaws, grant the President of the ASNMSU the power to make specified appointments at their sole discretion, without requiring the approval of the ASNMSU Senate. Additionally, the ASNMSU President shall have the authority to appoint such executive assistants as deemed necessary for the effective operations of the Executive Branch.

A. Any individual nominated, hired, or appointed to an executive office or assistant position who currently holds another official position within the ASNMSU must resign from their existing position prior to accepting the new appointment.



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3-8-6. TEMPORARY APPOINTMENT OF EXECUTIVES

- A. Should an ASNMSU Executive Director position or the ASNMSU Comptroller position become **vacant** during the term, the ASNMSU President shall, with the consent of the ASNMSU Hiring Committee, **hire someone** to fill the position for the remainder of the term, provided that the replacement fulfills the qualifications for the position; and
- B. Should an ASNMSU Assistant Director position become vacant during the term, the ASNMSU Executive Director of that office shall hire a replacement for the remainder of the term, provided that the replacement fulfills the qualifications for the position; and
- C. Should the Office of the ASNMSU Chief of Staff become vacant during the term, the ASNMSU President shall hire a replacement for the remainder of the term, provided that the replacement fulfills the qualifications for the position.

3-8. EXECUTIVE CABINET

- A. The ASNMSU President and Chief of Staff, with the help of the ASNMSU Hiring Committee, will hire and fill the ASNMSU Executive Director positions, which include the following:

- 1. ASNMSU Attorney General; and
- 2. ASNMSU Comptroller; and
- 3. ASNMSU Director of Activities; and
- 4. ASNMSU Director of Community Outreach; and
- 5. ASNMSU Chief Elections Officer; and
- 6. ASNMSU Director of Governmental Affairs; and
- 7. ASNMSU Director of Public Relations; and
- 8. ASNMSU Director of Services; and
- 9. ASNMSU Assistant Chief of Staff.”

Opinion Rendered:

1. Addressing Bylaw 1-3-3, Scope of Legislative & Presidential Power:

It has come to the attention of the Attorney General's office that bylaw 1-3-3 is being taken out of context in comparison to the rest of the governing document. In 1-3-3, it is claimed that elections are held for both Senators **AND** Executive Officers by the ASNMSU Senate. As any ASNMSU Executive member can attest, it is not by elections that one is hired, but through the formal interview process. This has been the



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case for several administrations, occurring as far as one can remember. So, to clarify, I would like to draw your attention to Article 2 Section 2 Clause 2 of the Constitution, in which it is stated that the Senate has final say in appointing a President's choice. Although, consequently after, it is stated *"the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."* Meaning, while yes, it is precedent to follow such provisions to remain in accordance with the constitution, this power of "appointing" is able to be delegated to another point of power, in this case as stated in the bylaws, the: ASNMSU Chief of Staff, President, along with a Hiring Committee whom follow a hiring format as evident in 3-8-6 and 3-8.

2. What is the intention of bylaw 1-4-4?

So, bylaw 1-4-4, is not an attempt to grant the same power back to the Senate. Rather it is an attempt to provide the President with the authority to take initiative in instances of unfilled executive offices, when necessary, in the bylaws, while allowing to be checked by the legislative. Although, consequently after, it is stated that through the bylaws, the President may have sole responsibility, as illustrated in bylaw 3-8.

3. So, are ASNMSU members appointed by the President required to be confirmed by the Senate?

No. While it is given in 1-3-3 that the ASNMSU Senate may reside authority over filling Executive positions, in 1-4-4 it is stated that the President may hold sole responsibility if given in the bylaws, as we see is evident in 3-8.

Conclusion:

Based on the language of Bylaws 1-3-3, 1-4-4, and 3-8, as well as established hiring practices, executive appointments made by the President pursuant to the bylaws do **not** require Senate confirmation unless the bylaws expressly provide otherwise. The Senate retains authority only where confirmation is specifically mandated, while the President may act independently in filling positions under delegated hiring procedures.

If you have any concerns or questions, please do not be afraid to reach out to the Attorney General's Office.

Best regards,

Ruben Morales - he / him / his



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ASNMSU Deputy Attorney General

Email: asnmsu_dag@nmsu.edu



Rahaf A. Ben Ali - *she / her / hers*

ASNMSU Attorney General

Cell: (575) 651-9119

Email: asnmsuag@nmsu.edu

