

# ASUNM STUDENT COURT

Student Union Building, Room 245

277-2336

*jwp75@unm.edu*

April 29, 1998

**Decision**

**Case No. 98-003**

Tucker

Vs.

ASUNM Elections Commission

The ASUNM Election was held on April 8, 1998. Concerning alleged improprieties of the Elections Commission, a contest of election was submitted by the Plaintiff.

The ASUNM Lawbook Elections Code states in Article XVII, Section 2 and Section 6 that a contest of such nature is appealed directly to the ASUNM Student Court and on an accelerated schedule. The Plaintiff filed his complaint with the ASUNM Student Court on April 15, 1998, citing violations of the Elections Code by the Elections Commission, poll workers, and the Attorney General as causes to invalidate the Election. These allegations refer to (the court has numbered these for clarity):

- 1) Secret Ballot
- 2) Elections Code, Article IV, Section 1H
- 3) Elections Code, Article VI, Section 1B
- 4) Elections Code, Article VI, Section 1D
- 5) Elections Code, Article VIII, Section 4
- 6) Elections Code, Article XVI, Section 1.

At the Hearing, the Plaintiff requested that allegation 2 be withdrawn. The Court granted this request. As instructed by the Student Court and in accordance with the accelerated process noted above, the Defendant submitted the Answer form to the Student Court by noon on April 22, 1998. In summary, the Answer filed:

- Responded to the Complaint by denying and clarifying allegations 1, 2, 3, and 6.
- Admitted to violations of the Elections Code on allegations 3, 4, and 5.
- Submitted evidence to support their argument regarding violations of the Elections Code on points 1, 2, and 4.
- Cited precedent regarding elections of national and state scope.
- Motion 1A, requesting summary dismissal of the Complaint on the ground of a statement made by the Plaintiff (Complaint filed 4/15/98, Summary of Complaint, first paragraph, third sentence).
- Motions 1B, C, and D supporting the request for summary dismissal from 1A.
- Motion 2, requesting that the Plaintiff's witness list be declared as inadmissible evidence.

The ASUNM Student Court responds to the motions requested in the Defendant's Answer form as follows:

Motion 1: The Court did not grant summary dismissal of the Plaintiff's Complaint. In 1A, the Defendant cites a statement by the Plaintiff "...the ASUNM election was not conducted in a way inconsistent with the ASUNM Law Book" (Summary of Complaint, Paragraph 1, Line 3). The Court asked the Plaintiff to clarify this statement, as it seems to be incongruous with the filing of this Complaint. He responded that it was a typographical error. As such, summary dismissal is not warranted. Motions 1B, C, and D support the request for summary dismissal; however, they cite topics the Court believes could only have been clarified at the Hearing.

Motion 2: This motion requests that the witness list submitted by the Plaintiff (the Student section of the 1997-98 UNM phone directory) be held inadmissible. The Court agreed with the plaintiff and denied the use of that as a legitimate witness list.

The ASUNM Student Court held a Hearing on April 22, 1998. The Hearing was held in SUB Room 230 and lasted from 4:30 until 6:05 p.m. and followed the ASUNM Judicial Procedure.

After hearing all the evidence presented and reviewing all evidence submitted, this Court finds the following:

❖ With regards to the Plaintiff's witnesses, the Court unanimously agreed that any witnesses produced by the Plaintiff at the Hearing would be inadmissible for the following reasons:

- 1) The Plaintiff had ample time to prepare an appropriate witness list.
- 2) The one submitted with the Complaint is absurd, inaccurate, and would have placed undue burden both on the Court and on the Defendant.
- 3) The Plaintiff attempted to submit a witness list to Associate Justice Lanphere on April 21, 1998.
- 4) A witness list submitted the day before the Hearing is in no way consistent with ASUNM Judicial Procedure, and would have been logically unfair to the Defense.
- 5) The Court makes exceptions to rules if an exception seems deserved; the Plaintiff offered no explanation for his actions.
- 6) With one exception (see below), the Plaintiff never specifically referred to any one of his three apparent witnesses in the gallery while presenting evidence and never specifically requested testimony of a witness in any of his statements at the Hearing.
  - One exception: Mr. Keith Valles' testimony was requested by the Plaintiff for a point of clarification which the Court accepted as pertinent testimony.

◆ *Allegation 1: Violation of secret ballots.*

While the ASUNM Lawbook and Constitution do not specifically provide for election by secret ballot, the existence of secret ballots is crucial to a fair and truly democratic election. Testimony was given by the Plaintiff that he “felt watched” while filling out his ballot, and therefore intimidated. Intimidation could, if proven, be grounds for a lack of secret ballots in a democratic election. The Plaintiff stated that he believed that other students did not vote because they were intimidated by the poll-workers watching voters. The Plaintiff did not provide any specific testimony or evidence supporting this allegation. No other distinct incidents were cited beyond his personal experience. The Defendant provided evidence and testimony that the “watching” of voters by poll workers was to ensure that no ballots left the voting area—this would be a violation of the principle of secret ballots. The Defendant also provided evidence indicating the spatial dimensions of the voting area, supporting the argument that the poll-workers were not watching the specific vote being cast while ensuring that no ballots left the area.

- The Court finds that being watched while voting (in manners described at the Hearing) being enough intimidation to scare off voters is pure speculation and conjecture on the part of the Plaintiff. Thus, the Court finds that there are little grounds to imply that the principle of secret ballots was violated in election.

◆ *Allegation 2: Violation of Elections Code, Article IV, Section 1H*

This allegation, that printed instructions were not provided to voters, was rescinded by the Plaintiff at the Hearing.

◆ *Allegation 3: Violation of Elections Code, Article VI, Section 1B*

The Plaintiff charges that two people utilized as poll-workers were unsuitable for those positions, Attorney General Branden Young and ASUNM Advisor Debbie Morris. The Defendant admits that Ms. Debbie Morris was used to fill in for absent poll-workers, stating that she is the ASUNM Advisor and as such is beyond the jurisdiction of this Court. Also, the Defendant states that Attorney General Young does meet the criteria for a poll-worker. Under the current Election Code:

Elections Code, Article VI, Section 1B:

“Poll workers must meet the same qualifications as Elections Commissioners”

Elections Code, Article II, Section C:

“In order for a student to be an Elections Commissioner, he/she must:...not be an Associate Justice, the Chief Justice, or the Clerk of the Court, or the Attorney General”

Clearly, Ms. Morris and Attorney General Branden Young are ineligible to be poll-workers. The Elections Code, Article II, Section C was revised to include the Attorney General in October 1997. This revision failed to be included in the most “current” edition of the Lawbook. Mr. Keith Valles testified that he informed Elections Commission Chair Ryan Lindquist of the changes at the Candidates Forum on April 1, 1998; Mr. Lindquist corroborated that statement.

- Therefore, the Court finds that it was indeed a violation of the Elections Code, Article VI, Section 1B to include the Attorney General and the ASUNM Advisor as poll-workers. The Court also recognizes that Ms. Morris is not a member of ASUNM and is thus outside the jurisdiction of this Court.

◆ *Allegation 4: Violation of Elections Code, Article VI, Section 1D*

The Plaintiff alleges that identification badges were not worn by the poll-workers as required by Elections Code, Article VI, Section 1D. The Plaintiff testified that he saw poll-workers without ID badges. No other evidence or testimony was presented by the Plaintiff with respect to this allegation. The Defendant submitted evidence that Election Commission Chair Ryan Lindquist included the ID badges in the poll-workers information packet but neglected to include that instruction on the written direction for poll-workers. At the Hearing, the Court heard testimony from the Defense that some poll-workers wore badges while others did not.

- Therefore, the Court finds that a violation of the Elections Code, Article VI, Section 1D did occur in an unknown percentage of instances during this election.

◆ *Allegation 5: Violation of Elections Code, Article VIII, Section 4*

The Plaintiff alleges that no advertisement for the positions of poll-workers took place as required by the Elections Code, Article VIII, Section 4. Again, this portion of the Elections Code was amended in October 1997 to read:

“Notification for hiring Poll workers will be placed in the NM Daily Lobo for two (2) consecutive days not less than fourteen (14) days prior to the election and must include procedures for applying.”

Mr. Keith Valles testified that he verbally informed Election Commission Chair Ryan Lindquist of the change to the Lawbook at the Candidates Forum on April 1, 1998. The Defense presented testimony that the positions had been filled by that time by members of two fraternities, one sorority, and one other student group; consequently there was no need to advertise for those positions. No allegations were made nor evidence presented by the Plaintiff that any of these poll-workers were biased towards any particular candidate or group of candidates.

- Therefore, the Court finds that it was indeed a violation of the Elections Code, Article VIII, Section 4 to fail to advertise for the poll-worker positions.

◆ *Allegation 6: Violation of Elections Code, Article XVI, Section 1.*

The Plaintiff alleges that the presence of Attorney General Branden Young during the tabulation of election results is a violation of Elections Code, Article XVI, Section 1:

“No persons other than the Elections Commission, election officials, designated assistants, Official Poll Watchers, one (1) official representative each from the NM Daily Lobo and KUNM, and professionals required will be present during the tabulation of election results.”

The Defense contests that his presence is allowable as he was a “designated assistant”. The Attorney General himself testified that he was present, and assisted Yevonne Pena, Election Commission Vice-Chair, with the tabulation of 25-30 paper ballots. The electronic ballots were processed via “Scantron” machines—the same ones that process exams and ICES forms here at UNM. Since the “Scantron” machines are run by the University administration, the Court assumes that the electronic results are quite unlikely to be susceptible to tampering by a student present during their counting. That leaves the matter of paper ballots and a potentially inappropriate assistant. However, the

Plaintiff never alleged nor presented testimony or evidence alleging that the Attorney General had opportunity and/or intent to defraud the election; instead relying on the fact that the Attorney General was present to constitute a corrupt election.

- Therefore, after thoroughly reviewing the ASUNM Lawbook and Constitution, this Court finds that the term “designated assistant” does apply to Attorney General Branden Young. As a “designated assistant” his presence and aid during the tabulation of results does not taint the sanctity of the election.

While this Court finds that violations occurred in three out of five of the allegations; the Court has especially taken into consideration in this decision:

1. The fact that there was never any definite proof nor any specific testimony presented by the Plaintiff regarding bias on the part of poll-workers, the Attorney General, the ASUNM Advisor, and the Election Commission in general.
2. The fact that no definite proof nor specific testimony was offered by the Plaintiff regarding violation of the secret ballot
  - a. Instead, specific testimony and definite proof regarding the dimensions of the voting areas and instructions to poll workers was provided by the Defense.
3. The fact that no definite proof nor specific testimony was offered by the Plaintiff to demonstrate bias on the part of any poll-workers, despite the violations that occurred with regards to the poll-workers.
4. The fact that there was no proof, leading to even a reasonable doubt, that the above violations changed the election results in any way.
5. The violations that the Court finds did occur are strictly technicalities of the election.
6. The circumstances of the violations (i.e. the ASUNM Lawbook is not updated with new legislation),

This Court finds that these violations are indeed irregularities and as the NM State Supreme Court has found (*Gallegos v. Miera*, 28 NM 565; 1923; pg 570):

“...mere irregularities which, in the absence of fraud or evidence of a change in the result, do not necessarily destroy the validity of the election nor the probative force of the ballots as evidence.”

This Court holds inviolate the necessity of a fair, democratic election. Vital to such an election is the right of voters to participate. Thus, the Court realizes the need to carefully scrutinize any challenge to the mandate of the majority. We feel that we have indeed done so, while following the ASUNM Constitution and Lawbook and while being grounded in reason, justice, and precedent:

“...the voter should not lightly be deprived of his right, nor should the successful candidate suffer, if by any reasonable interpretation of the laws governing elections it can be avoided.” *State ex rel. Read v. Crist*, 25 NM 175, 179 p. 629.

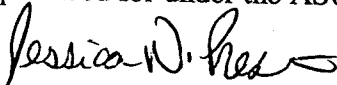
With the above findings and reasoning, this Court does not find enough evidence to rule the ASUNM Election of April 8, 1998 invalid and upholds the results *as tabulated* by the ASUNM Election Commission. Furthermore, the Court denies the requests of the Plaintiff to invalidate and call for a repeat of the election.


This Court does not absolve all parties from any responsibilities, however. In Tucker v. ASUNM Finance Committee, only a few months past, this Court *strongly recommended* that then-Attorney General Fred Melendres remember his duties as demarcated in the ASUNM Lawbook, Executive Code, Article II, Section 1. Duties of the Attorney General:


- A8. Review monthly the Constitution for the purpose of engrossing any Constitutional Amendments as passed by the ASUNM and the UNM Board of Regents.
  - a. The Attorney General is designated the responsibility to publish current editions of the ASUNM Constitution.
- A9. The Attorney General, in consultation with the President and Vice-President, will be responsible for codifying of the Constitution and Lawbook. This includes new legislation passed for both documents.

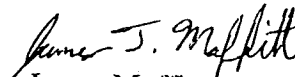
The facts brought to light in this case illustrate that there has been *serious dereliction of duty* on the part of then-Attorney General Fred Melendres. The Court reminded the Attorney General of his obligations, and these crucial tasks were still ignored. The results of this neglect would make it nearly impossible to hold an election free from inconsistencies. Therefore, we order the office of the ASUNM Attorney General to follow the requirements of that office and codify the ASUNM Constitution and Lawbook with respect to new legislation passed in the year 1997-98 (last revision dated 05/16/97). This shall be completed and turned over to the ASUNM Student Court for review no later than the end of the third full week of school in the Fall semester 1998. Barring no failure on this order, once the Court reviews the ASUNM Constitution and Lawbook it will be given to the Executive and Legislative Branches for their perusal. The Court shall have ten (10) business days to review the revised documents.

This Court also finds that the ASUNM Election Commission is not free from reproach. The Court orders that the next Election Commission Chair work closely with the ASUNM Senate and Attorney General to ensure that the Elections Code being followed is indeed the correct one, and also take relevant action should it come to light that legislation is missing from the ASUNM Lawbook and/or Constitution. Incompliance with any part of these orders will be consider Contempt of Court as provided for under the ASUNM Constitution, Article IV, Section 2, C.

  
Jessica W. Preston,  
Chief Justice

  
Angela Lester,  
Associate Justice

  
Christopher Lanphere,  
Associate Justice

  
James S. Moffitt,  
Associate Justice