



ADVISORY OPINION

SCOPE OF EXECUTIVE ORDERS AND CABINET POWERS

February 11, 2025

Introduction

This Advisory Opinion is issued by the Student Judicial Court of the Undergraduate Student Government at the University of Iowa in response to an inquiry about the scope of executive authority, the limits of Executive Orders, the creation of cabinet positions, and the mechanisms for holding leadership accountable for Bylaw violations. This opinion is to provide guidance and clarification regarding a received Advisory Opinion request for clarification.

Background

The Student Judicial Court (SJC) received a request on Wednesday, February 5th at 11:30 PM to review the scope of executive authority within the Undergraduate Student Government (USG) and the mechanisms for holding leadership accountable. The request raised concerns regarding the limits of Executive Orders, specifically whether the President could issue orders beyond the Executive Branch's scope and what checks exist to prevent overreach. Additionally, it inquired about the legitimacy of creating new cabinet positions without constitutional authorization and whether executives drafting legislation is implicitly unconstitutional. The second part of the request questioned the lack of enforcement mechanisms to hold leadership accountable for Bylaw violations. This Advisory Opinion seeks to review these concerns and clarify the extent of Executive power, cabinet authority, and accountability measures within USG.

Issue Presented

The issue presented is whether the scope of executive authority within USG allows for actions such as issuing Executive Orders beyond the Executive Branch, creating new cabinet positions without constitutional authorization, and drafting legislation. Additionally, there is a question of whether there are sufficient mechanisms in place to hold leadership accountable for violations of the Bylaws, particularly regarding failures to uphold constitutional requirements within the three branches of USG.

Analysis and Findings

The scope of executive authority within USG is explicitly outlined in the Executive and Legislative Bylaws, under Article III, Section D, Sub-section b:

- b) “Powers
 - i) Executive Order Process
 - (1) Executive Orders may be established for effective and efficient operation of the Executive Branch.
 - (2) An Executive Order shall be a written document that must be presented to the Senate within a week of its establishment.
 - (3) All Executive Orders shall expire at the completion of the presidential term.”

According to this section, "Executive Orders may be established for effective and efficient operation of the Executive Branch," and must be presented to the Senate within a week of issuance. Additionally, all Executive Orders automatically expire at the conclusion of the presidential term. This language establishes a clear limitation on the use of Executive Orders, confining them solely to matters within the Executive Branch. Additionally, under Article III, Section D, Sub-section 1, Sub-sub-section b, Point iii, Point 2:

“The President shall have the power to establish councils or commissions of the Executive Branch by Executive Order unless otherwise stated in these Bylaws. All Executive Orders shall remain in effect until terminated by another Executive Order or reversed by a two-thirds majority vote. A copy of all Executive Orders shall be sent to the Speaker of the Senate five days prior to enactment.”

This sub-section states that Executive Orders may also be published to establish commissions and councils ad hoc. However, these commissions and councils must be “of the Executive Branch.” This clause clarifies that established councils and committees must originate from the Executive Branch.

Under the 2023 – 2024 USG Administration, two Executive Orders were issued, E.O.1 *Establishing a USG Elections Commission* and E.O.2 *Establishing a Constituency Senator Restructuring Commission*. Each of President Winterlin’s Orders included a clause stating that the established commission must include a member of Executive Branch Leadership, Legislative Branch Leadership, and Judicial Branch Leadership to ensure adequate representation from all effected parties. The requirement that an Executive Branch Leadership member sits on the commission fulfills the requirement that councils and commission must be “of the Executive Branch.”

In continuing to review past precedent within USG, it is observed that Executive Orders have not always strictly adhered to this framework. During the 2017 – 2018 UISG Administration, [E.O.1](#),

[*Institution of the Student Leader Training Incentive Program*](#) was issued. The establishment of this Program intended to reward student organizations for participating in training programs. Rather than focusing on internal executive operations, this program influenced broader student governance structures, an action that would now be considered outside the scope of executive authority. Given the current governing framework, such an initiative would require Senate approval and legislative action to ensure proper oversight and separation of powers.

Similarly, President Mills's 2019-2020 [*Executive Order 1*](#), which created the Transfer Student Legislative Liaison, directly altered the structure of the Legislative Branch by introducing a new position within the Senate. This action circumvented the legislative process, which is the sole jurisdiction of the Senate, and thereby exceeded the constitutional limitations of Executive Orders. The creation of new roles that impact another branch of government must undergo the proper legislative process rather than being unilaterally enacted by the Executive Branch.

If issued today, these Executive Orders would be considered unconstitutional, as they do not adhere to the limitation that Executive Orders must remain within Executive Branch operations. This shift in interpretation reflects a growing emphasis on working with the Legislative Branch to correctly identify areas where the Senate would be of more efficient use rather than Executive Orders in order to prevent executive overreach.

When examining the powers of the Executive Branch, we have found the following. The constitutionality of establishing new deputy positions appears to be well-grounded in Article III, Section D, Sub-section 3, Point e, which explicitly grants the authority to create temporary, at-will deputy roles for identified needs. Since these positions are unpaid, unofficial, and limited to the duration of the administration, they do not hold the same weight as formal cabinet roles, making their creation a permissible extension of executive powers rather than an overreach:

“The Chiefs of Staff, the President, and the Vice President shall have the authority to create temporary, at-will “deputy positions” for any cabinet position as needed. These will be unpaid and unofficial positions only active for the remainder of the administration in which they are created and may only be created to fill an identified need.”

There are mechanisms in place for holding leadership accountable, though they vary in effectiveness and scope across branches. In the Executive Branch, the Executive Code of Conduct establishes expectations and outlines removal processes. Conduct Meetings, facilitated by the Chief(s) of Staff, President, or Vice President, provide an avenue for addressing misconduct, while ultimate removal of the President and Vice President follows a formal process requiring Senate approval. This means executives can be held accountable, but only through internal oversight or a high-threshold Senate removal vote when it comes to the President and Vice President.

Under Section I, Sub-section a. of the Executive Code of Conduct:

“I. Introduction

a. This Executive Code of Conduct, made and entered into upon submission of this form, outlines the expectations and requirements that justify payment and continued employment for all members of the Undergraduate Student Government's Executive Branch. This document is authored and revised annually by the Chief(s) of Staff in their role as conduct officer(s) for the Executive Branch. In addition to the general responsibilities and definitions described in this document, all Executives are beholden to the specific requirements of their respective positions, as written in the Undergraduate Student Government Constitution and Bylaws. This document also outlines the processes of Resignation and measures of accountability, including Conduct Meetings and Removal."

Regarding the concern with executive noncompliance with the Bylaws, under Section III, Sub-section a of the Executive Code of Conduct, Executives are expected to:

"Comply with the various responsibilities outlined for Executives as well as each position's specified responsibilities in the USG Bylaws."

Further, Executives are expressly prohibited from writing legislation. Under Article III, Section C, Sub-section 8 of the Constitution:

"Members of the Executive Branch shall serve as ex-officio, non-voting members of the Student Senate. Executives do not have the power to introduce legislation."

This provision highlights the crucial separation of powers between the Executive Branch and the legislative process. By being non-voting members, executives are effectively kept from directly influencing or controlling the legislative agenda, ensuring that they cannot overstep their authority and dominate the writing process. This is a key safeguard against the concentration of power in the executive.

The quote below outlines the provisions in place to keep the Chief(s) of Staff, President and Vice President accountable, under the Executive Code of Conduct:

"IX. Special Circumstances

a. If the Chief(s) of Staff require a Conduct Meeting, the President and Vice President will facilitate the Conduct Meeting, with the USG Advisor(s) acting as an intermediary.

i. The Chief(s) of Staff are subject to the same process of removal as all other Executives.

b. If the President or Vice President require a Conduct Meeting, the Chief Justice will facilitate the Conduct Meeting, with the USG Advisor(s) acting as an intermediary.

i. In accordance with the USG Bylaws, the President and Vice President can only be removed through two considerations of the Student Senate, with the first requiring the approval of 2/3rds of seated senators and the second requiring the approval of 3/4ths of seated senators."

In the Judicial Branch, Article II, Section 2.5.1 of the Judicial Bylaws provides the most direct enforcement mechanism, as SJC members can be removed for malfeasance, misfeasance, or nonfeasance:

“Any member of the SJC may be impeached and removed from office if that member fails to perform their duties. Grounds for removal shall be limited to malfeasance,

misfeasance, or nonfeasance of duties.A

2.5.1.1 Malfeasance, defined as intentional conduct that is wrongful or unlawful, or

2.5.1.2 Misfeasance, defined as the incorrect, improper, or wrongful performance of a lawful act, or

2.5.1.3 Nonfeasance, defined as the failure to act when a duty to act existed.”

The section below outlines the process for holding Legislative Branch Leadership accountable, specifically addressing the removal of the Speaker from their position. Currently, the Bylaws do not explicitly mention the Speaker Pro Temp, but as part of Senate leadership, it is understood that they are held to the same accountability standards. Under Article II, Section C, Sub-section 1, Sub-subsection c of the Executive and Legislative Bylaws:

- c) “Removal of Responsibilities as Speaker
 - i) At any official Senate session, any senator may make a motion on the floor to remove the Speaker from their leadership position and return to an at-large senator position. This introduction shall be the first consideration of the motion. For the motion to move on to the second consideration, it must receive a two-thirds affirmative vote of seated senators. If the motion reaches this threshold, it can be brought for a second consideration no less than two-weeks later to allow for concerns to be addressed.
 - ii) If the first consideration passes, the Speaker Pro-Temp shall serve as the chair of the senate until the time at which either the second consideration vote fails or the Speaker is replaced.
 - iii) At the second consideration, the motion must receive a three-fourths majority vote of seated senators for the removal to be approved.
 - (1) In the event the Speaker is relieved of their duties, an election following the same procedure as the original vote shall take place at the next Senate session after removal.”

The analysis of executive authority within USG highlights the established abilities of Executive Orders, ensuring they remain within the Executive Branch’s jurisdiction. As well, existing accountability mechanisms across branches provide oversight, outlining clear procedures for addressing noncompliance and maintaining separation of powers.

Conclusion

SJC has determined that the scope of Executive Orders outlined by the USG Executive and Legislative Bylaws are to establish effective and efficient operations within the Executive Branch

and should not extend beyond the Executive Branch’s jurisdiction. Additionally, through Executive Orders, the president is granted the power to establish councils and commissions that originate from the Executive Branch. SJC has found that the language in the Executive and Legislative Bylaws surrounding Executive Orders is vague on the definition of what “effective and efficient” operations are and therefore, SJC has provided recommendations on Bylaw changes to further clarify boundaries and the scope of Executive Orders.

Regarding enforcement methods in place to hold leadership accountable, SJC has found that there are existing mechanisms that prevent violations of the Bylaws. The Executive Code of Conduct, Judicial Bylaws, and the Executive and Legislative Bylaws outline the standard of conduct to which Branch Leadership is held. Violations of the Bylaws or the Executive Code of Conduct are managed through the initiation of conduct meetings or removal processes for the respective leadership positions. While these processes are described in the Governing Documents, SJC has found that USG needs to further communicate and enforce any violations, ensuring each branch is held to the same high standard.

Recommendations

Considering concerns raised regarding the scope and limitations of Executive Orders, cabinet powers, and enforcement mechanisms within USG, the following recommendations are proposed to ensure clarity, accountability and adherence to the governing documents:

1. Exhaustion of Options

The USG Constitution and Bylaws grant the USG President significant power in issuing Executive Orders. Misuse of Executive Orders jeopardizes the checks and balances of the USG democratic process. Prior to issuing an Executive Order, SJC recommends that the USG President communicate with the other branches to institute change through a collaborative process. This ensures that all options are exhausted prior to reaching the point of executive action.

2. Clarification of Executive Order Expiration

USG should resolve the conflict between the Constitution and the Bylaws regarding the duration and expiration of Executive Orders. A constitutional amendment or Bylaw revision should be pursued to ensure consistency across documents.

3. Clarification of Legislative Member Accountability Assessment

USG should address the inconsistency between Article I, Section A, Sub-section 3 of the Executive and Legislative Bylaws and current practices regarding the assessment of members’ understanding of the USG Constitution and Bylaws. A Bylaw revision should be pursued to either reaffirm the requirement for an examination, ensuring its proper enforcement, or to amend the provision to reflect current accountability practices.

4. Definition of Executive Order Limitations

Establishment of clear boundaries as to what “effective and efficient” operations are, relating to the Executive Branch. This may include but not be limited to stating that they cannot extend beyond the Executive Branch’s jurisdiction. This clarification should

include restrictions preventing the dissolution of committees or other structural changes outside Executive authority.

5. Clarification of Bylaws Compliance Mechanisms

While compliance mechanisms for the Executive Cabinet exist in the Executive Code of Conduct, USG should ensure these mechanisms are communicated, updated and enforced. Additionally, mechanisms for holding the Senate and Judiciary branches accountable for violations should be explicitly defined to ensure all branches are held to equal and clear standards.

Limitations

While this Advisory Opinion aims to provide clarification, several limitations of it must be acknowledged. All recommendations provided should be considered within the context of these constraints.

This Advisory Opinion is limited to the interpretation of the USG Constitution, Bylaws, and the Executive Code of Conduct as they pertain to executive authority and accountability. It does not assess the intent behind past Executive Orders, cabinet appointments or legislative proposals nor does it rule on specific instances of alleged overreach.

Additionally, while this opinion examines potential gaps in oversight and enforcement mechanisms, it does not prescribe disciplinary action or mandate policy changes; rather it provides guidance on how these concerns align with existing governance structures. Any proposed changes or policy implementations remain at the discretion of the appropriate governing bodies within USG.

Compliance Statement

This Advisory Opinion was issued in accordance with the governing documents and procedures of the University of Iowa's Undergraduate Student Government (USG) and the Student Judicial Court (SJC). All relevant provisions of the USG Constitution and Bylaws, as well as the established procedures of the SJC, were followed in the issuance of this opinion.

Please note that this Advisory Opinion is non-binding but serves as guidance for decision-making purposes within the Undergraduate Student Government at the University of Iowa. For further assistance or clarification, please contact Chief Justice Briones.

Thank you,

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