Constitutional Review Board Convened April 23rd, 2010

Question at hand:
Is it constitutional for ASUM Senate to support a new fee, or increase a fee, without conducting a student referendum?

Facts:
SB 27 was introduced March 24, 2010 and was passed in the senate on April 14, 2010 following the suspension of house rules.

Senator Patrick Rhea petitioned the Constitutional Review Board to review the constitutionality of SB 27.

Any motion or finalized document taken up by ASUM Senate, its subcommittees, or recognized agencies, constitutes an ASUM policy, and as such the Constitutional Review Board has the authority to take up the review of SB 27.

The Constitutional Review Board convened on April 23, 2010 to consider the question.

Article 4 Section 3 Part G states:
( g ) The ASUM Senate must have at least a two-thirds (2/3) majority vote in order to support the increase of any University of Montana or ASUM fee.

Section 10 Article 2 of the ASUM Constitution states:
Upon the petition of five percent (5%) of the membership of the ASUM, or an ASUM policy calling for the support of a new University of Montana or ASUM fee, the ASUM Senate shall be obligated to conduct a referendum. Alternatively, the Senate may initiate a referendum by a two-thirds (2/3) vote. In order to pass, at least twelve percent (12%) of ASUM members must vote, and a majority (50% plus one) of those voting must vote to ratify the referendum proposal. Notice of such a referendum must be published in the Montana Kaimin in each of the four issues preceding the referendum voting date.

Decision:
A fee increase involving coping with inflation or rising operational costs is considered an increase and is governed by Article 3 Section G of the ASUM constitution and a student referendum is not required. A fee increase is considered a new fee provided the increase expands on the original intent of the fee and is governed by Article 10 Section 2 of the ASUM constitution and a student referendum is required.

Therefore, the fee increase proposed in SB 27 is considered a new fee as it expand the scope of the athletic fee beyond its original intent, and as such is governed by Article 10 Section 2, requiring a student referendum in order to be considered constitutional.

Dissenting Opinion:
It is my opinion that redefining “New Fee” to include the interpretation of “Scope” is dangerous. It is also my opinion that redefining the application of Article 10 Section 2 titled “Referendum” is an inappropriate application of our authority as the Constitutional Review Board.

1) Defining “New Fee” as any fee increase or new introduction of a fee, sets a precedent for funds allocated for a specific line item that is otherwise allocated by the institution receiving the funds, to be interpreted as a miss-allocation. This puts the ASUM Senate in the position of defining the “Scope” of an institution for which it has no authority, and jeopardizes existing fees that are allocated by such entities outside of the explicit request language presented to ASUM Senate, by labeling them a “New Fees.”

2) Governing documents are created with a hierarchy in mind. Articles that identify the members, authority, and bodies included in an organization are given more weight then those articles following. This is important because Article 10 Section 2, is by very nature of its heading dealing with referendum, not the processes by which ASUM Senate has the authority to act. That it by this body’s interpretation contradicts preceding Articles, does not make it more valid, but less.

Using resolution SB 27 as precedent for what will be in the future defined as “New Fees,” as well as the disregarding of the structure of governing documents will create many problems as ASUM continues to consider fees in the future.

In affirmation of the decision: Eric Fulton, Brad Dusenbery, Sean Schilke, Ali Tabibnejad

Opinion written by: Eric Fulton

In dissent of decision: John Blake

Dissenting Opinion written by: John Blake