



ASSOCIATED STUDENTS OF  
THE **UNIVERSITY OF NEVADA**

Steven Kish  
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Opinion

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Attorney General Steven Kish filing per Title II, Chapter 207, Section 02, Subsection C as it pertains to the request for an opinion made on the Senate floor. This opinion seeks to lay out for the Eighty-First Session of the Associated Students – and for future Sessions – the process by which an elected Government Official may be impeached by the Senate of the Associated Students of the University of Nevada. The opinion ought also help establish and clarify the current proceedings against Vice President Elliot Malin.

First, it is important to establish the proper forum for which the Senate may initiate these proceedings; we turn first to the Constitution of the Associated Students; although mute on the initiation of these procedures, Article II, Section 2, Subsection C, holds that the Senate may determine the rules of its proceedings.

It is necessary and prudent to establish the Senate Rules within the context of this opinion and to set them as a cornerstone for the regulation of the Senate as a body. To debunk past precedence and argument that they're outside of the scope of this Office or the Judicial Council – which is essential if this process is to be properly overseen and ensured in the future – we turn to SAS 207.02.a which outlines the jurisdiction and duty of this Office first, which holds that:

“The Attorney General shall issue advisory opinions concerning the law, legislation, or any other act of the Association.”

A case can be made that the Rules of the Senate are, in-and-of-themselves and by their very nature, something within the scope of the Senate as it directly governs their actions and procedure and “determines the rules of its proceedings” per the Constitution II(2)(c) - essential in cases as this. The Attorney General and Judicial Council has inherent jurisdiction over these Rules as they are established and enacted by binding resolution, falling within the context of SAS 207.02.a as legislation of the



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Association. Further, Article IV, Section 2, Subsections A and C in particular show that these Rules, falling within and subordinate to the Constitution and Laws of the Associated Students, ought to be and implicitly are within the Council's purview. Specifically, the flexibility of subsection (a)(2) that allows and controversy among members of the Association to be adjudicated in this manner would open the door to the Council's intervention or influence on the Rules. Beyond that, subsection C would certainly make the Rules subject and vulnerable to interpretation by the Council as it's an act of the Senate.

That so established, we can incorporate Senate Rule X: Standing Committee Duties into the discussion. Specifically referencing subsection (f) and the Oversight Committee, which has power over "reviewing personnel matters, and conducting investigations regarding the impeachment of Governmental Officials, in accordance with the Senate punitive powers," we see that Senators – holding final punitive powers – may propose an investigation into impeachment which will be handled by the Oversight Committee. That being said, the *only* authority vested to the Oversight Committee is that of investigation, and is duly and rightfully governed by Nevada Open Meeting Law, NRS 241.033 specifically which requires:

- “1. Except as otherwise provided in subsection 7, a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has:
  - (a) Given written notice to that person of the time and place of the meeting; and
  - (b) Received proof of service of the notice.
2. The written notice required pursuant to subsection 1:
  - (a) Except as otherwise provided in subsection 3, must be:
    - (1) Delivered personally to that person at least 5 working days before the meeting; or
    - (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.
  - (b) May, with respect to a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, include an



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informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person.

(c) Must include:

- (1) A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and
- (2) A statement of the provisions of subsection 4, if applicable.”

As such, to follow Nevada Open Meeting Law, the process would be as follows:

First, the Committee on Oversight would inform the Government Official in question that they are to be investigated, per 241.033(1)(a) and 241.033(2)(a).

Secondarily, the Committee – if it had elected not to include a notice per 241.033(2)(b) – must call the Official in question down another time to include that stipulation.

Finally, it is important to realize that 241.033(2)(c) is in place to ensure that due process is afforded and clarity/transparency in the investigations is present.

This Office would advise Speaker Byrnes to, throughout these proceedings and those of future 81<sup>st</sup> Session proceedings, make a better, good faith attempt to include more information as to the *nature of the investigation* instead of solely hiding behind - or purposefully obfuscating the issue with – NRS; similarly, the placing of Vice President Malin on the Agenda for Senate is improper until such a time as he is called down to Oversight with the stipulation made, and *then* sent to the Senate proper. In this case, the vote need not be retaken, but Senator Malin must be made aware of the continuance of administrative or punitive sanctions/action *on the Oversight floor*, to ensure legitimate due process be upheld considering the agenda for December 4 only entailed questioning to check up on, per the minutes of the November 13 minutes, the progress or good faith improvement asked of him by Oversight.



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Should this process be conducted professionally, properly, and legally, the *question* of further action becomes the authority of the Committee on Oversight not the action itself. As such, they may report favorably – in the form of a *binding resolution* – on the impeachment of the Official in question.

The Senate shall discuss and debate the Resolution in normal venues and recourse. Should the resolution be approved by a simple majority, the Official is impeached (although, per the Constitution Article III, Sec. 4(a), the Official will continue to hold and discharge the duties and powers of the Office considering no *conviction* has been rendered) and a hearing will be held to establish the disciplinary action to be taken if the Official is convicted.

Either the Speaker of the Senate, Chief Justice or Vice President, per Constitution Article II Sec. 5(b), shall Chair the meeting depending on the Officer; Senator, Executive Officer, or Judicial Officer, respectively. At this time, evidence will be presented, witnesses offered, and arguments made per SAS 301.01, specifically Rule 4 (considering the changed venue, many of the Rules would be improper on the Senate floor), although the Judicial Council has to its purview the ability to entertain other aspects or Rules arguably under its jurisdiction. For instance, Rules 5 and 6 have no bearing or place in the impeachment process considering the Senate holds the jurisdiction and establishment of culpability, guilt, and punishment.

Should the Senate vote by a 2/3 majority to convict the Official, they shall consider the punishment. Turning to the precedent set in 2006 by the 74<sup>th</sup> Senate Session as it pertained to the impeachment of Senators Steven Caloiaro and Shane Steinbauer, the Senate has the authority under Sec. 5(c) of the Constitution to render (by another 2/3 majority vote);



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1. Removal from office with “disqualification to hold any office of honor, trust, or profit under the Associated Students”
2. Removal from office
3. Or censure

Be it so advised,

Dated this Fifth Day of December, Two Thousand and Thirteen, in the Eighty-First Senate Session.

Respectfully,

Steven Kish  
Attorney General