

THE STUDENT BODY SUPREME COURT OF INDIANA UNIVERSITY

Amplify for IUSA v. IUSA Election Commission

Docket Number: SBSC-2015-04 (2015)

Before MANON, Chief Justice, and BRILES, BRUNE, GOEL, HOEPFNER, MURPHY,
NEVILL, ROBBINS, RYAN, and TESTIN, Associate Justices.

OPINION

Chief Justice MANON and Justices BRILES, HOEPFNER, and RYAN delivered the opinion of the Court.

BACKGROUND

On April 14, 2015, a petition for *writ of certiorari* was filed by the Amplify for IUSA (“Amplify”) executive ticket requesting that this Court REVERSE the IUSA Election Commission’s decision to disqualify Amplify from the 2015 IUSA election due to violations of the IUSA Election Code’s financial regulations. In its decision, entered April 11, 2015, the Election Commission cited Title IV, Section 401: Campaign Expenditures Defined; Title IV, Section 402: Contributions for IUSA Elections; and Title VI, Section 602: Excessive Campaign Contributions of the Election Code as grounds for Amplify’s disqualification. Among other arguments, Amplify asserted that an incorrect or incomplete advisory opinion provided on behalf of the Election Commission should nullify any alleged violations under these sections of the Election Code.

On April 16, 2015, the Student Body Supreme Court of Indiana University accepted Amplify’s petition for *writ of certiorari* in part. In accordance with this Court’s *Universal Procedures for Public Hearing*, Amplify and the Election Commission were allowed to submit briefs, and the Court set the docket for oral arguments. *Amicus curiae* briefs were accepted on behalf of the INtouch for IUSA executive ticket and the Unify for IUSA executive ticket.

On April 23, 2015, the Court heard oral arguments pursuant to this Court’s *Standing Rules for Public Hearing*. The Court now CONFIRMS the Election Commission’s disqualification of the Amplify for IUSA executive ticket.

DISCUSSION

I.

In the first section of Amplify's petitioner brief, the ticket makes it clear that its disqualification occurred due to actions following the Chair of the Election Commission Ms. Aparna Srinath's advisory opinion. Amplify quotes the IUSA Election Code, stating, "Any particular candidate may request from the Election Commission an advisory opinion as to whether a particular purchase would constitute a campaign expenditure and what value it would be assessed." In Amplify's opinion, the ticket requested an advisory opinion, received a satisfactory answer through text message from Ms. Srinath, and pursued actions that would be considered fair. However, the Court finds multiple faults with this argument.

Title IV, Section 401 of the Election Code refers to "a particular purchase." Amplify argues that after being encouraged to find a lower price for the campaign t-shirts, it purchased the goods at a price of \$0.00. However, Merriam-Webster Dictionary defines the word "purchase" as "*to obtain by paying money or its equivalent.*" Related words used in the brief and hearing argumentation, such as "buy," "pay," and "sell" are all defined by the exchange/transfer of money. Therefore the Court does not accept the argument that Amplify fairly purchased over \$1,000 worth of t-shirts for the price of \$0.00.

Fortunately, Section 401 creates two classes of items that should be considered campaign expenditures. The first grouping – purchases – was deemed not valid above, meaning the t-shirts must fit into the second group: donations. Merriam Webster defines "donation" as "*a free contribution,*" further proving that a "\$0.00 purchase" should be rephrased as a donation. Regardless of whether the shirts would be defined as a purchase or a donation, Amplify erred in not listing the exchange as a campaign expenditure, which will be discussed in detail in Part II of this opinion.

Of more concern, however, is Amplify's request for and subsequent receipt of an advisory opinion that did not match the ticket's situation. Ms. Rachel Martinez's initial question to the Election Commission stated "they [the t-shirt vendor] were offering to sell them to us at the price they pay, not fair market price." Although Ms. Srinath's reply suggested encouragement of getting goods at lower-than-market prices (to which Amplify inferred \$0.00 would be a reasonable price), the fact remains that Ms. Martinez framed the question in a way that made it seem the ticket would pay the same price as the t-shirt vendor. As evidenced by the intermediate financial statements requested later, as well as common sense, t-shirt vendors obviously do not pay \$0.00 for the manufacturing, procuring, selling, etc. of their main product. During the hearing, Amplify petitioner Mr. Nicholas Laszlo suggested that the donation of shirts for \$0.00 did not become a possibility until later. The Court recognizes that this fact could be true, but does not recognize that Ms. Martinez's initial question and Ms. Srinath's advisory opinion could then be applied to a situation in which goods are procured for the price of \$0.00 rather than production costs. Rather than applying an advisory opinion to a situation that had a small, albeit critical, difference, Amplify should have requested a new opinion on the new situation – the possibility of receiving shirts for free.

Extending on this point, Ms. Martinez's initial inquiry contains no mention of the possibility of exchanging ten volunteer hours for the use of a miniature horse. Once again, the Court finds serious fault in the logic that Amplify used to infer that a ticket could use volunteer hours as a means of purchase for goods from an initial question about receiving t-shirts at production costs. During the hearing, Amplify mentioned that a personal connection to the horse farm enabled the ticket to establish connections there and use the horse in exchange for volunteer hours. The Court does not believe that another ticket without a connection would have been able to pay in volunteer hours to receive the same benefits.

Lastly, Mr. Laszlo's logic of when to ask for an advisory opinion from the Election Commission contained serious faults as well. The petitioner told the Court that ambiguity and confusion over the listing of market price vs. production price led to Ms. Martinez's initial inquiry. After receiving an answer from the Election Commission, the Amplify ticket proceeded to acquire the t-shirts and miniature horse based on Ms. Srinath's advisory opinion. During the hearing, however, Mr. Laszlo stated that the Election Commission's advice had been unclear, leading to confusion within the ticket that led to the making of illegal expenditures as defined by the Election Code. The Court must wonder if the ticket had been so confused by Ms. Srinath's advice, why it had not merely reached out again for a new opinion rather than acknowledging that it understood completely. The Election Commission did provide what could be construed as unclear advice through text message, but that does not clear the Amplify ticket of responsibility when it proceeded to forge ahead with an imprecise answer.

II.

In addition to Amplify's failure to ask the Election Commission a question that was actually relevant to the actions the ticket would ultimately follow, Amplify additionally failed to follow the advice that *was* provided by Ms. Srinath. By complying with Ms. Srinath's instructions, the ticket would have listed the t-shirts and the pony on their intermediate financial statements and would have subsequently learned that the scenario under which it was operating (i.e. receiving t-shirts and a pony for free, as a donation and contribution, respectively) was not covered by Ms. Srinath's advisory opinion. Additionally, Amplify contends that it did not list these items because the ticket calculated financial statements on a cash basis. However, the Court has determined that this is an error on the part of the Amplify ticket. Finally, Amplify argued that the ticket could not possibly have determined the value of the t-shirt and pony contributions received. The Court finds this to be false since the ticket was able to produce a value for the items when pressed by the Election Commission.

Ms. Srinath's text message to Rachel Martinez clearly instructed the Amplify ticket to list the expenditures that the ticket made. Since the t-shirts were obtained prior to the intermediate financial statements becoming due to the Election Commission, if Amplify had followed Ms. Srinath's instructions to list the t-shirts, even if these t-shirts had been incorrectly listed at a price of zero dollars, the issue might have been resolved before causing uncorrectable Election Code violations. The Election Commission would have had the opportunity to inform Amplify that the ticket's accounting for the t-shirts at a zero dollar value was incorrect, and Amplify could possibly have limited its other expenses or returned the t-shirts in order to avoid violations. In the Court's view, the Election Commission could not have known that Amplify was planning on

counting the t-shirts at zero dollars on its final financial statements unless Amplify listed the transaction as such on the all financial statements as instructed. Amplify's decision to leave the t-shirts and pony off the financial statements was clearly against the advice of Ms. Srinath.

Amplify justified the ticket's decision not to list the t-shirts and pony on the basis that its financial statements reflected only cash transactions. The Court finds this both outside the advice sought from Ms. Srinath and against the Election Code. Ms. Srinath was clearly under the impression that the t-shirts would be listed, as Ms. Martinez's question clearly referred to the price at which the shirts would be listed on the financial statements. Furthermore, Title IV, Section 401 of the Election Code states, "In determining the value of an expenditure... tickets shall be assessed the fair market value of the goods or services used to campaign." This is clearly contrary to using a cash basis for the financial statements. The Election Code makes no mention of determining the value of a given expenditure through the amount of cash spent on said "purchase." Thus, Amplify was in error using this method, and it materially contributed to the violations ultimately committed by Amplify. The petitioner argued that it would be unreasonable to list expenditures at their "fair market" values as opposed to the amount of cash spent. Part of this argument included a comparison of the t-shirts to items such as wireless Internet and tables used at on-campus campaign locations. This analogy is faulty. First, the Election Code in Title IV, Section 401 states, "fair market value shall be defined as the ability of interested parties to secure the same goods or services in question." It seems that any interested party could obtain free wireless Internet or tables for campaigning (as they are provided by the Office of Student Life and Learning at no cost). It does not seem that interested parties could obtain t-shirts at zero cost. Thus, the cash basis listing of Amplify's financial statements was in error and contributed to the violations of the Election Code that ultimately led to Amplify's disqualification.

The last argument advanced by the petitioner was that it would have been impossible to determine the fair market value of the t-shirts and pony. For this reason, Amplify contends that even if the ticket was not using cash basis on the financial statements, the ticket still could not have listed the items on the financial statements. This is clearly shown to be false, as the ticket was able to produce fair market value for the items when the Election Commission requested additional clarification of these expenditures. Even if the ticket was not able to obtain an actual cost from the providers of the goods or services, the ticket had other options beyond simply omitting the items from the financial statements. The ticket could have found reasonable estimates by asking other vendors or researching costs on the Internet. While not as accurate as the estimates the ticket was able to obtain, it clearly would have been more accurate than simply not listing the items at all. Finally, the assertion that the ticket thought the cost and value of the t-shirts and pony might actually have been zero dollars is unreasonable.

Together, this evidence illustrates that not only did Amplify seek to extend Ms. Srinath's answer to cover scenarios that were clearly outside of the purview of the ticket's original question, but also that this ticket failed to follow the instructions that were given with regard to its original question. Complying with the directives provided by Ms. Srinath could have given Amplify an opportunity to avoid subsequent violations. Amplify should have listed all applicable items on the financial statement. Possible justifications offered by the ticket, such as a cash basis for the financial statements and an inability to determine the value of the items, are no defense. Thus,

the Court is confident in holding the Amplify Ticket responsible for the Election Code violations that led to the ticket's disqualification.

III.

This Court does not find that the IUSA Election Commission acted in clear error when it gave Amplify for IUSA an advisory opinion regarding how to list campaign expenditures on its financial statement. The decision of the IUSA Election Commission is affirmed.

Amplify contends that the Election Commission acted in clear error with regard to the advisory opinion that Ms. Srinath gave to Ms. Martinez, a member of the Amplify ticket. Amplify additionally believes that the Election Commission was in clear error for disqualifying Amplify because Amplify claims to have relied entirely on the information provided in the advisory opinion. It is the role of this Court to determine if there was clear error and, if there was clear error on the part of the Election Commission, this Court can and should reverse the decision and remand the case to the Election Commission. However, the actions of Ms. Srinath, while improper, do not rise to the level of clear error. There is no doubt that a more formal process should have taken place, but Amplify asked a question, Ms. Srinath answered that question, and Amplify responded in the affirmative that they "Got it." (Petitioner's Brief, Exhibit number 2).

This Court held in its decision in *SPARC vs. IUSA Election Commission*, that the Election Commission's failure to provide an advisory opinion is, itself, clear error because the Election Commission shall issue an advisory opinion when requested pursuant to §103(5) of the Election Code. In this instance, Amplify presented Ms. Srinath with a question and, in return, Ms. Srinath provided Amplify with an answer.

This Court also will find clear error when the Election Commission intentionally misleads the ticket seeking an advisory opinion. Again, admonishing Ms. Srinath and the entire Election Commission for failing to put in place formal procedures on how to deal with questions from the tickets, Ms. Srinath did answer the question that Amplify posed. And if Amplify was confused about Ms. Srinath's response, the onus is on the ticket to seek further clarification. This Court refuses to hold the Election Commission responsible for a ticket's decision to interpret an advisory opinion however it sees fit. The question that Amplify asked is entirely unrelated to its actions in failing to list the t-shirts on its financial statements simply because it did not pay anything for them. Amplify asked Ms. Srinath about lower-priced goods, not free goods. While the distinction seems small, there is indeed a distinction. Ms. Srinath clearly answered the question that was posed. The fact that Amplify incorrectly interpreted that advisory opinion in order to best serve itself does not mean that Ms. Srinath's original answer was misleading.

Ms. Srinath did respond to the question posed by Amplify. And though the advisory opinion was sloppily answered in a text message, Ms. Srinath's response was not intentionally misleading. For these reasons, the Election Commission did not act in clear error in issuing its advisory opinion or in disqualifying the Amplify for IUSA ticket.

IV.

The petitioner raised an issue to which the Court did not grant writ of certiorari. This issue was the purchase of materials promoting a ticket by individuals unaffiliated with the ticket, and the proper consideration these materials should be given with regards to campaign finance regulations included in the Election Code. This issue is not ripe for review.

CONCLUSION

The Student Body Supreme Court of Indiana University hereby CONFIRMS the IUSA Election Commission's disqualification of the Amplify for IUSA executive ticket.

It is so ordered.

DISSENT

Justice ROBBINS, with whom Justice BRUNE joins, dissenting (Chief Justice MANON and Justices GOEL, HOEPFNER, MURPHY, NEVILL, and RYAN join Part IV ONLY)

I.

The purpose of advisory opinions is to provide guidance to a party who seeks to act within the limits of the rules or law that govern the party's behavior. The value of an advisory opinion is fully dependent on the advising party correctly interpreting the rules or law in question and then issuing a clear and precise opinion.

When an opinion is issued that is unclear and imprecise, the party seeking the opinion must not be found solely responsible for actions it takes that are contrary to the rules if the action was giving a blessing by the advising party. To hold otherwise is to eliminate the need for and the value of advisory opinions. Therefore, I dissent from the majority's opinion.

II.

To be clear from the outset, the Election Commission is not the only party at fault in this case. Amplify could have asked a more precise question that would have garnered a better response, or they could have sought another opinion when it came to the miniature horse. Along with my colleagues in the majority, I do not buy in to many of the arguments made by the Amplify – e.g., that they were not trying to pull a fast one by omitting contributions and expenditures from their financial statements, that shirts and a horse are similar to wireless Internet access or a table, etc.

Rather, the reason for my dissent is that the Election Commission's failure to provide the clarifying information contained in its inter-commission emails effectively gave Amplify a green light to attempt the uncouth political maneuvers they did attempt.

III.

At oral argument, the Election Commission promoted the idea that the emails its members sent back and forth were for the purpose of confirmation, rather than clarification. While I will not get into the nuances of what, in the realm of the commission's daily operations, the difference in those two terms is, I will explain how in this particular case the email exchange after the advisory opinion was issued contained information that clarified the rules for the issuing member and thus would have clarified the opinion had it been amended, or retracted and reissued.

Ms. Srinath, the commission member who issued the advisory opinion via text – which presents issues in and of itself, and is addressed in section IV below – emailed Ms. Dusenberry because she was “worried [she] gave an incorrect advisory opinion.” She informed Ms. Dusenberry of the situation that warranted the opinion and the information she gave in the opinion.

Ms. Dusenberry then responded that she agreed with the opinion, but then went on to qualify her agreement by adding reservations based on the reasonableness of the purchasing price. She stated that she agreed “so long as they did not receive a ‘bargain purchase price’ or an unreasonably low price i.e. \$2 per shirt.” She went on to say that if the price was unreasonably low, the commission should reassess the situation. But that is exactly what happened here. \$0 per shirt is less than \$2 per shirt.

This qualification served, undoubtedly, as a clarification of the financial reporting rules. But even if we were to use the commission's language, calling it a “confirmation” rather than a “clarification,” this problem still remains:

There is no doubt that this information would have been valuable to Amplify. If they knew that \$2 per shirt was considered an unreasonably low price and that the advisory opinion would not have applied to a cost that low, surely Amplify would have sought another advisory opinion and then – if the commission had issued a clear and precise opinion, which evidently would not have been a guarantee – would not have ignorantly violated the Election Code.

The bottom line is that the Election Commission clearly saw the potential for Amplify to receive the shirts at an unreasonably low price. It had a conversation amongst itself. And the result of that conversation was the conclusion that if the shirts were obtained at an unreasonably low price, the commission's advisory opinion would not apply. Worse yet, the information was readily available to share with Amplify and to clarify the advisory opinion. It would have merely taken a commission member copying and pasting the one paragraph response from Ms. Dusenberry. Or, simply, the email could have been forwarded.

To not provide this clarifying information was irresponsible and has, in my opinion, deprived Amplify of their rightful offices and the students of Indiana University of the leaders they have chosen. The purpose of the Election Commission is to ensure that the election is a fair process. But its failure to provide a clear and precise advisory opinion in this case has acted incongruently with its purpose. Indeed, it has cast a cloud of illegitimacy over this entire election.

Ms. Srinath's original feelings were correct. The commission did issue an incorrect opinion. For that reason, disqualification is improper.

IV.

A larger issue at hand (larger not because the disqualification is of little importance, but because a flawed advisory opinion process has the potential to affect future elections as well) is the process by which advisory opinions are requested and subsequently issued. Better yet, the issue is the lack of a formal process. The proper steps for this process are as follows:

1. The party seeking an advisory opinion should send a formal request to a specific question to the Election Commission's email account.
2. After members of the Election Commission have conferred with each other, it should issue a formal response that should be made available to the public.
3. If the requesting party feels that further clarification is necessary, they should submit an additional request.
4. If clarification is requested, the Election Commission should repeat their previous steps.
5. Then, after the Election Commission has offered a clear and precise advisory opinion that answers the question asked, the final responsibility lies with the requesting party. It is that party's responsibility to act as a reasonable person would, following the advisory opinion as closely as possible, and pointing out to the commission any inconsistencies the party believes exists between the opinion and the Election Code.

This process will allow for transparency and clarity, and will foster legal campaign behavior. The Election Commission can be more transparent by making the opinions public, which could occur, for example, by the commission compiling its opinions and asking this Court to post them to the IUSA Supreme Court website. The clarity comes from precise questions and answers and the express process by which the burden to get it right shifts back and forth from one party to the other once a duty has been fulfilled.

And then, hopefully, we get campaign behavior that falls squarely within the election code. If not, this Court will be here waiting to review the process and then, as always, interpret the Code.