

Election!

Campaigning is in full swing for Friday's Student Union general election with the publication of candidates and platforms in tonight's *Gateway*.

Posters drape many campus walls and the high point of the election campaign will come on Wednesday, February 13, when an election rally will be held from 11 a.m. to 2 p.m., featuring all the candidates.

The format will see each candidate give a brief speech with a question period following.

Wednesday, February 13 is also the final date for receipt of applications for the position of editor in chief of the *Gateway*.

The publications board, consisting of *Gateway* staff, the outgoing editor, members of student council, and a student at large will hold a public interview of all aspirants in room 142 of the Student Union Building, Thursday, February 14, at 2 p.m.

Students are invited to attend.

Once again, the election is on Friday, and Thursday's paper will carry a detailed list of polling stations.



Confidence?

18,000 students attend this university. Why does Charles Hall feel that 58% of 2734 students represents "an overwhelming vote of confidence" in the Students Union executive? (*Gateway*, Feb. 7). There should be a minimum number set for referendums that would represent a valid indication of student opinion on issues that effect the entire student body. Nobody turns out to vote on referenda? Maybe nobody knows what's going on - maybe the Students Union doesn't want us to know what's going on.

The Students Union newspaper carried very little on the actual issues at hand. When it should have presented unbiased facts and explanations it chose instead to publish statements of pro-SU opinion and biased advertisements (*Gateway*, Jan 31, p. 6-7).

George Mantor's attitude in the Jan. 31 front page article reflects the handling of the entire hastily-pushed-through campaign "It does not require a tremendous amount of time and debate". Apparently it did require much more time and well-prepared debate for the Students Council is now going to try and amend the constitution to suit themselves. This move, I hope, find much more time for consideration and a hell of a lot of debate.

Stephen Cain

Letters

The following "documents", pertaining to the Students' Union General Manager's salary; the nature and obligations of the Discipline, Interpretation and Enforcement (D.I.E.) Board; and to the powers of the Students' Union executive, were turned over to *Gateway* late last week.

We leave it to you to make what you will of them, since we feel the documents speak for themselves, needing no editorial comment or interpretation.

FIELD HYNDMAN

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PLEASE QUOTE FILE NUMBER 5-39619/JBD/8
5 FEBRUARY, 1974.

Professor Aviner A. Ryan,
Provost and Executive Assistant
to the President,
The University of Alberta,
EDMONTON, Alberta.
T6C 2J9

Dear Sir:

Re: The Discipline, Interpretation and Enforcement Board of the Students' Union ("the D.I.E."), Talbot and Mantor

Thank you for your letter of 30 January, 1974 with enclosures.

A number of factors have made the work of the D.I.E. in this case rather difficult. Talbot's request for enforcement proceedings is confused by his reference to By-law 100(11) and his reference to "contravention" and "breach". Those references smack of discipline. D.I.E. was nevertheless correct, in our view, in regarding Talbot's request as a request that the D.I.E. simply enforce a resolution of the Students' Council.

Mantor's answer also raises irrelevancies, but it also raises points of substance. Mantor claims that his refusal to obey the Students' Council Resolution is justified by the Constitution. It is, we think, significant that this is not a position first raised at the time of the D.I.E. Hearing but is a position which Mantor has taken since the disputed Resolution was enacted in May of 1973.

We now draw your attention to By-law 3500(8) and (9). What is the purpose of those By-laws? In part, this can be determined

by an examination of By-laws 3500 (4) and (5) and Bylaws 3500 (6) and (7).

It seems to us that by separating these three concepts of "discipline", "interpretation" and "enforcement" and providing somewhat different procedures for the institution of proceedings under each, that the Constitution intends each to be separate and to deal with different matters.

By-laws 3500 (4) and (5) impose upon the D.I.E. an essentially judicial function. Did "A" breach rule "B". If found guilty, the D.I.E. imposes a penalty. The enforcement powers of D.I.E. in these sections are restricted to the enforcement of the penalty.

By-laws 3500 (8) and (9), on the other hand, seem to us to impose upon the D.I.E. a very different kind of function. Here the D.I.E. is charged with the responsibility for the enforcement of the Constitution. This is not the judging and punishing of individuals for breaches, but instead is a legislative or administrative obligation to see that the Constitution is carried out. Having been given this responsibility, we are of the view that the D.I.E. has by implication of law the power to perform the responsibilities imposed.

If the Students' Council refused to perform its obligations to conduct elections. This is not simply a determination that Students' Council has failed to perform its obligations, but a duty to do what should be done on the default of Students' Council. The D.I.E. may start off by ordering the Students' Council to do that which the Constitution requires of it, but in the final analysis if its order is not obeyed the D.I.E. "shall be responsible for the enforcement...."

As the D.I.E. points out in one of its opinions, there is no question under these By-laws 3500 (8) and (9) of discipline, but as above mentioned we think that the obligation of the D.I.E. goes much further than waiting for public pressure to react to an order of the D.I.E.

In view of this analysis, we tend to agree with the D.I.E. that By-law 3500 (9) (b) does not make a mistake when it fails to refer to Section 5(c), although we acknowledge that the point is arguable.

What is perhaps more significant in this analysis is that the D.I.E. ought not to exercise its responsibilities under By-laws 3500 (8) and (9) when the part of the Constitution to be enforced is subject to different interpretations. For D.I.E. to act under By-laws 3500 (8) and (9) when the true intent of the Constitution is in dispute, seems to us a most dangerous practice especially in a case where the interpretation which the D.I.E. places upon the Constitution is at a variance with the interpretation placed upon the Constitution by the elected officers of the Students' Union.

The Constitution, it seems to us, has recognized that there will be differences of interpretation and for that reason has established By-laws 3500 (6) and (7) to deal with the problem.

Accordingly, it is our view that when an application is made to the D.I.E. to enforce the Constitution and an argument arises as to what the Constitution requires, that the D.I.E. should refuse to act on the request for enforcement until the Constitution has been interpreted under By-laws 3500 (6) and (7).

There may be cases where a party opposing a request for enforcement will raise the matter of interpretation, not because he has any serious belief in the interpretation advanced, but simply for the purpose of delay or obstruction and the D.I.E. will no doubt proceed notwithstanding the objection, but we would be reluctant indeed to characterize the objections of Mr. Mantor in this case in such a light.

We think that this case raises a very important point on the powers of the Students' Council qua the powers of the Executive, and before any enforcement occurs an interpretation should be made under By-laws 3500 (6) and (7).

It may be argued that the D.I.E. has already interpreted the Constitution on this matter. But has it? By-laws 3500 (6) and (7) provide that the D.I.E. will interpret the Constitution upon the request of the Students' Council of a club or a petition of ten Students' Union members. Has that procedure been followed? Because of the consequences of an interpretation by the D.I.E. under By-laws 3500 (6) and (7) it is we think important that the procedures be followed. What authority is there for the interpretation which the D.I.E. has issued in this case?

It is to be noted that the Students' Council (who should be the party aggrieved, as it is its Resolution which has been disobeyed) has done nothing in seven months to secure obedience to its Resolution. If the Students' Council opposed the interpretation being placed on the Constitution by Mr. Mantor, why did it not request an interpretation under By-laws 3500 (6) and (7)? Indeed, if Students' Council felt that there was no serious interpretation conflict, why did Students' Council not institute the enforcement proceeding? Apparently the only thing the Students' Council has done since the passage of the disputed Resolution was to refuse Talbot the authority to charge Mantor under By-laws 3500 (4) and (5) in August of 1973.

In conclusion, it is our view that an appeal launched by Mantor against the decision of the D.I.E. will be successful on the following grounds:

1) The D.I.E. should have refused Talbot's request on the basis that it is premature. Until the D.I.E. makes an interpretive decision on the issues raised by Mantor, the true construction of the Constitution is in doubt and the D.I.E. ought not to exercise its extraordinary powers to enforce where the very thing being enforced is subject to dispute.

2) The D.I.E. interpretive decision is without force or effect as it was made without due compliance to the procedures required, i.e. a request of Students' Council or a request of a club, committee or organization, or the petition of at least ten members of the Students' Union. Talbot is unable by himself to secure the required interpretive decision and the D.I.E. ought not to assist him to do indirectly that which the Constitution prevents him from doing directly.

Yours very truly,
Field Hyndman

DIE BOARD HEARING - FEBRUARY 7, 1974

The DIE Board met at 5:00 p.m., February 7, 1974 to consider a request for enforcement of motion F-96, the request having been submitted by: Jim Talbot, The Board members present were: A. Low, Wanda Tennant, James Goruk, Dennis Wong and Hans Eirenlechner.

The Board ruled that the request was premature and was not to be considered. The Executive Committee, the named defendant in the complaint, had been acting on their interpretation of executive powers. No enforcement decision was possible until such time as an interpretation of executive powers had been made. The decision of the Board was unanimous.

DIE Board Meeting

February 7, 1974

The DIE board met in response to a request for interpretation of the powers of the Executive Committee. The request took the form of a petition signed by eleven members of the Students' Union.

The Board hears argument on the issue from all who wished to comment, and adjourned until 12 noon, February 8. The Board then made the attached interpretation of the executive powers of the Constitution, specifically Articles JV, VIII and XII. The decision of the Board was unanimous.

The request also went on to request comment on the "present dispute over revelation of General Manager's contract". The Board declines to do so, since this would require access to facts which were not presented to it.

The members of the Board were:

Al Low, Chairman
Hans Eirenlechner
Dennis Wong
James Goruk

Wanda Tennant

EXECUTIVE POWERS IN THE STUDENTS' UNION

In order to understand the nature of the Executive Powers, it is necessary to go behind the Constitution to the Universities Act R.S.A. 1970 c. 378. Section 41 of this Act outlines the powers of Students' Council:

"41 (2) business and affairs of a student organization shall be managed by a body to be known as the council of the student organization....."

It is important to note that no mention is made of the Executive Committee in the Act. The power to manage the business and affairs of the Students' Union is given to Students' Council, not to the Executive Committee.

Students' Council is the creation of the Universities Act. The Executive Committee is the creation of the Constitution (Art. III), which is in turn the creation of Students' Council. The executive Committee owes its very existence to Students' Council, which could conceivably legislate it out of existence. (Editor's italics)

Since the Executive Committee is a creation of Students' Council, it must then derive its powers from Students' Council, as expressed in the Constitution and By-Laws. Two limitations on these powers are obvious:

- 1) The Executive Committee cannot be given more power than Students' Council possesses. *Nemo dat quod non habet*
- 2) The Executive Committee has only those powers which Students' Council has given it.

What then are the powers of that Students' Council has given to the Executive Committee? It should be noted that we are concerned with the powers of the Executive Committee as a committee and not as individuals. The By-Laws, particularly By-law No. 100, give many powers and duties to the individual members of the Executive Committee, but these powers are not in question. We are concerned only with the powers of the Committee as a committee, and not the powers of the individuals who compose it, however similar these functions may be.

The Constitution refers several times to "matters of an executive character". The Constitution does not attempt to define exactly what type of matters can be so classified; rather it leaves this responsibility to the Executive Committee.

Art. XII "The Executive Committee...shall decide what matters are of an executive character, but their decision in each case may be over-ruled by Students' Council."

An appeal from any such over-ruling lies to the D.I.E. Board. Art. XII is the only section which provides for the classification of matters as executive or non-executive in character. The article uses the imperative "shall". It is important that this function be done, although there is a presumption that any matter not classified as of an executive character is to be considered as non-executive in character.

This classification function is the only power conferred by Art. XII. It does not confer any power to the Executive Committee to deal with matters classified as of an executive character. The question of who may deal with such matters is the subject of Art. IV and Art. VIII, which give this power initially to Students' Council.

Art. IV "The Students' Council shall have all the...executive powers of the Students' Union...."

Art. VIII(1) "The Students' Council shall have full authority to deal with such Students' Union affairs as are of an executive character."

In dealing with such matters, Students' Council need only have a bare majority to pass any motion or resolution (Art. VIII(2)) Council may not

proceed by way of By-Law (Art. VII(1)).

It is not necessary that Students' Council deal with all matters of an executive character. Art. VII (3) allows Council to delegate this privilege. Art. VIII(3) "The Students' Council may, upon approval by a two-thirds majority of the voting members present at one meeting, delegate this power to the Executive Committee."

It should be noted that such express delegation is the only mechanism by which the Executive Committee can obtain power to deal with matters of an executive nature. Art. XII gives to the Executive Committee a power of classification, not the authority to deal with matters once classified.

The most critical question remains: Once a matter has been classified as being of an executive character, and once it has been expressly delegated to the Executive Committee, can Students' Council still deal with the matter, or must the delegation be revoked before Council is again competent to deal with the matter?

The Board is of the opinion that Students' Council at no time loses its power to deal with matters of executive character directly. (Editor's italics) It is not necessary for Council to revoke the Delegation to the Executive Committee before it acts. The Board bases its opinion on the following reasons:

1. While the Constitution is explicit in explaining how to delegate such matters to the Executive Committee, no mechanism is provided to revoke this delegation. It is inconceivable that the intention be that Students' Council should thereby lose control over such matters forever. The Board much prefers the view that such revocation is possible although it is not required before Council deals with such a matter.

2. The proposition that Council must first revoke the delegation and then deal with the matter is unnecessarily cumbersome. The vote for both