

Legal Opinion E 04-02

March 8, 2004

Dear XXXXX:

You have asked whether the interpretation of Education Code section 72023.5 (regarding eligibility requirements for student trustees) set forth in our earlier opinion E 01-09 would extend to the substantially similar provisions of Education Code section 76061 governing eligibility of students to serve as officers of the student body organization of a community college.

In Legal Opinion E 01-09 we held that the governing board of a community college district may not require student trustees to meet eligibility standards higher than those specified in Education Code section 72023.5.

Education Code section 72023.5 requires each community college district to have on its governing board one or more nonvoting student members. Among other things, section 72023.5(a) specifies that:

"A student member shall be required throughout the term of his or her appointment to be enrolled in a community college of the district for at least five semester units, or its equivalent, and shall meet and maintain the minimum standards of scholarship for community college students prescribed by the community college district."

Your inquiry is based on the fact that Education Code section 76061 uses virtually identical language to specify the eligibility requirements students must satisfy to serve as officers of a student body organization. Specifically, section 76061 provides:

"76061. A student who is elected as an officer in the student government of a community college shall meet both of the following requirements:

(a) The student shall be enrolled in the community college at the time of election, and throughout his or her term, with a minimum of five semester units, or its equivalent.

(b) The student shall meet and maintain the minimum standards of scholarship prescribed for community college students by the community college district."

Despite the striking similarity between these two provisions, we cannot automatically conclude that the reasoning of Legal Opinion E 01-09 applies to section 76061. There is at least one difference between the two statutes which merits discussion.

In Legal Opinion E 01-09 we divided the inquiry into two distinct parts—the unit requirement and the standards of scholarship. With respect to the requirement related to standards of scholarship, we stated:

"We think the answer is reasonably clear with regard to the imposition of higher standards of scholarship. Section 72023.5(a) explicitly says that student trustees must 'meet and maintain the minimum standards of scholarship for community college students prescribed by the community college district.' Had the Legislature intended to allow community college districts to require student trustees to meet standards of scholarship higher than those for all other students, it could simply have said that student trustees must 'meet standards of scholarship established by the district governing board.' Were this the intent, the reference to minimum standards of scholarship 'for community college students' would be surplusage. The principles of statutory construction require us to assume that all words in a statute have some meaning. (*People v. Gilbert* (1969) 1 Cal.3d 475, 480.) It will be presumed that every word, phrase, and provision of a statute was intended to have some meaning and to perform some useful office. (*Van Nuis v. Los Angeles Soap Co.* (1973) 36 Cal.App.3d 222, 228-229.) Thus, we must reject this possible interpretation and hold, instead, that student trustees may only be required to meet the same standards of scholarship required of other students of the district."

This reasoning is equally applicable to the identical wording of section 76061 and we adopt it here.

With respect to the portion of section 72023.5 which establishes a minimum unit requirement, we made three arguments to justify the conclusion that a local governing board may not require a student to maintain more than five units. First, we pointed out that section 72023.5 listed a number of the statutory rules which the governing board is explicitly authorized to override, but did not include the five unit rule in that list. Second, we observed that if the governing board could require a student to take more units, it could restrict eligibility to a rather elite group of students who might not necessarily understand or adequately represent the views of their less academically inclined colleagues. Finally, we relied upon an opinion of the Attorney General, which specifically held that community college district governing boards cannot impose eligibility requirements beyond those spelled out in section 72023.5. (62 Ops.Cal.Atty.Gen. 126 (1979).)

The first of these arguments cannot be applied directly to section 76061 because that section does not contain the same list of rules that the local governing board is authorized to override. However, it is important to note that section 76061 was added to the Code by the same bill, Assembly Bill 1914 (Stats. 1984, ch. 599), which added the parallel requirements related to unit load and standards of scholarship to section 72023.5. When the Legislature amended section 72023.5, the rules of statutory construction require us to presume that they reviewed its prior wording, noted the list of provisions the local board could override, and consciously chose not to add the new rules on unit load and standards of scholarship to that list. Although the inference is not quite so strong with regard to section 76061, it seems unremarkable that the Legislature would not have felt the need to explicitly prohibit governing boards from overriding the eligibility standards for student government officers since there was no pre-existing authorization for a governing board override. Indeed, since the Legislature used virtually the same wording to establish eligibility standards for student trustees and student government officers and took this action in the same piece of legislation, it seems highly likely that they intended the standards to be equally binding in both situations.

In addition to the difference between the two statutes discussed above, there is one other caveat that must be mentioned in applying the reasoning of Legal Opinion E 01-09 to section 76061. The 1979 opinion of the Attorney General on which we relied in interpreting section 72023.5 did not consider section 76061. Indeed, that statute did not even exist in 1979. However, we believe the Attorney General's reasoning, which we considered in Legal Opinion E 01-09 is equally valid with respect to the election of student government officers. The Attorney general observed:

"(S)tudent members are chosen by the students. The statute does not provide for participation in the selection by the governing board. Thus, while the board may prescribe the *procedures* by which the students choose their representative, it may not circumscribe their choice by means of imposing eligibility limitations." (62 Ops.Cal.Atty.Gen., *supra*, at p. 131, emphasis in original.)

Thus, while there are very slight differences between the two situations, we believe that the reasoning in Legal Opinion E 01-09 provides a sound basis for interpreting section 76061. Accordingly, we hold that district governing boards may not require student government officers to maintain enrollment in more than five semester units (or the equivalent number of quarter units) or to meet standards of scholarship higher than those required of other students.

Sincerely,

Ralph Black,
General Counsel

E 04-02