

Faculty Senate
Rights and Responsibilities Committee: Special Meeting
Agenda

November 29, 2016

9:30am

Library 204G

John Fitch (co-chair), Nicola Mason (co-chair), Debbie Whalen, Norman Powell,
Weiling Zhuang, Nancy McKenney (AAUP Rep.)

Excused: Deb Givens

1. Ruling on Faculty Regent Day No confidence vote

Suppression of 1st Amendment rights and protected speech
Reviewed personal transcripts from Nov FS meeting

Concerns:

a. Dana Fohl said she didn't render an opinion to FS Chair- Shirley's

b. Dana Fohl - Senate by laws call for a voice vote

Fs (transparency committee) aligns with state requirements (recorded -
clicker or stand). It's a matter of supremacy. State law trumps EKU.

FS Special Rules state:

(4) Items submitted for inclusion on the Senate agenda shall reach the Chair
or a member of the Executive Committee of the Senate at least two weeks
before a scheduled meeting of the Senate. A substantive matter not so
submitted, but presented on the floor of the Senate, shall be placed on the
agenda for action at the next Senate meeting.

FS Rules of Order state:

Voting

Compliance with Open Meeting/Open Records Laws in the Senate

The Senate will operate in compliance with the Kentucky Revised Statutes,
Open Meetings of Public Agencies, 61.800 to 61.850 and 61.991, and Open
Records of Public Agencies, KRS 61.870 to 61.884, 61.991.

A record for all votes taken will be included in the minutes and will register
the vote of each member, the total votes cast and the final action. Unanimous
votes may be recorded by that notation

Faculty Handbook:

Part Seven: Senate voting on all matters, except election of officers and of
members of Standing Committees, shall be viva voce or by a **separation of**
the **house**

Still waiting on official minutes on vote of no confidence from Shirley O'Brien

(see attached email)

TO DO:

Motion – all previous votes (Deb draft) BEFORE report
Pending O'Brien's response: Request Rules committee edit bylaws and retroactively approve all previous votes

Statement from R&R should include the following: a no confidence vote is a First Amendment right and constitutionally protected speech

2. Response (letter) from University Deputy Counsel, Dana Fohl.
See attached
3. What does this mean for past and future FS votes?
4. Further action by R&R committee?
Recommendation: Rules Committee needs to clean up language in Senate Bylaws.
e.g. Whereas the senate bylaws have not been revised to reflect the new voting procedure that follows KRS we move that Section D5 be changed to Senate voting shall be



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November 17, 2016

John Fitch
Faculty Senate
Rights & Responsibilities Committee

Via E-mail: john.fitch@eku.edu

Dr. Fitch and Faculty Senate Rights & Responsibilities Committee Members:

Please accept this as a response to your November 14, 2016 email and memorandum requesting a copy of “the opinion referenced by Chair Shirley O’Brien to the Rights and Responsibilities Committee.”

To the extent your request is couched as an open records request pursuant to KRS 61.870 et seq., there are no documents that are responsive to your request.

I did not render an opinion as it relates specifically to the legality or procedural correctness of the vote of no confidence in Faculty Regent Richard Day.

However, in response to a request to review the vote, my assessment was as follows:

Pursuant to Section D, Paragraph 5, the Senate bylaws provide the following: “Senate voting on all matters, except election of officers and members of Standing Committees, shall be viva voce or by a separation of the house.”

It is my understanding that vote taking in Faculty Senate meetings prior to September 12, 2016 was taken as specifically set forth in the bylaws. According to the minutes of the September 12, 2016 meeting of the Faculty Senate, electronic voting was implemented as the primary method of recording votes.

Given that Faculty Senate implemented electronic voting without amending its bylaws as it relates for “voting on all matters”, then any vote taken by electronic means since September 12, 2016 is potentially invalid, void and subject to attack as procedurally unauthorized.

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Should you have any questions or need additional information, please let me know.

Sincerely,



Dana Daughetee Fohl, J.D.
Deputy Counsel