Auxiliary Organizations
Part of the CSU Team
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Richard Jackson
Secretary/Treasurer
Auxiliary Organizations Association

Overview
What are they?
What are they NOT?
Why were they created?
What are their authorized roles?
Types of auxiliary organizations and activities
How do they (should they) operate?
Current issues impacting auxiliary organizations
Auxiliary Organizations Association resources
Auxiliary Organizations

What Are They?

- Separately organized legal entities (currently 94) created to perform services and functions of benefit to the campuses
  - First auxiliary established in 1922 – the Fresno State College Association
- They have THREE different statutory footings, each with its own compliance and reporting requirements and audit authority

1. As an Auxiliary Organization

Structure
- Authorized under the provisions of the Education Code (Ed. Code Sections 89006, 89300-304 and 89900 et seq.)
- The Ed Code delegates to the CSU Board of Trustees the authority to implement more detailed regulations – these are established in Title 5
- Title 5, in turn, delegates to the Chancellor and campus presidents authority to establish operational and oversight policies
Auxiliary Organizations

(Structure continued)

• May only provide functions designated and approved by the Trustees of the California State University (CCR, Title 5, Section 42500)
• Must have an Operating Agreement between the organization and the host campus approved by the Trustees/Chancellor's Office
  – Exception for Student Body Organizations, unless they are providing other functions, such as a student union, child care center, etc.
• Must be fiscally viable (with adequate reserves), and commercial services must be self-supporting
• **Advantage:** Provides additional operational capability to the university

Auxiliary Organizations

**Governance**

• Must maintain Chancellor’s Office recognition as an auxiliary in Good Standing
• Subject to compliance audit by Trustee auditor
• Serves at the will of the university
• Assets revert to a successor organization approved by the campus president and Trustees
• Campus presidents responsible by statute for ensuring expenditures are in accord with Trustee policies and for approving annual budgets, expenditures and programs
• CFO is the single campus officer designated to ensure auxiliaries maintain sound systems of internal controls and remain in compliance with legal and regulatory requirements, including nonprofit law
2. As a Tax Exempt Organization

Structure
- Authorized under Internal Revenue Code as 501(c)(3) nonprofit organizations and 509(a) supporting organizations, operated for exempt purposes as a “public charity” under California and federal law
- Subject to IRS, Franchise Tax Board and Board of Equalization jurisdiction, standards and audit
- **Advantage**: Generally exempt from tax on the income and gifts they receive, and can offer donors charitable tax deductions for their contributions

Governance
- Must adhere closely to tax law and regulations and to reporting and independent audit requirements
- Must file IRS Form 990 with information on mission, activities, financial status, directors, and operational policies, demonstrating transparency by making information available to the public,
- **Activity unrelated to the entity’s exempt purpose can result in tax liability on unrelated business income – or, when extensive, loss of tax-exempt status**
- Fundraising solicitations must meet federal and state standards, have reasonable costs, and abide by rules when using commercial fundraisers
- Nonprofit Integrity Act of 2004 sets operational requirements and financial standards (e.g., Audit Committee requirements, executive management compensation review)
3. As a Nonprofit Public Benefit Corporation (NPBC)

Structure
- Authorized under California Corporations Code Sections 5110 et seq.
- Articles of Incorporation filed with Secretary of State citing the general governance features of the entity
- Board adopts Bylaws to set internal governance structure and alert directors to laws affecting organization
- Nonprofit corporations are categorically NOT public or governmental entities

(Structure continued)

- Although only certain auxiliaries are authorized to perform fundraising functions, all auxiliaries are technically “charitable organizations” by virtue of their status as nonprofit, public benefit tax-exempt organizations
- Intended activities restricted to public/charitable purposes — in this case, supporting the university
- Corporate powers per statute: right to acquire property, enter into contracts, carry on a business
- Advantage: Entity functions within clear but flexible statutory norms

There is no requirement that auxiliary organizations be structured as non-profit public benefit corporations—-but they ALL ARE
Auxiliary Organizations

**Governance**
- Powers and affairs must be exercised by Board or under Board direction
- Directors must exercise due diligence in the exercise of their fiduciary duties
  - Duty of Care – must act in charity’s best interests
  - “Prudent Person Rule” (contrasted with “Business Judgment Rule”)
  - Duty of Inquiry – need to get full and accurate information for informed decisions
  - Duty of Loyalty – must avoid and disclose conflicts of interest; loyalty owed to organization, not constituency
  - Duty to Investments – must steward the corporate assets
- Directors exercise their authority collectively, not individually. Board members are individually held to statutory requirements
- Directors are individually liable: Directors must exercise reasonable diligence and care to avoid exposure to personal liability from injuries or losses caused by the organization
- Nonvoting directors prohibited
- Board members must review and approve executive compensation

**Oversight Role of California Attorney General**
- Supervision responsibility over financial affairs of public benefit corporations
- Registration and annual reporting required to the Registry of Charitable Trusts
- Certain transactions require Attorney General approval (e.g., disposition of all or substantively all assets, loans to officers or directors, self-dealing transactions)
Auxiliary Organizations

What They Are NOT

**Auxiliary Enterprises or Services**

- Auxiliary organizations are NOT “auxiliary enterprises” or “auxiliary services” which are functions or operations that are departments of the university – not separate legal organizations. Examples are:
  - Housing – Dormitory Revenue Fund
  - Parking Fund
  - Continuing Education Fund (CERF)
  - Student Health Center

- Auxiliary Enterprises are authorized under separate statutory authority (Ed Code, § 90000 et seq.) and have the following characteristics:
  - Managed by the State and the funds are deposited with the State
  - Generally operated as self-support with fees directly related to, although not necessarily equal to, the cost of the facilities, goods or services
  - The funds are deposited in separate university Enterprise or Trust Funds and are governed by State rules (which can be restrictive)

How a function is organized determines whether it is an Auxiliary Organization or an Auxiliary Enterprise

Auxiliary organizations are self-supporting entities, while auxiliary enterprises are self-supporting activities.
**Auxiliary Organizations**

**Activity**

CSU Trustees/Chancellor's Office

- Auxiliary Organization
  - Separate Legal Entity
    - Ed Code
    - Title 5
    - Operating Agreement
    - Cal. Corporations Code
    - Nonprofit Public Benefit Corp. Law
    - Articles of Incorporation & Bylaws
    - Oversight of Governing Board

- Auxiliary Enterprise
  - Operates as Department
    - Ed Code
    - Title 5
    - State rules for funds, employees

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**Why Created?**

The purpose of CSU auxiliary organizations is:

- “To provide the fiscal means and the management procedures that allow the campus to carry on activities providing those instructional and service aids not normally furnished by the State budget;” and

- “To provide effective operation and to eliminate the undue difficulty which would otherwise arise under the usual governmental budgetary, purchasing, and other fiscal controls.”

(Title 5, California Code of Regulations, Section 42401)
Auxiliary Organizations

Authorized Functions of Auxiliary Organizations

(Title 5, Section 42500)

- Student body organizations
- Bookstores, food services, and campus services
- Housing (e.g., faculty and staff for-sale housing)
- Student unions
- Supplementary health services
- Loans, scholarships, grants-in-aids, stipends and related financial assistance
- Externally funded projects including research, workshops, conferences and institutes

(Authorized Functions – continued)

- Instructionally-related programs (e.g., radio, athletics, etc.)
- Alumni programs
- Gifts, bequests, devises, endowments, trusts
- Public relations, fundraising, fund management and development
- Acquisition, development, sale and transfer of real and personal property, including financing transactions
### Typical Auxiliary Organizations & Revenue Sources

- **Associated Student Body Organization Programs**
  - Revenues from student body fees
- **Student Unions**
  - Revenues from student union fees and operations in the facility
- **Sponsored Programs & Special Education Projects**
  - Externally funded grant and contract activity conducted by faculty and staff
- **Commercial Services**
  - Revenue from bookstore sales, food services, child care centers, and other commercial activities

### (Typical Auxiliary Organizations – continued)

- **Instructionally-Related Programs**
  - Funding from various sources including student newspapers, radio and television stations, agricultural programs, etc.
- **Gifts, Endowments, Trusts, and Fundraising**
  - Funds come from external entities intended to support specific activity and other university operations, and typically 90% of donations are restricted as to use
- **Real and Personal Property**
  - Auxiliaries can incur debt to purchase property and/or engage in partnership projects to develop property
Auxiliary Organizations

(Typical Auxiliary Organizations – continued)

• Many of these activities can be performed by either the university or an auxiliary, as long as authorized and with an operating agreement in place
  – E.g., Research and sponsored programs, conferences and workshops, operation of commercial services, acceptance of donor gifts, etc.)

• Most campuses have traditionally provided these functions through auxiliaries

• Auxiliary Organizations have $1.2 Billion in Revenue and Expenses
Examples of Support Activities Performed by Auxiliaries

- Operate on a self-support basis without State General Fund money or resources
- Diversify university resources by generating net revenues from commercial enterprises, contract and grant management, and gift administration
- Offer private-sector business speed, efficiency and adaptability (e.g., enhanced budgetary flexibility; different spending restrictions; accumulate reserves)
- Offer reduced operating costs, and offer alternative to university long-term employment obligations (at-will employment environment; alternative compensation and benefits structures)

(Activity Performed By Auxiliaries – continued)

- Accept entrepreneurial and special program risk exposures not appropriate for the public entity
- Manage endowment funds outside State investment restrictions (e.g., invest in equities to maximize returns)
- Purchase and dispose of property; provide seed money or loans for development of university projects
- Enter into public/private partnerships that support the university (e.g., ease of construction management)
- Facilitate certain types of financing, and add debt capacity
Auxiliary Organizations

(Activities Performed By Auxiliaries – continued)

Auxiliaries cannot, due to current CSU policy:
- Hold state funds appropriated to CSU through legislative process
- Hold tuition fee revenue
- Hold most other mandatory student fees required for registration
- Own or sponsor instructional programs awarding academic credit or Continuing Education Units

Since the CSU cannot, auxiliaries can on behalf of the University:
- Invest in equities
- Buy, sell and hold real property without legislative action
- Engage in statewide education bond campaigns

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How Do They (Should They) Operate?

- No state funds (General Fund appropriations) – considered a gift of public funds
- Good private sector business practices (an alternative to governmental standards and state procedures), which enhance university capabilities
  - Flexibility and adaptability make auxiliaries useful to their universities
  - Auxiliaries held accountable, but subject to a different standard
- Subject to different laws and regulations – e.g., different Wage & Hour provisions, different Open Meeting laws, different Records Disclosure requirements
- Comparability of salary and benefits for similarly classified positions
  - “ Comparable” does not mean “the same”
Auxiliary Organizations

(How Do Auxiliaries Operate – continued)

Reimbursement requirements – EO 1000

- Pay for direct costs plus an allocable portion of indirect costs associated with facilities, goods, and services provided by the University funded from the General Fund (CSU Operating fund)
- Costs are determined in accordance with a written cost allocation plan approved annually by the campus CFO
- University can recover costs with cash and/or a documented exchange of value and in-kind consideration.
- Auxiliary funds can transfer to the University, but University funds cannot be transferred to the auxiliary
- Auxiliary employees’ time can be donated to the University, but the cost of University employees must be reimbursed
- Chancellor’s Office to develop FAQs to guide campuses regarding when “in-kind” or less than full cost reimbursement is appropriate

Auxiliary Organizations

(How Do Auxiliaries Operate – continued)

Permissible activities and accounts – EO 1052

- Campus establishes which of the permissible functions and activities will operate in its auxiliaries (Operating Agreement, MOU’s, contracts for service)
- Governing concept in making a decision about proper placement of funds is Ownership
  - Authority to sign related contracts
  - Risk of business loss
  - Legal responsibility and liability exposure
  - Fiduciary duty
  - Policies that will govern the conduct of the program
  - Administrative control over expenditures
Auxiliary Organizations

(How Do Auxiliaries Operate – continued)

Ownership of an activity is NOT necessarily evidenced by which entity:

- Pays the employee or has signatory for the program
- Owns the facility where the activity occurs
- Has programmatic (i.e., subject matter) control over expenditures

It does not matter if university employees, facilities or other resources are involved in the activity, so long as the state General Fund is reimbursed per the campus Cost Allocation Plan.

Current Issues Impacting Auxiliary Organizations

- What is the role and distinctive value of auxiliaries at the university in the current environment? Has it changed?
- Auxiliary Review Committee’s review of the role of auxiliaries and existing policies (e.g., EO 1052)
- Changes in Stateside capability (e.g., what can be done in Trust accounts)
  - Over the years some rule changes have given CSU greater flexibility.
  - However, during the same period university operations have gotten more complex
- Governance training for board members
- Synergy initiative; search for efficiencies; eliminate duplication of effort
Auxiliary Organizations

(Current Issues Impacting Auxiliaries – continued)

- Achieving the right balance on a campus between
  - Preserving separate legal and operational structures of Auxiliary Organizations that enhance the capabilities of the universities, and the role of their governing boards
  - Preserving the authority of the university to set policy and standards, and oversee operations
- Proper exercise of Presidential and CFO authority: oversight vs. management
- Keeping employment straight between university and auxiliary
- Accountability/Transparency of Auxiliary Organizations
  - Public Records Act – Trustees legislation providing disclosure and protecting certain activity (proprietary terms in some vendor contracts)
  - Trustees may amend Title 5 to include guidelines regarding transparency of Auxiliary Organizations
- Public relations exposure: public sees auxiliaries and campuses as one entity

The Balancing Act
(An underlying theme)

- “Separate But Related”
  - Private Entities operating within a public framework
  - Separate from the public entity, yet its sole purpose is to serve it
- Board authority vs. Presidential/campus authority
  - Transfer of assets requires Board authorization
  - President’s veto power over an auxiliary program or expenditure
- The need for public disclosure and transparency, but without being inaccurately characterized as a “state agency”
- Assume additional risk on behalf of campus – yet can’t expose the deep pocket
Auxiliary Organizations Association (AOA)
Services to Members

- Website Resources (www.csuaoa.org)
  - Information sharing, Membership directory, Networking bulletin board, Legislative and legal updates, Library of resource materials, Job postings, Sample policies, procedures and forms
- AOA Annual Conference
- Access to legal counsel
- Group insurance and pooled benefit programs (cost savings, and millions returned in dividends)
- Standing Committee resources and programs (e.g., AS/SU, Research, Financial Services, Human Resources)
- Professional development programs
- Teleconferences and workshops for membership
- Biennial salary survey

(AOA Services to Members – continued)

- Special research projects and monographs
- Assistance in creation of separate resources for member auxiliaries
  - Auxiliary Organization Unemployment Insurance Trust (AOUIT)
  - Multi-employer VEBA Trust for managing post-retirement health benefit liability
- Resolution of common issues affecting members
- Representation of collective interests of auxiliaries to policy-making groups of the CSU and State of California
- Point of contact with Chancellor’s Office, CABO, FOA
  - Building partnerships, seeking joint solutions
Questions?