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 Operate?

• Advantages of Auxiliary Organizations

• Current Issues

• Auxiliary Organizations Association Resources
Mission Statement

We are a consortium of diverse, entrepreneurial, service-oriented California State University auxiliary organizations whose purpose is to assist in exemplary services, programs, and facilities that further the educational mission of each campus.
What Are They?

• Separately organized legal entities (currently 85) created to perform services and authorized support functions of benefit to the campuses

• 501 (c)(3) nonprofit public benefit corporations

• First auxiliary established in 1922 – the Fresno State College Association
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, Research & 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

- 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
1. 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
(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 with the CSU defining approved activities for each auxiliary

• Need a written MOU with the campus to establish scope of operations and address other contractual issues
(Structure continued)

• Must be fiscally viable (with adequate reserves)

• Commercial services must be self-supporting

• Advantage: Provides additional operational flexibility and support to the university
Governance as an Auxiliary Organization

- Education Code
- Title 5
- CSU and Campus Policy and Practices:
- The University President and CFO are accountable for all auxiliary organization activity

- Compliance
- Annual Budgets
- Expenditures
- Programs
2. A Tax Exempt Organization

Structure

• Authorized under Internal Revenue Code as 501(c)(3) nonprofit organizations and 509(a)(3) supporting organizations, operated for exempt purposes as a “public charity” under California and federal law

• Advantage: Generally exempt from tax on the income and gifts they receive, and can offer donors charitable tax deductions for their contributions
Governance as a Tax Exempt Organization

• Must file IRS Form 990
  • Information on mission, activities, financial status, directors, and operational policies

• Fundraising solicitations must meet federal and state standards

• Nonprofit Integrity Act of 2004
  • Operational and financial standards

• UBIT
  • 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
3. **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

- *Bylaws* adopted by Board
  - to set internal governance structure
(Structure continued)

• Intended activities restricted to public/charitable purposes – in this case, supporting the university

• Corporate powers to acquire property, enter into contracts, carry on a business

• Advantage: Entity functions within clear but flexible statutory norms

• Oversight: California Attorney General
Governance as a NPBC

- Powers and affairs must be exercised by Board or under Board direction
- Institutional control through board appointment
- Each auxiliary governing board must approve amounts and purpose for expending auxiliary funds
- Includes funds for auxiliary operations as well as amounts and purpose of expenditures to augment State appropriations
- Board members must review and approve executive compensation
- Review and approve an annual budget
- Nonvoting directors prohibited
Even though auxiliary organizations may be organized as corporations, they are first and foremost auxiliary organizations of the CSU and must therefore operate pursuant to the specific statutes and regulations applicable to auxiliary organizations.
The Ladder:

- Tier One – Statutory:
  - Corporations Code
  - Education Code
  - Revenue and Taxation Code

- Tier Two – Regulations:
  - California Code of Regulations (Title 5)

- Tier Three – CSU Policy/Practices:
  - Trustee Resolutions
  - Chancellor’s Executive Orders
  - Coded Memoranda
  - ICSUAM

- Tier Four – Campus Policy/Practices

- Tier Five – Auxiliary Governance & Management Policy/Practices
What Are They 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 or Services (Continued)

- **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
Why Were They Created?

The purpose of CSU auxiliary organizations is:

• “To provide instructional and service aids not normally furnished by the State budget;” and

• Facilitate essential services and activities
• Enhance budgetary flexibility
• Shield against liability
• Manage risk and exposure
• Increase investment opportunities
• Purchase and sell real estate
Auxiliaries can do lots of things
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 and Recreation Centers
- Supplementary health services
- Loans, scholarships, grants-in-aids, stipends and related financial assistance
(Authorized Functions – continued)

• Externally funded projects including research, workshops, conferences and institutes

• Instructionally-related programs (e.g., radio, athletics, etc.)

• Alumni programs (not alumni associations)

• Gifts, bequests, endowments, trusts

• Public relations, fundraising, fund management and development

• Acquisition, development, sale and transfer of real and personal property, including financing transactions
(Authorized Functions – 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.

• Most campuses have traditionally provided these functions through auxiliaries.
How Do They Operate?

• No state funds (General Fund appropriations)

• 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”
Executive Order 1059
“Utilization of Campus Auxiliary Organizations”

- 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 –
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
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**
Executive Order 1000
“Delegation of Fiscal Authority and Delegation”

• 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
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
A perspective on perspectives
Advantages of Auxiliary Organization Activities – A General Perspective

• Operate on a self-support basis

• Diversify resources by generating net revenues from commercial enterprises, contract and grant management, and gift administration

• Offer “private-sector” efficiency and flexibility

• Offer reduced operating costs and alternative employment relationships

• Accept entrepreneurial and special program risk exposures not appropriate for the public entity
(Advantages of Auxiliary Organization Activities– continued)

• 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 (shift of project risk and debt issuance)

• Facilitate certain types of financing, and add debt capacity

• Engage in statewide education bond campaigns

• Manage risk exposure
Current Issues

• What is the role and distinctive value of auxiliaries at the university in the current environment? Has it changed?

• 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
(Current Issues—continued)

• Synergy initiative; search for efficiencies; eliminate duplication of effort

• Achieving the right balance of campus oversight and Board governance
  • (Oversight vs. Management)

• Maintain distinction between campus and auxiliary employment

• Public relations exposure: public sees auxiliaries and campuses as one entity
The Balancing Act

• “Separate But Related”
  • Private Entities operating within a public framework
  • Separate from the public entity, yet its sole purpose is to serve

• 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
AOA Resources

- Website Resources (www.csuaoa.org)
  - Information sharing
  - Membership directory
  - Legislative and legal updates
  - Library of resource materials
  - Sample policies, procedures and forms
(Resources– continued)

• AOA Annual Conference
• AORMA - Group insurance and pooled benefit programs (cost savings, and millions returned in dividends)
• Access to legal counsel
• Standing Committee resources and programs (e.g., AS/SU, Research, Financial Services, Human Resources)
• Professional development programs
Resources (Continued)

- Meetings and workshops for membership
- Assist in creation of resources for member auxiliaries:
  
  *Multi-employer VEBA Trust*

  - Act as a forum/resource for resolution of common issues
  - Represent interests of auxiliaries to policy-making groups
  - Point of contact with Chancellor’s Office, CABO, FOA

  ...*a partnership with the intent to seek joint solutions to common issues*
Contact Info

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