

APPROPRIATIONS, EXPENDITURES AND OTHER ASSET DISPOSITIONS:

ROLE & AUTHORITY OF GOVERNING BOARD

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Background. Auxiliary organizations operating within the California State University are subject to provisions of the Education Code (*Ed Code §§ 89006, 89300-304 and 89900 et seq.*) as well as the California Nonprofit Public Benefit Law (*Corp Code § 5110 et seq.*). Auxiliary organizations should not be confused with “auxiliary services” – typically associated with campus departments or as operational functions for student housing and similar activities within the College Auxiliary Enterprise Fund, and authorized under separate and distinct statutory authority (*Ed Code § 90000 et seq.*). University officials have confused or conflate the important distinction between auxiliary organizations and auxiliary services.

There is no requirement that an auxiliary organization be structured as a nonprofit corporation; however, all, at present, are indeed separate legal, nonprofit corporate entities which meet one or more of the statutory definitions of the term “auxiliary organization entity.” See *Ed Code § 89901*.

Role and Authority of Governing Board. Each auxiliary organization (and nonprofit public benefit corporation) is required to have a governing board. See *Ed Code § 89903* and *Corp Code § 5210*. The authority of the governing board, particularly with respect to the management of funds (and all other assets), is statutorily explicit:

“(T)he activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board.” – *Corp Code § 5210*; and

“All expenditures and fund appropriations of auxiliary organizations ... shall be approved by the governing board of the auxiliary organization.” – *Ed Code § 89904*.

While a governing board typically delegates operational affairs of the organization to management, “...the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.” See *Corp Code § 5210*.

Generally with respect to significant matters involving organization funds (and other assets), the following actions customarily require Board decision:

- Adopting the annual operating, special, or capital budgets;
- Planning the year’s activities and programs;
- Adopting corporate policies and long-term plans;
- Investing corporate funds;
- Approving the mortgage or other hypothecation of corporate property to secure payment or performance of contracts or obligations (*Corp Code § 5910*); and

- Approving the sale, lease, conveyance, exchange, transfer, or other disposition of significant corporate assets (*Corp Code § 5911*).

Budgeted Funds. Fund appropriations (and expenditures there under) are generally authorized through a periodic budget review and approval process that includes oversight by the campus president. If before or after the board adopts a budget (or program funded thereby), the campus president determines that an appropriation or program planned by an auxiliary organization is not consistent with system or campus policy, or is operating outside such policy, then the program or appropriation shall not be implemented, or shall be discontinued by direction of the president for further review and appropriate adjustments made. See *Cal Code of Regs, Title 5, § 42402*. Note that the campus president has a strong appropriation/program oversight role – not one that dictates board action or that directly, or through intermediaries, subsumes the board’s lawful governance function. An auxiliary organization is clearly not a campus “holding company” in its exclusive supporting role to the campus.

Other Financial Transactions. Assets (including funds) held by an auxiliary organization, but not subject to a periodic appropriation/program review and approval process, also require both the attention and involvement of the governing board. The board is required to set policy which will assure the organization’s fiscal viability, including provisions for adequate working capital, adequate reserves for current operations, new business requirements, and capital replacements (*Ed Code §§ 89904(b) and 89904.5*). Similarly, the board has the responsibility for assuring that any commercial services operated by the organization are self-supporting (*Ed Code § 89905*), and that discretionary funds related to sponsored programs, workshops, and institutes by the organization are expended under system and campus guidelines (*Ed Code § 89904.6*).

Gift, trust, or agency assets received, managed, and expended (disbursed, transferred, or otherwise disposed of) by an auxiliary organization are subject to a heightened governing board role and responsibility. Such assets are often characterized by donor, settlor or principal restrictions, statutory and accounting standards limitations, and system or campus restrictions – all of which make critical the fiduciary role played by the board. See *Corp Code § 5230 et seq.*

All nonprofit public benefit corporations are also considered to be “charitable corporations” (*Corp Code § 5111 and Gov Code §12582.1*) -- hence this classification extends to auxiliary organizations, and making it imperative that the board has adequate formal policies in place, and that it closely exercise not only its oversight role in attending to operational areas properly delegated to management, but with full engagement in significant financial transactions involving such assets.

The above responsibilities bear solely on the governing board and cannot be delegated or assumed (or presumed) by another individual, entity or body. To buttress the statutory responsibilities of a governing board, the Attorney General has been given broad oversight role over corporate transactions. See *Corp Code §§ 5233, 5250 and 5910-13*.

Thus, while the campus president certainly has important budget and program approval and oversight responsibilities, including compliance with applicable laws, regulations, best practices, system and campus policy, that responsibility should not be used to thwart or diminish the role of the auxiliary governing board. For example, the campus could not adopt a policy that attempts to shift to the university (including a university official) the statutory authority vested in the board -- then assert that the auxiliary had to comply with that campus policy by virtue of the president's oversight responsibilities.

Note that the auxiliary board could delegate certain aspects of its authority to a university official (while retaining ultimate responsibility).

Auxiliary board members (including ex-officio directors holding university positions) need to realize that even if the board delegates appropriate duties to someone, or to a sub board, the board itself will still be held statutorily accountable if the delegated actions run counter to the interests or viability of the auxiliary, or counter to the standards of conduct to which each board member is held.