

Instruments of Change:
The Viability of Auxiliary Organizations
Into the 21st Century

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Auxiliary Organizations Association
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I.

Introduction

This narrative has two objectives. Foremost, it is part of a broader effort by the Auxiliary Organizations Association (AOA)¹ to explore and help define how auxiliary organizations can best serve the California State universities into the next century.

Auxiliary organizations share a common legal framework.² The corporate structure of each auxiliary organization is, or should be, designed for a support purpose, or combination of purposes, deemed most suitable at the campus level. The Board of Trustees of the California State University sanction this flexibility. Through myriad changes over the past seventy-five years, auxiliary organizations have remained, providing basic support³ and serving in a wide variety of roles sought by campuses.

Amid rapid change, however, organization nuances become obscured or lost from institutional memory. Hence, this narrative also traces the nature and extent of auxiliary organizations, and describes the major forces and changes at work within the CSU that bear upon these unique support entities.

For those able to bring the auxiliary organization into play for more visionary purposes, having a clearer view of these unique entities and their potential will be a powerful tool. The AOA will circulate this paper to auxiliary organization governing boards and managers, and to senior campus administrators. Our hope is to stimulate more discussion leading to a vital auxiliary support system.

II.

The Nature and Extent of Auxiliary Organizations

Auxiliary entities and State colleges were the original campus “partners” in the mid-twenties. Student agricultural projects used credit and production techniques with an enterprise bent. State accounts were unsuitable for handling such projects. Student and faculty organizations had permission to rent State facilities for campus cooperative stores by the early thirties. A decade later, separate entities had authority to operate cafeterias, along with other campus support activities needed by early State colleges that were either not funded or not feasible through governmental processes.

Campus commercial and aid-to-instruction support programs grew. In the fifties auxiliary organizations had multiplied to an extent that oversight agencies insisted on guiding principles to help shape auxiliary organization operations. Eventually these principles found their way into lease agreements, and later into the statutory and regulatory framework governing auxiliary organizations today. By 1960, several of the colleges had moved into research, were sponsoring conferences and workshops, and had set up special education services, often administered through campus centers or institutes. Auxiliary organizations successfully administered these activities. These successes led to involvement in a broader array of ancillary operations. Housing, handling private support funds and related development programs, administering student financial assistance funds, athletics, alumni programs, radio and television stations, newspapers and media production services -- all evolved into auxiliary functions over the years at several campuses.

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

It is typical for commercial support-ive activities to use campus facilities under lease arrangements that reimburse the university for utilities, maintenance and repairs, and custodial services. There is a space-use reimbursement requirement for externally funded projects conducted through auxiliary organizations.

They may come packaged, and in some cases, repackaged, to perform different functions, but auxiliary organizations share important common features. All are separate nonprofit corporations.⁴ The term “nonprofit” does not mean they cannot make money. It means there are no stockholders or distribution of profits to members.⁵ Any profit goes for the purposes set out in the articles of incorporation.⁶ Nonprofit corporation governance is subject to the general standards of care required of for-profit entities under General Corporation Law,⁷ although special standards apply to the investment of funds.⁸

All auxiliary organizations have achieved tax exempt status: they do not pay income or franchise taxes if they keep their activities within those circumscribed by tax laws and regulations.⁹ They are taxpayers otherwise, unless specific exemptions or narrow exclusions apply. Tax exempt status, plus a determination by the IRS that it is not a private foundation, also means individual donors may ordinarily claim gifts to auxiliary organizations, consistent with its purposes, as charitable contributions.¹⁰

Like The California State University itself, auxiliary organizations are creatures of the California Legislature. The statutory basis for auxiliary organizations is in the Education Code.¹¹ Here, the unique character of these “separate” entities truly becomes clear, for auxiliary organizations are also

“integral” to the CSU and their host institutions.

The Education Code gives the Trustees authority to regulate auxiliary organizations within statutory limits.¹² The Trustees, exercise their authority over auxiliary organizations through formal regulations,¹³ by delegated authority to the Chancellor or campus president to set policy and procedures,¹⁴ and in separate agreements.¹⁵ The Trustees prescribe broad functions that auxiliary organizations may perform without additional Trustees’ authority.¹⁶ Auxiliary organization functions (student governance excepted) require an operating agreement with the Chancellor, acting for the Trustees. A support service lease is necessary when the auxiliary uses campus property.¹⁷

The campus president reviews auxiliary organization programs and budgets for conformity with system and campus policy.¹⁸ The Education Code, Title 5 and Chancellor directives prescribe finance and management standards for auxiliary organizations. For example: commercial services must be self-supporting,¹⁹ an annual independent audit is required,²⁰ and expenditures must conform with State control procedures.²¹ The Trustees also regulate the composition of governing boards and other operational features.²²

Auxiliary organizations also possess common operational qualities. These features make the auxiliary organization an essential bridge between services or activities not practicable for the public sector, and that the private sector would likely treat only as a profit or loss center. This “bridging effect” has been successful on a national scale in both public higher education, and in the health care industry. The following restatement of these critical qualities helps explain why a CSU campus can expect flexibility,

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

retain control and achieve service quality in situations requiring innovative actions or relationships:

Corporate Partnering & Joint Ventures.

Auxiliary organizations have the legal and operational advantage over the public sector in its ability to form and function successfully within both limited and strategic partners or joint ventures. Investors often must restructure rapidly to move into and out of modern marketplaces.

Long Term Financing.

Over the past several years, auxiliary organizations have established a sound record of securing and managing capital debt, usually at favorable rates, because of their tax-exempt status and repayment capacity. This feature gives the campus an alternative financing tool for projects that may be a low priority for public funding, but critical to the campus.

Contract and Procurement Flexibility.

An auxiliary organization may not have the buying power of the CSU for many materials and some services. However, auxiliary organizations retain essential policy flexibility and the ability to negotiate contracts and purchase goods and services without the strict and formal bidding process still required for university transactions in most cases.

Property Development Transactions.

Major asset leveraging usually involves real estate transactions and development relations that can prove difficult for the university to manage directly. The auxiliary organization can generally help structure these transactions and relationships.

Fewer Labor Constraints.

Auxiliary organizations are not subject to collective bargaining laws commonly

encountered in the public sector. In some cases, capital project costs are less because construction work is not subject to wage requirements applied to public works.

Presently, over seventy auxiliary organizations serve within the CSU at the campus level or on a system-wide basis. Many are small, single-function operations. Others are large, full-service corporations with major and diverse holdings. Review and coordination of campus auxiliary organizations occurs at the local level, with system-wide coordination by the Chancellor's Office working through a business officer's council.

III.

The CSU in Transition

The CSU is also a creature of the California Legislature.²³ It has been subject to contract and procurement, payroll, accounting, budget, and other centrally controlled features, applied to other State agencies. To a degree, this control helped spawn campus auxiliary entities since campuses were without the operational flexibility to handle directly many of these ancillary services.

Early auxiliary operations kept to the core functions, like food services, bookstores, student body programs, student unions, and the like. The CSU came together and grew. The number of auxiliary organizations "in good standing" and the list of authorized functions expanded.²⁴ About the time the Trustees authorized the most recent function in 1989 ("acquisition and development of real property"), dramatic changes struck the CSU, touching nearly every aspect of the system.

The CSU, under severe recession-driven budget constraints, made dramatic

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

fiscal cuts and reorganizations at all levels. Supported by the governor and the Trustees, new senior management at the Chancellor's Office instituted major themes of change: frugality, flexibility, productivity, decentralization, private support, campus revenue generation, and accountability. A six-year run of legislative initiatives gave the CSU extraordinary relief from general State agency requirements, and the authority to handle much of its business without detailed oversight by other State agencies.²⁵ The CSU may now more readily:

- transfer property interests;
- make payments directly to vendors;
- manage claims, appropriations and internal funds;
- offer student fee payment options;
- negotiate direct major materials and services agreements;
- manage risks and pool for self-insurance; and
- enter into facility construction and repair project contracts.

Trustees and the Chancellor linked the management flexibility gained from the Legislature with reformed internal policies and rules. This has given campus president's considerable delegated authority. Campuses are hardly independent agencies, but more cost-effective operations should result. Campuses still do not have at their disposal business practices common to the management of contemporary business enterprises.

These efforts at change have a price: the Legislature and the governor expect results, measured by productivity benchmarks and accountability standards.²⁶ In such a climate, auxiliary organizations should have the advantage.

Rapid change across the CSU brings opportunities and challenge for both auxiliary organizations and campus administrators to find and leverage assets, and to deliver better service within resource limits.

The additional managerial flexibility gained through legislative changes affords considerable possibilities for more transparent relationships between campuses and their auxiliary organizations. In turn, "easier" relationships hold prospect for more efficient, innovative activities by, with, and through auxiliary organizations. Examples, thus far, include:

Long-term Leases.

Long-term auxiliary operating leases are now possible and, for terms up to 20 years, do not require the approval of the Department of General Services.

Property Development.

The CSU has more flexibility to transfer property interests to accomplish campus objectives. This authority includes transactions with auxiliary organizations.

Risk Pool JPA.

Auxiliary organizations may join the Joint Powers Authority formed by the CSU to administer risk pools for satisfying liabilities within the system and auxiliary JPA members. Such an approach to risk management should streamline liability responsibilities.

Auxiliary Organization Bonds are Tax-exempt.

Interest charged on qualified debt issued by auxiliary organizations is exempt from state corporation tax.

Removal of Dept. of Finance from Auxiliary Organization Audits.

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

No longer does the Department of Finance set auxiliary organization audit procedures.

On balance, a conducive environment is emerging that favors innovation, but positioning is critical. The CSU and campuses will enter into major relationships in ways that leverage resources, improve productivity, add value, while retaining appropriate control and accountability. This will require a blending of approaches -- CSU management flexibility and campus based authority, coupled with auxiliary organizations ready and able to serve as instruments-of-change.

IV.

Instruments of Change

Customary ancillary campus activity -- or traditional ways of doing it -- is no longer the realm of many auxiliary organizations. The cases profiled here place the auxiliary in a broader, more dynamic role, with the functions authorized in Title 5 as useful platforms lifting the host institution toward its mission.

Community Volunteer-Partnering.

A university and the community's housing authority join in programs to construct or renovate low-income housing, and to serve children living in the projects. The campus student organization auxiliary assists with outreach, materials funding, and coordination of student clubs that support the partnership.

Community involvement is an important service of many ASI-type auxiliary organizations, helping to strengthen "town-gown" relations. One campus has an annual local creek "clean-up" weekend and the auxiliary organizes student crews. Another aux-

iliary operates a mentor program to help motivate inner city youth to consider going to college.

Campus and Community Facilities Operator.

Auxiliary organizations are active in offering leisure and entertainment programs, managing related campus or community facilities, and operating concessions at events.

News Media Service.

At several campuses, an auxiliary organization serves both campus and community news and entertainment needs with radio, television or newspaper services.

Campus Service Bureau.

Even small ancillary units frequently require sophisticated business and communications services. At one full service auxiliary is a service bureau to the alumni association, a smaller auxiliary organization, a community performing arts commission, and for special institutes and research centers affiliated with the host institution. The auxiliary and the units served enter into separate agency agreements and an appropriate is fee applied.

In a variation of this approach, one large auxiliary organization provides full management and business support to several other smaller auxiliary organizations on campus. Each served auxiliary has a separate governance structure, but they share a common administrative function. A management fee and charge-back arrangement apply.

Service Bureau for External Entities.

Nearby to one campus, an emergency response training center, affiliated with a governmental agency, obtains business services by contract. The center, through the university, seeks the campus auxiliary or-

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

ganization's accounting, procurement, MIS, and personnel services. A service support agreement results between the government agency and the campus auxiliary organization. The center associates with a related national crisis-intervention training entity. This entity needs similar services, and plans a joint venture with government, education, and private sector participants to build and operate a shared use, high-tech training facility near to the campus. The auxiliary organization may be the ideal mechanism to accomplish both needs.

Exporter of Commercial Enterprises.

Auxiliary organizations with extensive commercial operations have, by invitation, exported those enterprises to other campuses within the system. Such arrangements typically are a contract function of an auxiliary organization on the campus being served, and involve multi-year service agreements between two auxiliary organizations.

Community Partner.

One university has joined with the adjoining city and a community foundation to build and operate a performing arts center located on the campus. Under the partnership operating agreement, a campus auxiliary organization provides various support services to the facility.

Facility Financial Partner.

An auxiliary organization wants to build and equip a modern child care center to serve university students, faculty, staff, and, on a limited basis, the community. Funds are limited. At the request of the University, a larger campus auxiliary organization arranges a tax-exempt construction loan from a local bank. The facilitating auxiliary obtains a ground lease from the State for the site. A lease-back Agreement between the auxiliary organizations secures sufficient

rent from fees and other income serving to satisfy the loan payments.

In another case, the campus auxiliary organization structured a tax-exempt loan on behalf of the nearby city to provide supplemental funds to equip a joint university-community cultural facility.

Investment Manager.

Several campus auxiliary organizations have evolved successful corporate and endowment investment management programs. Using prudent policy-frameworks permitted by law, some offer investment services to other auxiliary organizations or nonprofit entities in the community on a management fee basis.

Capital Project Developer and Facilitator.

A campus needed to site, design, build and equip a special technology research center on a "fast-track." The campus auxiliary organization administering research and grants agreed to facilitate the project, serving as project general contractor and ultimate tenant of the facility. The auxiliary leased the site from the university, bought modular units, and had them installed. The university obtained tax-exempt financing, reimbursed the auxiliary for project costs, took title to the facility, then leased the new facility back to the auxiliary for research purposes. Research indirect cost earnings are the source for rent to retire financed obligation.

Progressive Student Union Manager.

It takes more than fee revenue to operate a "full-on" student union. Progressive student union auxiliary organizations, using rigorous market and business plans and techniques, are offering union activities and convenience-services on a more self-supporting basis. A strong national trade

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

group is a source for fresh, but proven management techniques and service approaches.

Campus Facility Financial Partner.

One campus seeks to develop campus property into a multi-purpose facility for both intramural sports and intercollegiate athletic programs. A joint funding plan involves student fees to repay a revenue bond issue, coupled with private support. To move the project into the construction phase, the university requests a campus auxiliary organization to structure a secured tax-exempt loan for the athletics facility part of the project. The arrangement includes a site ground lease, and an operating lease-back agreement pledging firm private support funds to pay off the loan.

At another campus, university land is the focus of plans to develop sports and business incubator facilities in cooperation with adjacent communities. The auxiliary organizations on that campus will have a key role in structuring and operating the project.

Another university may involve an auxiliary organization in plans to sell housing units situated on the campus, while retaining the underlying land.

Off-campus Extension of Campus Enterprises.

As an extension of a campus bookstore, at least three auxiliary organizations have opened retail outlets in adjacent communities. These extended stores feature products related to each campus. The stores provide additional income, and give the general public more access to university related products.

Property Owner or Manager.

Major private support often comes as real property. Some auxiliary organizations

become the owners and property managers of income-producing real estate. Others lease the property for instructional uses, and provide support services on a fee basis.

One research-type auxiliary organization built and manages a campus office complex that includes space rented to the university and to other government agencies.

Endowment Funds Manager.

Several of the universities have policies that designate a campus auxiliary organization as the recipient of private support. Major gifts designated as endowments are invested by the auxiliary organization, and the earnings held for the university for purposes intended by the donors. The auxiliary organization applies a fee for managing the funds.

Housing & Bridge Loan Provider.

Some auxiliary organizations have invested corporate assets into housing assistance programs to help attract and retain quality university faculty and senior administrators.

At some campuses the program is simply temporary loaned funds secured by equity in the former home until it sells. Other assistance is more elaborate, like partnering with private developers and community agencies to offer supported housing on a rent or acquisition basis.

Research and Business Park Developer.

Campus auxiliary organizations handling externally sponsored research projects for the university are partner-prospects with the private, public and independent sectors in developing and operating research and technology "incubator" parks convenient to the host institution. The synergy created through these joint ventures can have both

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

educational and economic benefits that stretch well beyond a campus.

One campus is taking the lead with property and facilities declared surplus by the State. A major regional center is under development involving four CSU universities. It will likely operate through a separate auxiliary organization.

Technology Transfer Agent.

One auxiliary organization is forming a separate limited liability company to market and serve ventures stemming from particular expertise or technology developed through the university. Another set up a subsidiary corporation to manage businesses in which the auxiliary organization initially had only a partnership interest.

Commercial Product Developer and Agent.

One university operates an industry-supported products technology research center. The campus auxiliary organization provides business service support (as an extension of its sponsored programs role). More significantly, it relies upon the auxiliary to invest in promising product inventions. After careful evaluation for market potential, the product is patented and licensed for commercial uses.

Collegiate Products Agent.

Auxiliary organizations can serve as the university's agent for commercial licensing of university names and symbols. The auxiliary contracts the administrative functions to a professional firm, sets product quality and variety standards, audits license compliance, and accounts for royalty payments and resulting net income to the university. Collegiate licensing programs will become more common with the size and success of campus intercollegiate athletic programs.

Systemwide Initiator and Innovator.

In one of the first acts of "reinventing" itself, the CSU spun off a new system auxiliary organization with some promise of being a true instrument-of-change. This auxiliary organization has as its purposes: administering educationally related projects; developing instructionally related materials, courseware, software and hardware; participating in public/private ventures, including activities relating to technology transfers; and assisting with the development of small business enterprises, including research parks and business incubators. It now runs agency accounts for a host of fledgling non-profits, and provides advice to campuses on technology transfer opportunities.

California Education Technology Initiative.

Another systemwide auxiliary organization is being formed, as a member of limited liability company with a selected team of private companies, to design and build a "baseline" electronic communications system for all CSU campuses. The primary objective of this initiative is to leverage private capital and the system's potential customer base into a \$300 million investment return of a hi-tech infrastructure.

These profiles involve or anticipate "healthy" auxiliary organizations. A fertile seedbed for further service and ventures includes stable policy leadership by the governing board, steady management and campus oversight, and a sound financial base.

California and its communities face a daunting challenge in the next century. Colleges and universities have been prominent in California's educational, social, and cultural fabric as creators, preservers, and transmitters of knowledge and culture. With

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

a long-term shift of the economy toward knowledge-intensive industries, colleges and universities will serve as pivotal economic-engines, applied technology centers, major employers, investors, property developers, and reservoirs of creative and energetic people.

California State universities are mobilizing to meet this challenge. They should cross the threshold of the millennium with capable auxiliary support. Vital and engaged auxiliary organizations require decision-makers to discern limits as well as potential, to nurture these entities as assets, and put them in play as prudent instruments-of-change on a planned basis.

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Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

Source Reference & Comments

¹ The AOA is a separate nonprofit corporation composed of auxiliary organizations within the CSU. The purpose of the AOA is: to provide a means of communications among members; to serve as a vehicle for considering and resolving common issues; to assist new auxiliary organizations or those with management or other problems; and, to represent the common interest of the members in appropriate forums (AOA Articles of Incorporation, Article II).

² See the California Corporations and Education Codes, coupled with Title 5 of the California Code of Regulations.

³ Commercial services (such as bookstores and food service), student associations, and student union operations are the traditional functions of auxiliary organizations. See Section II for details.

⁴ Cal. Corp. Code, Sec. 5110, et seq., classifies them as “nonprofit public benefit corporations.”

⁵ Cal. Corp. Code at Sec. 5410.

⁶ Cal. Corp. Code at Secs. 5111 and 5130.

⁷ Cal. Corp. Code Sec. 5231. Compare with Sec. 309.

⁸ See Cal. Corp. Code Sec. 5240(a). Additional standards apply to funds held for investment only, but not invested funds related to corporation’s programs.

⁹ Taken together, U.S. Internal Revenue Code Sections 170(b)(1)(A), 501(c)(3) and 509(a) are the basis for exempt organization status of auxiliary organizations operating within the CSU. See California Revenue & Taxation Code Section 23701d for exemption from franchise taxes.

¹⁰ IRC, Sec. 170(b) et seq., and Cal. Rev. & Tax. Code Secs. 17240-41.

¹¹ Cal. Ed. Code Sec. 89900 et seq.

¹² Cal. Ed. Code at Sec. 89900(c).

¹³ Cal. Code of Regs, Title 5, Sec 42400 et seq.

¹⁴ Title 5 at Secs. 42396.4 and 42402.

¹⁵ Title 5 at Secs. 42501-02.

¹⁶ Title 5 at Secs. 42500(a)(1)-(12) and 42500(e).

¹⁷ Title 5 at Sec. 42502(d) and (e).

¹⁸ Title 5 at Sec. 42402.

¹⁹ Cal. Ed. Code Sec. 89905.

²⁰ Title 5, Sec. 42408.

Instruments of Change: The Viability of Auxiliary Organizations Into the 21st Century

²¹ Office of the Chancellor, *Manual of Policies and Procedures for Auxiliary Organizations of The California State University*, (ABS 92-05) Revision No. 7, Appendix J, "Policy on Expenditure of Funds," Section 1(C).

²² Title 5, Sec. 42600 et seq.

²³ Cal. Ed. Code Sec. 89000 et seq.

²⁴ Trustee regulations now list twelve broad functions, some with multiple categories. See Title 5, Sec. 42500(a)(1)-(12).

²⁵ See 1/28-29/97 Trustees' Committee on Finance, "Management Flexibility & Productivity Report." This report was prepared and presented by Lenore C. Rozner, Senior Director, Planning & Analysis, Office of the Chancellor.

²⁶ See the annual CSU Productivity Improvement Reports to the Governor and California Legislature.

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