



# Making Your Auxiliary Legally Compliant

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# Agenda



- Introduction
- Corporate & nonprofit responsibilities
- Auxiliary organization requirements
- Transparency requirements
- Common mistakes

# Introduction



- What is an auxiliary organization?
  - Independent corporate entity
  - Subject to College/District rules
  - Subject to College/District oversight

# Introduction



- Services and programs an auxiliary may provide:
  - Student association activities and program
  - Bookstores; food and campus services
  - Facilities and equipment
  - Supplemental health services
  - Workshops, conferences, institutes, federal programs
  - Loans, scholarships, grants
  - Gifts, bequests, devises, endowments and trusts
  - Alumni activities
  - Public relations programs

# Introduction



- Why an Auxiliary Organization?
  - District/College control and oversight
  - Professional expertise
  - Ability to raise and spend private funds / earned income
  - Flexibility to engage in nonprofit corporation activities

Caveat: Auxiliary itself may be a public entity in certain respects, case-specific assessment required



# Corporate & Nonprofit Responsibilities

# Corporate Responsibilities



- Fiduciary responsibilities
  - Duty of obedience
  - Duty of care
  - Duty of loyalty
  - Good faith and fair dealing

Helpful Hint: Auxiliary organization regulations tie into these responsibilities

# Nonprofit Responsibilities



- Operate for proper purpose
  - Under IRS standard
  - Under state franchise tax board standard
- Comply with incorporating documents
  - Bylaws
  - Articles of incorporation
- Comply with annual filing requirements
- Provide donor acknowledgments



# Nonprofit Responsibilities



- Beware Of:
  - Private inurement
  - Violating incorporating instruments
  - Engaging in other non-exempt activities, e.g.
    - Lobbying; engaging in political activity
    - Supporting candidates for office



# Maintaining Auxiliary Status

# Auxiliary Organization Responsibilities



- Ensure proper recognition
  - Requires procedure including a public hearing
  - Requires approval from College/District governing body
  - Requires submission of recognition, governing documents, and agreement to the Chancellor of California Community Colleges
  - Requires approval of Chancellor if regulatory requirements met by agreement rather than by implementing regulations

# Auxiliary Organization Responsibilities



- Ensure organization complies with College or District implementing regulations and/or master agreement.
  - Must have one or the other or both
  - To meet 20+ provisional requirements set forth in California Code of Regulations, Title 5, Section 59257 (an auxiliary organization checklist)
  - Details to follow . . .

# Auxiliary Organization Responsibilities



***Here comes the California Code of  
Regulations, Title 5, Section 59257  
Auxiliary Organizations checklist...***

# Auxiliary Organization Responsibilities



- What do implementing regulations / master agreement require?
  - Method for recognition
  - Limited authority to perform recognized functions (listed in introductory slide)
  - Board composition regulations
  - Provision addressing salaries, working conditions, benefits of employees
  - Provision implementing audits

# Auxiliary Organization Responsibilities



- What do implementing regulations / master agreement require (continued)?
  - Provisions establishing recordkeeping responsibilities
  - Provisions establishing “periodic review” to ensure compliance with Education Code, implementing regulations, agreement, articles and bylaws
  - Provisions which prohibit the District from transferring funds inappropriately

# Auxiliary Organization Responsibilities



- What do implementing regulations / master agreement require (continued)?
  - Provision specifying functions the auxiliary will manage, operate or administer
  - Statement of reasons for administration by the auxiliary instead of the college
  - Areas of authority and responsibility of the auxiliary
  - Facilities to be made available, if any, by the district for Auxiliary functions



# Auxiliary Organization Responsibilities



- What do implementing regulations / master agreement require (continued)?
  - Charge or rent to be paid to district by auxiliary for use of its facilities, note:
    - Does not require involved method of computation
    - “Should be” identified before incurrence

# Auxiliary Organization Responsibilities



- What do implementing regulations / master agreement require (continued)?
  - *Full reimbursement to the district for services performed by district employees at the direction of the auxiliary*
  - *Up to, but no more than, 50% of which may be made in the form of a “non-monetary benefit” that the auxiliary provides to the district*
  - Must still be valued and accounted
  - Commercial services must be self-supporting

# Auxiliary Organization Responsibilities



- What do implementing regulations / master agreement require (continued)?
  - Simple and stable method of determining in advance, extent auxiliary is liable for indirect costs relating to federally-sponsored programs
  - Responsibility for maintenance and payment of operating expenses
  - Proposed expenditures for public relations and statement of policy and procedures for solicitation of funds, source of funds, and use

# Auxiliary Organization Responsibilities



- What do implementing regulations / master agreement require (continued)?
  - Provision specifying the disposition of net earnings and provisions for reserves
  - Provision specifying disposition of net assets on cessation of operations
  - Provision requiring covenant that auxiliary will maintain its existence and operate in accordance with Education Code section 72670-72682 and 5 CCR 59250, et. seq.

# Auxiliary Organization Requirements



***Okay, that was a lot of detail.  
So, what do these provisions and  
regulations actually require an  
Auxiliary to do?***

# Auxiliary Organization Responsibilities



- **Auxiliary organization board**
  - Must be composed as to size and membership categories in accordance with regulations established by the District
  - Must hold at least one business meeting each quarter
  - Must have the advise and counsel of at least one attorney admitted to practice in the State and one CPA
    - These individuals need not be members of the board

# Auxiliary Organization Responsibilities



- **Auxiliary organization board**
  - Must condition acceptance of grants on use for purposes consistent with policies of District
  - Must conduct its business in public meetings in accordance with the Ralph M. Brown Act

# Auxiliary Organization Responsibilities



- **Auxiliary organization employees**
  - Full-Time employees
    - Must have salaries, working conditions, benefits comparable to those provided to District employees performing similar services,
  - Temporary & executive employees
    - May withhold retirement benefits, permanent status benefits, or both, if regulations permit
  - If no comparable duties at District
    - Must look to salaries at other institutions or commercial operations of like nature



# Auxiliary Organization Responsibilities



- **Auxiliary organization accounting procedures**
  - Standard system-wide accounting and reporting system for businesslike management of the operation
  - Financial standards to assure fiscal viability
  - Provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements

# Auxiliary Organization Responsibilities



- **Auxiliary organization expenditures**
  - Transactions must be within educational mission of District
  - Expenditures must be approved by Auxiliary Board
  - Must obtain district approval for appropriation of funds outside of auxiliary's normal business
  - Must regularly report use of funds derived from indirect cost payments to District governing board

# Auxiliary Organization Responsibilities



- **Auxiliary organization audits**
  - Must be performed by a CPA
    - Contracted by the auxiliary
  - Must be performed annually
  - Must audit all auxiliary funds
  - Must be submitted to District governing board and board of governors
  - Must publish audited statement of financial condition



# Transparency Requirements

# Transparency Requirements



- General Rule:
  - A nonprofit corporation to which public administrative functions are delegated must comply with the same laws and regulations as the public entity that is delegating the authority

*International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4<sup>th</sup> 287.

# Transparency Requirements Specific to Auxiliaries



- Public meetings
  - Business of auxiliary organization board must be conducted under rules of Brown Act
- Public records
  - Initial filings / incorporating documents
  - Annual audit
  - Annual information reports (IRS)
  - Richard McKee Transparency Act
- Political Reform Act filings

# Transparency Requirements Specific to Auxiliaries



- Political Reform Act / FPPC filings, must ask is auxiliary a “local government entity”?
  - Did impetus for formation of corporation originate with government agency?
  - Is corporation substantially funded by, or is its primary source of funding, a government agency?
  - Is a principal purpose of corporation to provide service or undertake obligation which public agency is legally authorized to perform, and which is traditionally performed by public entity?
  - Is corporation treated as a public entity by other statutory provisions?

# Transparency Requirements Specific to Auxiliaries



- A Note on the McKee Act
  - Similar to Public Records Act, but with exceptions for:
    - Information that would disclose the identity of a donor, prospective donor or volunteer
    - Personal donor financial information, estate planning information, private trusts, etc.
    - Fundraising plans, research or strategies; and trade secret
    - Information exempt under PRA or other Statute





# Common Mistakes

# Common Mistakes



- Adequate recognition
- Compliance with Public Meeting Law
- Financial separation and designation between college and auxiliary
  - Reimbursement to district for services performed by district employees
  - Accounting of services performed by district employees for auxiliary
- Oversight and audit

# Correcting Mistakes



- Review “Auxiliary Organizations Manual”
- Use regulatory check-list
- Develop operating agreements
- Use the operating agreement
- Audit
- And if necessary, revoke auxiliary status

# Resources



- *The Auxiliary Organizations Manual: A Guide to Establishing, Operating, Accounting and Reporting for California Community College Auxiliary Organizations*
  - Online at:  
[http://extranet.cccco.edu/Portals/1/CFFP/Fiscal Services/Accountability/Auxiliary%20Organization%20Manual%20August%202017.pdf](http://extranet.cccco.edu/Portals/1/CFFP/Fiscal%20Services/Accountability/Auxiliary%20Organization%20Manual%20August%202017.pdf)

# Thank you!



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