

California Community Colleges

AUXILIARY ORGANIZATIONS MANUAL

A Guide to Establishing, Operating, Accounting and
Reporting for California Community College
Auxiliary Organizations

August 2017 Edition

In accordance with Education Code sections 72670 et seq.; Government Code sections 12580 et seq.; California Code of Regulations, title 5, sections 59250 et seq.

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Introduction

This Auxiliary Organization Manual (Manual) provides the user with the rules and regulations to establish and maintain auxiliary organizations. It includes the requirements for accounting, auditing, and reporting pursuant to Education Code sections 72670 et seq., Government Code sections 12580 et seq., and California Code of Regulations, title 5¹, sections 59250 et seq.

Auxiliary organizations established or organized on or before August 31, 1980, under the provisions of AB 2627, chapter 858, statutes of 1980, should also refer to those regulations.

One of the more common auxiliary organizations is the college's or district's foundation. But auxiliary organizations can be established for associated student activities, or other ancillary services of the district like bookstore and food service activities. The California Community Colleges Budget and Accounting Manual (BAM) describes ancillary services as activities where a district engages in business-type activities (e.g., bookstore and cafeteria), when the intent is to recover, in whole or in part, the cost of providing goods and services to beneficiaries. These activities are recorded and reported in the Enterprise Fund of the district unless an "auxiliary organization" has been established for these activities pursuant to Education Code sections 72670 et seq.

The primary intent of this Manual is to establish a uniform standard of accounting and reporting in order to provide both local governing boards and the Board of Governors of the California community colleges with information necessary to monitor these operations and provide meaningful comparative data across the system.

The Education Code, Government Code, and title 5 section references included in this Manual reflect those sections as of the date of this Manual. It is advised to always check the current codes for any changes. Similarly, the Manual includes sample documents for reference. Those documents should not be used in whole or in part without appropriate consultation with your legal counsel.

¹ All references to "title 5" hereinafter refer to California Code of Regulations, title 5.

Chapter 1

Recognition and Establishment of Auxiliary Organizations (Ed. Code, § 72670; Cal. Code Regs., tit. 5, §§ 59250, 59255, 59257]

Scope

Pursuant to title 5, section 59250, "The governing body of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges, as determined by the governing board. Such organizations shall be established and maintained in accordance with the provisions of article 6 (commencing with section 72670) of chapter 6, part 45, division 7, title 3 of the Education Code, and the regulations contained in this subchapter."

Conditions for Establishment

Auxiliary organizations at California community college districts are non-profit organizations which are separate legal entities that operate pursuant to title 5, section 59255. Auxiliary organizations were created for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges, as determined by the governing board. Before an auxiliary organization can be established by a community college district, certain conditions must first be met. These conditions include the district governing board's adoption of implementing regulations for the auxiliary organization and the approval by the California Community Colleges Chancellor's Office of those regulations (Cal. Code. Regs., tit. 5, § 59255). Also see title 5, section 59257 for a list of the subjects the implementing regulations must address.

A district's governing board must approve the establishment of an auxiliary organization. To establish the organization, the district's governing board must adopt implementing regulations for auxiliary organizations, which must be reviewed and approved by the California Community Colleges Chancellor's Office.

The implementing regulations must address the following subjects:

1. Provisions which set forth the district's method for recognizing an auxiliary organization, which must include a public hearing prior to such recognition;
2. Provisions which limit authorized auxiliary organization to perform recognized functions (as described in Cal. Code Regs., tit. 5, § 59259);
3. Provisions which implement Education Code section 72674, regarding the composition and meetings of boards of directors of auxiliary organizations;
4. Provisions which implement Education Code section 72672, regarding auditing requirements for auxiliary organizations;
5. Provisions which implement Education Code section 72672, regarding salaries, working conditions, and benefits for full-time employees of the auxiliary organization, in accordance with;
6. Provisions which implement Education Code section 72675 regarding expenditures and fund appropriations by auxiliary organizations (different standards may be established for different types of auxiliary organizations);

7. Provisions which establish recordkeeping responsibilities of auxiliary organizations;
8. Provisions which establish a procedure for periodic review of each auxiliary organization by the district to ensure that it is complying with the Education Code, district implementing regulations, any written agreement with the district, and its articles of incorporation or bylaws;
9. Provisions which prohibit the district from transferring any of its funds or resources other than funds or resources derived from gifts or bequests, to any of its auxiliary organizations, when the purpose of such transfer is either to avoid laws or regulations which constrain community college districts or to provide the district with an unfair advantage with respect to the application of any state funding mechanism; and
10. Provisions which specify:
 - a. The function or functions the auxiliary organization is to manage, operate or administer;
 - b. A statement of the reasons for administration of the functions by the auxiliary organization instead of by the college under usual district procedures;
 - c. The areas of authority and responsibility of the auxiliary organization and the college;
 - d. The facilities to be made available, if any, by the district to permit the auxiliary organization to perform the functions specified in the implementing regulations or written agreement;
 - e. The charge or rent to be paid to the district by the auxiliary organization for any district facilities used in connection with the performance of its function;
 - f. Full reimbursement to the district for services performed by district employees under the direction of the auxiliary organization;
 - g. A simple and stable method of determining in advance to what extent the auxiliary organization shall be liable for indirect costs relating to federally-sponsored programs;
 - h. The proposed expenditures for public relations or other purposes which would serve to augment district appropriations for operation of the college;
 - i. The disposition to be made of net earnings derived from the operation of facilities owned or leased by the auxiliary organization and provisions for reserves;
 - j. The disposition to be made of net assets on cessation of the operations under the agreement; and
 - k. Provisions which require a covenant of the auxiliary organization to maintain its existence throughout the period of the agreement and to operate in accordance with Education Code sections 72670-72682 and with the regulations contained in this subchapter as well as district implementing regulations.

As a district's governing board must approve the establishment of an auxiliary organization, the chief executive officer (CEO) or designee of a community college district must submit a recommendation to the governing board to establish an auxiliary organization when the organization will serve the district. The recommendation must include, but need not be limited to, the following:

1. The purpose(s) for which the auxiliary organization is to be established;
2. Whether the proposed auxiliary organization will primarily serve the district or a particular district;
3. The function(s) which the auxiliary organization is intended to perform;
4. The proposed bylaws and articles of incorporation for the auxiliary organization, including the size and composition of the board of directors; and
5. The proposed written agreement between the auxiliary organization and the district, as required in title 5, section 59259.

Districts should adopt a process for recognition. It is recommended that the process of recognition be as follows:

1. When the CEO receives a request to establish an auxiliary organization, the CEO shall submit a recommendation concerning the establishment of the organization to the governing board within three months.
2. The governing board shall hold a public hearing on each recommendation concerning the establishment of an auxiliary organization.
3. At a subsequent scheduled meeting after the public hearing, the board shall announce its decision concerning the establishment of the organization, and, if approved, authorize the functions it may perform, identify the number and category or categories of the board of directors and approve contractual arrangements.
4. At such time as the district recognizes an auxiliary organization, it shall submit to the California Community Colleges Chancellor's Office any written agreements with the auxiliary organization, as well as the articles of incorporation, bylaws, or other governing instruments. (Ed. Code, § 72672.)

Determining the use of Education Code on or before-August 31 or Post-August 30, 1980

It is important to understand what laws and regulations an auxiliary organization must follow. In order to determine the applicable Education Code provisions, you must first determine when your auxiliary organization was formed. Education Code sections governing auxiliary organizations significantly changed after August 30, 1980. Therefore, the date your auxiliary organization was established, and whether it has since been recognized under Education Code section 72670 et seq., will determine whether to follow pre-August 31 or post-August 30, 1980 rules.

An auxiliary organization which was in existence on or before August 31, 1980, may continue to operate under the provisions of article 6 (commencing with § 72670) of chapter 6, part 45, division 7, title 3 of the Education Code, as it read on August 30, 1980. Such organizations, however, shall operate only in accordance with the provisions of former article 6; and shall not, unless established and maintained in accordance with the provisions of title 5, section 59250, be vested with any additional authority or flexibility that may be provided by this subchapter and the current article 6 (commencing with § 72670) of chapter 6, part 45, division 7, title 3 of the Education Code.

An auxiliary organization that was in existence before August 31, 1980, shall continue to operate under Education Code sections 72670 et seq., as it read on August 30, 1980, until the time, if any, that the organization is recognized pursuant to the article (Ed. Code, § 72670 et seq.). (Ed. Code, § 72682.) See Appendix D and E for Education Code pertaining to auxiliary organizations pre-August 31, 1980 and post- August 31, 1980.

Exemption Requirements - 501(c)(3) Organizations

To be tax-exempt under Internal Revenue Code section 501(c)(3), an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

Organizations described in section 501(c)(3) are commonly referred to as charitable organizations and, other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Internal Revenue Code section 170.

The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual. If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person and any organization managers agreeing to the transaction.

Section 501(c)(3) organizations are restricted in how much political and legislative (*lobbying*) activities they may conduct. For a detailed discussion, see Political and Lobbying Activities. For more information about lobbying activities by charities, see the article Lobbying Issues. For more information about political activities of charities, see the FY-2002 CPE topic Election Year Issues.

Auxiliary Organizations vs. Independent Corporations

Community college auxiliary organizations can be established under the Corporations Code or the California Education Code. Both types can be tax-exempt 501(c)(3) organizations.

An operating entity that remains completely independent (independent corporation) must pay for the use of college facilities, services and personnel. No college funds can be used without appropriate compensation to the college. If the college did assist an independent corporation with facilities, personnel, or services without appropriate compensation, it could conceivably be sued. Civil or criminal legal action could be instigated by taxpayers against the governing board of the district, or the college's administrators for "making a gift of public funds" to a totally independent corporation over which the trustees of the district have no control.

However, a community college district may, under California Education Code and title 5, through a written master agreement approved by the California Community Colleges Chancellor's Office, form an auxiliary organization of the district even though the auxiliary organization has an independent board of directors.

If the auxiliary organization signs the master agreement offered by the district, the auxiliary organization can use district personnel, facilities, and services to assist the auxiliary organization to perform the activities for which it was established. The cost of these services must be reimbursed as indicated in the master agreement. Under the master agreement, the auxiliary organization is limited in purpose to those activities approved for auxiliary organizations in title 5 regulations.

The following chart compares the differences between an auxiliary organization and an independent corporation:

AUXILIARY ORGANIZATION	INDEPENDENT CORPORATION
Purpose must be to promote or assist a community college/district [Ed. Code, § 72670(d)(1)].	Purpose can be for any charitable purpose consistent with Internal Revenue Code section 501(c)(3).
Gifts, funds, and property received must be used for the benefit of the community college [Ed. Code, § 72670(d)(1)].	Expenditures may be for any purpose not prohibited under the IRS Code and not prohibited by the organization's bylaws.
May perform only functions that are an integral part of the community college educational program, such as scholarships, alumni activities, public relations programs, bookstore, food services (Cal. Code Regs., tit. 5, § 59259).	May carry on any activities not prohibited under the Internal Revenue Code.
Audit must meet title 5, California Department of Finance, and IRS regulations and standards. Must provide audit report to district [Ed. Code, § 72672(a); Cal. Code Regs., tit. 5, § 59270].	No audit required unless gross revenue of \$2 million or more. Not required to provide any audit report to district (Not for Profit Integrity Act).
Any of its board of directors are appointed or approved by the district's trustees or selected, ex officio, from Trustees, employees, or students [Ed. Code, § 72670(d)(2)].	Selection of board members governed solely in accordance with the organization's articles of incorporation and bylaws.
District CEO is responsible for ensuring organization expenditures comply with district policies, propriety of expenditures, and financial reporting integrity [Ed. Code, § 72672(b)].	Expenditures are subject to approval of organization's governing board. No district oversight or control.
Full reimbursement to the district for services performed by district employees under the direction of the auxiliary organization. No more than 50% of the reimbursement by an auxiliary organization may be made in the form of non-monetary benefits that the auxiliary organization provides to a community college district, such as increased community awareness or other such benefits that are agreed upon by district officials and the auxiliary organization. Such non-monetary benefits shall be assigned a good-faith reimbursement value by the district. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable [Cal. Code Regs., tit. 5, § 59257(j)(6)].	District cannot provide publicly funded financial support (or services provided by district employees) to independent organizations (Cal. Const., art. XVI, § 6). District can enter into a contract with an independent organization that provides for a 100% quid pro quo exchange of consideration.
The organization may be responsible for paying rent for use of district facilities, and is responsible for maintenance and payment of operating expenses [Cal. Code Regs., tit. 5, § 59257(5) and (8)].	The same – must reimburse district the market value for use of public property, services, etc.

Chapter 2

Recognized Services, Programs and Functions (Cal. Code Regs., tit. 5, § 59259)

Auxiliary organizations may be recognized and established by the governing board of a community college district to perform services, programs and functions which are an integral part of the community college educational programs. The following supportive services and specified programs have been determined to be appropriate:

1. Student association or organization activities
2. Bookstores
3. Food and campus services
4. Student union programs
5. Facilities and equipment
6. Loans, scholarships, grants-in-aids
7. Workshops, conferences, institutes and federal projects
8. Alumni activities
9. Supplementary health service;
10. Gifts, bequests, devises, endowments and trusts
11. Public relations programs.

This shall not be construed to prohibit an auxiliary organization from taking actions essential to satisfy the non-profit corporation or tax laws of the state of California or the federal tax laws.

Operations of commercial services on a campus shall be self-supporting when operated by an auxiliary organization.

Fundraising

As outlined in chapter 1, auxiliary organizations are intended to provide the fiscal means for the benefit of the district and eliminate the undue difficulty that would otherwise arise under the usual governmental budgetary, purchasing and other fiscal controls except as expressly prohibited by the Education Code or title 5, or the district's procedures. Fundraising, particularly through raffles and drawings is a means often used.

Raffles and Drawings

Since colleges and districts are considered public governmental entities and not private nonprofit organizations, they cannot conduct raffles. Only private nonprofit organizations are considered "eligible organizations" and legally permitted to conduct raffles in California. The nonprofit raffle program is governed by California Code of Regulations, title 11, division 1, chapter 4.6, and Penal Code section 320.5. These statutes and regulations outline procedures, registration, and reporting requirements to the state Attorney General's office.

Penal Code section 320.5(c) states, "For the purposes of this section, "eligible organization" means a private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the Revenue and Taxation Code."

While community college auxiliary organizations are typically tax-exempt and are usually identified as 23701d organizations, whether or not the auxiliary is a “private” organization must also be determined. The state Attorney General’s office opinion 04-211 dated April 7, 2005, indicates that the courts have generally recognized auxiliary organizations as private non-governmental entities versus public governmental entities (see Appendix H). The opinion goes on to state that even those created under Education Code section 72670 enjoy certain latitude not afforded colleges and districts as public governmental entities. Districts should consult their legal counsel to confirm private nonprofit organizational status to ensure they meet the criteria to be eligible to conduct raffles in compliance with the statutes and regulations noted above.

Steps to determine if your auxiliary organization qualifies to conduct raffles:

1. Verify that your auxiliary is a private nonprofit organization eligible to conduct raffles
2. Confirm your auxiliary’s nonprofit identification under the California Revenue and Tax Code. Most auxiliaries are classified as 23701d.
3. Register your auxiliary organization and complete required raffle reporting annually to the Attorney General’s office and ensure compliance with Penal Code section 320.5.

More resources are available from the state Attorney General’s Registry of Charitable Trusts.

- <http://oag.ca.gov/charities/raffles>
- <http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>
-

See Appendix G for Questions and Answers on Raffles and 50/50 Drawings.

Note: you should not rely upon the information in this section of the Manual as your assurance of your auxiliary’s status. The information provided here is to assist you in making your own determination and conduct your own assessment. If in doubt, it is strongly recommended that you consult legal counsel.

Donations

Seeking out and accepting donations for the benefit of the college district and its students are a primary objective of many auxiliary organizations. Donations can be monetary or in-kind, which are non-cash gifts such as tangible items or services. The IRS also has special rules regarding quid pro quo donations. A quid pro quo donation is a charitable contribution in which the donor receives something of value or good, typically of lesser value, in exchange for the contribution. *More about quid pro quo and in-kind donations is found following this section.*

Donations can be either unrestricted or restricted. Careful attention should be given to the restrictions and terms of the donation imposed by the donor. When preparing to accept a donation it is important to consider the usefulness of the donation to either the auxiliary organization or the district. Additional scrutiny must be taken to evaluate a non-monetary donation for any costs, fees, risks or hazards to avoid liability. Consultation with the parties who will make use of the donation and those who provide support for the donation is an important step prior to acceptance. The auxiliary should not establish value for non-monetary donations. The donation should be acknowledged with the value identified by the donor. For certain in-kind donations over \$5,000, an appraisal prepared by a qualified appraiser must be

obtained for the donor to claim a tax deduction. The donor should consult their tax advisor or other resource to make the appropriate tax deduction determination.

In regards to monetary gifts, it is important to understand the terms, conditions and timing of such gifts. Are the conditions consistent with the values and mission of the organization? Are the requirements manageable? Is the timing reasonable? How long do the conditions apply? What happens when the terms are fulfilled, but funds from the gift remain? Identifying these issues and defining parameters in the early stages of gift acceptance allows those responsible for administering the gifts clear direction of resource use both in the short and long term.

See Appendix I for an example of a district's procedures for having an auxiliary organization accept gifts on behalf of the district.

Quid Pro Quo

Quid pro quo is a contribution a donor makes to a charity for which the donor also receives goods or services in exchange. Organizations may receive deductible contributions under Internal Revenue Code section 170(c); however, when the organization provides goods or services in exchange for any contribution of more than \$75, they must notify the donor of the value of the goods or services provided.

For example, if a donor gives a charity \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable contribution part of the payment is \$60. Even though the deductible part of the payment is not more than \$75, a disclosure statement (below) must be provided by the organization to the donor because the donor's payment (quid pro quo contribution) is more than \$75.

A penalty is imposed on a charity that does not make the required disclosure of a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

Internal Revenue Code section 170 allows a taxpayer to take a deduction for making a contribution to a federally tax exempt charitable (educational, religious etc.) organization.

In order for a contribution to qualify for a deduction, a taxpayer must transfer money or property to an organization without receiving property or benefits in return.

If a taxpayer receives property of value in return for a contribution to the organization, the taxpayer is only entitled to a tax deduction in the amount that the contribution exceeds the fair market value of the property or benefits received by the taxpayer.

See IRS Publications 526, *Charitable Contributions*, for additional guidance.

In-Kind Donations

In-kind donations are non-monetary gifts, such as tangible items or services given to nonprofit organizations such as auxiliaries. Donors of noncash contributions should determine the fair value (FV) of donations made to qualified organizations. For donations in excess of \$250 or more, the organization should

provide written acknowledgement to the donor that includes the description (but not the value) of the non-cash contribution.

When items are donated to an auxiliary organization, the fair value should be obtained by the auxiliary organization to properly record the value of in-kind donations in their financial statements.

It is recommended that the auxiliary organization obtain and document information regarding the FV of donated items from the donor at the time of receipt. This will allow the appropriate value of donated items to be included in the financial statements as in-kind donation and expense. Furthermore, the auxiliary organization will be able to provide donors with written acknowledgement of the donation received, including the estimated FV of the donated item as stipulated in IRS regulation.

Any monies paid for merchandise at an auction would most likely be considered the "fair value" of the merchandise - in other words, the amount paid for an item at an auction may not be tax deductible. At the very most, if an item has a set price (from a store etc.) only the amount above the price would be deductible. "Bargain" prices are not deductible.

See also IRS Publications 526, *Charitable Contributions*, and 561, *Determining Value of Donated Property*, for additional guidance.

Chapter 3

Authority and Responsibility of Auxiliary Organizations

In accordance with title 5, section 59257, the district governing board wishing to establish an auxiliary organization must, by implementing regulations, establish provisions which specify, among other things, the areas of authority and responsibility of the auxiliary organization and the college [Cal. Code Regs., tit. 5, § 59257, subd. (j)(3)].

As noted, the implementing regulations must include provisions that prohibit the district from transferring funds or resources (other than those derived from gifts or bequests) to any auxiliary organization to avoid laws or regulations which constrain community college districts or to provide the district with an unfair advantage with respect to the application of any state funding mechanism. Such state funding mechanisms include, but are not limited to, general apportionment funding, capital outlay funding, Extended Opportunity Programs and Services funding, and funding for programs and services for students with disabilities.

All services, programs and activities that may be undertaken by an auxiliary organization must be for the purpose of providing activities which are an integral part of the community college educational programs. Support services, and programs specified by title 5, section 59259, may be developed and operated by auxiliary organizations. For example, upon governing board approval, an auxiliary organization may assume any of the services, programs and activities listed in order:

1. To provide the fiscal means and the management procedures that allow the district to carry on educationally related activities not normally funded by state apportionment;
2. To eliminate the undue difficulty that would otherwise arise under the usual governmental budgetary, purchasing and other fiscal controls except as expressly prohibited by the Education Code or title 5, or the district's procedures; or
3. To provide fiscal procedures and management systems that allow effective coordination of the auxiliary activities with the district in accordance with sound business practices.
4. To be a highly visible conduit for individuals or entities to direct resources in a way that ensures donor intentions are fulfilled.
5. To provide services for the benefit of the college district and its students.

Important Note: Activities of the auxiliary organizations should not be intended to support non-district related charitable endeavors or organizations. At times, groups within the college district and under the auxiliary organization umbrella may want to solicit funds for a unique humanitarian effort or in support of a colleague in need. These efforts should be limited, short-term, humanitarian in nature, and fully disclosed to any potential donors that the collection effort is a non-tax deductible "donation." Typically, the auxiliary organization functions only as a conduit and serves merely as a custodian of funds to secure the proper processing of the non-tax deductible donations. Again, such activities should be limited since they do require some effort and resources that can take away from the primary mission of the auxiliary organization.

Chapter 4

Composition and Conduct of Auxiliary Organization Boards of Directors (Ed. Code, § 72674)

In accordance with Education Code section 72674, each auxiliary organization shall have a board of directors composed, both as to size and categories of membership, in accordance with regulations established by the district governing board. Composition of the auxiliary organization's board of directors should be included in the bylaws of same organization. Each board of directors shall, during each fiscal year, hold at least one business meeting each quarter. The board of directors shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in this state and at least one licensed certified public accountant. Neither the attorney at law nor the certified public accountant need be members of the board of directors.

No auxiliary organization shall accept any grant, contract, bequest, trust, or gift, unless it is so conditioned that it may be used only for purposes consistent with policies of the district governing board.

Each board of directors of an auxiliary organization shall conduct its business in public meetings in accordance with the provisions of chapter 9 (commencing with § 54950) of Part 1 of the Government Code (also known as the Ralph M. Brown Act).

Student associations established pursuant to Education Code section 76060, et seq., may be established as auxiliary organizations. In such cases, the student association would be subject to Article 6 (commencing with Education Code § 72670, et al). However, if the student association has not been established as an auxiliary organization, the organization would be exempt from Article 6. (Ed. Code, § 72673).

Conduct of the Board of Directors (Ed. Code, §§ 72674-72680)

No member of the board of directors of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he/she is a member. Any contract or transaction entered into in violation of this section is void.

Whenever a director or officer has a financial or personal interest in any matter coming before the board of directors, the affected person shall a) fully disclose the nature of the interest and b) withdraw from discussion, lobbying, and voting on the matter. Any transaction or vote involving a potential conflict of interest shall be approved only when a majority of disinterested directors determine that it is in the best interest of the corporation to do so. The minutes of meetings at which such votes are taken shall record such disclosure, abstention and rationale for approval.

No contract or other transaction entered into by the board of directors of an auxiliary organization is void under the provisions of Education Code section 72677; nor shall any member of such board be disqualified or deemed guilty of misconduct in office under such provisions, if pursuant to Education Code section 72678, both of the following conditions are met:

1. The fact of such financial interest is disclosed or known to the board of directors and noted in the minutes, and the board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members.

2. The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.
3. The provisions of Education Code section 72678 above shall not be applicable if any of the following conditions are met:
 - a. The contract or transaction is between an auxiliary organization and a member of the board of directors of that auxiliary organization.
 - b. The contract or transaction is between an auxiliary organization and a partnership or unincorporated association of which any member of the governing board of that auxiliary organization is a partner or in which he/she is the owner or holder, directly or indirectly, of a proprietorship interest.
 - c. The contract or transaction is between an auxiliary organization and a corporation in which any member of the board of directors of that auxiliary organization is the owner or holder, directly or indirectly, of five percent or more of the outstanding common stock.
 - d. A member of the board of directors of an auxiliary organization is interested in a contract or transaction within the meaning of Education Code section 72677 and without first disclosing such interest to the governing board at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

It is unlawful for any person to utilize any information, not a matter of public record, which is received by the person by reason of his/her membership on the board of directors of an auxiliary organization, for personal pecuniary gain, regardless of whether he/she is or is not a member of the board at the time such gain is realized.

Conflict of Interest statements should be signed and discussed annually and might include topics such as:

- Appropriate conduct
- Gifts
- Confidentiality
- Fiduciary responsibility
- Conflicts of interest

Chapter 5

Bylaws

In accordance with the California Corporations Code, nonprofit corporations are required to adopt articles of incorporation and bylaws (among other requirements). An organization's bylaws (unless provided by its articles of incorporation) must set forth the number of directors of the corporation, which may be one or more. Bylaws must also set forth meeting requirements; such as the time, place, and method of calling meetings of directors and committees; the duties and powers of the directors; the method of election and qualification of directors; director terms; director duties; and financial reporting requirements.²

Pursuant to the Corporations Code, statutes which define auxiliary organizations, and best practices, the bylaws of an auxiliary organization should include, but not be limited to, specifying:

1. The number of members of the board of directors, the categories from which members shall be selected and the method by which they shall be selected.
2. The size of the board of directors.
3. That at least one public business meeting will be held each quarter.
4. The time table for the preparation and adoption of its program and annual budget and the submission of both for review to the CEO.
5. That an attorney admitted to practice in this state and a licensed certified public accountant shall be selected to provide advice and counsel to the board of directors. Each shall have experience appropriate to the responsibility and shall have no financial interest in any contract or other transaction entered into by the board which he/she serves. Neither the attorney nor the certified public accountant needs to be a member of the board of directors.
6. The procedures for approving expenditures.
7. The procedures for accepting gifts, donations, bequests, trusts and specially funded grants and other income.

The auxiliary organization's bylaws (as well as its articles of incorporation and other governing instruments) will become part of the implementing regulations adopted by the district governing board and submitted to the California Community Colleges Chancellor's Office for approval [see Education Code section 72672, subd (c)].

See Appendix J for a sample of an auxiliary organization's bylaws.

² Most auxiliary organizations are formed as public benefits corporations, in accordance with California Corporations Code section 5110, et seq. For further information about the required contents of public benefit corporation formation documents, see California Corporations Code section 5110, et seq. For information specific to nonprofit "mutual benefit corporations" see California Corporations Code section 7110, et seq.

Chapter 6

Master Agreement between District and Auxiliary Organizations

In the recognition and establishment of an auxiliary organization, there should be a written agreement between the district and the auxiliary organization which sets forth the purposes of the auxiliary organization as permitted under title 5, sections 59257 and 59259. If established, a written agreement between the district and the auxiliary organization must provide for all requirements of title 5, section 59257, which are not addressed in the district's implementing regulations. This written agreement must be submitted to the California Community Colleges Chancellor's Office for approval if the requirements of title 5, section 59257, are in the Agreement.

Should an auxiliary organization provide more than one service, program, or function, such service, program, or function may be authorized in one or more written agreements with the district. Such services, programs, and functions thereby performed by an auxiliary organization may also be part of a joint powers agreement in accordance with Education Code section 72671 and Government Code section 6500, et seq.

An auxiliary organization shall provide only those services, programs, or functions authorized by a written agreement. No other service, program, or function shall be permitted or performed unless a written agreement between the district and the auxiliary organization is amended to provide otherwise.

If the requirements of title 5, section 59257 are provided for in the written agreement rather than the District's implementing regulations, the auxiliary organization may not be recognized by the District until the agreement is submitted to the California Community Colleges Chancellor's Office for approval.

See Appendix B for a sample Master Agreement between a district and an auxiliary organization.

Chapter 7

Personnel (Ed. Code, § 72672)

The governing board of each auxiliary organization shall be required to provide salaries, working conditions, and benefits for the full-time employees of each auxiliary organization which are comparable to those provided to district employees performing similar services [Ed. Code, § 72672(c); Cal. Code Regs., tit. 5, § 59257 subd. (e)]. It is recommended that auxiliary organizations develop general regulations to govern its operations to include policies and regulations concerning the salaries, working conditions, and benefits of its employees.

These regulations should not conflict with the implementing policies or procedures adopted by the governing board.

For those full-time auxiliary employees who perform services that are not substantially similar to the services performed by district employees, the salaries established shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature.

As indicated in chapter 6, the auxiliary organization must fully reimburse the district for services performed by the district or by district employees in support of the auxiliary organization. No more than 50 percent of the reimbursement may be made in the form of non-monetary benefits that the auxiliary organization provides to the district, such as increased community awareness or other such benefits that are agreed upon by authorized district officials and the auxiliary organization. The district shall assign a good-faith reimbursement value to such non-monetary benefits. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable. Student body organizations may be exempt from reimbursing all or any portion of the costs for such services, unless the organization has been established as an "auxiliary organization" pursuant to Education Code section 72670 et seq.

Auxiliary organizations that were in existence on or before August 31, 1980 shall continue to operate under those statutes as they read immediately prior to August 30, 1980, until the time, if any, that the organization is recognized pursuant to the current statutes.

Regular district employees may be employed by the auxiliary organization. However, districts should require that employees resign or request a personal leave of absence from the district in order to accept employment with the auxiliary organization. District officers and employees who are required by the district's Conflict of Interest Code to file disclosure of financial information should be responsible for determining whether or not they are eligible to accept employment with the auxiliary organization immediately upon resignation from the district.

Notwithstanding the requirement that auxiliary organization employees be provided salaries, working conditions, and benefits comparable to those provided to district employees for similar services, the board of directors of each auxiliary organization may withhold retirement benefits, or permanent status benefits, or both from temporary employees. For these purposes, a "temporary employee" is:

1. An employee employed for a specific research project, workshop, institute or other special project funded by any grant, contract or gift; or
2. An employee whose contract of employment is for a fixed term not exceeding three years, not renewable.

[Ed. Code, § 72672, subd. (c), Cal. Code regs., tit. 5, § 59257(e)]

Should retirement benefits be provided, they may, but need not be provided by the Public Employees' Retirement System. Any newly created auxiliary organization is exempted from the requirement of providing retirement benefits for a period not to exceed three years from the date on which the governing board recognizes the establishment of such auxiliary organization.

An auxiliary organization may contract with the district for the services of a district employee and reimburse the district for that portion of the employee's full-time assignment (and corresponding benefits) that is spent in providing services.

Chapter 8

Accounting and Reporting for Auxiliary Organizations (Ed. Code, §§ 72672, 72675; Cal. Code Regs., tit. 5, § 59270)

Although not required, it is prudent business practice to coincide the fiscal year of the auxiliary organization with that of the district.

Each auxiliary organization shall develop an accounting system that is in accordance with generally accepted accounting principles. The use of the following is recommended: FASB (Financial Accounting Standards Board) and CASE (Council for the Aid and Support of Education) Reporting Standards and Management Guidelines.

An auxiliary organization may be established for the sole purpose of fundraising on behalf of a college or district but it is not limited to that purpose. An auxiliary organization may also be established for bookstore, food service, and other enterprise activities. Auxiliaries may also be used for the operation of performing arts centers and dormitories. See chapter 2 – Recognized Services, Programs and Functions. An auxiliary organization that operates more than one type of activity should have separate funds for each function. The fund definitions are similar to those established in the California Community Colleges Budget and Accounting Manual (BAM). For example, if the auxiliary organization operates a bookstore, then it should establish a bookstore fund. Note though that this is not an enterprise fund of the district but rather a sub-fund of the auxiliary organization that uses the same format as an enterprise fund in terms of the recording of revenues, cost of goods sold, etc.

In setting up the chart of accounts, the object codes used for expenses may be the same as provided by the BAM. However, the purpose of the transactions needs to be captured to be appropriately classified for expenditure reporting. For example, salary costs may be incurred in the course of a fundraising activity. In addition to reporting the costs as salaries in the appropriate object code, the account structure should capture that the purpose of the expenditure was fundraising. The following are suggested categories for classifying expenditures by activity or purpose:

- Scholarships awarded
- Program support and enhancement
- Sponsorships and promotions
- Fundraising
- Administrative

In terms of revenue, the chart of accounts should classify revenues by the nature of the revenue or donation, or to segregate by major initiative. For example:

- Contributions for scholarships
- Contributions for program support and enhancement
- Fundraising and special events
- Capital Campaign
- Annual Fund
- Grants
- Noncash donations

In addition, certain accounts may be exclusive to an auxiliary organization, such as Net Assets Released from Restriction (revenue) and Provision for Contributions Deemed Uncollectable (expenses).

The balance sheet may include accounts for Pledges Receivable and Amounts Held in Trust for others. The net asset section of the balance sheet should reflect FASB standards.

The auxiliary organization shall implement financial practices that will assure its fiscal viability. Such standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations, capital replacements, and contingencies, and adequate provisions for new business requirements.

Each auxiliary organization serving the district shall submit its programs and budgets for review at a time and in a manner specified by the CEO.

Pre-August 31, 1980 auxiliary organizations - The board of directors of each auxiliary organization shall have prepared annually a budget which shall be submitted to the governing board of the district for approval.

Post-August 30, 1980 auxiliary organizations - The board of directors of an auxiliary organization shall approve all expenditures and fund appropriations. Appropriations of funds for use outside of the normal business operations of the auxiliary organization shall be approved in accordance with district policy and regulations by an officer designated by the district governing board.

Funds derived from indirect cost payments shall only be appropriated with the specific approval of the CEO. All uses of such funds shall be regularly reported to the district's governing board.

Should the CEO determine that any program or appropriation planned by an auxiliary organization is not consistent with district policy, the program or appropriation shall not be implemented. Further, should a program or appropriation which has received approval, upon review, be determined by the CEO to be operating outside the acceptable policy of the Board of Governors or the district, then that program or appropriation shall be discontinued by direction of the CEO until further review is accomplished and an appropriate adjustment is made.

The board of directors of an auxiliary organization shall approve all expenditure authorizations, and a certified public accountant shall annually audit any and all community college auxiliary funds. See chapter 10, regarding Annual Audits.

Investments and Endowment Funds (Prob. Code, § 18501 et seq.)

[UPMIFA](#) encourages institutions to establish an investment and spending policy. Although UPMIFA does not provide clear answers to questions, a charity faces when the value of an endowment fund drops below historic dollar value, a prudent business practice would be for the auxiliary organization to address this topic in their investment policy.

The National Association of College and University Business Officers recommends defining permanently restricted net assets as:

1. The original value of gifts donated to the permanent endowment fund,
2. The original value of subsequent gifts to the permanent endowment fund, and
3. Accumulations to the permanent endowment fund made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund.³

³ NACUBO provides a sample board resolution to adopt this definition, via its website. See FSP FAS 117-1 Generic Resolution for UPMIFA states, available online at:

In accordance with UPMIFA, an auxiliary organization should consider the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds:

1. The duration and preservation of the various funds,
2. The purposes of the donor-restricted endowment funds,
3. General economic conditions,
4. The possible effect of inflation and deflation,
5. The expected total return from income and the appreciation of investments,
6. Other resources of the auxiliary organization, and
7. The auxiliary organization's investment policies.

(Prob. Code, § 18504.)

As a part of prudent management, auxiliary organizations are encouraged to adopt a policy on the administration of funds that drop below historical dollar value, commonly called underwater funds.

Financial Reporting

Financial Reporting Under GASB - For financial reporting purposes, the auxiliary organization is considered a special-purpose government engaged in business-type activities. Accordingly, the auxiliary organization's basic financial statements should be presented using the economic resources measurement focus and the accrual basis of accounting.

The financial statement presentation required by the Governmental Accounting Standards Board (GASB) statements provides a comprehensive, entity-wide perspective of the auxiliary organization's financial activities.

Financial Reporting Under FASB - In accordance with the Financial Accounting Standards Board (FASB) the auxiliary organization reports information regarding its financial position and activities according to three classes of net assets:

- a. Unrestricted net assets – Net assets that are not subject to donor-imposed stipulations. Net assets designated by the board are considered unrestricted net assets since the board has the ability to release the designation.
- b. Temporarily restricted net assets – Net assets subject to donor-imposed stipulations that may or will be met, either by actions of the auxiliary organization or passage of time. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. Temporarily restricted net assets are restricted for scholarships and program and campus projects.
- c. Permanently restricted net assets – Net assets subject to donor-imposed stipulations that they be maintained permanently by the auxiliary organization. Generally, the donors of these assets permit the auxiliary organization to use all or part of the income earned on any related investments for general or specific purposes. Earnings generated from the permanently restricted net assets are available for expenditures.

In the absence of a donor-imposed stipulation, an organization's governing board may also

[http://www.nacubo.org/Business and Policy Areas/Accounting/Archived Accounting Topics and Initiatives/UPMIFA.html](http://www.nacubo.org/Business_and_Policy_Areas/Accounting/Archived_Accounting_Topics_and_Initiatives/UPMIFA.html).

determine that certain net assets must be retained permanently consistent with the relevant law. Such assets would also be classified as temporarily restricted net assets.

For sample financial statements, see Appendix A.

Basis of Accounting - Basis of accounting refers to the general approach taken in determining when financial transactions and related assets and liabilities are recognized in accounts and financial statements. Specifically, it relates to the timing of the measurements made, e.g. whether costs are recognized when incurred or when paid; whether income is recognized when earned or when received.

1. Accrual Basis - revenues are recognized when earned, and expenses are recorded when an obligation has been incurred.
2. Cash and Modified Accrual - certain revenue and the related assets are recognized when received rather than when earned and certain expenses are recognized when paid rather than when the obligation is incurred.

Component Unit

A component unit is a legally separate organization for which the primary government is financially accountable or closely related. A component unit may be a governmental organization (except for a primary government), a non-profit corporation, or a for-profit corporation. The term *reporting entity* means the primary government and its component units.

Each potential component unit should be considered for inclusion in the financial reporting entity under *GASBS No. 14, The Financial Reporting*, as amended by *GASBS No. 39, Determining Whether Certain Organizations Are Component Units* and *GASBS No. 61, The Financial Reporting Entity: Omnibus*.

Things to consider:

- Are the financial statements of the auxiliary organization significant to the financial statements of the district?
- Does the auxiliary organization have separate corporate powers that would distinguish it as being legally separate from the district?
- Does the district appoint a voting majority of the auxiliary organization's governing body?
- Can the district impose its will on the auxiliary organization by significantly influencing the program, projects, activities, or level of service performed by the auxiliary organization?
- Is the auxiliary organization fiscally dependent on the district?
- In management's professional judgment, should this auxiliary organization be included in the reporting entity because, due to its close relation to, or financial integration with, the district, its exclusion would render the financial statements misleading?
- Does the district have fiduciary responsibility for the other organization?

If the auxiliary organization is considered to be a component unit, it should be included in the financial reporting entity and presented as either:

- Blended - this presentation is one in which the district's financial results are combined with those of another entity. It is not possible to discern separate information about either the district or the affiliated auxiliary in a blended presentation.
- Discretely Presented - separate columns for the primary government and any component units. Details about the district and its affiliates are apparent because each is presented separately.

- Fiduciary fund financial statements – If the auxiliary organization is neither blended nor discretely presented but the district has fiduciary responsibility, report the auxiliary organization in the appropriate fiduciary fund type in the district’s fiduciary fund financial statements.

If the auxiliary organization is considered not to be a component unit, it is by definition a part of the reporting entity and is to be disclosed in the footnotes of the financial statements.

College Trusts versus Auxiliary (Agency) Accounts

Many districts administered gifts, endowments, and fundraising activities through trust accounts or student organizations prior to the establishment of an auxiliary organization. Once auxiliary organizations were created, there was some confusion as to where gifts should be directed and how existing district based accounts should be handled in light of the new auxiliary structure.

There is not a right or wrong answer to this question. They can both continue, but there needs to be clarification as to how each will function going forward. Based on the BAM, the primary difference is the degree of discretion exercised over the funds. In general, trust and auxiliary (agency) accounts can be identified using the following guidelines.

- Trust funds are used to account for assets held on behalf of another party in which the district has some discretionary authority for decision-making or responsibility for approving expenditures. Trust funds are used to account for all other moneys held in a trustee capacity by the college or district for individuals, organizations or non-student clubs.
- Agency funds differ from trust funds in the degree of discretion that may be exercised. In agency funds, the agreement or instrument allows the district or college little or no discretion. This fund is used to account for the activities of organizations known as “foundations” or “booster” clubs.

There is a variety of structures districts have enlisted to account for trust funds in conjunction with their auxiliaries. Some districts have transferred all district based trusts to their auxiliaries. Others have limited the trusts to existing functions and funds with new resources being directed to the auxiliary organization. Still other districts have established that the trusts will handle specific activities while the auxiliaries would account for other activities.

Form 990 Information Return

The Form 990, titled “Return of Organization Exempt from Income Tax,” is a form filed each year with the Internal Revenue Service (IRS) by most organizations exempt from federal income taxes under section 501 of the Internal Revenue Code.⁴ It is an information return and not an income tax return since the organizations that file it do not pay income taxes. The Form 990 is a public document and a copy provided to each person who is a voting member of the governing body, i.e. the board of directors of the auxiliary organization.

⁴ According to current Form 990 instructions, organizations that “normally” have gross receipts of \$50,000 or less must still submit a form 990-N. There are some exceptions, such as religious organizations.

Internal Revenue Service Forms:

- Form 990: when gross receipts \geq \$200,000
- Form 990EZ: when gross receipts $>$ \$50,000 and $<$ \$200,000
- Form 990N: when gross receipts $<$ \$50,000

Due dates for June 30th Organizations:

- November 15th - 15th day of the 5th month following accounting year-end

Extensions are three months from the prior deadline:

- 1st extension is February 15th (Form 8868, request for automatic extension of time)
- 2nd extension is May 15th (Form 8868, request for non-automatic extension of time. Requires organization to show reasonable cause for additional time requested)

California Forms:

- Form 199 California Exempt Organization Annual Information Return
- Form RRF-1 Annual Registration Renewal Fee Report

Common schedules that may be completed with the Form 990 are:

Schedule A – Public Charity Status and Public Support that focuses on the public charity status of a 501(c)(3) organization and includes a test regarding percentage of public support that must be greater than thirty-three and a third percent (33 1/3%).

Schedule B – Schedule of Contributors. The IRS and Franchise Tax Board requirements for disclosure of contributors are different.

Schedule D – Supplemental Financial Statements if the organization maintains endowment funds.

Schedule G – Supplemental Information Regarding Fundraising or Gaming Activities.

Schedule I – Grants and Other Assistance to Organizations, Governments, and Individuals in the United States

Schedule J – Compensation Information lists the salaries and benefits for district paid board members with voting rights and the executive director (both paid by the auxiliary organization or the district).

Schedule M – Noncash Contributions.

Schedule R – Related Organizations and Unrelated Partnerships.

Chapter 9

Records and Annual Report of Auxiliary Organizations (Ed. Code, §§ 72672, 72675; Cal. Code Regs., tit. 5, § 59020)

Records

Personnel and payroll records shall be maintained as permanent records by each auxiliary organization.

Adequate records of all other transactions of an auxiliary organization should be maintained for a minimum of five years unless a longer period applies under Government Code section 12599.7. Transactions of the organization include, but are not limited to, purchases, disbursements, and investments.

Records maintained by an auxiliary organization shall be available to the public to inspect or copy at all times during the office hours of the auxiliary organization, pursuant to and with the exceptions provided in Education Code section 72690 et seq. As stated in this code section, access to records used, owned, or maintained by auxiliary organizations must be balanced by the need to protect the individual privacy rights of donors and volunteers, and to protect an auxiliary organization's fiduciary interests.

Annual Report

An annual report should be submitted to the board of directors of the auxiliary organization and to the CEO no later than six (6) months after the close of the organization's fiscal year. The report shall include, but need not be limited to:

1. All financial statements required to be filed with the California Community Colleges Chancellor's Office
2. A comparison of budgeted and actual expenditures
3. A description of major accomplishments of the organization
4. A description of improvements proposed for operation of the organization.

Chapter 10

Annual Audit (Ed. Code, § 72672, Cal. Code Regs., 5, § 59270)

Each auxiliary organization shall contract for and receive an annual audit for any and all community college auxiliary funds. A certified public accountant (CPA) shall be selected by each auxiliary organization and the annual audit shall be conducted in accordance with generally accepted auditing standards. Upon being notified of the CPA selected by an auxiliary organization, the district shall forward this Manual to the selected CPA. Copies of the audit report shall be submitted to the board of directors, the governing board, and the California Community Colleges Chancellor's Office within 30 days after it is received by the auxiliary organization. Thereafter, it shall be a public record, except as otherwise provided by law. Such audits may be conducted as part of the audit of the district itself.

Auxiliary organizations shall annually publish an audited statement of their financial condition which shall be disseminated as widely as feasible and be available to any person on request. When an auxiliary organization primarily serves a single community college of the district, publication in the campus student newspaper shall be deemed compliance with this requirement. When an auxiliary organization serves the district governing board, distribution of the published audited statement of its financial condition at a regularly scheduled meeting of the district governing board shall be deemed compliance with this requirement. When an auxiliary organization primarily serves a single community college of the district, the president of that community college, and when an auxiliary organization primarily serves a district, the superintendent of the district, shall be responsible for ascertaining that all expenditures are in accordance with policies of the district governing board, the propriety of all expenditures, and the integrity of the financial reporting made by auxiliary organization.

The auditor's report will consist of the following:

1. A list of the auxiliary organization's board of directors and key administrative staff
2. A table of contents
3. The audit scope and opinion
4. Statement of Financial Position
5. Statement of Activities
6. Statement of Cash Flows
7. Notes to Financial Statements
8. Supplemental schedules and exhibits, as required or needed
9. A list of the auditor's findings and recommendations, and
10. Comments on the disposition of prior year findings.

Note: Current year and prior year findings are included in GASB audit reports. Under FASB, findings and recommendations are included in a separate letter. See Appendix A for an example of financial statements included in an auxiliary organization's audit report.

Audit Committee – (in accordance with the Nonprofit Integrity Act, (Gov. Code, § 12586.)

The following language applies only if auxiliary organizations receive or accrue in any fiscal year gross revenues of \$2 million or more. The \$2 million-threshold excludes grants received from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received.

If the auxiliary organization receives or accrues in any fiscal year gross revenue of two million dollars (\$2,000,000) or more, it shall also have, and include in its bylaws, an audit committee appointed by the board of directors. The audit committee may include persons who are not members of the board of directors, but the member or members of the audit committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the auxiliary organization has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, members of the finance committee cannot comprise fifty percent (50%) or more of the audit committee. Moreover, the chairperson of the audit committee may not be a member of the finance committee.

Members of the audit committee shall not receive any compensation from the corporation (auxiliary organization) in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the corporation (auxiliary organization). Subject to the supervision of the board of directors, the audit committee shall be responsible for recommending to the board of directors the retention and termination of the independent auditor and may negotiate the independent auditor's compensation, on behalf of the board of directors.

The audited financial statements shall be available for inspection by the Attorney General and shall be made available to members of the public no later than nine (9) months after the close of the fiscal year covered by the financial statements. A charity must also make its annual audited financial statements available to the public in the same manner prescribed by IRS Form 990. This requires copies of the statements to be provided immediately if a person requests the copy in person, and within thirty (30) days of a request received in writing. See [Int. Rev. Code, 26 U.S.C. § 6104(d)]

The audit committee must also:

- Confer with the auditor to satisfy committee members that the financial affairs of the nonprofit organization are in order;
- Review the audit and decide whether to accept it; and
- Approve non-audit services by the independent CPAs accounting firm, and ensure such services conform to standards in the Yellow Book issued by the U.S. Comptroller General (Gov. Code, § 12586).

Chapter 11

Insurance, Licenses and Permits

Insurance

An auxiliary organization should secure and maintain insurance adequate to protect its operations from catastrophic losses, and as required by law, including but not limited to, the following:

1. Comprehensive general liability;
2. Property and extended coverage, when applicable;
3. All risks, money and securities;
4. Fidelity and performance bonds covering its chief fiscal officer;
5. Automotive liability when applicable;
6. Workers' Compensation
7. Crime
8. Directors and Officers

In obtaining the insurance coverage, the auxiliary organization may secure the insurance directly through its own broker or through the district.

The auxiliary organization and its directors may be covered under the district's general liability insurance policies, to the extent it is endorsed by the district. In any insurance policy secured by the auxiliary organization, the district should be named as additional insured. A copy of each policy or endorsement or insurance certificates setting forth the coverage and limits shall be provided to the district within 30 days from the receipt of the document.

The auxiliary organization may also seek coverage under the district's other then-existing policies of coverage required to be carried by the district (e.g., property, crime, directors & officers) and, upon the auxiliary organization's written request to the district for such coverage, the district shall apply with the insurance provider, for proper endorsement with respect to the auxiliary organization's coverage. Any such coverage shall be subject to the insurance provider's limits, as may be set forth in the memorandum of coverage or other controlling policy underwriting documents. To the extent such endorsement increases the district's premiums, the increased cost shall be reimbursed to district by the auxiliary organization pursuant to title 5, section 59257, subdivision (j)(6), and chapter 6 of this Manual. districts are not required to apply for additional coverages, other than endorsement, or change insurance providers in order to accommodate the insurance coverage requirements or supplemental coverage requests of the auxiliary organization. However, when special events are hosted by the auxiliary organization, separate insurance coverage may be required by the district.

License and Permits (Alcoholic Beverages)

Auxiliary organizations, and more specifically college foundations, may, as a function or purpose of their establishment, conduct fundraising "events." Many times, these events will include the acquisition, possession, use, sale or consumption of alcohol. It is important to be very familiar with the required actions that must be taken to insure compliance with applicable local, state and federal laws, and applicable district policies and procedures.

An auxiliary organization sponsoring an event where alcohol is served must first obtain the approval of the district's CEO or designee as prescribed in the district's policies and procedures. See Appendix K for a sample of a district's administrative procedures for alcoholic beverages.

The possession, sale, consumption or furnishing of alcohol is controlled by the California Department of Alcohol and Beverage Control (ABC). It is unlawful to possess, consume, sell, give, or deliver any alcoholic beverage in or on any public or private area of a campus, or to sell, furnish or provide alcohol to a person under the age of 21.

Only under certain circumstances is the possession, consumption, sale or use of alcohol permitted on a campus. These circumstances include, but are not limited to, when the alcoholic beverage is possessed, consumed, or sold, pursuant to a license obtained under the Business and Professions Code and is part of an instructional program; for a special event held with the permission of the governing board; or for a fundraiser event held to benefit a nonprofit corporation.

District sponsored events that are held off campus should comply with the same procedures as if the event were held on the campus. Refer to your district's board policies and administrative procedures for alcoholic beverages and the conditions that govern the use of alcoholic beverages.

Chapter 12

Use of Facilities

Facilities may be made available by the district to an auxiliary organization to perform the functions specified in the district's implementing regulations or in a written agreement (Cal. Code Regs., tit. 5, § 59250 et seq.).

If district facilities are made available by the district, to permit the auxiliary organization to perform the function specified in the implementing regulations or written agreement:

1. The auxiliary organization shall pay to the district a charge or rental for the district facilities used by it in connection with the performance of its function or functions [Cal. Code Regs., tit. 5, § 59257, subd. (j)(5)].
2. The charge or rental to be paid by the auxiliary organization shall not require involved methods of computation [Cal. Code Regs., tit. 5, § 59257, subd. (j)(5)].
3. The charge or rental to be paid by the auxiliary organization should be identified by the district and the auxiliary organization in sufficient time before it is incurred so that the auxiliary organization may determine to what extent it shall be liable [Cal. Code Regs., tit. 5, § 59257, subd. (j)(5)].
4. The charge or rental to be incurred by an auxiliary organization for use of district facilities on a regular basis should be incorporated into the agreement between the parties, and
5. The auxiliary organization shall provide full reimbursement⁵ to the district for any services performed by district employees under the direction of the auxiliary organization as it relates to the facilities. For example, the actual cost of custodial services, maintenance, security, and technical support, should be reimbursed as appropriate and as a direct cost of renting the facility to the auxiliary organization. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable [Cal. Code Regs., tit. 5, § 59257 subd. (j)(6)].

⁵ As noted, No more than 50 percent of the reimbursement by an auxiliary organization may be made in the form of non-monetary benefits that the auxiliary organization provides. See Cal. Code Regs., tit. 5, § 59257 subd. (j)(6).

Chapter 13

List of Auxiliary Organizations in Good Standing [Cal. Code Regs., tit. 5, §§ 59263, 59265 subd. (e)]

Each district which establishes one or more auxiliary organizations shall prepare and keep current a list of auxiliary organizations in good standing. All auxiliary organizations which, after periodic review in the manner specified hereinafter in these regulations, are found to be in compliance with applicable laws, policies and regulations shall be included in the list. See chapter 15 for compliance requirements.

Auxiliary organizations achieve and maintain a good standing by working cooperatively with the college and the Chancellor's Office (if a multi-campus district) to integrate their specific operations with those of the whole college community as established by the college president. Basic criteria for good standing status encompass compliance with college and system-wide policy, fiscal responsibility, social responsibility, good business practices, and compliance with applicable statutes.

When the CEO, or other designee of a district, has reason to believe that a particular organization should be removed from the list of auxiliary organizations in good standing, a conference shall be held to determine whether such grounds for removal do in fact exist. The district shall give the auxiliary organization board of directors reasonable notice that such conference will be held, and representatives of the board shall be entitled to be present at the conference, and to be heard.

Based upon such conference, the CEO or other designee shall recommend to the district governing board whether the particular organization shall be removed from the list of auxiliary organizations in good standing. The district governing board may, in its sole discretion, remove such an auxiliary organization from the list, and may make such other provisions consistent with law as may be appropriate with respect to an auxiliary organization not included on the list.

An organization so removed should not be permitted to do any of the following:

1. Use the name of the district;
2. Have as a director any official in the district acting in his/her official capacity;
3. Operate a commercial service for the benefit of the district or any of its colleges; and
4. Receive gifts, property or funds to be used for the benefit of the district or any of its colleges.

If the auxiliary organization is dissolved or ceases operations upon removal from the list of organizations in good standing, its net assets and liabilities will be distributed according to the terms of the written agreement between the organization and the district, or the auxiliary organization's bylaws. In the absence of an agreement, or bylaws, the Attorney General will determine how to distribute assets.

A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list, shall be forwarded to the California Community Colleges Chancellor's Office. This may be accomplished by including the list of "Auxiliary Organizations in Good Standing" on the History and Organization page of the auxiliary organization's audit report.

Chapter 14

Limitation on Transfer of Funds to Auxiliary Organizations [Cal. Code Regs., tit. 5, § 59257 subd. (i)]

No funds or resources, other than funds or resources derived from gifts or bequests, shall be transferred by the district to any of its auxiliary organizations for the purpose of either avoiding laws or regulations which constrain community college districts or providing the district with an unfair advantage with respect to the application of any state funding mechanism. Such state funding mechanisms include, but are not limited to, general apportionment funding, capital outlay funding, Extended Opportunity Programs and Services funding, and funding for programs and services for disabled students.

Each district governing board wishing to establish an auxiliary organization must include a provision prohibiting such activity in its implementing regulations.

Chapter 15

Compliance Review (Cal. Code Regs., tit. 5, § 59265)

Each district governing board which establishes one or more auxiliary organizations shall periodically review each auxiliary organization for compliance with Education Code section 72670 et seq., the regulations of title 5, the district's implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instruments. The review shall be conducted in accordance with the procedure specified in the district's implementing regulations.

If the district determines, after inspection and review, that certain auxiliary organization procedures and practices are not in compliance with policies, rules and regulations of the Board of Governors and the district, a recommendation concerning the items of noncompliance should be communicated in writing to the CEO and to the board of directors of the auxiliary organization in accordance with the procedure described by chapter 13, and as otherwise described by the district's implementing regulations.

Chapter 16

Revision of Rules and Procedures and Reports to the California Community Colleges

Chancellor's Office (Cal. Code Regs., tit. 5, § 59265)

Rules and procedures for the administration of auxiliary organizations may be revised as necessary by the district. The district should promptly notify the board of directors of each auxiliary organization in writing of such revisions and inform the board of the date by which any changes in the organization's procedures must be accomplished.

Changes made to written agreements, articles of incorporation, bylaws or other governing instruments pertaining to any established auxiliary organization must be submitted to the California Community Colleges Chancellor's Office [Cal. Code Regs., tit. 5, § 59265(c)].

Any revisions to the implementing regulations shall be submitted to the California Community Colleges Chancellor's Office for approval [Cal. Code Regs., tit. 5, § 59265(b)].

The district shall report to the California Community Colleges Chancellor's Office, as may be required from time to time, on the operation of its auxiliary organizations [Cal. Code Regs., tit. 5, § 59265 (f)].

Glossary of Terms

Accrual Basis of Accounting: Under the accrual basis of accounting, revenues are recognized when earned, and expenses are recorded when an obligation has been incurred.

Articles of Incorporation: The primary rules governing the management of a corporation in the United States and are filed with a state or other regulatory agency.

Associated Student Body (ASB): An organization formed by any group of students from a college of the district in accordance with the provisions of Education Code section 76060. All clubs and organizations recognized by an Associated Student Body or Organization shall be included in any auxiliary organization established by the Student Body or Organization. Also referred to as Associated Student Organization, Student Association, or Student Organization.

Auxiliary Organization: An auxiliary organization is an entity authorized by section 72670 of the Education Code which is established by the governing board in accordance with the provisions of California Code of Regulations, title 5, subchapter 4.5, and article 6 (commencing with § 72670) of chapter 6, part 45, division 7, title 3 of the Education Code.

Auxiliary Operations: Operations auxiliary to, or beyond that necessary for, the regular instructional program. These activities should not be confused with auxiliary organizations formed under Education Code section 72670 et seq.

Budget and Accounting Manual (BAM): Provides a uniform fund structure, revenue and expenditure classifications, and other accounting procedures for the consistent and comparable reporting of financial data by all community college districts.

Board of Directors: The governing board of an auxiliary organization.

Board, Governing: Refers to the board of trustees of a district.

Board of Trustees: The board of trustees of the district.

Board of Governors: The Board of Governors of the California Community Colleges.

Bylaws: A rule or law established by an organization or community to regulate itself, as allowed or provided for by some higher authority. The higher authority, generally a legislature or some other government body, establishes the degree of control that the by-laws may exercise.

California Community Colleges Chancellor's Office (CCCCO): State agency responsible for the oversight of the California Community College system.

Cash and Modified Accrual: certain revenue and the related assets are recognized when received rather than when earned and certain expenses are recognized when paid rather than when the obligation is incurred.

Chief Executive Officers (CEO): The chancellor or superintendent/president of the district or designee.

Component Unit: A component unit is a legally separate organization for which the primary government is financially accountable or closely related.

District: The community college district for which the auxiliary organization provides supportive services and specialized programs.

Eligible Organization – As used in this Manual, eligible organization refers to those private (nongovernmental) nonprofit entities eligible to conduct raffles. Public nonprofits are not eligible to conduct raffles.

Endowment Fund: An investment fund set up by an institution in which regular withdrawals from the invested capital are used for ongoing operations or other specified purposes. Endowment funds are often used by nonprofits and are funded by donations which are tax deductible for donors.

Enterprise Activities: Services where a district engages in business-type activities (e.g., bookstore and cafeteria), when the intent is to recover, in whole or in part, the cost of providing goods and services to beneficiaries. These activities are recorded and reported in the Enterprise Fund of the district unless an auxiliary organization has been established for these activities.

Executive Director: The manager or the director of the auxiliary organization.

Financial Accounting Standards Board (FASB): Generally accepted accounting principles for not-for-profit and for-profit organizations.

Governmental Accounting Standards Board (GASB): Generally accepted accounting principles for governmental organizations.

Governing Board: The Board of Trustees of a district.

Independent Corporation: A corporation, like a foundation, established under the California Corporate Code, not the California Education Code.

Joint Powers Agreement: An agreement with any federal, state, or local governmental entity pursuant to article 1 (commencing with § 6500) of chapter 5 of division 7 of title 1 of the Government Code.

Master Agreement: See Written Agreement.

Permanently Restricted Net Assets: Net assets subject to donor-imposed stipulations that they be maintained permanently by the auxiliary organization.

Temporarily Restricted Net Assets: Net assets subject to donor-imposed stipulations that may or will be met, either by actions of the auxiliary organization or passage of time.

Unrestricted Net Assets: Net assets that are not subject to donor-imposed stipulations.

Uniform Prudent Management of Institutional Funds Act (UPMIFA): Requires the auxiliary organization's governing board manage and invest endowment funds in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

Written Agreement: An agreement between a community college district and an auxiliary organization which may implement or otherwise address the requirements of subdivision (j) of section 59257 "Implementing Regulations".

APPENDIX A

Sample #1 Financial Statements:

STATEMENTS OF *Foundation* FINANCIAL POSITION

Donor Community College

June 30	20XX	20XX
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	\$ xxx,xxx	\$ xxx,xxx
Investments	xxx,xxx	xxx,xxx
Accounts Receivable	xxx,xxx	xxx,xxx
Total Current Assets	xxx,xxx	xxx,xxx
OTHER ASSETS		
Investments - noncurrent	xxx,xxx	xxx,xxx
Contributions receivable	xxx,xxx	xxx,xxx
Assets held by others	xxx,xxx	xxx,xxx
Total Other Assets	xxx,xxx	xxx,xxx
Total Assets	\$ xxx,xxx	\$ xxx,xxx
LIABILITIES AND NET ASSETS		
CURRENT LIABILITIES		
Accounts Payable	\$ xxx,xxx	\$ xxx,xxx
Accounts payable – related party	xxx,xxx	xxx,xxx
Amounts held for pass-through donors	xxx,xxx	xxx,xxx
Depository liability	xxx,xxx	xxx,xxx
Total Current Liabilities	xxx,xxx	xxx,xxx
NET ASSETS		
Unrestricted	xxx,xxx	xxx,xxx
Temporarily restricted	xxx,xxx	xxx,xxx
Permanently restricted	xxx,xxx	xxx,xxx
Total Net Assets	xxx,xxx	xxx,xxx
Total Liabilities and Net Assets	\$ xxx,xxx	\$ xxx,xxx

**STATEMENTS OF
ACTIVITIES**

Donor Community College Foundation

Years Ended June 30	20XX	20XX
CHANGES IN UNRESTRICTED NET ASSETS		
REVENUES, GAINS, AND OTHER SUPPORT		
Contributions:		
Public Support	\$ xxx,xxx	\$ xxx,xxx
Value of services provided by Donor Community College District	xxx,xxx	xxx,xxx
Total Contributions	xxx,xxx	xxx,xxx
Other revenues, gains and support:		
Investment return – net of investment fees	xxx,xxx	xxx,xxx
Depository liability management	xxx,xxx	xxx,xxx
Total Other Revenues, Gains and Support	xxx,xxx	xxx,xxx
Net assets released from restriction	xxx,xxx	xxx,xxx
Total Revenues, Gains, and Other Support	xxx,xxx	xxx,xxx
EXPENSES		
Program services:		
Scholarships	xxx,xxx	xxx,xxx
Programs and grants	xxx,xxx	xxx,xxx
Total Program Services Expenses	xxx,xxx	xxx,xxx
Supporting services:		
Management and general	xxx,xxx	xxx,xxx
Management and general in-kind	xxx,xxx	xxx,xxx
Total Supporting Services Expenses	xxx,xxx	xxx,xxx
Total Expenses	xxx,xxx	xxx,xxx
Change in Unrestricted Net Assets	\$ xxx,xxx	\$ xxx,xxx

**STATEMENTS OF
ACTIVITIES**

Donor Community College Foundation

Years Ended June 30	20XX	20XX
CHANGES IN TEMPORARY RESTRICTED NET ASSETS		
REVENUES, GAINS, AND OTHER SUPPORT		
Contributions:		
Public Support	\$ xxx,xxx	\$ xxx,xxx
Special Events:		
Gross revenue	xxx,xxx	xxx,xxx
Less: Expenses	(xxx,xxx)	(xxx,xxx)
Total Special Events	xxx,xxx	xxx,xxx
Other revenues, gains and support:		
Investment return – net of investment fees	xxx,xxx	xxx,xxx
Net assets released from restriction	xxx,xxx	xxx,xxx
Change in Temporarily Restricted Net Assets	xxx,xxx	xxx,xxx
CHANGES IN PERMANENTLY RESTRICTED NET ASSETS		
Endowment fund contributions	xxx,xxx	xxx,xxx
Change in Permanently Restricted Net Assets	xxx,xxx	xxx,xxx
Change in Net Assets	xxx,xxx	xxx,xxx
Net Assets – Beginning of Year	xxx,xxx	xxx,xxx
Net Assets – End of Year	\$ xxx,xxx	\$ xxx,xxx

**STATEMENTS OF
CASH FLOWS**

Donor Community College Foundation

Years Ended June 30	20XX	20XX
CASH FLOWS FROM OPERATING ACTIVITIES		
Change in net assets	\$ xxx,xxx	\$ xxx,xxx
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	xxx,xxx	xxx,xxx
Net realized and unrealized gains on investments	xxx,xxx	xxx,xxx
Reinvested investment return – net of investment fees	xxx,xxx	xxx,xxx
Changes in:		
Accounts receivable	xxx,xxx	xxx,xxx
Prepaid expenses	xxx,xxx	xxx,xxx
Assets held by others	xxx,xxx	xxx,xxx
Amounts held for pass-through donors	xxx,xxx	xxx,xxx
Depository liability	xxx,xxx	xxx,xxx
Net Cash Provided by Operating Activities	xxx,xxx	xxx,xxx
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of investments	(xxx,xxx)	(xxx,xxx)
Proceeds from the sale of investments	xxx,xxx	xxx,xxx
Net Cash Used by Investing Activities	(xxx,xxx)	(xxx,xxx)
Net increase in cash and cash equivalents	xxx,xxx	xxx,xxx
Cash and Cash Equivalents – Beginning of Year	xxx,xxx	xxx,xxx
Cash and Cash Equivalents – End of Year	\$ xxx,xxx	\$ xxx,xxx

Sample #2 Financial Statements:

SAMPLE COMMUNITY COLLEGE FOUNDATION
STATEMENT OF FINANCIAL POSITION
JUNE 30, 20XX

ASSETS

Current assets:

Cash and cash equivalents	\$ xxx,xxx
Accounts receivable	xxx,xxx
Pledges receivable, net	xxx,xxx
Other assets	xxx,xxx
Total current assets	<u>xxx,xxx</u>

Noncurrent assets:

Pledges receivable, net	xxx,xxx
Long-term investments	xxx,xxx
Total noncurrent assets	<u>xxx,xxx</u>

TOTAL ASSETS

\$ xxx,xxx

LIABILITIES AND NET ASSETS

Current liabilities:

Accounts payable and accrued expenses	\$ xxx,xxx
Amounts held in trust for others	xxx,xxx
Total liabilities	<u>xxx,xxx</u>

Net assets:

Unrestricted	xxx,xxx
Temporarily restricted	xxx,xxx
Permanently restricted	xxx,xxx
Total net assets	<u>xxx,xxx</u>

TOTAL LIABILITIES AND NET ASSETS

\$ xxx,xxx

SAMPLE COMMUNITY COLLEGE FOUNDATION
STATEMENT OF ACTIVITIES
YEAR ENDED JUNE 30, 20XX

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
REVENUES				
Public support:				
Contributions for scholarships	\$ xxx,xxx	\$ xxx,xxx	\$ xxx,xxx	\$ xxx,xxx
Fundraising and special events	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Capital campaign	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Annual fund	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Noncash donations	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Other contributions	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Net assets released from restrictions	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Total public support	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Other revenues:				
Interest and dividend income	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Gain on sale of investments	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Unrealized gain on investments	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Total other revenues	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
TOTAL REVENUES	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
EXPENSES				
Program services:				
Scholarships awarded	xxx,xxx	-	-	xxx,xxx
College instructional support	xxx,xxx	-	-	xxx,xxx
Sponsorships and promotions	xxx,xxx	-	-	xxx,xxx
Total program services	xxx,xxx	-	-	xxx,xxx
Support services:				
Fundraising	xxx,xxx	-	-	xxx,xxx
Administrative	xxx,xxx	-	-	xxx,xxx
Total support services	xxx,xxx	-	-	xxx,xxx
Provisions of contributions deemed uncollectable	xxx,xxx	-	-	xxx,xxx
TOTAL EXPENSES	xxx,xxx	-	-	xxx,xxx
Increase in Net Assets	xxx,xxx	xxx,xxx	xxx,xxx	xxx,xxx
Transfers	xxx,xxx	xxx,xxx	xxx,xxx	-
Net Assets - Beginning of				

Year - as Restated (Note 2)

<u>xxx,xxx</u>	<u>xxx,xxx</u>	<u>xxx,xxx</u>	<u>xxx,xxx</u>
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Net Assets - End of Year

<u>xxx,xxx</u>	<u>xxx,xxx</u>	<u>xxx,xxx</u>	<u>xxx,xxx</u>
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SAMPLE COMMUNITY COLLEGE FOUNDATION
STATEMENT OF CASH FLOWS
YEAR ENDED JUNE 30, 20XX

CASH FLOWS FROM OPERATING ACTIVITIES

Proceeds from:	
Contributions for scholarships	\$ xxx,xxx
Fundraising and special events	xxx,xxx
Capital campaign	xxx,xxx
Annual fund	xxx,xxx
Other contributions	xxx,xxx
Interest and dividend income	xxx,xxx
Payments for:	
Scholarships awarded	(xxx,xxx)
Payments to suppliers	(xxx,xxx)
Payments to/on behalf of employees	(xxx,xxx)
Payments for services	(xxx,xxx)
Payments for travel	(xxx,xxx)
Other operating costs	(xxx,xxx)
Net cash used by operating activities	(xxx,xxx)

CASH FLOWS FROM INVESTING ACTIVITIES

Proceeds from sales and maturities of investments	xxx,xxx
Interest and dividends on investments	xxx,xxx
Purchases of investments	(xxx,xxx)
Net cash provided by investing activities	xxx,xxx

NET DECREASE IN CASH AND CASH EQUIVALENTS (xxx,xxx)

CASH AND CASH EQUIVALENTS - BEGINNING OF YEAR xxx,xxx

CASH AND CASH EQUIVALENTS - END OF YEAR \$ xxx,xxx

RECONCILIATION OF INCREASE IN NET ASSETS TO NET CASH USED BY OPERATING ACTIVITIES

Increase in net assets	\$ xxx,xxx
Adjustments to reconcile increase in net assets to net cash used by operating activities:	
Gain on sale of investments	xxx,xxx
Unrealized gain on investments	xxx,xxx
Interest and dividends on investments	xxx,xxx
Changes in:	
Pledges and accounts receivable	xxx,xxx
Prepaid expense	xxx,xxx
Accounts payable and accrued expenses	xxx,xxx
Unearned revenue	xxx,xxx
Payable under trust agreements	xxx,xxx
Net cash used by operating activities	\$ xxx,xxx

APPENDIX B

Master Agreement by and Between The _____ Community College District and _____ Foundation

This Agreement is made and entered into this ____ day of _____, 20____, by and between the _____ Community College District, a California community college district duly organized and existing pursuant to the laws of the State of California; specifically, the California Education Code, hereinafter referred to as the "district," and the Foundation _____, a non-profit organization duly organized and existing pursuant to the laws of the State of California and the Internal Revenue Code; specifically section 501(c)(3), hereinafter referred to as the "Foundation," an auxiliary organization established and operated as an integral part of the district.

Purpose and Finding

The Foundation has been created to provide administration of the functions and activities described herein, instead of administration by the district. The Foundation is deemed to be more effective in accomplishing these functions and activities than would be possible under the district budgetary, purchasing and other fiscal procedures. The governing board of the district has determined that the value of fundraising, community and donor relations, gift and program administration and other services provided by the Foundation greatly exceeds the cost to the district of the provision of any facilities, property and other support as provided by this Agreement. The purpose of this Agreement is to establish the relationship between the district and the Foundation for the Foundation's solicitation and administration of programs involving gifts, bequests, devises and trusts on behalf of the district pursuant to California Code of Regulations, title 5, section 59259, subdivision (j).

Areas of Service

The Foundation, through amendments to this Agreement and with the agreement of the district, may administer functions or activities defined in California Code of Regulations, title 5, section 59259. Other services may be provided if first approved by the Board of Governors, California Community Colleges. The Foundation will engage only in those activities that are in support of and consistent with state and federal Laws and with the policies, rules, regulations and program goals of the district.

Use of Facilities

The auxiliary may occupy, operate and use district facilities and property assigned by the district, either separately or jointly with the district, in accordance with district regulations for auxiliaries of the district. The auxiliary shall occupy, operate and use the facilities and property only for those services and functions that are consistent with the policies, rules and regulations, which have been or may be adopted by the governing board of the district.

Operations of the Foundation under this Agreement shall be integrated with the district operations, and shall be under the general supervision of the district officials. Such supervision shall be provided without cost to the Foundation.

The right to use any of the district's facilities or equipment included in this Agreement or amendments shall cease upon written notice to the Foundation and the board of trustees by the district CEO that the facilities are needed for the exclusive use of the district.

Covenant Re Existence

During the term of this Agreement, the Foundation agrees to maintain its existence and to operate in accordance with California Education Code sections 72670-72680, and with the California Code of Regulations, title 5, sections 59250-59270, as well as the district's implementing regulations.

Right Of Entry

It is understood and agreed that any time the district, officers, employees and agents shall have the right to enter described facilities or any part of thereof for the purpose of examination or supervision and to inspect books and records.

Allocation of Earnings

Income generated by the Foundation in excess of costs and appropriate provision for equipment, maintenance, working capital and reserves shall be used for the general benefit of the students and college programs as determined by the board of directors of the Foundation and approved by the CEO. Money may be expended for services and property, including, but not limited to, parking facilities, stadia, student centers, student union, health centers, bookstores or auxiliary facilities for use of students, faculty members, or employees of the _____ Community College District.

Good Standing

The Foundation must remain in good standing with the district. Otherwise, this Agreement will immediately terminate and the Foundation will terminate any contracts with third parties and meet the provisions of this Agreement entitled Distribution of Assets Upon Cessation.

Expenditures For Public Relations

With respect to expenditures for public relations or other purposes which would serve to augment the district appropriations for operation of the district, the Foundation may expend funds in such amount and for such purposes as are approved by the board of directors of the Foundation. Prior to the expenditure of such funds, the Foundation shall file with the district CEO a statement of its policy on accumulation and use of public relations funds. The statement will include the policy and procedure on solicitation of funds, sources of funds, purposes for which the funds will be used, allowable expenditures and procedures of control.

Real Property Matters

The board of directors shall not enter into any contract or other business arrangement involving real property without prior approval of the district CEO or designee in accordance with district procedures and regulations.

Third Party Agreements By The Foundation

The Foundation shall not enter into any contract that would obligate the district, its facilities, equipment or personnel, without the prior written approval of the district.

Submission of Annual Program and Budget

The board of directors shall submit its program and budget for the next fiscal year to the district CEO for his/her approval on or before the beginning of each fiscal year. Should the district CEO determine that any program or appropriation planned by the Foundation is not consistent with the policies of the board of trustees, the program or appropriation shall not be implanted. Further, should a program or appropriation which had received approval, upon review, be determined by the district CEO to be operating outside of the scope of the policies of the board of trustees, then that program or appropriation shall be discontinued by direction of the district CEO until further review is accomplished and an appropriate adjustment is made.

Insurance, Indemnification and Restoration

The district shall provide for the Foundation all risk liability coverage under the terms and conditions of the district's all-risk blanket policy. Further, the district will extend its directors and officers errors and omissions coverage to include the Foundation board members, officers, and managers.

In the event that the district is unable to maintain such coverage for the Foundation, the district shall provide (30) days notification to the Foundation of the district policy cancellation. In the event of such notice of cancellation by the district, the Foundation shall secure the appropriate coverage under its own name.

The Foundation agrees to indemnify, defend and save harmless the district, its officers, agents and employees from any and all loss, damage, or liability that may be suffered or incurred by the district, its officers, agents, and employees caused by, arising out of, or in any way connected with the use of the described facilities by the Foundation or in connection with this Agreement, provided that the loss,

damage, or liability does not arise from the intentional or negligent acts or omissions of the district, its officers, agents, or employees.

Upon termination of this Agreement, the district shall have the option to require the Foundation, at its own expense and risk, to restore the facilities as nearly as possible to the condition existing prior to the executive of the Agreement. But, if the Foundation shall fail to do so within ninety (90) days after the district exercises this option, the district may restore the property at the risk of the Foundation, and all costs and expenses of such removal or restoration shall be paid by the Foundation upon demand of the district. The district shall have the right to exercise this option within thirty (30) days after the expiration of this Agreement, but not thereafter.

Termination of Agreement

This Agreement may be terminated by either party giving sixty (60) days' written notice, subject to the provision of this Agreement entitled Distribution of Assets Upon Cessation. The Foundation shall have necessary use of facilities and assets for the Foundation to operate until termination.

Distribution of Assets Upon Cessation

Upon cessation of the operations of the Foundation under this Agreement, unless extended or renewed, the net assets of this Foundation resulting or arising from this agreement shall be either transferred to the district or expended for the benefit of the district or automatically revert to the district.

Notices

All notices herein required to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and received.

Notice to the Auxiliary shall be addressed as follows:

Name and Title
Foundation Name
Address
City, State. Zip code

Notice of the district shall be addressed as follows:

Name and Title
_____ Community College District
Address
City, State. Zip code

Supersedure and Authorization

This Agreement supersedes all prior contracts between the parties with respect to its subject matter. It may be amended only by a fully executed written agreement of the parties. The individuals whose signatures appear below certify that this Agreement has been approved by their respective governing boards and has received all approvals required under California Law.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

_____ **Community College District**
By: _____

Insert Foundation Name
By: _____

Ratified and Approved by the Board of Trustees
_____ **Community College District**

By: _____

Ratified and Approved by the Board of Directors
Insert Foundation Name

By: _____

Resources for Auxiliary Organizations:

- Budget and Accounting Manual (BAM) - Prepared under the direction of the College Finance and Facilities Planning Division of the Chancellor's Office California Community Colleges with the cooperation of the Association of Chief Business Officials Board
- Guide for Charities - Published by the California Attorney General
- [Financial Accounting Standards Board](#) (FASB)
- Council for Advancement and Support of Education (CASE) Reporting Standards & Management Guidelines for Educational Fundraising, 4th edition.
- Associated Student Body Accounting Manual, Fraud Prevention Guide & Desk Reference - Published by Fiscal Crisis & Management Assistance Team (FCMAT)
- Compilation of Policies and Procedures for California State University Auxiliary Organizations
- IRS Publication 1771 Charitable Contributions
- IRS Publication 561 Determining Value of Donated Property
- IRS Publication 3079 Tax-Exempt Organizations & Gaming
- IRS Publication 4302 A Charity's Guide to Vehicle Donations
- IRS Publication 598 Unrelated Business Income Tax (UBIT)

EDUCATION CODE (Pre 08/31/1980)

Sections 72670-72675

72670. [a] The governing board of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of students, as determined by the governing board, and which are not provided by the general fund of the district. [b] Such services and programs shall be consistent with the purposes of the college and shall conform with the policies and regulations of the governing board. [c] Commercial services operated by an auxiliary organization shall be self-supporting. Nothing in this article shall be construed as granting to any auxiliary organization any power which exceeds any power of a governing board of a community college district.

72671. [a] Auxiliary organizations formed pursuant to this article may be incorporated under the laws of the State of California. Each auxiliary organization so organized shall have a board of directors whose size and membership shall be established by the governing board of the district. Each board of directors shall hold at least one business meeting in each fiscal year.

[b] No member of the board of directors shall be financially interested in any contract or other transaction entered into by the board of directors.

72672. The governing board of the community college district may establish a fund for each auxiliary organization into which proceeds derived from the operation of the organization or from fees, sales, grants, contracts, bequests, trusts, or gifts shall be deposited.

Moneys from such sources shall be deposited or invested in one or more of the following ways:

(a) Deposits in a bank or banks whose accounts are insured by the Federal Deposit Insurance Corporation.

(b) Investment certificates or withdrawable shares in state-chartered savings and loan associations and savings accounts of federal savings and loan associations provided such associations are doing business in this state and have their accounts insured by the Federal Savings and Loan Insurance Corporation.

(c) Purchase of United States securities pursuant to subdivision (a) of section 16430 of the Government Code.

72673. Any employee, not a student or substitute employee, employed by an auxiliary organization shall be a member of the classified service of the district.

72674. The board of directors of each auxiliary organization shall have prepared annually a budget which shall be submitted to the governing board of the district for approval.

72675. Funds established under this article shall be audited pursuant to section 84040.

EDUCATION CODE (Post 08-30-1980)

SECTION 72670-72690

72670.

The governing board of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges. As used in this article, "auxiliary organization" may include, but is not limited to, the following entities:

- (a) Any entity in which any official of a community college district participates as a director as part of his or her official position.
- (b) Any entity formed or operating pursuant to Article 4 (commencing with Section 76060) of Chapter 1 of Part 47.
- (c) Any entity which operates a commercial service for the benefit of a community college or district on a campus or other property of the district.
- (d) Any entity whose governing instrument provides in substance both of the following:
 - (1) Its purpose is to promote or assist a community college or district, or to receive gifts, property and funds to be used for the benefit of the community college or district or any person or organization having an official relationship therewith.
 - (2) Any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the governing board of the district, an official of the district, or selected, ex officio, from the membership of the student body or the faculty or the governing board or the administrative staff of the district.
- (e) Any entity which is designated as an auxiliary organization by the district governing board.

72670.5.

- (a) The Board of Governors of the California Community Colleges may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of the mission of the California Community Colleges.
- (b) As used in this article:
 - (1) "Auxiliary organization" may include, but is not limited to, the following entities:
 - (A) Any entity whose governing instrument provides in substance both of the following:
 - (i) That its purpose is to promote or assist the Board of Governors of the California Community Colleges, or to receive gifts, property, and funds to be used for the benefit of the Board of Governors of the California Community Colleges or any person or organization having an official relationship therewith.
 - (ii) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the Board of Governors of the California Community Colleges or an official of the California Community Colleges, or selected, ex officio, from the membership of the Board of Governors or the administrative staff of the California Community Colleges.
 - (B) Any entity which, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the Board of Governors of the California Community Colleges.
 - (2) "District governing board" includes the Board of Governors of the California Community Colleges, unless the context requires otherwise.
- (c) Any agreement between the Board of Governors of the California Community Colleges and an auxiliary organization established pursuant to this section shall provide for full reimbursement from the auxiliary organization to the Board of Governors of the California Community Colleges for any services performed by the employees of the board under the direction of, or on behalf of, the auxiliary organization.

72671.

An auxiliary organization may enter into a joint powers agreement with any federal, state, or local governmental entity pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code.

72672.

(a) A certified public accountant shall be selected by each auxiliary organization described in Section 72670. Upon being notified of the certified public accountant selected by an auxiliary organization, the district shall forward the applicable auditing and reporting procedures to the selected certified public accountant. In accordance with procedures prescribed by the Board of Governors of the California Community Colleges, such certified public accountant shall annually audit any and all community college auxiliary funds. The auxiliary organizations shall contract for and receive such audit annually, and shall submit such audit to the district governing board and to the board of governors. Auxiliary organizations shall annually publish an audited statement of their financial condition which shall be disseminated as widely as feasible and be available to any person on request. When an auxiliary organization primarily serves a single community college of the district, publication in the campus student newspaper shall be deemed compliance with this requirement. When an auxiliary organization serves the district governing board, distribution of the published audited statement of its financial condition at a regularly scheduled meeting of the district governing board shall be deemed compliance with this requirement.

(b) When an auxiliary organization primarily serves a single community college of the district, the president of that community college, and when an auxiliary organization primarily serves a district, the superintendent of the district, shall be responsible for ascertaining that all expenditures are in accordance with policies of the district governing board, the propriety of all expenditures, and the integrity of the financial reporting made by auxiliary organization.

(c) The purposes and operations of an auxiliary organization shall be conducted in conformity with general regulations established by the board of governors and with implementing regulations which shall be established by each district governing board prior to the establishment of an auxiliary organization. The implementing regulations established by a district shall be submitted to, and approved by, the chancellor's office prior to the recognition of an auxiliary organization by that district. At such time as a district may recognize an auxiliary organization, it shall submit a copy of the articles of incorporation, bylaws, or other governing instruments of the auxiliary organization to the chancellor's office. The accounting procedures of such auxiliary organizations shall be comparable to those that govern the auxiliary organizations established under Chapter 7 (commencing with Section 89900) of Part 55. The regulations shall include provisions requiring the governing board of each auxiliary organization to provide salaries, working conditions and benefits for the full-time employees of each auxiliary organization which are comparable to those provided district employees performing similar services; provided, however, that the regulations may permit retirement benefits, or permanent status benefits, or both, to be withheld from temporary and executive employees of each auxiliary organization. For the purposes of this subdivision, a "temporary employee" is (1) an employee employed for a research project, workshop, institute, or other special project funded by any grant, contract, or gift; or (2) an employee whose contract of employment is for a fixed term not exceeding three years. For the purposes of this subdivision, an "executive employee" is any management employee with responsibility for the development and execution of auxiliary organization policy and includes, but is not limited to, general managers, business managers, directors, and similar positions. For those full-time employees whose duties are not comparable to classes in the district, the salaries established shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature.

(d) Retirement benefits may be provided by other than the Public Employees' Retirement System. A contract for participation in the Public Employees' Retirement System in accordance with the terms and conditions of the public employees' retirement law shall be deemed to satisfy fully the requirements of subdivision (c) with respect to retirement.

Notwithstanding subdivision (c), the regulations established by the district governing board may exempt the board of directors of any newly created auxiliary organization from the requirement of providing retirement benefits for a period not to exceed three years from the date that the auxiliary organization is established.

72673.

Student body organizations not formed or operating pursuant to Article 4 (commencing with Section 76060) of Chapter 1 of Part 47; student or faculty societies, social clubs, fraternities, and sororities; and alumni associations shall be exempt from the provisions of this article, unless any such organization, society, club, fraternity, sorority, or association has been established as an auxiliary organization pursuant to the provisions of this article.

This section shall not be construed to alter or limit the powers of the district governing board to establish rules and regulations governing organizations which maintain an official relationship with a college or district or which uses the name or facilities of the college or district.

72674.

Each auxiliary organization formed pursuant to this article, shall have a board of directors composed, both as to size and categories of membership, in accordance with regulations established by the district governing board.

Each board of directors shall, during each fiscal year, hold at least one business meeting each quarter. The board of directors shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in this state and at least one licensed certified public accountant. Neither the attorney at law nor the certified public accountant need be members of the board of directors.

No auxiliary organization shall accept any grant, contract, bequest, trust, or gift, unless it is so conditioned that it may be used only for purposes consistent with policies of the district governing board.

Each board of directors of an auxiliary organization shall conduct its business in public meetings in accordance with the provisions of Chapter 9 (commencing with Section 54950) of Part 1 of the Government Code.

72675.

(a) The board of directors of an auxiliary organization shall approve all expenditures and fund appropriations. Appropriations of funds for use outside of the normal business operations of the auxiliary organization shall be approved in accordance with district policy and regulations by an officer designated by the district governing board.

(b) The district governing board, in accordance with regulations of the Board of Governors of the California Community Colleges, shall do all of the following:

(1) Institute a standard systemwide accounting and reporting system for businesslike management of the operation of these auxiliary organizations.

(2) Implement financial standards that will ensure the fiscal viability of these various auxiliary organizations. The standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements.

(3) Institute procedures to ensure that transactions of the auxiliary organizations are within the educational mission of the district.

(4) Develop policies for the appropriation of funds derived from indirect cost payments not required to implement paragraph (2). Uses of these funds shall be regularly reported to the district governing board.

72676.

Operations of commercial services on a campus, such as a food service or bookstore, or such commercial services as may be provided in a student union, shall, when operated by an auxiliary organization, be self-supporting.

Any surplus funds from commercial operations shall be used for such purposes as are consistent with regulations of the district governing board.

72677.

No member of the board of directors of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he or she is a member. Any contract or transaction entered into in violation of this section is void.

72678.

No contract or other transaction entered into by the board of directors of an auxiliary organization is void under the provisions of Section 72677; nor shall any member of such board be disqualified or deemed guilty of misconduct in office under such provisions, if both of the following conditions are met:

(a) The fact of such financial interest is disclosed or known to the board of directors and noted in the minutes, and the board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members.

(b) The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

72679.

The provisions of Section 72678 shall not be applicable if any of the following conditions are met:

(a) The contract or transaction is between an auxiliary organization and a member of the board of directors of that auxiliary organization.

(b) The contract or transaction is between an auxiliary organization and a partnership or unincorporated association of which any member of the governing board of that auxiliary organization is a partner or in which he or she is the owner or holder, directly or indirectly, of a proprietorship interest.

(c) The contract or transaction is between an auxiliary organization and a corporation in which any member of the board of directors of that auxiliary organization is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

(d) A member of the board of directors of an auxiliary organization is interested in a contract or transaction within the meaning of Section 72677, and without first disclosing such interest to the governing board at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

72680.

It is unlawful for any person to utilize any information, not a matter of public record, which is received by the person by reason of his or her membership on the board of directors of an auxiliary organization, for personal pecuniary gain, regardless of whether he or she is or is not a member of the board at the time such gain is realized.

72682.

An auxiliary organization that was in existence on August 31, 1980, shall continue to operate under Article 6 (commencing with Section 72670) of Chapter 6 of Part 45, as it read immediately prior to August 30, 1980, until the time, if any, that the organization is recognized pursuant to this article.

72690.

The Legislature finds and declares all of the following:

(a) Access to information concerning the conduct of the people's business is a necessary and fundamental right of every person in this state.

(b) The auxiliary organizations of a governing board of a community college district and of the Board of Governors of the California Community Colleges promote and assist the colleges by engaging in activities that are essential and integral to the mission and purpose of the California Community Colleges.

(c) The auxiliary organizations of a governing board of a community college district and of the Board of Governors of the California Community Colleges are legally separate from the California Community Colleges.

(d) Access to records used, owned, or maintained by these auxiliary organizations must be balanced by the need to protect the individual privacy rights of donors and volunteers, and to protect an auxiliary organization's fiduciary interests.

California Code of Regulations, Title 5, Division 6, Chapter 10, Subchapter 4.5
(California Community College Auxiliary Organizations)

§ 59250. Scope.

(a) The governing body of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges, as determined by the governing board. Such organizations shall be established and maintained in accordance with the provisions of article 6 (commencing with section 72670) of chapter 6, part 45, division 7, title 3 of the Education Code, and the regulations contained in this subchapter.

(b) Other organizations which provide supportive services and specialized programs for the general benefit of colleges, which are authorized by other provisions of law, need not be established as an auxiliary organization pursuant to this subchapter. If, however, an organization is not established as an auxiliary organization in accordance with the provisions of this subchapter, its powers and duties will continue to be defined by the other provisions of law which provide for its establishment and operation.

(c) An auxiliary organization which was in existence on or before August 31, 1980, may continue to operate under the provisions of article 6 (commencing with section 72670) of chapter 6, part 45, division 7, title 3 of the Education Code, as it read on August 30, 1980. Such organizations, however, shall operate only in accordance with the provisions of former article 6; and shall not, unless established and maintained in accordance with the provisions of this subchapter, be vested with any additional authority or flexibility that may be provided by this subchapter and the current article 6 (commencing with section 72670) of chapter 6, part 45, division 7, title 3 of the Education Code.

§ 59251. Definitions.

For the purposes of this subchapter, the following definitions shall be applied:

(a) Auxiliary organization: An “auxiliary organization” is an entity authorized by section 72670 of the Education Code which is established by the governing board in accordance with the provisions of this subchapter and Article 6 (commencing with section 72670) of chapter 6, part 45, division 7, title 3 of the Education Code.

(b) Written agreement: A “written agreement” is an agreement between a community college district and an auxiliary organization which may implement or otherwise address the requirements of subdivision (j) of section 59257 of this subchapter.

§ 59255. Conditions for Establishment.

The following conditions must be met before an auxiliary organization may be established by a community college district:

(a) The district's governing board must adopt implementing regulations for auxiliary organizations. Such regulations must, at least, address the subjects specified in section 59257 of this subchapter;

(b) The district's implementing regulations must be reviewed and approved by the Chancellor of the California Community Colleges;

(c) The particular auxiliary organization being established may only provide recognized services or functions as specified in section 59259;

(d) The district governing board must approve the establishment of the auxiliary organization; and

(e) The district must at such time as it recognizes an auxiliary organization, submit to the Chancellor any written agreement with an auxiliary organization, as well as the articles of incorporation, bylaws, or other governing instrument of the particular auxiliary organization.

§ 59257. Implementing Regulations.

Each district governing board wishing to establish an auxiliary organization must adopt implementing regulations, and submit such regulations to the Chancellor for approval. The implementing regulations must contain provisions which address at least the following subjects:

(a) Provisions which set forth the district's method for recognizing an auxiliary organization, which procedure must include a public hearing prior to such recognition;

(b) Provisions which limit authorized auxiliary organizations to those performing recognized functions described in section 59259;

(c) Provisions which implement section 72674 of the Education Code, regarding composition and meetings of boards of directors of auxiliary organizations;

(d) Provisions which implement subdivision (a) of section 72672 of the Education Code, regarding the audit of auxiliary organizations;

(e) Provisions which implement subdivision (c) of section 72672 of Education Code, regarding salaries, working conditions, and benefits for full-time employees of auxiliary organizations;

(f) Provisions which implement section 72675 of the Education Code, regarding expenditures and fund appropriations by auxiliary organizations. In implementing subdivision (b)(2) of section 72675, the district regulations may specify different standards for different types of auxiliary organizations.

(g) Provisions which establish recordkeeping responsibilities of auxiliary organizations;

(h) Provisions which establish a procedure for periodic review of each auxiliary organization by the district to insure that it is complying with sections 72670-72682 of the Education Code, district implementing regulations, any written agreement with the district, and its articles of incorporation or bylaws; and

(i) Provisions which prohibit the district from transferring any of its funds or resources other than funds or resources derived from gifts or bequests, to any of its auxiliary organizations, when the purpose of such transfer is either to avoid laws or regulations which constrain community college districts or to provide the district with an unfair advantage with respect to the application of any state funding mechanism. Such state funding mechanisms include, but are not limited to, general apportionment funding, capital outlay funding, Extended Opportunity Programs and Services funding, and funding for programs and services for students with disabilities.

(j) Provisions which shall specify the following:

(1) The function or functions which the auxiliary organization is to manage, operate or administer;

(2) A statement of the reasons for administration of the functions by the auxiliary organization instead of by the college under usual district procedures;

(3) The areas of authority and responsibility of the auxiliary organization and the college;

(4) The facilities to be made available, if any, by the district to permit the auxiliary organization to perform the functions specified in the implementing regulations or written agreement;

(5) The charge or rental to be paid to the district by the auxiliary organization for any district facilities used in connection with the performance of its function. The charge or rental specified shall not require involved methods of computation, and should be identified in sufficient time before its incurrence so that the auxiliary organization may determine to what extent it shall be liable therefor;

(6) Full reimbursement to the district for services performed by district employees under the direction of the auxiliary organization. No more than 50% of the reimbursement by an auxiliary organization may be made in the form of non-monetary benefits that the auxiliary organization provides to a community college district, such as increased community awareness or other such benefits that are agreed upon by district officials and the auxiliary organization. Such non-monetary benefits shall be assigned a good-faith reimbursement value by the district. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable;

(7) A simple and stable method of determining in advance to what extent the auxiliary organization shall be liable for indirect costs relating to federally-sponsored programs;

(8) The responsibility for maintenance and payment of operating expenses;

(9) The proposed expenditures for public relations or other purposes which would serve to augment district appropriations for operation of the college. With respect to expenditures for public relations or other purposes which would serve to augment district appropriation for the college, the auxiliary organization may expend funds in such amount and for such purposes as are approved by the board of directors of the auxiliary organization. The governing board shall name a designee who shall file with the governing board a statement of auxiliary organizations' policies on accumulation and use of public relations funds. The statement will include the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control;

(10) The disposition to be made of net earnings derived from the operation of facilities owned or leased by the auxiliary organization and provisions for reserves;

(11) The disposition to be made of net assets on cessation of the operations under the agreement; and

(12) Provisions which require a covenant of the auxiliary organization to maintain its existence throughout the period of the agreement and to operate in accordance with sections 72670-72682 of the Education Code, and with the regulations contained in this subchapter as well as district implementing regulations.

In addressing the requirements of this subdivision in its district implementing regulations, a district may provide for such requirements in a written agreement or agreements with an auxiliary organization. The agreement shall provide for all requirements of this subdivision which have not been addressed in the district implementing regulations. Notwithstanding subdivision (e) of section 59255, if the requirements of this subdivision are provided for in the written agreement rather than the district's implementing regulations, the auxiliary organization may not be recognized by the district until the agreement is submitted to the Chancellor for approval.

§ 59259. Recognized Functions.

The functions to be undertaken by auxiliary organizations are for the purpose of providing activities which are an integral part of the community college educational programs. The following supportive services and specified programs which may be developed and operated by auxiliary organizations have been determined by the Board of Governors to be appropriate:

- (a) Student association or organization activities;
- (b) Bookstores;
- (c) Food and campus services;
- (d) Student union programs;
- (e) Facilities and equipment;
- (f) Loans, scholarships, grants-in-aids;
- (g) Workshops, conferences, institutes, and federal projects;
- (h) Alumni activities;
- (i) Supplementary health services;
- (j) Gifts, bequests, devises, endowments and trusts; and
- (k) Public relations programs.

§ 59263. Auxiliary Organizations in Good Standing.

(a) Each district which establishes one or more auxiliary organizations shall prepare and keep current a list of auxiliary organizations in good standing. All auxiliary organizations which, after periodic review in the manner specified by district implementing regulations, are found to be in compliance with applicable laws and regulations, shall be included on this list.

(b) When the chief executive officer or other designee of a district has reason to believe that a particular organization should be removed from this list, he or she shall give the board of directors of such organization reasonable notice that a conference will be held to determine whether grounds for removal do in fact exist, and representatives of said board shall be entitled to be present at such conference and to be heard. Based upon such conference, the chief executive officer or other designee shall recommend to the district governing board whether a

particular organization should be removed from the list. The district governing board may, in its sole discretion, remove such an auxiliary organization from said list, and may make such other provisions consistent with law as may be appropriate with respect to an auxiliary organization not included on said list.

§ 59265. Ongoing Responsibilities.

Each district governing board which establishes one or more auxiliary organizations shall:

- (a) Insure that an audit on each auxiliary organization is performed annually in the manner prescribed by subdivision (a) of section 72672 of the Education Code; and that a copy of said audit is submitted to the Chancellor;
- (b) Submit any changes in district implementing regulations to the Chancellor for approval;
- (c) Submit to the Chancellor any changes made in any written agreement, articles of incorporation, bylaws or other governing instrument pertaining to any established auxiliary organization;
- (d) Periodically review each auxiliary organization for compliance with Education Code sections 72670-72682, the regulations contained in this subchapter and district implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;
- (e) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and
- (f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall prescribe the reporting and auditing procedures for auxiliary organizations. Districts and auxiliary organizations shall apply and comply with such procedures.

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected. Regulations that have not been disapproved by the Chancellor within 60 days of receipt shall be deemed to be approved until such a time as the Chancellor notifies the district that a provision of the implementing regulations must be revised and a statement of the reason for the revision.

RAFFLES Q & A

State of California Department of Justice

Office of the Attorney General

1. May charities now hold raffles to raise funds?

The California State Constitution and Penal Code provide a narrow exception to the prohibition against gambling in California. Certain tax-exempt organizations such as charities may hold fundraising raffles.

2. What is a raffle?

A raffle is a type of lottery in which prizes are awarded to people who pay for a chance to win. Each person enters the game of chance by submitting a detachable coupon or stub from the paper ticket purchased. A raffle must be conducted under the supervision of a natural person age 18 or older. At least 90 percent of the gross receipts from raffle ticket sales must be used by the eligible tax-exempt organization to benefit or support beneficial or charitable purposes in California.

Awarding raffle prizes by use of a gaming machine, apparatus, or device such as a slot machine is prohibited. Operating or conducting a raffle via the Internet is also prohibited. However, the organization conducting the raffle may advertise the raffle on the Internet. See Penal Code section 320.5 and [Laws and Regulations](#).

3. Do we need to register if we call our raffle an “opportunity drawing”? What sort of raffle can we have if we don’t want to register?

If participants are required to purchase a ticket in order to have a chance to win a prize, the drawing is subject to the provisions of Penal Code section 320.5 and related regulations.

Penal Code section 320.5, subdivision (m), states that a raffle is exempt from registration with the Attorney General’s Office if **all** of the following are true:

- a. It involves a general and indiscriminate distribution of the tickets;
- b. The tickets are offered on the same terms and conditions as the tickets for which a donation is given; and
- c. The scheme does not require any of the participants to pay for a chance to win.

4. I want to verify that the type of raffle I want to hold is legal even if it doesn’t meet all of the criteria in Penal Code section 320.5. Can you give me advice?

The Office of the Attorney General does not provide legal advice to members of the public. If you are not sure that the raffle your organization is holding is in compliance with Penal Code section 320.5, we suggest that you consult private legal counsel.

5. **Can an individual raffle off his house to pay off the mortgage if he gives any remaining funds to charity?**

No. Only eligible organizations as defined in Penal Code section 320.5, subdivision (c) may conduct raffles in California, provided they are registered with the Registry of Charitable Trusts before conducting any raffle activities. The purpose of the statute is to benefit eligible organizations. Individuals, corporations, partnerships, and other legal entities are prohibited from holding a financial interest in the conduct of a raffle. (Pen. Code, § 320.5, subd. (g).)

6. **Can individuals affiliated with the nonprofit organization conducting the raffle purchase raffle tickets?**

Penal Code section 320.5 does not prohibit individuals affiliated with an organization from participating in a raffle held by the organization.

7. **Who may hold raffles?**

Only eligible private, tax-exempt nonprofit organizations qualified to conduct business in California for at least one year prior to conducting the raffle may conduct raffles to raise funds for the organization and charitable or beneficial purposes in California.

Eligible organizations are charities and religious or other organizations that have been granted tax-exempt status by the Franchise Tax Board under the following Revenue and Taxation Code sections: 23701a (labor, agricultural, or horticultural organizations other than cooperative organizations); 23701b (fraternal orders); 23701d (corporations, community chests, or trusts operating exclusively for religious, charitable, or educational purposes); 23701e (business leagues, chambers of commerce); 23701f (civic leagues, social welfare organizations, or local employee organizations); 23701g (social organizations); 23701k (religious or apostolic corporations); 23701l (domestic fraternal societies); 23701t (homeowners' associations); and 23701w (veterans' organizations).

If an organization needs a copy of its exemption letter or entity status letter, one can be obtained by contacting the Franchise Tax Board (FTB) or by using the "Entity Status Letter" tool on the FTB website. In addition, a list of California tax-exempt organizations by category may be found on the Exempt Organizations List page on the FTB website.

8. **I don't know if my organization qualifies as an "eligible" organization under Penal Code section 320.5. How do I find out?**

An "eligible organization" is defined in Penal Code section 320.5, subdivision (c), as a "private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the Revenue and Taxation Code." This information can be found on the exemption letter or entity status letter received by an organization from the Franchise Tax Board. If an organization needs a copy of its exemption letter or entity status letter, one can be obtained by contacting the Franchise Tax Board or by using the "Entity Status Letter" tool on the FTB website. In addition, a list of California tax-exempt organizations by category may be found on the Exempt Organizations List page on the FTB website.

9. What is the 90/10 rule? Does it apply to 50/50 raffles?

Penal Code section 320.5, subdivision (b)(4)(A) states that 90 percent of the gross receipts generated by the sale of raffle tickets for any given draw are to be used by the eligible organization for charitable purposes. For example: An organization raised \$100 in ticket sales. It would be required to spend \$90 of that amount to further its charitable purposes, and only \$10 could be used to help pay for expenses or operating costs associated with conducting the raffle.

The organization is not precluded from using funds from sources **other than** the sale of raffle tickets to pay for the administration or other costs of conducting the raffle. However, the organization must exercise due care in using other funds. The misuse of restricted assets or the use of unrestricted assets which results in losses to the corporation may subject the board of directors to personal liability for breach of fiduciary duty.

The 90/10 rule applies to 50/50 raffles, in which 50 percent of ticket-sale revenue is awarded as the prize and 50 percent of the revenue is retained by the organization conducting the raffle. 50/50 raffles are illegal because 90 percent of the gross ticket-sale revenue is not used for charitable purposes.

10. What happens if we do not meet the 90/10 requirement?

Penal Code section 320.5 is a criminal statute. Violations may be forwarded to the local district attorney, city attorney, or county counsel for investigation and possible prosecution. In addition, the Attorney General may take legal action under the provisions of the Nonprofit Corporation Law for breach of fiduciary duty or waste of charitable assets. The raffle registration may also be suspended or revoked. (See § 419.2(a)(2) of the raffle regulations, which can be found on our website: oag.ca.gov/charities/raffles.)

11. Does an organization already registered with the Registry of Charitable Trusts as a charity need to register separately to conduct a raffle? Are there separate reporting requirements?

Yes. Raffle registration is a separate requirement from charity registration. The reporting requirements are separate as well. A report for all raffles conducted during the reporting year (September 1 through August 31) must be filed by September 1. Annual reporting for charity registration is based on an organization's fiscal year and the timing of filing IRS Form 990 with IRS.

12. Must all eligible organizations register and report?

Nonprofit religious organizations, educational institutions, and hospitals are exempt from the registration and reporting requirements; however, even though these categories of organizations are not required to register and file annual raffle reports with the Registry of Charitable Trusts, they must still comply with all other provisions of Penal Code section 320.5.

13. May we sell raffle tickets prior to the raffle drawing if we are not currently registered?

No. You must obtain a confirmation letter from the Registry of Charitable Trusts prior to conducting any raffle activities. This includes selling tickets to an event that will be held in

the future. If you wish to conduct the drawing after September 1 of any year, but you wish to sell tickets prior to September 1 of that year, you must register for both years.

14. If an organization gives away raffle tickets, does it have to register and report?

Registration is not required if all tickets for a drawing are free, solicitations of voluntary donations to the organization are in no way connected to distribution of tickets, and this is made clear to all participants. If a "donation" is required in return for a ticket, registration is required.

15. How do I register to conduct a raffle?

Complete the raffle annual registration form (CT-NRP-1) and mail it to the Registry of Charitable Trusts with the \$20 registration fee. Checks should be made payable to the Department of Justice.

Please note: You must receive written confirmation of registration before conducting any raffle activities, including the sale of tickets. Raffle registration forms are available on the Attorney General's Website at Charities Forms, or may be requested by mail, fax, or telephone.

16. What is the deadline for registration, and can I still submit an application if I miss the deadline?

The registration period for raffles runs from September 1 to August 31, and registration applications are due on or before September 1. If an eligible organization that has not registered by September 1 determines after that date that it will conduct a raffle during the reporting year (September 1 through August 31), the organization must submit its registration application at least 60 days before the scheduled date for the raffle. Applications are processed in the order received, and no expedited service is available. In order to receive confirmation of receipt of an application, the application must be mailed to the Registry of Charitable Trusts via certified mail.

17. How long is a raffle registration valid?

A raffle registration is valid from the date registration is issued through August 31. Registration must be renewed annually, on or before September 1 of each year in which the organization wishes to conduct raffles.

18. If my organization registers to conduct raffles but decides not to hold a raffle, is the fee refundable?

No.

19. What information must we provide for raffle registration?

An eligible nonprofit organization must provide the following information on the registration form:

- a. Name of organization;
- b. Address of organization;

- c. One or more of the following:
 - o Federal Tax/Employer Identification Number
(assigned by the Internal Revenue Service and usually found on the IRS letter granting tax-exempt status. Contact the Exempt Organization Division of the IRS at (877) 829-5500; or www.irs.gov/Charities-&-Non-Profits if you have questions)
 - o Corporate Number
(assigned by the Secretary of State at the time the articles of incorporation are endorsed and filed)
 - o Organization Number
(assigned by the Franchise Tax Board to associations, trusts, and organizations that are not incorporated in California but do business in California)
 - o California State Charity Registration Number [CT number]
(assigned by the Registry of Charitable Trusts)
- d. Specify the organization's tax-exempt status pursuant to the California Revenue and Taxation Code section.
- e. Proposed date(s) of raffle(s) MM/DD/YY.
- f. Certification checkboxes 1, 2, and 3 must be completed along with a dated signature, printed name, and title of director or authorized officer of the organization.
- g. **IN ADDITION, the organization must attach to the registration application proof of California Franchise Tax Board exempt status.** To obtain a copy of an organization's exemption letter or entity status letter, contact the Franchise Tax Board at (916) 845-4171 or use the "Entity Status Letter" tool available at www.ftb.ca.gov under "Online Services". In addition, a list of California tax-exempt organizations by category may be found on the Exempt Organizations List page on the Franchise Tax Board (FTB) website.

20. Our organization is a chapter which operates under the tax-exempt status of a national organization. Can we conduct our own raffles?

Only an "eligible organization" may conduct a raffle. An "eligible organization" is defined as one that has conducted business in California for at least one year and is exempt from taxation under one of the subsections of Revenue and Taxation Code section 23701 listed in Penal Code section 320.5, subdivision (c). If the organization has not, **independent of the national organization**, applied for and received tax-exempt status from the Franchise Tax Board, it is not, by definition, an "eligible organization."

Whether a "chapter" (sometimes referred to as a "subsidiary" or "child") of a national office or other organization ("parent") may conduct a raffle is determined on a case-by-case basis after a review of relevant facts:

- o Does the parent organization qualify as an "eligible organization" in California?
- o Is the subsidiary funded by the parent?
- o Do the parent and subsidiary file a group return with IRS?
- o How independent is the subsidiary from the parent, and to what degree does the parent control and manage the subsidiary?

If the parent is an “eligible organization” and there is a true parent-subsidary relationship, only the parent is required to register for raffles conducted by both the parent and subsidiary. The parent is also responsible for filing all subsequent raffle reports. The parent is ultimately responsible for conducting the raffle, but may delegate responsibilities to the subsidiary.

21. Our organization is an auxiliary [or chapter, charter, lodge, etc.] with a group exemption and has its own Federal Employer Identification Number (FEIN). How do we register?

Only an “eligible organization” may conduct a raffle. To qualify as an “eligible organization” within the meaning of Penal Code section 320.5, the organization must have one of the requisite California Franchise Tax Board (FTB) exemptions set forth in the statute. (See Pen. Code § 320.5, subd. (c).) Please note that an Internal Revenue Service exemption does not qualify an organization to conduct raffles.

The organization must submit its FTB tax exemption letter or entity status letter with the raffle registration application. If you cannot find one of these letters, contact FTB to request a copy. If the organization has never been granted FTB tax exemption, you must file an application with FTB to obtain the requisite tax-exempt status. Please contact the California Franchise Tax Board at (916) 845-4171 for more information.

22. My organization has changed the raffle date noted on the registration form. Do we need to contact the Registry?

No. You can indicate the revised date on the Nonprofit Raffle Report (Form CT-NRP-2) when it is completed and filed.

23. When is the Nonprofit Raffle Report required to be filed?

An aggregate report is required for all raffles held by the organization during the reporting year. The report must be filed with the Registry of Charitable Trusts at any time after the conclusion of a raffle, but no later than October 1 of each year for activities in the current registration period.

24. What kind of record keeping is required?

Record-keeping must be sufficiently detailed in order to complete the Nonprofit Raffle Report form (CT-NRP-2). Organizations should review that form before conducting a raffle in order to assure all necessary categories of information are being maintained, including the date and location of each raffle held, total funds received from each raffle, total expenses for conducting each raffle, the charitable or beneficial purpose for which raffle proceeds were used or the amount and organization to which proceeds were directed. (See Nonprofit Raffle Report form at: oag.ca.gov/charities/forms.)

25. Are there limits on raffle prizes?

State law does not specify any limits on the value of raffle prizes.

26. Is disclosure of the identity of individual purchasers of raffle tickets required on annual raffle report?

No.

27. When can an organization expect to receive confirmation of registration?

Depending on volume of registration applications received, staff may not send confirmation of registration for up to 60 days after receipt of the registration application.

28. What are the consequences for an eligible organization that fails to register with the Attorney General's Registry of Charitable Trusts to conduct raffles in California?

Gambling is illegal in California unless it is permitted by statute. A raffle is defined as gambling unless it meets all of the criteria set forth in Penal Code section 320.5. One of the criteria is that an eligible organization must be registered with the Attorney General prior to conducting any activity associated with a raffle. Failure to comply with the provisions of section 320.5 is a misdemeanor. Violations of section 320.5 may be forwarded to the local district attorney, city attorney, or county counsel for enforcement. Section 320.5 and related regulations can be found on the Attorney General's website at oag.ca.gov/charities/raffles.

29. What is my recourse if a raffle was cancelled, the drawing was not held or was delayed, or a different prize was substituted for the prize that was advertised?

Contact local law enforcement (the police department or district attorney), the city attorney or county counsel in your county.

30. If an organization is interested in conducting a casino night, where do we go to get information on how to register and what are the requirements?

Rules and regulations regarding nonprofit casino nights can be found at oag.ca.gov/gambling/charitable.

31. Our organization has registered in previous years. Why am I now being asked to submit a Franchise Tax Board determination letter before the Registry will process my application? Isn't our IRS exemption letter sufficient?

An "eligible organization" is defined in section 320.5, subdivision (c) of the Penal Code as a "private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w **of the Revenue and Taxation Code.**" In the past, organizations self-certified that they were exempt under one of the above subsections of section 23701. Registry staff has determined that some organizations did not have state tax exemption under one of the subsections listed above. If an organization does not currently have exemption under one of the those subsections, it must first apply for, and receive, exemption from the California Franchise Tax Board (FTB). Information about obtaining tax-exempt status from FTB can be found on the FTB website at

https://www.ftb.ca.gov/businesses/Exempt_organizations/index.shtml. IRS exemption does not qualify an organization to conduct raffles.

32. **How many raffles may we conduct?**

There is no limit to the number of raffles an organization may hold during any registration period for which it holds a valid registration certificate. A valid registration certificate allows an organization to conduct raffles from September 1 through August.

Though an organization may conduct numerous raffles during that time, the organization must keep records adequate to account for all revenue received from, and expenses incurred for **each** raffle held during the registration year in order to properly complete their year-end raffle report (CT-NRP-2). A report that reports only estimates of revenue and expenses will not be accepted for filing.

Organizations that host raffles as part of a larger fundraising event must maintain raffle proceeds and expenses **separate** from all other event monies and report **only** raffle proceeds and expenses on form CT-NRP-2.

33. **The raffle report form asks what other eligible organizations received funds from our raffles. Our organization does not distribute funds until our fiscal year-end, which conflicts with the October 1st report deadline. What do we do?**

Submit the report by October 1st with an attachment indicating that a revised report will be submitted listing the recipient organizations at the end of your organization's fiscal year. When submitting the revised report, please type or print "Revised Report" next to the raffle year on Part B, Question 1.

Auxiliary Organizations Promoting Bond Measure Voter Approval (excerpt from State Attorney General's Office opinion 04-211 dated April 7, 2005)

An "auxiliary organization," as we use the term here, is one whose goals and purposes support the mission of a community college district or one or more of its colleges. (See 84 Ops.Cal.Atty.Gen. 41, 45-46 (2001); 82 Ops.Cal.Atty.Gen. 102, 104-105 (1999).) Auxiliary organizations may take a number of forms, including fund-raising nonprofit foundations, student organizations, and entities providing commercial services for the benefit of a district or one of its colleges. (§§ 72670, 72674, 76060.) Auxiliary organizations may, but need not, be established and operated under the auspices of a community college district board. (See 84 Ops.Cal.Atty.Gen., *supra*, at pp. 45-46; 82 Ops.Cal.Atty.Gen., *supra*, at p. 105; § 72673; Cal. Code Regs., tit. 5, § 59250, subd. (b).) The question presented is whether auxiliary organizations may independently determine to contribute their own privately raised funds to a political action committee established to advocate voter approval of a bond measure placed on the ballot by a community college district. We conclude that they may do so.

California courts have generally recognized auxiliary organizations as private entities rather than as public agencies or as part of the public bodies they seek to aid or assist. (*California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 826, 829; *Wanee v. Board of Directors* (1976) 56 Cal.App.3d 644, 648-649; see also *Coppernoll v. Board of Directors* (1983) 138 Cal.App.3d 915, 918-920.) We have previously reached the same conclusion. (47 Ops.Cal.Atty.Gen. 8, 10 (1966).) Since an auxiliary organization is not a public entity, its use of its own privately raised funds is not subject to the prohibition against the use of "public funds" for political purposes.

We recognize that an auxiliary organization that is officially established under the auspices of a community college district board (§ 72670) may sometimes involve the participation of district officials. (*E.g.*, § 72670, subds. (a), (d).)⁹ Also, auxiliary organizations that are established in this manner are required to act in conformance with the district's regulations, and to submit to district oversight of their financial operations, including an annual audit and report to the district. However, we believe these provisions are insufficient to make an auxiliary organization's funds "public funds" for purposes of § 7054 and the general principles which it embodies. A community college district board does not have the power to convert an auxiliary organization's funds to its own use.

It is to be recognized that auxiliary organizations, particularly those established under the official auspices of a community college district, may enjoy benefits from their association with the district, such as the use of the district's name, reputation, and facilities.¹⁰ Preventing abuse of these advantages is sufficient reason for giving community college districts the responsibility to exercise oversight of an auxiliary organization's financial affairs. For this reason, we do not regard the statutory provisions for financial oversight as an indication that an auxiliary organization's funds are equivalent to a district's funds for purposes of the prohibition against using public funds for advocacy purposes. Moreover, auxiliary organizations, as non-governmental organizations, are entitled to a degree of freedom under the First Amendment to make financial contributions to political causes. (See generally *Buckley v. Valeo* (1976) 424 U.S. 1; *Pacific Gas & Electric Co. v. City of Berkeley* (1976) 60 Cal.App.3d 123.) We assume for purposes of this opinion that any such contributions would be consistent with the laws and bylaws governing the establishment and operation of the donor organization. We assume also that any such contributions would be consistent with the First Amendment interests of the members of the donor organization. (See generally *Keller v. State Bar of California* (1990) 496 U.S. 1; *Abood v. Detroit Board of Education* (1977) 431 U.S. 209.)

We conclude that after a community college district has placed a bond measure on the ballot, consistent with its charter, articles, and bylaws, the district's nonprofit foundations, student body associations, and other auxiliary organizations may independently determine to contribute their own privately raised funds to a political action committee established specifically to advocate voter approval of the bond measure, subject to applicable campaign disclosure requirements.

SAMPLE ADMINISTRATIVE PROCEDURE ##### - Gifts

REFERENCE: EDUCATION CODE SECTIONS: 70902(B)(10); 72205; 72122; 26 USC § 170(c)(1)

PURPOSE

This Administrative Procedure describes how to process and acknowledge gifts to the _____ Community College District made through the _____ Community College District or the _____ College Foundation.

GENERAL PROVISIONS

The _____ Community College District (“district”) may accept or decline gifts on an individual basis based on whether the gifts provide educational value or otherwise serve the district’s purposes. All gifts are the property of the district and not individual employees, departments or programs.

The _____ College Foundation (“Foundation”), a recognized auxiliary organization of the district, is the central receiving unit of the district for gifts to the district. Generally, all gifts are to be solicited by and directed to the Foundation.

Gifts made directly to the Foundation, must be accepted and processed in accordance with legal requirements and procedures established by the Foundation board of directors.

The Foundation manages the central district gift database.

Central reporting of gifts made to the district is accomplished through the execution of a Gift Acceptance Form (GAF); which ensures the appropriate recording and acknowledgement of all gifts.

GIFT PROCESSING PROCEDURES

It is the responsibility of the department or program receiving a gift to ensure that the gift is processed in a timely and accurate manner.

1. Cash/Check

Gifts of cash or checks must be deposited immediately through the Foundation on a Cash Deposit Form (sample follows). Cash should never be forwarded through inter-campus mail but should be hand-delivered to the Foundation. A copy of the Cash Deposit Form, that is proof of deposit, should then be attached to a Gift Acceptance Form (GAF) and submitted for gift acceptance as described below.

2. Credit Card Donations

The district can accept credit card donations through the Foundation. Contact the Foundation at _____ or in person to make a credit card donation using Visa or MasterCard.

3. Payroll Deduction

Gifts through district payroll deduction may be made to district and Foundation accounts. If a faculty or staff member wishes to make a gift through payroll deduction, complete the Payroll Deduction Form (sample follows) and forward it to Business Services with the following information:

- Donor Name
- Employee Identification Number
- Monthly deduction amount

Scholarship or Special Program
Donor signature

Business Services provides a payroll report and check to the Foundation on a monthly basis. Annually (in January) the Superintendent/President's office will send general acknowledgements to all donors participating through payroll deduction. Business Services should be notified immediately (by email, form or other written notice) of any changes to existing monthly payroll deductions.

4. Gifts-In-Kind

Gifts-in-kind (such as paintings, books, antiques, sculptures, furniture, and equipment) can provide valuable materials to the district. Departments must be consulted prior to the acceptance of any gift-in-kind for use by the department or its programs to ensure that the gift is wanted and can be used. The Vice President for Administration should be consulted prior to the acceptance of any unusual gifts-in-kind or if there is a question about restrictions attached to a gift offered to the district. Other departments can also be consulted as to the suitability of accepting gifts-in-kind, such as the library to evaluate the acceptance of gifts of books, and the Art Department for the acceptance of gifts of artwork.

The district must consider requirements for special storage, display, insurance, or security measures related to the gift prior to the acceptance of a gift-in-kind. The exact placement of furniture, artworks, or equipment cannot be guaranteed. Transportation costs are generally borne by the donor and appraisal costs related to the acceptance of a gift-in-kind must be borne by the donor.

With the exception of items to be auctioned as part of a fundraising event (§ 7 – Auctions and Raffles), gifts-in-kind are received through the Foundation and become property of the district. In general, the district does not accept items, such as automobiles, for immediate liquidation.

A Deed of Gift (sample follows) may be prepared for the donor's signature to document the item(s) donated and facilitate transfer of the gift.

Neither the district nor the Foundation shall assume responsibility for affixing value to any gift; it is the responsibility of the donor to prove the value.

If a gift-in-kind is offered:

- a) Using the above guidelines, ascertain that the appropriate department wants or needs the gift, or that it can be sold to benefit the district. Be mindful of the IRS rules regarding selling a gifted item within three (3) years. Consult the Vice President for Administration prior to agreeing to accept a gift that is unusual or restricted.
- b) Notify the donor that the district would be pleased to accept the gift, or provide a truthful but tactful reason why the district cannot accept the gift. If the estimated value is \$5,000 or more, remind the donor of the IRS rulings and the need for an outside appraisal, and assure the donor that the district will sign IRS Form 8283 at the time of accepting the gift.
- c) Complete a Gift Acceptance Form (GAF) and route for appropriate signatures with supporting documentation (Deed of Gift or donor's gift letter, appraisal, IRS Form 8283) for gift acceptance as described below.

5. Gifts Requiring Special Handling

Gifts of securities, life insurance, endowments, student scholarships, as well as bequests and other planned gifts, are facilitated through the Foundation.

6. Gifts Involving Real Property

All gifts of real property will be coordinated through the Vice President for Administration.

7. Auctions and Raffles

The district does not participate in auctions or raffles. These activities should be conducted through the Foundation.

GIFT ACCEPTANCE PROCEDURES

1. A Gift Acceptance Form (GAF) is required for every gift acquired by the district. GAFs customarily are prepared by the benefiting department or program. Full information should be recorded on each GAF to identify the donor and benefiting department or program and to document the donor's wishes concerning the gift. The GAF should also note any special instructions, such as anonymity. This not only ensures that receipts and acknowledgements are issued correctly but also that the gift database reflects complete and accurate information for donor relations and stewardship purposes.
2. After completion of the GAF, route for appropriate signatures with supporting documentation (gift instrument, Cash Deposit Form, Deed of Gift or donor's gift letter, appraisal, IRS Form 8283). Signatures should include:
 - a) *Department Dean/Director of the benefiting department or program
 - b) Director for Business Services (for cash/check/credit card gifts)
 - c) Director for Facilities Planning & Management (if item uses chemicals)
 - d) Chief Technology Officer (if computer equipment or software)
 - e) *Vice President of the benefiting department or program
 - f) *Vice President for Administration (final review and acceptance)*=required signatures
3. Following acceptance of the gift, the office of the Vice President for Administration will submit the completed gift packet to the Foundation. The Foundation and the Superintendent/President's Office will, on a monthly basis, prepare a board item to the Board of Trustees for consideration and acceptance of gifts.

GIFT ACKNOWLEDGMENT

Gift acknowledgement is essential, both for legal and donor-relations reasons. The district must comply with IRS regulations regarding the substantiation of charitable donations. All acknowledgement letters are signed by the Superintendent/President and may also be signed by the President of the Board of Trustees as appropriate. The district has an IRS tax-exempt number, and gifts to district qualify as tax-deductible for the reason that the district is a political subdivision of the State of California, qualifying for tax exemption under 26 USC § 170(c)(1).

Additional thank-you letters are encouraged and may be written by department deans, department chairs, etc., as appropriate. The dollar amount of a gift may be mentioned in a thank you letter for cash gifts (cash, check, credit card) but never for other gifts (in-kind, securities, real estate, etc.) due to IRS valuation and deductibility issues.

GIFT REPORTING

After acceptance by the Board of Trustees, the Foundation Office will file the GAF and distribute copies to the following:

- a) Risk Management (for insurance)
- b) Facilities Planning & Management (for fixed asset inventory)
- c) Originating Department

AUTHORITY TO RETURN GIFTS

If, for some reason, the district is unable to comply with the donor's intent, or if the gift has been misdirected to the district, a return of gift may be authorized at the district's discretion. The President has delegated the authority to approve such returns to the Vice President for Administration.

DISPOSAL OF GIFTS

The disposal of a gift-in-kind, accepted by the district must be in compliance with Board Policy and Administrative Procedure XXXX Disposal of district Personal Property.

_____ COLLEGE FOUNDATION
SAMPLE BYLAWS

ARTICLE I. OFFICES

Principal Office

§ 1.01. The principal office of the Corporation for its transaction of business is located at _____
_____, California _____.

Change of Address

Section 1.02. The Board of Directors is hereby granted full power and authority to change the principal office of the Corporation from one location to another in California. Any such change shall be noted by the Secretary in these bylaws, but shall not be considered an amendment of these bylaws.

ARTICLE II. DIRECTORS

Number

Section 2.01. The corporation shall have not less than fifteen (15) nor more than twenty-five (25) directors. This number may be changed from time to time, within the limits specified in this Bylaw, by an amendment to this Bylaw duly adopted by approval of the Board of Directors.

Composition of Directors

Section 2.02. The Directors of the Corporation, (hereinafter "citizen directors"), shall be residents of or maintain a business or be a community/business leader in the _____Community College District. There will be a maximum of nineteen (19) citizen directors. There are seven (7) trustee areas, as established by the _____ College Board of Trustees, and there will be a minimum of one (1) director and a maximum of four (4) directors representing each trustee area:

Area 1: ____ Area 2: ____ Area 3: ____ Area 4: ____ Area 5: ____ Area 6: ____ Area 7: ____

There will be a minimum of two at large positions. In addition, there are the following directors:

The person holding the position of _____ College Superintendent/President shall serve as an ex-officio director of the Corporation as a non-voting member.

Up to two (2) members of the _____ College Board of Trustees, selected by the _____ College Board of Trustees, shall be a director.

Four (4) members, comprised one (1) each from the following: district Management, Faculty, Classified Staff, and Student Representative. Each of these representatives shall be chosen by their respective entity or group to serve a three year term, excluding the Student Representative, who shall be selected annually by the respective entity or group.

Term of Office/Subsequent Election

Section 2.03. Directors will be elected for a three-year term, beginning July 1. Terms of the directors will be staggered, such that the term of no more than a third of the directors will expire every year.

Directors may serve a maximum of two full consecutive terms. After a break of one year, a former director may again be elected.

The replacements for non-returning citizen directors will be nominated by the remaining directors and their appointments will be approved by a majority of the board.

The Superintendent/President of _____ Community College District will serve as a director, ex-officio, non-voting.

Vacancies

Section 2.04. Vacancies in the elected membership of the Board of Directors occurring other than by expiration of term shall be filled in the same manner as at expiration of the term of a director. Such vacancies may be filled at any regular meeting of the board or at any special meeting called for that purpose, and a director elected shall hold office for the unexpired term of the director who he/she succeeds. Other vacancies on the Board of Directors shall be filled in like manner by their respective entities or group.

Director Obligations

Section 2.05. The minimum expectation for Directors is as follows: (a) attend 60 percent of regular board meetings, (b) actively participate on at least one committee, (c) attend or provide financial support for board events, and (d) provide a monetary contribution to support the operation of the Foundation as determined annually by the Board. The Foundation will provide each director with an annual statement detailing attendance, committee participation, and monetary obligation. The student director will be exempt from this financial obligation.

Removal

Section 2.06. A director may be removed at any time by the affirmative vote of a majority of the directors. Removal, at the discretion of the Board, is allowed, but not limited to, the failure of a director to meet the board expectations described in Section 2.05.

Compensation

Section 2.07. Directors may be compensated for actual and necessary expenses in conducting the business of the corporation as authorized by the Board of Directors. Otherwise, the directors shall serve without compensation.

Conflict of Interest

Section 2.08. Notwithstanding any other provision of these Bylaws, no Director nor an Officer of the Corporation (or their spouses or their relatives by blood or marriage) may engage in any transaction or business relationship with the Corporation that results in such person or persons receiving an economic benefit of any kind or nature whatsoever from the Corporation which does not comply with the law of the State of California. Any such person as described above shall be deemed an interested Director or Officer.

An interested Director or Officer, or anyone with an interest as defined above that is nominated for membership on the Board of Directors, shall be disqualified and shall not be eligible to serve on the Board of Directors and their existing position on the Board of Directors shall be declared vacant by the President of the Board.

Indemnification

Section 2.09. Right of Indemnity. To the fullest extent permitted by law, the Foundation shall defend and hold harmless its Directors, Officers, employees, and other persons described in § 5238(a) of the California Corporations Code, including persons formerly occupying any such position against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any proceeding, as that term is used in that Section, and including an action by or in the Right of the Foundation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used by this Bylaw, shall have the same meaning as in § 6238(a) of the California Corporations Code.

Approval of Indemnity. On written request to the Board by any person seeking indemnification under § 5238(b) or § 5238 (c) of the California Corporation code, the Board shall promptly determine under § 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in § 5238(b) or § 5238(c) has been met and, if so, the Board shall authorize indemnification.

Insurance. The Foundation shall purchase and maintain insurance to the full extent permitted by law on behalf of its Officers, Directors, employees, and other agents, against any liability asserted against or incurred by any Officer, Director, employee, or agent in such capacity or arising out of the Officer's, Director's employee's, or agent's status as such.

Regular Meetings

Section 2.10. Regular meetings of the Board of Directors shall be held bi-monthly, at a place, date and time designated by the Chairman. Notice of the time and place of meeting shall be emailed to each director not less than five (5) days before the date of such meeting at his/her last known email address. Such notices may be waived by any director.

All the regular meetings of the board, and meetings of standing board committees shall be open and public, and all persons shall be permitted to attend these meetings; provided, however, that the board may hold closed sessions during any meeting to consider those matters that may lawfully be considered in such sessions under Chapter 9 (commencing with § 54950) of Part 1 of Division 2 of Title 5 of the Government Code, known as the "Ralph M. Brown Act." Ad hoc meetings that do not result in commitments, decisions or recommendations to the Board of Directors are not subject to the "Ralph M. Brown Act."

Special Meetings

Section 2.11. Special meetings may be called at any time by the President, by the Secretary-treasurer, or by a majority of the voting members of the Board of Directors. Notice of the time and place of a special meeting shall be emailed to each director not less than five (5) days before the date of such meeting at his/her last known email address. Such notice may be waived by any director.

Filing Address

Section 2.12. Each director shall file with the Secretary/Treasurer an email address to which all notices may be directed until notice of change of email address has been given in writing.

Quorum

Section 2.13. A majority of the voting members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the board.

Manner of Action

Section 2.14. The act of a majority of the voting directors shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these bylaws. All directors will have one vote.

Committees

Section 2.15. The Board of Directors, by an affirmative vote of a majority of the members constituting the Board of Directors, may establish committees which shall have and may exercise such powers as shall be conferred or authorized by resolution of the board. A majority of any such committee may determine its action and fix the time and place of its meetings unless the Board of Directors shall otherwise provide. The Board of Directors, by such affirmative vote, shall have the power at any time to change the structure, function, and members of any such committee, to fill vacancies, to dispose of any such committee, and to form ad-hoc committees as needed. The current board committees include:

Executive Committee. Sets and coordinates the agenda for the full board meetings. Provides recommendations to the full board and oversight for the operations of the committees.

Finance/Investment/Audit. Reviews Foundation finances to include investments and audit recommendations.

Fundraising. Raises funds to meet the objectives of the Foundation. Includes alumni and donor relations, estate planning and capital campaigns.

Events. Plans and implements Foundation events to include the Spring Gala.

Board Development. Recruits and orients new board members, develops procedures for ensuring that the board operates in accordance with its by-laws.

Scholarships and Grants. Selects students to receive scholarships and programs to receive grants.

Members of Committees

Section 2.16. Committee members need not be members of the board, except that the board may appoint one or more of their number to any committee the board so designates. As a minimum, the chairperson of each committee will be a member of the board.

Quorum of Committee

Section 2.17. Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Transactions of Board

Section 2.18. Except as otherwise provided in the Articles, in these Bylaws, or by law, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board, provided, however, that any meeting at which a quorum was initially

present may continue to transact business notwithstanding the withdrawal of directors if any action taken is approved by at least a majority of the required quorum for such meeting, or such greater number as is required by the law, the Articles, or these Bylaws.

Conduct of Meetings

Section 2.19. In the absence of the President, or the Vice President, any director selected by the directors present may preside at meetings of the Board of Directors. The Secretary/Treasurer of the Corporation or, in the Secretary/Treasurer's absence, any person appointed by the presiding officer shall act as Secretary of the Board.

Adjournment

Section 2.20. A majority of the directors present, whether or not a quorum, may adjourn any meeting to another time and place. Notice of the adjournment must be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

ARTICLE III. OFFICERS

Numbers and Titles

Section 3.01. The Officers of the corporation shall consist of a President, a Vice-President, a Secretary/Treasurer, a member at large and such other officers as may be chosen in accordance with the provisions of this article. The Board of Directors may also in its discretion appoint such other officers, including one or more assistant secretaries, as it shall deem desirable; such officers will have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two (2) or more offices may be held by the same person, except the office of the President. All officers are to be voting members of the Board of Directors.

Term of Office

Section 3.02. The officers of the corporation shall be nominated by the Board Development Committee and elected annually by the board of Directors at a regular meeting of the board. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his/her successor shall have been duly chosen and qualified.

Removal or Resignation

Section 3.03. Any officer elected or appointed by the Board of Directors may be removed with or without cause by majority of the voting members of the Board of Directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. In the event of any elected officer resignation, the Board Development Committee will meet and nominate a new officer for approval at the next board meeting.

President

Section 3.04. The President shall be the chief executive officer of the corporation and shall supervise and control all meetings of the Board of Directors. He/she may sign, with the Secretary/Treasurer or any other officer of the corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the board of directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of Directors or by these bylaws or by statute to some other officer or agent of the corporation; and in general, he/she

shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. The President shall remain on the executive board for the ensuing year. The President or designee shall attend the presentation of the annual report to the Trustees.

Vice President

Section 3.06. In the absence of the President, or in event of his/her inability or refusal to act, the Vice-President shall perform the duties of the President, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties as from time to time may be assigned to him/her by the President or by the Board of Directors.

Secretary/Treasurer

Section 3.07. The Secretary/Treasurer shall keep or cause to be kept with assistance from staff the minutes of all the proceedings of the Board of Directors and its committees. Minutes shall be kept in the principal office of the Foundation. The Secretary/Treasurer shall have, with the assistance of the staff, oversight of all funds of this organization in accordance with written financial policies and procedures and shall cause to be kept the financial records of the funds and assets of the Foundation.

Members At Large

Section 3.08. The Members at Large will be elected by the Board of Directors to serve a one (1) year term on the executive board (Duties of the Member At Large will be determined by the board).

Executive Committee

Section 3.09. The executive committee shall consist of the officers of the corporation, the trustee representative, the superintendent/president, and such other executive committee members as may be chosen by the Board of Directors. All executive committee members will be voting members of the executive committee. The immediate Past President shall remain on the executive committee for one (1) year, and have voting rights.

Honorary and Emeritus Directors

Section 3.10. From time to time at the discretion of the Board of Directors, any person whom the board wishes to recognize for his/her beneficence, ability to help the Foundation meet its fundraising objectives, or service, may be elected an Honorary Director of the corporation. Only individuals that have served on the Board of Directors may be elected an Emeritus Director. Recognition as an Honorary or Emeritus Director may be given upon the unanimous vote of the directors present at any meeting duly called and held. A notice of intent to nominate an Honorary or Emeritus Director must be submitted to all members of the Board of Directors in writing at least ten (10) days preceding the meeting at which one is to be elected. The notice shall describe the criteria used in selecting the person to be nominated as Honorary or Emeritus Director. Such an Honorary or Emeritus Director shall have no vote on the Board of Directors and perform only such duties as he/she shall voluntarily undertake at the request of the Board of Directors. The Board Development Committee will review these appointments annually and if necessary make recommendations to the Board of Directors.

ARTICLE IV. CONTRACTS, CHECKS; DEPOSITS, AND FUNDS

Section 4.01. The board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or

execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

Section 4.02. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by the Foundation Director and, either the Superintendent/President of _____ College, the Vice President of Administration of _____ College, one (1) representative of the _____ College Business Office designated by the Vice President of Administration or one (1) Foundation director as designated by resolution of the Board of Directors. Any draft, or order for the payment of money, note, or other evidence of indebtedness issued in the name of the corporation to the Foundation Director will be signed by the Vice President for Administration rather than the Foundation Director.

Section 4.03. All funds of the corporation shall be deposited by the Foundation Director or designee, from time to time, in the name of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select. Funds shall not be co-mingled with those belonging to _____ Community College District or any successor thereto, or any other organization.

Section 4.04. The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest, legacy, or devise for the general purpose or for any special purpose of the corporation.

ARTICLE V. CAPITAL GAINS AND CAPITAL ASSETS

Section 5.01. The Board of Directors may consider any capital gains of the corporation as income and may distribute this income in any way which is in accordance with the purposed of the corporation as outlined in the Articles of Incorporation.

Section 5.02. Unless restricted by conditions of the donation, the Board of Directors may dispose of any capital asset in accordance with the purpose of the corporation as outlined in the Articles of Incorporation.

ARTICLE VI. CORPORATE RECORDS

Section 6.01. The Corporation shall keep adequate and correct records of account and minutes of the proceedings of its board and committees of the board. The Corporation shall also keep a record of its directors giving their names, email addresses and physical addresses. The minutes shall be kept in written form. Other books and records shall be kept in either written form or in any other form capable of being converted into written form.

ARTICLE VII. ANNUAL AUDIT

Section 7.01. The Board of Directors shall provide for an annual audit of the records and accounts of this corporation by an independent auditor to be employed by the _____ Community College Foundation. Copies of the audit shall be furnished to each member of the Board of Directors and be made available to the _____ College District Board of Trustees and general public.

ARTICLE VIII. FISCAL YEAR

Section 8.01. The fiscal year of the corporation shall begin on the first day of July and end on the last day of June in each year.

ARTICLE IX. SEAL

Section 9.01. The Board of Directors shall provide a corporate seal which shall be in the form of a _____ having on its circumference the words, "_____ College Foundation."

ARTICLE X. AMENDMENTS

Section 10.01. These bylaws may be altered, amended, or repealed and new bylaws may be adopted by a majority of the voting directors at any regular or special meeting of the Board of Directors, if at least ten (10) days written notice is given to all directors of intention to alter, amend, or repeal, or adopt new bylaws at such meeting.

Adopted _____ by the _____ College Foundation Board of Directors

SAMPLE ADMINISTRATIVE PROCEDURE ##### - Alcoholic Beverages

References: Business and Professions Code Sections 25608; 34 Code of Federal Regulations Section 668.46(b)

The possession, sale, consumption or the furnishing of alcohol on campus is governed by California state law and this procedure. The possession, sale, consumption or furnishing of alcohol is controlled by the California Department of Alcohol and Beverage Control. However, the enforcement of alcohol laws on campus is the primary responsibility of the _____ College Police Department. It is unlawful for anyone to possess, consume, sell, give, or deliver any alcoholic beverage in or on any public or private area of campus or to sell, furnish or provide alcohol to a person under the age of 21. Only under certain circumstances is the possession, consumption, sale or use of alcohol permitted on campus. Any organization, group or individual violating alcohol laws or district policies is subject to criminal prosecution, fine and imprisonment, and/or sanctions by the district.

Alcoholic beverages, limited to beer and wine, on district owned or operated properties or at district-sponsored events are permitted if:

1. The alcoholic beverage possessed, consumed, or sold, pursuant to a license obtained under the Business and Professions Code, is wine that is produced by a bonded winery owned or operated as part of an instructional program in viticulture and enology.
2. The alcoholic beverage is acquired, possessed, or used in connection with a course of instruction given at the school and the instructor has been authorized to acquire, possess, or use it by the Board of Trustees or Superintendent/President.
3. The alcoholic beverage is wine that is acquired, possessed, or used during an event sponsored by the district or an organization operated for the benefit of the district where the district maintains both an instructional program in viticulture on no less than five acres of land owned by the district and an instructional program in enology, which includes sales and marketing.
4. The alcoholic beverage is acquired, possessed, or used at a professional minor league baseball game conducted at a district stadium pursuant to a contract between the district and a professional sports organization. *[NOTE: This provision can only apply to a community college located in a county with a population of less than 250,000 inhabitants.]*
5. The alcoholic beverages are acquired, possessed, or used during an event at a district-owned or district-operated stadium or other facility. As used in this paragraph, "event" means a fundraiser held to benefit a nonprofit corporation that has obtained a license pursuant to the Business and Professions Code for the event. "Event" does not include football games or other athletic contests sponsored by any college or public community college.

6. The alcoholic beverage is beer or wine acquired, possessed, used, sold, or consumed only in connection with a course of instruction, sponsored dinner, or meal demonstration given as part of a culinary arts program at a California community college campus and the instructor has been authorized to acquire, possess, use, sell, or consume it by the Board of Trustees or the Superintendent/President.
7. The alcoholic beverages are possessed, consumed, or sold pursuant to a license or permit obtained under the Business and Professions Code, for special events held at the facilities of the district during the special event. As used in this paragraph, "special event" means events that are held with the permission of the Board of Trustees that are festivals, shows, private parties, concerts, theatrical productions, and other events held on the premises of the district and for which the principal attendees are members of the general public or invited guests and not students of the district.
8. The alcoholic beverages are acquired, possessed, or used during an event at a district-owned facility in which any grade from kindergarten to grade 12, inclusive, is schooled, if the event is held at a time when students in any grades from kindergarten to grade 12, inclusive, are not present at the facility. As used in this paragraph, "event" includes fundraisers held to benefit a nonprofit corporation that has obtained a license pursuant to the Business and Professions Code for the event.

Approval Procedures

If it has been determined that the use of alcoholic beverages is appropriate and desirable at an event, the organization or individual sponsoring the event must thoroughly review this procedure and determine the actions that must be taken to insure compliance with applicable local, state and federal law and applicable district policies and procedures.

The organization or individual sponsoring an event where alcohol will be served must first obtain the approval of the district's Superintendent/President and/or Board of Trustees as prescribed in this procedure for the proposed event. The event sponsor must complete a Request for Use of Alcoholic Beverages Form (Exhibit A) to specify:

1. The name and type of the organization sponsoring the event;
2. The name and contact information for the one person who will be responsible for the event (Person In Charge), who must be 21 years of age or older and be in attendance during the entire period of the event;
3. Type of Event;
4. Composition of Group;
5. Location and Hours of the Event (Permission to serve alcoholic beverages at an event during the work week before 4:00 p.m. will ordinarily not be approved);
6. Kind, amount and method of alcohol service;
7. If applicable, that the proper Alcoholic Beverage Control license or permit will be obtained;
8. That all applicable laws and guidelines will be followed; and
9. For off-campus groups, that proof of insurance will be provided.

The event sponsor must submit a completed Request for Use of Alcoholic Beverages Form to the Office of the Superintendent/President AT LEAST FOUR (4) WEEKS PRIOR TO THE EVENT

OR SIX (6) WEEK PRIOR IF BOARD OF TRUSTEES APPROVAL IS REQUIRED. Each of the following district officials must also approve the event and sign the Request for Use of Alcoholic Beverages Form:

1. For academic or administrative units: Departmental Dean or Director and Vice President
2. For auxiliary organizations and off-campus groups: Director for Facilities Planning and Management and Vice President for Administration

The Office of the Superintendent/President shall be the office of record for filing the original, completed, and approved Request for Use of Alcoholic Beverages Form. A copy shall be sent to the Director for Facilities Planning and Management. A copy shall also be sent to the organization or individual sponsoring the event, who must make it available at the event for inspection by any appropriate district official.

The event sponsor must obtain approval of the event and confirmation of facility use in accordance with applicable district procedures for use of facilities (see AP 6700 Civic Center and Use of Facilities).

Alcohol may not be purchased with district funds, and district procurement cards (Cal Card) may not be used to purchase alcohol. Non-district funds held in Foundation accounts may, at the discretion of the Foundation, be used. All purchases of alcoholic beverages, whether for on-campus or off-campus events, must be made through Foundation check-request forms and approved by the appropriate district administrator and Foundation representative.

All district sponsored events held off campus shall comply with Board Policy 3560 Alcoholic Beverages and this procedure.

Contact

Facilities Planning & Management at (###) ###-####.

Exhibit A

Request for Use of Alcoholic Beverages Form including Conditions Which Govern Use of Alcoholic Beverages

Conditions Which Govern Use of Alcoholic Beverages

The use of alcoholic beverages at district properties or events may be permitted if the event sponsor has obtained approval by the appropriate authority pursuant to the district policy on Alcoholic Beverages. All of the following conditions shall govern the use of alcoholic beverages:

1. Any request to use alcoholic beverages at district properties or events must be approved by the Superintendent/President and Board of Trustees. A Request for Use of Alcoholic Beverages Form must be submitted for approval at least FOUR WEEKS PRIOR TO THE DATE OF THE EVENT or if Board of Trustees approval is required, SIX WEEKS PRIOR TO THE DATE OF THE EVENT. The Request for Use of Alcoholic Beverages Form is available at the Facilities Planning & Management Office or on the Web at [www...](#)
2. In the case of college department or organization, this request must be approved prior to the submittal of a Facility & Equipment Use Application reflecting alcoholic beverages will be used.
3. The sale and service of alcoholic beverages on campus or district sponsored facilities is limited to beer and wine.
4. Alcoholic beverages shall only be consumed in the approved enclosed or inside area designated on this Request for Use of Alcoholic Beverages Form. Exterior service area(s) must be clearly defined.
5. Event sponsor shall designate a "Person In Charge" who must be 21 years of age or older and be in attendance during the entire period of the event. Person In Charge shall take adequate measures to ensure compliance with all of the conditions for approval of this request, and shall have a copy of this approved request at the event.
6. Servers of alcohol: must be 21 years of age or older; shall be trained to serve alcohol (Licensee Education on Alcohol and Drugs Program or Responsible Beverage Service Training Program) and must have received orientation on responsible beverage service techniques through the _____ College Foundation; are prohibited from consuming any alcoholic beverages at the event; and shall be familiar with the system being used at the event for verifying that only persons 21 years of age and older are being served alcohol.
7. Access to the event is restricted to members of the sponsoring organization and their invited guests. A majority of the participants attending the event must be 21 years of age or older.
8. The event shall not be open to the public or district community generally and shall not be advertised to the public or district community as an event where alcoholic beverages will be served.
9. Person In Charge shall stop the consumption of alcohol at least 1 hour prior to the scheduled ending time of the event. Unless otherwise approved, actual serving period shall not exceed 3 hours.
10. Suitable non-alcoholic beverages and food must be made readily available at all functions when alcoholic beverages are served. Non-alcoholic beverages should be of comparable quality and shall be featured as prominently as the alcoholic beverages.
11. The Person In Charge, other officers and representatives of the event sponsor, and the party holding the license or serving alcoholic beverages are responsible for compliance with applicable laws, regulations, and district policies.

12. The sale of alcoholic beverages is prohibited except pursuant to a valid license or permit issued by the Department of Alcoholic Beverage Control (ABC). Exchanging any consideration for alcoholic beverage service constitutes a sale. "Consideration" includes money, tickets, tokens, or chits that have been issued in exchange for alcohol or anything else of value. The imposition of a uniform per person admission charge, however, does not constitute a sale, provided the admission ticket or other evidence of payment is not exchangeable for alcoholic beverages. A copy of the license or permit must be maintained by the licensee and available for inspection upon request at the event.
13. No person under 21 years of age and no obviously intoxicated person shall be furnished, served, or given an alcoholic beverage.
14. Wine shall be available only by the glass (not to exceed 4 ounces), and beer shall be available only by the bottle, can or glass (not to exceed 12 ounces). Kegs or common source containers are permitted only with an authorized server. Guests may not serve themselves.
15. Guests will not be allowed to bring alcoholic beverages to any event or to exit an event in the possession of alcoholic beverages.
16. In the event an individual becomes intoxicated, Person In Charge will immediately alert a College Police Officer.

The sponsoring organization and individuals as representatives, agents or officers of the sponsoring organization should be cognizant of vicarious liability and the consequences to the organization or individual should a vicarious liability civil suit be filed against the organization or individual when a person attending their event and consuming alcoholic beverages is involved in an accident resulting in personal injury or death.