

**CALIFORNIA COMMUNITY COLLEGES  
CHANCELLOR'S OFFICE**

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September 2, 2009

**To:** Steve Bruckman  
Executive Vice Chancellor of Operations and General Counsel

**From:** Jonathan Lee *QL*  
Staff Counsel, California Community College Chancellor's Office

**Subject:** Auxiliary Organization Legal Liability  
**Legal Opinion O 09-03**

You requested a legal opinion regarding the potential legal liability, if any, that the Board of Governors ("BOG") has in regard to actions taken by auxiliary organizations such as the Foundation for Community Colleges ("Foundation").

Auxiliary organizations such as the Foundation were created for the purpose of providing supportive services and benefits to the California community colleges and the BOG (Education Code section 72670.5). According to Standing Order ("SO") 252, there are numerous services, programs, and functions that can be undertaken by a systemwide auxiliary such as the Foundation which include:

- Facilities and equipments
- Workshops, conferences, events, institutes and federal projects
- Gifts, bequests, devises, endowments and trusts
- Public relations programs
- Contracts for the employment of students by state agencies pursuant to Government Code section 19133
- Negotiation and managing voluntary cooperative purchase agreements for the benefit of the Chancellor's Office and community college districts

In performing these activities, the Foundation acts as an independent entity. The BOG has virtually no role in the Foundation's day-to-day operations. Since its role is limited, the BOG's liability for the actions of the Foundation is limited as well.

Typically liability is defined as legal responsibility for one's acts or omissions. The BOG's main legal responsibilities therefore lie with the functions it is directly charged with in the Standing Orders. Those functions are:

- Approval and designation of recognized services, programs and functions of the Foundation (SO 251)
- Identification of the number of directors to serve on the board of directors (SO253)
- Selection of the directors (SO 253)
- Removal of any director without cause through a majority vote (SO 253)
- May provide authorization for personnel of the Chancellor's Office to provide services for or on behalf of the Foundation (SO 256)

In any of these functions, the BOG is expected to act reasonably and with an appropriate amount of due diligence. Doing so insulates the BOG from liability. If the BOG fails to reasonably act in performing those functions, then there is potential for exposure to liability. For example, if the BOG completely neglected its duty and failed to appoint a Foundation Board, there might be exposure to liability.

Aside from those explicit functions set forth in the Standing Orders, however, the BOG seemingly would have very limited liability, if any. While there is no direct case law on point, the BOG's role in the Foundation is analogous to that of a shareholder in business associations. In that situation, shareholders only have a limited amount of liability toward the actions performed by a corporation. This is known as shareholder liability.

Much like the BOG's role with the Foundation, shareholders, in a business setting, elect a board of directors to control the operations of a corporation. While the board of directors makes the decisions for the corporation, the shareholders have limited duties and generally are just informed of the corporation's progress. Due to this limited role, common law rulings over time have established that the shareholders of that corporation are limited in their liability. If the board of directors or the corporation is found guilty of performing some illegal act, oftentimes the shareholder's personal assets are protected from seizure. Only in the most egregious situations will the shareholder's protection from liability be pierced.

In conclusion, if the BOG fails to reasonably perform the duties outlined in the Standing Orders, then it can be held liable. However because these duties are very limited, liability is unlikely. Furthermore, it should be noted that if liability is asserted against a BOG member, the State of California has the duty to indemnify and defend against those types of legal actions (Government Code section 995), unless the BOG member acted in some egregious manner outside the scope of his or her duties.

JL/fr/me