

STUDENT UNION, INC. BOARD OF DIRECTORS

**Special Meeting Agenda for
A CSU Auxiliary - A Legal Overview
Fiduciary Responsibility & Operating Agreement Training
Monday, April 5, 2021
4:00 pm**

This is a telecommute meeting by Zoom Video Conference.

This meeting is being facilitated through an online Zoom format, consistent with the Governor's Executive Order N25-20, suspending certain open meeting law restrictions.

Join the Zoom Video Conference Meeting at:

<https://sjsu.zoom.us/j/87172369596?pwd=MURCRzNwOTNJQ2ZleXM2MG9pRG1uZz09>

Meeting ID: 871 7236 9596 / Password: 621109

Or by Telephone Dial (for higher quality, dial a number based on your current location)

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+1 312 626 6799

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- I. CALL TO ORDER**
 - II. ROLL CALL**
 - III. APPROVAL OF AGENDA**
 - IV. OPEN FORUM**
 - V. TRAINING AGENDA**
 - 1. Learning Outcomes
 - A. What is a CSU Auxiliary – Its Legal Status: how is this different from most US Colleges and Universities?
 - B. Your fiduciary responsibilities and authority under federal and state law.
 - C. The Regulatory Authority of the President and CFO.
 - D. Issues with multiple CSU auxiliary boards, at an AOA Annual Conference and an analogous session with many nonprofit legal entities.
 - E. Whose funds are who's?
 - F. Making it work – focused on SJSU today
 - 2. Orientation Goals
 - 3. Challenges for Auxiliaries, University, and CSU – COVID 19
 - 4. Origins of SJSU Student Union
 - 5. Fulfilling Your Fiduciary Responsibilities
 - A. Duty of Care, Loyalty, Obedience
 - B. Responsibility of Board Member
 - 6. Public Policy
 - A. Non-profit Corporation Status
 - B. Auxiliary Organization Status via the Ed Code
 - C. Auxiliary Organizations as Separate Legal Entities
 - 7. Hierarchy of Law
 - A. Education Code Section 89904
 - B. Conflict in Responsibilities with the CCC and EC
 - C. The Balancing Act
 - i. Separate but Related
 - ii. Board Authority vs. Presidential/campus Regulatory Authority

iii. Applicable Case Law

8. Key Auxiliary – Campus Issues
 - A. Fees and Revenues
 - B. Education Code - Section 89304
9. EO 1102 CSU Fee Policy and Delegation
 - A. CSU Legal Accounting and Reporting – Student Union
 - B. EC 89303, 89304, E) -1000 Section IIIA
 - C. CSU Classification within State Fund, CSU Trust Fund
10. What is Custodianship and Responsibility
 - A. President Budget Responsibility
 - B. Title 5 42402, 42403, EC 89904
11. CSU Operating Agreement – EC 89900, Title 5 42400
12. CSU Recharge/Cost Allocation Policy
13. Questions and Answers

ACTION ITEMS

- A. Special Committee - Operating Agreement Create a special committee to work with your ED on multiple key outstanding University/SU issues
- B. Complete work on 2021-2022 budget, both operating budget and funds needed for necessary repairs and maintenance. Immediately advise CFO and President of assumptions on which this work is based.
- C. Identify what are the protocols for Student Union cost recovery
- D. Request meeting with CFO to review the Operating Agreement and agree to completion timeline.

VI. MEETING ADJOURNMENT

The Student Union Board of Directors is a public body, and members of the public have a right to attend and participate in its meetings. This schedule is established as a best approximation of how long each scheduled meeting will take to complete its business. Depending on the length of the discussions, which are not possible to predict with precision in advance, the scheduled meeting times indicated may vary widely. The public is advised to take this uncertainty into account in planning to attend any meeting listed on this schedule.

Mark Bookman, President
Education and Non-Profit Consulting, Inc.

- I. My interest in higher education administration began while I earned my BA in History at UCLA. Serving as a resident hall president and then as the undergraduate student body vice president, and then while in law at UCLA serving as the graduate student body president, I began to understand the complexities of governing a higher education community.
 - a. Chaired of the ASUCLA Board of Control. ASUCLA is an unincorporated body that runs the Ackerman Student Union, has authority over most of Kirchhoff Hall, a North Campus Union, all cash operations food services, the college store and an array of other services. While not covered by a statute like the Education Code sections applicable to your organization and all other CSU auxiliaries, it operates in a way very similar to CSU auxiliaries.
- II. After taking the California bar exam, which I happily passed on my initial try, UCSD engaged me to be the director of their small university center. In this position I was confronted with what to do when a student-initiated fee (the University Center fee) was being used to support services/programs that were not part of the UC.
- III. My interaction with CSU auxiliaries began 3 years post law school (1976) when I was appointed the General Manager of the A.S. at CSU-Chico.
 - a. During my 8 plus years in this position, I did extensive work with AOA and the Chancellor's Office.
 - b. The latter included representing auxiliaries on a task force assigned with updating and revising those sections of Title 5 applicable to auxiliaries.
- IV. In my tenure at Chico, I interacted with 3 University Presidents. Significant effort went into developing positive relationships with Chico's downtown business district and with all elements of the University. The last University President while I was the AS-General Manager functionally wanted the bookstore, food service and student union to report to him and not the Board of Directors as specified in its articles of incorporation and CSU policies. As we work through the PowerPoint, we will discuss how this was resolved.
 - a. While at Chico, I was recruited by the University of Houston to be its assistant vice president – student affairs. In this position I was responsible for a 500,000+ square foot student union, a small satellite union, all campus food services (outsourced – I negotiated a new contract), the campus bookstore, student activities, student government, the student newspaper and other programs. There was an advisory committee on the student union, whose recommendations I could choose to ignore. Unlike your organization, all of the functions reporting to me were University departments.
- V. University of Houston I began my legal and management consulting practice. With an appointment as a visiting scholar at the Institute for High Education, I wrote a monograph on out-sourcing university auxiliary services. This effort was also supported by several national higher education associations and sold widely across the U.S. My next project was to research and author Protecting Your Organization's Tax-Exempt Status published by Jossey-Bass.
- VI. Appointed Professor of Business and Law at what is now the American Jewish University, 1990. There I taught an array of undergraduate courses (business law, accounting, the first-year seminar, special topics course like The Environment and the Economy, and constitutional law. In the MBA Program, with its focus solely on the nonprofit sector, I taught human resource management and The Law and Taxation of Nonprofits. In this position I earned tenure.
- VII. Vice President-Administration, 1996.
 - a. I was promoted to Senior Vice-President and Chief Operating Office. I was also recognized as the University's in-house legal counsel.

- b. I served as the Senior Vice President until 2011, when I exercised my retreat rights and returned to my position as a full professor.
- c. In the Senior Vice-President role, I also served for multiple years as the Provost, successfully gaining the University a 10-year reaccreditation.
- d. Served as a member of the Senior Commission of WASC for 6 years, serving on the executive committee for 4 years.

VIII. Consultant

- a. First Consultation - Franciscan Shops at SFSU.
- b. Over the years I have done a range of assignments with more than a dozen CSU auxiliaries and made multiple presentations for AOA.
- c. Currently, legal counsel to the ASI at CPSU-Pomona and to the AS at HSU.
- d. Other current clients are general nonprofit organizations having me addressing an array of tasks from a recently completed merger, being an expert witness on nonprofit law and assisting a few entities to update their operating documents.
- e. Student Union at San Jose State University, 2013