So why are you here?

Institutionally-related foundations often provide an important impetus to the financial development of an institution by raising and using private funds for the support of the institution’s purposes.
College and University foundations present both unique opportunities and difficult challenges for business officers.

The business operating environment of these related organizations can and must be different in important ways from the day-to-day operations of institutions of higher education.
Problems for the business officer:

- Responsible for institution’s assets
- Foundation assets in separate organization
  - May not have any authority
- Assets held by foundation often perceived to be institution’s assets

University of California Policy describes Support Groups as “groups… whose representatives or activities make the entity indistinguishable from the University itself”
Why you should understand foundations:

Faculty, public, board may look to business officer to explain actions of related foundation

President will most likely rely on business officer for advice and assistance

Massive transfers of wealth expected to occur within the next two decades
How prevalent are foundations?

Since 1890, as many as 2,000 foundations have been created to support institutions of higher education, both public and private.

Council for Advancement and Support of Education
Many campuses have a number of foundations, each serving a specific purpose.

For Example...
Multiple Foundations

LSU A & M (Baton Rouge)

- Louisiana State University System Foundation
- LSU Property Foundation
- Pennington Biomedical Research Foundation
- Pennington Medical Foundation
- Tiger Athletic Foundation
- LSU Alumni Association
- LSU Law Alumni Association
UNIVERSITY OF NEW ORLEANS

- University of New Orleans Foundation
- University of New Orleans Research and Technology Foundation
- Privateer Athletics Foundation
- UNO International Alumni Association
- New Beginnings Schools Foundation
- Orleans Student Housing Foundation
So what is a Foundation?

A nonprofit organization, with funds and programs managed by its own trustees or directors, established to maintain or aid social, educational, charitable, religious, or other activities serving the common welfare. The majority of modern foundations in the U.S. are incorporated under a state or federal charter; others are created under trust agreements.

Funk and Wagnall’s
A closer look at the definition

- Foundations are nonprofit corporations
- Separately incorporated from the college or university
- With a separate board of directors
- Separate tax and legal identity
- Incorporated in the state of activity
Why so many foundations in the U.S.?

- United States has the most highly developed sector of nonprofit organizations in the world
- Basic distrust of government
- Americans tend not to rely on the government
- We often use non-governmental means to attack our problems
- Americans tend to join associations
Federal Support of Non-profits:

- Congress and State Legislatures authorized non-profit corporations
  - recognizing benefit of these organizations to society
- Congress freed non-profit corporations from the burden of income taxes
- Relieves the government of a burden by performing a public service
- Recognition reflected in Internal Revenue Code
How did foundations come into existence?

- Desire to provide or preserve important assets or institutions
- Plato bequeathed land to disciples to maintain the academy
- Egyptian King Ptolemy endowed the famed library and museum at Alexandria
How did foundations come into existence?

During the Middle Ages, religious orders endowed religious and social welfare projects

British mineralogist James Smithson’s bequest founded the Smithsonian Institution in 1846

In 1901, Swedish Inventor Alfred Nobel desired to honor international achievements
According to the Drucker Foundation,

“Nonprofit institutions are essential to the quality of life in America and central to citizenship; indeed they carry the values of American society and the American tradition”

“Every other American adult, 90 million people all told, works at least three hours per week as ‘unpaid staff’, that is, as a volunteer with a nonprofit organization”
American Giving

• 2017 America’s most generous year ever
• Giving is so large that is included in GDP Calculation – approx. 2%
• Total giving - $410 Billion
• Giving to Higher Education - $43.6 Billion
• Giving by individuals – 70% of all giving
• Small gifts have an enormous impact

Giving USA

More people give than vote!
In 1891, the 1st Governor of Kansas wanted to make land available to the University of Kansas for half of its assessed value to be used for a football stadium.

UK had a cash gift it had received earlier, but...

- State law required gifts to be deposited in the state general fund.
- Law would only allow the *interest income* earned on the gift to be used by the university.
Kansas University Endowment Association

Created by the Governor, Chancellor and 10 other friends for administering money and other gifts for the use and benefit of the University of Kansas
“Not to the State”...

Elizabeth Miller Watkins, in 1939, wanted her gift of 25,000 acres of farmland to go to the University of Kansas – “not to the state and so increase its efficiency”.

Consequently, she made her gift to the Kansas University Endowment Association, hoping her gift would encourage others to also make gifts to the university.
“Greater University than the State Alone Can Build”

“The fundamental prototype for more than 1,000 college and university foundations in the U.S.”

Joseph Phelan
AGB

KU Endowment Annual Report 2017
So what’s wrong with gifts to the government?

- Acquisitions/gifts become public property
- Fiscal year
- Gifts commingled
- Budget Cuts
- Investment restrictions
- Earn less
Why do public institutions need foundations?

- Access to things otherwise couldn’t have or get
- Access to people
  - Not politically appointed or elected
  - Emotionally attached (and wealthy!)
- Safeguard gifts and provide vehicle to comply with donors’ intentions
- Many Americans do not want to give anything to a state or federal government

For example...
Why do private institutions want foundations?

Opportunity for community involvement beyond institution’s governing board

Independent oversight of gifts

Foundation boards may provide expertise not on institutional board

Hold money, assets, or property for strategic reasons
A separate corporation affords three distinct advantages:

- Focus
- Flexibility
- Modest liability insulation
A single-minded focus undistracted by the usual factors that plague academic bureaucracies.
Flexibility

Routine decision making is simple and, in cases of complex issues, decisions can be made by an easily collected board of directors, not the cumbersome system of university boards of trustees (or complex network of University committees).
Modest liability insulation

Liability is always a threat. By engaging a separate corporation to carry out activities, the University creates a credible argument that it is far removed from the activities of the corporation. None of this will prevent the University from being named in a suit, but it is at least one step removed.
Kinds of activities supported by foundations:

- The entire college or university
- Specific segments, programs or activities
- Athletics
- Libraries
- Museums
- Individual colleges within a university
- Research activities
- Property Management Activities
- “Friends of”
- Special Purposes
- Medical Practice
How are Foundations created?

**Needs**
- Institution cannot meet on its own
- Best met through separate organization

**People**
- Friends to give time, expertise and/or money
- Founding board members

**Define specific purpose**
- Goals and objectives
- Name
- Begin the incorporation process
Articles of Incorporation

Corporate Name

Organization’s Purpose

- What foundation is all about
- Who it serves

Authorized Range of Activities

Members of Board of Directors/Trustees

Principal Office Location

Incorporator

Disposition of Assets
Key Provisions of Bylaws

• How does corporation perpetuate itself?

• Election of Board Members
  • How often?
  • Who nominates?
  • Election of Officers
    • State laws vary

• Committee Appointments

• Meeting
  • Keep minutes
  • Quorum
  • Format - in person, teleconference, fax, e-mail?
Application for Recognition of Exemption
(Form 1023)

- No private inurement
- Profits may not be distributed
  - Cannot issue shares of stock
  - Cannot pay dividends
  - Can make payments for fair value of services rendered
- Will not attempt to influence legislation as a substantial part of its activities
- No participation in political campaign for or against candidates for public office
Adoption of Basic Philosophical Approach to the Foundation by the Institution
Philosophical Position Will Depend Upon

- Institutional policy
- Board/state regulations
- Completely independent?
- Partially independent?
  - Decision tied to capitalization of foundation?
  - If little or no capital, may need to use institutional resources
  - Plan to eventually be independent
Philosophical Position Will Depend Upon

• Seemingly conflicting objectives:

• U of Minnesota Board of Regents:
  • Board recognizes that it should not have direct control over foundations
  • Foundations serve University but are governed separately

• However:
  • Must protect name and integrity of institution and its programs
  • Maintain standards
Variations in Organizational Structure/Policy

Affiliation Agreement

Use of name
Use of resources
Disclosure/reporting/auditing

Examples...

- University of Virginia
- University of Minnesota
- Louisiana State University System
**University of Virginia**

- Board of Visitors must approve foundation, its organization and scope of activities
- Foundations must submit any new business venture to board for approval
- Foundation can use UVA services, etc., accounting, facilities, investment services
- Audit committee reports to Foundation’s governing board
- Can’t teach courses without approval
- Compensation comparable to university
University of Minnesota Board of Regents

- Foundations must be recognized
- Proposed new ones must show that services can’t be performed by existing foundations
- May use seal, space, equipment and staff
- Payments to U of M employees approved by appropriate U of M official
- Board members or staff cannot accept personal gifts
- Foundation must expend funds through university designated program accounts
Variations in Institutional and State Policies

Louisiana State University System

- Foundation needs recognition by LSU Board
- Reimburse LSU directly or in kind for personnel, space and services
- Manage matching public funds with investment agreement
- Payment to university employees must be approved by LSU Board
- Must have annual audits, copy to System President, State Board of Regents & Legislative Auditor
- Annual compliance audit to System President
The Involvement of Foundation Board Members Provide an Important Source of Support
“...the very best among your alumni and friends; women and men with wealth, influence, leverage, marketing skills and entrepreneurial backgrounds.”

Marcia Muller, President
Wright State University Foundation
Political Support

- Foundation board members often wield substantial political influence
  - Have ear of elected officials
  - Often have access to other powerful opinion makers
Financial Support

• Board members or their companies make contributions

• A certain level of giving is usually expected in return for the prestige of sitting on the board of the foundation

• In-kind donation of services
Community Support

• Fundraising and “Friend-Making”

• Can help create support for the institution in the community

• Provide entrée to other community leaders and groups

• Provide leadership for fund raising campaigns
The Development Process

Knowledge...
leads to relationships...

Relationships...
lead to gifts!
Gifts!

The major source of Foundation resources
## Gifts To Higher Education

- Giving since 1967:

<table>
<thead>
<tr>
<th>Amount</th>
<th># Gifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 50 million</td>
<td>125</td>
</tr>
<tr>
<td>$ 50.1 to $99 Million</td>
<td>117</td>
</tr>
<tr>
<td>$ 100 million</td>
<td>94</td>
</tr>
<tr>
<td>$ 101 million or more</td>
<td>116</td>
</tr>
</tbody>
</table>

*Chronicle of Higher Education*
Gifts - Current Trends

• Colleges and universities raised $43.6 Billion in 2017 Fiscal Year

• Increase of 6% from previous year

• Top 20 U.S. fundraising institutions raised 28% of all the 3700 institutions in the survey

• Less than 1% of Universities raised almost 30% of total

Council for Aid to Education (CAE)
# 2017 Voluntary Support to Higher Education “Top Ten”

## (in millions)

<table>
<thead>
<tr>
<th>Institution</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvard</td>
<td>$1.28 billion</td>
</tr>
<tr>
<td>Stanford</td>
<td>$1.13 billion</td>
</tr>
<tr>
<td>Cornell</td>
<td>$753 million</td>
</tr>
<tr>
<td>MIT</td>
<td>$673</td>
</tr>
<tr>
<td>Univ. of So. California</td>
<td>$668</td>
</tr>
<tr>
<td>Johns Hopkins</td>
<td>$637</td>
</tr>
<tr>
<td>Penn</td>
<td>$626</td>
</tr>
<tr>
<td>Columbia</td>
<td>$603</td>
</tr>
<tr>
<td>Yale</td>
<td>$595</td>
</tr>
<tr>
<td>Duke</td>
<td>$581</td>
</tr>
</tbody>
</table>
Not all “Mega” Gifts are to Private Institutions

• 8 of top 20 are public institutions
• Ohio State and Indiana - $400 million
• Dakota State - $30 million
• 204 gifts of $10 million or more in 2017 to both public and private institutions

 Chronicle of Philanthropy and Inside Philanthropy
Higher Education Giving

Giving by Source to Higher ED
(in billions)

- Foundations $13.1 30%
- Alumni $11.4 26%
- Non Alumni Indiv $7.9 18%
- Corporations $6.6 15%
- Other $4.6 11%

Chronicle of Philanthropy and Council for Aid to Education and Insider Higher Ed
“Mega” Gifts to Higher ED

- 204 gifts of $10 million or more
- 23 gifts of $50 million or more
- Total of Mega gifts = $6.2 billion (highest ever!)
- Higher education received 74% of all gifts of $10 million or more

Chronicle of Philanthropy Apr 2017
Marts and Lundy Feb 2018
Purpose of the Giving

- Current Operations (61%)
- Capital Projects (39%)
- Student Financial Assistance (17%)
- Charitable contributions account for 10% of college and university expenditures
What can gifts be?

• Whole things
• Parts of things
• Now
• Later
• Part now and part later
• Parts of things left over later
• Conditioned on events
• Things you want
• Things that you don’t want, but can’t say no to
Examples of Gifts

- Cash
- Securities – stock, bonds
- Property - land, buildings, equipment
  - Minerals, timber, water rights
- Royalties or assignment of payments
- Services in kind
- Inheritance/estate rights
Giving Mechanics

- Delivered/consummated gift
- Pledge – promise to give
  - Conditions
  - Installments
  - Collection
- Deferred Gifts
- Bequests
When is a gift not a gift??

Does the president know how to tell the difference??

Presidents love to collect things
When is a gift not a gift??

- Building with mortgage
- Environmental problems
  - e.g., asbestos significant enough to affect value
- Manufacturing plant with an ample stream of waste
- Carrying cost offsets the value received
- How to ever get rid of it?
Gift Acceptance Policies

- Types of gifts that will be accepted
- Gifts that will not be accepted
- Required due diligence
  - Environmental assessments
  - Encumbrances
  - Carrying costs
Gift Acceptance Policy Example

- Iowa State University Foundation
  - Procedures for analyzing and accepting gifts
  - Accept only when the donor’s interest is served
  - Gift can “be reasonably expected” to benefit the university
  - Gifts of marginal risk may be accepted by staff
  - Gifts of moderate risk approved by foundation officers
  - Gifts of material risk approved by joint University-Foundation Gift Acceptance Committee
Gift Instruments/Agreements

• Describe the gift
• Specify term of pledges/payments
• Conditions to be met, e.g., naming
• Disposition of gift if original purpose cannot be met
• Disposition of gift if donee ceases to exist
• Ability to amend instrument
Primary Sources of Foundation Funding

1. Management fees on endowments
2. Employees on institution payroll
3. Direct support from institution
4. Management fees on other invested accounts
5. Income on cash balances
6. Unrestricted gifts

*Institutions provide 44% of fundraising costs on average*
Love That Leverage!

What can you do with a foundation that you could not do without one?
Flexibility in Funds Management
Institution

Transaction

Foundation
Flexibility in Funds Management

- Additional avenue and new possible tactics for management of institution’s resources
- University business office and foundation work to strategically manage expenditures
- Move funds or transactions along the public-private continuum
- Significant legal and strategic implications
Flexibility in Funds Management

- Revenues can be received on either side of the wall
- Expenditures can be made on either side of the wall
- Understanding the matrix of possibilities is the key to increased flexibility
Public Institution

- Acquisitions/Purchasing
  - Expedited process
  - Specify vendors/locations
  - Installments payments
  - Quality/”Luxury”
  - Used/Trade-ins
  - Travel

- Contracts
  - Regulatory issues
  - Confidentiality
  - Avoid politics

- Property transactions
  - Intent to sell
  - Use restrictions
  - Quiet acquisition

- Risky/Unpopular Ventures

- Recruitings
  - Moving expenses/housing
  - Loans
  - Salary supplements
  - Club memberships
  - Expense account

- Employee Recognition
  - Awards
  - Bonuses

- Official Functions
  - Entertainment
  - Receptions
  - Retreats

- Business Gifts/Tickets

Endless possibilities...
Institution & Foundation

Joint Ventures
Privatized Student Housing Projects

- Several variations of project structure
- Many involve housing foundation as owner of the facilities
- Is Foundation liable for project structured as “in rem” debt?
- Property tax exemption
- At end of ground lease, title to facilities passes to institution
LSU Football Stadium Expansion

- LSU leased land (and air rights) to Tiger Athletics Foundation (TAF)
- TAF borrowed against projected ticket revenues and pledges ($50 million)
- Enhanced by bank letter of credit
- Addition to Tiger Stadium included luxury boxes and 10,000 new seats
- Foundation leases a portion of the addition back to LSU
Nickname: "Death Valley" since 1950s
Built: 1924 (east/west; 12,000)
Playing Surface: Natural grass -- Bermuda
Expanded:
1931 (east/west vertical; 22,000)
1936 (north; 46,000)
1953 (south; 67,720)
1978 (west upper/club; 78,000)
1988 (bleacher seating; 80,150)
1994 (visitor locker room; 80,000)
2002 (east upper; 91,600)
Cultural & Arts Centers
“Arts Block”

- $46 million project
- Downtown Baton Rouge, Louisiana
- Components
  - LSU Museum of Art
  - Performing Arts Theater
  - Public plazas & fountains
  - Outdoor performance venues
  - Retail, office, & residential
- 125,000 sq. ft. facilities
  - 43,000 sq. ft. for LSU Museum, classrooms, galleries & studios for College of Art & Design
Arts Block Contributors

- **State**
  - $19 million
  - Land, Central Utilities Plant & Construction

- **LSU Foundation**
  - $12.6 Million - LSU Museum of Art

- **Baton Rouge Area Foundation**
  - $9.3 Million - Performing Arts Theater

- **City**
  - Landscaping

- **Arts Block Development, LLC**
Academic Facilities
TAF Academic Center

• Old “uninhabitable” building

• LSU needed study center, computer lab & recreation center for student-athletes

• TAF raised $10 million in pledges for the 54,000 sq. ft. center

• TAF leased the facility and constructed renovations

• Completed renovations donated to LSU for use by students
Economic Development Opportunities
Enabling Legislation

- **“Fraternity & Sorority” Statute**
  - Lease land in return for improvements

- **Cooperative Endeavor Statute**
  - Public $ into private things for return of tax revenue and economic development

- **Research Park Statute**
  - Land declared “Research Park” then leased to any person
Fraternity & Sorority Statute

- Designed for lease of land as site for fraternity & sorority houses
- Used for lease of land and/or facilities
- Requires construction of improvements
- Title to improvements transfers to institution at end of lease term
- Student housing
- Bookstore
- Food service facilities
Cooperative Endeavor Statute

- Designed for economic development
- State can put public money into “private” things if return to the state is greater than investment
- Used for industrial development, public/private ventures, etc.
- Provides for “perfection” of agreement, i.e., public court proceeding in which validity of cooperative endeavor can be challenged
Research Park Statute

• Provides confidentiality and ability to negotiate privately with tenants

• Land leased to foundation

• Foundation serves as developer to identify tenants and negotiate lease terms

• University approves tenants

• Foundation manages park and dedicates excess revenue to institution’s programs
UNO/Avondale Shipyard Project

• New Orleans shipyard needed help from State to compete for large federal contract

• To keep 6,000 jobs, State would contribute money but not directly to shipyard

• Avondale and partners had to submit a proposal to the Navy with guaranteed start date
UNO/Avondale Shipyard Project

- Needed $40 million for hardware, software, furniture and a building to house the ship design operation
- Software and hardware proprietary
- Only 11 months to build
- Obstacles: State procurement, contractual and capital outlay regulations
Solution – get out of the state acquisition and capital outlay system

- Annual appropriation from State Legislature to State Department of Economic Development (DED)
- Cooperative endeavor agreement between DED, UNO Research and Technology Foundation, Avondale & UNO
- State provided $$; Foundation agreed to issue debt & provide building, software and equipment to shipyard & University
UNO/Avondale Shipyard Project

- Foundation provides economic development activity through those actions

- Economic impact study projected tax revenues back to State well in excess of its $40 million investment (NPV)

- Foundation borrowed $40 million based on promised appropriation plus guarantee by shipyard
UNO/Avondale Shipyard Project

- Shipyard bought adjacent land
- Donated land to University
- University & local government declared land as “Research Park”
- University leased land to R&T Foundation
- Avondale acted as agent for design/build of facilities and other procurements
- Foundation financed project; holds title to facilities, software & equipment
- Facilities, software & equipment leased from Foundation to Avondale
UNO/Avondale Shipyard Project

- Shipyard pays operating expenses of building during lease period
- University received cost-free engineering laboratory in shipyard design building
- University has access to state-of-the-art software to teach students & other shipbuilders
- State retained jobs; receives tax revenues
- Foundation was capitalized & gained creditworthiness; later sold equipment at end of useful life
- University owns building at end of ground lease
UNO/Northrup Grumman/Avondale Shipyard

UNO/Avondale Maritime Technology Center of Excellence
UNO Research and Technology Park
Real Estate Development

- UNO designates adjacent 30 acre tract as Research & Technology Park
- Needed private negotiations with tenants
- University leases ground to Foundation
- Foundation serves as developer, leasing agent & operator of Park
- Annual $10,000 ground lease payment offset by expenses that Foundation pays for operation & maintenance of Park
UNO Research and Technology Park

- Foundation exempt from public bid laws
  - Allowed for relocation of Navy Information Technology Center within 11 months (200,000 sq. ft.)
- Foundation issues debt
- Foundation owns facilities during ground lease
- At end of land lease, buildings transfer to UNO
- Foundation manages Research Park
- Rents used to finance Park operations; excess funds used to support UNO research, technology transfer & other activities
• Oil company wanted to donate a building

• No immediate use, but a good opportunity

• If building donated to LSUS, would become state property

• LSUS could not sell and keep proceeds
Solution??

*Foundation*

- Incorporate a separate supporting organization to accept the gift
- LSUS gained an endowment and valuable experience
Bossier Parish Community College

- State created new institution with short fuse to open
- Created separate 501(c)3 entity (Foundation)
- Entire campus site leased to related Foundation
- Foundation selected developers for design/build of entire campus
- Some buildings completed; others constructed as shell only
9 Main Buildings
334,000 Square Feet
Classroom & Lab Space
Library, Bookstore, Gym
Student Activity Center
Theatre/Auditorium

BOSSIER PARISH COMMUNITY COLLEGE
NASA Michoud Assembly Plant

- NASA’s only manufacturing plant in the United States
- Made fuel tanks for Apollo and Space Shuttle
- Shifted to Aries Rockets
- Joint Venture National Center for Advanced Manufacturing – (NCAM)
  - NASA
  - La. Dept. of Economic Development
  - UNO Research and Technology Foundation
  - University of New Orleans
NASA Michoud Assembly Plant

- State purchased scientific/manufacturing equipment for University (NASA)

- UNO Engineering staff operated equipment and trains other users and students

- UNO R&T Foundation managed leasing of equipment to NASA space program contractors and other commercial users

- Usage fees cover maintenance and replacement reserves

- Any surplus from leasing dedicated to UNO Engineering
NASA Michoud Assembly Plant

• NCAM certified to manufacture parts for space program

• On site training in manufacturing environment for UNO engineering students

• An important resource for NASA to develop the capabilities of the space program

• Develops the capabilities of the manufacturing corridor in Southeast Louisiana

• Foundation recovers its overhead for managing the program
### Foundation Activities

#### Commonplace Uses
- Advancement/Fundraising
- Manage endowment
- Maintain confidentiality
- Act expeditiously
- Handle non-core activities
- Test project feasibility
- Provide access to capital

#### Creative Uses
- Insulate from liability
- Take equity positions in for-profit firms
- Own subsidiary for-profit company
- Manage commercialization of patents, copyrights
- Partner in Joint Ventures
Important philosophical question for the business officer
Are the things above...

• “Good” or “bad”?

• “Appropriate” uses of funds or “inappropriate” uses?

• How many of those things could you do with institutional funds?

• Are these expenditures just “different” from the usual institution-authorized expenses?

WHAT DO YOU THINK?
Should Foundations be used for such purposes?
Many Different Perspectives...

- State rules and regulations
- Institution rules & regulations
- State auditors
- Internal auditors
- Business Officer
- Purchasing Officer
- President/Chancellor
- Athletic Director
- Deans
- Development Officer
- Newspaper reporter
- Faculty
- Staff
- Students
- Board members
- Donors
- Politicians
- IRS
According to what standard??

- **Business standard**
  - “ordinary and necessary”
    - What expenses are ordinary and necessary in operating or developing the institution’s business?

- **Compliant with grant or contract regulations?**

- **Prudent person rule**
  - What would a prudent person do in these circumstances?
According to what standard??

- Institutional purpose
  - Would the expenditure be permitted under state or institutional rules?
    - Why or why not?

- Fiduciary responsibility
  - Same standards of care and prudence as he or she would use in attending to own affairs

- Allowable per IRS?
  - e.g., personal clothing without an institution’s logo

- Public perception?
  - What it look like in the newspaper?
Business Office Perceptions of Foundation

- Can do things we cannot do
- Don’t have to follow rules; no wonder quicker!
- Makes us look bad
- Say they can do it better
- Pay higher interest rates
- Attitude – don’t want to follow rules
- “Spend frivolously”
- We could do the same thing, or better, if we didn’t have to follow the institution’s rules
Other University perceptions

- “Slush fund”
- Policies & procedures??!!
  - Indignant when have to justify expense!
- Frequency of reporting/availability of departmental account data
- Foundation never does anything for me
- Competing needs
  - Every department wants something, but
  - finite number of donors; bottom to pot of money
- Unrealistic expectations
- Foundation should...
  - Meet all my needs, as much as I want, when I want!!
Business Officer must adopt philosophical position

Regarding...

- foundation operations
- expenditures relationship to the institution and
- the role of the business office in supporting the activities of the foundation
A Train Wreck!
Critical elements for successful relationship

• Open communication
  • Talk to each other – not about each other
  • Institution officers serve as ex-officio members/attend board meetings
  • Periodic reporting by foundation to institution staff and faculty
  • Foundation representative serve on President’s cabinet, strategic planning committee, master planning committee, etc.

• Recognize that all have institution’s best interest at heart
  • Respect the differences and look for opportunities to benefit the institution
  • Remember that none of us are bigger than the institution (or should be)
Cracks in the Foundation
Can They Be Avoided?
Can They Be Repaired?

Can you keep the curtains closed?
Access to Foundation Records

- **Institutional or State Auditors**
  - Authority for access to foundation records
    - Statute
    - Contractual terms in agreement with institution
    - Any state or institutional funds?
      - Full Access
      - Partial Access
    - Investment management agreement
  - CPA Firm with reports to appropriate authority

- **Public view**
Which records are public and which are not?
• Application for Recognition of Tax Exempt Status *(IRS Form 1023)*

• Annual Return of Organization Exempt from Income Tax *(Form 990)*

• Must provide without charge, all or part of application or return to any individual requesting a copy in person or in writing
Which foundation records are *not* public?

- Depends on state laws and terms of agreements
- Generally, most are considered private
- Court challenges continue...
1989 – West Virginia

- Community Association requested info about Foundation coal leases
- Foundation denied the request – claimed not a public body
- Association argued that Foundation was created or primarily funded by state authority
- Foundation proved otherwise – court declared not a public body
Challenges to Privacy of Foundation Records

1991 - South Carolina

Newspaper and the AP sued Foundation to gain access to financial records

Claimed University “had diverted public funds to the foundation”

Court found Foundation
- supported with public funds
- therefore a public entity
- therefore subject to state’s Freedom of Information Act (FOIA)
Challenges to Privacy of Foundation Records

1991 – South Carolina

- Records released due to media and legislative pressure
- University president’s discretionary funds reported as “lavish expense account purchases”
- Resignations of foundation’s executive director, the university’s chief financial officer, and 9 foundation board members
- SC Supreme Court - FOIA would not apply if Foundation received public funds in exchange for identifiable goods and services
Challenges to Privacy of Foundation Records

**1992 - Ohio**

- Newspaper requested access to all Foundation records
- “to shine flashlights in dark corners” on the “secretive organization that controls almost $40 million in university endowments and investments”
- Foundation countered - not a “public office”
- Court held it was public:
  
  performed indispensable public function (the receipt, holding, investment and administration of property and spending of funds for benefit of the university)
1992 - Ohio

• Court did not directly deal with issue of privacy of donor’s names

Result:

Newspaper published names of donors, friends, incomes, addresses, and other details of personal financial histories

• Now, according to Foundation website:

“All Foundation records, as well as board meetings, are open to the public.”
Challenges to Privacy of Foundation Records

1992 - Kentucky

• Newspaper sued Foundation

• Court held was a public entity

Why?

• Foundation in campus space

• Board same as the University’s

• Articles of Incorporation alone insufficient to prove otherwise
Challenges to Privacy of Foundation Records

2004 - Kansas

- Newspaper, press association & AP sued for access to coach’s contract
- In 1993, AG advised that employment and contingency contracts not public
- Court ruled otherwise - salary was paid with public funds, so contract was public
- Legislation introduced in 2005 to make all public employee contracts public
Challenges to Privacy of Foundation Records

2005 - Kentucky

• In 2001, newspaper sought identities of donors to foundation

• Court ruled in 2002 that ties to public university made it public institution

• Appeals court overruled in 2005 - stating that “the privacy interests of the donors outweigh the public interest”
Challenges to Privacy of Foundation Records

**2005 - Iowa**

- University employee & a businessman denied request for minutes, list of major donors and list of Foundation expenses

- Court determined Foundation a non-governmental body - records not open

- Appeals court reversed decision ruling Foundation performing a governmental function through contract with public university
Challenges to Privacy of Foundation Records

2006 - Iowa

• June 2005, District court ordered Foundation to make all its public records available for inspection and copying

• If donors request confidentiality, Foundation to withhold names

• Citing concerns of waning donations, legislature responded in Feb 2006 with bill to keep “personal, financial, estate planning or gift planning matters” confidential
2009 - Pennsylvania

- *Pocono Record* wanted E. Stroudsburg Univ. Foundation to release contribution records of 6 donors related to new bldg.

- Allegations of misconduct by former ESUF executive director

- Foundation argued legally separate

- Appeals court ruled foundation performs “governmental function”
Challenges to Privacy of Foundation Records

2010- Pennsylvania

- Court applied state Right-to-Know law which extends to private contractors performing governmental functions

- Must disclose:
  - Amount of money raised
  - Fndtn board minutes if fundraising discussed
  - All records “directly” relating to fundraising with donors names redacted back to 2000

2012

- State Supreme court refused to hear case
2011 - California

- Senator tried for years to open up foundation & auxiliary org. records
- 2009 & 2010 bills vetoed by governor
- New governor agreed to compromise
  - Correspondence, emails, letters, financial statements and contracts made public records
  - Donor records protected unless donor received benefits over $2,500, received a “no-bid” contract, or attempted to influence curriculum or operations
Challenges to Privacy of Foundation Records

2013 - Louisiana

- Consultant hired by LSU Foundation to search for LSU president
- Resumes viewed on private web portal
- Committee split up to avoid quorum
- Only final “applicant” disclosed
- *The Advocate* newspaper sued for info about all 35 candidates
- District court ruled records are public
2013 – 2015 Louisiana

- Sept. 2013 Judge ordered seizure of LSU records regarding the search
- Judge ordered LSU to pay penalties and newspapers attorney fees and court costs
- LSU turned over records under seal and appealed the judge’s rulings
- April 2015 State Supreme Court affirms lower court ruling that the records of only the 4 finalists be made public.
Challenges to Privacy of Foundation Records

2017 New Mexico

• Sports website operator sued asking for bank records and emails concerning naming rights for WisePies Arena of UNM

• Seeking proof that sponsorship payments have been made

• Suit alleges UNMF substantially controlled by UNM via university officials on board and through financial support to foundation

• University responded that UNMF is a stand alone organization
Challenges to Privacy of Foundation Records

2017 Illinois

- College of DuPage questioned about $170,000 of meals at campus restaurant over three years
- University and Foundation apparently both paid at varying times
- Subpoena for Foundation records issued and then withdrawn
- Contracts between Foundation board members and institution have become focus of broader investigation
Challenges to Privacy of Foundation Records

2018 University of Florida Policy

- Foundation records are confidential and exempt from Florida Public records Law
- Foundation will provide information on expenses and completed business transactions
- Foundation will not release any personal or financial information about a donor, alumnus, volunteer or employee without their “express written consent as required by law”
- Documents related to fundraising are exempt from public records law no matter who has possession
Seven Touchstones of Independence

Assoc. of Governing Boards of Universities and Colleges (January 2000)

1) Independent Board of Trustees?

2) Who pays for office space?

3) Is foundation serviced by university personnel?

4) Does foundation receive legal advice from state Attorney General?
5) Is there suspicion of foundation engaging in improper conduct?

6) Does foundation routinely release info about public funds?

7) What does agreement between foundation and institution say?
Strategic Mistakes in Using Foundations

• Institution not monitoring the activities of a foundation
• Inadequate separation
• Mixing of funds or transferring funds without proper justification
• When things go bad, they can go really bad
One mistake can undo all the good that the related foundations do!