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”
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
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.
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
MUltiple Foundations

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
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
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”
Americans gave a total of $427.7 billion to charity in 2018, a small decline from a year earlier, according to the Giving USA 2019 report. Numbers are in billions of inflation-adjusted dollars.
Most gifts in 2018 came from individuals. But those donations declined overall at a time when giving by foundations rose and corporate philanthropy and giving through bequests of the estates of people who have died held steady. Amounts expressed in billions of inflation-adjusted US dollars.

% of individuals donating to charity dropped below 70% for 1st time since 1954

More people give than vote!
Despite recent declines in the amount of money given, churches and other religious institutions by far remained the top target for donations in 2018, followed by education and human services. Amounts expressed in billions of inflation-adjusted US dollars.
2018 Key Sector Metrics From U.S. Nonprofits

**Donor Age**
- Average age of donor: *62*

**Donation Amounts**
- Median donation amount for gifts above $1,000: *$2,049*
- Median donation amount for gifts below $1,000: *$20*
- Average online donation amount: *$147*

**Donor Retention**
- First-year, offline-only donor retention rate for nonprofits: *29%*
- Multi-year, offline-only donor retention rate for nonprofits: *60%*
- First-year, online-only donor retention rate for nonprofits: *22%*
- Multi-year, online-only donor retention rate for nonprofits: *64%*

Source: Blackbaud 2018 Charitable Giving Report
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
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
Consequently, she named Kansas University Endowment Association in her will hoping to encourage others to also donate in support of KU.

Elizabeth Miller Watkins

Attended KU prep school in 1874; left after only 1 year due to finances.

Later made gifts to construct scholarship dorms for female students and to provide health care services for students.

Wanted to leave cash and 25,000 acres of farmland to support the University of Kansas – “not to the state and so increase its efficiency.”

Consequently, she named Kansas University Endowment Association in her will hoping to encourage others to also donate in support of KU.

“Lady Bountiful”
1861-1939
Proceeds from Elizabeth Miller Watkins’ generous legacy gifts were used to purchase land that doubled the size of KU and KU Medical Center campuses

Proceeds were also used to help build...

- Danforth Chapel
- Campanile
- 53 bell carillon chimes
- Other scholarship halls
KU Endowment
Annual Report 2018
Private Giving

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

Joseph Phelan
AGB

$257.4 million
Total as of June 30, 2018

$182.6 million
Current outright gifts and pledges

$31.8 million
Realized bequests and life income gifts

$43 million
Deferred gift commitments

$257.4 million
Total as of June 30, 2018

40,832 Donors
91% of gifts < $500

“Greater University than the State Alone Can Build”
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?

Vehicle for philanthropy

• 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.
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).
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?
• 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
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
• 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
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
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
Knowledge... leads to relationships...

Relationships... lead to gifts!
Gifts!

The major source of Foundation resources
Giving since 1967:

<table>
<thead>
<tr>
<th>Amount</th>
<th># Gifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 50 million</td>
<td>138</td>
</tr>
<tr>
<td>$ 50.1 to $99 Million</td>
<td>124</td>
</tr>
<tr>
<td>$ 100 million</td>
<td>99</td>
</tr>
<tr>
<td>$ 101 million or more</td>
<td>130</td>
</tr>
</tbody>
</table>

Chronicle of Higher Education
2018 Giving by Source to Higher ED

- Total Support: $46.73
- Nonalumni Individuals: $8.57 (18.3%)
- Foundations: $14.01 (30.0%)
- Corporations: $6.73 (14.4%)
- Alumni: $12.15 (26.0%)
- Other Organizations: $5.27 (11.3%)
<table>
<thead>
<tr>
<th>Source &amp; Purpose of Higher Ed Giving</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>Percentage Change 2017 to 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>Percentage of Total</td>
<td>Amount</td>
</tr>
<tr>
<td>Total Voluntary Support</td>
<td>$43,600</td>
<td>100.0</td>
<td>$46,730</td>
</tr>
<tr>
<td>Source</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alumni</td>
<td>$11,370</td>
<td>26.1</td>
<td>$12,154</td>
</tr>
<tr>
<td>Nonalumni Individuals</td>
<td>7,860</td>
<td>18.0</td>
<td>8,567</td>
</tr>
<tr>
<td>Corporations</td>
<td>6,600</td>
<td>15.1</td>
<td>6,732</td>
</tr>
<tr>
<td>Foundations</td>
<td>13,130</td>
<td>30.1</td>
<td>14,010</td>
</tr>
<tr>
<td>Other Organizations</td>
<td>4,640</td>
<td>10.6</td>
<td>5,266</td>
</tr>
<tr>
<td>Purpose</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Operations</td>
<td>$25,800</td>
<td>59.2</td>
<td>$27,400</td>
</tr>
<tr>
<td>Capital Purposes</td>
<td>17,800</td>
<td>40.8</td>
<td>19,330</td>
</tr>
</tbody>
</table>

CASE.org 2019
## 2017 Voluntary Support to Higher Education “Top Ten”

(in millions)

<table>
<thead>
<tr>
<th>University</th>
<th>Voluntary Support</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>

*Chronicle of Philanthropy and Council for Aid to Education and Insider Higher Ed*
While $10M+ giving to Higher Education is up just 3 percent from 2017, it is up 29 percent from 2016. The number of $10M+ gifts stayed nearly the same between 2017 and 2018: 206 to 208.
Higher Education Mega Gifts ($10+ Million)

280 gifts
$7.96 billion

Chronicle of Philanthropy May 2019
Marts and Lundy Feb 2019
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
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
• 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
• 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
• **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**

• **Recruiting**
  - 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
Expansions:
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)
2006 (Stadium Club suites; 92,400)
2014 (south endzone; 102,321)
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 Mill - LSU Museum of Art

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

**City**
- Landscaping

**Arts Block Development, LLC**
ACADEMIC FACILITIES
• 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
• **“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 Maritime Technology Center of Excellence
Ship Design Facility

$40 million Cooperative Endeavor Agreement (CEA)

State - UNO - R&T Foundation – Avondale Industries (now Huntington Ingalls)
U.S. NAVY LPD-17 PROJECT

- Jan 1993, Defense Acquisition Board approved construction of San Antonio class ships (LPD 17)
- Replace 4 existing classes of ships
- Dec 1996, Avondale consortium competed for Navy contract
- 8 ships @ $1.8B each
UNO /Avondale Shipyard Project

State Div. of Administration (DOA) committed to seek an annual appropriation to LA Dept. of Economic Development; Shipbuilder donated land to UNO, who leased to Foundation

- Foundation financed project with bank loans & capital lease (loan later refinanced w/ tax-exempt bonds)
- Foundation contracted for design and construction of 200,000 SF building to house naval architects/faculty
- Foundation acquired hardware, software, FF&E
- All leased to shipbuilder on triple-net basis for 50 years
UNO Avondale Shipyard Project

Benefits Received:

University
- Land, building & access to software for teaching
- Cost free 20,000 sq. ft. lab on Avondale campus
- 2 Endowed Chairs ($1 million each)
- $921,000 to support Engineering from debt refinancing

Foundation
- Software and hardware
- Credibility – concept tested
- Creditworthiness
- Capitalization
- Economic development for region

State
- Retained jobs
- Tax revenues well in excess of $40 million investment
UNO /Avondale Shipyard Project
LPD -17 Accomplishments

- 1st class to incorporate Advanced Enclosed Mast Sensor System – largest composite structures installed on U.S. Navy steel ships
- Advancement in naval amphibious warfare technology & capability
- Stealth design

USS San Antonio: Flagship for anti-piracy naval force off Somalia (afloat forward staging base)

Surgical capability – trauma, critical care, medical evacuation

Winner of Navy Battle Effectiveness among amphibious ships
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
UNO Research & Technology Park

- 30 acres
- 800,000 SF
- 1,700 jobs

2016 Economic Impact on Greater New Orleans = $472M
• 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
• 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
NASA Michoud Assembly Facility

- 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
• 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 Facility

- 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
• “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
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)
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)
Challenges to Privacy of Foundation Records

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.”
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
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
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
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”
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
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* sued for info on 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
- Appeals court ruled records of only 4 finalists are public
- April 2015 La. Supreme Court refused to hear case allowing appeals court ruling to stand
CHALLENGES TO PRIVACY OF FOUNDATION RECORDS

2017 Illinois

- College of DuPage questioned about $170,000 of meals at campus restaurant over 3 years; both University & Foundation paid some expenses

- Contracts between Foundation board members and institution focus of broader investigation

- Subpoena for Foundation records issued, then withdrawn

- Appeals court unanimously ruled Foundation subject to FOIA because conducts govt business, controls college’s fundraising operation, staffed by college employees receiving state health & retirement benefits

- Ordered to reimburse Chicago Tribune $225K of legal fees
CHALLENGES TO PRIVACY OF FOUNDATION RECORDS

2017 – 2019 Arkansas

- *Democrat-Gazette* reporter requested copy of Razorback Foundation contract with search firm for head football coach
- Foundation blocked access to its records
- *Gazette* obtained from Univ of Arkansas
  22,000 pages of emails exchanges between UA athletic dept employees & Foundation employees
- 2019: Bill introduced to apply FOIA to private organizations that perform "a public or government function on behalf of government agency or public entity" & groups with "primary purpose" of directly supporting public bodies
- Bill rejected by Legislative committee
2017 – 2019 Virginia

- Students at George Mason University sued GMU and GMU Foundation for records of donations from certain private donors

- 2018: County court ruled GMUF is not a public body

- Donor (Kock Foundation) pledged to make future agreements with universities public

- March 2019: Virginia Supreme Court agrees to hear case
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
CHALLENGES TO PRIVACY OF FOUNDATION RECORDS

2019 Oklahoma

- Former U of Okla general counsel sued UO Foundation on behalf of 70 Norman residents regarding the University arena and entertainment district proposal

- Claims Foundation uses both university employees and university property — to further the university foundation

- Cites use of state mail as just one indication that it is a public entity and subject to open records laws
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!