ACADEMIC SENATE
OF
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, California

AS-216-86/AHCCPF

RESOLUTION ON
THE FOUNDATION ELECTION PROCESS

WHEREAS, the current process by which the Board of Directors of the California Polytechnic State University Foundation is elected has resulted in a Board that has effectively been closed to new individuals and new ideas; and

WHEREAS, the current process has not resulted in sufficient equity and balance among the various constituencies; therefore, be it

RESOLVED: That the process of selection/election to and membership of the Board of Directors of California Polytechnic State University Foundation be altered to be:

1. The University President or his/her designee;
2. Three administrative staff members of the University selected to serve three-year terms. The process is to be determined by the University President in consultation with the Board;
3. Three tenured faculty members of the University selected to serve three-year terms by the Academic Senate. The process is to be determined by the Elections Committee of the Academic Senate. No members shall serve more than two consecutive terms;
4. Three students of the University selected to serve one-year terms as determined by the University President. The process is to be consistent with Resolution #86-03 of the Student Senate;
5. At least one, but no more than three, off-campus members selected to serve one-year terms by the University President; and be it further

RESOLVED: That in the event that a vacancy occurs on the Board, a replacement shall be selected to fill the vacancy for the remainder of the term of office of that individual by the same process by which that individual was selected.

Proposed By:
The Ad Hoc Committee on the
Cal Poly Foundation
April 29, 1986
Memorandum

To: Lloyd Lamouria, Chair
    Academic Senate

From: Warren J. Baker
     President

Subject: ACADEMIC SENATE RESOLUTION ON THE FOUNDATION ELECTION PROCESS

As I have shared with you, I had James Landreth, Vice President for Business Affairs, and Malcolm Wilson, Interim Vice President for Academic Affairs, conduct a detailed review of the implications of the Academic Senate Resolution. In addition, I requested and received an analysis of corporate and Education Code law on related issues from the Foundation's legal counsel.

After reviewing in detail the information which was provided to me and after discussion with a number of individuals, I have concluded that there are no compelling reasons for asking the Foundation to change its bylaws regarding the composition and selection of the Foundation Board of Directors in the manner proposed in the Senate resolution.

However, the Academic Senate Resolution and resulting review has raised an issue relating to the faculty members serving on the Board of Directors which I intend to pursue further. As I know you are aware, Title 5 of the California Administrative Code requires that Board of Directors of CSU auxiliary organizations such as the Foundation contain membership from four broad groups of individuals: administration and staff, faculty, students, and non-campus personnel. By virtue of this policy and in practice, the Foundation Board of Directors has included in its elected director membership two members of the faculty for at least the last 20 years. I have no reason to believe that the Foundation would modify this practice, and I would oppose any effort to do so. I do believe, however, that the matter upon which we need to focus is the question of how we might more effectively address the concerns raised by the Academic Senate relative to the selection of faculty members.

As we proceed, it is important that we keep in mind the thrust of the legal issues conveyed to you by Fred Dalton, University Auditor, for the CSU Trustees. In his November 7 letter to you, Mr. Dalton stated: "The primary purpose of a board of directors is to run the entity for which the board has responsibility. A director's primary responsibility under the law is not to the area he is nominated or originates from, but the good faith management of the best interests of the corporation. We have found in our audits that directors are financially responsible for actions they take as members of a board." Thus, while it is clear from Trustee policy that auxiliary organizations must have faculty on their board of directors, it is also clear that there is a legal corporate responsibility which such members assume as contrasted with constituency representation.
Lloyd Lamouria
Page Two
April 15, 1987

The terms of office of the two faculty members presently serving on the Board of Directors of the Foundation do not expire this year. One's term of office continues through 1988, and the other through 1989. I am assuming that they will continue to serve out their elected terms. Within this framework, I have asked University staff to pursue and develop for my consideration some alternative processes whereby we can achieve the objective of more effectively addressing the concerns raised by the Academic Senate relative to the selection of faculty members for the positions on the Board of Directors. I intend to have an acceptable alternative in place in time for utilization in connection with the selection/election process when the term of office of one of the current faculty members expires in May of 1988. Whether or not it will require a request to the Foundation Board of Directors for minor modifications in the bylaws will not be known until alternatives have been developed.
Date: November 19, 1986

cc: Warren J. Baker
     Harvey Greenwald (w/att)

To: James Landreth, Vice President for Business Affairs
    Howard West, Associate Executive Vice President
    Malcolm Wilson, Interim Vice President for Academic Affairs

From: Lloyd H. Lamouria, Chair
      Academic Senate

Subject: Academic Senate Resolution on the Foundation Election Process
         (AS-216-86/AHCCPF)

As you know, action on this resolution has been delayed since June 3, 1986 for the reasons stated in President Baker’s memo of July 17, 1986.

Under date of September 26, I tried to interest the three of you to take action. We were standing still because the Trustees’ Audit Staff might be developing information which might have a bearing on our resolution. Subsequently, I contacted Fred Dalton to determine whether or not we should be waiting for a report from his staff.

As I read Fred Dalton’s attached November 7 response to my inquiry of September 26, I see no restriction on the feasibility of proceeding in accordance with President Baker’s July 17 authorization for review. Would you please advise as to your current timetable for review? Thanks.

Attachment
November 7, 1986

Dr. Lloyd H. Lamouria, Chair
Academic Senate
California Polytechnic State University,
San Luis Obispo
San Luis Obispo, California 93407

Dear Dr. Lamouria:

Subject: Cal Poly Resolution on the Foundation Election Process

I am sorry I have not answered your letter earlier, however, I was on an extended vacation and since my return I have been involved in the completion of the auxiliary organization audit reports.

The Trustees' Audit Staff was assigned a review of auxiliary organizations within the CSU by the Committee on Audit at the January, 1986 meeting. We have conducted an extensive review of auxiliary organizations on eight campuses within the system and have reported these to the Board of Trustees. In addition, our efforts were diverted for a considerable length of time to an extensive auxiliary organization problem that may result in criminal charges. We did not review auxiliary organizations at Cal Poly San Luis Obispo during the current review, but we did in 1980.

The specific issue you addressed in your letter, the selection of a board of directors of an auxiliary organization, was not a subject matter of our audit. As far as I know there are no code requirements, policies or systemwide procedures stipulating the selection of members of a board of directors of an auxiliary organization. Education Code Section 89903 stipulates that each auxiliary organization will have a board "composed, both as to size and categories of membership, in accordance with regulations established by the Trustees of the California State University." Section 42602, (b) and (c) of Title 5 of the California Administrative Code, established by the CSU Board of Trustees, stipulates, regarding size and categories of boards, as follows:

"The composition of the governing board of auxiliary organizations shall be as follows:

(b) Other Auxiliary Organizations.

(1) Approved auxiliary organizations, other than student body organizations, operating on April 1, 1969, may continue the composition of their governing boards of directors existing at that time."
Approved auxiliary organizations, other than student body organizations, operating on April 1, 1969, desiring to make a substantial change in their governing board's composition, and any auxiliary organization established after that date, shall have a governing board consisting of voting membership from the following categories:
(A) Administration and staff
(B) Faculty
(C) Noncampus personnel
(D) Students
(c) The size of the governing board of an auxiliary organization shall be at least large enough to accommodate the membership from the various categories which are required by this section."

The California Corporation Code stipulates that directors of non-profit corporations are governed as follows:

"A director shall perform the duties of a director, including duties as a member of the board upon which the director may serve, in good faith, in a manner such director believes in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances."

The primary purpose of a board of directors is to run the entity for which the board has responsibility. A director's primary responsibility under the law is not to the area he is nominated or originates from, but the good faith management of the best interests of the corporation. We have found in our audits that directors are financially responsible for the actions they take as members of a board. Personally, I would advise any individual who is considering accepting a directorship to consult with an attorney (1) regarding the personal liabilities being incurred and (2) to obtain director's indemnification insurance to mitigate any judgment against non-performance of these responsibilities.

Sincerely,

Fred Dalton
University Auditor

cc: Warren J. Baker
Date: September 26, 1986

To: James Landreth, Vice President of Business Affairs
    Howard West, Associate Executive Vice President
    Malcolm Wilson, Interim Vice President of Academic Affairs

From: Lloyd H. Lamouria, Chair
      Academic Senate

Subject: Academic Senate Resolution on the Foundation Election Process (AS-216-86)

In President Baker's response of July 17, 1986 to the Academic Senate, he advised that the three of you were charged with the responsibility of reviewing the resolution on the Foundation election process.

I sense that we are at a standstill. Because I have no evidence that the Trustees' Audit Staff is specifically addressing the needs expressed in our resolution, I have contacted Dr. Fred Dalton. Please see attached memo.

Let me encourage you to proceed with your analysis. Audit bodies are forever making reviews - that is their job. Using the possibility of the Audit Staff commenting on factors which may affect your review creates a delay not easily understood by this office. If you support the Academic Senate resolution and later find that a portion of it is outside future audit guidelines, correction can always be made.

The question is, based upon existing guidelines can the Academic Senate recommendations be legally implemented? Would you please respond to this question because if we have recommended the impossible, we should know the answer without delay.

Please take the initiative to move this item off dead center. Your cooperation is needed. Thanks!

Attachment
September 26, 1986

Dr. Fred Dalton
University Auditor
Trustees' Auditing Staff
Office of the Chancellor, CSU
400 Golden Shore
Long Beach, CA 90802

Re: Cal Poly Resolution on the Foundation Election Process

Dear Dr. Dalton:

Attached is a copy of the Cal Poly Resolution on the Foundation Election Process and President Warren J. Baker's response.

Pivotal to having our resolution appear as a business item on a near future Cal Poly Foundation agenda, is the reference to your office. Since I am unaware that your audits may be examining the process of selection/election to, and membership of the Foundation Board of Directors -- I am uncertain as to what we are waiting for.

Would you please advise as to whether or not the Trustees' Auditing Committee is addressing the improvements outlined in the Cal Poly Resolution on the Election Process? Also, if you are actively involved in such a study, when may tentative findings be available?

Thank you for your assistance.

Sincerely,

Lloyd H. Lamouria
Chair, Academic Senate

Enclosures
ACADEMIC SENATE
OF
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
San Luis Obispo, California

AS-216-86/AHCCPF

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Proposed By:
The Ad Hoc Committee on the Cal Poly Foundation
April 29, 1986
Memorandum

To: Lloyd Lamouria, Chair
   Academic Senate

From: Warren J. Baker
   President

Subject: ACADEMIC SENATE RESOLUTION ON
THE FOUNDATION ELECTION PROCESS
(AS-216-86)

This will acknowledge your June 10 memo with which you transmitted
the resolution adopted by the Academic Senate relative to the
membership, composition and the method of selection of the
Foundation Board of Directors. I am forwarding this resolution
to Vice President Wilson, Vice President Landreth and Howard West
asking Messrs. Landreth and Wilson to consult with Howard West,
the Chair of the Foundation Board of Directors, as they review
the recommendation of the Academic Senate and report to me on their
recommendations with regard to the structure and membership of the
Foundation Board of Directors.

As I do so, however, the Academic Senate needs to be aware that
the Trustees' Audit Staff has recently conducted audits of a number
of auxiliaries within the California State University System.
Results of audits of several of the campuses were presented at the
July Trustees' meeting, and it's anticipated that the results of
audits of other campuses' auxiliaries will be presented in September.
It's also anticipated that at the September meeting the Trustees' Audit staff will present overall systemwide recommendations. While
it's not possible to determine at this time what those overall system recommendations may be, based upon the comments of the
Trustees' Audit staff at the meeting in July, it is likely that
there will be some recommendations made with regard to the
membership and structure of all auxiliary organizations within the
system. Accordingly, the review which I am asking Messrs. Wilson
and Landreth to undertake with Howard West will have to be done
within the context of whatever recommendations are presented by
the Trustees' Audit staff and adopted by the Trustees. I do not
anticipate that we will have a ready answer to this question before
sometime well into the Fall Quarter and perhaps later.
The questions raised in Harvey Greenwald's memo of June 26 were considered by an advisory body on July 18. AS-216-86/AHCCPF Resolution on the Foundation Election Process is pending action by President Baker and the Foundation Board at this time. In view of this fact, it is not deemed advisable to proceed with the four questions. This does not rule out later consideration. Hopefully, a reconstituted Board will examine the questions raised in Harvey's June 26 memo.

Let me extend my most sincere thanks and appreciation to each of you for so capably preparing the Resolution on the Foundation Election Process. It was handled most professionally. With this task completed, your Ad Hoc Committee on the Cal Poly Foundation is discharged. You were a terrific team!
During the hearings conducted by the Ad Hoc Foundation Committee, a number of issues arose concerning the Cal Poly Foundation. Among these issues are:

1. The possibility of establishing a separate foundation to deal only with research should be examined. Within the California State University system there are a number of foundation's which deal only with research. There are many advantages to this concept of a single foundation concentrating on the single issue of research. Since Cal Poly is entering an era of increased emphasis on research, the idea of a separate foundation dealing only with research is one that should be explored further.

2. The Bookstore policy concerning the pricing of textbooks should be examined. I have enclosed a copy of a list of textbook prices. If accurate, this list seems to indicate that the Bookstore charges prices which are higher than list prices. Since the Bookstore represents the only source of textbooks for students at Cal Poly, the students have no alternative to purchasing their textbooks at the Bookstore. If the price list is accurate, the pricing policy of the Bookstore should be explored further.

3. The Foundation's University Services Fund currently provides funds for Athletics as well as University Relations (Fund Raising). The need to generate sufficient money in order to permit such large expenditures affects the pricing policy of the Foundation. The Foundation's University Services Fund and its affect on prices is an issue that should be explored further.

4. The Development Program is currently not self-supporting. It has required progressively more money each year from the Foundation's University Services Fund. This is an issue that should be explored further.

The Ad Hoc Foundation Committee strongly recommends that a committee or committees be charged with examining the above issues for possible action by the Academic Senate. Members of the committee would be able to appear before the Executive Committee of the Academic Senate when this memorandum is discussed.

Some of the members of the Ad Hoc Foundation Committee would be willing to serve on such a committee or committees.
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<tr>
<th>Course</th>
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TAB was 10% under list price

For list prices, see "Books in Print"

Prices effective Spring 1986