

18A:64-26 to 18A:64-44

LEGISLATIVE HISTORY CHECKLIST

(Public College Auxillary Organization Act)

NJSA 18A: 64-26 to 18A:64-44

LAWS 1982

CHAPTER 16

Bill No. A711

Sponsor(s) Doria and others

Date Introduced Feb. 1, 1982

Committee: Assembly

Senate Education

Amended during passage Yes ~~xxxx~~ No Amendments during passage denoted by Asterisks

Date of Passage: Assembly Feb. 8, 1982

Senate March 8, 1982

Date of approval April 1, 1982

Following statements are attached if available:

Sponsor statement Yes ~~xxxx~~ No

Committee Statement: Assembly ~~xxxx~~ Yes No

Senate Yes ~~xxxx~~ No

Fiscal Note ~~xxxx~~ Yes No

Veto Message ~~xxxx~~ Yes No

Message on signing ~~xxxx~~ Yes

Following were printed:

Reports ~~xxxx~~ Yes No

Hearings ~~xxxx~~ Yes No

See newspaper clipping (attached)
Referred to in Senate statement: (attached) F.O. no 22-1980, F.O. no 2-1981.
Referred to in news clipping: ~~██████████~~ Faculty-Student Cooperative Association
of Montclair V. Degnan

6/22/81

1983

4-1-82

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 711

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Assemblymen DORIA, CHARLES, BOCCHINI, PATERNITI,
 ADUBATO, JANISZEWSKI, COWAN and T. GALLO

(Without Reference)

AN ACT providing for auxiliary organizations at certain public
 institutions of higher education and supplementing Title 18A of
 the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Public College
 2 Auxiliary Organization Act."

1 2. As used in this act:

2 a. "College" means any State college.

3 b. "Auxiliary organization" means an organization, subject to
 4 the provisions of this act, that performs selected functions or
 5 operations of a college while maintaining an identity distinct from
 6 that of the college.

1 3. A college may establish and utilize one or more auxiliary
 2 organizations for the performance of college operations or func-
 3 tions.

1 4. An auxiliary organization may engage only in such operations
 2 and may serve only such functions as shall be approved by the
 3 Board of Higher Education. Such functions or operations may
 4 include, but shall not be limited to:

5 a. operation of student centers;

6 b. operation of student pubs;

7 c. management of student dormitories;

8 d. operation of college bookstores.

1 5. Each auxiliary organization shall be a body corporate and

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendment adopted February 25, 1982.**

2 politic, with corporate succession. Each auxiliary organization
 3 shall have the power to contract, to sue and be sued, to make, amend
 4 and rescind rules for its own reorganization and operation, but it
 5 shall not in any manner, directly or indirectly, pledge the credit
 6 of the State.

1 6. Each auxiliary organization shall have a board of directors
 2 composed of the president of the college or his designee, one mem-
 3 ber of the college board of trustees, and at least five citizens
 4 appointed by the college board of trustees **at least two of whom*
 5 *shall be students**. The citizen members shall be appointed for 3
 6 year terms except that the initial appointments shall be staggered
 7 so that two members shall be appointed for terms of 2 years and
 8 one member shall be appointed for a term of 1 year. There shall
 9 be no limitation on the number of terms an individual may serve.
 10 Vacancies shall be filled in the manner of the original appointment.
 11 Each member shall serve until a successor is appointed and
 12 qualified.

1 7. No member of the board of directors of an auxiliary organi-
 2 zation shall have a financial interest in any contract or other
 3 transaction entered into by the board of which he is a member.
 4 Any contract or transaction entered into in violation of this section
 5 is void. The members of the board of directors shall receive no
 6 compensation for their services, but shall be paid their necessary
 7 expenses in performing their duties.

1 8. The board of directors is a "public body" as defined in section
 2 3 of the "Open Public Meetings Act," P. L. 1975, c. 231 (C. 10:4-8),
 3 and shall conduct its business in accordance with the provisions
 4 of that act.

1 9. An auxiliary organization shall maintain its own bank accounts
 2 and shall make such purchases as are necessary to its operation,
 3 without regard to the provisions of P. L. 1954, c. 48 (C. 52:34-6
 4 et seq.), pursuant to regulations promulgated by the Board of
 5 Higher Education.

1 10. An auxiliary organization shall obtain private legal counsel
 2 and shall not be represented by the Attorney General.

1 11. An auxiliary organization may accept any grant, contract,
 2 bequest, trust or gift unless the Board of Higher Education
 3 determines that acceptance would be contrary to policies of the
 4 Board of Higher Education.

1 12. The annual budget of each auxiliary organization shall be
 2 approved by the board of directors of the organization.

1 13. As may be necessary for its operation, an auxiliary organi-
 2 zation may appoint, retain and employ officers, agents, employees

3 and experts, who shall be within the unclassified service of the
4 Civil Service.

1 14. An auxiliary organization may lease or rent facilities and
2 office space from the college, provided that it reimburses the college
3 for the fair rental value for its use of such facilities.

1 15. Operations of commercial services on college campuses such
2 as a food service or bookstore, or such commercial services as may
3 be provided in a college union, shall, when operated by an auxiliary
4 organization, be self supporting. Any surplus funds from com-
5 mercial operations shall be used for purposes that are consistent
6 with the educational purposes of the institution.

1 16. Expenses incurred by an auxiliary organization shall be
2 payable from funds raised by the organization, and no liability or
3 obligation, in tort or contract, shall be incurred by the State for
4 the operation of such an organization.

1 17. The Board of Higher Education shall prior to the operation
2 of any auxiliary organization under this act:

3 a. Institute with the approval of the Director of the Division
4 of Budget and Accounting a standard Statewide accounting and
5 reporting system for businesslike management of the operation
6 of auxiliary organizations.

7 b. Implement financial standards which will tend to assure the
8 fiscal viability of auxiliary organizations. These standards shall
9 include proper provision for professional management, adequate
10 working capital, adequate reserve funds for current operations and
11 capital replacements, insurance, and adequate provisions for new
12 business requirements.

13 c. Institute procedures to assure that transactions of the auxil-
14 iary organizations are within the educational purposes of the
15 college and the Board of Higher Education.

16 d. Develop policies for the appropriation of surplus funds not
17 required to implement section 15. Uses of such funds shall be
18 regularly reported to the board of trustees of the college.

19 e. Promulgate regulations determining which college employees
20 may also be employed by the auxiliary organization and the terms
21 and conditions of such employment.

22 f. Promulgate regulations for the effective enforcement of this
23 act.

1 18. A certified public accountant shall be selected by each aux-
2 iliary organization. Upon being notified of the certified public
3 accountant selected by an auxiliary organization, the office of the
4 chancellor shall forward the applicable auditing and reporting
5 procedures to the selected certified public accountant. In accord-

6 ance with procedures prescribed by the Board of Higher Education,
7 the certified public accountant shall annually audit the auxiliary
8 organization's funds. Auxiliary organizations shall contract for
9 and receive such audit annually, and shall submit the audit to the
10 board of trustees of the college, and to the Board of Higher Educa-
11 tion and the Director of the Division of Budget and Accounting.

1 19. Each college student government association to which student
2 fee moneys are allocated by the college, whether or not it is an
3 auxiliary organization subject to the provisions of this act, shall
4 comply with the provisions of section 18 of this act.

1 20. This act shall take effect immediately.

ASSEMBLY, No. 711

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Assemblymen DORIA, CHARLES, BOCCHINI, PATERNITI,
ADUBATO, JANISZEWSKI, COWAN and T. GALLO

(Without Reference)

AN Act providing for auxiliary organizations at certain public
institutions of higher education and supplementing Title 18A of
the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Public College
2 Auxiliary Organization Act."

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3 b. "Auxiliary organization" means an organization, subject to
4 the provisions of this act, that performs selected functions or
5 operations of a college while maintaining an identity distinct from
6 that of the college.

1 3. A college may establish and utilize one or more auxiliary
2 organizations for the performance of college operations or func-
3 tions.

1 4. An auxiliary organization may engage only in such operations
2 and may serve only such functions as shall be approved by the
3 Board of Higher Education. Such functions or operations may
4 include, but shall not be limited to:

5 a. operation of student centers;

6 b. operation of student pubs;

7 c. management of student dormitories;

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4 and rescind rules for its own reorganization and operation, but it
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6 of the State.

1 6. Each auxiliary organization shall have a board of directors
2 composed of the president of the college or his designee, one mem-
3 ber of the college board of trustees, and at least five citizens
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5 shall be appointed for 3 year terms except that the initial appoint-
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9 individual may serve. Vacancies shall be filled in the manner of
10 the original appointment. Each member shall serve until a suc-
11 cessor is appointed and qualified.

1 7. No member of the board of directors of an auxiliary organi-
2 zation shall have a financial interest in any contract or other
3 transaction entered into by the board of which he is a member.
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5 is void. The members of the board of directors shall receive no
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6 with the educational purposes of the institution.

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2 payable from funds raised by the organization, and no liability or
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4 the operation of such an organization.

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2 of any auxiliary organization under this act:

3 a. Institute with the approval of the Director of the Division
4 of Budget and Accounting a standard Statewide accounting and
5 reporting system for businesslike management of the operation
6 of auxiliary organizations.

7 b. Implement financial standards which will tend to assure the
8 fiscal viability of auxiliary organizations. These standards shall
9 include proper provision for professional management, adequate
10 working capital, adequate reserve funds for current operations and
11 capital replacements, insurance, and adequate provisions for new
12 business requirements.

13 c. Institute procedures to assure that transactions of the auxil-
14 iary organizations are within the educational purposes of the
15 college and the Board of Higher Education.

16 d. Develop policies for the appropriation of surplus funds not
17 required to implement section 15. Uses of such funds shall be
18 regularly reported to the board of trustees of the college.

19 e. Promulgate regulations determining which college employees
20 may also be employed by the auxiliary organization and the terms
21 and conditions of such employment.

22 f. Promulgate regulations for the effective enforcement of this
23 act.

1 18. A certified public accountant shall be selected by each aux-
2 iliary organization. Upon being notified of the certified public
3 accountant selected by an auxiliary organization, the office of the
4 chancellor shall forward the applicable auditing and reporting
5 procedures to the selected certified public accountant. In accord-
6 ance with procedures prescribed by the Board of Higher Education,
7 the certified public accountant shall annually audit the auxiliary
8 organization's funds. Auxiliary organizations shall contract for
9 and receive such audit annually, and shall submit the audit to the
10 board of trustees of the college, and to the Board of Higher Educa-
11 tion and the Director of the Division of Budget and Accounting.

- 1 19. Each college student government association to which student
2 fee moneys are allocated by the college, whether or not it is an
3 auxiliary organization subject to the provisions of this act, shall
4 comply with the provisions of section 18 of this act.
- 1 20. This act shall take effect immediately.

STATEMENT

This bill provides statutory authorization for the establishment and operation of auxiliary organizations at the State Colleges. With respect to the management of such organizations, the bill requires the Director of the Division of Budget and Accounting to approve the accounting and auditing methods and practices and to implement financial standards that shall assure the fiscal viability of the organization.

Additional provisions require: auxiliary organizations to engage only in such financial activities that are within the educational purposes of the colleges and the Board of Higher Education; the proceeds and their uses to be regularly reported to the respective boards of trustees; the board of directors to consist of the president or his designee, a trustee of the college, and five citizens to be appointed by the board of trustees; the board of directors to be without any financial interest in any contract or other transaction entered into by the board; an accountant to be elected to annually audit the organization according to procedures prescribed by the Board of Higher Education; and, the audit report to be submitted to the board of trustees of the college, the Board of Higher Education, and the Director of the Division of Budget and Accounting.

In addition, the bill requires State college student government associations which receive funds from the student fees to be subject to the same auditing and reporting practices as the State college auxiliary organizations.

SENATE EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 711

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 25, 1982

The Senate Education Committee favorably reports this bill which as amended provides statutory authorization for the establishment and operation of auxiliary organizations at the State colleges. With respect to the management of such organizations, Assembly Bill No. 711 requires the Director of the Division of Budget and Accounting to approve the accounting and auditing methods and practices and to implement financial standards that shall assure the fiscal viability of the organization.

Additional provisions require: auxiliary organizations to engage only in such financial activities that are within the educational purposes of the colleges and the Board of Higher Education; the proceeds and their uses to be regularly reported to the respective boards of trustees; the board of directors to consist of the president or his designee, a trustee of the college, at least five citizens to be appointed by the board of trustees, at least two of whom shall be students; the board of directors to be without any financial interest in any contract or other transaction entered into by the board; an accountant to be selected to annually audit the organization according to procedures prescribed by the Board of Higher Education; and, the audit report to be submitted to the board of trustees of the college, the Board of Higher Education, and the Director of the Division of Budget and Accounting.

In addition, Assembly Bill No. 711 requires State college student government associations which receive funds from the student fees to be subject to the same auditing and reporting practices as the State college auxiliary organizations.

BACKGROUND:

It has been the practice of State colleges to operate food services, book stores and athletic activities by creating a separate corporation for the management of such functions. However, the Attorney General has ruled that such corporations are illegal without statutory authorization.

The Senate Education Committee favorably endorses the concept of auxiliary organizations and the regulatory provisions contained within Assembly Bill No. 711 with Senate committee amendments.

COMMITTEE AMENDMENT:

The committee amendment would require a college board of trustees to appoint at least two students to a board of directors of an auxiliary organization.

OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATELY

CONTACT: CARL GOLDEN

APRIL 2, 1982

TRENTON---Legislation to authorize the establishment and operation of auxiliary organizations at State colleges and to regulate their financial matters was signed into law yesterday by Governor Thomas H. Kean.

The bill, A-711, was sponsored by Assemblyman Joseph Doria, (D-Hudson).

The auxiliary organizations authorized by the law include operators of student centers, food services, pubs, bookstores and dormitory projects. Such enterprises are common in private colleges and universities and this legislation authorizes them by statute in the public college system.

#

ATTORNEY GENERAL

the payment of municipal taxes, be required, contrary to the clear intent of the statute, to support spending increases in excess of the 5% limit established by the statute. These consequences further demonstrate that the appropriation of Urban Aid moneys must be treated as a modification under the Local Government Cap Law.

In conclusion, you are advised that appropriations of Urban Aid moneys received pursuant to L. 1978, c. 14 should be treated as a modification under the Local Government Cap Law. You are further advised that, in the calculation of a municipality's permissible spending increase, the appropriation of Urban Aid in a municipal budget for a preceding year should be deducted from the final appropriations in that year to derive a base amount from which a permissible spending increase for a current year is determined.*

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DANIEL P. REYNOLDS
Deputy Attorney General

* It is provided in the 1981 State Appropriations Act that in 1980 municipal budgets appropriations of municipal aid moneys by qualifying municipalities, or line item moneys contained in the Act for municipalities that no longer qualify, may be treated as an exception to the spending limitation. It is also provided that the treatment of such moneys as an exception to this spending limitation shall not alter the amount upon which the five percent annual increase is calculated in 1980 budgets for such municipalities. In the preparation of 1981 municipal budgets, however, municipalities should be governed in their determination of appropriate spending limits by the conclusions set forth in this opinion.

October 31, 1980

T. EDWARD HOLLANDER
Chancellor
Department of Higher Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 22—1980

Dear Chancellor Hollander:

For the past several years, this office has expressed its concern over the increasing use of corporate entities formed and utilized by some of the state colleges to carry out various functions of the institutions. We have been informed that state colleges have formed corporations which operate student centers and campus pubs, manage dormitories and engage in other functions normally controlled by the college administration. As a general rule, these corporations have been set up by college personnel,

are managed by a board of directors, dominated and controlled by college employees, utilize both college facilities and office space and are funded to varying degrees with state money. Nonetheless, these corporations do not comply with any of the rules and regulations which state colleges are subjected to by statute, such as bidding laws, civil service requirements and treasury regulations concerning state funds. For the following reasons, you are hereby advised that such activities are improper and may not continue absent statutory authorization.

It is clear that the college corporations are instrumentalities of the state. The corporations are controlled by college officials, have the use of state facilities, expend state funds and effectuate state functions. Courts in various jurisdictions have uniformly held under similar circumstances that such entities are in fact instrumentalities and components of the colleges which created them. For example, in *Brown v. Wichita State University*, 540 P. 2d 66 (Kan. 1975), *mod.* 547 P. 2d 1015, (1976), the court held that a corporation created by the college and controlled by it must be "considered a mere instrumentality of the University," *Id.* at 76. In *DeBonis v. Hudson Valley Community College*, 389 N.Y.S. 2nd 647 (1977), the court utilized the same analysis in concluding that a purportedly "independent" corporation controlled by the college was in actuality an arm of the state which accordingly must comply with New York's public bidding law. *See also Shriver v. Athletic Council of Kansas State University*, 564 P. 2d 451 (Kan. 1977); *Good v. Associated Students of the University of Washington*, 542 P. 2d 762 (Wash. 1975). Accordingly, the college corporations at issue are clearly state entities which are subject to all general statutory and regulatory requirements imposed upon the colleges which created them, including the fiscal, contractual and budgetary requirements mandated by N.J.S.A. 18A:64-6(e), 18A:64-6(k), and 18A:64-18.

Moreover, even if the corporations were structured so as to be truly independent of the colleges, their present operation at the colleges would remain improper. It is a settled principle of law that a statutory body may not delegate its essential managerial prerogatives to a private body. *Group Health Insurance Co. v. Howell*, 40 N.J. 436 (1963), *aff'd after remand*, 43 N.J. 104 (1964). Pursuant to N.J.S.A. 18A:64-2 and N.J.S.A. 18A:64-6, it is the college Board of Trustees which is statutorily required to exercise supervision and control over the institution. Clearly the Legislature intended that the trustees would manage and administer the colleges themselves or through their respective presidents and other officers and employees. The Legislature has given no indication that the boards or their officers and employees may authorize purportedly private, independent, non-profit corporations to assume any significant responsibilities traditionally associated with the colleges. *See N.J. Dept. of Transportation v. Brzoska*, 139 N.J. Super. 510 (App. Div. 1976); *Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education* 78 N.J. 144 (1978).

Finally, it should be noted that even if a corporation could be deemed truly independent of its parent college, and was engaged in a function which may be legitimately contracted out to a private concern, college transactions with that entity would necessarily entail compliance with statutory requirements concerning contracts with private entities. For ex-

ATTORNEY GENERAL

ample, if the college determined that it did not desire to operate a campus cafeteria service itself, there would not be any authority for the college to award the contract unilaterally to the purportedly independent college corporation. Rather, the college would be required to enter into such a contract only after compliance with applicable competitive bidding statutes. *See* N.J.S.A. 52:34-6, *et seq.*

In conclusion, you are hereby advised that state colleges may not use independent corporate entities to carry out college functions unless all statutory and administrative requirements imposed on state agencies are satisfied. Therefore, the following interim steps must immediately be taken:

1. All corporate employees must be advised that the corporations are in actuality components of the colleges and that the functions and duties of the corporations will be brought within the control of the college administration;
2. The Department of Civil Service must be provided a list of names and job functions of corporation employees so that appropriate college job titles can be created;
3. Corporate purchases must utilize the procedures set forth in the applicable state bidding laws;
4. Certified audits of corporate accounts must be forwarded to the Chancellor and the State Treasurer; and
5. The Legislature must be advised of the status of college corporate accounts prior to submission of budget requests.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT A. FAGELLA
Deputy Attorney General

November 17, 1980

BARRY SKOKOWSKI, *Acting Director*
Division of Local Government Services
Department of Community Affairs
363 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 23—1980

Dear Mr. Skokowski:

You have raised a question with us concerning the manner in which the proceeds of the sale of municipal assets are to be treated under the Local Government Cap Law. Your question is whether such proceeds are to be treated in the same manner as all other modifications under the statute, that is, as a modification to the statute's spending limitation both in the year in which such proceeds are appropriated and in the year subsequent to such appropriation. For the reasons which are set forth in

ATTORNEY GENERAL

February 5, 1981

DR. T. EDWARD HOLLANDER
Chancellor
Department of Higher Education
225 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 2—1981

Dear Chancellor Hollander:

A question has arisen concerning the applicability of state statutory requirements such as bidding laws, civil service, and treasury and budget laws to non-profit corporations known as alumni associations and development funds. We have been advised that these are independent organizations which are incorporated and controlled by private individuals for the primary purpose of engaging in fund-raising activities for various state colleges.

In *Formal Opinion No. 22—1980*, it was concluded that state colleges may not use independent corporate entities to carry out college functions unless statutory and administrative requirements imposed on state agencies were satisfied. In many instances those corporations are virtually indistinguishable from the state colleges with which they are associated. Such organizations are incorporated and controlled by college officials and are often utilized to carry out activities more appropriately supervised by the college administration. In contrast, however, development and alumni associations are controlled by boards of directors which are independent of both the boards of trustees and administrators of their affiliated colleges. These corporations do not utilize office space or employees of the college to any significant extent, provide for their own liability insurance and do not supervise or effectuate activities traditionally associated with a college administration. Most importantly, both the allocation and disbursement of the funds donated to, or raised by these corporations are made available to the colleges in the sole discretion of the corporate board of directors. The state colleges do not control, either directly or indirectly, the activities of these corporations, nor do these entities purport to carry out state mandated functions. For these reasons, you are advised that alumni associations and development funds which are in their organization and operation totally independent of state colleges and whose sole purpose is fund-raising activities, are not subject to statutory and other requirements imposed on state agencies.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT A. FAGELLA
Deputy Attorney General