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OPINION	:	No. 80-1012
of	:	FEBRUARY 6, 1981
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The Honorable Mary Ann Graves, Director of Finance, requests an opinion on the following question:

Is the California State University and Colleges required to collect from its auxiliary organizations a proportionate share of the "costs" that are set forth in Government Code section 11010?

CONCLUSION

The California State University and Colleges is not required to collect from its auxiliary organizations a proportionate share of the "costs" that are set forth in Government Code section 11010.

ANALYSIS

The question presented for out resolution in essence seeks to have determined whether Government Code[1] section 11010 applies to the California State University and Colleges (hereinafter sometimes CSUC) and to its statutorily authorized "auxiliary organizations," which organizations usually take the form of nonprofit corporations.

Section 11010 provides in part that:

> "*[W]hen a state agency, supported from the General Fund, is required to collect from any person, firm, or corporation a proportionate share of the cost* of providing any service, inspection, or audit*, such share shall include: . .* (a *'proration'* of 'costs' to the state as specified]." (Emphasis added.)

Our analysis will demonstrate that CSUC is a state agency, supported from the General Fund, within the meaning of section 11010; that an "auxiliary organization" taking the form of a nonprofit corporation is a "corporation" within the meaning of section 11010. We will note further that title 5, California Administrative Code section 42502 requires that auxiliary organizations provide full reimbursement to the state for services performed for them by CSUC employees. We conclude, nevertheless, that section 11010 is not applicable to CSUC and its auxiliary organizations because section 11010 applies only in a situation where a state agency is funded in part from the General Fund and in part from a special fund, where the amount of the special fund available to the state agency is determined by reference to the fees or other charges that are required to be imposed by a state agency upon such "persons, firms, or corporations." Section 11010 requires the state agency to include in its determination of the amount of such "fees" the prorata share of its costs as specified in section 11010 to the end that the General Fund shall not bear any of such costs. There being no such condition precedent existing with respect to CSUC and its auxiliary organizations, sections 11010 does not apply to them.

We turn initially to an examination of the question whether CSUC is a state agency" since if it is not there can be no issue with respect to the application to it of the substantive provisions of section 11010.

[1] All unidentified section references are to the Government Code.

Section 11000 provides in part that:

> "[A]s are used in this *title* 'state agency' includes every state officer, officer, department, division, bureau, board and commission. "(Emphasis added.)

The reference in section 11000 to "title" is to title 2 of the Government Code which title pertains generally to the Legislature (§§ 9000–10604), the executive branch of state government (§§ 11000–16081) to the state's fiscal affairs (§§ 16100–17310) and to its personnel (§§ 18000–22866). Section 11010, *supra*, thus appears in title 2 of the Government Code. In 63 Ops. Cal. Atty. Gen. 132 (1980) we concluded that the University of California, although it is autonomous under the state Constitution, is a "state agency" as that phrase is used in title 2 of the Government Code.

The Donahoe Higher Education Act (Stats. 1960, 1st Ex. Sess., ch. 49) "established a unified and centrally administered state college system in California by transferring the administration of the state colleges from the Director of Education and the State Board of Education to the Trustees of the State College System" (37 Ops. Cal. Atty. Gen. 69 (1961)). (See Ed. Code, § 66600 *et seq*.; see generally, Ed. Code, § 89000 *et seq*.)

In 37 Ops. Cal. Atty. Gen. 69, 70, *supra*, we stated that:

> "It would appear from the legislative history of the Donahoe Act and its specific provisions that this legislation was drafted with the intent of establishing an autonomous board with power and responsibility similar to that of the Regents of the University [of California], *differing chiefly in that certain fiscal controls inapplicable to the University are retained by the Legislature and other state agencies,* and that the board is not established by the state Constitution, as is the University (see 'A Master Plan for Higher Education [in California]' (1960) pp. 42–43." (Emphasis added.)

In *Slivkoff v. Board of Trustees* [of the California State University and Colleges] (1977) 69 Cal. App. 3d 394, 400–401, it is stated that:

> "Unlike the University of California, the California State University and Colleges are subject to full legislative control. . . No such autonomy (as is recorded by the state Constitution to the University of California is accorded by the Constitution to the State University and Colleges. They have only such autonomy as the Legislature has seen fit to bestow."

The court in *Slivkoff*, *supra*, concluded that section 19143 applied to the California State University and Colleges. *Section 19143 is part of title 2 of the Government Code.*

We conclude that CSUC is a "state agency" within the meaning of section 11000 of the Government Code. (*Slivkoff v. Board of Trustees*, *supra*, 69 Cal. App. 3d 394.)

However, because of the fact that the California State University and Colleges has "such autonomy as the Legislature has seen fit to bestow" (*Slivkoff*, *supra*, 69 Cal. App. 3d at p. 401), an inquiry concerning the application of any specific provision of title 2 of the Government Code to the California State University and Colleges, as a state agency, requires an examination of its language to see whether the Legislature has made the statute applicable to CSUC irrepective of its general designation as a "state agency." (*Slivkoff*, *supra*, *cf.*; 63 Ops. Cal. Atty. Gen. 132, *supra*.)

We turn to an examination of the legislative history of section 11010, which has undergone significant changes since it was enacted in 1949. (Stats. 1949, ch. 156, p. 385.)

As enacted in 1949, section 11010 read as follows:

> "When a state agency, supported from the General Fund *and occupying space in a state-owned building for which no charge is made by the State for rent or janitor service,* is required to collect from any person, firm, or corporation a proportionate share of the cost of providing any service, inspection, or audit, such share shall include a proration of the cost of agency's rent and janitor service to the State.
>
> "There shall also be included in such proportionate share a proration of the State's retirement contribution for the employees engaged in providing such services, inspection or audit." (Emphasis added.)

By memorandum dated April 27, 1949, the then Director of the Department of Finance advised former Governor Earl Warren that Senate Bill No. 33 (enacting § 11010) was enacted at the request of the Department of Finance:

> . . . to require State agencies which render special services for activities, which activities are not strictly for governmental operation, to *include in their charges for such services* a proration of the cost for rent,

janitor service, and the State's contribution to the State Employees Retirement System. There are many laws which provide *that special fund activities* administered by a State agency *shall bear a proportionate cost of expenses incurred by the agency administering such laws.* When such agencies are housed in State owned buildings they are not at the present time charged for the value of rent and janitor service provided by the State, and consequently the prorata cost to the State of furnishing space and janitor service is not considered as an expense incurred by the agency and is therefore not charged to the activities required to be administered by the agency." (Emphasis added.)

In that memorandum, the former Director of Finance gave an example of the factual situation intended to be made subject to section 11010, to wit:

"For example, the Division of Corporations in administering the Industrial Loan Act, the Credit Union Act, the Personal Property Brokers Act, the Small Loan Brokers Act, and the Check Seller and Cashier Act, is authorized to assess to persons, firms, or corporations administered under the aforesaid acts the Division's proportionate share of the cost of providing services or of making inspections or audits. The Division now occupies space in a privately owned building in Los Angeles for which space it pays rent. Such rental is a cost of rendering the services and is chargeable to the persons, firms or corporations receiving the service. On the other hand, the Division occupies space in State owned buildings in San Francisco and Sacramento where the agency does not pay rent or for janitor service. Since the cost of furnishing janitor service and space in a State owned building is a cost to the State, it is only reasonable that such cost be assessed to the parties receiving the service, and the State's contribution to the retirement system is also a State cost which properly should be included in the charges assessed to such parties."

By memorandum dated April 28, 1949, this office advised then Governor Earl Warren that Senate Bill No. 33 had as its intended effect the same goal as was recited by the Director of Finance. In addition we noted that:

"A number of General Fund agencies are authorized to perform service for counties, cities, districts and other political subdivisions and to charge for same pursuant to contract. Among these are the Personnel Board (Gov. Code, Sec. 18707), Department of Finance (Gov. Code, Sec. 13073), Controller (Gov. Code, Sec. 12424), and Board of Equalization (Pol. Code,

> Sec. 3692.5). The bill applies only to an agency which is required to collect a pro-rata share of the cost of the service, and presumably will not apply in these latter cases where the service is performed and the price is fixed by contract. It should be noted also that the bill applies only to agencies which render services to 'any person, firm or corporation' and it is doubtful whether this phraseology applies to services performed for political subdivision [sic]."

Thus, as originally enacted, section 11010 had limited applicability. It applied to state agencies, supported from the General Fund, that engaged in "special fund activities" and which were directed by the statute to recover from the regulated "persons, firms or corporations" their costs in providing any "service, inspection or audit." Section 11010 had as its only purpose a legislative mandate that state agencies, *occupying space in a state-owned building for which no charge is made*, shall include as part of their costs to be charged to their "specially funded" activities, the specific additional costs therein specified, which costs were otherwise being charged to their General Fund appropriation.

Section 11010 did not, expressly or impliedly, impose an obligation upon any state agency to impose such costs. It operated only to provide that where such costs were otherwise required to be imposed, then the definition of such "costs" would include the elements specified under the circumstance set forth in the statute.

In 1952 we were required to construe section 11010 (19 Ops. Cal. Atty. Gen. 142 (1952) wherein we stated—after quoting the language of section 11010—that:

> "At first glance the first paragraph of this section is somewhat bewildering, as it requires a State agency to make a charge for things which are not charged to it. The answer is not reflected from the code section itself, but rather lies in the fact that the two items of the first paragraph are bookkeeping entries of cost allocations by the Department of Finance. As used in the Financial Code the word 'shall' is mandatory (§ 15). The division of Corporations is a State agency which comes within the scope of section 11010 (*cf.* Stats. 1951, ch. 11020, pp. 2649 and 2684). Consequently, the Commissioner must include the costs mentioned in section 11010 when he determines the accounts to be paid by each of the five licensees to whom he has referred.
>
> "It has been suggested that the words 'actual cost' of a special examination of the affairs of a personal property broker, check casher or small loan company should be limited to the actual expense incurred in

sending a State employee to make the examination because the 'cost of providing any service, inspection or audit' (§ 11010, *supra*) is covered by the annual license fees. But this suggestion overlooks the rule that the greater contains the less (Civil Code, § 3536) and that the 'cost of providing any service, inspection, or audit' will include the 'actual cost' as well as any additional charges which the Legislature has specified. Thus in *Boston Molasses Co. v. Molasses Distributors' Corp*., 277 Mass. 389; 175 N.E. 150, it was said that the terms 'cost' and 'actual cost' have no technical meaning and that where provision has been made for the payment of actual costs without executive overhead such actual costs may include *other overhead expense.*

"The second, third and fourth phrases of the Commissioner's inquiry each warrants a negative reply. In other words, the costs enumerated in sections 11044, 11270–11275 and 11290 of the Government Code should not be included by the Commissioner in determining the expenses of examination or of administration noted hereinabove. These costs refer to and are payable only by so-called special fund agencies; that is, those agencies which are not supported by appropriations from the General Fund (*Cf.* 11 Ops. Cal. Atty. Gen. 297, 9 Ops. Cal. Atty. Gen. 137 and opinions numbered 9371, N52331 and NS2331a). Other than as duplicated by section 11010 of the Government Code, these costs are not so identified with the administration of agencies supported by the General Fund as to permit them to be charged to their licensees in the absence of a specific mandate from the Legislature. Insofar as so-called General Fund agencies are concerned, these costs are part of the expense of State government, payable from revenues which go to make up that fund and to which the licensees herein mentioned contribute in the form of license fees and taxes as well.

"It is our opinion that the 'cost' of administration or examination refers (a) to the expenses of the Division of Corporations, and (b) to those specifically authorized by Government Code section 11010. They do not include costs incurred by any other department of State government or, for that matter, by private enterprises. It has been urged that all costs referred to by the Commissioner as well as any other costs which may be reasonably identified within the scope of administration or examination should be assessed and collected, and that this conclusion should be reached independently of the Government Code sections cited by him. This contention rests on the assumption that the Legislature intended that taxpayers should not pay any of such costs. Under this theory the

Commissioner should assess and collect from the licensees an amount representing the services rendered by the Attorney General, for example, when the Division itself is not charged for such service. Under this theory also the 'actual cost of an examination could be expanded indefinitely to include any cost to or burden upon private industry. We cannot accept this view. The Commissioner is the only officer charged with the administration of the respective divisions of the Financial Code. No other officer or agency has that responsibility. The Division of Corporations is supported by appropriations from the General Fund (*cf*. Stats. 1951, ch. 1020, pp. 2649 and 2684, item 149) and the fees and other costs collected by the Commissioner are payable to the General Fund (*cf.* Government Code, §§ 16300 *et seq*., Financial Code §§ 16004, 18053, 22212 and 24212). Obviously, these moneys are intended to defray in part the administration costs of the Division (*Daugherty v. Riley* [1943] 1 Cal. 2d 298). And it seems logical that in the absence of express legislation to the contrary, the actual cost of making an examination or the cost of administration by the Commissioner would be limited to the expense and overhead of the Division.

"Had the Legislature intended that the cost of the services rendered by the Attorney General or by the officers mentioned in section 11270 of the Government Code, or that the cost of the items enumerated in section 11290 (other than rent and janitor service) should be included by the Commissioner in determining the assessments under sections 18810, 16000–16004, 12306, 22608, 24604 of the Financial Code, it could easily have made provision therefor by including them in section 11010, *supra*, or by making provision elsewhere. But it has not done so. Rather, the legislative trend is the other way. Formerly the Division of Corporations was a special fund agency and was charged for the services of the Attorney General and for the other items mentioned in paragraphs 2, 3 and 4 hereinabove noted (*cf.* Deering's Act No. 3814, Sec. 26 and *Daugherty v. Riley*, *supra*). In 1943, it was taken out of that category (Stats. 1943, ch. 301, p. 1293) and is no longer chargeable with those types of expense. Consequently the Commissioner should not attempt to pass on to licensees of the Division costs which it does not incur itself. Moreover, the failure of the Legislature to include such costs in section 11010 (other than rent and janitor service) indicates legislative intent that the Commissioner should not do so. *Indusio unius est exclusio alterius*. If the subject under discussion needs correction it is the sole province of the Legislature to enact the appropriate legislation." (Emphasis in original text.)

The Legislature promptly amended section 11010 (Stats. 1953, ch. 925, pp. 2279–2280) to make it read as follows:

> "11010. When a state agency, supported from the General Fund, is required to collect from any person, firm, or corporation a proportionate share of the cost of providing any service, inspection, or audit, such share shall include:
>
> "(a) A proration of the cost to the State, as determined by the Department of Finance, of janitor service for the agency and of the charge for rent actually made for space occupied by the agency in a state-owned building or that would be charged such agency were it required to pay rent for such occupancy.
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> "(b) A proration of the administrative costs of the agency, as defined in Section 11270.
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> "(c) The pro-rata share of the cost of insuring motor vehicles belonging to the state agency against liability for damages resulting from the negligent operation of motor vehicles and arising under Section 400 of the Vehicle Code or, in the discretion of the Director of Finance, an amount which he considers equivalent to such pro-rata share to be expended by him in accordance with law in paying claims under that section and for their investigation, adjustment, defense and administration.
>
> "(d) The pro-rata cost of workmen's compensation insurance and bonds covering the officers and employees of the state agency.
>
> "(e) A proration of the State's retirement contribution for the employees engaged in providing such services, inspection or audit.
>
> "(f) A proration of the cost of Attorney General's services rendered the agency.
>
> "(g) A proration of any other costs to the State for providing such service, inspection or audit."

These legislative changes were set forth in Senate Bill No. 285 (1953). While it was being considered by then Governor Earl Warren as part of the adoption process, we advised the Governor by memorandum dated May 18, 1953, that:

"At present Government Code section 11010 says that when General Fund agencies occupy space in a state-owned building and pay no rent or janitor charges, and whenever they collect from any person a proportionate share of the costs of providing any service, inspection or audit, such share shall include a proration of three items: (1) cost of the agency's rent to the State, (2) cost of the agency's janitor service to the State; and (3) cost of the State's retirement contribution for the employees engaged in providing the service.

> "An example of an affected agency is the Corporation Commissioner; who imposes charges on check sellers and cashers, industrial loan companies, credit unions, personal property brokers, and small loan brokers. Under applicable provisions of the Financial Code, the Corporation Commissioner imposes a charge equivalent to the actual cost of examining such enterprises, or a prorata share of the cost of administration. In 19 Ops. Cal. Atty. Gen. 142 we held that under Government Code section 11010, as it now reads, the Corporation Commissioner had to include rent, janitor service and retirement contributions in computing these charges, but should not include proportionate cost of service rendered by the Attorney General's office, cost of supervision by the State Controller, Treasurer or Department of Finance, or cost of motor vehicle insurance, workmen's compensation insurance or bonds.
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> "*The present bill is designed to change the situation brought to light by our opinion, supra. It makes Government Code section 11010 apply not only to General Fund agencies occupying space in state owned buildings, but to all General Fund agencies which collect prorate fees.* It expands the list of items which are to be included in the computation of the prorata fee to include not only rent, janitor services and retirement contributions but also a proration of administrative costs (see Government Code section 11270), motor vehicle insurance, workmen's compensation insurance, Attorney Generals' services, as well as a proration of any other costs to the *State for providing the service, inspection or audit*. "(Emphasis added.)

The Legislature thereafter made several technical amendments to section 11010 (see, i.e., Stats. 1963, chs. 307, 1682). Thus, section 11010 presently reads as follows:

> "When a state agency, supported from the General Fund, is required to collect from any person, firm, or corporation a proportionate share of the cost of providing any service, inspection, or audit, such share shall include:

"(a) A proration of the cost to the state, as determined by the Department of General Services, of janitor service for, the agency and of the charge for rent actually made for space occupied by the agency in a state-owned building or that would be charged such agency were it required to pay rent for such occupancy.

"(b) A proration of the administrative costs of the agency, as defined in Section 11270.

"(c) The pro rata share of the cost of insuring motor vehicles belonging to the state agency against liability for damages resulting from the ownership or operation of motor vehicles and arising under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code or, in the discretion of the Director of General Services, an amount which he considers equivalent to such pro rata share to be expended by him in accordance with law in paying claims under that article and for their investigation, adjustment, defense and administration.

"(d) The pro rata cost of workmen's compensation insurance and bonds covering the officers and employees of the state agency.

"(e) A proration of the state's retirement contribution for the employees engaged in providing such services, inspection or audit.

"(f) A proration of the state's contribution toward the cost of medical and hospital care, including administrative costs, and the cost of procuring liability insurance coverage, for the employees engaged in providing such services, inspection or audit.

"(g) A proration of the cost of Attorney General's services rendered the agency.

"(h) A proration of any other costs to the state for providing such service, inspection or audit."

The critical phrase contained in section 11010, as pertains to its intended operation, is the following underscored language:

"When a state agency, supported from the General Fund, is required to collect from any person, firm, or corporation *a proportionate share of the*

cost of providing any service, inspection, or audit, such share shall include: . . . ."

Thus, a condition precedent to the application of section 11010 to any state agency is the existence of the requisite requirement that it collect a proportionate share of its costs upon it providing a "service, inspection, or audit" to any "person, firm, or corporation" within the meaning of those terms as they appear in section 11010.

The obvious legislative goal is to require that the persons, firms, and corporations receiving such services, inspections, and audits pay for such services rather than to have the general taxpayers pay such costs by means of appropriations from the General Fund.

As a general proposition, a state agency, funded—whether in whole or in part—by appropriations from the General Fund is authorized to spend those funds for a public purpose. The main limitations upon that power—assuming the existence of an appropriation—are that it be statutorily authorized to act in furtherance of such a public purpose and that its expenditures must further that public purpose and may not constitute a gift of public funds. There is no generally applicable requirement that a state agency shall recover from the public receiving its services, the cost to the state agency of providing them. There is, in fact, a requirement that it provide such services without charging for them—without exacting a fee or other charge—unless specifically authorized to do so.

The concept of "special fund" agencies or the concept of "special funds" as distinct from "general funds" revolves specifically upon the issue of whether the state agency providing services is authorized to charge a fee for such services, which when collected amounts to a "special fund" that is the source—in whole or in part—of its revenue supporting its operation. It is in this context that section 11010 is intended to operate, i.e., when a state agency is receiving both special funds and general funds, it shall collect from the entitles paying to it the moneys constituting the special fund a proportionate share of its costs as specified in section 11010 by calculating the amount of fee or other charge that it is statutorily obligated to collect so as to recover such costs from the industry or other segments of society that it is charged with regulating and with respect to which it provides "services, inspections or audits."

In other words, section 11010 is limited in its application to General Fund agencies which are required to collect "prorata fees" in respect of their performing some part of their public purpose, which public purpose involves them in providing services, inspections or audits to the persons, firms or corporation that are required to pay such fees. The function of section 11010 is to prescribe those cost factors that must be taken into consideration

when the state agency establishes the amount of the fee or charge to be collected by it from the person, firm or corporation required to pay the fee or charges.

It should be noted that if a CSUC auxiliary organization were to be included within the definition of a "state agency," then section 11250 would be applicable to CSUC and such auxiliary organizations, as state agencies. Thus, sections 11256 and 11290 rather than section 11010 would be applicable in determining the costs to be charged by the general fund state agency providing the "services or materials" to a special fund state agency under that circumstance,

Section 11250, *supra*, provides that:

> "Whenever a State agency *supported from the General Fund* renders services or furnishes materials *to a State agency not supported from the General Fund*, the cost of the services or materials is a charge against the fund from which is derived the support of the State agency receiving the services or materials." (Emphasis added.)

The relevance of the observation with respect to section 11250 is that it: (1) presents additional evidence of the legislative policy of requiring state agencies supported by the General Fund to pass on their costs of providing services to state agencies that are supported by special funds so as to avoid having such costs borne by the General Fund and (2) it presents an example of a statute setting forth the conditions precedent to the operation of a statute like section 11010, whose purpose is to identify the specific costs to be allocated from the General Fund to a special fund. (Compare §§ 11010 with 11256 and 11290; see generally, §§ 11250–11293.)

Since we have established the legislative purpose which section 11010 is intended to implement, we must determine whether CSUC, as a state agency, is required by any applicable provision of law to collect a "proportionate share of the cost of providing any service, inspection, or audit" to its auxiliary organization.

The statutory provisions regulating CSUC are to be found in Education Code section 89000 *et seq*. Education Code section 89001 provides that the California State University and Colleges includes the institutions for higher education established at locations therein identified. Education Code section 89005 provides that:

> "All references in any law or regulation to the 'California State Colleges,' to 'state colleges' or to any particular state college shall be deemed to refer, respectively, to the California State University and Colleges, to the

institutions of higher education which comprise the California State University and Colleges as authorized in Section 89001, and to the particular institution of higher education as named pursuant to Section 89033. All references to the California State University and Colleges shall include all campuses, branches and functions thereof. The term 'campus' shall mean any of then' institutions included within the California State University and Colleges specified in Section 89001."

Education Code section 89036 provides that:

"The trustees may enter into agreements with. any public or private agency, officer, person, or institution, corporation, association, or foundation for the performance of acts or for the furnishing of services, facilities, materials, or equipment by or for the trustees or for the joint performance of an act or function or the joint furnishing of services and facilities by the trustees and the other party to the agreement.

"The trustees may enter into agreements with the federal government or any agency thereof in accordance with the procedures prescribed by the federal government or such agency in order to receive the benefits of any federal statute extending benefits to the California State University and Colleges or to the California State University and Colleges students, including, but not limited to:

"(a) Agreements with any agency of the federal government for the education of persons in the service of the federal government.

"(b) Agreements with any agency of the federal government for the education of veterans, provided that such agreements shall provide for payment of the maximum amount permitted under the act, or acts, of Congress under which the agreement is entered into.

"Notwithstanding any other provision of law, the trustees have all power necessary to perform such acts and comply with conditions required or imposed by the federal government in order to receive such benefits. The trustees are vested with all necessary power and authority to cooperate with any such agency of the federal government.' in the administration of any applicable act of Congress and rules and regulations adopted thereunder.

"The provisions of Article 1 (commencing with Section 4300) of Chapter 4 of Division 5, Title 1 of the Government Code shall not apply to the purchase by the trustees of musical instruments for the use of students of the' California State University and Colleges."

Education Code section 89030 provides that:

"The trustees shall adopt rules and regulations not inconsistent with the laws of this state for:

"(a) The government of the trustees

"(b) The government of their appointees and employees

"(c) The government of the California State University and Colleges.

"The rules and regulations shall be published for distribution as soon as practicable after adoption.

"This section shall be liberally construed in order that the purposes of the Donahoe Higher Education Act pursuant to Part 40 (commencing with Section 66010) of Division 5 of this title, may be effectuated."

Education Code section 89045 provides that:

"The trustees shall establish an internal audit staff which shall include such staff positions as may be presently authorized for internal auditing. The internal auditing staff shall report directly to the trustees and shall be available for consultation with any audit committee of the trustees which may be established by the trustees.

"The duties of the internal audit staff shall include, but shall not be limited to, auditing, reviewing, cost and systems analysis, analyzing, and recommending operating procedures for the California State University and Colleges.

"Management audits shall be made to determine the effectiveness and efficiency of the organization, operation, and procedures of each state college, each auxiliary organization, and the office of the chancellor. Officials and employees of each state university or college, each auxiliary

organization, and the office of the chancellor shall furnish all books, papers, contracts, management charts, and related information necessary for such management audits."

None of these sections, pertaining directly to CSUC, contain any requirement, express or implied, that may be said to direct the recovery by CSUC of the cost of any services it may provide to its auxiliary organizations. We turn next to the provisions of the Education Code relating specifically to CSUC and its auxiliary organizations.

"Auxiliary organizations" of CSUC are authorized pursuant to Education Code section 89900 *et seq*., which sections contain extensive provisions regulating such entitles in their relationship with CSUC.

We examined the legal relationship between CSUC and its auxiliary organizations in an opinion published at 47 Ops. Cal. Atty. Gen. 8 (1966) wherein we concluded that such auxiliary organizations are not public entitles, or political entitles or even "instrumentalities" of the state but rather are private, nonprofit organizations, usually taking the form of a corporation. (See tit. 5, Cal. Admin. Code, § 42600; *cf*. 17 Ops. Cal. Atty. Gen. 181 (1951); 14 Ops. Cal. Atty. Gen. 210 (1949).)

Our opinion published at 47 Ops. Cal. Atty. Gen. 8, *supra*, was discussed in *Wanee v. Board of Directors* (1976) 56 Cal. App. 3d 644, as follows:

> "ASC (a nonprofit corporation) filed its articles of incorporation with the Secretary of State on March 20, 1942. The articles state that one of the purposes of the organization is to "'[o]perate, supervise, manage and otherwise control . . . [a] . . . bookstore . . . .'" The corporation has a constitution characterized by the parties as setting forth its bylaws.
>
> "ASC is an 'auxiliary organization' as the same is defined in section 24054.5, subdivisions (b) and (c). Section 24054, as then applicable, sets forth the regulations governing such auxiliary organization and more particularly subdivision (c) thereof provides: 'The operation of state university or college auxiliary organizations shall be conducted in conformity with regulations established by the trustees, ... The regulations shall include provisions requiring the governing board of each auxiliary organization to provide salaries, working conditions and benefits, *exclusive of retirement and permanent status benefits*, for the full-time employees of each auxiliary organization which are comparable to those provided state

university or college employees performing similar services. (Italics added.)'

"Petitioner's argument also ignores an opinion of the Attorney General, addressed to the question whether auxiliary organizations are instrumentalities of the state and thus governmental entitles for social security purposes. The Attorney General concluded that an auxiliary organization such as ASC was a nongovernmental body created to promote the welfare of the college and not a public agency carrying out a governmental function. (47 Ops. Cal. Atty. Gen. 8–11, 10 (1966).) Involved in that matter were employees of the El Corral Book Store at California State Polytechnic College and of San Jose State College Foundation. The opinion states, 'Both are created, not under laws pertaining to governmental entitles, but under general provisions applying to private, as distinguished from governmental, entitles.' While the opinions of the Attorney General are not controlling, they generally 'have been accorded great respect by the courts. [Citations.]' (*Wenke v. Hitchcock* (1972) 6 Cal. 3d 746, 751–752 [100 Cal. Rptr. 290, 493 P.2d 1154].)

"There appears no doubt that employees such as petitioner are not employees of the college or of any governmental entity, but instead are employees of a private corporation. Under the laws which govern private corporations, petitioner, as an employee thereof, has no right insulating him against a dismissal which is made in good faith but without cause. (*Petermann v. International Brotherhood of Teamsters* (1959) l74 Cal. App. 2d 184, l88–l89 [344 P.2d 25]; *Coats v. General Motors Corp.* (1934) 3 Cal. App. 2d 340, 348 [39 P.2d 838].) 'A contract for permanent employment . . . is only a contract for an indefinite period terminable at the will of either party . . .' (*Speegle v. Board of Fire Underwriters* (1946) 29 Cal. 2d 34, 39 [172 P.2d 867].)

"'It is an elementary principle of law that a court has no power or right to intermeddle with internal affairs of a corporation in the absence of fraudulent conduct on the part of those who have been lawfully entrusted with the management and conduct of its affairs . . . The authority of the directors in the conduct of the business of a corporation must be regarded as absolute when they act within the law The court cannot substitute its judgment for that of the directors.' [Citations.] (*Fairchild v. Bank of America* (1961) 192 Cal. App. 2d 252, 256–257 [13 Cal.Rptr. 491].)" (Fns. omitted.)

It is contended that section 11010 does not apply to CSUC and its auxiliary organizations to the extent that the latter entitles are nonprofit corporations in that section 11010 applies only to corporations, not to nonprofit corporations. We do not agree. Assuming that all of the conditions exist that make section 11010 applicable, there is no legal basis known to us for concluding that section 11010 would nevertheless be inapplicable simply because of the form of the corporation, whether it be organized for profit or for nonprofit purposes. We turn to the Education Code provisions pertaining to auxiliary organizations of CSUC.

Education Code section 89900 provides in part that:

> "(a) A certified public accountant shall be selected by each auxiliary organization described in Section 89901. Upon being notified of the certified public accountant selected by an auxiliary organization, the office of the chancellor shall forward the applicable auditing and reporting procedures to the selected certified public accountant. In accordance with procedures prescribed by the Department of Finance, such certified public accountant shall annually audit any and all state university or college auxiliary funds. The auxiliary organizations shall contract for and receive such audit annually, and shall submit such audit to the trustees and to the Director of Finance. Auxiliary organizations shall annually publish an audited statement of their financial condition which shall be disseminated as widely as feasible and be available to any person on request . . . .
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> ". . . . . .
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> "(c) The operation of auxiliary organizations shall be conducted in conformity with regulations established by the trustees, and the accounting procedures of such auxiliary organizations shall be approved by the Director of Finance. The regulations shall include provisions requiring the governing board of each auxiliary organization to provide salaries, working conditions and benefits for the fulltime employees of each auxiliary organization which are comparable to those provided California State University and Colleges employees performing similar services; . . . .
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> ". . . . . .

Education Code section 89904 provides that:

"All expenditures and fund appropriations of auxiliary organizations described in Section 89903 shall be approved by the governing board of the auxiliary organization. Appropriations of funds for use outside of the normal business operations of the auxiliary organization shall be approved in accordance with trustee policy and regulations by an officer designated by the trustees.

"The trustees in consultation with the Department of Finance and the governing boards of the various auxiliary organizations described in Section 89903, on or before the beginning of the 1970–197 1 fiscal year, shall:

"(a) Institute a standard systemwide accounting and reporting system for businesslike management of the operation of such auxiliary organizations.

"(b) Implement financial standards which will assure the fiscal viability of such various auxiliary organizations. Such standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements.

"(c) Institute procedures to assure that transactions of the auxiliary organizations are within the educational mission of the state colleges.

"(d) Develop policies for the appropriation of funds derived from indirect cost payments not required to implement subdivision (b). Uses of such funds shall be regularly reported to the trustees."

It is apparent from the wording of Education Code section 89904 that the "appropriation of funds" referred to in the opening paragraph of that section and in subparagraph (d) refer to internal appropriations of funds by the Directors of an auxiliary organization and not to appropriations of funds by the state Legislature. Thus, we find no provision having the necessary effect, in respect of section 11010, in any of the statutory provisions relating to CSUC and its auxiliary organizations. We turn next to the regulations adopted by the Board of Trustees of CSUC, pertaining to its auxiliary organizations.

Title 5, California Administrative Code section 42500 provides that:

"42500. Functions of Auxiliary Organizations. The functions to be undertaken by auxiliary organizations are for the purpose of providing

essential activities which are an integral part of the campus educational program.

"(a) The following functions have been determined by the Board to be appropriate for auxiliary organizations to operate, administer, and manage in accordance with Board policies:

"(1) Student Association Activities;

"(2) Bookstores;

"(3) Food and Campus Services;

"(4) Campus Union Facilities and Programs;

"(5) Housing Facilities;

"(6) Loans, Scholarships, Grants-in-Aids;

"(7) Research, Workshops, Conferences, Institutes and Federal Projects;

"(8) Instructionally-related Programs, including Agriculture;

"(9) Alumni Activities;

"(10) Supplementary Health Services;

"(11) Gifts, Bequests, Devises, Endowments and Trusts;

"(12) Public Relations Programs.

"(b) Whenever feasible, gifts should be accepted under the provisions of Education Code Section 89720 or 89723.

"(c) No auxiliary organization may enter into any contract or other business arrangement acquiring or affecting real property either by purchase, or lease involving payments of more than $10,000 per annum and duration terms of more than one year, without prior notification and consultation with the Office of the Chancellor.

"(d) Loans, scholarships and grants-in-aid shall only be given to currently admitted students. In no case shall the scholarship or grants-in-aid exceed the amount necessary to cover books, school fees, and living expense, except as provided under Section 42403, subdivision (b).

"(e) An auxiliary organization shall not engage in a function not listed in subdivision (a) of this section unless an appropriate amendment is made to subdivision (a) by the Board of Trustees, adding said function to the list of approved functions of auxiliary organizations, or unless such function is essential to satisfy the corporation laws of the State of California."

Title 5, California Administrative Code section 42501 provides that:

"42501. Requirement of Written Agreement. A written agreement on behalf of the State of California by the Chancellor of the California State University and Colleges, and the auxiliary organization is required for the performance by such auxiliary organization of any of the functions listed in Section 42500, except student association activities. If any auxiliary organization performs more than a single function, then the written agreement may cover any number of the functions it performs on the campus or a separate agreement may cover each function performed."

Title 5, California Administrative Code section 42502 provides that:

"42502. Contents of Written Agreement. The written agreement required by [tit. 5, Cal. Admin. Code] section 42501 shall, among other things, specify the following:

"(a) The function or functions which the organization is to manage, operate or administer.

"(b) The necessity for administration of the functions by the auxiliary organization instead of by the campus under usual state procedures;

"(c) The areas of authority and responsibility of the auxiliary organization and the campus.

"(d) The facilities to be made available to permit the auxiliary organization to perform the functions specified in the written agreement.

"(e) The charge or rental to be paid for the facilities used in connection with the performance of its function. The charge or rental specified shall not require involved methods of computation, and should be identified in sufficient time before its incurrence so that the organization may determine to what extent it shall be liable therefor.

"(f) *Full reimbursement to the State for services performed by state employees under the direction of the organization. Methods of proration where services are performed by state employees for the organization shall be simple and equitable.*

"(g) A simple but equitable method of determining in advance to what extent the organization shall be liable for indirect costs relating to federally-sponsored programs.

"(h) The responsibility for maintenance and payment of operating expenses.

"(i) Proposed expenditures for public relations or other purposes which would serve to augment state appropriations for operation of the campus. With respect to expenditures for public relations or other purposes which would serve to augment state appropriations for operation of the campus, the auxiliary organization may expend funds in such amount and for such purposes as are approved by the governing body of the auxiliary organization. The President shall file with the Chancellor, a statement of such policy on accumulation and use of public relations funds for all auxiliary organizations. The statement will include the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control.

"(j) The disposition to be made of net earnings derived from the operation of facilities owned or leased by the auxiliary organization and provisions for reserves.

"(k) The disposition to be made of net assets on dissolution of the auxiliary organization or cessation of the operations under the agreement.

"(l) The covenant of the auxiliary organization to maintain its organization and to operate in accordance with the regulations contained in this Subchapter 6, and Board resolutions." (Emphasis added.)

Thus, subdivision (f) of section 42502, title 5, California Administrative Code, contains a requirement, imposed by the Board of Trustees of CSUC, that the written agreement between the Chancellor of the CSUC and an auxiliary organization of CSUC, provide for "full reimbursement to the State for services performed by state employees . . . which methods of proration . . . shall be simple and equitable.

However, this administrative regulation fails to constitute the condition precedent for the operation of section 11010. One element of such a condition precedent is that the state agency, supported by the General Fund, must be somewhere directed to establish vis a vis a "person, firm, or corporation" a fee, which fee constitutes a special fund which shall 'bear the burden of the costs incurred by the state agency rather than the General Fund which is also available to fund the operations of that state agency. There is no such special fund relationship between CSUC and its auxiliary organizations.

That is to say, there is no process applicable to CSUC in which it must determine the amount of a fee to be charged to its auxiliary organizations, which fee is to constitute a special fund providing revenue to support the operation of CSUC. Only under such a circumstance would the elements of such costs as are set forth in section 11010 then be applicable. Section 11010 operates to shift the accounting of such costs from the General Fund to the special fund, where applicable. In contradistinction, section 42502, title 5, California Administrative Code, simply operates to recover for CSUC those expenses it has incurred in assisting its auxiliary organizations, but nowhere does there appear any statutory requirement that it do so. The providing of such services by CSUC to its auxiliary organizations, in the first instance, appears to be authorized by Education Code sections 89036, 89045 and 89904.

Thus, section 42502, subdivision (f) of title 5, California Administrative Code is simply an implementation of CSUC policy—not state legislative policy—controlling the fiscal relationship between the individual state universities and colleges and their auxiliary organizations as is authorized by Education Code sections 89030, 89036 and 89904. The specific condition precedent to the application of section 11010 to CSUC and its auxiliary organizations does not exist.

Accordingly, it is concluded that the California State University and Colleges is not required to collect from its auxiliary organizations a share of the "costs" set forth in section 11010.

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