

Presentation to Higher Education Committee

Prepared by NDUS Office

June 10, 2010 – 1:00 p.m. agenda item

Our institution foundations are legally separate and independent organizations. All - or almost all - of the foundations are incorporated under ND law as non-profit corporations. Most of our institution foundations incorporated long ago - probably back in the 50s or 60s - although foundations at some campuses, such as BSC or WSC, were established later. Most of our institutions have just one affiliated foundation, but NDSU has two and UND has five or six separate foundations. At least for main foundations, the stated purposes of the organization typically include raising funds on behalf of and providing financial and other support to the institutions and its students. Again, at least for main foundations, most of the available funds contributed by a foundation are allocated to student scholarships and other aid, contributions to institution facilities and other institution support, including endowments or other support for faculty positions, etc. Some foundation funds are unrestricted, but a good portion of foundation funds and other assets are "restricted," meaning they are designated for a specific purpose (a donation for a specified building project, scholarship aid, including funds earmarked for named and other specific scholarships, endowments for faculty positions or designated departments, etc.). All of the foundations have independent governing boards. It is common to have one or two institution officers on a foundation board, typically in an *ex officio*, non-voting capacity. (The SAO made recommendations a number of years ago regarding independence of foundation boards and, specifically, concerns about numbers and roles of institution officers on foundation boards. As a result of SAO recommendations, several NDUS foundations revised by-laws to reduce the number of institution officers on the boards or converted what may have been voting positions to *ex officio*, nonvoting positions.)

There are several related foundations established to support UND departments (including medical school, aerospace and EERC). Purposes of these foundations are more narrowly focused on a specific UND unit. At least one and perhaps two or three of the UND foundations (the aerospace foundation for sure and, probably the EERC foundation and perhaps the medical school foundation) engage in activities that are beyond the scope of traditional foundations. For example, the aerospace foundation has functioned as the legal entity that contracts for pilot and other flight training at UND, the foundation has purchased or leased aircraft for these operations, etc.). At NDSU, there is, in addition to its alumni foundation, a separate research and development foundation. In recent years, several foundations (including those at UND and NDSU but also at other institutions including, for example, BSC) have gotten into the property development business. The foundations have purchased property, made improvements and leased needed facilities to the institutions. Also in recent years, foundations at NDSU and UND were involved in project management for institution projects funded by foundations (although recently-amended SBHE policies now require institution project management for institution or institution-funded projects).

SBHE Policy 340.2 requires that institutions have written agreements with the foundations. The policy specifies items that must be addressed in the agreements, including a summary of contributions or payments made by one party to the other. Foundations typically operate as the fundraising arm of the institution and they provide related services, including maintenance of alumni and donor records, communicating with and providing information to alumni and other supporters, etc.

It is not clear what information is requested regarding "state liability for actions of foundations." Because foundations are separate legal entities, responsibility and potential liability for foundation activities rests with the foundations and foundation officers and not the institutions. Liability of non-profit corporations and their boards and officers is determined under laws and rules that apply to non-profit corporations generally. However, institutions and foundations have contracts and agreements under which risks may be transferred from one party to the other. As a general rule, if a NDUS institution assumes liability risks by contract, those risks are excluded from coverage by the state risk fund. Because of this potential liability exposure, it is important that agreements involving institutions and foundation are reviewed and language allocating risks is carefully scrutinized and SBHE policy requires review of all institution contracts, including contracts with foundations. Further, it is important that institutions insist that foundations have adequate liability insurance if institutions delegate functions to a foundation or a foundation provides services to or on behalf of the institution.