

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-4826
HTTP://WWW.CCCCO.EDU



January 27, 2006

James Austin
Vice Chancellor for Business Services
Grossmont - Cuyamaca Community College District
8800 Grossmont College Drive
El Cajon, CA 92020-1799

Legal Opinion L 06-01

Dear Vice Chancellor Austin:

I am writing in response to your memorandum of October 31, 2005, in which you requested our opinion as to whether an election held at Grossmont College validly authorized a mandatory student center fee and, if so, whether the fee revenue may be used to pay the salary of a custodian to clean the student center.

You indicated that the Board of Trustees of the Grossmont - Cuyamaca Community College District (District) approved imposition of a mandatory student center fee at Grossmont College of \$1 per unit, up to a maximum of \$10 per year, based on the results of a student election conducted in March 2002. The ballot asked that each student vote "yes" or "no" on the following question: "I support the creation of a fee of \$1.00 per unit (up to a maximum of \$10.00 per student per academic year) for the purpose of renovation and expansion of the Grossmont College Student Center."

You explained that, although the Board of the Associated Students of Grossmont College (ASGC) certified the election results, a member of the ASGC Board is now questioning the validity of the election and the planned use of the proceeds from the fee. Specifically, this Board member apparently argues that the election did not validly authorize the fee because it did not state the duration of the proposed fee and that, even assuming the fee is valid, it cannot be used to pay the salary of a custodian to maintain the student center because the language of the ballot measure did not mention operating expenses.

As discussed further below, we conclude that the election did not validly authorize the fee and that fee revenue collected may not be used for operating expenses.

Education Code section 76375 provides, in pertinent part:

"(a)(1) The governing board of a community college district may establish an annual building and operating fee for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center, which fee shall be required of all students attending a community college where the student body center is to be located.

(2) The fee shall be imposed by the governing board, at its option, only after a favorable vote of two-thirds of the students voting in an election held for that purpose at a community college, in the manner prescribed by the Board of Governors of the California Community Colleges, and open to all regular students enrolled in credit classes at the community college. The election shall occur on a regularly scheduled college day and at least 20 percent of the students enrolled in credit classes as of October 1 of the college year during which the election is held must cast a ballot for the election to be declared valid."

The Board of Governors has adopted title 5, California Code of Regulations, section 58510 to implement Education Code section 76375. Among other things, section 58510(d) provides that "The ballot proposal seeking authorization of the fee shall specify the intended duration of the fee and the intended use of the fee revenue."

The first question is whether the election conducted at Grossmont College provides a valid basis for authorizing a student center fee in view of the fact that the language of the ballot measure did not explicitly "specify the intended duration of the fee" as required by section 58510. One might surmise that, since no ending date was specified, it was intended that the fee would remain in place indefinitely. However, this would be logically inconsistent with the ballot language specifying that the fee was "for the purpose of renovation and expansion of the Grossmont College Student Center." Presumably, at some point in the future, the renovation and expansion will be complete and it will no longer be necessary to collect fees for that purpose.

Thus, students who might have been concerned about the duration of the fee were left to guess what was intended. This is precisely the evil section 58510 was designed to prevent. Accordingly, we conclude that the election held at Grossmont College did not comply with section 58510 and did not validly authorize the collection of a student center fee. Consequently, the District should promptly discontinue collection of the student center fee.

We do not mean to say that section 58510 prohibits establishing a student center fee on an ongoing basis. It simply requires that the language of the ballot measure be written in such a way that students will be informed as to the intended duration of the fee. This is important to carry out the general principle that fees should only be charged when explicitly authorized. (Cal. Code Regs., tit. 5, § 51012.) Certainly, the ballot language could easily have been drafted to clearly state that the fee would be charged "on an ongoing basis" or words to that effect.

In light of our conclusion that the fee was not properly authorized, answering the second question is largely moot. However, there may be an issue of how any remaining funds can be used.

Since the fee was not properly collected in the first place, the funds should theoretically be returned to the students who paid them. However, it may be impractical to identify and locate each student who paid the fee since the fee was established and give him or her a small refund. Moreover, since some of the funds have presumably already been used for renovation of the student center, requiring a refund would compel the District to locate other funds for this purpose.

For these reasons, we will not require a refund. Instead, we believe the intent of the students who approved the ballot measure can best be served by permitting the funds already collected to be used for the purposes specifically enumerated in the ballot. As noted above, the ballot stated that the fee revenue was to be used "for the purpose of renovation and expansion of the Grossmont College Student Center." Obviously, this does not give any indication that the fee might be used for ongoing operating expenses, so we do not believe any remaining funds can be used to pay a custodian.

If the ASGC decides to schedule a new election to reauthorize the fee, the District should ensure that the language of the proposed ballot measure complies with section 58510 by clearly specifying the duration and proposed uses of the fee. Specifically, if it is intended that the fee be ongoing in nature and that funds can be used for operating expenses, those terms should be expressly stated.

If you have any further questions, you may contact Assistant General Counsel Ralph Black at (916) 327-5692 or rblack@cccco.edu

Sincerely,

Steven Bruckman
Executive Vice Chancellor and General Counsel

SB:RB:sj

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