

From: [Maxwell Love](#)

To: [Tyler Junger](#)

Date: Tue, 09 Mar 2010 01:44:34 -0600

Subject: Re: RE:

Attachment(s): 0

Tyler:

First off I know the legislation ties your hands, I am going to be supporting amendments to change that as my only real intent was to go about the process of finding a lawyer through the ASM Foundation.

Furthermore, I needed you to look here:

<http://www.uwsa.edu/fadmin/activity/studserv.htm>

This says:

Student Services--Functional Definition:

This category should include funds expended for offices of admissions and registrar and those activities whose primary purpose is to contribute to the student's emotional and physical well-being and to his or her intellectual, cultural, and social development outside the context of the formal instruction program. It includes expenditures for student activities, cultural events, student newspapers, intramural athletics, student organizations, intercollegiate athletics, counseling and career guidance (excluding informal academic counseling by the faculty), student aid administration, and student health services."

Which is clearly different from auxiliary enterprise accounts. I'm saying that the definitions DO put ASM and the GSSF, (as well as possibly UHS and Rec Sports) into the Student Services delineation and not the Auxiliary Enterprise.

I'm not going to speak for Kurt or Carl who I talked to about this matter but I hope they respond to you with what we discussed.

Once again, I do by no means intend to subvert your leadership, work done in summer, or any of the sort by what I'm doing. The legislation came across that way, and a number of council members have told me that,

and I totally recognize that and apologize. I will apologize in front of council and ask that it be amended. But under no means do I feel that we shouldn't consult something bigger here, i.e. a lawyer. I would appreciate it if these arguments were brought to the VCA as well.

Thanks for your time,
I'm definitely willing to chat more,
Maxwell

On Mar 9, 2010, at 1:34 AM, Tyler Junger wrote:

Max, the general problem is this:

We have no forum to air any of these grievances short of litigation. If we litigate, we'll have to seek to use student funds to pay for lawyer fees and find money somewhere to pay for them, inevitably resulting in less than \$180,000 return if we actually do win.

If we lose, students definitively lose control of segregated fees. Right now, the status of seg fees as student property v. state property exists in legal limbo. Supreme Court concurring opinions (in Univ of Virginia v. Rosenberger, O'Connor opinion) state that student fees are student money. F-50 states that seg fees are state money. We can operate like this, and we have for a number of years. If we litigate and lose, the decision will more than likely have ramifications which will result in seg fees becoming state dollars. If we litigate, our main goal is not to secure this for students, our main goal is to get our money back, and the argument in this vein, for students owning seg fees, is distracting and wouldn't be part of our case.

Finally, here's the definition of what an Auxiliary Enterprise is from the site you directed me to:

Auxiliary Enterprises--Functional Definition:

An auxiliary enterprise is an entity that exists to furnish goods or services to students, faculty, or staff, and that charges a fee directly related to, although not necessarily equal to, the cost of the goods or services. The distinguishing characteristic of auxiliary

enterprises is that they are managed as essentially self-supporting programs. The general public may also be served incidentally by auxiliary enterprises.

This program includes all expenditures and transfers relating to the operation of auxiliary enterprises, including expenditures for operation and maintenance of plant and for institutional support; also included are other direct and indirect costs, whether charged directly as expenditures or allocated as a proportionate share of costs of other department of units.

That definition describes, without stretching or weird interpretations, the function of ASM. We collect segregated fees, are self-supporting in that we don't receive state or university money other than seg fees (relying on the argument that they're student dollars), and we seek to provide services to students. ASM has held for several years, through our funding of WISPIRG contracts, that advocacy is a service, and thus our basic mission, to advocate for students, is a service as can be construed under the definition above. The question you have to necessarily ask is: if ASM doesn't fall under this definition, what exactly does it do?

The answer to this is simple: the GSSF. Clearly, the GSSF falls under the definition of a "student service." GSSF dollars should be immune from the seg fee sweep. Conveniently, they are immune. Unfortunately, that doesn't matter. The money is being taken out of ASM's reserve account, which does contain money which was previously allocated to GSSF groups but is now in possession of ASM, thus in position of a group which is easily defined as an auxiliary enterprise.

We've looked at this. Deeply. Me and Kurt and Erik and Carl and Brandon and Michael and Tom spent hours and hours trying to find a legal argument that could help us and there wasn't anything to be found. If there was even a dim hope that our case couldn't be dismissed based on such a blank-read interpretation, we would have pursued litigation further. But because we couldn't find anything reliable, we eventually conceded. The sweep, odious as it may be, is legal and follows system policy.

Because of this, we fought to secure a Memo of Understanding

with the VCA's office that further restricts what the administration can do in the face of another sweep. We're negotiating this on Thursday and it'll be brought to the Council after that. The legislation you put forward ties my hands in a way so restrictive that we risk losing the possibility of having an MOU altogether. If all I can bring to the Council, Max, is something with provisions that "allow ASM to fight the transfer of funds from its reserve account" or nothing at all, I greatly fear, and genuinely believe, that I will be able to bring nothing.

In sum, I agree that the document you sent me divides 128 funds into, among other things, Auxiliary Enterprises and Student Services. Unfortunately, it is far too easy to define ASM as an Auxiliary Enterprise for this to be a sound legal argument. The legislation you put forward is, I believe, inaccurate at best and detrimental to our cause at worst.

I honestly applaud you for your work on this. You're showing tenacity that I've rarely seen out of students. Representative Ingram said at a recent meeting, if your work is good, it will stand up to scrutiny. You've scrutinized our work in the summer more fully than I expected anyone to. However, I fully believe that our work stands up to your search.

If you find any holes in the argument or want to debate this more, let me know.

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Tyler Junger
Chair, Associated Students of Madison
(414) 531-8425
jungertyler@gmail.com

From: Maxwell Love [mailto:maxwelllove@gmail.com]
Sent: Tuesday, March 09, 2010 1:04 AM
To: Tyler Junger
Subject:

#1 Sorry the legislation was so confrontational (I didn't mean

for it to be so negative but it is so I apologize), it was a mistake and we'll have to amend that.

#2 Look at this before you look at any of the information I've given you: <http://www.uwsa.edu/fadmin/activity/index.htm>

I've talked about it with Carl (and semi talked with Kurt), it's explicit in how it delineates Fund 128s into Auxiliaries (8) and Student Services (0). Why is this important? Because the state budget only referenced Auxiliaries.

I just found this. I really hope you look at it.
Maxwell