Guidelines on the Use of Services and Activity Fees (a/k/a Killian Outline)
October 2018 Revision [1]

These Guidelines represent the most recent update to a document that has long circulated as guidance among student services and business administrators, known as the "Killian Outline." It began as a compilation of AGO advice by a college administrator named John Killian in 1980 and has been periodically updated through the efforts of the Council for Unions and Student Programs (CUSP) and the Education Division of the Attorney General's Office. The basic legal principles governing the appropriate use of services and activities (S&A) fees have changed little since 1980. However, practical application of these principles remains challenging as student programs and activities have become more sophisticated and broader in scope, colleges have faced new budgeting pressures, and the line between student activities and college operations has become more difficult to distinguish.

I. Basic Principles Concerning the Use of S&A Fees

- Colleges are authorized by statute to establish and collect S&A fees from students. Once collected, the fees become public funds but remain dedicated for the use and benefit of the student body. For any proposed use of S&A fees, we must ask
    - (1) whether the use is for a student activity or program within the scope of the authority of the S&A fee statute and authorized by the board of trustees;
    - (2) whether S&A budgeting procedures have been followed; and
    - (3) whether, even if properly budgeted and for student benefit, such a use is consistent with constitutional restrictions on the use of public funds and other legal principles.[2]

- *Statutory Authority*. S&A fees are for the purposes of supporting student activities and programs.[3] Students must propose budgetary recommendations to the college or university administration and governing board. The boards of trustees of the state's colleges and universities have the express and exclusive authority to approve funding for bona fide student activities.[4] In its ordinary and usual meaning, "student

[1] Updated by AGO Education Division with assistance of CUSP and BAR. Note: This document is intended to be guidance to college administrators and therefore is not intended to be a substitute for a Student Financial Code.
[2] Consistent with AGLO 1971 No. 98, there are two analytical guideposts for use of public funds: (1) a statutory basis to authorize the activity must be found and (2) some basis for avoidance of a collision with the gift of public funds restrictions of Article VIII, § 5 must be demonstrated.
[3] RCW 28B.15.041. "Services and activities fees" are defined as: "fees, other than tuition fees, charged to all students registering at the state's community colleges, regional universities, The Evergreen State College, and state universities. Services and activities fees shall be used as otherwise provided by law or by rule or regulation of the board of trustees or regents of each of the state's community colleges, The Evergreen State College, the regional universities, or the state universities for the express purpose of funding student activities and programs of their particular institution."
[4] RCW 28B.15.045. "The boards of trustees and the boards of regents of the respective institutions of higher education shall adopt guidelines governing the establishment and funding of programs supported by services and activities fees."

activities" refers to any college co-curricular or extracurricular activity participated in by students in the furtherance of their education.[5]

- *Expenditure Authority*: Ultimate authority for S&A expenditures resides with the college board of trustees,[6] but students should have a great deal of input. Students propose expenditures through the S&A budget process, make up the majority of the S&A fee committee, [7] and make recommendations to the board of trustees.[8] Students are expected to have a "strong voice" in recommending budgets for S&A fees. "Members of the governing boards shall adhere to the principle that services and activities fee committee desires be given priority consideration on funding items that do not fall into the categories of preexisting contractual obligations, bond covenant agreements, or stability for programs affecting students."[9]

- *Constitutional Prohibition on Gifts*. The state constitution prohibits the gifting of public money or property to private parties. The State Supreme Court has defined a gift as a transfer of public property without consideration[10] and with a donative intent. By statute, S&A fees, plus any revenues generated by S&A funded activities, must be deposited in college accounts and expended through the college's chief fiscal officer. Thus, once collected from the students and deposited, the funds become state funds subject to all constitutional and statutory restraints on use of state funds.[11]

---

[5] House Journal, 42nd Leg., 1st Ex. Sess., at 1537 (Wash. 1971). In response to a question concerning the meaning and scope of "student activities and programs," Representative King said: "[i]t would include such things as their athletic programs (if they want to), their intercollegiate debate, their school dances -- all the things that students do as a part of their activity programs. In addition to that, I would believe that this amendment would cover the things necessary for the activities. I think it would be possible if the student government decided to build an intramural building, for example, as part of their activities program, and they were involved in it, that this would cover that also. I think the key thing is that it be related to a decision made by the students." *Id.*

[6] See, *Good v. Associated Students of the University of Washington*, 86 Wn.2d 94, 542 P.2d 762 (1975).

[7] Individual institutions may have a different name for the committee, such as the "S&A Budget Committee." The legislature uses the term "services and activities fee committee." "Responsibility for proposing to the administration and the governing board program priorities and budget levels for that portion of program budgets that derive from services and activities fees *shall reside with a services and activities fee committee*, on which students shall hold at least a majority of the voting memberships, such student members shall represent diverse student interests, and shall be recommended by the student government association or its equivalent. The chairperson of the services and activities fee committee shall be selected by the members of that committee. The governing board shall insure that the services and activities fee committee provides an opportunity for all viewpoints to be heard at a public meeting during its consideration of the funding of student programs and activities." RCW 28B.15.045(3).

[8] *See* RCW 28B.15.044 ("It is the intent of the legislature that students will propose budgetary recommendations for consideration by the college or university administration and governing board to the extent that such budget recommendations are intended to be funded by services and activities fees.").

[9] RCW 28B.15.045(2). Best practice is to identify preexisting obligations to the S&A Fee Committee, particularly any items identified as necessary for stability of programs affecting students. There is also a detailed dispute resolution process when the S&A fee committee and the administration disagree on budget recommendations. The Board must consider the results of any dispute resolution process.

[10] "Consideration" is a legal term for receiving reciprocal value. To avoid a gift, there must be an exchange of value, e.g, money for goods or services.

[11] Const. art. VIII, §§ 5 & 7.

- *Tuition-funded Programs*. As a general principle, S&A fees should not be used to supplant tuition (building fee and operating fee) support for employees and facilities supporting the academic programs and business operations of the institution.[12]

II. Distinguishing S&A Fees from Voluntary Student Fees

There are actually two separate sources of statutory authority for raising funds for student purposes. These are often conflated and confused. As stated above, student and activities fees are authorized and described with guidelines and budgeting procedures in RCW 28B.15.041 through .045. A separate authority exists in RCW 28B.15.610 for "voluntary student fees" (VSF). The VSF is a charge which the students voluntarily maintain upon themselves for student purposes only. Students are authorized to create or increase VSF for each academic year when passed by a majority vote of the student government or its equivalent, or referendum presented to the student body. There is little else in the statute concerning these fees. The grant of authority to students to create or increase a fee also implies the same authority to abolish or decrease a fee by the same process. Provided, if the students vote VSF to support a bond or other binding contractual obligation, they may not subsequently breach that obligation by removing that pledge. Note, the VSF is the only authorized vehicle, aside from tuition and S&A fees, for assessing across-the-board fees on all students (as distinguished from special user fees).[13]

III. Examples of Permissible Uses of S&A Fees.

There is no way to capture every conceivable use of S&A fees. One should always go through the steps of analyzing whether the proposed use is for authorized student activities and programs rather than for general college operations and whether the S&A fee budgeting process was followed. The following examples have been determined over time to be appropriate uses of S&A fees, *provided that* they are approved as bona fide student activities by the board of trustees through the budget approval process:

- S&A funds may be used for expenses associated with traditional and time-honored activities such as student government, clubs, or activities of other official student organizations, student health and wellness programs, retreats, conferences, musical, dramatic, artistic, debate, and other presentations, events, and activities of an extra-curricular nature, student publications and other mass media initiatives. Permissible expenses may include meals and lodging during group travel. These costs may be paid as a return for participation.
- Awards in the form of trophies, certificates, plaques, attire, etc. may be provided to students who have served or are serving as members of athletic teams, student leadership teams, cheer leaders, outstanding scholars, outstanding participants in drama,

[12] Narrow exceptions to this principle allow for S&A support for staff engaged in supporting student activities and programs as discussed in Section III below.

[13] Some community and technical colleges assess a "technology fee." This must be assessed as a VSF. The technology fee authorized under RCW 28B.15.051 is only applicable to the state universities, regional universities and TESC.

debate, student government, and others who have earned them, *provided that* they are a result of participation, are personal in nature, and are of nominal value.[14]

- Support for college employees in student programs operations. S&A fees may be used only to the extent that they support employees engaged in student activities and programs--as opposed to normal maintenance and operation functions of the college.[15]
- Premiums for liability and casualty insurance coverage for the college for actions taken by students serving in official student program capacities or participating in such activities and programs.
- Food and refreshments for student attendees at approved student programs as incidental thereof. Examples include: graduation ceremonies, vocational certificate awards programs, scholarship convocations or receptions, student activity or club meetings, student awards, student work sessions, new student orientations, honor society initiations, scholarship donors receptions, etc.[16]
- Food and beverages may be provided at an "open house" hosted by a student club aimed at promoting awareness of that club's activities on campus, provided, the club provides the college students who attend that open house with written or oral information about the club's function and mission.
- Costs associated with childcare centers for the children of students.
- Dues for institutional memberships in officially recognized student leadership, governmental or programming organizations.
- Special tutorial or co-curriculum programs provided they are not to sustain a critical operation of the college.
- A legal aid program that provides services to individual students, provided that the program is not used to institute legal action against the college or university.[17]
- Furniture and equipment for informal or non-instructional student spaces as approved by the associated student association or student governmental organization.
- Partial subsidization of a student food bank or food pantry operations, provided that the food bank benefits are reserved for students.
- Scholarships. RCW 28B.10.825 expressly provides for a limited amount of S&A fees ($1.00 per student quarter or $1.50 per student per semester) to be used for an institutional student loan fund for needy students. In light of the specific statutory authority and cap, the authority to devote any additional amount of S&A fees to any type of loan program is doubtful. It also makes authority for scholarships uncertain. A

[14] AGLO 1971, No. 98, dated Aug. 23, 1971 (addressing permissible use under const. article VIII, §§ 5 & 7 gift of public funds restrictions).

[15] AGLO 1971 No. 93, dated July 26, 1971 (addressing newly enacted S&A Fee statute).

[16] There are always questions concerning the scope of who may partake of the light refreshments served at various types of award ceremonies and celebrations. Often, graduation and awards ceremonies are meaningful only if the recipient students may share the experience with families and close friends. Sometimes, certain staff would be meaningful to the occasion. There are many possible scenarios that could include some individuals who are not S&A fee payers—too many to try to address. But, there are some safeguards that could support allowing personal guests to participate fully. First, the institution should be able to identify some additional benefit that third parties bring to the students who are the primary beneficiaries of the activity. Donative intent is lacking where the benefit is primarily to the student participant and only incidentally to others. Second, the institution should be able to distinguish between invited guests of students and the general public or college staff at large.

[17] Note: The associated student body, as an entity, must use the services of the Attorney General's Office.

student-initiated scholarship program would certainly have to be directed at enrolled students with economic need or be supported by some sort of consideration, such as employment, participation or contribution to an extracurricular program by the recipient.

IV. Examples of *Im*permissible Uses of S&A Fees

The following are some examples of inappropriate S&A fee expenditures either because they involve "gifting" or because they are not "student activities":

- Salaries of professional employees in teaching, administrative or clerical positions not directly related to the student programs' operations.
- Curriculum development activities or other personnel, facilities, equipment and maintenance considered part of the fundamental educational objective of, and basic services provided by the college.[18]
- Free meals and/or lodging for anyone without consideration and with a donative intent.
- Gifts of appreciation or concern for anyone (farewell gifts, flowers for bereavement, etc.) unless in return for participation or as an award for which one has competed and won.
- Tips or gratuities for services rendered by anyone unless authorized by OFM.[19]
- Meals, lodging, coffee hours, receptions, or teas for a guest entertainer, lecturer, etc., unless required by the contract made for their services.
- Promotional hosting. Promotional hosting entails offering gifts to others in hopes of attracting their business or favorable public relations. For example, paying for complimentary tickets or admissions as a gift or for public relations purposes.[20] Promotional hosting may also include paying for refreshments for prospective students at an event intended to bring potential students to campus to learn about the educational offerings of the college.[21]

[18] AGLO 1971 No. 93 (the legislature intended to establish separate operating expenditures and student activity expenditures). Clearly, questions will continue to arise over where a student activity or program crosses the line to become a curricular/operational expense and vice versa. It is impossible to draw a bright line. Conceivably, students could determine that they want to fund additional academic or curricular supports not traditionally offered by the college, or fund existing supports in greater degree than offered by the college. If it is clearly a student priority proposed by students through the budgeting process, it should likely receive deference in any audit of appropriate use of funds. In contrast, were a college administration to unilaterally shift a historically college-supported program to S&A support, it would be less likely to be viewed favorably by an auditor.

[19] See State Administrative and Accounting Manual (SAAM), for example, sections 10.20 and 10.40 (https://www.ofm.wa.gov/accounting/saam)

[20] The exception to this rule is that free admission may be granted to a news media person who is attending the function in his or her news reporting capacity, or to persons performing their assigned duties, since the granting of admission in these instances is in return for participation (and therefore supported by consideration).

[21] See *State ex rel. O'Connell v. Port of Seattle*, 65 Wn2d 801 (1965) (promotional hosting raises prohibited gift of public funds issues because there is no exchange of consideration where the Port had only the prospect of new business in exchange for promotional expenditures).

V. Fundraising Using S&A Funds

- Where fundraising projects have used S&A funds as "seed money," all resulting revenues are considered to have been commingled with state funds and are under college and state spending restrictions pertaining to public funds.

- Funds raised without the use of state property or money may be considered private funds and may be used without restriction. Provided, in order to retain their private character, any such funds raised must be held in a segregated account, separately accounted for, and must not be commingled with any other public funds."

- Privately raised funds may retain their private character even if state facilities are used where (a) fair market value is paid for rental of state facilities; or (b) fundraising activities occur in public areas consistent with the institution's facilities use policy for all users.

VI. Use of S&A Fees for Student Political Clubs and Lobbying Activities

- *Recognition and Allocation of Funds.* S&A fees may be used to fund officially recognized student political clubs or organizations.[22] Allocation of funds to student political groups (as well as religiously affiliated groups) must be neutral with respect to the viewpoint of the groups.[23]

- *Use of Funds.* S&A fees may be used to support political speakers, provided, the opportunities are not limited to one particular viewpoint.[24]

- *Lobbying.*[25] Use of S&A fees for lobbying by student government is expressly authorized by statute. RCW 28B.15.610, pertaining to voluntary student fees, provides in pertinent part, ". . . Notwithstanding RCW 42.17A.635 (2) and (3),[26] voluntary student fees imposed under this section and *services and activities fees may be used for lobbying by a student government association* or its equivalent and may also be used to support a statewide or national student organization or its equivalent that may engage in lobbying." (emphasis added).

---

[22] *See Board of Regents of the University of Wisconsin System v. Southworth,* 528 U.S. 217, 233, 120 S.Ct. 1356 (2000) ("The University may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends.").

[23] *Good v. Associated Students of the University of Washington*, 86 Wn.2d 94, 542 P.2d 762 (1975).

[24] RCW 28B.15.044 ("It is also the intent of the legislature that services and activities fee expenditures for programs devoted to political or economic philosophies shall result in the presentation of a spectrum of ideas.");

[25] "*Lobbying*" means to attempt to influence the passage or defeat of any state legislation. "*Legislation*" means matters pending or proposed in either house or matters that may be the subject of action. "*Attempt to influence*" includes legislative staff as well as legislators.

[26] RCW 42.17A.635 is the statute pertaining to legislative activities of state agencies. It generally prohibits agencies from expending public funds for lobbying, subject to certain reporting requirements.

- Use of S&A fees for lobbying activities other than by or through the student government association, is still governed by the constraints on public agencies and reporting requirements in RCW 42.17A.635.[27]
- Campaign contributions**.** Under no circumstances may public funds be used as a gift or campaign contribution to any elected official or officer or employee of a public agency.[28] Nor may any public employee authorize the use of any facilities of a public agency (employees, stationary, postage, machines, etc.) to be used for the purpose of assisting a campaign for election or for the promotion or opposition to any ballot proposition.[29]
- S&A funds may support a student newspaper even if the newspaper engages in traditional journalistic role of editorial opinions and endorsements concerning candidates. See RCW 28B.10.037.

VII. Use of S&A Fees on Student Religious Clubs and Activities

- *Recognition and Allocation of Funds.* S&A fees may be used to fund officially recognized student religious clubs or organizations. Allocation of funds to religiously affiliated student groups must be neutral with respect to the viewpoint of the group. Colleges and universities must officially recognize student religious groups on the same basis as other student groups.[30]

- *Provision of Facilities, Goods, and Services.* Colleges and universities must provide officially recognized student groups equal access to facilities, goods, and services. If a college or university opts to provide facilities, equipment, or even a faculty advisor to

[27] Orchestrated grassroots lobbying or other indirect forms of lobbying, i.e., mailing campaigns; mobilizing non-state employees to action; rallying public support; organizing rallies in Olympia; and creating citizen action groups, remain regulated by lobbying restrictions regulated by the Public Disclosure Commission. *See* Public Disclosure Commission website (https://www.pdc.wa.gov/learn/publications/lobbyist-instructions/grass-roots-lobbying); *Board of Regents of the University of Wisconsin System v. Southworth*, 528 U.S. 217; *Rounds v. Oregon State Board of Higher Education*, 166 F.3d 1032, 1040 (9th Cir. 1999) (upholding the provision of mandatory student activity fees to student groups, such as OSPIRG-EF, that do "not engage in activities utilizing professional lobbyists, door to door fundraising . . . and do not "incur administrative costs associated with such programs.").

[28] RCW 42.17A.550 ("Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or local office.") For example, S&A funds may *not* be used for flyers or advertisements endorsing a political candidate, such as "Vote for so-and-so for U.S. Senate." Similarly, S&A funds may *not* be used for yard signs endorsing a political candidate. However, S&A funds *may* be used for a student newspaper even if it includes endorsements and express opinions on political candidates via editorials. This is permissible due to the historical and traditional role of newspapers.

[29] RCW 42.17A.555 ("No… agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition."); See also, State Ethics Law at RCW 42.52.180.

[30] *Healy v. James*, 408 U.S. 169 (1972).

student groups, then it must make such resources available on an equal basis to student religious groups.[31]

- *Freedom of Speech and the Establishment Clause.* Under cases construing the First Amendment to the U.S. Constitution, it is clear (1) that religious speech is protected to the same degree as non-religious speech,[32] and that (2) making college facilities equally accessible to all student groups on a nondiscriminatory basis is a secular purpose, insulating the college from claims that allowing such use violates the Establishment Clause.[33]
  - Colleges may continue to employ reasonable time, place and manner restrictions on the use of public fora. Such restrictions must apply equally to *all* student groups.[34]
  - The Establishment Clause of the Washington State Constitution[35] has been interpreted consistent with the First Amendment to permit state funds to support a program having primarily a secular purpose or objective, even if some individuals were to engage in religious conduct incidental to the secular purpose.[36] This would be particularly true for conduct that is also protected speech.

- *Nondiscrimination.* The U. S. Supreme Court has ruled that colleges may condition official recognition to religious student groups, as with all student groups, on welcoming all students on a nondiscriminatory basis.[37]

[31] *Widmar v. Vincent*, 454 U.S. 263 (1981). University may not close its facilities to a recognized student group desiring to use facilities for religious worship or discussion. The Court's reasoning was that (1) the "purpose" of an equal access to facilities policy is a secular purpose, *Widmar* at 275-76, and (2); the denying access was impermissible discrimination based on speech content, *Id*. at 273; and (3) the religious student group was receiving only incidental benefit from equal access to facilities, thereby defeating any argument that access would advance religion under the *Lemon* test. *Id*. at 273.

[32] "If school facilities may be used to discuss anticlerical doctrine, it seems to me that comparable use by a group desiring to express a belief in God must also be permitted." *Widmar v. Vincent*, at 281, (Justice Stevens concurring).

[33] The *Widmar* court also cautioned that college administrators could risk entangling government and religion by trying to sort religious speech from religious worship.

[34] For example, if the college or university places a limit on the number of times a particular group may use a particular room, that limit must apply equally to all groups. Similarly, if a college or university charges a fee for use of particular facilities, that fee must apply equally to all groups.

[35] " No public money shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment . . ." Washington Constitution, article I, section 11

[36] *Gallwey v. Grimm*, 146 Wn.2d 445, 466-67 (2002); *Malyon v. Pierce Cy.*, 131 Wn.2d 779, 804 (1997).

[37] *Christian Legal Society v. Martinez*, 561 U.S. 661 2010)