WESTERN WASHINGTON UNIVERSITY
ITEM SUBMITTED TO THE BOARD OF TRUSTEES

TO: Members of the Board of Trustees

FROM: President Bruce Shepard by Wendy Bohlke, Senior Counsel

DATE: August 14, 2009

SUBJECT: History of Legal Relationship Between WWU Board of Trustees and the WWU Foundation

PURPOSE: Discussion Item

Purpose of Submittal:

Senior Counsel Bohlke will present a historical overview of the legal relationship between WWU Board of Trustees and the WWU Foundation.

Supporting Information:

- August 4, 2009 Memorandum Regarding the History of Legal Relationship Between WWU Board of Trustees and the WWU Foundation
- Agreement Between Western Washington University and The Western Foundation

M E M O R A N D U M

DATE: August 4, 2009

TO: Western Washington University Board of Trustees

FROM: Wendy Bohlke, Senior Counsel

SUBJECT: **History of Legal Relationship between WWU Board of Trustees and the WWU Foundation**

Legal Authority

The legal authority and responsibility for governing Western Washington University resides in its Board of Trustees. RCW 28B.35.120 lists the areas of responsibility. This law was enacted in 1969. For purposes of this history, I direct your attention to subparagraph (10), which states:

> RCW 28B.35.120 In addition to any other powers and duties prescribed by law, each board of trustees of the respective regional universities:
>
> (10) **May receive such gifts**, grants, conveyances, devises and bequests **of real or personal property from whatsoever source**, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the regional university programs; **sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof except as limited by the terms and conditions t**hereof; **and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income t**hereof;

Prior to 1969, there was no statute that provided authority to the Board of Trustees to receive gifts and bequests for Western. While the University of Washington and Washington State University regents were so authorized in 1909, the trustees of the normal schools (predecessor in name to the regional universities) were not. Donors gave gifts and WWSC trustees considered and received them, but only under the general authority of the State to consider and receive gifts.

Foundation Established in 1966

In 1966, the Western Washington State College **Foundation** was founded as a non-profit corporation to "promote, aid, and assist" the educational and instructional programs and services of WWSC.

> Its general powers and purposes include:

a) To solicit gifts of, to receive by gift, devise or bequest, to purchase, or to otherwise acquire real and personal property of every kind and nature, and to hold, own, manage, and administer the same;

b) To aid and assist by gifts, grants-in-aid, loans, or the establishment and/or administration of scholarship and fellowships, need or deserving students at all educational levels;

c) To cooperate with and aid other institutions, agencies, or associations organized and conducted for cognate purposes, to the end of promoting educational, literary, cultural, charitable, and scientific purposes, no part of the net earnings of which insures to the benefit of a private shareholder or individual, and no substantial part of the activities o which is carrying on propaganda, or otherwise attempting to influence legislation;

h) To invest and reinvest funds of this corporation in real or personal property of every kind and nature, including bonds, corporate common or preferred stocks, or securities of any type or character;

i) To borrow money, contract debts, guarantee the payment of indebtedness, and issues bonds, notes and debenture and secure the payment or performance of its obligations;

If for any reason this corporation shall be dissolved, the assets of this corporation shall become the responsibility of WWSC . . . and its governing Board of Trustees.

Again, in 1969, the Board of Trustees itself was specifically authorized by state law to receive gifts and bequests on behalf of [then] WWSC.

The WWSC Foundation proceeded to solicit and receive gifts for the benefit of the college.

<u>1984 WWU Board Policy Directs Donations to Foundation</u>

In 1984, the WWU BOT passed the following Motion:

> 11-5-84: that the Board, upon recommendation of the President, adopts the proposed policy statement regarding private gifts.
>
> WWU Policy Regarding Private Gifts:
>
> The Board of Trustees desires that all private gifts for the benefit of the University should be directed to The Western Foundation, Inc. As the fundraising agency for the University, The Western Foundation, Inc. has direct responsibility for the solicitation, receipt, investment, transmittal, acknowledgement and reporting of all private gifts.

Private gifts which are directed by the donor to WWU shall be acknowledged in the same manner as gifts directed to the Foundation, and will be presented to the Board of Trustees for action.

1995 Agreement between Foundation and Board

In the mid-1980's, the Washington State Office of Attorney General Education Division in Olympia developed a recommended agreement form for use between the universities and colleges and their foundations. In 1995, the Board of Trustees and The Western Foundation entered into such an agreement. It is attached for your reference.

The pertinent elements of the agreement are:

- WWU provides staff, facilities, goods and services to the Foundation to carry out its work of soliciting, considering, receiving, acknowledging, and managing various gifts and bequests for the benefit of WWU, its students, faculty, and staff.

- The Foundation can receive gifts of securities and stock in private companies, hold the same, and sell or exchange them at such times as it deems prudent. (Because WWU as an agency and arm of the State lacks state constitutional authority to hold stock in private companies, this remains an important reason for this relationship to exist.)

- The Foundation annually provides to WWU its audited financial statements prepared by an independent certified public accountant, and is further required to make its books and records available to audit by any such audit as designated by the WWU Board of Trustees should it so choose. Given that the Foundation manages gifts designated to WWU as well as to the Foundation, this was thought to be a prudent provision to include during the time the agreement was developed. (I annually submit a letter to the Foundation's auditors regarding pending or threatened litigation, similar to the letter I submit to the auditors performing the University's annual financial audit.)

Foundation's Conduct of Meetings and Operations Ensures Donor Privacy

The Foundation conducts its operations in keeping with standards for 501(c)(3) operations, maintaining donor records in confidence and discussing prospective donations discreetly.

Under the Washington State Open Public Meetings law, there is no legal basis for the WWU Board of Trustees to discuss donations in executive sessions at board meetings.

College and university boards have long been counseled by the Washington State Office of Attorney General to avoid having less than a quorum of board members serve on boards of their affiliated foundations, to avoid subjecting the actions of those boards to the scrutiny otherwise required under the OPMA.

Conclusion

I hope the foregoing is useful to the Board of Trustees for its members to maintain knowledge and confidence regarding the important relationship between WWU and its affiliated foundation. Should you have any further questions, please contact me at your convenience.

Attachment: Agreement between Western Washington University and The Western Foundation