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STATE OF ALABAMA

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Colleges and Universities -
Building Commission - Alabama
Public School and College
Authority - Condemnation

University of Alabama System
Board of Trustees has general
authority in acquiring of
land, planning of buildings,
designating of sites of
buildings, and the awarding of
contracts for construction
which in its judgment are
necessary for the mission of
the university system.

Dear Dr. Bartlett:

You have requested of this office an opinion regarding
several questions which may be paraphrased as follows:

1. Are the statutory powers and
duties of the State Building Commission
set forth in Section 41-9-141, Code of
Alabama 1975, as last amended, exclusive
to the Building Commission?

2. When projects are funded from
sources other than the Alabama Public
School and College Authority bond funds,
or other funds over which the Building
Commission has been given specific
statutory authority does the Board of
Trustees of the University of Alabama
System independent of the Building
Commission have the authority to:

a. Acquire land by purchase, condemnation or otherwise;

b. Plan buildings and designate the sites of the same on the campuses under the jurisdiction of the board;

c. Award construction contracts, supervise construction, repair, equip, remodel, enlarge, renovate, furnish, refurnish, improve, and locate buildings, structures, and facilities on the campuses under its control which, in the board's judgment, are necessary for carrying out the mission of the University of Alabama System.

3. When projects do not involve APSCA bond funds or other funds over which the Building Commission has been given specific statutory authority:

a. Must owner/architect agreements, construction contracts, general conditions, and other legal forms and documents which are prepared by the board's legal advisors be approved for use by the Building Commission; and

b. Do questions involving the interpretation of owner/architect agreements, construction contracts, change orders, and other matters of construction contract execution and administration rest solely with the board's administrators and legal advisors?

4. In construction projects undertaken by the board which are funded wholly or in part by APSCA bond funds, is the authority of the Building Commission with respect to the supervision of those construction

projects limited to the approval of plans and specifications for those projects for safety code compliance and the approval of the expenditure of APSCA funds?

In an opinion addressed to the Honorable James Sasser dated October 29, 1979, No. 80-00045, this office held that the powers and duties set out in Section 41-9-141, Code of Alabama 1975, as last amended, are not exclusive to the Building Commission as a body. As there has been no amendment to the statutes creating and governing the Building Commission since that opinion was issued, there does not appear to be any reason why that opinion should be changed. Accordingly, the answers to your questions 1, 2, and 3 set forth above are as follows:

1. The statutory powers and duties granted to the State Building Commission pursuant to Section 41-9-141 are not exclusive to the Building Commission as a body.

2. The board of trustees, independent of the Building Commission, has the authority to acquire land by purchase, condemnation or otherwise, and to plan buildings and designate the sites of the same erected on lands under its control, and to award contracts for construction, repair, remodeling, enlargement, renovation, or improvement of buildings, structures, and facilities on its campuses and to equip, furnish or refurnish, and supervise the construction of the same when the projects are funded from sources other than the Alabama Public School and College Authority, or other funds over which the Building Commission has been given specific statutory authority.

3. Owner/architect agreements, construction contracts, general conditions, and other legal forms and documents prepared by the board's legal advisors, and questions involving the interpretation of such agreements, contracts, and change orders and other matters of construction contract execution and administration are not subject to the Building Commission's jurisdiction when the project does not involve bond funds from the APSCA or other funds over which the Building Commission has been given specific statutory authority.

The Alabama Public School and College Authority is established under the provisions of Sections 16-16-1 through 13, Code of Alabama 1975, as last amended. Section 16-16-10

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addresses the disposition of the proceeds of bonds issued by the APSCA. In subsection (2) of subsection (o) of that section we find the following:

"The preparation of all plans and specifications for any building constructed wholly or in part with any of the money realized from this issue and all work done hereunder in regard to the construction, reconstruction, alteration, and improvement of buildings shall be supervised by the Alabama Building Commission, or any agency which may be designated by the legislature as its successor, and the authority shall reimburse the Building Commission for its reasonable direct costs in having plans, specifications, and contract documents prepared and in supervising and inspecting the work."

In view of this, the fourth question set forth above is answered that the Building Commission has the authority to oversee the preparation of plans and specifications and the work done thereunder in regard to construction, reconstruction, alteration and improvement of buildings, the construction of which is funded wholly or in part by APSCA funds.

The Board of Trustees of the University of Alabama, in addition to being granted the "management and control" of the state university by Article XIV, Section 264, of the Constitution of Alabama of 1901, as amended by Amendment No. 399 (ratified March 17, 1982) is vested with "all the rights, powers, and franchises necessary to or promotive of the end of its creation." Section 16-47-2, Code of Alabama 1975, as last amended. These powers include the right to acquire property and construct whatever buildings that promote the functioning of the campuses of the University of Alabama System; and accordingly, the authority of the Building Commission over the board of trustees can be distinguished from its authority over state agencies and institutions which are not governed by their own board of trustees or other governing body, or which have no independent authority to construct buildings. However, we note that the technical staff of the Building Commission does have the authority to review plans and specifications "to insure that

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such plans and specifications comply with the requirements concerning the handicapped, fire, safety and civil defense." In Section 41-9-165, Code, the legislature provided "...Other agencies and instrumentalities of the state government are directed hereby to cooperate, as requested by the commission, in the enforcement of the building code..." Accordingly, the board of trustees should take steps to cooperate with the Building Commission in that regard. However, any reduction in the board's control over the affairs of the University System would require constitutional amendment. Opinion of the Justices, 417 So.2d 946 (1982).

As this office has previously noted, in the opinion cited above, the purpose of creating the Building Commission was to provide general supervision and authority over state construction projects. With respect to the University of Alabama System, the board of trustees has the authority to engage in construction projects and to equip buildings located on its campuses. This authority is independent of, and concurrent with the statutory authority granted to the Building Commission. The technical staff of the Building Commission, however, does have the authority to review plans and specifications to insure that such plans and specifications comply with health, safety and building codes.

I trust that the foregoing answers your questions. If this office can be of further service to you, please let us know.

Yours very truly,

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Attorney General

By:



PHILIP C. DAVIS
Assistant Attorney General

DS/PCD/dn