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STATE OF ALABAMA

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Colleges and Universities -  
Alcoholic Beverages - Alcoholic  
Beverage Control Law - Zoning

UAH and its agent, the Marriott  
Corporation, are exempt from  
the City of Huntsville's zoning  
regulations.

Dear Dr. Padulo:

This opinion is issued in response to your request for an  
opinion from the Attorney General.

QUESTION

Is the sale of alcoholic beverages in the  
Bevill Center exempt from local zoning  
control in view of its integral and ac-  
cessorial connection with the educational  
use of the Bevill Center by the University,  
a public corporation and state instru-  
mentality, the management and control of  
which has been vested by constitutional and  
statutory provision in its Board of Trustees?

FACTS AND ANALYSIS

The campus of the University of Alabama in Huntsville (UAH)  
is located within an area of Huntsville identified for zoning  
purposes as the Research Park District. The Bevill Center for

Professional Development and Continuing Education was recently constructed with federal funds appropriated for a "learning center," to include "support facilities for lodging and dining." According to the intent of Congress, the Center is to be jointly used by UAH for its Continuing Education program and by the U. S. Army Corps of Engineers as the site for its world-wide training program conducted in cooperation with UAH. The facility is owned by UAH.

The Center includes a 100-room hotel, a restaurant capable of seating approximately 140 persons, 42,000 square feet of classroom and conference space, computer laboratory resources, audio-visual systems, and computer networking, etc. Except for the area leased to the Corps of Engineers for administrative and classroom space, the Center is operated by UAH.

To insure that the Center is marketed and operated in an efficient, expert and financially successful manner UAH secured, by contract, management services for the hotel-restaurant complex from the Marriott Corporation. As a means of encouraging the optimal use of the Center's lodging and dining services by patrons of its educational programs, of attracting conferences to the campus, and of providing those full services normally available at comparable and competing centers, UAH has determined that the sale of alcoholic beverages at the Bevill Center is an appropriate accessory activity to the principal educational function carried out there. Accordingly, it has authorized the Marriott to apply for an alcoholic beverages license for the sale and consumption of alcoholic beverages in the restaurant and in a small lounge in the Center.

As a general rule, municipal zoning regulations do not apply to the state or its subdivisions or agencies, unless clearly made applicable by statute. 8 McQuillin, Municipal Corporations § 25.15 (3rd ed. 1983). Although there is no Alabama case law directly on point, the Alabama Supreme Court has implied that governmental functions are exempt from municipal zoning laws. City of Huntsville v. Moring, 284 Ala. 678, 227 So.2d 578 (Ala. 1969).

Public universities and other similar state institutions in other states have consistently been exempted from local zoning regulations. See Regents of University of California v. City of Santa Monica, 143 Cal.Reptr. 276 (1978); City of Newark v. University of Delaware, 304 A.2d 347 (Del. 1973); Rutgers, The State University v. Piluso, 286 A.2d 697 (N.J. 1972). The

basis for the exemption is that the authority and responsibility to manage and control each institution, which has been granted by the state to a governing board, must be exercised free of control or supervision by a municipality within whose corporate limits the state agency must act.

The Board of Trustees of The University of Alabama is a public corporate body created by constitutional and statutory provisions which manages and controls the "state university." Constitution of Alabama 1901, Section 264, as amended by Amendment No. 399; Code of Alabama 1975, § 16-47-1 and § 16-47-30. The Board is composed of three divisions or institutions, which includes UAH. The activities and operations of UAH are carried out under the auspices and acts of the corporate body, i.e., the Board of Trustees.

The State of Alabama has conferred upon the Board of Trustees of the University of Alabama the same broad powers as were possessed by the universities in the foregoing cases. The Board has been charged with the "management and control" of the University and "all rights, powers and franchises necessary to or promotive of" that end are vested in the Board. Constitution of Alabama 1901, Section 264, as amended by Amendment No. 399; Code of Alabama 1975, § 16-47-2; see also Code of Alabama 1975, §§ 16-47-1, -3, -6, -30, -34, -35. The powers of a state university, such as UAH, including incidental and accessory powers, have been broadly construed in view of the university's educational, research and service mission. See Churchill v. Board of Trustees, 409 So.2d 1382 (Ala.1982). In fact, not even the legislature has the authority to impinge upon the Board's management discretion without a constitutional amendment. Opinion of the Justices, 417 So.2d 946 (Ala. 1982).

Based upon the foregoing, it is the opinion of the Attorney General that UAH is not subject to the zoning regulations of the City of Huntsville. However, since UAH has contracted with Marriott to provide management services for the restaurant and hotel, we must determine whether Marriott is also exempt from the zoning regulations. In the City of Huntsville v. Moring, supra, the Alabama Supreme Court held that the operation of a hospital which was built by a medical clinic board of the city and leased to a private medical corporation for its operation was not a "municipal use" as defined by the zoning ordinance permitting lands and buildings in the district to be used for a municipal use. However, the Court stated that if the hospital were to be operated directly by the city or by its agency or creature, such use might be a municipal use.

A close look at the Morring case reveals a number of factual differences between that case and the circumstances involved here. In Morring the private medical corporation originally owned the land and transferred it to the medical clinic board which agreed to construct a hospital thereon and lease it back to the medical corporation. The state statute creating the clinic board did not give the clinic board any authority to operate the hospital. Apparently, the only role of the clinic board was to promote the construction of the medical facility.

In contrast, the Bevill Center and the land upon which it is located is owned by UAH and is a part of the UAH campus. Marriott has no lease or other possessory interest in any part of the Bevill Center. The operation of the Center as a whole remains in the hands of UAH with Marriott providing support in the form of management services. Alcoholic beverage sales will be made, not as an independent enterprise of Marriott, but as an accessory service intended for the patrons of UAH's conference and training center. This is not a case involving a facility on public land which is operated solely for the commercial benefit of the private entrepreneur. Accordingly, it is the opinion of the Attorney General that Marriott, as an agent of UAH, is also exempt from the City of Huntsville's zoning regulations.

#### CONCLUSION

The University of Alabama in Huntsville and its agent, the Marriott Corporation, are exempt from the City of Huntsville's zoning regulations; therefore, the sale of alcoholic beverages may be permitted in the Bevill Center located on the UAH campus.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:



BRENDA FLOWERS  
Assistant Attorney General