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# OFFICE OF THE ATTORNEY GENERAL

CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

SEP 24 1985

Mr. Joseph T. Sutton
Executive Director
Alabama Commission on
Higher Education
Suite 221, One Court Square
Montgomery, Alabama 36197

Commission on Higher Education - Colleges and Universities - Armory Commission - Military Affairs

An Alabama National Guard Armory owned by the Armory Commission of Alabama is not a military reservation.

Dear Mr. Sutton:

The Attorney General is in receipt of your recent request for an opinion. This request for an opinion is based upon Act 79-461 which requires the Alabama Commission on Higher Education to regulate the off-campus offerings for academic credit taught by institutions of higher education in this state. In your request for an opinion you state that it is your understanding that off-campus offerings by institutions of higher education in this state are being offered in Alabama National Guard armories. Your specific question is whether an Alabama National Guard armory is a military reservation for the purpose of exempting the off-campus offerings from regulation by the Alabama Commission on Higher Education.

In United States v. Tichenor, 12 F. 415 (1882) the definition of military reservation was at issue. The Court held:

> "Military reservation" is a term unknown to the law, and does not mean anything, except that it may have been intended for a fort, magazine, arsenal, camp, post or other military use.

In Burgess v. Territory, 19 P. 558 (S.Ct. Montana 1888) the Court held that a military reservation:

> is an act of the President of the United States, under authority of law, withdrawing so many acres of the public domain from the immediate administration of the commissioner of public lands - that is, from sale at public auction, and from pre-emption, or general private entry - and appropriating it for the time being to some special use of the government.

National Guard armories in the State of Alabama are state property and are subject to regulation by the Armory Commission of Alabama, see Section 31-4-1, et seq., Code of Alabama 1975, Armory Commission v. Staudt, 388 So.2d 991 (Ala.1980). Therefore, the armories and the property upon which they are situated are public property of the State of Alabama. It is the opinion of the Attorney General that the generally accepted definition of a military reservation involves the military forces of the United States and property of the United States, see generally 6 C.J.S., Armed Services §21. Since armories housing the organized militia of a state are generally considered to be public property of the state, 53 Am. Jur. 2d Military and Civil Defense, §37, it is the opinion of the Attorney General that the term military reservation would normally not refer to state property. This conclusion is further fortified by the specific usage of the term military reservation in Act 79-461.

The last paragraph of §8 of Act 79-461 provides:

> Colleges and universities conducting off-campus offerings on military reservations are exempt from the Commission's regulatory review and approval authority for those offerings on the military reservation.

It is the opinion of the Attorney General that when the sixth paragraph of §8 is read in para materia with the other five paragraphs of §8 it is clear that the legislature did not intend for this particular definition of military reservation to include national guard armories owned by the State of Alabama. In this context we believe that the legislature intended military reservation to be the commonly accepted definition of that term, i.e., a military facility of the United States Government owned by the United States Government.

Therefore, it is the opinion of the Attorney General that off-campus course offerings by postsecondary institutions in the State of Alabama that are conducted in Alabama National Guard armories are subject to the regulatory authority of the Alabama Commission on Higher Education as provided in Act 79-461.

If we may provide you with any further information concerning this matter please feel free to contact us at any time.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General
By:

RICHARD N. MEADOWS
Assistant Attorney General

CAG:RNM:mth