



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007  
September 19, 1975

75-336

(R 75/318)  
BRUCE E. BABBITT  
ATTORNEY GENERAL

Honorable Frank Felix  
State Senator  
1302 West Ajo, #401  
Tucson, Arizona 85713

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Dear Frank:

This is in response to your letter to this office dated April 7, 1975, wherein, you requested this office to respond to two questions: The first concerning the selling of liquor on the University of Arizona campus and the second concerning the employment of an attorney by the Associated Students of the University of Arizona (ASUA).

More specifically, the first question is directed to who has the authority to permit the selling of liquor on the campus of the University of Arizona. In general, this State has by legislation, contained in Title 4 of the Arizona Revised Statutes, regulated the sale of alcoholic beverages. The sale of alcoholic beverages upon any university campus in this state must comply with all of the provisions of that legislation. We now turn to a discussion of the pertinent parts of that legislation.

A.R.S. §4-244 sets forth a number of unlawful acts involving alcoholic beverages. Among those, in paragraph 1 of that section, is for a "person" (defined in paragraph 12 of A.R.S. §4-101 to include a partnership, association, company or corporation, as well as a natural person) to buy for resale, to sell or to deal in spirituous liquors in this state without first having procured a license duly issued by the State Liquor Board. A.R.S. §4-246 then makes it a misdemeanor for any person to violate any of the provisions of Title 4, which includes A.R.S. §4-244.

Quite obviously, therefore, it will be necessary for the person who seeks to sell spirituous liquors to obtain a license. The licensing procedure, which is set forth in A.R.S. §4-201, requires an application for a license to be files with the city clerk of the city in which the



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premises are located, as well as with the State Liquor Board, and specifies certain posting requirements (subsection B). The city is entitled to recommend disapproval of the license (subsection C), although that recommendation is not binding on the State Liquor Board (subsection D). Duncan v. Truman, 74 Ariz. 328, 333, 248 P.2d 879 (1952). Though State property is involved, there does not appear to be any question that the City of Tucson can carry out the posting requirement and make its recommendation to the State Liquor Board. That kind of participation does not appear to run afoul of Board of Regents v. City of Tempe, 88 Ariz. 299, 356 P.2d 399 (1960), which held that the Arizona Constitution vested the Board of Regents with the jurisdiction and control over the State's universities and that the Board, as a State agency, was not subject to the general police powers of a municipal corporation. What is here involved is no exercise of a police power, but only a participation in a legislatively mandated process, the purpose of which is to bring to a State agency's attention all information necessary for it to make an informed decision whether to issue a liquor license.

Returning to the statutory scheme, subsection A of A.R.S. §4-207 specifies certain requirements which must be satisfied before a license will be issued for premises located near a school building or church. We shall assume, without deciding, that a university is a school within the meaning of that provision. Among the requirements then, insofar as is here relevant, is the necessity of obtaining the approval of the governing bodies of the school and the city. An additional requirement is that the city certify that the land within a certain distance of the premises where the liquor is to be served is zoned at least 75 percent for commercial purposes, exclusive of the school property. We are obviously dealing with a situation in which all of the property within the specified distance from the premises is excluded from the calculation, since it all constitutes school property. The short answer to this anomaly is that the condition is obviously satisfied, since there is no relevant property but for school property.

Finally, on this point, we think it quite clear that the decision concerning whether to apply for the license rests with the Board of Regents under the general supervisory and

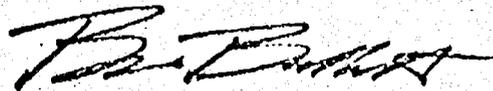
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administrative power conferred upon it by the Arizona Constitution (Art. 11, §§1, 2 and 5) and by legislation which implements those provisions (A.R.S. §§15-724 and 15-725). If the Board decides to apply for the license, and if the license is issued, the Board may wish to adopt such regulations as are reasonable to assure that spirituous liquors are not sold to or by persons under the age of 19 in violation of A.R.S. §4-244 (paragraphs 9, 10 and 11).

In summary on this issue, we think that the Board of Regents, which A.R.S. §15-724 specifies is a body corporate, may apply to the State Liquor Board for an appropriate spirituous liquor license or may authorize some other appropriate person to do so. The State Liquor Board is empowered to issue the license upon the satisfaction of all the statutory requirements.

Your second question concerns whether ASUA can employ counsel to represent it in its relations with the University and the Board of Regents. Implicit in this question is whether any counsel so employed can be paid with ASUA funds. We think it inappropriate to now respond to this question, which may involve constitutional issues, as well as possibly the interpretation and application of subsection E of §41-192 (which prohibits a state agency other than this office from employing legal counsel or expending money for or incurring an indebtedness for legal services), as the entire question is directly or indirectly at issue in at least two lawsuits in the Pima County Superior Court between ASUA and the Board of Regents, in both of which suits the authorized deputy of this office is representing the Board of Regents as legal counsel. At such time as those suits are settled, we will address ourselves to the legal counsel question if the ASUA representatives so desire.

Sincerely,



BRUCE E. BABBITT  
The Attorney General

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