

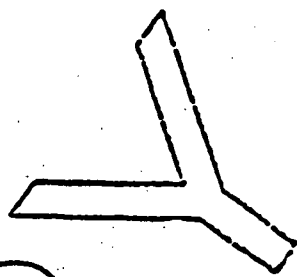


TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

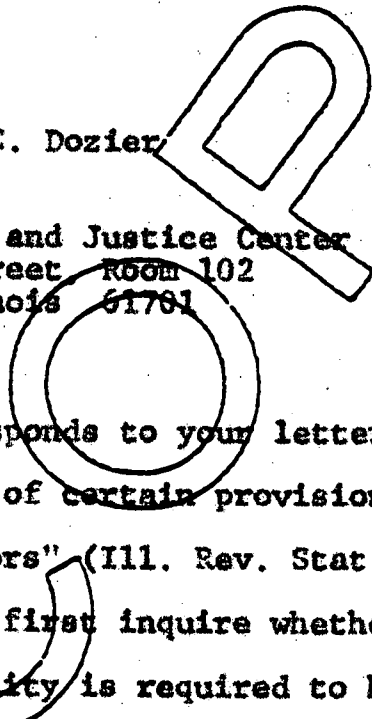
December 16, 1980

FILE NO. 80-044

LIQUORS:
Licensing Requirements for
Sale of Alcoholic Liquor in
Authorized Facilities of
State University



Honorable Ronald C. Dozier
State's Attorney
McLean County
McLean County Law and Justice Center
104 West Front Street, Room 102
Bloomington, Illinois 61701



Dear Mr. Dozier:

This responds to your letter wherein you ask for an interpretation of certain provisions of "AN ACT relating to alcoholic liquors" (Ill. Rev. Stat. 1979, ch. 43, par. 94 et seq.). You first inquire whether the governing body of a State university is required to have a local liquor license or is subject to regulation of local authorities, if the State university desires to sell alcoholic liquor at a faculty center or convention-type facility, as authorized

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by section 11 of article VI of the Liquor Control Act (Ill. Rev. Stat. 1979 Supp., ch. 43, par. 130). You subsequently advised that the State university in question is the Illinois State University at Normal, Illinois.

For the reasons hereinafter stated, it is my opinion that the governing body of Illinois State University at Normal, Illinois, would not be required to have a local liquor license nor would it be subject to regulation of local authorities, in the situation presented in your first question. My answer, however, is limited to situations where the university itself would make the liquor sales. If the university did not itself make the sales but permitted others, such as a lessee, to make the sales, then it would be my opinion that a local liquor license would be required and such sales would be subject to regulation of local authorities.

Your second question is related to your first one. You ask whether a "club", as defined in section 2.24 of the Liquor Control Act (Ill. Rev. Stat. 1979, ch. 43, par. 95.24), permitted to sell liquor at a faculty center or convention-type facility of a State university, would be required to obtain a local liquor license and be subject to local regulation. I am of the opinion that such a club would be required to obtain a local liquor license and would be subject to local regulations.

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Your questions relate to section 11 of article VI of the Liquor Control Act (Ill. Rev. Stat. 1979 Supp., ch. 43, par. 130), which provides that no alcoholic liquors shall be sold or delivered in any building belonging to or under the control of the State or any political subdivision thereof, and further provides in pertinent part:

" * * * Alcoholic liquors may be delivered to and sold at any * * * faculty center, or facility in which conference and convention type activities take place belonging to or under control of any State university, provided that with respect to a facility for conference and convention type activities alcoholic liquors shall be limited to the use of the convention or conference participants, * * * ."

The aforesaid provisions permit the sale or delivery of alcoholic liquor at faculty centers or facilities belonging to or under control of any State university, in which conference and convention-type activities take place. In facilities for conference and convention-type activities, alcoholic liquors are required to be limited to the use of the convention or conference participants. The statute is silent as to whether the governing body of a State university which sold or delivered alcoholic liquor would be required to have a local liquor license or be subject to regulation of local authorities.

The Illinois State University at Normal, Illinois, about which you inquire, is managed, operated, controlled and maintained by a Board of Regents pursuant to the pro-

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visions of section 1 of the Regency Universities Act (Ill. Rev. Stat. 1979, ch. 144, par. 301). It is an agency or arm of the State.

In McGuire v. Board of Regents of Northern Illinois University (1979), 71 Ill. App. 3d 998, a breach of contract action was brought in the circuit court against the Board of Regents of Northern Illinois University. Holding that relief must be sought in the Court of Claims, the court stated at pages 1000 - 1001:

" * * *

The language describing the structure of the Regency Universities (Ill. Rev. Stat. 1967, ch. 144, par. 307) discloses an intent that the Board of Regents is an agency of the State in the execution of its powers.

* * *

Without recitation of detail, examination of the statutory provisions creating the Regency Universities and granting their powers disclose that such provisions meet the criteria of an arm or agency of the State as determined in Williams v. Medical Center Com. (1975), 60 Ill. 2d 389, 328 N.E.2d 1, and Kane v. Board of Governors (1976), 43 Ill. App. 3d 315, 356 N.E.2d 1340.

* * *

Similarly, in Hoffman v. Yack (1978), 57 Ill. App. 3d 744, 747, the court said:

" * * *

* * * A State university and its board of trustees are arms of the State and are not independent or autonomous of the State. An action premised on a breach of contract brought

against the board is a suit against the State over which the circuit court has no jurisdiction. Tanner v. Board of Trustees, 48 Ill. App.3d 680, 363 N.E.2d 208 (1977); see also Kane v. Board of Governors, 43 Ill. App.3d 315, 356 N.E.2d 1340 (1976).

* * *

The statutory provisions relating to the Board of Regents also demonstrate that the Board is an agency or arm of the State. The Board consists of nine members appointed by the Governor, by and with the advice of the Senate, and one nonvoting student member from each university governed by the Board. (Ill. Rev. Stat. 1979, ch. 144, par. 302.) Real property acquired by the Board is held for the People of the State of Illinois, for the use of the Regency University concerned. (Ill. Rev. Stat. 1979, ch. 144, par. 307.) The State is the beneficial owner of real property acquired by the Board. People v. Todd (1973), 12 Ill. App. 3d 391, 393.

The Board of Regents is required generally to pay income received by the universities under its jurisdiction, into the State treasury, to be held in a special fund. The General Assembly is authorized to make appropriations from this special fund for the support and improvement of the State colleges and universities under the jurisdiction of the Board of Regents. (Ill. Rev. Stat. 1979, ch. 127, par. 142a4.) Expenditures of the Board of Regents are subject to both the State Comptroller Act (Ill. Rev. Stat.

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1979, ch. 15, par. 201 et seq.) and the Illinois State Auditing Act. (Ill. Rev. Stat. 1979, ch. 15, par. 301-1 et seq.)

The court decisions and statutes demonstrate clearly that the Board of Regents is an agency or arm of the State. The Board for some purposes may be separate and distinct from the State, but it is not autonomous and completely independent of the State. The status of the Board of Trustees of the University of Illinois was considered in People v. Barrett (1943), 382 Ill. 321. The court stated at page 243 that "it functions solely as an agency of the State for the purpose of the operation and administration of the university, for the State".

Generally speaking, the State is not subject to legislative enactments of a municipal corporation. (Newton v. City of Atlanta (1939), 189 Ga. 441, 444, 6 S.E.2d 61, 63; Board of Councilmen of City of Frankfort et al. v. Commonwealth et al. (1932), 243 Ky. 633, 635, 49 S.W.2d 548, 549.) Broad principles of sovereignty require that a State or its agency or subdivision performing a governmental function be free of municipal control. (County of Westchester v. Village of Mamaroneck (Sup.Ct. 1964), 255 N.Y.S. 2d 290, 294; Board of Regents of the Universities and State College of Arizona v. City of Tempe et al. (Ariz. S.Ct. 1960), 356 P. 2d 399, 407; 5 McQuillin, Municipal Corporations, § 15.31a at 112

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(3rd ed. 1969.) See, also, 1940 Ill. Att'y Gen. Op. 234; 1932 Ill. Att'y Gen. Op. 609; 1931 Ill. Att'y Gen. Op. 595.

The pertinent part of section 11 of article VI of the Liquor Control Act (Ill. Rev. Stat. 1979 Supp., ch. 43, par. 130), set forth above, permits the sale of alcoholic liquor at faculty centers or facilities, belonging to or under control of any State university, in which conference and convention-type activities take place, provided that in facilities for conference and convention-type activities, alcoholic liquors are limited to the use of convention or conference participants. By implication, the State university itself, through its employees or agents, would be authorized to make these sales. The manner in which university property is used necessarily pertains to the operation and administration of the university. The authorities cited above establish that these functions are not subject to control by a municipal corporation. If the Board of Regents were to determine that a State university under its jurisdiction, such as Illinois State University, could sell alcoholic liquor at faculty centers or facilities in which conference type activities take place, the State university, as an agency of the State, would not be required to have a local liquor license nor would it be subject to regulation of local authorities, if the State university itself through

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its employees or agents made the sales. The Board of Regents, which has the power to manage, operate and control its universities, has the authority to establish its own regulations. The fact that Illinois State University is located in Normal, which is a home-rule municipality, would not alter my opinion. A municipal ordinance enacted pursuant to "Home Rule" powers granted by section 6(a) of article VII of the 1970 Illinois Constitution must be limited to its own affairs and may not affect the affairs of the State. City of Highland Park v. County of Cook (1975), 37 Ill. App. 3d 15, 25, 26; Spears Free Clinic & Hospital For Poor Children v. State Board of Health (Colo. S.Ct. 1950), 220 P. 2d 872, 874.

In answer to your second question, it is my opinion that if the State university itself did not make the sales but permitted others, such as lessees, to sell the liquor or permitted a "club," as defined in section 2.24 of the Liquor Control Act (Ill. Rev. Stat. 1979, ch. 43, par. 95.24), then a State and local liquor license would be required and the sales would be subject to local regulation. In opinion No. S-1469, issued November 2, 1979, my predecessor advised that the exceptions set forth in section 22 of article VI of the Liquor Control Act (Ill. Rev. Stat. 1977, ch. 43, par. 130), in general, merely constitute exceptions from the general prohibition against the sale or delivery of alcoholic beverages in any building belonging to or under the control

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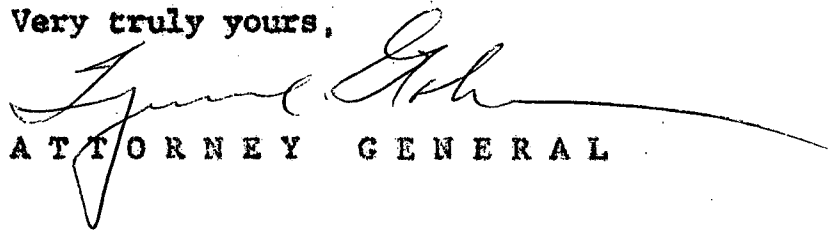
of the State or any political subdivision thereof. It was stated that these exceptions do not provide an exemption from licensing. The opinion advised that a person who leases concession space in a State park must obtain both a local and State license before selling alcoholic liquor at a State park. It was further stated that there is nothing in the Liquor Control Act which specifically exempts a concessionaire in a State park from the requirement to obtain licenses. (See, Ill. Rev. Stat. 1979, ch. 43, pars. 108, 109, 110, 115.)

I am in agreement with opinion No. S-1469. Consequently, it is my opinion that the exceptions in section 11 of article VI of the Liquor Control Act (Ill. Rev. Stat. 1979, ch. 43, par. 130), set forth above, which permit the sale or delivery of alcoholic liquor in faculty centers and facilities in which conference and convention-type activities take place, belonging to or under control of any State university, do not provide an exemption from licensing or from regulation of local authorities, if such licensing would otherwise be required. It is therefore clear that, if a lessee or other person or "club", as defined in section 2.24 of the Liquor Control Act (Ill. Rev. Stat. 1979, ch. 43, par. 95.24), were to sell liquor in a faculty center or facility, belonging to or under the control of Illinois State University at Normal, Illinois, in which conference and convention-type

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activities take place, both a State and local liquor license would be required and the sales would be subject to local regulation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James G. Ash", written in dark ink. The signature is fluid and extends across the width of the typed name below it.

ATTORNEY GENERAL