

VOLUME NO. 34**Opinion No. 42**

BOARD OF EDUCATION - Ex-officio regents of Montana university system; power to control use of alcoholic beverages in residence halls. INTOXICATING LIQUORS - Control of, in residence halls of units of the Montana university system. UNIVERSITY OF MONTANA - Alcoholic beverages in residence halls, power of regents to control. Sections 4-102, 4-159, 75-8501, 75-8503, and 75-8701, R.C.M. 1947.

HELD: The board of education, ex-officio regents of the Montana university system, has the authority to allow or prohibit the possession and consumption of alcoholic beverages in a student's room in a residence hall on a campus of a unit of the Montana university system.

May 3, 1972

Mr. Edward W. Nelson
Executive Secretary
Montana University System
1231 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Nelson:

You have requested my opinion on the following question:

Can alcoholic beverages be held or consumed in a student's room in a residence hall on a campus of a unit of the Montana university system?

Section 75-8501, Revised Codes of Montana, 1947, provides in part:

"The state board of education shall serve ex officio as regents of the Montana university system . . . and shall:

* * *

"(3) Provide, subject to the laws of the state, rules and regulations for the government of the system.

* * *

"(8) Have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system."

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The regents' control over buildings of the university system is further strengthened by section 75-8503, R.C.M. 1947, which provides in part:

"The regents of the Montana university system may:

* * *

"(2) Rent housing facilities and provide food and other services to the students, . . .

* * *

"(4) Exercise full control and complete management of such facilities."

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Section 75-8701, R.C.M. 1947, further provides in part:

"The university system is open to all people subject to such uniform regulations as the regents deem proper. . . ."

From the above-quoted provisions of Montana law, it would appear that the regents may permit or prohibit the possession and consumption of alcoholic beverages within an individual student's room in a residence hall, unless otherwise restricted by law.

The only statutory provision which might be thought to conflict with the regents' power over the possession and consumption of alcoholic beverages within an individual student's room in a residence hall is section 4-159 (1), R.C.M. 1947, which provides:

"Except in the case of liquor purchased and consumed in accordance with the beer license or a special license for a purpose permitting its consumption in a public place, no person shall consume liquor in a public place."

Section 4-102 (o), R.C.M. 1947, provides:

" 'Public place' includes any place, building, or conveyance to which the public has or is permitted to have access and any place of public resort,"

The areas of residence halls which are open to the public, such as lounges and recreation rooms, would come within the restriction of section 4-159, *supra*, dealing with consumption of liquor in a public place. However, an individual student's room in a residence hall, since it is not open to public access, is not subject to the restriction of section 4-159, *supra*.

THEREFORE, IT IS MY OPINION that the board of education, ex-officio regents of the Montana university system, has the authority to allow or prohibit the possession and consumption of alcoholic beverages in a student's room in a residence hall on a campus of a unit of the Montana university system.

Very truly yours,

ROBERT L. WOODAHL
Attorney General