

El .Bd. Op. 75-2 (Reaffirmed 3/26/08)

Summary:

The state does not occupy University of Wisconsin owned and operated student residences, dormitories and the facilities incidental thereto which are the subject of a housing lease or agreement entered into by the university with its students. Other University of Wisconsin owned or operated facilities are occupied by the state except when the University of Wisconsin enters into an agreement with individuals or groups, to allow those individuals or groups to use the facilities for non-academic purposes. (Issued to Richard A. Hyde, September 16, 1975)

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on March 26, 2008.

Opinion:

You have requested the Board's opinion on the following question: "Are the University-owned and operated dormitories, auditoriums, and student unions considered 'a building, office, or room occupied for any purpose by this State . . .' and thereby subject to the restrictions specified in §11.36 of the state statutes?"

Section 11.36 provides: "No officer or employee of this state may solicit or receive or be involved in soliciting or receiving any contribution or service for any political purpose from any officer or employee of this state while on state time or engaged in his official duties as an officer or employee. Any person who has charge or control in a building, office or room occupied by this state shall prohibit the entry of any person for the purpose of making or receiving a contribution. No person may enter or remain in any such building, office or room or send or direct a letter or other notice thereto for the purpose of demanding or collecting a contribution."

As to state university owned and operated student residences, dormitories, and the facilities incidental thereto, it is the opinion of the Board that the University, when it enters into a housing lease or agreement with its students, does not occupy the areas which are the subject of such lease or agreement. Those areas which are the subject of the lease or agreement, including incidental supporting facilities such as dining halls, or lounges, are the residence of that student. The University does not "occupy" those areas under the provisions of §11.36 for the duration and pursuant to the conditions of the agreement - rather the renting student "occupies" the subject areas.

As to other state university owned or operated facilities, such as auditoriums and student unions, those areas are occupied by the university as defined by §11.36 except when the university through the authority of the Board of Regents enters into an agreement with individuals or groups to allow those individuals or groups to use the facility for non-academic purposes. For the duration of that authorized use the state through the university is not "occupying" the subject facility.

A building, office or room will be considered to be used for "academic purposes, when the facility is used by an individual or group for any activity directly related to accomplishing the university's statutory missions of instruction, research, extended training and public service.

A non-academic use of a university facility could normally include meetings sponsored by student or employee organizations wherein the university has, by agreement with the organization, explicitly relinquished functional use of the facility to the student or employee organization for its own organizational purposes. These organizational or "non-academic" uses could include, for example, meetings sponsored by student organizations such as Students for N. for President, the Interfraternity Council, and student academic societies, and would also include meetings sponsored by employee organizations for organizational, social, or recreational purposes as long as the employees in attendance were not on state time. Moreover, a facility will not be considered to be used for academic purposes merely because of the presence in that facility of employees on state time whose presence is unrelated to the non-academic use of the facility. For example, provision of janitorial and maintenance services, security, or food and beverage service, would not render an otherwise non-academic use an "occupation" of a "building, office or room" for "any purpose by this state."

This opinion does not speak to the question of whether or not the state "occupies" the particular facility through the student lessor or individual or group which may be granted authority to use a facility for a residence or non-academic use. The characteristics of the individual or group would be determinative in each instance. Certainly there are a number of organizations separate from the university which might be granted such authority by the Board of Regents which are a state agency in their own right or are sufficiently state related and therefore subject to §11.36.

The Board draws your attention to the fact that there may be statutes and rules not subject to interpretation by this Board which may also apply.