

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
ATTORNEY GENERAL

Spencer E. Austin
Chief Criminal Deputy

Ric Cantrell
Chief of Staff

Tyler R. Green
Solicitor General

Brian L. Tarbet
Chief Civil Deputy

September 27, 2024

Commissioner Geoffrey Landward
Via email

Re: University of Utah Student Housing Project

Dear Commissioner Landward,

The University of Utah is requesting that the Board of Higher Education (“Board”) authorize a public private partnership between the University of Utah (“University”) and American Student Housing Project (“Project”) under Board Policy R712, *Nontraditional Arrangement for Development of Facilities on Campuses*. The decision to proceed with ACC as a partner came after an RFP process that lasted several months.

The Board has authority to approve the proposed project under the following statutes.

Under Subsection 53B-2-101(2)(a), institutions of higher education, including the University, “may, subject to [Title 53B], take, hold, lease, sell, and convey real and personal property as the interest of the institution requires.”

Under Subsection 53B-20-103(2), the Board may:

- (a) acquire, purchase, construct, improve, remodel, add to, and extend capital facilities projects and buildings including necessary and related utilities;
- (b) accept buildings, land, or a combination of buildings and land, donated to an eligible higher education institution without obtaining approval of the donation from the director of the Division of Facilities Construction and Management;
- (c) acquire necessary and suitable equipment, furnishings, and land for institutional projects and buildings;
- (d) set aside portions of campuses for institutional projects and buildings;
- (e) maintain and operate institutional projects and buildings; and
- (f) impose and collect rents, fees, and charges for the use of institutional projects and buildings.

Subsection 53B-20-104(1) requires the Board to “approve all new construction, repair, or purchase of educational and general buildings and facilities financed from any source at all institutions subject to the jurisdiction of the [B]oard.”

Subsection 53B-21-108(1) authorizes the Board to acquire a project by purchase or lease rather than the issuance of revenue bonds.

Whenever the board, by resolution, finds and declares it preferable to acquire a project under this chapter by purchase or lease of the facilities constituting the project under an agreement which provides the consideration for the purchase or lease to be paid in installments during a period *not exceeding 99 years*, rather than through the issuance of revenue bonds by the board in the manner provided in this chapter, it may do so upon compliance with this section. (emphasis added)

Subsection 53B-21-108(7) outlines the contractual provisions the Board is permitted to include in any purchase or lease agreement. Having this statutory authority, the Board adopted Board Policy R712. Under that policy, the Board can authorize a public private partnership subject to “advice from the Attorney General’s Office that the specific proposal is within the Board’s authority to approve under the statute.” Additionally, before the project can be finalized other conditions listed in the policy must be met, including contractual provisions and construction requirements.

In this case, there will be a 55-year lease for the land under the building. ACC will own the building through the term of the lease, then the building will revert to the University. The University has first right of refusal if the building is sold to another investor, and future owners must be experienced in managing residential housing.

ACC’s costs are expected to be \$155 million, while U of U’s are expected to be \$12 million, plus \$3 million for the site. All U of U costs related to this development will be covered by internal U of U funds that it bonded for related to student housing and were previously approved by the Board.

Based on our review of the transaction as it has been presented and the statutes referenced above, the Board has the legal authority to approve the transaction, subject to approval of the contracts as to form and legal authority by the Attorney General’s Office. If the Board approves the transaction, I will review the final documents to ensure they comply with Subsection 53B-21-108 and Board Policy R712-5.

Please let me know if you have any questions.

Very truly yours,



William T. Evans
Assistant Attorney General

cc: Alison Adams, USHE General Counsel, via email