

May 7, 2014

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: University of Utah Request for Exception to R555 - Competition with Private Sector

Issue

At the January Regents meeting, updated policy language to R555, *Providing Facilities, Goods and Services in Competition with Private Enterprise* was considered and approved by the Board. These changes were in response to recommendations made in the 2013 Legislative Audit of Higher Education's Competition with the Private Sector. The University of Utah is requesting an exception to the policy as allowed by section 4.5. for its satellite "Utah Red Zone" retail outlets as it makes plans to discontinue its operations of its satellite retail stores, the off campus Red Zones.

Background

The Board of Regents role in enforcing R555 (attached) includes monitoring compliance through institutional policy creation and grievance procedure requirements (section 4.6.), along with a method by which institutions can request an "exception" to R555 (section 4.5.), which is what the university is doing in the present instance.

Pertinent policy states, "An institution may submit a proposal to the State Board of Regents requesting an exception to policy R555. Exceptions to this policy may be authorized if the Board determines, upon consideration and weighing of the various interests and public policies pertinent to providing the facilities, goods or services in competition with private enterprise, that the public interest favoring an exception outweighs the interest favoring denial of an exception."

The University has provided a cover letter (attached) outlining the justification for the exception, including a consideration of the public interest favoring an exception as required by policy for the smooth transition as it works to "wind down" the operations of the off campus Utah Red Zones effective end of the year 2017. The University also requests an exception for limited marketing and advertising efforts targeted to supporters of the University of Utah and University athletics.

The University's request emphasizes the importance of maintaining the financial viability of the satellite stores for the next several years as the leases expire and while it considers options to sell or franchise the

retail operations. The adoption of an institutional policy and grievance procedures are in process with anticipated adoption by the Board of Trustees in the next month or so.

Commissioner's Recommendation

The Commissioner recommends that the Regents consider the University of Utah's request for an exception to policy R555, *Providing Facilities, Goods and Services in Competition with Private Enterprise*, allowing them to continue operating satellite retail outlets of the "Utah Red Zones" through December 31, 2017, as well as allowing for limited marketing and advertising efforts, and if satisfied with the public interest rationale approve the request effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/DAM/CRW
Attachment



Office of the Vice President
for Administrative Services

May 1, 2014

David L. Buhler
Commissioner of Higher Education
Utah System of Higher Education
Board of Regents Building, Two Gateway
60 South 400 West
Salt Lake City, Utah 84101-1284

Dear Dave:

As you are aware, the University of Utah has committed to discontinue its operations of its satellite retail stores, the off campus Utah Red Zones. The operation of these retail stores, however, involves a significant commitment of capital as well as other financial obligations. It is important, therefore, that the University proceed very prudently to determine the appropriate course of action to minimize any negative financial impacts to the Red Zone operations or the University. Furthermore, if the University determines that it is in the University's best interest to sell or franchise the retail operations, it is important that their value be maintained.

Accordingly, we are requesting, per R555.4.5, the following exceptions to allow the University to make a smooth transition as we wind down operations: 1) we are requesting authorization to continue operating the satellite retail outlets (the off campus Utah Red Zones) through December 31, 2017, and 2) allow for limited marketing and advertising efforts targeted to supporters of the University of Utah and University athletics. Such advertising would include use of specific media outlets with clear ties to the University, such as ESPN 700 (the radio station of University of Utah athletics) and the PAC 12 Network. It should also be noted that the entire advertising budget for the satellite Utah Red Zone stores for the fiscal year beginning on July 1, 2014 is only \$25,980, and is less than 2% of projected net sales and consistent with prior years. Therefore, advertising will be limited.

Our decision to request these exceptions has been made to allow for a smooth transition in the ownership of these off campus retail outlets and has also been made with the public's interest at the forefront. The University of Utah is confident public demand of merchandise bearing the state's flagship institution's trademarks and names, along with our obligation required by R550 of self-supporting auxiliary enterprises weighs in our favor for exception. We are proud of the unique services our auxiliary enterprises provide the campus community, which includes students, faculty, staff, and also, alumni, sponsors, neighbors, and other interested citizens of our state.

Public Demand

Initiating the operation of the satellite Utah Red Zone stores came after years of complaints from the growing fan base and alumni along the Wasatch Front who demanded a greater variety and selection of Utah insignia merchandise, yet were not able to visit the University Campus Store. Our intent was not to increase market share, but rather to preserve a share of an expanding market by offering more convenient locations for alumni, community fans, students and prospective students.

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Three years after the Sandy location was established, our market share remains approximately what it was then. Fans and alumni have the choice to support the University of Utah without having to make a trip to campus. The Utah Red Zones carry a wider selection of sizes, styles, and gift items year-round (5,000 SKU's of insignia merchandise per the Spring 2013 *Licensing Retail Impact Summary*). By comparison the next highest retailer is Scheels, which offers only 2,000 SKU's.

Red Zone Stores Bear the Same Costs and Do Not Undercut Private Retailer Pricing

The Utah Red Zones in Sandy, South Jordan, and Layton bear the costs that any other retail operation would; including, rent, CAM charges, costs of goods sold, and personnel. Goods are not offered at a discounted rate when compared to other retailers providing a more limited selection of insignia apparel. All property taxes are included in the rent charges and sales tax generated is returned to the State as is with any private retailer.

The U of U Trademarks and Licensing Program Supports and Promotes Private Enterprise

The University of Utah's Trademarks & Licensing department actively works with local vendors and retailers to encourage private sector production and sale of Utah insignia merchandise. We regularly partner with the private sector on marketing campaigns and promotions, and continually work to channel as much product as possible through private sector outlets. Despite our best efforts to support marketing, promotions, and acting as a liaison between licensed vendors and retailers, many private retail outlets choose to carry on a limited selection peaking during football season.

Red Zone Stores Provide Student Training, Employment, and Discounted Textbooks

More than three-quarters of the approximately 180 employees of the University Campus and Utah Red Zone stores are students. The Stores conduct a thriving student management training program, in which student employees fulfill educational training requirements in retail operation, management, accounting and human resources. The student employee can directly apply what he or she is learning in real-world retail management scenarios as they work in the Campus or off campus Red Zone stores. In addition, an Employee Textbook Incentive Plan enables student employees to borrow rather than buy their textbooks, saving each student approximately \$500 per semester. Both programs have been very successful.

Auxiliary Enterprises Are Required To Be Self-Supporting

The "Bookstore" now referred to as the University Campus Store is recognized in R550 as an auxiliary enterprise and is required to be self-supporting. The net revenues from each store are returned to the institution to support the auxiliary enterprise system as outlined in Utah Board of Regents policy R550. Utah Red Zones are not operated with any subsidy from state funds, student tuition or fees. The ability for the Campus Store to remain self-supporting has relied heavily on the sale of insignia merchandise to supplement the declining revenues in textbooks and general books as technology has replaced some of the hard copy textbook market. This trend is noticeable across the country in higher education. It has and continues to seem reasonable that the institution be able to profit from, promote, and protect its own trademarks and names to help fund auxiliary programs where operating costs like utilities and personnel benefits have increased dramatically. (The Campus Store still plays a viable role on the university campus and thus needs to survive financially.)

Marketing

The Utah Red Zone has a unique branding message targeting our campus community, alumni, supporters and fans of the University of Utah. Products that are branded and related to the institution, (bearing our marks and names), are

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the only merchandise offered to that targeted audience, and any net revenue generated by sales of these products is returned to the university.

The University of Utah's marketing and advertising costs, as they relate to the University Campus Store, are paid for by the campus store, an auxiliary enterprise, without any special discount awarded or institutional subsidy. We will focus our marketing and advertising efforts using outlets targeted to the University of Utah community including, but not limited to, ESPN 700, the PAC 12 television network, and other electronic and/or printed media outlets with a targeted audience of supporters of the University of Utah and university athletics.

University-Operated Insignia Stores Are Common in the PAC-12, Neighboring States, and States as Cited in a Recent Audit

Membership in the PAC-12 has elevated the University of Utah trademarks and names to more of a household brand, rather than being associated solely with athletic programs. To support this change in demand the University has opened three off-campus stores. Five other PAC-12 institutions operate stores similar to the Utah Red Zones:

<u>Institution</u>	<u>Number of Locations</u>
Arizona	5
Oregon	5
UCLA	1
USC	2
Washington	5

Institutions in Nevada and Idaho also own or operate insignia merchandise outlets. There are institutionally owned or operated outlet stores in three states (Arizona, Washington, and Iowa) cited by a recent audit.

The University Complies Fully With IRS Regulations

The University of Utah has taken a conservative approach to reporting unrelated business income to the IRS and complies with all applicable federal and state statutes, regulations, and judicial authority.

Sincerely,



Arnold B. Combe
Vice President

cc: President David W. Pershing
Dr. Gregory L. Stauffer
Ralph Hardy
John E. Nixon
Gordon Wilson

R555, Providing Facilities, Goods and Services in Competition with Private Enterprise¹

R555-1. Purpose: To establish policy and guidelines for institutions providing facilities, goods and services in competition with the private sector. The following policy shall apply to all non-academic, self-support services.

R555-2. References

- 2.1. Utah Code §53B-7-101(10) (Each Institution Handles Its Own Financial Affairs Under the General Supervision of the Board)
- 2.2. Policy and Procedures R550, Auxiliary Enterprises Operation and Accountability

R555-3. Definitions

- 3.1. **"Institutions"**: colleges and universities which are part of the Utah System of Higher Education.
- 3.2. **"Campus Community"**: an institution's prospective students, students, faculty, staff, alumni and campus guests.
- 3.3. **"Institutional Services"**: an institution's facilities, goods, and services.
- 3.4. **"Non-academic Self-support Services"**: services that are complementary to an institution's teaching, research, and public service functions and are funded through the service's own activities or by charging a fee directly related to the costs of providing the goods or services.

R555-4. Policy: Institutions shall not sell or provide services to their campus community or to the general public except as set forth below.

- 4.1. **Services Necessary for the Education of Students or Basic Research:** Institutions are expected to provide their campus communities appropriate services which are necessary for the education of students, or the performance of basic research in accordance with the institution's mission as established by the Utah State Board of Regents. This responsibility includes, but is not limited to, instructional, research, and public service programs; libraries; computing programs; and other academic support services.
- 4.2. **Educationally Related Activities:** Institutions may provide other services to their campus communities even though such services are practically available elsewhere providing that the services satisfy reasonable educationally related needs of the campus community, e.g. campus newspapers, campus store(s), campus dining facilities, student housing, etc.
 - 4.2.1 Institutions may advertise institutional services to the campus community.
 - 4.2.2 Institutions may advertise or share information with the general public via an institution's webpage, the internet, social media, and e-mail.

¹ Adopted November 14, 1986, amended January 24, 1997 and January 24, 2014.

4.2.3. Except as is necessary to meet the purposes of services listed in section 4.3, institutional services may not otherwise be advertised to the general public.

4.3. Services to Persons Other Than Members of the Campus Community: An institution shall not provide services to persons other than members of the campus community unless:

4.3.1. The service offers a substantial and valuable educational or research experience for registered students and faculty;

4.3.2. The service fulfills the institution's public service mission;

4.3.3. The service is incidental to the ordinary and authorized function of a campus entity, i.e., occasional sales by bookstores, food service, etc., to campus visitors;

4.3.4. The service consists of recreational, cultural, and athletic events; health services and medical treatment; public service radio and TV broadcasting; events of functions which have as their principal purposes the improvement of relations between the institutions and the general public; and sales of contributed services, if related to fund raising activities;

4.3.5. The equivalent service is not available in the local area; or

4.3.6. The service to persons not members of the campus community has been specifically authorized by the State Board of Regents.

4.4. Private Enterprise on Campus: Private enterprise entities which operate service or auxiliary units on a campus under contract with an institution are subject to this policy.

4.5. Exceptions Authorized by State Board of Regents: An institution may submit a proposal to the State Board of Regents requesting an exception to policy R555. Exceptions to this policy may be authorized if the Board determines, upon consideration and weighing of the various interests and public policies pertinent to providing the facilities, goods or services in competition with private enterprise, that the public interest favoring an exception outweighs the interest favoring denial of an exception.

4.6. Monitoring Institutional Services Which May Compete with Private Enterprise: Where an institution claims to provide services to persons other than members of the campus community in accordance with Sections 4.3. of this policy, the Board of Regents requires that the institution comply with the following requirements:

4.6.1. Each institution must establish a written policy regarding competition with private enterprise. This policy shall include the following provisions: (1) a requirement that the institution's provision of facilities, goods and services to persons other than members of the campus community complies with Policy R555; and (2) a description of the institution's grievance process, which must meet the requirements described in Section 4.7. The policy must designate an individual within the institution to whom complaints should be addressed. The policy must be accessible via the institution's website.

4.7. Grievance Review Procedures: In the event that the provision of a good or service by a higher education institution is perceived to be in competition with a privately owned business, that business shall be provided the opportunity for a hearing of such a complaint according to the following guidelines:

4.7.1. Each institution must establish a grievance hearing process as well as a first point of contact for that hearing process.

4.7.2. If resolution is not reached as a result of the institutional grievance hearing process, appeal may be made to the Board of Trustees of the institution.