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Honorable William N. Tunnell, Jr.
Commission Chairman
USS Alabama Battleship Commission
Post Office Box 65
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Battleship Commission – Firearms –
State Departments and Agencies

The USS Alabama Battleship Commission (“Commission”) may promulgate rules that prohibit firearms in its park if it determines that doing so is necessary or convenient to effect the purposes for which it has been established or incidental or necessary to the discharge of its powers and duties.

Dear Mr. Tunnell:

This opinion of the Attorney General is issued in response to your request on behalf of the Commission.

QUESTIONS

Is the Commission legally prohibited from maintaining a policy prohibiting firearms in the park?

Is there any distinction between the open (non-fenced) areas of the park and the closed (paid admission required) area of the park as far

as application of the new firearms law is concerned?

FACTS AND ANALYSIS

In 2013, the Legislature broadly preempted the regulation of firearms, ammunition, and firearm accessories by political subdivisions. ALA. CODE § 13A-11-61.3 (2015). A general statement of preemption is set forth in section 13A-11-61.3(a) as follows: “The purpose of this section is to establish within the Legislature complete control over regulation and policy pertaining to firearms, ammunition, and firearm accessories in order to ensure that such regulation and policy is applied uniformly throughout this state...” *Id.* at (a). This statement is then qualified by section 13A-11-61.3(c) of the Code, limiting preemption to “**any order, ordinance, or rule promulgated or enforced by any political subdivision of this state.**” ALA. CODE § 13A-11-61.3(c) (2015) (emphasis added). Section 13A-11-61.3 of the Code “is to be liberally construed to accomplish its purpose.” ALA. CODE § 13A-11-61.3(a) (2015).

The Commission is not a “political subdivision” as defined by section 13A-11-61.3(b)(6) of the Code. A “political subdivision” is defined as “[a] county, incorporated city, unincorporated city, public local entity, public-private partnership, and any other public entity of a county or city commonly considered to be a political subdivision of the state.” ALA. CODE § 13A-11-61.3(b)(6) (2015). The Legislature designated the Commission as a state commission, a state agency, and a public body corporate. ALA. CODE §§ 41-9-340, 346, and 348 (2019). The courts have not determined whether the Commission is a state agency or a public corporation, and we are not asked to do so here. *Cf.* Opinion to Honorable J. Fred Mitchell, Acting Executive Director, Battleship Memorial Park, dated Dec. 16, 1991, A.G. No. 92-00083 (Identifying the Commission as a state agency as applied to a specific statute providing the Commission with the authority to offer its employees any benefits offered to state employees.). Regardless, the plain language of section 13A-11-61.3(b)(6) of the Code does not include state agencies within its definition of a political subdivision. In addition, it is well settled that a public corporation is generally considered an entity separate from, and not a political subdivision of, the county, city, or state. Opinion to Honorable Kay Kelly, Vice-President, North Shelby County Library District, dated Dec. 2, 2016, A.G. No. 2017-009, pg. 3; *Thomas v. Ala. Mun. Elec. Auth.*, 432 So. 2d 470, 481 (Ala. 1983); *Ala. Hosp. Ass’n v. Dillard*, 388 So. 2d 903, 905 (Ala. 1980); AGO Firearm Determination 2015-001 (As public

corporations, section 13A-11-61.3 of the Code does not apply to the University of South Alabama and Auburn University.). Thus, whether operating as a state agency or a public corporation, section 13A-11-61.3 of the Code does not apply to the Commission.

Although section 13A-11-61.3 of the Code does not prohibit the Commission from promulgating rules to prohibit firearms at the park, we must now determine whether the Commission is authorized to promulgate such rules. The Commission has “*exclusive control over* the Battleship USS Alabama, the memorial park..., any and all improvements and exhibits located thereon, and any additions constructed, created, leased, acquired, or erected in connection therewith...” ALA. CODE § 41-9-348 (2019) (emphasis added); *see also*, ALA. CODE § 41-9-347 (2019) (The park is under the “exclusive management and control of the commission as a separate agency of the state government.”); ALA. CODE § 41-9-349(d) (2019) (“The commission shall have full, complete and exclusive jurisdiction over the vessel, the sites and the related exhibits...”). The plain language of sections 347, 348, and 349(d) of the Code indicate that the Commission has exclusive control, management, and jurisdiction over the park property. ALA. CODE §§ 41-9-347, 348, 349(d) (2019). Further, in addition to any powers set forth by the Legislature, the Commission has “all powers necessary or convenient to effect the purposes for which it has been established...together with all powers incidental thereto or necessary to the discharge of its said powers and duties.” ALA. CODE § 41-9-346 (2019). Given the broad authority granted to the Commission by the Legislature, the Commission has sufficient statutory authority to prohibit firearms in the park if the Commission determines that doing so is necessary or convenient to effect the purposes for which it has been established or incidental or necessary to the discharge of its powers and duties. If the Commission opts to promulgate a policy prohibiting firearms in the park, any rules that restrict or prohibit employees from possessing firearms on park property must be compliant with section 13A-11-90 of the Code. ALA. CODE § 13A-11-90 (2015).

Your question regarding the “new firearms law” is moot. The Legislature recently enacted Act 2022-133 which amended several firearms-related statutes, but it did not amend section 13A-11-61.3 of the Code. 2022 ALA. ACTS NO. 2022-133. The analysis above, therefore, remains unchanged.

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CONCLUSION

The USS Alabama Battleship Commission may promulgate rules that prohibit firearms in its park if it determines that doing so is necessary or convenient to effect the purposes for which it has been established or incidental or necessary to the discharge of its powers and duties.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Wes Shaw of my staff.

Sincerely,

STEVE MARSHALL
Attorney General

By:



BEN BAXLEY
Chief, Opinions Division

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