



COMMONWEALTH of VIRGINIA

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John T. Casteen, III
President, University of Virginia
P.O. Box 400224
Charlottesville, Virginia 22904

Dear President Casteen:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the University of Virginia may provide recreational gym memberships to an adult who is not a spouse and who lives in the household of an employee or student.

Response

It is my opinion that the University of Virginia is authorized to provide a recreational gym membership to an adult who is not a spouse and who lives in the household of an employee or student.

Background

You report that employees and students of the University of Virginia (“University”) along with their spouses and children are eligible to receive recreational gym memberships. You state that the University would like to offer recreational gym memberships to an adult, other than a spouse, living in the household of an employee or student as an additional benefit to employees and students. You note that such benefit would be uniformly offered and applied without regard to the type of relationship that may exist and without regard to the personal or private circumstances of the home.

Applicable Law and Discussion

The University of Virginia is a public institution.¹ The University’s Board of Visitors and the President exercise broad statutory authority with respect to the government and management of the University.² However, such authority is not without limits. “It is plain that the University of Virginia is in the strictest sense a public institution ... and that the interest of the public constitutes its ends and aims.”³ It is well established in Virginia that a university, through its governing Board, “has not only the powers

¹ See VA. CODE ANN. § 23-69 (2005); *Phillips v. Rector & Visitors*, 97 Va. 472, 475-76, 34 S.E. 66, 67 (1899).

² See § 23-76 (2006).

³ *Phillips*, 97 Va. at 475-76, 34 S.E. at 67.

expressly conferred upon it, but it also has the implied power to do whatever is reasonably necessary to effectuate the powers expressly granted.”⁴ The proper relationship is that colleges and universities are state agencies, *i.e.* arms of the Commonwealth, tasked with fulfilling the Commonwealth’s commitment to provide education to the students of Virginia.⁵ As such, the broad authority of Virginia colleges and universities does not supersede statutory or case law, public policy, or explicit statements of the General Assembly regarding specific topics.⁶

Sections 23-76 authorizes the Board of Visitors of the University to:

appoint a comptroller and proctor, and employ any other agents or servants, regulate the government and discipline of the students, and the renting of the rooms and dormitories, and, generally, in respect to the government and management of the University, make such regulations as they may deem expedient, not being contrary to law.

The University is also “charged with the care and preservation of all property belonging to the University”⁷ These powers and duties enable the University, within the bounds of the law and public policy of the Commonwealth, to manage its property, including use of that property by employees and students. Such power certainly would include the regulation of eligibility requirements for membership in the University’s recreational facilities.

Currently, the University’s policy governing eligibility for recreational sports memberships provides that full-time students, full-time and part-time faculty and classified staff with benefits, spouses of full-time and part-time faculty and staff with benefits, and children of members all are eligible for membership in the recreational gym facilities.⁸ Thus, the suggested policy change is to allow current members to designate another adult who resides with them for membership eligibility. Such a policy

⁴Goodreau v. Rector & Visitors, 116 F.Supp.2d 694, 703 (W.D.Va. 2000) (quoting Batcheller v. Commonwealth, 176 Va. 109, 123, 10 S.E.2d 529, 535 (1940)).

⁵The relationship between the Commonwealth and its universities and colleges is not akin to the relationship between the Commonwealth and cities and counties. The Dillon Rule is not applicable to state agencies. See 2006 Op. Va. Att’y Gen. 5, 10 n.28 (forthcoming May 2007), available at <http://www.vaag.com/OPINIONS/2006opns/06-034w.pdf>.

⁶Virginia public colleges and universities are state agencies; they are statutory corporations created and empowered by acts of the General Assembly. As such they are subject to the control of the General Assembly and are limited to the powers granted them. See *e.g.* Jones v. Commonwealth, 267 Va. 218, 222-23, 591 S.E.2d 72, 74-75 (2004); see also § 23-76 (providing that Board of Visitors of University of Virginia “shall be at all times subject to the control of the General Assembly” and authorizing Board to make such regulations as they may deem expedient, not contrary to law); § 23-114 (2006) (providing that Board of Visitors of Virginia Tech “shall at all times be under the control of the General Assembly”); § 23-122 (2006) (providing that Virginia Tech’s Board of Visitors may make such regulations as they deem expedient, not contrary to law); § 23-91.24 (2006) (providing that Board of Visitors of George Mason University “shall be subject at all times to the control of the General Assembly”). Similar provisions, often utilizing the exact language, prescribe the authority of the Boards of Visitors of the University of Mary Washington, Virginia Military Institute, Radford University, Virginia State University, Norfolk State University, Longwood University, and the College of William & Mary.

⁷Section 23-76.

⁸See <http://www.virginia.edu/ims/membership/eligibility.html> (last visited May 8, 2007).

Mr. John T. Casteen, III
June 7, 2007
Page 3

change is consistent with the University's current practice of allowing individuals other than employees and students to obtain gym membership.

The proposed expansion of gym membership eligibility does not appear to contravene the law regarding University management of property in its care. It provides two basic and objective criteria for eligibility, the potential member must: (1) be an adult; and (2) share a residence with the eligible University employee or student through whom he will claim eligibility.⁹

Conclusion

Accordingly, it is my opinion that the University of Virginia is authorized to provide a recreational gym membership to an adult who is not a spouse and who lives in the household of an employee or student.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

6:1185; 1:941/07-018

⁹However, should the University base its expanded membership eligibility on the personal relationship of the University employee or student and the adult coresident, the policy may violate the Constitution of Virginia if it is deemed to "create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage." VA. CONST. art. I, § 15-A.