

CONSTITUTION OF VIRGINIA: EDUCATION.

Students attending for-profit, nonsectarian postsecondary private schools and institutions of learning are eligible to participate in state-funded financial aid programs established under Constitution. Postsecondary schools and institutions of learning that offer certificates for completion of their curriculum, rather than approved two- or four-year degree, do not qualify as offering "collegiate" education.

The Honorable Warren E. Barry

Member, Senate of Virginia

October 2, 1998

You ask whether students attending for-profit, nonsectarian postsecondary private schools and institutions of learning are eligible to participate in state-funded financial aid programs established under Article VIII, § 10 of the Constitution of Virginia (1971).¹ You also ask whether postsecondary schools and institutions of learning that offer certificates of completion of a specific curriculum, rather than a two- or four-year degree, qualify as offering "collegiate" education under Article VIII, § 10. If so, you ask whether such institutions qualify as offering "collegiate" education under § 10 if they are accredited by a national or regional accrediting agency recognized by the United States Secretary of Education, and are licensed or certified to operate in the Commonwealth by the State Council of Higher Education, the State Department of Education, or some other state agency.

You relate that approximately 22,000 students in the Commonwealth attend nonsectarian private career schools that offer postsecondary education in a wide variety of occupational specialties, such as computer technology;² court reporting; and legal secretarial, executive administrative secretarial, and accounting technician, education. Some of these institutions offer degrees approved by either the State Council of Higher Education for Virginia (the "Council") or the Department of Education (the "Department"), and some offer certificates for completion of their curriculum rather than approved degrees. All of the particular institutions about which you inquire are accredited by an accrediting agency recognized by the United States Secretary of Education, and are licensed, certified or approved by the Council, the Department, or some other state agency. Finally, you represent that the majority of such institutions are for-profit.

A 1983 opinion of the Attorney General considers the question of whether students enrolled in proprietary institutions³ are eligible under Article VIII, § 10 to participate in the Virginia Work-Study Program⁴ should the Council elect, by regulation, to permit such students to be included within that pro-gram. The opinion construes Article VIII, § 10 and notes that "[n]o restriction is made as to whether the school is 'for profit,' but the legislature is empowered to establish appropriate limitations."⁵ Accordingly, the opinion concludes that "it is constitutionally permissible for the General Assembly to provide for proprietary (private for profit) schools to be eligible for the Program, provided that the expenditure is in furtherance of 'collegiate or graduate education of Virginia students'"⁶ Having carefully considered the 1983 opinion, it is also my opinion that students attending for-profit, nonsectarian postsecondary private schools and institutions of learning are eligible to participate in state-funded financial aid programs established under Article VIII, § 10.

You next ask whether postsecondary schools and institutions of learning that offer certificates for completion of their curriculum, rather than an approved two- or four-year degree, qualify as offering "collegiate" education under Article VIII, § 10. If so, you also ask whether such

postsecondary schools and institutions qualify as offering "collegiate" education under Article VIII, § 10 if they are accredited by a national or regional accrediting agency recognized by the United States Secretary of Education, and are licensed or certified to operate in the Commonwealth by the Council, the Department, or some other state agency.

Article VIII, § 10 provides that appropriations for financial aid programs "may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning." The term "collegiate," however, is not defined in the Virginia Constitution. Furthermore, there is no record of any discussion of the definition of that term during the General Assembly's debates on the revision of the Constitution of Virginia at either the 1969 or 1970 Sessions of the General Assembly.⁷ In addition, in its 1969 report, the Commission on Constitutional Revision made no comments regarding the term.⁸ In the absence of any statutory or judicial definition, the term should be given its plain and ordinary meaning, given the context in which it is used.⁹ At the time of the adoption of the 1971 Constitution, the term "collegiate" was defined to mean "[o]f, pertaining to, or resembling a college,"¹⁰ and "of the nature of or constituted as a college."¹¹ Furthermore, the term "college" is defined to mean

[a] school of higher learning that grants the bachelor's degree in liberal arts or science or both[;] ... [a]ny of the undergraduate divisions or schools of a university offering courses and granting degrees in a particular field, such as liberal arts or business administration[;] ... [a] technical or professional school, often affiliated with a university, offering the bachelor's or master's degree[.]^[12]

"College" is also defined as "an institution of higher learning, esp. one providing a general or liberal arts education rather than technical or professional training[;] ... a constituent unit of a university, furnishing courses of instruction in the liberal arts and sciences, usually leading to a bachelor's degree."¹³

Postsecondary schools and institutions of learning that offer certificates for completion of a curriculum, rather than an approved two- or four-year degree, do not meet either definition of these terms recognized at the time of the adoption of the 1971 Constitution. Consequently, I must conclude that postsecondary schools and institutions of learning that offer certificates for completion of their curriculum, rather than an approved two- or four-year degree, do not qualify as offering "collegiate" education for the purposes of Article VIII, § 10.¹⁴

¹Article VIII, § 10 provides: "No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, ... subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of ... collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State"

²You state that the occupational specialty of computer technology includes within it the occupational fields of computer electronics technology, computerized business systems, medical computer administration, computer network administration, and computer programming.

³The opinion interprets "proprietary" schools as including private schools and institutions that are generally operated for profit. 1982-1983 Op. Va. Att'y Gen. 97, 97.

⁴See Va. Code Ann. tit. 23, ch. 4.7, §§ 23-38.70, 23-38.71 (codifying Virginia Work-Study Program and authorizing Council to adopt regulations necessary for administration of program).

⁵1982-1983 Op. Va. Att'y Gen., *supra* note 3, at 97-98.

⁶*Id.* at 98 (quoting art. VIII, § 10).

⁷See Proceedings and Debates of the house of Delegates of Virginia Pertaining to Amendment of the Constitution 235 *passim* (Ex. Sess. 1969, Reg. Sess. 1970); Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution 202 *passim* (Ex. Sess. 1969; Reg. Sess 1970); see also 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia 879-963 (1974).

⁸See Report of the Commission on Constitutional Revision 20, 63-64, 269-74, 405-06 (1969).

⁹Commonwealth v. Orange-Madison Coop., 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); Anderson v. Commonwealth, 182 Va. 560, 565, 29 S.E.2d 838, 840 (1944); 1995 Op. Va. Att'y Gen. 205, 207.

¹⁰The American Heritage Dictionary of the English Language 261 (1969).

¹¹The Random House Dictionary of the English Language 290 (1966).

¹²The American Heritage Dictionary of the English Language, *supra* note 10.

¹³The Random House Dictionary of the English Language, *supra* note 11.

¹⁴Because I answer this question in the negative, it is not necessary to consider whether such postsecondary schools and institutions qualify as offering "collegiate" education under Article VIII, § 10 if they are accredited by a national or regional accrediting agency recognized by the United States Secretary of Education and are licensed or certified to operate in the Commonwealth by the Council, the Department or some other state agency.