

May 2, 2007

Joseph C. Good, Jr., Esquire  
General Counsel, Medical University of South Carolina  
Post Office Box 250204  
Charleston, South Carolina 29425

Dear Mr. Good:

We received your letter concerning a proposed resolution submitted to the Medical University of South Carolina's ("MUSC's") Board of Trustees (the "Board") by MUSC's Student Government Association for the Board's consideration. Per your letter, the resolution aims to expand MUSC's "policy on non discrimination to specifically include non discrimination in any University activities based on 'sexual orientation.'" You included a copy of the resolution with your request. The resolution proposes an amendment to MUSC's admissions equal opportunity policy to read as follows:

The Medical University of South Carolina does not discriminate on the basis of race, color, creed, sex, age, national origin, disability, veteran status, sexual orientation, or marital status in the administration of admissions policies, educational policies, financial aid, employment, or any other university activity.

(emphasis added). You ask "whether MUSC is empowered to adopt this Resolution and not be in violation of State or Federal laws."

### **Law/Analysis**

First, we consider MUSC's authority to adopt an anti-discrimination policy. Chapter 123 of title 59 of the South Carolina Code (2004) establishes MUSC and governs its operations. Section 59-123-40 of the South Carolina Code, in particular, creates the Board, giving it "management and control of the university . . . ." Through section 59-123-60 of the South Carolina Code, the Legislature affords certain enumerated powers to the Board. Among these is the power to create "rules for the government of the university" and the power to "make bylaws and regulations considered expedient for the management of its affairs and its own operations not inconsistent with the constitution and laws of this State and the United States . . . ." According to these provisions, the Board has broad authority to enact rules and regulations concerning MUSC. Therefore, we

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believe the Board has authority to pass a resolution explaining MUSC's policy with regard to discrimination assuming this policy is not contrary to State or federal law.

In our review of State law, we found no provision preventing MUSC or any body, private or public, from adopting a policy stating that it will not discriminate based upon sexual orientation. We also did not find a federal law preventing the adoption of such policies. Furthermore, the United States Supreme Court, in Romer v. Evans, 517 U.S. 620 (1996) ruled a state constitutional provision prohibiting such policies violates the Federal Constitution. In that case, the plaintiffs challenged an amendment to the Colorado Constitution prohibiting legislative, executive, or judicial action protecting homosexuals from discrimination. Id. The Court examined the amendment and determined it denies homosexuals equal protection for the following reasons:

First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and, as we shall explain, invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.

Id. at 632. Thus, not only did we not find any federal or state law prohibiting MUSC from adopting the policy included in the resolution, Romer indicates to prohibit the adoption of such policies would violate the United States Constitution.

In conclusion, we believe MUSC, acting through the Board, is authorized pursuant to its enabling to adopt an anti-discrimination policy. Furthermore, we find no State or federal law prohibiting MUSC from including in such a policy that MUSC does not discriminate based on sexual orientation.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook

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Assistant Deputy Attorney General