1984 WL 249823 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 10, 1984

***1** Dr. James B. Holderman
President
University of South Carolina
Columbia, South Carolina 29208

Dear Dr. Holderman:
You have requested the advice of this Office as to whether denial of a student organization license to a student group, the Collegiate Association for the Research of Principles ('C.A.R.P.'), by the University of South Carolina, thence denying official recognition of that group by the University, would be permitted once that group has properly submitted an application for licensure. Based upon the following discussion, we would advise that the group should be granted a license if application requirements have been met as determined by the University and if the aims of the organization are not illegal or disruptive of orderly campus functioning.

The Collegiate Association for the Research of Principles, also known as C.A.R.P. or 'Moonies,' has existed at the University under various names since at least 1973. The group appears to have been licensed by the University as recently as April 1976, at which time the license was suspended temporarily. We understand that an application for licensure of C.A.R.P. is presently pending before the Student Organization Licensing Commission and that the application procedure specified on pages 52-56 of Carolina Community (1983-84) appears to have been complied with. [1] For purposes of our advice, all other requirements for recognition by the University are assumed to have been met.

The University of South Carolina faced a similar problem to the one raised here when the Gay Student Association, a homosexual rights advocacy organization, applied for a student organization license. The Attorney General issued an Opinion dated June 12, 1980 (copy enclosed) concluding that homosexual rights advocacy organizations may not be denied official recognition by public colleges and universities if such organizations comply with college rules and regulations and the aims of such organizations are not illegal or disruptive of orderly campus functioning. That Opinion discussed the major decisions addressing licensure of student organizations and denial of First Amendment rights by public colleges and universities. We would advise that the authority contained therein is still valid, and the conclusion reached therein would also apply to the group presently seeking licensure, C.A.R.P.

The 1980 Opinion may be updated by the inclusion of several recent decisions, all of which tend to support licensure of C.A.R.P. Recently, in Gay Student Association v. University of South Carolina, et al., C.A. #82-3080-0, the Honorable Matthew J. Perry enjoined the University from withholding official recognition and licensing from the Plaintiff organization. Following Gay Alliance of Students v. Matthews, 544 F. 2d 162 (4th Cir. 1976) (see 1980 Opinion), Judge Perry stated in his Order filed February 15, 1983:
To be sure, . . . a University has an interest in prohibiting unlawful activities. Nothing however, stated by this Court shall be interpreted as depriving the University of the right and the duty to curb violations of the law within its community. But as a state-supported institution, the University may not prohibit rights of freedom of association and speech and other rights secured by the First Amendment to the United States Constitution nor deny equal protection of the laws.

***

***2** Numerous privileges flow from official recognition including the right to affix the University of South Carolina to its name, the right to reserve and use meeting rooms, and the right to apply for and receive allocations of Student Activity Funds. More importantly, [the Gay Student Association] has a right not to be officially condemned by the withholding of official recognition. In this case, denial of official recognition and licensing violates the rights of the Plaintiff association and its membership to freedom of expression and freedom of association as guaranteed by the First Amendment to the United States Constitution and violates equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

Order, pages 12-13. The Court found, as a matter of fact, that there was 'no evidence that the Gay Student Association has or will engage in any unlawful activities.' Order, page 8. We suggest that the same reasoning would very likely be considered persuasive by a court.

Official recognition of gay student organizations by public colleges or universities was discussed also in Gay Activists Alliance v. Board of Regents of University of Oklahoma, 638 P. 2d 1116 (Okla. 1981) and in Gay Student Services v. Texas A & M University, 312 F. 2d 160 (5th Cir. 1980). In the former, the Supreme Court of Oklahoma, discussing denial of official recognition to the student group, stated:

First Amendment rights of speech and association may be restricted only if the State or the University as an instrument of the State 'demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms,' and . . . 'the curtailing of expression which [the university officials] find abhorrent or offensive cannot provide the important governmental interest upon which impairment of First Amendment freedoms must be predicated.' [Citations omitted.] No abridgement of associational rights can be tolerated if the only competing interest is the University's opposition to the content of that expression. Therefore, the University must be careful to distinguish between those organizations having lawful, but unpopular, goals and those organizations having both lawful and unlawful goals.

638 P. 2d at 1120. This case suggests that to avoid a denial of C.A.R.P.'s First Amendment rights, the University must demonstrate a 'sufficiently important interest,' the basis of which could not be merely the opposition of the University to the content of C.A.R.P.'s expression of rights. The Texas A & M decision discusses standards which the Fifth Circuit was willing to apply to a case in which a public university denied licensure to a student organization; since the United States District Court here in South Carolina has followed decisions in other gay student organization cases, our courts may also find this reasoning persuasive.

The only case which we have located involving denial of licensure to a chapter of C.A.R.P. is Aman v. Handler, 653 F. 2d 41 (1st Cir. 1981). The University of New Hampshire sought to deny licensure to a chapter of C.A.R.P. and was successful in the district court proceeding in which C.A.R.P. sought to enjoin the University from such denial based on First Amendment rights. The First Circuit remanded for a full evidentiary hearing to determine whether an injunction was warranted. The court suggested that the University of New Hampshire, to uphold its argument that C.A.R.P. would be controlled by national C.A.R.P. or the Unification, Church, must show how and why the association will result in a degree of control over the University of New Hampshire chapter, which control would violate reasonable university rules of further illegal aims; further, the court felt that the University's argument that C.A.R.P. will violate rules of conduct in the future, while based on past experience with the group, is diminished by the present pledge of students to obey university rules. These argument should be considered by the officials of the University of South Carolina in considering the application for licensure. As noted by the First Circuit in Aman, the University of South Carolina would also have a remedy (withdrawal of licensure and recognition) if C.A.R.P. or its members, once licensed, failed to live up to their pledges to obey university rules and regulations.

***3** In conclusion, this Office advises that, based on judicial precedent in many similar cases involving the denial of licenses to student groups by public universities, failure to grant a student organization license to a student group which has properly applied for licensure, the goals and objectives of which group are not illegal, may well be viewed (by the student group) as a denial of rights guaranteed by the First and Fourteenth Amendments. It is apparent that the University of South Carolina will

have to show a sufficiently important interest to justify denial of licensure; mere disagreement with the group's philosophies or a course of prior dealing with C.A.R.P. which suggests rules will be violated in the future may not be sufficient. [2]

I trust that this information will offer some guidance in the University's decision-making process. If we may clarify anything contained herein, please advise us.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

1 This Office expresses no opinion as to the compliance with University requirements by C.A.R.P., the merits of the application, or the legality of the goals or objectives of C.A.R.P. Our only concern herein is to outline the applicable First Amendment law as we understand it to be.

2 This Office cannot substitute its judgment for that of a court. It may well be that, upon a full evidentiary showing, the University could justify denial; we can only point out how courts have dealt with similar issues, expressing no opinion as to the merit of any potential argument of the University. See, Op. Atty. Gen. (December 6, 1983).

1984 WL 249823 (S.C.A.G.)

End of Document