



COMMONWEALTH of VIRGINIA

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The Honorable Phillip P. Puckett
Member, Senate of Virginia
P.O. Box 2440
Lebanon, Virginia 24266

Dear Senator Puckett:

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 a private law school, such as the Appalachian School of Law, may request that student applicants and potential employees execute a waiver permitting the law school to conduct criminal background checks through the Virginia Criminal Information Network¹ or the National Crime Information Center.²

Response

It is my opinion that private, nonprofit institutions of higher education, such as the Appalachian School of Law, may require criminal background searches as a condition of employment. Moreover, such institutions may request that candidates for admission consent to a criminal background search as a condition of matriculation.

Background

The Appalachian School of Law is a private, nonprofit law school located in Grundy, Virginia. In April 2006, the legal education committee of the American Bar Association recommended the School for full accreditation. You ask whether the Appalachian School of Law may require candidates for admission and potential employees to submit to a criminal background search.

¹The Virginia Criminal Information Network was created by Chapter 2 of Title 52, §§ 52-12 through 52-15, as "a basic coordinating police communication system of private line typewriter communication, operating through sending and receiving stations." VA. CODE ANN. § 52-12 (2005).

²See 28 U.S.C.S. § 534 (2001 & Supp. 2006).

Applicable Law and Discussion

Section 19.2-389(A) authorizes certain designated agencies or individuals to receive criminal history record information. Specifically, § 19.2-389(A) provides that:

Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, ...;

....

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment[.]

Section 9.1-101 defines “criminal history record information” as “records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any dispositions arising therefrom,” exclusive of juvenile records. Additionally, § 9.1-101 defines “criminal justice agency” as “a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so.”

I find no prohibition, statutory or otherwise, that would prevent a private institution of higher education from requesting that student applicants submit to a criminal background searches as a condition of admission. Specifically, the Appalachian School of Law may require a candidate for admission to request a copy of his criminal history record information.³ Student applicants requesting their criminal history records must pay the costs associated with the background searches.⁴ Applicants may direct that the state criminal record reports be sent directly to the school. Should national criminal background checks be desired in addition to the state searches,⁵ students may contact the Federal Bureau of Investigation’s Criminal Justice Information Services Division to receive a copy of their own records.⁶

It is also my opinion that, because the Appalachian School of Law is a private, nonprofit law school,⁷ it falls within the class of institutions eligible to receive criminal history record information for the purpose of screening potential employees.⁸ Such records may be received without the approval of the applicants for employment.⁹

³See VA. CODE ANN. § 19.2-389(A)(11) (Supp. 2006). Students must voluntarily consent to the state criminal history search and follow the procedures established by § 19.2-389 and developed by the Department of State Police.

⁴See § 19.2-389(A)(11).

⁵See tit. 19.2, ch. 23, §§ 19.2-387 to 19.2-392.02 (2004 & Supp. 2006).

⁶See 5 U.S.C.S. § 552(a)(3)(A) (LexisNexis 2006) (part of Freedom of Information Act); see also 28 C.F.R. § 16.32 (2006) (permitting subject of “rap sheet” identification record to obtain copy of report from FBI).

⁷See 1999 Op. Va. Att’y Gen. 65, 66.

⁸See § 19.2-389(A)(24).

⁹*Id.*

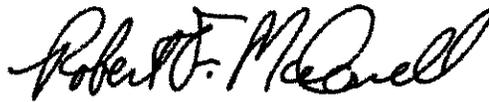
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Conclusion

Accordingly, it is my opinion that private, nonprofit institutions of higher education, such as the Appalachian School of Law, may require criminal background searches as a condition of employment. Moreover, such institutions may request that candidates for admission consent to a criminal background search as a condition of matriculation.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent initial "R".

Robert F. McDonnell