



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell  
Attorney General

February 20, 2007

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The Honorable Robert Tata  
Member, House of Delegates  
P.O. Box 406  
Richmond, Virginia 23218

Dear Delegate Tata:

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

## Issues Presented

You inquire concerning the eligibility of students attending private, for-profit, nonsectarian, postsecondary career colleges to participate in state-funded financial assistance programs established under Article VIII, § 10 of the Constitution of Virginia. First, you ask whether students attending such colleges who are enrolled in a two- or four-year program leading to a degree are constitutionally eligible for state-funded financial assistance. You next ask whether students enrolled in nondegree programs<sup>1</sup> at such career colleges are eligible for state-funded financial assistance. Finally, should students in either category be eligible for state-funded assistance, you ask whether the General Assembly may appropriate the funds for the benefit of the students directly to a career college or whether § 10 requires that such funds be appropriated by the General Assembly via an approved financial assistance program that would make the funds available to qualifying students.

## Response

It is my opinion that students enrolled in a for-profit career college in a two- or four-year degree program are constitutionally eligible for state-funded financial assistance under Virginia Constitution Article VIII, § 10. It further is my opinion that students who attend such a school but who are enrolled in a program that leads to a certificate or diploma, rather than a degree, are not eligible for state-funded financial assistance. Finally, it is my opinion that the General Assembly may appropriate financial assistance funds directly to private, for-profit, nonsectarian, postsecondary career colleges for the benefit of students enrolled therein in a two- or four-year degree program.

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<sup>1</sup>For purposes of this opinion, a “nondegree program” means a program that leads to a certificate of completion or a diploma as opposed to a two- or four-year degree.

### Background

You relate that more than 22,000 students are enrolled in programs at private, for-profit, nonsectarian career colleges in Virginia and are studying nursing, hospital management, criminal justice, homeland security, information technology, and paralegal training as well as other areas of study. You note that some, but not all, career colleges offer programs that lead to degrees ranging from an associate's to a master's degree. When a career college offers a nondegree program, it awards a certificate or diploma to a student who successfully completes that program.

You report that the career colleges about which you inquire are all members of the Virginia Career College Association. Additionally, all but three of these schools offer degree programs. You further report that the three schools that currently offer only nondegree programs are in the process of developing at least one program that will lead to a degree.<sup>2</sup>

### Applicable Law and Discussion

Article VIII, § 10 of the Constitution of Virginia provides 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 elementary, secondary, collegiate or graduate education of Virginia *students* in public and nonsectarian private schools and institutions of learning.” (Emphasis added.)

Prior opinions of the Attorney General have analyzed Article VIII, § 10 and are particularly relevant to your inquiry.<sup>3</sup> The 1983 opinion (“1983 Opinion”) considered whether students enrolled in proprietary institutions<sup>4</sup> were eligible under § 10 to participate in the Virginia Work-Study Program<sup>5</sup> provided the State Council of Higher Education for Virginia elected, by regulation, to permit such students to be included.<sup>6</sup> The 1983 Opinion noted that in § 10, “[n]o restriction is made as to whether the school is ‘for profit,’ but the legislature is empowered to establish appropriate limitations.”<sup>7</sup> As a result, the 1983 Opinion concluded 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.’”<sup>8</sup>

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<sup>2</sup>For purposes of this opinion, you ask that I assume that all the career colleges offer a degree for one or more of their programs.

<sup>3</sup>See Op. Va. Att’y Gen.: 1998 at 24; 1982-1983 at 97.

<sup>4</sup>The 1983 Opinion interprets “proprietary” schools as including private schools and institutions that generally are operated for profit. 1982-1983 Op. Va. Att’y Gen., *supra* note 3, at 97.

<sup>5</sup>See VA. CODE ANN. §§ 23-38.70, 23-38.71 (2003) (establishing Virginia Work-Study Program and authorizing Council to adopt regulations necessary for administration of program). Since the 1983 was issued, the General Assembly has abolished the Virginia Work-Study Program. See 2006 Va. Acts ch. 51, at 54, 54 (repealing Chapter 4.7 of Title 23, §§ 23-38.70 to 23—38.71).

<sup>6</sup>1982-1983 Op. Va. Att’y Gen., *supra* note 3, at 97.

<sup>7</sup>*Id.* at 97-98.

<sup>8</sup>*Id.* at 98 (quoting VA. CONST. art. VIII, § 10) (emphasis in original).

The 1998 opinion (“1998 Opinion”) considered questions virtually identical to the first two questions you present.<sup>9</sup> The 1998 Opinion concluded 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.<sup>10</sup> Additionally, the 1998 Opinion concluded that 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 qualify as offering “collegiate” education for purposes of § 10.<sup>11</sup>

The 1983 and 1998 Opinions, taken together, lead me to conclude that students who are enrolled in a for-profit career college in a two- or four-year program leading to a degree are constitutionally eligible for state-funded financial assistance under Article VIII, § 10 of the Virginia Constitution. Conversely, students enrolled in nondegree programs at such schools or institutions are not eligible. Students at career colleges studying to receive a degree are engaged in collegiate or graduate education while students at such schools enrolled in nondegree programs are not engaged in collegiate or graduate education. Such distinction is significant as § 10 requires the General Assembly to appropriate educational funds “in furtherance of ... collegiate or graduate education.”

Your final question concerns the manner in which the General Assembly may appropriate funds for eligible students under Article VIII, § 10. Section 10 first prohibits the appropriation of public funds to any school or institution that is not owned or exclusively controlled by the Commonwealth or one of its political subdivisions. However, the exceptions that follow the prohibition authorize the General Assembly to appropriate funds to career colleges “for educational purposes ... in furtherance of ... collegiate or graduate education of Virginia students.” Section 10 imposes no restriction on the type of funding, or on making direct appropriations to schools or institutions of learning, or making appropriations to programs or state agencies that would administer such funding available through the student. The only restrictions are that the school must be “public [or] nonsectarian private schools and institutions of learning” and must be used for the “elementary, secondary, collegiate or graduate education of Virginia students.” Nothing in § 10 prohibits the General Assembly from appropriating funds, should it choose to do so, directly to career colleges; the General Assembly may appropriate such funds “for educational purposes ... of Virginia students,” subject to the restrictions identified in the Virginia Constitution and those imposed by the General Assembly itself through statutes.

### Conclusion

Accordingly, it is my opinion that students enrolled in a for-profit career college in a two- or four-year degree program are constitutionally eligible for state-funded financial assistance under Virginia Constitution Article VIII, § 10. It further is my opinion that students who attend such a school but who

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<sup>9</sup> 1998 Op. Va. Att’y Gen., *supra* note 3, at 24.

<sup>10</sup> *Id.* at 25.

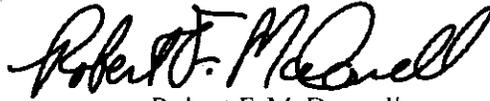
<sup>11</sup> *Id.* at 25-26. This conclusion was based on the fact that the term “collegiate” is not defined in the Virginia Constitution. In the absence of a statutory or judicial definition, a term is given its plain and ordinary meaning given the context in which it was used. *See id.* at 25, 26 n.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,’ and ‘of the nature of or constituted as a college.’” *Id.* at 25 (citations omitted).

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are enrolled in a program that leads to a certificate or diploma, rather than a degree, are not eligible for state-funded financial assistance. Finally, it is my opinion that the General Assembly may appropriate financial assistance funds directly to private, for-profit, nonsectarian, postsecondary career colleges for the benefit of students enrolled therein in a two- or four-year degree program.

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, flowing style with a large initial "R".

Robert F. McDonnell

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