



# The State University and Community College System of Tennessee

1161 Murfreesboro Road Nashville, Tennessee 37217 (615) 741-4821

August 23, 1979

Mr. Edwin Guzman  
P. O. Box 6434  
Austin Peay State University  
Clarksville, Tennessee 37040

Dear Mr. Guzman:

In reference to the action of the Committee on Student Life of the Board of Regents on August 13, 1979, pursuant to which the appeal of the proposed organization, the "Student Coalition for Gay Rights" (SCGR), from the denial of official recognition by Austin Peay State University was referred back to this office for reconsideration, the following constitutes the final decision of this office on the appeal.

While the "experts" may disagree on the causes of homosexuality, there is substantial evidence to demonstrate that homosexual behavior is learned behavior, and this office is of the opinion that it is predominantly learned behavior. On this basis, it is only logical to conclude that the effect of recognition of the SCGR, with the resulting activities by that organization, would encourage young persons and students with sexual identity problems to emulate the behavior of admitted homosexuals. The record in this case demonstrates that one of the overall purposes and objectives of the SCGR is to encourage homosexual students to be open about their homosexuality, and to advocate that there is no ethical, social, or political justification for the prohibition of homosexual conduct. The results of such promotional activities can only serve to reinforce the personal identities of homosexual students, and to encourage others to experiment in homosexual behavior.

One of the most significant issues in this case is whether recognition of the SCGR would be likely to result in imminent violations of state law. Counsel has advised that TCA § 39-707, which makes crimes against nature a crime in Tennessee, is valid, and that it prohibits the sexual behavior normally engaged in by homosexuals. It is the opinion of this office that recognition of the SCGR would be likely to result in imminent violations of that statute. The bases for that opinion are as follows: (a) the record shows that a significant number of homosexuals, perhaps even most homosexuals, pursue patterns of promiscuity. In addition, among some male homosexuals, the drive for homosexual behavior takes on an enormous compulsive quality. Therefore, it is only reasonable to assume that, as a result of the frequent meetings of openly admitted homosexuals, and as a result of other associational activities of the group, there will be an immediate increase in the homosexual behavior of those students who are homosexuals. (b) In addition, since recognition of the SCGR would constitute a finding that the policies, objectives, etc. of the SCGR are consistent and compatible with the educational goals of the University, and since recognition would be construed as

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approval of the organization by young persons, prospective students, and some current students, it would encourage young students and students with sexual identity problems to accept, or at least experiment with, the homosexual lifestyle, thereby increasing the incidence of homosexual behavior and the number of persons involved in such behavior. (c) Furthermore, the record supports the conclusion that the effect of recognition would have a long-term effect of increasing the number of persons who engage in homosexual conduct. While the final illegal conduct resulting from this aspect of recognition may not be imminent, the chain of consequences which will result in increased homosexual behavior in the long-run would be imminent, and we cannot ignore the likely future results of our present actions.

In regard to the conflicting "expert" testimony concerning the normalcy of homosexual behavior, it is the opinion of this office that such behavior cannot be considered normal when it constitutes a crime in the State of Tennessee. Moreover, the record shows without a question that homosexuality is a psychologically treatable condition, and that the incidence of suicides and attempted suicides is significantly greater among homosexuals. On these bases, it is clear that homosexual students and students with sexual identity problems need professional, psychological counseling rather than the peer counseling which would occur as a result of recognition.

A further consideration on this appeal is the fact that the members of the SCGR have not been denied any rights to freedom of association or freedom of speech by the University. In reference to the alleged purposes of the SCGR as set forth in the April 11, 1979 statement of purpose, the members of the organization are free to: (1) encourage communication between homosexual and normal members of the University community; (2) educate the University and the community on the meaning of being homosexual and to dispel any false stereotypes of homosexual people that now exist; (3) organize effective political action in support of legislation protecting the civil rights of homosexuals; and (4) engender rational debate concerning and urge the repeal of the laws prohibiting crimes against nature. These activities can be pursued through campus discussions, meetings, the distribution of literature, etc., regardless of recognition. Moreover, counsel for the SCGR stated at the August 13, 1979 meeting of the Committee on Student Life that the only privileges the group had been denied were the ability to be listed in the student handbook and the yearbook, the ability to have a campus post office box in the name of the organization and to use campus mails, the ability to use campus bulletin boards, and the ability to schedule the use of facilities. In regard to the campus post office box, the February 24, 1979 letter of appeal to this office from the former president of the SCGR indicates the organization does have a post office box. In regard to campus bulletin boards, the members of

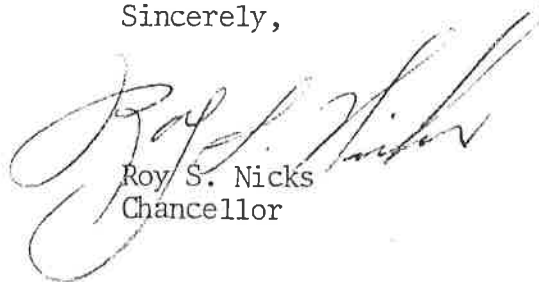
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the group have the same opportunity to post materials on student bulletin boards as any other individual student. And in regard to the use of campus facilities, the group is free to use certain facilities on a non-scheduled basis, and the record reflects it has used facilities on a scheduled basis. As a result, this office fails to see how the group has been denied any significant right or privilege on the campus of the University.

A final area of consideration is the failure of the SCGR to demonstrate compliance with University policies and procedures concerning recognition, which indicates a substantial likelihood of continued failure to adhere to such policies. The SCGR failed to adhere to the administrative officer system of governance set forth in its charter, and changed to an executive council system of governance without submitting the change to the University. Furthermore, the SCGR has frequently amended and revised its statement of purposes, but has failed to submit any such statement to the University for approval. Finally, while counsel for the SCGR has alleged that a new group of officers has been elected, the SCGR has failed to register the new names of its officers with the University as of the date of this letter.

Pursuant to action of the Committee on Student Life, I have met with the attorneys for the SCGR, and I have determined that there is no mutually acceptable compromise of this appeal. Furthermore, I have sought and obtained further legal advice concerning the appeal, and have been advised that there is such a degree of uncertainty as to the controlling law on this issue that recognition is not mandated as a matter of law. However, due to this uncertainty, and to ensure that all actions by the University and this office are consistent with the law, I have requested the Attorney General of the State of Tennessee to initiate a court action for a declaration of the rights and obligations of the University in this case. Finally, I have carefully reconsidered the factual issues in this appeal, as set forth above, and I find no basis to alter my decision of July 16, 1979, which is hereby reaffirmed.

Sincerely,



Roy S. Nicks  
Chancellor

RSN:dc

cc: President Robert O. Riggs  
Mr. David C. Porteous  
Mr. Gary Crawford