THE RELATIONSHIP BETWEEN
STUDENT ORGANIZATIONS
AND COLLEGES AND UNIVERSITIES

Presenter:

DR. WILLIAM L. KIBLER
Associate Vice President for Student Affairs
Texas A&M University
College Station, Texas

Stetson University College of Law:

17th ANNUAL LAW & HIGHER EDUCATION CONFERENCE
Clearwater Beach, Florida
February 11-13, 1996
LEGAL ISSUES AND STUDENT ORGANIZATIONS

RIGHT OF ASSOCIATION

1. May not prohibit formation or participation in organizations.
2. May require organizations to apply for "official recognition."
   a. Recognition.
   b. Registration.
   c. Endorsement.
   *Term is not important - how the institution defines the term is important.*
   Institution should "endorse" an organization's purpose or beliefs - important to remain content neutral.
3. As part of the recognition process, may require:
   a. Purpose statement.
   b. Names of officers.
   c. Assurance that the organization will abide by laws and campus regulations.
4. Burden for "non-recognition" falls on the institution:
   a. Cannot deny recognition based on disagreement with the group's philosophy.
   b. Can deny recognition for the following:
      * Advocacy for inciting or producing imminent lawless action.
      * Failure to show willingness to comply with reasonable regulations.
      * Engaging in unlawful or disruptive activity or conduct.
5. Recognition entitled the group to "services and facilities" as determined by the institution, such as:
   a. Use of facilities.
   b. Mailing services.
   c. On-campus advertising.
   d. Ability to apply for limited resources, such as funding and office space.
   *Services and facilities cannot be denied on a discriminatory basis.*
6. Recognition does not entitle the group to access to the institution's equipment or limited resources.
7. Officials should treat all organizations the same insofar as recognizing them and allowing them to use campus facilities.
   a. Political and religious groups can use facilities just like other groups.
   *It does not constitute an endorsement of the group's beliefs to allow them to use facilities - even for religious services (Widmar v. Vincent, 1981).*
   b. Public institutions generally cannot fund political groups or activities.
   c. The Supreme Court recently ruled (Rosenberger v. University of Virginia, 1995) that a public University cannot deny funding to an organization based on its religious viewpoint.
8. May publish or release the names of the officers and the purpose of an organization. Cannot require the membership of an organization to be made public (intrusion into associational freedom and right to privacy).
MEMBERSHIP POLICIES

Legitimate and illegal forms of membership discrimination:
1. Can discriminate based on legitimate membership criteria in keeping with the purposes of the organization.
2. Cannot discriminate based on protected classes, i.e. gender, race, age, ethnicity - unless an exemption exists, such as for social fraternities and sororities.

LIABILITY

1. Liability concerns increasing.
   a. Litigious nature of our society.
   b. Growing concern for consumer protection.
   c. Increasing contractual disputes.
2. Issues.
   a. Policies and procedures that evolved through tradition.
   b. Decision making and enforcement that is often diffuse.
   c. Authority is not clearly defined.
   d. Erroneous assumption that institutions are protected from strict legalistic interpretation of actions.
   e. Uninformed administrators.
3. Prevalent sources of liability.
   a. Bodily injury.
   b. Property damage.
   c. Changing status of sovereign immunity.
   d. Status of "good faith" defense of actions by administrators.
   e. Contractual disputes.
4. Tort liability.
   Broadly defined as a civil wrong, other than a breach of contract, for which the courts will allow a damage remedy.
5. Negligence.
   a. Did the defendant owe a duty of care to the claimant?
   b. Did the defendant breach that duty?
   c. Was the breach of duty the proximate cause of the injury?
   Key element to determining negligence rests of the legal relationship between the individual claiming negligence and the institution.
6. Contracts.
   a. Parties must have the legal capacity to contract.
   b. Contract must cover subject matter that is within the legal mission of the institution.
   c. Parties contracting must have the authority to do so.
   d. Contract must be based on an offer - direct or implied.
   e. Contract must be accepted by either promise or performance.
   f. Mutual agreement to the terms and conditions of the contract.
   g. Contract must be entered into for a legal purpose.
Concerns:  Delineation of the contracting authority of each employee.
Who has the authority to sign contracts?
Who is responsible for compliance.
What is written?

RISK MANAGEMENT

1. Adequate supervision.
2. Proper instruction.
3. Maintenance of all equipment used in a state of reasonable repair.
4. Policies and procedures evaluated and revised,
5. Consistent decision making and endorsement.
6. Authority is clearly defined.
7. Consultation with legal counsel when appropriate.
8. Informed administrators.
10. Assumption of risk (waivers).

INSURANCE

1. Cost.
2. Eligibility.
3. Coverage.
Framework for Determining the Legal Relationship
Between Student Organizations and Colleges or Universities

An ethical dilemma faced by many institutions is to define the legal relationship between the institution and the student organizations they register or recognize. Are institutions obligated ethically to advise and defend student organizations, their advisors, officers or members when they are sued or faced with other legal challenges? Or should institutions keep the organizations at "arms length," by defining a clear legal separation between the two entities?

Few institutions want to accept the legal responsibility for the behavior of their students. However, many institutions rely on or allow student organizations to take responsibility for events, activities or programs that are considered an integral part of the institution, i.e. orientation or homecoming activities.

Can institutions legitimately separate student organizations into categories in terms of the legal relationship between the institution and the organizations? What criteria should be used to determine the categories? How should the relationship between the organizations and the institution differ in the categories?

Definitions

University Affiliated Organizations
Legal Relationship:
Equivalent to a department or program of the University.
Advisors, Officers and Members:
Advisors, officers, and members that are acting within the role and scope of their duties and within the regulations of the University are granted immunity and protection by the University as would any employee.
Contracting Authority:
The University reviews and executes contracts on behalf of the group.
Contracts are with the University, not the organization.

University Recognized Organizations
Legal Relationship:
University assumes no legal responsibility or liability for the activities of the organization. University merely extends recognition and offers certain services to the organization.
Advisors, Officers and Members:
Advisors, officers, and members are offered no immunity or protection by the University.
Contracting Authority:
The organization cannot obligate the University contractually. The organization itself is the contracting party.
Publish disclaimers in publications, on organization letterhead and in contracts: "Organization is a recognized student organization of the University and does not represent the University. The organization cannot contractually obligate the University. The University accepts no legal responsibility for the organization's activities."
Criteria for Determining Category of Student Organization

1. Funding

**Affiliated Student Organization**
- University funding
- Student fee funding
- University employees manage organization's funds.

**Recognized Student Organization**
- Gift Funds
- Dues/fees/fundraising
- University employees do not manage organization's funds.

2. Space

**Affiliated Student Organization**
- University provides designated space.

**Recognized Student Organization**
- Organization rents space on a qualifications basis.
- Organization reserves general use space for meetings/activities.

3. Advising

**Affiliated Student Organization**
- Advisor is assigned by virtue of position - part of job description.

**Recognized Student Organization**
- Advisor is a volunteer selected by the organization.

4. Responsibilities of the Organization

**Affiliated Student Organization**
- The organization responsible for an event or activity that is considered a program of the University and is beyond the scope of the membership of the group, i.e. orientation or homecoming.

**Recognized Student Organization**
- The organization is only responsible for activities within the purpose of the organization and normally limited to its membership.

Questions to determine Affiliated status:
- Is the event or activity considered a program of the University?
- Is the organization responsible for high profile events that reflect on the University.
- Is the primary purpose or mission of the organization to represent the University?
- Does the organization routinely plan and implement activities targeted beyond the membership of the organization?