

March 4, 2003

MEMORANDUM

PIM #03-01

TO: District Directors
Environmental Health Managers
Division of Food and Environmental Services Staff

FROM: Gary L. Hagy, Director
Division of Food and Environmental Services

SUBJECT: Interpretation – Members of Exempt Organizations

Attached to this PIM is an informal opinion from the Attorney General's office regarding the definition of "member" in § 35.1-25(3). Please consult this opinion when questions arise regarding membership of organizations exempt under § 35.1-25(3).

If you have any questions, please contact me.

Attachment



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Richmond 23219

December 9, 2002

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The Honorable Robert D. Orrock, Sr.
Member, House of Delegates
P.O. Box 458
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Dear Delegate Orrock:

As you know, the Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under the provisions of § 2.2-505 of the *Code of Virginia* "is of the most persuasive character and is entitled to due consideration."¹ The same status and weight, however, is not afforded informal opinions and advice rendered by deputy and assistant attorneys general. The views expressed herein do not constitute an opinion of the Attorney General under the provisions of § 2.2-505. Consequently, this response to your inquiry represents only the individual views² of one of the counsel to the Attorney General .

Issues Presented

You ask whether the term "member" includes individuals that are voluntarily made "temporary" members of an organization for the purpose, -, of § 35.1-25(3). Section 35.1-25(3) provides an exemption from the requirements for operating restaurants for certain organizations that hold occasional fund raisers.

Response

It is my view that the term "member" may include any type of member recognized by the organization holding a fund raiser that qualifies for the exemption in § 35.1-25(3).

Applicable Law and Discussion

Section 35.1-1(9)(a) defines a "restaurant" as "[a]ny place where food is prepared for service to the public on or off the premises, or any place where food is served." Section 35.1-18 provides that "[n]o person shall own, establish, conduct, maintain, manage or operate any ... restaurant, ... in this Commonwealth unless the ... restaurant, ... is licensed as provided in [§§ 35.1-18 through 35.1-24]."

¹Barber v. City of Danville, 149 Va. 418, 424, 141 S.E. 126, 127 (1928); *see also* City of Va. Beach v. Va. Restaurant Assoc., 231 Va. 130, 341 S.E.2d 198 (1986); Albemarle County v. Marshall, Clerk, 215 Va. 756, 214 S.E.2d 146 (1975).

²*See* VA. CODE ANN. § 2.2-501 (LexisNexis Repl. Vol. 2001) (permitting Attorney General to appoint such deputy and assistant attorneys general as may be necessary).

Section 35.1-25 provides

The provisions of [Title 3 5.1] applicable to restaurants shall not apply to:

3. Churches, fraternal, school and social organizations, and volunteer fire departments and rescue squads which hold occasional dinners, bazaars, and other fund raisers of one or two days' duration, at which food prepared in the homes of *members* or in the kitchen of the church, school or organization is offered for sale to the public.

[Emphasis added.]

You seek guidance regarding the meaning of "member" for purposes of § 35.1-25(3). Specifically, you ask whether "member" includes individuals who voluntarily are made "temporary" members of an organization. When a statute is expressed in plain and unambiguous terms, whether general or limited, the legislature is assumed to mean what it plainly has expressed, and no room is left for construction.³ Ordinarily, when a particular word in a statute is not defined therein, a court must give it its ordinary meaning.⁴

The word "member" is not defined in § 35.1-25(3) or in Title 35.1. It is, therefore, appropriate to give the word its ordinary meaning. The ordinary meaning of the word "member" is "[o]ne that belongs to a group or an organization."⁵ A member is "a person belonging to some association, society, community, party, etc."⁶ The word "member" has also been construed to mean "a person considered in relation to any aggregate of individuals, to which he belongs; particularly, one who has united with or has been formally chosen as a corporate part of an association or public body of any kind, as a church or society."⁷

Membership in a society or group is defined by the organization. An organization may have part-time, full-time, permanent, temporary, active, inactive or any other category of membership it desires to establish. The word "member" in § 35.1-25(3) is presented without limitation. Section 35.1-25(3) makes no distinction between any class of membership within an organization. Therefore, if the organization determines that an individual has met the requirements of membership and is entitled to be a member, whatever class of membership that may entail, then that individual is a "member" for the purposes of § 35.1-25(3).

³Town of **South Hill** v. Allen, 177 Va. 154, 165, 12 S.E.2d 770, 774 (194 1).

⁴See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

⁵The AMERICAN HERITAGE COLLEGE DICTIONARY 849 (3d ed. 1997). Membership is defined as "[t]he state of being a member." *Id.*

⁶*In re Freshour's Estate*, 185 Kan. 434, 442, 345 P.2d 689, 696 (1959) (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY, SECOND EDITION).

⁷*Traders' Mutual Life Ins. Co. v. Humphrey*, 109 111. App. 246, 256, 109 111. App. LEXIS 320, at *15-16 (1903) (quoting CENT. DICT.).


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Conclusion

Accordingly, it is my view that the term "member" may include any type of member recognized by the organization holding a fund raiser that qualifies for the exemption in § 35.1-25(3).

With kindest regards, I am

Sincerely



Christopher R. Nolen
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& Chief of Opinions Section

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