

CARL J. KUNASEK  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

RENZ D. JENNINGS  
COMMISSIONER



ARIZONA CORPORATION COMMISSION

GEOFFREY E. GONSHER  
EXECUTIVE SECRETARY

VICTOR RODARTE  
ACTING DIRECTOR

SECURITIES DIVISION  
1300 West Washington, Third Floor  
Phoenix, AZ 85007-2996  
TELEPHONE: (602) 542-4242  
FAX: (602) 594-7470

May 14, 1997

R. Joel Ankney, Esq.  
Mays & Valentine, L.L.P.  
111 East Main Street  
P.O. Box 1122  
Richmond, Virginia 23218-1122

RE: Virginia Higher Education Tuition Trust Fund  
A.A.C. Rule R14-4-104(A)(5)

Dear Mr. Ankney:

On the basis of the facts set forth in your letter dated April 17, 1997, the Securities Division declines to issue a no-action letter. Please be advised that either the use of a registered dealer and registered salesmen will be required or the registration of the Fund as an issuer-dealer and the registration of the officers, directors and employees of the Fund who are engaged in the sale of the contracts offered by the Fund will be required in Arizona pursuant to A.A.C. Rule R14-4-104(A)(5).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Victor Rodarte".

VICTOR RODARTE  
Acting Director of Securities

VR:ptj  
Attachment

**MAYS & VALENTINE  
LLP.**

8201 GREENSBORO DRIVE  
SUITE 800, TYSONS CORNER  
MCLEAN, VIRGINIA 22102-3805  
TELEPHONE (703) 734-4334  
FAX: (703) 734-4340

500 LIBBIE AVENUE  
SUITE 2A  
RICHMOND, VIRGINIA 23226  
TELEPHONE (804) 697-1200  
FAX: (804) 266-8366

1111 EAST MAIN STREET  
P.O. Box 1122  
RICHMOND, VIRGINIA 23218-1122

(804) 697-1200  
FAX: (804) 697-1339

2525 DOMINION TOWER  
999 WATERSIDE DRIVE  
NORFOLK, VIRGINIA 23510-3300  
TELEPHONE (757) 627-5500  
FAX: (757) 627-5200

4425 CORPORATION LANE  
SUITE 420  
VIRGINIA BEACH, VIRGINIA 23462  
TELEPHONE (757) 518-3200  
FAX: (757) 518-3210

DIRECT DIAL

(804) 697-1255  
jankney@maysval.com

FILE NO.

17321.001

April 17, 1997

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

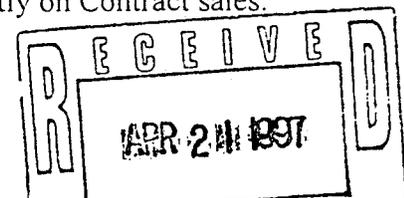
Dee Riddell Harris  
Director of Securities  
Securities Division  
1300 West Washington, Third Floor  
Phoenix, Arizona 85007-2996

**Virginia Higher Education Tuition Trust Fund**

Dear Director Harris:

Thank you for your November 6, 1996 letter to F. Claiborne Johnston, Jr. of this firm in which you opined that the contracts (the "Contracts") offered by the Virginia Higher Education Tuition Trust Fund (the "Fund") are exempt from registration with the Securities Division pursuant to A.R.S. § 44-1843(A)(1). At our request, that letter did not offer an opinion or no-action position on whether officers, directors, and employees of the Fund were exempt from the dealer registration requirements of A.A.C. R14-4-104(A)(5). This letter supplements our request for an interpretive opinion or no-action letter on that issue.

A description of the Fund is found in our August 30, 1996 letter to the Securities Division (Enclosure 1) and will not be repeated here. As explained in that letter, the Contracts are offered to the public solely by written communication (e.g., direct mailings) and television, radio, and print advertising in the Commonwealth of Virginia. All written communications are prepared by the Fund's directors, officers, and/or employees. A potential purchaser receives the offering documents (Enclosure 2) by mail only upon his or her request to the Fund. No representative of the Fund directly or indirectly solicits purchasers. Officers and employees of the Fund respond to inquires of potential purchasers only when initiated by such purchasers. They also perform ministerial and clerical work involved in effecting any sale of Contracts. No director, officer, or employee of the Fund is compensated in connection with his or her participation in the offer or sale of Contracts by the payment of commissions or other remuneration based directly or indirectly on Contract sales.



April 17, 1997

Page 2

We believe that the Fund's directors, officers, and employees who participate in the sale of Contracts should be exempt from any broker registration requirements. That conclusion is based on the applicability of the safe harbor established in Securities Exchange Commission ("SEC") Rule 3a4-1. 17 C.F.R. § 240.3a4-1 (Enclosure 3). As you may recall, that Rule provides that an "associated person of an issuer of securities" is not deemed a broker solely by reason of his or her participation in the sale of such issuer's securities if, among other things, he or she:

- Is not subject to a statutory disqualification;
- Is not compensated in connection with his or her participation by the payment of commissions or other remuneration based directly or indirectly on transactions in the securities;
- Is not an "associated person of a broker or dealer," as that term is defined in Rule 3a4-1; and
- Restricts his or her participation to
  - preparing or delivering any written communication that does not involve oral solicitation;
  - responding to inquires of a potential purchaser in a communication initiated by the potential purchaser (the content of such responses being limited to information contained in the offering documents); and
  - performing ministerial and clerical work involved in effecting any transaction.

17 C.F.R. § 240.3a4-1(a)(1)-(3), (4)(iii). An "associated person of an issuer of securities" is an officer, director, or employee of an issuer. *Id.* § 240.3a4-1(c)(1).

The Fund is an issuer of contracts that, if securities at all, are exempt from registration with the SEC and the Arizona Securities Division. A.R.S. §§ 44-1801 11, 44-1843(A)(1); Letter from SEC Office of the Chief Counsel Division of Corporation Finance to Virginia Higher Education Tuition Trust Fund (Nov. 5, 1996) (Enclosure 4); Letter from Dee Riddell Harris, Director of Securities, Arizona Securities Division, to F. Claiborne Johnston, Jr., Mays & Valentine (Nov. 6, 1996). The directors, officers, and employees of the Fund are associated persons of an issuer. The activities of the Fund's directors, officers, and employees in connection with the offer and sale of Contracts fit squarely within the safe harbor of Rule 3a4-1. According to the SEC, the safe harbor "promote[s] both investor protection and the integrity of the brokerage community." 33 SEC Docket 652 (Release No. 34-22172) (Enclosure 5). Thus, the activities of the Fund's directors, officers, and employees should not subject them to the Arizona broker registration requirements because qualification for the safe harbor under Rule 3a4-1 achieves the purposes of registration.

Based on the applicability of Rule 3a4-1, we respectfully request that the Arizona Securities Commission issue an interpretive opinion or no-action letter that the Fund's directors,

Director Dee Riddell Harris

April 17, 1997

Page 3

officers, and employees are not subject to the broker registration requirements of A.A.C. R14-4-104(A)(5).

Because the prepaid tuition payment program described in our August 30, 1996 letter is of great significance to the Commonwealth of Virginia and its residents, consideration of our request on an expedited basis will be greatly appreciated. If any staff member of your office or any other Division to which you may consider it appropriate to refer this request requires further information, please feel free to contact the undersigned. In any case, we would appreciate being informed at your earliest convenience, by letter or telephone call to the undersigned (804/697-1255) of the identity of the individual(s) assigned to consider this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Joel Ankney". The signature is stylized with a large, looped "R" and a long horizontal stroke extending to the right.

R. Joel Ankney

133

401797

Enclosures

cc: Cynthia Wilkinson Comer, Esquire, Assistant Attorney General (w/o encls.)  
N. Pendleton Rogers, Esquire (w/o encls.)