



DAVE LAROCK
POST OFFICE BOX 6
HAMILTON, VIRGINIA 20159

THIRTY-THIRD DISTRICT

COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES
RICHMOND

COMMITTEE ASSIGNMENTS:
COURTS OF JUSTICE
TRANSPORTATION
SCIENCE AND TECHNOLOGY

September 21, 2015

Honorable Mark R. Herring
Attorney General
Pocahontas Building
900 East Main St
Richmond, VA, 23219

Dear Attorney General Herring,

I am requesting an official advisory opinion regarding various provisions in the Virginia Code prohibiting discrimination. Specifically, the Virginia Code prohibits discrimination on the basis of sex in several contexts, including (i) state employment under the State Grievance Procedure (Va. Code § 2.2-3004), the contracting of public business under the Fair Employment Contracting Act (Va. Code § 2.2-4201) and the Virginia Public Procurement Act (Va. Code §§ 2.2-4310 and 2.2-4311), housing under the Virginia Fair Housing Law (Va. Code § 36-96.1), and under the Virginia Human Rights Act (§ 2.2-3900). However, the Code does not define the term "sex" within the context of such statutory prohibitions.

Title VII of the Civil Rights Act also prohibits workplace discrimination on the basis of sex. Like the Virginia Code, Title VII does not define the term "sex." See 42 U.S.C. §§ 2000e-1 and 2000e-2. The U.S. Equal Employment Opportunity Commission (EEOC) has recently ruled that the term "sex" includes sexual orientation. Please refer to *David Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015) (<http://www.eeoc.gov/decisions/0120133080.pdf>). This ruling follows an earlier ruling that the term "sex" includes gender identity. Please refer to *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012) (<http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>).

In light of the recent EEOC decisions that have found that the term "sex" in the context of Title VII of the Civil Rights Act includes both sexual orientation and gender identity, I request an official advisory opinion for the question of whether the term "sex" as used in § 2.2-3901 and other various discrimination provisions in the Virginia Code include gender identity or sexual orientation? If the answer to this question is in the affirmative, I also request an official advisory opinion as to how the terms "sexual orientation" and "gender identity" would be defined for the purposes of the application of Virginia's various laws prohibiting sex discrimination?

I appreciate your prompt consideration of this request, and am available should you require any clarification of this inquiry.