

RECEIVED, 7/17/2017 4:36 PM, Jon S. Wheeler, First District Court of Appeal

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

ED CRAPO, as Alachua County Property
Appraiser

Appellant,

v.

CASE NO.: 1D17-1895
L.T. NO.: 01-2015-CA-001554

ACADEMY FOR FIVE ELEMENT
ACUPUNCTURE, INC.

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

JOHN C. DENT, JR.
FBN: 0099242
JENNIFER A. MCCLAIN
FBN: 0446830
DENT & MCCLAIN, CHARTERED
3415 Magic Oak Lane
Sarasota, Florida 34232
(941) 952-1070
Attorneys for Appellant, Ed Crapo,
as Alachua County Property Appraiser

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
STANDARD OF REVIEW	5
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. THE TRIAL COURT, CONTRARY TO THE RULE THAT EXEMPTIONS FROM AD VALOREM TAXES AS STRICTLY CONSTRUED AGAINST THE PARTY CLAIMING THEM, WRONGFULLY INCLUDED THE COMMISSION OF INDEPENDENT EDUCATION AS AN ACCREDITING AGENCY UNDER SECTION 196.012(5), FLORIDA STATUTE AND CONSTRUED A LICENSE BY THE COMMISSION AS THE EQUIVALENT OF ACCREDITATION.	7
CONCLUSION.....	14
CERTIFICATE OF SERVICE	15
CERTIFICATE OF COMPLIANCE.....	16

TABLE OF AUTHORITIES

CASES

PAGE

Citizens Prep. Ins. v. Pendido Sun Condo. Assn.,
164 So.3d 663, 666 (Fla. 2015) 8

City of Gainesville v. Crapo,
953 So.2d 557 (Fla 1st DCA 2007) 5

Innman v. State,
916 So.2d 59 (Fla. 2nd DCA 2005)..... 8

Page v. City of Fernandina Beach,
714 So.2d 1070, 1072 (Fla. 1st DCA 1998) 8

Sebring Airport Auth. v. McIntyre,
642 So.2d 1072, 1073 (Fla. 1994) 8

*Volusia County v. Daytona Beach racing and
Recreational Facilities District*,
341 So.2d. 498, 502 (Fla. 1976) 8

Williams v. Jones,
326 So.2d 425, 435 (Fla. 1975) 8

FLORIDA STATUTES

Section 20.03(10) Florida Statutes..... 10

Section 20.15(1)(2) Florida Statutes 10

Section 20.15(6) Florida Statutes..... 10

Section 194.036(1)(a)(b), Florida Statutes 2

Section 194.036(3), Florida Statutes..... 2

Section 196.011(9)(e), Florida Statutes 3

Section 196.012(5), Florida Statutes.....	3,6,7
Section 196.198, Florida Statutes	7
Section 1005.01 Florida Statutes	11
Section 1005.02(1)(13) Florida Statutes.....	11,12
Section 1005.21(1)(2) Florida Statutes.....	10,11
Section 1005.22(1)(e)1 Florida Statutes	11
Section 1005.31(13) Florida Statutes.....	12

FLORIDA RULES

Fla. Admin Code Rule 6E-1.0032(5)(d)	12
Fla. Admin Code R. 12D-7.015	9
Fla. Admin Code 66E-2.004(4)(b).....	12

PRELIMINARY STATEMENT

Reference to the record on appeal shall be as follows:

Reference to the pleadings, filings and exhibits in the records shall be

(R-__).

STATEMENT OF THE CASE AND FACTS

Appellant, Ed Crapo, as Property Appraiser of Alachua County, Florida, (APPELLANT) initiated this action by filing his complaint in Circuit Court on April 23, 2015 appealing the decision of the Alachua County 2014 Value Adjustment Board (VAB) pursuant to *section 194.036(1)(a)and(b), Florida Statutes*. (R-8) By statute this action is a trial de novo. *§194.036(3), Fla. Stat.* The VAB had entered its decision overturning APPELLANT'S denial of APPELLEE'S application for an educational exemption on the 2014 tax roll of APPELLEE'S real property and granted the exemption. (R-48)

APPELLEE moved to dismiss the complaint challenging APPELLANT'S basis for jurisdiction. (R-14) The motion was denied, by order granting the APPELLANT the authority to file an Amended Complaint, which was filed. (R-110)

The APPELLEE answered the Amended Complaint which answer contained affirmative defenses. (R-118) Following an order striking these affirmative defenses, APPELLEE filed amended affirmative defenses which were answered. (R-125,127)

APPELLANT filed a second action for the 2015 tax roll which was answered, followed by consolidation into this action. (R-414)

APPELLEE had an existing educational exemption on its real and personal property until the 2014 tax year. (R-424) A previous denial of the exemption occurred in 2008 again resulting in a VAB decision upholding the exemption. This decision was not appealed by APPELLANT. (R-423)

On June 6, 2014 APPELLANT issued his revocation of the exemption for the 2014 tax roll for APPELLEE'S real property and on June 9, 2014 its exemption on the tangible personal property (TPP), pursuant to *section 196.011(9)(e), Florida Statutes*. APPELLEE did not file new applications for 2014, but filed petitions with the 2014 VAB. (R-179)

The basis of the revocations was that the APPELLEE was not and had not demonstrated it was an educational institution as defined by *section 196.012(5), Florida Statutes*. (R-50)

The special magistrate recommended that the petition for APPELLEE'S real property be denied and the revocation of the exemption be upheld. (R-44) The VAB rejected the magistrate's recommendation of the conclusion of law and granted the petition upholding the exemption. (R-47)

As found by the magistrate in her factual finding, APPELLEE presented no evidence that APPELLEE met the specific requirements of the definition of an educational institutional under *section 196.012(5), Florida Statutes*. (R-44, 45) There was no evidence presented that APPELLEE was a private school, college or

university conducting regular courses of study or classes to be eligible for certification, accreditation or membership in the State of Florida Department of Education (DOE), The Southern Association of College and Schools (SACS) or The Florida Council of Independent Schools (FCIS). (R-45)

Instead, at all stages APPELLEE relied solely upon its licensure by the Commission for Independent Education. (R-45, 725)

The APPELLEE had also petitioned the revocation of its exemption for its TPP, however, no decision was ever rendered for this petition. (R-35, 167, 423) The APPELLEE did not pursue the exemption for its TPP which therefore is not at issue in this appeal.

The APPELLANT and APPELLEE both filed motions for summary judgment. (R-35, 167, 423) The APPELLEE'S was granted and APPELLANT'S was denied.

APPELLANT filed a motion for rehearing which was also denied. (R-731, 767) The Motion for Rehearing was based upon the rules adopted by the Commission which did not require any classroom activity, only that the lack of classroom activity be disclosed to prospective students and that the standards of the Commission did not relate to the quality of the education but only of an institution of learning to disclosure. (R-731, 735) This appeal followed.

STANDARD OF REVIEW

The standard of review for a trial court's ruling on a motion for summary judgment that poses purely a legal issue is de novo review on appeal. *City of Gainesville v. Crapo*, 953 So.2d 557 (Fla 1st DCA 2007).

SUMMARY OF THE ARGUMENT

APPELLEE was granted by the Alachua County Value Adjustment Board (VAB) an exemption of its real property overriding the removal and rejection of the exemption by APPELLANT. The trial court upheld this determination of the VAB by determining a license issued by the Commission for Independent Education (Commission) was the equivalent of accreditation, certification or membership in DOE, SACS, FCIS, the three separate organizations specifically set out in Section 196.012(5), Florida Statutes.

The trial court held, contrary to the legislative scheme set out by the Florida Legislature, that the Commission was “part of the DOE” and a commission’s license was the equivalent, of certification, accreditation or membership.

The law establishing the Commission provides it is separate and apart from the DOE and not controlled by it, has its own rules and is appointed by the Governor.

The Commission establishes to request classroom hour or courses of study for any school but only requires disclosure of what is offered by licensee under requirements established by a federally approved accreditation agency.

ARGUMENT

- I. THE TRIAL COURT, CONTRARY TO THE RULE THAT EXEMPTIONS FROM AD VALOREM TAXES AS STRICTLY CONSTRUED AGAINST THE PARTY CLAIMING THEM, WRONGFULLY INCLUDED THE COMMISSION OF INDEPENDENT EDUCATION AS AN ACCREDITING AGENCY UNDER SECTION 196.012(5), FLORIDA STATUTE AND CONSTRUED A LICENSE BY THE COMMISSION AS THE EQUIVALENT OF ACCREDITATION.

The trial court, contrary to the actual statutory wording, upheld the APPELLEE's entitlement to an exemption from ad valorem taxation for its real property located in Alachua County, Florida. The trial court adopted a strained interpretation of the law to approve the exemption. In order to qualify for an exemption from ad valorem taxation for an educational exemption as provided by *section 196.198, Florida Statutes*, an entity has to qualify as an educational institution as defined by *sub-section 196.012(5), Florida Statutes*.

Sub-section (5) provides in pertinent part:

(5) "Educational institution" means a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools.

This Court is being called upon to construe and apply this statutory provision. Several rules of statutory construction are critical to the determination

by this Court of APPELLEE’S entitlement to an educational exemption. First, when applying principles of statutory construction, the actual wording of the statute is the beginning point. *Citizens Prep. Ins. v. Pendido Sun Condo. Assn.*, 164 So.3d 663, 666 (Fla. 2015).

Second,

“Generally, our supreme court has said ‘all property is subject to taxation unless expressly exempt and *such exemptions are strictly construed against the party claiming them.*’ *Sebring Airport Auth. v. McIntyre*, 642 So.2d 1072, 1073 (Fla. 1994) citing *Volusia County v. Daytona Beach racing and Recreational Facilities District*, 341 So.2d. 498, 502 (Fla. 1976); *Williams v. Jones*, 326 So.2d 425, 435 (Fla. 1975).” (emphasis added)

Page v. City of Fernandina Beach, 714 So.2d 1070, 1072 (Fla. 1st DCA 1998)

And third,

“the rule ‘expressio unius est exclusio alterius,’ meaning ‘express mention of one thing is the exclusion of another,’ is applicable in **statutory construction** and that ‘had the legislature intended to establish other exceptions [within the statute at issue] it would have done so clearly and unequivocally’);

Innman v. State, 916 So.2d 59 (Fla.2d DCA 2005)

The trial court did not give credence to these rules of construction. The definition of an educational institution first, provides for types of institutions including i.e. federal, state...private school etc. APPELLEE would be included, if at all, as a private school.

Second, the private school must conduct “regular classes” and “courses of study”. Third, these classes and courses of study must be those designated by one of three specific entities, The State Department of Education of Florida (DOE), The Southern Association of Colleges and Schools (SACS) or The Florida Council of Independent Schools (FCIS) required for eligibility to three types or grants of approval, certification by, accreditation to and membership in.

The Florida Department of Revenue, in its rules, appropriately provides that actual certification, accreditation or membership is not needed by a taxpayer to secure the exemption, only that they meet the specific eligibility requirements for such certification, accreditation or membership. Fla. Admin Code R. 12D-7.015

The APPELLEE never presented any evidence of classes offered or courses of study of any of the three designated entities in the statute. APPELLEE relies solely upon a *license* issued by an entity which is not listed, the Florida Commission for Independent Education (Commission). (R-45, 725)

The trial court, in violation of the rules of construction included the Commission as an entity that, although not listed, was created, it said, as *part of* The Department of Education. (R-728)

The trial court reasoned that the Commission’s application, includes information of classes and courses of study required for accreditation by the “appropriate organization”, but not the Commission.

Section 20.15, Florida Statutes creates the DOE. This statute first acknowledges the constitutionally created State Board of Education and the appointment of the Commissioner of Education. §20.15(1) and (2), Fla. Stat.

The section then divides the DOE into nine divisions, 3(a)-(i), none of which is the Commission. Section 20.15 additionally provides that the Commissioner of Education notwithstanding anything to the contrary in the law, appoints members of all members of all councils and commissions of the DOE except its Commission. §20.15(6) Fla. Stat.

Section 20.03, Florida Statutes sets out definitions for the organizational structure of the executive branch of Florida Government. Included is a definition of “commission.” Commission means a body created by statute within a department, independently of the head of the department. §20.03(10), Fla. Stat.

The legislature established the Commission by Section 1005.21(1), Florida Statutes. Although it is established in the DOE and the DOE serves as its administrative agent, the Commission exercises, independently, all its powers, duties and functions provided by law. §1005.21(1) Fla. Stat. Contrary to the trial court judgment it is not created as “part of” the DOE.

The Commission functions in matters concerning the institutions under its jurisdiction in consumer protection, program improvement and licensure. Its

members are appointed by the Governor, with confirmation by the Senate not the Commissioner of Education or DOE. §1005.21(2) Fla. Stat.

A review of the powers and duties of the Commission in Section 1005.22, Florida Statutes reflects that other than the general powers to meet and conduct business the Commission adopts its own rules. §1005.22(1)(e)1, Fla. Stat.

The purposes of Chapter 1005 are set out in Section 1005.01, Florida Statutes. These include protecting persons who receive the “services” of independent institutions, protecting employers when hiring those trained by such independent entities. This section further recognizes that it is federally recognized accrediting associations that set the standards for independent institutions, not Commission itself.

In this realm of these purposes of the Commission are the fair consumer protection requirements set out in Section 1005.04, Florida Statutes. These delineated practices are requirements to protect enrollees in the independent institutions, not the quality of education as the result of accreditation.

Chapter 1005 provides definitions applicable to the chapter. Subsection 1005.02(1) defines “Accreditation” as a “status” awarded by an accrediting agency recognized by the United States Department of Education. §1005.02(1), Fla. Stat. License is defined by subsection 1005.02(1) as a certificate (but not certification)

that evidences that the institution is, under Chapter 1005 and the Rules of The Commission, permitted to operate in Florida. §1005.02(13) Fla. Stat.

Independent institutions are required to obtain a license to operate in Florida as required by Section 1005.31, Florida Statutes. Subsection (13) provides that the granting of a license is not an accreditation. §1005.31(13), Fla. Stat.

The rules adopted by the Commission include the Fair Consumer Practices the Commission. Fla. Admin. Code Rule 6E-1.0032. This disclosure rule clearly states that an institution does not have to be accredited, only such fact be disclosed. Fla. Admin. Code Rule 6E-1.0032(5)(d).

Rule 6E-2.004 sets out the standards for licensure. Fla. Admin. Code 6E-2.004. Standard 4: education programs and curricula, sets out the disclosure requirements not that specific classes or courses of study are required for licensure. Programs preparing a student for an occupation or professions are not required any specific number of hours or classes but must conform to the standards of the profession and make a standard to sit for any exam required. Fla. Admin. Code 6E-2.004(4)(b).

The Commission Rules do not set any required classes or courses of study for licensure disclosure but whatever courses or classes are required by the school to the Commissions and more important to the prospective enrollee.

The license by the Commission is not equivalent of certification by, accreditation to or membership in the DOE, SACS or FCIS, and the Commission is not a “part of the DOE” but a totally independent agency over which the DOE does not possess oversight.

Under the rules of construction of statutes, starting with the actual wording of Subsection (5) defining educational institutions, the requirements are clear and unambiguous, “a private school, conducting classes or courses of study required by the DOE, SACS or FCIS for certification or accreditation.

Strict construction would not mean interpreting the legislative scheme to make the Commission a “part of DOE”, and not a totally separate governmental entity and would not make a license an accreditation. This is so when even the trial court recognized any accreditation was by another appropriate accrediting organization. (R-728)

The trial court’s interpretation means that the 1019 private schools licensed by the Commission are entitled to 100% exemptions of their property. (R-738)

In conclusion, APPELLANT does not believe this was intended by the legislation when it limited the definition to encompass only the DOE, SACS and the FICS.

CONCLUSION

This final summary judgment should be reversed by this Court and on remand direct this trial court to enter judgment for the APPELLANT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to: Paul A. Donnelly, Esq. and Jung Yoon, Esq., Donnelly & Gross, P.A., 2421 NW 41st Street, Suite A-1, Gainesville, Florida 32606, paul@donnellygross.com, jung@donnellygross.com and elecdocs@donnellygross.com on this 17th day of July, 2017.

DENT & MCCLAIN, CHARTERED
3415 Magic Oak Lane
Sarasota, Florida 34232
Phone: (941) 952-1070
Fax: (941) 952-1094
Attorneys for Appellant, Edward A. Crapo
Alachua County Property Appraiser

/s/ John C. Dent, Jr.

JOHN C. DENT, JR.

Florida Bar No. 0099242

jdent@dentmcclain.com

JENNIFER A. MCCLAIN

Florida Bar No. 0446830

jmclain@dentmcclain.com

CERTIFICATE OF COMPLIANCE

Counsel for Appellant, Ed Crapo, certifies that Appellant's Initial Brief is typed in 14 point (proportionately spaced) Times New Roman font.

/s/ John C. Dent, Jr.
JOHN C. DENT, JR.
Florida Bar No. 0099242