

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

CASE NO. 2015-CA-001554

**CRAPO, ED**, not individually,  
but in his capacity as Alachua County  
Property Appraiser,  
Plaintiff,

v.

**ACADEMY FOR FIVE ELEMENT  
ACUPUNCTURE, INC.**, a Florida  
Non-Profit Corporation,  
Defendant.

**SUMMARY FINAL JUDGMENT (CORRECTED)**

**FOR DEFENDANT**

This cause came before the Court on the parties' respective motions for summary judgment. After having considered the written and oral arguments and having reviewed the stipulated record, it is hereby adjudged as follows:

These motions raise three issues. One, did the Value Adjustment Board (VAB) have jurisdiction to make its 2014 determination, which was adverse to the plaintiff property appraiser, despite the defendant property owner's failure to file an application for exemption within twenty-eight days after receiving notification of denial of the exemption? Two, is the property appraiser's attempt here to uphold its denial of the exemption at issue barred by the doctrine of *res judicata* because it failed to appeal an adverse determination by the VAB in 2008 involving

the same owner and the same issue? Three, is the owner's licensing by the Florida Commission for Independent Education equivalent to and the same as meeting eligibility requirements for "certification by ... the State Department of Education of Florida" pursuant to section 196.012(5), Florida Statutes?

## I

### **VAB Jurisdiction**

The process for obtaining an exemption requires filing an annual application. §196.011(1). The requirement for successive annual applications after an exemption is initially granted may be waived, and the parties here agree this property owner's exemption was initially granted by the VAB in 2008 and the requirement for successive applications was waived. Section 196.011(9)(e) states that, in the case of such a waiver, if the appraiser thereafter intends to deny an exemption in the absence of refiling an application, it should give the owner notice of intent to do so prior to February 1, so that the owner can then file an application by the usual March 1 deadline. If the notification comes after February 1, the owner has twenty-eight days after the appraiser mails such notice to file the application for exemption. §196.011(9)(e).

Here, the appraiser sent a "Notice of Disapproval of Application for Property Tax Exemption or Classification" to the owner on June 6, 2014. The appraiser claims that this was in substance a notification that the appraiser was going to deny the exemption without a refiled application pursuant to 196.011(9)(e), and that the owner thereafter had twenty-eight days to file an application. Instead, the owner appealed to the VAB, which was notably exactly what the "Notice" instructed the taxpayer to do if it disagreed with the "denial" of its exemption. Now the appraiser argues, although not strenuously, that the VAB never had jurisdiction to make what was ultimately a determination upholding the exemption because the owner never filed an application for a 2014 education exemption in the first place.

The Court finds there is no genuine issue of material fact that the appraiser did not send a §196.011(9)(e) notification. Instead, the appraiser essentially continued to waive the refiling, treated the owner as having made an application

for exemption, and denied the application. This did not put into effect the twenty-eight-day re-application period under the statute. Therefore, the VAB had appropriate jurisdiction to consider the appeal.

## II

### **Res Judicata**

The appraiser suffered an adverse administrative ruling by the VAB in 2008 involving the same property owner and the same exemption issue that this case involves, and did not appeal. The owner argues that principles of estoppel, *res judicata*, and administrative finality bar the appraiser from challenging the educational exemption again. On its face, this appears to be a reasonable argument, particularly if the circumstances of the owner's use have not changed. See, for example, *Florida Power Corporation v. Garcia*, 780 So. 2d 34 (Fla. 2001). The appraiser, however, cites *Container Corp. of America v. Long*, 274 So. 2d 571 (Fla. 1<sup>st</sup> DCA 1973) (ad valorem taxes stand on their own validity each year regardless of prior or subsequent assessments) and *Page v. City of Fernandina Beach*, 714 So. 2d 1070 (Fla. 1<sup>st</sup> DCA 1998) (applying *Container* in an exemption context) as authority for its right to challenge the exemption again. In the peculiar context of ad valorem taxation, it appears that the appraiser is correct and is not barred from denying or challenging the exemption in this case.

## III

### **Section 196.012(5) Educational Institution**

The exemption for an educational institution depends on whether the applicant meets the definition under §196.012(5) and uses the subject property accordingly. The appraiser claims that the owner here did not meet the strict definition of an educational institution because it only received a license to operate a postsecondary private school from the Florida Commission for Independent Education. The appraiser claims that licensing by the Commission is not the same as meeting the eligibility requirements for certification by the State

Department of Education of Florida and that, therefore, this owner is not entitled to an educational exemption.

There is no issue that the owner here had to apply for and meet certain standards to obtain its license from the Commission. In every sense, it had to meet eligibility requirements set forth by the Commission that assured it was qualified to operate in the State of Florida as an educational institution. The application for its license included information pertaining to its regular classes and courses of study and its accreditation by the appropriate accrediting organization. This was not mere “licensing” in any sense that would make it qualitatively less than what would normally be associated with bona fide accreditation and certification. In fact, §1005.02(13) states clearly that such a license is a “certificate signifying that an independent postsecondary educational institution meets *standards prescribed in statute or rules* and is permitted to operate in this state”. (emphasis added). The question, then, is whether an organization which meets the Commission’s licensing requirements also meets the definition of an “educational institution” set forth in §196.012(5). To do so, it must be a “private school...conducting regular classes and courses of study required for eligibility to certification by...the State Department of Education....  
*Id.*

The statutory framework regarding the licensing of private postsecondary school programs provides the answer to this question. The Commission is not just a random organization with no connection to the Department of Education. Florida is committed to assuring for its citizens that independent private postsecondary educational institutions satisfactorily meet minimum educational standards. §1005.01. The Commission for Independent Education was created by the legislature as *part of* the Department of Education to effectuate this legislative purpose. §1005.21. It’s membership composition is determined by the legislature and the members are appointed by the governor subject to confirmation by the senate. §1005.21(2). Each private postsecondary school in the state must be licensed by the Commission; and the Commission must submit its own budget and rules to the Department of Education for approval. §1005.22. The Commission must report data to the Department annually regarding institutions licensed by it. §1005.22(1). It is directed to administer the provisions of Chapter 1005 with respect to nonpublic postsecondary education.

§1005.22(1)(e). Within this statutory framework, the Commission operates as the instrumentality of the Department of Education for assuring that the classes and courses of study of private postsecondary schools are eligible for state certification.

The appraiser correctly notes that the license granted by the Commission is not in itself an accreditation but relies on accreditation granted by others (1005.31(13)) and that the Commission operates independently (1005.21(1)). While these points are valid, it is apparent that the legislature has chosen to use Commission licensure as the way by which the Department of Education certifies the eligibility of classes and courses of study for private postsecondary schools. As statutorily created, the Commission is part of the Department of Education. Commission licensure, then, is in fact State Department of Education certification. Therefore, licensure in this context qualifies the licensee as an educational institution exempt from ad valorem taxation.

Therefore, The Plaintiff property appraiser's motion for summary judgment is denied, and the Defendant property owner's amended motion for summary judgment is granted. Summary Final Judgment as to parcel number 14571-000-000 and the disputed portion of parcel number 14570-000-000 is hereby entered in favor of Defendant, Academy for Five Element Acupuncture, Inc., establishing its right to an educational institution exemption for tax years 2014 and 2015. The Court reserves jurisdiction for costs and attorney fees as applicable.

DONE AND ORDERED in Chambers at Gainesville, Alachua County, Florida, on April 13 2017.



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TOBY S. MONACO  
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by e-mail delivery on April 13, 2017, to the following:

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