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IN THE DISTRICT COURT OF APPEAL OF THE EIGHTH JUDICIAL CIRCUIT
ALACHUA COUNTY, FLORIDA

ED CRAPO, as Alachua
County Property Appraiser

Appellant/Cross-Appellee,

v.

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

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

Appellee/Cross-Appellant.
_____/

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

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Reference to the record on appeal shall be as follows:

Reference to pleadings, filings and exhibits in the records shall be (R-___).

ARGUMENT

I. APPELLEE IS NOT AN EDUCATIONAL INSTITUTION AS DEFINED BY SECTION 196.012(5), FLORIDA STATUTE; A LICENSE ISSUED BY THE FLORIDA COMMISSION FOR INDEPENDENT EDUCATION IS NOT CERTIFICATION BY, ACCREDIATION TO OR MEMBERSHIP OF ANY ONE OF THE DESCRIBED ENTITIES.

APPELLANT questioned APPELLEE'S lack of specific argument regarding the denial of APPELLEE'S petition for rehearing. The Petition, (R-73) was to bring the trial courts attention a portion of its ruling. The trial court stated "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." (R-719,723)

The legal issue in both the motion for rehearing and the summary judgment are exactly the same, i.e., is the APPELLEE an educational institution as defined by Section 196.012(5), Florida Statutes. Both are purely questions of interpretations of Florida law. Both would be de novo review of this trial court's interpretation. *Van v. Schmidt, 122* So. 3d 243 (Fla. 2013), *Aills v. Boemi,* 29 So. 3d 1105 (Fla. 2010)

Contrary to APPELLEE'S repeated attempts to change a noun to a verb to make the pertinent statutory language qualify APPELLEE as an educational institution as defined by Section 196.012(5), Florida Statutes, it only has a license. The Commission for Independent Education issues a license in the form of a certificate, but not a certification. It's a license to do business in Florida. §1005.02(13), Fla. Stat.

The definitions applicable to Chapter 1005 Nonpublic Post-Secondary Education are contained in Section 1005.02, Florida Statutes and provide a definition for "Accreditation". Ch. 1005, §1005(2), Fla. Stat. The chapter which applies to nonpublic institutions postsecondary further provides that "The granting of a license is not an accreditation." §1005.31(13), Fla. Stat.

The granting of any exemption requires the applicant to be an exempt entity which uses its property for an exempt purpose. §196.192, Fla. Stat. This Court in the *Page v. City of Fernandina Beach* case stated:

> 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).

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

Section 196.012(5), Florida Statutes defines the entity required for an educational exemption. §196.012(5), Florida Statutes. The exempt entity for an educational exemption mandating an educational institution defined in this section.

To qualify as an educational institution, the applicant must establish that it conducts regular classes and courses of study required for "*eligibility* to certification by accreditation to, or membership" in the DOE, Southern Association of Colleges and Schools or the Florida Council of Independent School. §196.012(5), Fla. Stat.

APPELLEE'S problem with meeting this definition is twofold. First, it may conduct regular classes and courses of study; however, it has provided no requirement by the DOE for eligibility for "post-secondary academic instruction and clinical training in acupuncture and herbal studies." Ap. Br. p. 9 There is none, as there is no certification by the DOE. There is only licensure by the Florida Commission for Independent Education (Commission).

Second, the Commission is created by Section 1005.21, Florida Statutes. §1005.21(1), Fla. Stat. Although the Commission is "in" the DOE, it exercises all its powers and functions independently of the DOE, it is therefore not the DOE.

Section 20.03(10), Florida Statutes defines a Commission to be a body created by legislation enactment within a department or the governor's office

exercising limited quasi-legislation or quasi-judicial powers *independently* of the head of the department or Governor. §20.03(10), Fla. Stat.

Simply, the Commission is not the DOE and its title is not the "Florida Department of Education Commission for Independent Education, as repeatedly referred to by the APPELLEE" App. Br. p. 1, 3, 4, 6, 8, 9, 10. See 1005.02(5) Fla. Stat.

The Governance of Public Schools, except universities, begins in the Florida Constitution creating the Board of Education. Art. IX, §2 Fla. Const. Under the Board is the DOE, the executive director of which is the Commissioner of Education. §20.13, Fla. Stat.

Chapter 1001, Florida Statutes provides for the state governance of education except universities. Ch. 1001, Fla. Stat. Section 1001.21, Florida Statutes creates the office of Private Schools and Home Education Programs. §1001.21, Fla. Stat. This office is related to private schools and not to be considered a part of the public education system. Section 1002.42, Florida Statutes provides for regulation of private schools, which statute does not regulate, control, approve or accredit public educational institutions. §1002.42, Fla. Stat. See *Bush v. Holmes,* 919 So. 2d 392 (Fla. 2006)

In the same governances chapter the legislature established the Commission, which provides for oversight of nonpublic post-secondary educational entities.

(§1001.22, Fla. Stat.) The Commission, as stated operates independently of the DOE. The Commission does not have oversight regarding the quality of education i.e., accreditation, but only disclosure of the entity's offering. See Fla. Admin. Code Rules 6E-2.002, 6E-2.004 and 6E-1.0032.

The APPELLEE cites to the requirement in the Rules in Rule 6E-2.004(11)(b)2f, but does not cite to Rule 6E-2.004(11)(b)2e regarding accreditation. Fla. Admin. Code Rule 6E-2.004(11)(b)e. Accreditation is done by others, but neither the DOE nor the Commission.

APPELLEE claims a ruling contrary to the trial court would mean that no private educational institution would have certification from the DOE for a tax exemption. This is exactly what APPELLANT asserts. The DOE does not provide for certification, accreditation or membership by or in the DOE. The DOE only has jurisdiction to regulate the qualities of education of public schools. *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006). With reference to private schools, the state can regulate only the disclosure of the quality as determined by others that accredit.

II. EACH TAX YEAR STANDS ON ITS OWN AND A DECISION IN ONE YEAR IS NOT APPLICABLE OR BINDING ON A SUBSEQUENT YEAR.

APPELLEE argues that a decision of a value adjustment board in a This Court Ruling that a prior un-appealed VAB decision was binding on a property appraiser under Section 193.016, Florida Statutes and would be contrary to the constitution and held by this Court. *Fla. Dep't of Revenue v. Howard*, 859 So. 2d 619 (Fla. 1st DCA 2003).

prior year is binding on a property appraiser in subsequent years. It's argument ignores a long line of decisions that hold just the opposite. *Hecht v. Dade County*, 234 So. 2d 709 (Fla. 3rd DCA 1970); *Container Corporation v. Long*, 274 So. 2d 571 (Fla. 1st DCA 1973); *Daris v. Macedonia Housing Authority*, 641 So. 2d 131 (Fla 1st DCA 1994) (an exemption case); *Page v. City of Fernandina Beach*, 714 So. 2d 1070 (Fla. 1st DCA 1998); *Coletta v. Robbins*, 745 So. 2d 1034 (Fla. 1st DCA 1999).

This Court Ruling that a prior un-appealed VAB decision was binding on a property appraiser under Section 193.016, Florida Statutes and would be contrary to the constitution and held by this Court. *Fla. Dep't of Revenue v. Howard*, 859 So. 2d 619 (Fla. 1st DCA 2003).

In *Fla. Dep't. of Revenue v. Howard*, 916 So. 2d 640 (Fla. 2008), the Florida Supreme Court reversed this Court, overturning a holding, that determined a section of the Florida Statutes unconstitutional. §193.016, Fla. Stat. In upholding the statute, the Supreme Court held that the statute just required the consideration

of a prior determination of a VAB, in addition to Section 196.011, Florida Statute and was just another factor to consider and was not binding on a property appraiser.

CERTIFICATE OF SERVICE

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

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CERTIFICATE OF COMPLIANCE

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

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