

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

ED CRAPO, as Alachua
County Property Appraiser

Appellant/Cross-Appellee,

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

v.

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

**APPELLANT/CROSS-APPELLEE, RESPONSE BRIEF OF AMICUS CURIAE
BRIEF OF THE DEPARTMENT OF EDUCATION, COMMISSION FOR
INDEPENT EDUATION**

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PRELIMINARY STATEMENT

Reference to the record on appeal shall be as follows:

Reference to the record shall be (R-____).

Reference to Appellant's Initial Brief shall be (In.Br. p-____).

Reference to Commission Brief shall be (C.Br. p-____).

ARGUMENT

THE COMMISSION FOR INDEPENDENT EDUCATION (COMMISSION) IS NOT THE FLORIDA DEPARTMENT OF EDUCATION (DOE) AND A LICENSE ISSUED BY THE COMMISSION IS NOT CERTIFICATION BY, ACCREDITATION TO OR MEMBERSHIP IN THE DOE.

When interpreting and applying a statute, specifically one granting an exemption (special benefit) to a taxpayer, the rules of construction, as set in the APPELLANT’S initial brief, apply (In. Br. p-7,8). The actual wording of the statute, statutes providing for a tax-exemption (special benefit) are strictly construed against the party claiming them and the express mention of one thing is the exclusion of another.

As held by Florida Supreme Court, the beginning point is the actual wording of the statute. *Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass’n*, 164 So. 3d 663, 666 (Fla. 2015). Section 196.012(5) defines an educational institutional to include private schools, colleges or universities. §196.012(5), Fla. Stat. Appellee is a private school whose goal is to allow a person to practice acupuncture. See §457.105, Fla. Stat (licensure in Florida to practice acupuncture). To operate their school in Florida, Appellees need a “License”. §1005.31, Fla. Stat. Section 1005.31(13), Florida Statutes states that the Commission’s License is NOT an accreditation. This is an indication the legislation knows the difference between a

license and an accreditation and could have included in the definition the issuance of a license or licensure by the Commission, it did not.

A. THE COMMISSION IS NOT THE DOE.

The definition of Educational Institution enumerates three entities recognized as the enabling entities for certification, accreditation or membership. There is no question that Appellee does not qualify under the Southern Association of Colleges and Schools or the Florida Council of Independent Schools. That leaves the DOE. The legislature created the DOE, Section 20.15, Florida Statutes with seven divisions, (3)(2) through (9) and two other offices, one for articulation, the other for independent education (K-12). §20.15, Fla. Stat. The Commission is not a division of the DOE.

The powers and duties of the Board of Education include the governance over the divisions. §20.15(5), Fla. Stat. The Commission's Brief misstates subsection (6) of Section 20.15, Florida Statutes. Its brief states "And lastly, the Commission is specifically identified in a statute directed to 'councils and committees' of the Department of Education"and "the statute's specific identification of the Commission *as a council or committee of the department.*" (emphasis added) (C. Br. p-4) Contrary to this statement, the Commission *is not*

identified as a “council or committee” of DOE but just the opposite, the Commission is excepted out of the DOE. §20.15(6), Fla. Stat.

The Commission is a commission as defined in Section 20.03 (10), Florida Statutes. §20.03(10), Fla. Stat. The Commission is not the DOE. Even though the Commission is created within the DOE, it is not the DOE and operates independently of the DOE. §1003.21(1), Fla Stat.; Op Att’y Gen Fla. 90-100 (1990). The Commission adopts its own rules, subject to approval of the DOE, its budget is not submitted to DOE but to the State Board of Education. §1005.22(e) 1, 2, Fla. Stat.

The DOE supervises the system of free public education in divisions (2) through (9). §20.15(3) (2)-(9), Fla. Stat. It serves non-public K-12 education but independent post-secondary educational institutions are served by the Commission. §1001.21, Fla. Stat., §1001.22, Fla. Stat. and §1005.22, Fla. Stat. See also Ch. 1002, Fla. Stat.

The DOE has no authority over private schools and home education. §1001.21, Fla. Stat. Neither the DOE nor any office within the DOE licenses private schools, but they are recognized as providing a service to the public. §1001.21, Fla. Stat.

The DOE has no authority to grant or issue a license or to revoke a license that lies solely with the Commission. The Commission is autonomous, it can sue or be sued and enter contracts with the Federal Government, with other departments and individuals. §1005.22(2), Fla. Stat. This authority and all others of the Commission could not reasonably be attributed to or performed by to DOE or even legally attributed to DOE. *Sowell v. Pan. Commons L.P.*, 192 So. 3d 27 (Fla. 2016).

The Commission's Brief concludes that actions by the Commission for Independent Education *could reasonably be attributed to the Department of Education* (emphasis added) (Br. p-4). This is contrary to strict construction when interpreting tax exemptions. *Sowell v. Pan. Commons L.P.*, 192 So. 3d 27 (Fla. 2016).

The Commission is simply not named by the legislature in the definition of an educational institution in Section 196.012(5), Florida Statutes. To include the Commission as an additional entity violates the legal maximum "expressio unis est exclusio alterius" and is contrary to strict construction of an exemption statute. *Dobbs v. Sea Isle Hotel*, 56 So. 2d 241, 342 (Fla. 1952); *Sowell v. Pan. Commons L.P.*, 192 So. 3d 27 (Fla. 2016).

B. THE GRANTING OF A LICENSE IS NOT AN IDENTIFIED ACTION FOR AN EDUCATIONAL INSTITUTION.

A license is not an accreditation. §1005.31(13), Fla. Stat. Therefore it has to have either certification by or be a member of the DOE. Any reading of the statute under scrutiny, Section 196.012 (5), Florida Statutes, does not include a license or licensure by the DOE, the beginning point for statutory construction. *Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass'n*, 164 So. 3d 663 (Fla. 2015).

The inclusion of any designations other than certification, accreditation and membership would also be contrary to the rule of statutory construction, *expressio unis est exclusion alterius*. If the legislature intended licensure to be included in the definition, “it would have done so clearly and unequivocally. *Dobbs v. Sea Isle Hotel*, 56 So. 2d 241, 342 (Fla. 1952).” *Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass'n*, 164 So. 3d 663, 666 (Fla. 2015). See also, *Citizens Prop. Ins. Corp. v. Garfinkel*, 25 So. 3d 62 (Fla. 5th DCA 2009); *Univ. of Fla. v. Karch*, 393 So. 2d 621 (Fla. 1st DCA 1981).

The Affidavit of the Assistant Executive Director of the Commission includes the Commission's 2015-2016 Annual Report. This report reflects 1019 licensed institutions, with 598 institutions only offering non-degree programs. (R-735, 736, 740).

The Commission Rules, Rule 6E-2.004(4) Standard 4 provides for educational programs and curricula and for non-degree programs, subsection (m) provides:

“The following instructional program standards apply to nondegree diplomas: 1. Program specifications: The credential offered shall be a diploma or certificate. The duration of the program shall be appropriate for mastery of the subject matter or skills needed to pursue the occupation for which the student is being trained. There are no general education requirements.”

Fla. Admin. Code R. 6E-2.004(4)(m).

This Court must determine if the legislature envisioned that all the institutions, degree and non-degree, licensed by the Commission were to gain exemption from taxation when subsection 196.012(5), Florida Statute was adopted.

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, and Matthew H. Mears and James L. Richmond, Department of Education, Turlington Building, Suite 1244, 325 West Gaines Street, Tallahassee, Florida 32399-0400 at matthew.mears@fldoe.org and james.richmond@fldoe.org, on this 7th day of February, 2018.

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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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