

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT
STATE OF FLORIDA

ED CRAPO, as Alachua County
Property Appraiser,

Appellant/Cross-Appellee,

v.

Case No.: 1D17-1895

Lower Case No.: 2015-CA-001554

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

Appellee/Cross-Appellant.,

_____ /

APPELLEE'S MOTION FOR CERTIFICATION

Appellee, ACADEMY FOR FIVE ELEMENT ACUPUNCTURE, INC.,
pursuant to Fla. R. App. P. 9.330(a)(2)(C), files this Motion for Certification and
states in support:

1. Pursuant to Fla. App. P. 9.330(a)(2)(C), a motion for certification may
be granted where the movant sets forth "the case(s) that expressly and directly
conflicts with the order or decision or set[s] forth the issue or question to be certified
as one of great public importance." This motion should be granted for both reasons.

2. Following an en banc hearing, on July 8, 2019, this Court issued its
Order On Rehearing En Banc holding that the Academy was not an "educational
institution" entitled to the property tax exemption (p. 6); and that "administrative

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finality does not attach to a VAB decision that is not subsequently adjudicated in circuit court" (p. 15). Previously, this Court's three-judge panel's unanimous decision, after oral argument, held to the contrary on the issue of administrative finality, ruling that the doctrine of administrative finality applies in a tax exemption case involving identical parties, facts and legal issues with no changed circumstances. Given the decision on administrative finality, the panel did not reach a decision on the educational institution exemption though a concurrence would have affirmed the lower court granting educational institutional tax exemption.

3. This Court's Order on Rehearing En Banc raises the following issues or questions of great public importance:

a. does the doctrine of administrative finality applies in a tax exemption case involving identical parties, facts and legal issues with no changed circumstances; and

b. is a post-secondary school or educational institution, certified and regulated by the Florida Department of Education Commission for Independent Education, as is the Academy, an educational institution within the meaning of § 196.012(5), Florida Statutes.

4. That the issues are of great public importance is supported by the fact that this Court agreed to rehear this case en banc deeming it to be of exceptional importance and/or deeming en banc rehearing to be necessary to maintain uniformity

in the court's decisions. See Fla. App. P. 9.331(d) (permitting rehearing en banc where "the case or issue is of exceptional importance or that such consideration is necessary to maintain uniformity in the court's decisions")

5. The en banc ruling on administrative finality has broad and important application across the entire state and affects all taxpayers who have an exemption granted through the VAB and have maintained the exemption with identical facts and legal issues and no changed circumstances, and all future taxpayers who seek an exemption.

6. The en banc ruling on the educational institution exemption is of great public importance given the legislative history and intent and public interest in fostering postsecondary educational institutions and affects all current and future post-secondary educational institutions in the State of Florida such as the Academy. If the ruling were to stand, it would affect the educational institutions' decisions such as whether to locate in or out of the State and whether to purchase property and establish long-term presence in a community in Florida which in turn impact the community and the State at large. That the issue is of great public importance is underscored by the fact this Court solicited amicus brief from the Florida Department of Education on the very issue and that the Florida Department of Education itself has opined that educational institutions such as the Academy satisfy the statutory definition as an "educational institution" for purposes of the exemption.

7. Finally, the en banc ruling is in express and direct conflict with the following cases on the issue of administrative finality: *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107-08 (1991); *Thomson v. Dep't of Env'tl. Regulation*, 511 So.2d 989, 991 (Fla. 1987); *Holiday Inns, Inc. v. City of Jacksonville*, 678 So. 2d 528, 529 (Fla. 1st DCA 1996); *Jet Air Freight v. Jet Air Freight Delivery, Inc.*, 264 So.2d 35, 40 (Fla. 3d DCA 1972); *Metro. Dade Cty. Bd. of Cty. Comm'rs v. Rockmatt Corp.*, 231 So. 2d 41, 44 (Fla. 3d DCA 1970); *Rubin v. Sanford*, 168 So. 2d 774, 775 (Fla. 3d DCA 1964).

8. Accordingly, Appellee respectfully requests that this Motion be granted and the following issue(s) be certified as one of great public importance:

a. does the doctrine of administrative finality applies in a tax exemption case involving identical parties, facts and legal issues with no changed circumstances; and

b. is a post-secondary school or educational institution such as the Academy certified and regulated by the Florida Department of Education Commission for Independent Education and thereby an educational institution within the meaning of § 196.012(5), Florida Statutes.

9. Appellee further respectfully requests certification based on the case(s) that expressly and directly conflicts with the En Banc order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed this 22nd day of July, 2019, via email and through the Florida Courts E-Filing Portal which provides an electronic copy to the individuals on the following service list.

Respectfully submitted,

/s/ Paul A. Donnelly

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