

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MOBILE AUTO REPAIR SHOP, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 95-1095RX  
 )  
 DEPARTMENT OF AGRICULTURE AND )  
 CONSUMER SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

FINAL ORDER

Pursuant to written notice, a formal hearing was held in this case on April 6, 1995, by video teleconference in West Palm Beach, Florida, before Errol H. Powell, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Theron C. Phinney, Owner, pro se  
Mobile Auto Repair Shop  
Post Office Box 12813  
Lake Park, Florida 33403

For Respondent: Robert G. Worley, Esquire  
Department of Agriculture and  
Consumer Services  
Room 515, Mayo Building  
Tallahassee, Florida 32399-0800

STATEMENT OF THE ISSUE

The issue for determination at formal hearing was whether Rule 5J-12.001(2), Florida Administrative Code, constitutes an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

This is a rule challenge brought under the provisions of Section 120.56, Florida Statutes, challenging the validity of Rule 5J-12.001(2), Florida Administrative Code, which defines "established place of business."

At the hearing, Petitioner's owner testified and entered two exhibits into evidence. Respondent presented the testimony of two witnesses and entered one composite exhibit into evidence.

A transcript of the formal hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The parties submitted proposed findings of fact which have been addressed in the appendix to this final order.

#### FINDINGS OF FACT

1. Theron C. Phinney is the sole owner and operator of Mobile Auto Repair Shop, located in Lake Park, Palm Beach County, Florida. He is engaged in the repairing of motor vehicles and has been in the auto repair business for over 35 years.

2. Mr. Phinney's auto repair business is mobile. All of his equipment and tools for repairing vehicles are located in his truck. Mr. Phinney repairs vehicles wherever they are located, i.e., he goes to where the vehicles are located. No repairs are performed at Mr. Phinney's residence.

3. Mr. Phinney has no employees.

4. Mr. Phinney has been issued an occupational license by Palm Beach County at a cost of \$25.00. The license identifies his residence as the location for his business. Even though Mr. Phinney does not perform any vehicle repairs at his residence, the County required him to provide his residential address as the location of his business. The County renews his license yearly with the residential address. 1/

5. Repairs by mobile motor vehicle repair shops are performed wherever the vehicle needing repair is located. Equipment and tools used to perform the repairs are located in the vehicle owned by the mobile motor vehicle repair shop.

6. The Department of Agriculture and Consumer Services (Department) is charged with administering the Florida Motor Vehicle Repair Act, Sections 559.901-559.9221, Florida Statutes. The Act requires motor vehicle repair shops to register with the Department and pay a fee and provides certain exemptions. Section 559.904, Florida Statutes.

7. Section 559.904(9), Florida Statutes, provides:

(9) No annual registration application or fee is required for an individual with no employees and no established place of business.

8. Section 559.903(8), Florida Statutes, defines "place of business" and provides:

(8) "Place of business" means a physical place where the business of motor vehicle repair is conducted.

9. The Department's Rule 5J-12.001(2), Florida Administrative Code, provides:

(2) "Established place of business" means that physical location noted on the occupational license issued to the motor vehicle repair shop pursuant to Chapter 205, Florida Statutes. If

the county or municipality has adopted no local occupational license requirement pursuant to Chapter 205, Florida Statutes, the term means that physical location where motor vehicle repairs are performed, or records, equipment, or tools used for the conduct of the business of motor vehicle repair are housed or stored. The term includes any vehicle constituting a mobile repair shop.

The Rule was adopted on January 18, 1995.

10. Rule 5J-12.001(2) implements Section 559.904(9). The Rule also implements Section 559.903(5) and (7), Florida Statutes, which define "minor repair service" and "motor vehicle repair shop," respectively. There is no dispute that mobile motor vehicle repair shops are included in the definition of motor vehicle repair shops.

11. The Department developed the challenged Rule over a period of several months. Numerous public meetings were conducted, particularly with the motor vehicle repair industry, throughout the State of Florida.

12. From the public meetings conducted by the Department, it was evident, among other things, that there was no clear understanding of the meaning of the term "established place of business" in Section 559.904(9). Consequently, the Department was convinced that clarification of the term was needed.

13. The Motor Vehicle Advisory Council (MVAC) reviewed and advised the Department on the challenged Rule and gave the Rule its (MVAC) approval. The MVAC is a statutorily created advisory council, composed of members from the motor vehicle repair industry.

14. The challenged Rule includes all mobile motor vehicle repair shops within the class of businesses required to be registered with the Department pursuant to Chapter 559, Florida Statutes. The Department contends that this inclusion is necessary because, since the purpose of Chapter 559 is to regulate the auto repair business, the mobile motor vehicle repair shops are conducting the business sought to be regulated in that the mobile repair shops are licensed by county and municipal authorities and are performing significant repairs for compensation.

15. There are approximately 560 mobile motor vehicle repair shops registered with the Department.

16. Standing is not at issue in this proceeding.

#### CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Section 120.56, Florida Statutes.

18. Mr. Phinney has standing to challenge the validity of the promulgated rule. As challenger, the burden is upon Mr. Phinney to demonstrate by a preponderance of the evidence that the rule is an invalid exercise of delegated legislative authority. *Humana, Inc. v. Department of Health and Rehabilitative*

Services, 469 So.2d 889 (Fla. 1st DCA 1985); and Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978), cert. den. 376 So.2d 74 (Fla. 1979).

19. Section 559.903(8), Florida Statutes, provides:

(8) "Place of business" means a physical place where the business of motor vehicle repair is conducted.

20. Section 559.904(9), Florida Statutes, provides:

(9) No annual registration application or fee is required for an individual with no employees and no established place of business.

21. Rule 5J-12.001(2), Florida Administrative Code, provides:

(2) "Established place of business" means that physical location noted on the occupational license issued to the motor vehicle repair shop pursuant to Chapter 205, Florida Statutes. If the county or municipality has adopted no local occupational license requirement pursuant to Chapter 205, Florida Statutes, the term means that physical location where motor vehicle repairs are performed, or records, equipment, or tools used for the conduct of the business of motor vehicle repair are housed or stored. The term includes any vehicle constituting a mobile repair shop.

22. The Department enacted the challenged Rule through its general rulemaking authority "to enact, amend, and repeal administrative rules as necessary." Section 570.07(23), Florida Statutes.

23. Mr. Phinney contends that if a mobile motor vehicle repair shop satisfies the two requirements in Section 559.904(9), the mobile repair shop is exempt from registration.

24. To the contrary, the Department contends that no mobile motor vehicle repair shops are exempt from registration since the Florida Motor Vehicle Repair Act 2/ is intended to regulate all motor vehicle repair shops, including mobile repair shops.

25. Subsection 120.52(8), Florida Statutes, provides in pertinent part that a rule is an "invalid exercise of delegated legislative authority" if:

(a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;

(b) The agency has exceeded its grant of rule-making authority, citation to which is required by s. 120.54(7);

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(7);

(d) The rule is vague, fails to establish adequate

standards for agency decisions, or vests unbridled discretion in the agency; or

(e) The rule is arbitrary or capricious.

26. The Florida Supreme Court described the standard for review in rule challenge cases in *General Telephone Company of Florida v. Florida Public Service Commission*, 446 So.2d 1063, 1067 (Fla. 1984) as follows:

We adopt as the proper standard of review one set forth by the First District Court of Appeal upon review of similar rulemaking: Where the empowering provision of a statute states simply that an agency may "make such rules and regulations as may be necessary to carry out the provision of this act," the validity of the regulations promulgated thereunder will be sustained as long as they are reasonably related to the purposes of the enabling legislation, and are not arbitrary and capricious. *Agrico Chemical Co. v. State, Department of Environmental Regulation*, 365 So.2d 759 (Fla. 1st DCA 1978) cert. den. 376 So.2d 74 (Fla. 1979); *Florida Beverage Corp. v. Wynne*, 306 So.2d 200 (Fla. 1st DCA 1975).

27. Additional standards applicable to the review of a rule challenge proceeding are articulated in *Department of Professional Regulation, Board of Medical Examiners v. Durrani*, 455 So.2d 515, 517 (Fla. 1st DCA 1984) as follows:

The well recognized general rule is that agencies are to be accorded wide discretion in the exercise of their lawful rulemaking authority, clearly conferred or fairly implied and consistent with the agencies' general statutory duties. *Florida Commission on Human Relations v. Human Development Center*, 413 So.2d 1251 (Fla. 1st DCA 1982). An agency's construction of the statute it administers is entitled to great weight and is not to be overturned unless clearly erroneous. *Pan American World Airways, Inc. v. Florida Public Service Commission*, 427 So.2d 716 (Fla. 1983); *Barker v. Board of Medical Examiners*, 428 So.2d 720 (Fla. 1st DCA 1983). Where, as here, the agency's interpretation of a statute has been promulgated in rulemaking proceedings, the validity of such rules must be upheld if it is reasonably related to the purposes of the legislation interpreted and it is not arbitrary and capricious. The burden is upon petitioner in a rule challenge to show by a preponderance of the evidence that the rule or its requirements are arbitrary and capricious. *Agrico Chemical Co. v. State, Dept. of Environmental Regulation*, 365 So.2d 759 (Fla. 1st DCA 1978); *Florida Beverage Corp. v. Wynne*, 306 So.2d 200 (Fla. 1st DCA 1975). Moreover, the agency's interpretation of a statute need not be the sole possible interpretation or even the most desirable one; it need only be within the range of possible interpretations. *Department of Health and Rehabilitative Services v. Wright*, 439 So.2d 937

(Fla. 1st DCA 1983) (Ervin, C. J. dissenting); Department of Administration v. Nelson, 424 So.2d 852 (Fla. 1st DCA 1982); Department of Health and Rehabilitative Services v. Framat Realty, Inc., 407 So.2d 238 (Fla. 1st DCA 1981).

28. However, where the legislative intent as evidenced by a statute is clear and unambiguous, there is no need for any construction or interpretation, and the forum need only give effect to the plain meaning of its terms. *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918).

29. The fundamental rules governing construction applicable to the instant case were aptly set forth in *Florida State Racing Commission v. McLaughlin*, 102 So.2d 574, 575 (Fla. 1958), as follows:

It is elementary that the function of the Court is to ascertain and give effect to the legislative intent in enacting a statute.

In applying this principle certain rules have been adopted to guide the process of judicial thinking. The first of these is that the Legislature is conclusively presumed to have a working knowledge of the English language and when a statute has been drafted in such a manner as to clearly convey a specific meaning the only proper function of the Court is to effectuate this legislative intent.

This rule is subject to the qualification that if a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others in *pari materia*, the Court will examine the entire act and those in *pari materia* in order to ascertain the overall legislative intent.

When construing a particular part of a statute it is only when the language being construed in and of itself is of doubtful meaning or doubt as to its meaning is engendered by apparent inconsistency with other parts of the same or closely related statute that any matter extrinsic the statute may be considered by the Court in arriving at the meaning of the language employed by the Legislature.

30. Section 559.903(8), Florida Statutes, is clear and unambiguous. If a person in the business of motor vehicle repair, performs the repair at a physical location, that physical location is considered the place of business.

31. Moreover, Section 559.904(9), Florida Statutes, is clear and unambiguous. It provides an exemption from registration for motor vehicle repair shops which meet two requirements: (1) the repair shop must not have any employees; and (2) the repair shop must have no established place of business. That is, if the motor vehicle repair shop has no employees and no fixed or consistent physical location for repairing motor vehicles, the motor vehicle repair shop is exempt from registration. The effect of Rule 5J-

12.001(2) is to take away the statutory exemption provided by the Legislature to motor vehicle repair shops which satisfy these two requirements.

32. The Department's interpretation as reflected in the challenged Rule is clearly erroneous. The Rule is not reasonably related to the purposes of the statute interpreted and is arbitrary and capricious.

33. There is no need to consider the legislative history and other extraneous matters argued by the Department. Such matters are proper for consideration only if the statute being construed is of doubtful meaning.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the petition to declare Rule 5J-12.001(2), Florida Administrative Code, invalid is GRANTED.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 29th day of June 1995.

---

ERROL H. POWELL  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of June 1995

#### ENDNOTES

- 1/ The residential address listed is a former residence.
- 2/ Sections 559.901-559.9221, F.S.

#### APPENDIX

The following rulings are made on the parties' proposed findings of fact:  
Petitioner's Proposed Findings of Fact.

(Mr. Phinney's recommended order contains no numbered paragraphs but consists of six paragraphs.)

The six paragraphs are rejected as being argument, or conclusions of law.

Respondent's Proposed Findings of Fact.

1. Partially accepted in finding of fact 6.
2. Partially accepted in finding of fact 7.

3. Partially accepted in finding of fact 9.
4. Partially accepted in findings of fact 1 and 4.
5. Partially accepted in finding of fact 15.
6. Partially accepted in finding of fact 11.
7. Partially accepted in finding of fact 12.
8. Partially accepted in finding of fact 13.
9. Partially accepted in finding of fact 14.
10. Partially accepted in findings of fact 11-12.
11. Rejected as unnecessary, or subordinate.
12. Partially accepted in findings of fact 11-13.

NOTE: Where a proposed finding has been partially accepted, the remainder has been rejected as being irrelevant, unnecessary, cumulative, subordinate, not supported by the more credible evidence, argument, or conclusion of law.

COPIES FURNISHED:

Theron C. Phinney  
Mobile Auto Repair Shop  
Post Office Box 12813  
Lake Park, Florida 33403

Robert G. Worley, Esquire  
Department of Agriculture and  
Consumer Services  
Room 515, Mayo Building  
Tallahassee, Florida 32399-0800

Honorable Bob Crawford  
Commissioner of Agriculture  
The Capitol, PL-10  
Tallahassee, Florida 32399-0810

Richard Tritschler, General Counsel  
Department of Agriculture and  
Consumer Services  
The Capitol, PL-10  
Tallahassee, Florida 32399-0810

Brenda D. Hyatt, Chief  
Department of Agriculture  
Bureau of License and Bond  
Mayo Building, Room 508  
Tallahassee, Florida 32399-0800

Liz Cloud, Chief  
Bureau of Administrative Code  
The Elliot Building  
Tallahassee, Florida 32399-0250

Carroll Webb, Executive Director  
Administrative Procedures Committee  
Holland Building, Room 120  
Tallahassee, Florida 32399-1300



NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

=====  
DISTRICT COURT OPINION  
=====

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

STATE OF FLORIDA, DEPARTMENT  
OF AGRICULTURE AND CONSUMER  
SERVICES,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED.

Appellant,

CASE NO. 95-2583  
DOAH CASE NO. 95-1095RX

vs.

MOBILE AUTO REPAIR SHOP,

Appellee.  
\_\_\_\_\_ /

Opinion filed September 10, 1996.

An Appeal from order of the Division of Administrative Hearings.

Joseph R. Englander, Senior Attorney, Department of Agriculture and Consumer Services, Tallahassee, for Appellant.

No appearance for Appellee.

PER CURIAM

AFFIRMED.

ERVIN, KAHN, and BENTON, JJ., CONCUR.

MANDATE  
From  
DISTRICT COURT OF APPEAL OF FLORIDA  
FIRST DISTRICT

To the Honorable Errol H. Powell, Hearing Officer  
Division of Administrative Hearings

WHEREAS, in that certain cause filed in this Court styled:

MOBILE AUTO REPAIR SHOP

vs.

Case No. 95-2583  
Your Case No. 95-1095RX

DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES

The attached opinion was rendered on September 10, 1996.

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable Edward T. Barfield

Chief Judge of the District Court of Appeal of Florida, First District and  
the Seal of said court at Tallahassee, the Capitol, on this 26th day of  
September, 1996.

(seal) \_\_\_\_\_  
Jon S. Wheeler  
Clerk, District Court of Appeal of Florida,  
First District