

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROGER E. YATES, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE No. 97-0068  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, BOARD )  
 OF PROFESSIONAL LAND SURVEYORS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**RECOMMENDED ORDER OF DISMISSAL**

On February 11, 1997, Respondent filed a Motion to Dismiss. The motion was heard by Administrative Law Judge, Susan B. Kirkland, on February 17, 1997, by telephonic conference.

**APPEARANCES**

For Petitioner: Gerald T. Roden, Esquire  
1432 Twenty First Street  
Vero Beach, Florida 32960

For Respondent: R. Beth Atchison, Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0750

**STATEMENT OF THE ISSUES**

Whether Petitioner should be given credit for an examination question on the Florida Jurisdictional Essay Exam for Surveyors and Mappers taken by Petitioner in April, 1996.

**PRELIMINARY STATEMENT**

By letter dated October 1, 1996, Petitioner, Roger E. Yates, filed a petition pursuant to Rule 61-11.012, Florida Administrative Code, challenging the points awarded for question number 16 on the Florida Jurisdictional Exam for Surveyors and Mappers given in April, 1996. Petitioner contended that he should have been given four points, the maximum number of points which could have been given for the answer to question number 16. The request was forwarded to the Division of Administrative Hearings for assignment to an Administrative Law Judge. The final hearing was scheduled for February 20, 1997. On February 11, 1997, Respondent, Department of Business and Professional Regulation, Board of Professional Engineers (Department) filed a Motion to Dismiss, stating that the Petitioner had been given the maximum number of points that could be given for the answer to question number 16. On February 14, 1997, Petitioner filed a Response to Motion to Dismiss and Motion for Leave to File Amended Petition. Petitioner sought to amend his challenge to include other questions in addition to number 16.

The motions were heard by telephone conference on February 17, 1997. Petitioner's Motion for Leave to File Amended Petition for Formal Hearing is DENIED. Petitioner seeks to include questions which he did not challenge in his original petition. As such, the challenges to questions other than question number 16 would be untimely filed because they were not challenged

within twenty-one days of the date that he was notified of his examination grade report in accordance with Rule 61-11.012, Florida Administrative Code.

#### **FINDINGS OF FACTS**

1. Petitioner, Roger E. Yates, filed a petition for formal hearing by letter dated October 1, 1996, challenging the points which were awarded to him for the answer to question number 16 on the Florida Jurisdictional Essay Exam for Surveyors and Mappers given in April 1996.

2. Petitioner contends that he should have been given the maximum number of points, which is four, for the answer to question number 16. Petitioner did not challenge any other questions in his petition.

3. Petitioner was awarded four points for the answer to question number 16, which was the maximum number of points he could receive. Such award results in a score of 69, which is less than the required minimum score of 70.

#### **CONCLUSIONS OF LAW**

4. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

5. The Department is giving Petitioner four points for the answer to question number 16, which is the relief that Petitioner sought in his petition dated October 1, 1996. Thus, the Department concedes that Petitioner is entitled to four points

for that examination question and there is no disputed issue of material fact.

6. The four points will not change Petitioner's overall score for the examination of 69. Rule 61G-17.4004, Florida Administrative Code, provides that a score of 70 is required to pass the Florida Jurisdictional Exam.

7. Petitioner has sought to amend his petition to challenge other questions on the examination. To allow Petitioner to amend his petition to include questions which were not challenged in the original petition, in essence, would be to allow Petitioner to make an untimely challenge to those questions because the questions were not challenged within twenty-one days of the notice of the examination results as required by Rule 61-11.012, Florida Administrative Code.

#### **RECOMMENDATION**

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

**RECOMMENDED** that a Final Order be entered dismissing Roger E. Yates' petition for relief.

**DONE AND ENTERED** in Tallahassee, Leon County, Florida, this 19th day of February, 1997.

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**SUSAN B. KIRKLAND**  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of February, 1997.

**COPIES FURNISHED:**

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**NOTICE OF RIGHT TO SUBMIT EXCEPTIONS**

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.