

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN A. STEPHENS and JOHN)
STEPHENS, INC.,)
)
Petitioners,)
)
vs.) Case No. 97-0545RX
)
DEPARTMENT OF CITRUS,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to their waiver of formal administrative hearing by the parties, disposition of this case is based upon stipulated facts and documents, together with proposed final orders and supporting memoranda.

APPEARANCES

For Petitioner: William E. Williams, Esquire
Huey Guilday and Tucker, P.A.
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For Respondent: Clark R. Jennings, Esquire
Department of Citrus
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STATEMENT OF THE ISSUES

The issue for determination is whether Department of Citrus Rules 20-1.009 and 20-1.010, Florida Administrative Code, are invalid exercises of delegated legislative authority, as alleged by Petitioners.

PRELIMINARY STATEMENT

On February 3, 1997, Petitioners filed their petition for determination of invalidity of administrative rules. The case was assigned and set for hearing within the 30-day deadline. After a waiver of the deadline and agreed motion for continuance, the hearing was reset and was later cancelled when the parties requested submittal of the case by stipulated record in lieu of an evidentiary hearing.

That record, filed on June 26, 1997, includes the following:

Petitioners' exhibit 1: citrus fruit dealer's agent registration application, dated September 26, 1996, filed by John A. Stephens and John Stephens, Inc., with the Florida Department of Agriculture and Consumer Services (DACS);

Petitioners' exhibit 2: December 26, 1996, letter from DACS denying the application for agent registration;

Petitioners' exhibits 3-14: twelve Final Orders by DACS from 1991 and 1992, establishing indebtedness by J. A. Stephens, Inc., d/b/a Frostproof Groves, a licensed citrus fruit dealer, to various claimants;

Department of Citrus exhibit 1: Florida Citrus Commission minutes of meetings in 1964;

Department of Citrus exhibit 2: Florida Citrus Commission minutes of meetings in 1964 and 1965;

Department of Citrus exhibit 3: House of Representatives Committee on Streamlining Governmental Regulations Final Bill Analysis and Economic Impact Statement concerning Bill numbers CS/SB's 2290 and 2288, dated June 14, 1996; and

The parties' Prehearing Stipulation, with stipulations of facts.

The parties also filed their proposed final orders on June 26, 1997.

FINDINGS OF FACT

1. John Stephens, Inc., Petitioner, was at all times material hereto a Florida corporation duly licensed as a citrus fruit dealer in the State of Florida.

2. J. A. Stephens, Inc., was a Florida corporation, and held a valid fruit dealer's license in the State of Florida.

3. At all times material to this proceeding, Petitioner, John A. Stephens, served as an officer and director of J. A. Stephens, Inc. John A. Stephens is not an officer, director or shareholder of John Stephens, Inc.

4. John A. Stephens, Jr. is the president and sole director of John Stephens, Inc. and is not an officer, director nor shareholder of J. A. Stephens, Inc.

5. On or about September 26, 1996, Petitioners, John Stephens, Inc., and John A. Stephens, applied to the Florida Department of Agriculture and Consumer Services to register John A. Stephens as an agent of John Stephens, Inc., pursuant to Section 601.601, Florida Statutes. The application form furnished by the Department of Agriculture and Consumer Services indicates that the licensed dealer seeking registration of an agent agrees to "... accept full responsibility for all his activities...." (Petitioners' Exhibit 1)

6. By letter dated December 26, 1996, Petitioners were advised by the Department of Agriculture and Consumer Services that their application for registration of John A. Stephens as an agent of John Stephens, Inc., had been denied on the basis of

Rule 20-1.010, Florida Administrative Code. As indicated in the notice, that rule provides, in part, that an application for registration of a dealer's agent can be disapproved if a proposed registrant has a "...record, either as an individual, co-partnership, corporation, association or other business unit, showing unsatisfied debts or orders issued by the Commissioner of Agriculture with respect to prior dealings in citrus fruit." (Petitioners' Exhibit 1.) Specifically, the Department of Agriculture and Consumer Services advised Petitioners that "...Mr. Stephens has not satisfied orders issued by the Commissioner of Agriculture with respect to prior dealings in citrus fruit..." listing as the final orders in question Petitioners' Exhibits 3 through 14.

7. Between April 30, 1991, and September 30, 1992, the State of Florida, Department of Agriculture and Consumer Services entered a total of 12 final administrative orders in which it found that J. A. Stephens, Inc., was indebted to claimants for various sums arising from prior dealings in citrus fruit. (Petitioners' Exhibits 3 through 14.) At the time of the action of the Department of Agriculture and Consumer Services denying Petitioners' application, there remained amounts due and unpaid on each of the orders entered by the Department against J. A. Stephens, Inc.

8. Petitioner, John A. Stephens was not named as a party respondent in any of the 12 proceedings culminating in final

orders against J. A. Stephens, Inc., which formed the basis for the denial by the Department of the application for registration as a citrus dealer's agent. (Petitioners' Exhibits 2, and 3 through 14.) In denying a Motion for Relief for Final Order in the only Department of Agriculture and Consumer Services proceeding in which a claimant sought to join Mr. Stephens individually as a party, the Department found that:

The complaint filed by Claimant named J. A. Stephens, Inc. as the respondent. Because the complaint was against J. A. Stephens, Inc., it was served on J. A. Stephens, Inc. J. A. Stephens, an individual, was never subjected to the jurisdiction of the Agency with regard to this matter. J. A. Stephens, an individual, was not afforded an opportunity to defend against the allegations of the complaint. There was no discussion at the hearing about whether J. A. Stephens, Inc. was or was not the proper respondent. There was no allegation at the hearing that J. A. Stephens, an individual, was the proper respondent.

The Claimant has failed to express any legal basis for grant of his motion and this Agency could find no such basis. This Agency has no personal jurisdiction over J. A. Stephens, an individual, with regard to this matter and therefore cannot enter an order with respect to him. Further, even if such an order were to be entered, it would be of no force or effect because of the lack of personal jurisdiction. (Petitioners' Exhibit 4, pg. 2.)

9. The rules that are the subject of this proceeding had their inception in 1964, when the Florida Citrus Commission considered and adopted rules governing the registration of agents acting on behalf of licensed citrus dealers. These rules, which appear in the text of the minutes of the Commission as Regulation

105-1.05, are almost verbatim the same rules now found in Chapter 20-1, Florida Administrative Code. (Respondent's Exhibits 1 and 2.)

10. As reflected in the minutes of the Florida Citrus Commission, the rules were adopted to help protect the grower and shipper or processor in matters involving the normal movement of citrus fruit in all channels of distribution. The regulation was recommended by the Fresh Citrus Shippers Association and was endorsed by a resolution of the Florida Sheriffs Association. In presenting the Sheriffs' resolution to the Commission, Sheriff Leslie Bessenger of the Florida Citrus Mutual Fruit Protection Division cited the results of a seven-month investigation that found 71 out of 200 registered agents with criminal records. Those two hundred agents represented only nine dealers. (Respondent's exhibit 1, June 19, 1964, meeting.) Minutes of Commission meetings after rule adoption thoroughly explain the efforts to require accountability and curb abuse of the dealer-agent relationship.

11. The rules, as they appear today in the Florida Administrative Code, have not been revised since July 1, 1975.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Section 120.56, Florida Statutes (Supp. 1996), which provides that any person substantially affected by a rule or a proposed rule may seek an

administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

13. As stipulated by the parties, Petitioners have standing to maintain this challenge to Rules 20-1.009 and 20-1.010, Florida Administrative Code.

14. Petitioners, to prevail, must prove by a preponderance of the evidence that the challenged rules are invalid exercises of legislative authority. Agrico Chemical Company v. Dept. of Environmental Regulation, 365 So. 2d 759 (Fla. 1st DCA 1979).

"Invalid exercise of delegated legislative authority" is defined, in pertinent part, in 120.58(8), Florida Statutes:

120.52 Definitions.-

As used in this act:

(8) "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

...

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious;

(f) The rule is not supported by competent substantial evidence;

...

A grant of rulemaking authority is necessary but not sufficient to allow an agency to

adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

15. The language regarding agencies' authority to adopt rules is repeated in Section 120.536(1), Florida Statutes (Supp. 1996). That section requires agencies to provide the Administrative Procedures Committee by October 1, 1997, a list of rules adopted prior to October 1, 1996, which exceed their permitted rulemaking authority. Section 120.536(3), Florida Statutes, (Supp. 1996) provides:

(3) All proposed rules or amendments to existing rules filed with the Department of State on or after October 1, 1996, shall be based on rulemaking authority no broader than that permitted by this section. A rule adopted before October 1, 1996, and not included on a list submitted by an agency in accordance with subsection (2) may not be challenged before November 1, 1997, on the grounds that it exceeds the rulemaking authority or law implemented as described by this section. A rule adopted before October 1, 1996, and included on a list submitted by an agency in accordance with subsection (2) may not be challenged before July 1, 1999, on the grounds that it exceeds the rulemaking authority or law implemented as described by this section. (emphasis added)

This section does not preclude challenges to the invalidity of a rule under other provisions of Chapter 120. (Respondent's exhibit 3, p. 26.)

16. The rules that are challenged in this proceeding provide:

20-1.009 Examination of Agent Application.

(1) The Department of Agriculture shall, within a reasonable time, examine each application for agent registration and consider the information submitted therewith. The Department of Agriculture shall also consider the past history of any applicant for whom registration is sought, either individually or in connection with any individual, copartnership, corporation, association or other business unit with whom any person being considered for registration as a citrus fruit dealer's agent shall have been connected in any capacity, and may, in proper cases, impute to the applicant, association, or other business unit, the liability for any wrong or unlawful act previously performed by said individual, corporation, copartnership, association or any other business unit.

(2) Any application for the registration of a person as a citrus fruit dealer's agent, believed to be a subterfuge to permit a person to act as a citrus fruit dealer without proper licensing, shall, prior to registration being granted, be referred to the Department of Citrus, together with a report detailing the facts and circumstances surrounding the application. Agent registration shall not be approved if the Florida Citrus Commission makes a finding that such person would not be qualified for license as a citrus fruit dealer and that such agent registration would be a subterfuge to permit the person to operate as a citrus fruit dealer without a license.

20-1.010 Grounds for Disapproval of Agent Registration.

An application for the registration of a citrus fruit dealer's agent may be disapproved if the person for whom registration is requested has:

(1) A record, either as an individual or in connection with any individual, copartnership, corporation, association or other business unit, showing unsatisfied debts or orders issued by the Commissioner of Agriculture with respect to prior dealings in citrus fruit.

(2) Violated or aided or abetted in the violation of any law of Florida applicable to citrus fruit dealers, or any lawful rules of the Department of Citrus.

(3) Been guilty of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealing.

(4) Knowingly made, printed, published or distributed, or caused, authorized or knowingly permitted the making, printing, publication or distribution of false statements, descriptions, or promises of such a character as may reasonably induce any person to act to his damage or injury, if the applicant for registration as agent knew, or should have known, of the falsity of such statements, descriptions or promises.

(5) Committed any act or conduct of the same or different character as enumerated herein which shall constitute fraudulent or dishonest dealing.

(6) Violated any of the provisions of Sections 506.19 through 506.28, Florida Statutes. (emphasis added)

17. Sections 601.10(1), and 601.601, Florida Statutes, provide:

601.10 Powers of the Department of Citrus.- The Department of Citrus shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but shall not be confined to, the following:

(1) To adopt and, from time to time, alter, rescind, modify, or amend all proper and

necessary rules, regulations, and orders for the exercise of its powers and the performance of its duties under this chapter and other statutes of the state, which rules and regulations shall have the force and effect of law when not inconsistent therewith.

601.601 Registration of dealers' agents.-

Every licensed citrus fruit dealer shall:

(1) Register with the Department of Agriculture each and every agent, as defined in s. 601.03(2), authorized to represent such dealer; make application for registration of such agent or agents on a form approved by the Department of Agriculture and filed with the Department of Agriculture not less than 5 days prior to the active participation of the agent or agents on behalf of such dealer in any transaction described in s. 601.03(2); and be held fully liable for and legally bound by all contracts and agreements, verbal or written, involving the consignment, purchase, or sale of citrus fruit executed by a duly registered agent on his behalf during the entire period of valid registration of such agent the same as though such contracts or agreements were executed by the dealer. Registration of each agent shall be for the entire shipping season for which the applying dealer's license is issued; however, a licensed dealer may cancel the registration of any agent registered by him by returning the agent's identification card to the Department of Agriculture and giving formal written notice to the Department of Agriculture of not less than 10 days. In addition, such dealer shall make every effort to alert the public to the fact that the agent is no longer authorized to represent him. An agent may be registered by more than one licensed dealer for the same shipping season, provided that each licensed dealer shall apply individually for registration of the agent and further provided that written consent is given by each and every dealer under whose license the agent has valid prior registration.

(2) When the above requirements and such additional requirements as may be set forth

by regulations adopted by the Department of Citrus for registration of an agent have been met and the fee required by s. 601.59(2) has been paid, the Department of Agriculture shall duly register the agent and issue an identification card certifying such registration. The identification card, among other things, shall show in a prominent manner:

- (a) The name and address of the agent;
- (b) The authorizing dealer's name, address, and license number;
- (c) The effective date and season for which registration is made;
- (d)1. A space for signature of the agent;
- 2. A space to be countersigned by the licensed dealer;
- 3. A statement providing that the card is not valid unless so signed and countersigned.

The Department of Citrus may, from time to time, adopt additional requirements or conditions relating to the registration of agents as may be necessary. (emphasis added)

18. As observed by the Petitioners, the regulatory requirements for review and approval of registration of agents are very similar to requirements imposed by Statute on dealers in citrus fruit:

601.57 Examination of application; approval of dealers' licenses.-

(1) The Department of Citrus shall, within a reasonable time, examine the application and consider the information submitted therewith, including the applicant's financial statement and the reputation of the applicant as shown by applicant's past and current history and activities, including applicant's method and manner of doing business. The Department of Citrus shall also consider the past history of any applicant, either individually or in connection with any individual, copartnership, corporation, association, or other business unit with whom any applicant shall have been connected in any capacity, and may in proper cases impute to any

individual, corporation, copartnership, association, or other business unit liability for any wrong or unlawful act previously done or performed by such individual, corporation, copartnership, association, or other business unit.

(2) If the Florida Citrus Commission shall, by a majority vote, be of the opinion that the applicant is qualified and entitled to a license as a citrus fruit dealer, the commission shall approve the application; otherwise the application shall be disapproved. However, commission approval of any application may be contingent upon such reasonable conditions as may be endorsed thereon by the commission, or commission action on an application may, by majority vote, be deferred to a subsequent date.

(3) In cases of deferred action, as set forth in subsection (2), if the applicant so requests and the factual circumstances are deemed by the commission so to justify, the commission may approve the granting of a temporary license to be valid for a period to be set by the commission, not to exceed 60 days. No more than one temporary license shall be approved for any applicant during a shipping season. No temporary license may be approved unless all requirements relating to bonds or fees required to be posted or paid by the applicant have been met the same as though the approval were not of a temporary nature.

(4) Grounds for the disapproval of the application include, but are not limited to:

(a) Any previous conduct of the applicant which would have been grounds for revocation or suspension of a license as hereinafter provided if the applicant had been licensed.

(b) Delinquent accounts of the applicant owing to and growing out of the ordinary course of business with producers and other persons or firms.

(c) Delinquent accounts of the applicant with any person or persons with whom applicant has dealt in its operations under a previous license.

(d) Failure of the applicant or its owners, partners, officers, or agents to comply with any valid order of the Department of

Agriculture or the Department of Citrus relating to citrus fruit laws or rules.

(e) Applicant's violation, or aiding or abetting in the violation, of any federal or Florida law or governmental agency rule or regulation governing or applicable to citrus fruit dealers.

(5) When the applicant is a corporate or other business entity, the term "applicant" as used in this section shall be deemed to include within its meaning those individuals who have been, or can reasonably be expected to be, actively engaged in the managerial affairs of the corporate or other business entity applicant.

(6) The Department of Citrus shall designate not more than three employees directly involved in the processing of citrus fruit dealer license applications, who shall be a part of, and shall have access to, the criminal justice information system described in chapter 943, for purposes of investigating license applicants.

(7) The Department of Citrus is authorized to establish by rule the procedure and guidelines for granting interim conditional staff approval for issuance of a conditional citrus fruit dealer's license, which license shall at all times be subject to final approval or other action by the commission at its next regular meeting. Any license so issued shall clearly and conspicuously indicate thereon the conditional nature of the approval and pendency of final action.

(emphasis added)

19. The predecessor statute governing licensing of dealers was found to be a valid exercise of police power in Mayo v. Polk County, 169 So. 2d 41, 44 (Fla. 1936):

The method of growing and marketing a citrus fruit crop is fraught with hazards not peculiar to any other fruit crop. The period of growing and marketing from the bloom is from ten to eighteen months. The crop is grown, packed, and marketed in different places by different people, and under different circumstances. Fires, freezes, and

other destructive agencies may intervene over which the grower has no control. It often becomes advantageous to bargain for packing and sale months in advance of maturity. These and other contingencies are accompanied by hazards singular to the citrus fruit industry that amply justify the provisions of the act complained of.

20. Petitioners argue that if the legislature had intended that agents be subjected to the same scrutiny as dealers, it could have specifically described those requirements as it did in Section 601.57, Florida Statutes. More compelling is Respondent's argument that the legislature fully intended to leave to the Department of Citrus the discretion to adopt requirements as needed. The authority conferred in the last sentence in Section 601.601, Florida Statutes, is simple and direct. The principle of expressio unius est exclusio alterius, invoked by Petitioners, does not always circumscribe an agency's ability by rule to embellish requirements described in a statute. It is necessary to determine legislative intent in a broader examination of the regulatory scheme. See, Agency for Health Care Administration v. University Hospital, 670 So. 2d 1037 (Fla. 1st DCA 1996).

21. Petitioners complain that Rules 20-1.009 and 20-1.010, Florida Administrative Code, contain no standards to assess an applicant's involvement with a corporation or other business entity, and are thus vague, fail to establish adequate standards or vest unbridled discretion in the agency. As described above, the rules track the language of the statute governing licensing

of dealers. The statute has been applied for more than 30 years. The rules, like the statute do not require "men of common intelligence" to guess at their meaning. Bouters v. State of Florida, 659 So. 2d 235 (Fla. 1995). Whether the terms of the rule should properly apply to the Petitioners is a matter for disposition in an administrative hearing pursuant to Section 120.569 and 120.57(1), Florida Statutes (Supp. 1996).

22. The record of proceedings of the Florida Citrus Commission amply supports that agency's original adoption of the rules that are challenged here. The Commission recognized that persons representing dealers of citrus fruit require much the same scrutiny as the dealers themselves, as growers, producers, and other persons are egregiously harmed by the defalcations of either.

23. Petitioners have not met their burden of demonstrating the invalidity of Rules 20-1.009 and 20-1.010, Florida Administrative Code. The Department appropriately exercised its authority granted in Sections 601.10(1) and 601.601, Florida Statutes. This conclusion recognizes that the rules in their present form have reposed in the Florida Administrative Code for 22 years and have been applied and interpreted by the Agency for some 10 years longer. See, Jax Liquors, Inc. v. Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation, 388 So. 2d 1306 (Fla. 1st DCA 1980). The presumption of validity

substantially outweighs the level of proof and argument provided by Petitioners.

ORDER

Based on the foregoing, it is hereby,

ORDERED: the petition for Determination of Invalidity of Administrative Rules is DENIED.

DONE AND ENTERED this 29th day of July, 1997, in Tallahassee, Leon County, Florida.

MARY CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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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 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.