

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN HIS SERVICE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 99-0494  
 )  
 DEPARTMENT OF REVENUE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On April 13, 1999, a formal administrative hearing was held in this case in Clearwater, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Shirley Cole, Pastor  
In His Service  
5155 20th Avenue, North  
St. Petersburg, Florida 33710

For Respondent: Kevin ODonnell, Assistant General Counsel  
Department of Revenue  
Post Office Box 6668  
Tallahassee, Florida 32314-6668

STATEMENT OF THE ISSUE

The issue in this case is whether the Petitioner should be issued a sales tax exemption certificate either as a "church" or as a "religious organization."

PRELIMINARY STATEMENT

On December 28, 1998, the Respondent, the Department of Revenue (DOR), denied the application of the Petitioner, In His Service, for a sales tax exemption certificate either as a

"church" or as a "religious organization," and the Petitioner requested a formal administrative proceeding. DOR referred the matter to the Division of Administrative Hearings (DOAH) on February 1, and final hearing was scheduled for April 13, 1999, in Clearwater, Florida.

At final hearing, Shirley Cole testified as the Petitioner's pastor, and had Petitioner's Exhibits 1 through 3 admitted in evidence. DOR called one witness and had Respondent's Exhibits 1 through 4 admitted in evidence. DOR requested a transcript of the final hearing, and the parties were given ten days from the filing of the transcript in which to file proposed recommended orders. The Transcript was filed on April 22, 1999.

#### FINDINGS OF FACT

1. The Petitioner, In His Service, is a not-for-profit organization formed to give structure to a Bible study and prayer group Shirley B. Cole leads. Cole is the Petitioner's "pastor," but she is not ordained, does not officiate at weddings or funerals, and has no formal religious training other than participation in similar study groups in the past.

2. The Petitioner is affiliated with an organization called the Federation of Independent Churches, which has an office on East Bird Street in Tampa, Florida. (In a post-hearing submission, Cole asserted that the Petitioner's "outreach is from Greater Ministries International, basically functioning as a satellite church, but there was no evidence regarding Greater

Ministries International.) Portions of the Petitioner's by-laws were admitted in evidence at the final hearing. The by-laws make reference to three officers--president, vice-president, and secretary-treasurer--but Cole testified that she was the secretary and that someone else was the treasurer, and she did not seem to know anything about a president or vice-president. In addition, while the by-laws refer to a board of directors and meetings of the board of directors, Cole does not know anything about either.

3. The Petitioner is small (not more than 15 members). It consists primarily of Cole and her friends and neighbors and some others who hear about the meetings. The group has met in various locations, including Cole's home at 5155 20th Avenue North, St. Petersburg, Florida, and the homes of other members of the group. In addition to Bible study and prayer, the group discusses health issues and other topics of interest and shares reading materials and tapes on topics of interest. From time to time, the group collects items of donated personal property for the use of members of the group and others in need who could use the items.

4. In late June 1998, the Petitioner applied for a sales tax exemption certificate as a church. In response to a question from a representative of the Respondent DOR Cole stated that the Petitioner held services in her home every Thursday from 7:30 to 9:30 or 10 p.m.

5. A DOR representative attempted to confirm Cole's representation by attending a meeting in Cole's home on Thursday, October 8, 1998, but no services were being held there, and no one was home. If there was a meeting on that day, it was held somewhere else.

6. On or about December 28, 1998, DOR issued a Notice of Intent to Deny the Petitioner's application because the Petitioner did not have "an established physical place of worship at which nonprofit religious services and activities are regularly conducted and carried on."

7. In January 1999, Cole requested an administrative proceeding on the Petitioner's application, representing that she was holding the Petitioner's meetings at her home every Monday from 7:30 p.m.

8. On Monday, April 5, 1999, a DOR representative visited Cole's home at 7:30 or 7:35 p.m., but no one was home. At final hearing, Cole testified that she went to pick someone up to attend the meeting and was late returning.

9. Cole had an April 1999 newsletter admitted in evidence. It indicates that she holds weekly Bible study meetings on Mondays at her home. It also indicates: "The week of April 19th will be our maintenance [health] meeting." It also indicates that the Monday, April 26, 1999, meeting would be a "covered dish dinner with prayer and praise fellowship afterward."

10. Cole also had a book/tape loan check-out list admitted in evidence. The list indicates that two items were checked out on January 21, one on February 8, two on February 14, one on February 15, one on March 8, one on March 21, two on March 22, one on April 4, one on April 5, and four on April 12, 1999. (Two entries dated April 13 precede two on April 12, so it is assumed that all were on April 12, 1999).

11. Cole owns her home, pays the taxes, and pays the utility bills. Cole also claims a homestead exemption. There are no signs, no physical attributes, or anything else that would identify Cole's house as a church. No part of the home is set aside for the Petitioner's exclusive use. The Petitioner pays no rent to Cole and does not reimburse Cole for any of her expenses (such as taxes and utility bills) of home ownership.

12. Under local City of St. Petersburg zoning ordinances, Cole would have to obtain a special exception from the Environmental Development Commission to use her home as a church. Cole has not attempted to do so. Had she tried, the special exception would be denied because her home does not meet the ordinance's minimum lot and yard size criteria for such a special exception. (It is not clear whether Cole's home would meet the ordinance's parking, maximum floor area ratio, and maximum surface ratio criteria for a special exception for a church.)

13. In light of past discrepancies between the Petitioner's representations and the facts, it was not clear from the evidence

presented in this case that meetings have taken place, are taking place, or will take place in Cole's home on a regular basis.

CONCLUSIONS OF LAW

14. In pertinent part, Section 212.08, Florida Statutes (1997), provides for the following exemption from sales tax:

(o) Religious, charitable, scientific, educational, and veterans' institutions and organizations.--

1. There are exempt from the tax imposed by this chapter transactions involving:

a. Sales or leases directly to churches or sales or leases of tangible personal property by churches;

\* \* \*

2. The provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category as follows:

a. "Religious institutions" means churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on.

15. Florida Administrative Code Rule 12A-1.001(3) provides in pertinent part:

(3) RELIGIOUS, EDUCATIONAL, CHARITABLE, VETERANS' AND SCIENTIFIC ORGANIZATIONS, HOMES FOR THE AGED, NURSING HOMES OR HOSPICES, FEDERAL AND STATE CHARTERED CREDIT UNIONS, FLORIDA RETIRED EDUCATORS ASSOCIATION AND LOCAL CHAPTERS, ORGANIZATIONS PROVIDING SPECIAL EDUCATIONAL AND SOCIAL BENEFITS TO MINORS, STATE THEATER CONTRACT ORGANIZATIONS, MILITARY MUSEUM FUNDRAISERS, COAST GUARD AUXILIARIES, AND CEMETERY ASSOCIATIONS.

(a) A sale or lease directly to or sales or leases of tangible personal property by churches, or a sale or lease directly to nonprofit religious, nonprofit educational, nonprofit charitable institutions, and veterans' organizations, for use in the course of their customary nonprofit

religious, nonprofit educational, nonprofit charitable activities, and for use by veterans' organizations, including church cemeteries, are exempt from the tax imposed by Chapter 212, F.S. . . .

\* \* \*

(c) 'Church' means a religious institution having an established physical place of worship where persons regularly assemble for worship and instruction for religious purposes. Religious organizations whose functions are radio or television broadcasting or those organizations conducting services for short periods of time at temporary locations, and religious associations that provide administrative functions only, are not considered to be churches.

(d) 'Religious institutions' means churches, synagogues, and established physical places for worship at which

nonprofit religious services and activities are regularly conducted and carried on.

16. The statute and rule also provide for sales tax exemptions for certain "religious institutions" other than "churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on." But the Petitioner does not seek an exemption under any of those provisions. The issue is whether the Petitioner is a "church," as defined by the statute and rule--i.e., whether the Petitioner is an "established physical [place] for worship at which nonprofit religious services and activities are regularly conducted and carried on."

17. In deciding the issue, consideration must be given to the rule of statutory interpretation that provisions for tax exemptions must be strictly construed against the person claiming

the exemption. See Asphalt Pavers, Inc., v. Dept. of Revenue, 584 So. 2d 55, 57 (Fla. 1st DCA 1991); Dept. of Revenue v. Skop, 383 So. 2d 678, 680 (Fla. 5th DCA 1980); Wanda Marine Corp. v. Dept. of Revenue, 305 So. 2d 65, 69 (Fla. 1st DCA 1974). The Petitioner has the burden to prove entitlement to the exemption. Green v. Pederson, 99 So. 2d 292, 296 (Fla. 1957). Proof of entitlement requires proof of all of the criteria for exemption. Final Order, Gainesville Amateur Radio Society, Inc. v. Dept. of Revenue, DOAH Case No. 94-1200, (DOR 1995).

18. In this case, the evidence was not clear, in light of past discrepancies between the Petitioner's representations and the facts, whether meetings have taken place, are taking place, or will take place in Cole's home on a regular basis. In addition, it is clear that the meeting place which is the basis of the Petitioner's claim for exemption is, simply put, Shirley Cole's home. It is not a church and, under local law, cannot be a church.

#### RECOMMENDATION

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

RECOMMENDED that the DOR enter a final order denying the Petitioner's application for a tax exemption certificate.



DONE AND ENTERED this 18th day of May, 1999, in Tallahassee,  
Leon County, Florida.

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J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of May, 1999.

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.