

11-30-04

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

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Department of Health,  
*Petitioner,*

Rendition no.: DOH-04- 1621 -FOF-HST  
Case no.: 04-2946

vs.

Paul Ware aka Paul  
Montgomery-Ware aka  
Paul Leon Ware,  
*Respondent.*

LPS-CWS

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

2005 JAN -3 P 1:43

FILED

FINAL ORDER

A recommended order having been received, this matter is before Department of Health (Department) for the entry of a final order. At issue is the citation imposing a fine on the Respondent for installing an on-site sewage treatment and disposal system (septic tank) without first obtaining a permit from the Polk County Health Department.

The Administrative Law Judge recommends that a fine of five hundred dollars (\$500) be imposed on the Respondent for violating the statutory and rule requirement of a permit. Although he declined to attend the final hearing held in this proceeding, the Respondent filed a "Response to Recommended Order", which is deemed to be exceptions allowed by Section 120.57(1)(k), Florida Statutes. The same provision also requires each exception to identify the disputed portion of the recommended order, identify the legal basis for the exception, and include a specific citation to the record.

The Respondent identifies the paragraphs of the recommended order he disputes, but otherwise his exceptions do not sufficiently comply with Section 120.57(1)(k), Florida Statutes, to enable meaningful consideration. It is noted that the Respondent's primary objection to the recommended

order is that administrative adjudication is unconstitutional; therefore he maintains there is no jurisdiction over him for this proceeding, and the findings and conclusions of the Administrative Law Judge are extra vires. It is long settled that executive agencies may conduct quasi-judicial proceedings. See, e.g., *Koehler v. Florida Real Estate Commission*, 390 So.2d 711 (Fla. 1980). The exceptions are without legal foundation.

The recommended order of November 30, 2004 is incorporated by reference. The findings, conclusions, and recommendation set forth in the recommended order are adopted.

Based on the foregoing, a fine of five hundred dollars (\$500) is imposed on the Respondent. Payment in full is due no later than 30 days after the filing date of this final order. Pay by check or money order payable to the Department of Health and mail payment to Roland Reis, Polk County Health Department, 1290 Golfview Avenue, 4<sup>th</sup> floor, Bartow, Florida 33830-6740.

DONE and ORDERED this 29<sup>th</sup> day of December 2004, in Tallahassee, Leon County, Florida.

JOHN O. AGWUNOBI, M.D., M.B.A., M.P.H.  
Secretary, Department of Health

By: Bonita J. Sorensen  
Bonita J. Sorensen, M.D., M.B.A.  
Deputy State Health Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. A REVIEW PROCEEDING IS GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS FINAL ORDER.

Copy furnished to each of the following:

Roland Reis, Esquire  
Polk County Health Department  
1290 Golfview Avenue, 4<sup>th</sup> floor  
Bartow, Florida 33830-6740

Gerald Briggs, Bureau Chief  
Department of Health  
Onsite Sewage Program  
4052 Bald Cypress Way, bin A08  
Tallahassee, Florida 32399-1713

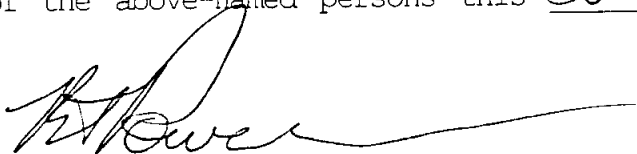
✓ Hon. Lawrence P. Stevenson  
Administrative Law Judge  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

Paul Ware  
c/o 6557 Crescent Drive  
Lakeland, Florida 33813

FALR

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing FINAL ORDER has been served by ordinary mail via the United States Postal Service, inter-office mail, or by hand delivery to each of the above-named persons this 30<sup>th</sup> day of December 2004.



R. Samuel Power  
Agency Clerk  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703  
phone: (850) 245-4005