

A. Cole

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

FINANCIAL SERVICES
COMMISSION and the FINANCIAL
SERVICES COMMISSION, OFFICE
OF INSURANCE REGULATION,

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

Appellants,

CASE NO. 1D05-4379

v.

The FLORIDA INSURANCE
COUNCIL, INC.,

Appellee.

2006 AUG 16 A 11:08
FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS

Opinion filed August 15, 2006.

An appeal from an order of the Division of Administrative Hearings.
Diane Cleavinger, Administrative Law Judge.

James H. Harris, Assistant General Counsel, Office of Insurance Regulation,
Tallahassee, for Appellants.

Cynthia S. Tunnicliff and Brian A. Newman of Pennington, Moore, Wilkinson, Bell
& Dunbar, P.A., Tallahassee, for Appellee.

PER CURIAM.

Appellants challenge a final order that found several of their proposed rules
invalid exercises of delegated legislative authority pursuant to section 120.52(8)(a),
Florida Statutes (2004), because they failed to follow applicable rulemaking
procedures. Specifically, the Administrative Law Judge found the Financial Services

Commission failed to fulfill its statutory duty under section 120.54(3)(a), Florida Statutes, as “agency head,” to approve the proposed rules prior to their publication in the Florida Administrative Law Weekly. We affirm.

Section 20.121(3)(c), Florida Statutes, provides that the Commission is the “agency head” of the Department of Financial Services for purposes of rulemaking. The agency head is required by section 120.54(3)(a) to approve proposed rules prior to their publication in the Florida Law Weekly. Based on these statutes, the ALJ concluded the Commission had the duty to review and approve the content of the proposed rules at issue before providing notice of their adoption.

Appellants contend the Commission delegated this duty to the Office of Insurance Regulation (Office). However, the Legislature granted rulemaking authority only to the Commission and the Department of Financial Services. *See* § 624.308(1), Fla. Stat. Consequently, the ALJ properly concluded the Commission could not delegate its rulemaking authority to the Office.

Because the Commission failed to approve the proposed rules prior to their publication in the Florida Administrative Law Weekly, the proposed rules constituted an invalid exercise of delegated legislative authority. The final order is AFFIRMED. KAHN, C.J., WEBSTER, and HAWKES, JJ., CONCUR.