STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH EDGERTON, Petitioner, vs. DEPARTMENT OF FINANCIAL SERVICES, Respondent.	)	Case No. 09-1917

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on May 6, 2009, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Joseph Edgerton, pro se
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For Respondent: Regina M. Keenan, Esquire
Department of Financial Services
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application for licensure as a firesafety inspector should be denied based

on Petitioner's criminal convictions, in the 1980s, on drug related charges.

PRELIMINARY STATEMENT

By a letter dated March 5, 2009, Respondent Department of Financial Services notified Petitioner Joseph Edgerton that it intended to deny his application to take the examination for certification as a Firesafety Inspector, which examination Mr. Edgerton must pass to fulfill a requirement for licensure. The Department's decision was based on Mr. Edgerton's criminal record, which includes two felony convictions for drug-related crimes that the Department alleges involved moral turpitude.

Mr. Edgerton timely exercised his right to be heard in a formal administrative proceeding. On April 14, 2009, the Department referred the matter to the Division of Administrative Hearings, where the case was assigned to an Administrative Law Judge.

The final hearing took place as scheduled on May 6, 2009, with both parties present. Petitioner testified on his own behalf and offered Petitioner's Exhibit 1, which was admitted into evidence. The Department presented the testimony of its employees Charles Brush, Anita Pringle, and Amy Smith, each of whom works in the Division of State Fire Marshal, Bureau of Fire Standards and Training. In addition, Respondent's Exhibits R-A through R-H were received in evidence without objection.

On May 8, 2009, the Administrative Law Judge convened a telephone conference for the purpose of soliciting the parties' input regarding the propriety of allowing Mr. Edgerton to submit documents pertaining to the restoration of his civil rights. The Department did not object to this, and Mr. Edgerton was afforded the opportunity to provide such material, which he did. Subsequently, in an Order Regarding Official Recognition dated May 11, 2009, the parties were invited to present information, no later than May 22, 2009, relevant to the propriety of the undersigned's taking official recognition of the Executive Orders by which Mr. Edgerton's civil rights were restored. Having received no information suggesting that it would be inappropriate to recognize these official actions of the executive branch of the State of Florida, the undersigned hereby takes official recognition of the Executive Orders dated, respectively, July 2, 1987, and September 1, 1993, whereby the Governor and Cabinet restored Mr. Edgerton's civil rights.

The final hearing transcript was filed on May 22, 2009. Thereafter, each party timely submitted a Proposed Recommended Order on or before June 1, 2009, in accordance with the schedule established at the conclusion of the hearing. On June 8, 2009, Mr. Edgerton submitted "objections" to the Department's Proposed Recommended Order. The Department objected in writing to Mr. Edgerton's objections. The undersigned did not consider

Mr. Edgerton's objections, which were not authorized, in preparing this Recommended Order.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2008 Florida Statutes.

FINDINGS OF FACT

1. The Denial of Petitioner's Application.

On May 23, 2008, Petitioner Joseph Edgerton ("Edgerton") submitted an application to the Department of Financial Services (the "Department" or "DFS") seeking approval to sit for the state certification examination that must be passed to become licensed as a Firesafety Inspector.

2. The next month, DFS verbally notified Edgerton that he would not be permitted to take the certification examination because of his criminal record, which includes two felony convictions, from the 1980s, for drug-related offenses. The Department took the position that each of the crimes of which Edgerton was convicted involved moral turpitude. Edgerton did not dispute the convictions, but he did object to the characterization of his criminal conduct as base and depraved, and he pressed the Department for a formal decision, in writing, on his application.

3. By letter dated March 5, 2009, the Department denied Edgerton's application, "based upon the following factual allegations:"[1]

> 1. On May 22, 1980, you pled [guilty to] and were adjudicated guilty . . . [of] felony possession of cocaine with intent to sell, . . . a crime of moral turpitude, in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida . . . .
>
> 2. On April 29, 1988, you pled [guilty to] and were adjudicated guilty . . . [of] felony conspiracy to distribute cocaine, . . . a crime of moral turpitude, in the United States District Court, Southern District of Florida, . . . were committed to the custody of the United States Bureau of Prisons for a term of forty-two (42) months, and upon release were placed on supervised release for a term of thirty-six (36) months.

4. The foregoing allegations of historical fact concerning Edgerton's convictions are true and undisputed. (In contrast, the Department's characterization of the offenses as crimes involving moral turpitude is sharply contested, but that particular dispute is not outcome determinative and need not be decided, for reasons that follow.)

5. The Circumstances Surrounding the Criminal Incidents.

Edgerton's state court conviction followed his arrest in late 1979, when he was discovered in an airport to be in possession of five ounces of cocaine. Edgerton testified that the cocaine was for personal use, and that he did not intend to sell or distribute the drug. While Edgerton's testimony in this regard was credible as far as it went, the fact that he pleaded guilty, in 1980, to the charge of possession with intent to sell

gives rise to a conflict in the evidence regarding his criminal intent.

6. Even assuming the worst, however, what matters more at present is that Edgerton genuinely accepts responsibility for, and is remorseful about, his very old criminal misconduct, which he readily acknowledges was "stupid" and "wrong." Edgerton further insists (and the undersigned finds that) he "is a different person now," at age 50, than the "kid" who "partied too much" 30 years ago.

7. With regard to the federal conviction for conspiracy to distribute cocaine, Edgerton testified that his role consisted of lending money to another person for use in a narcotics transaction. Edgerton denies having handled, carried, or delivered any drugs, and the undersigned accepts his testimony on this point, which was not contradicted by conflicting evidence. Consistent with his statements concerning the other matter, Edgerton accepts responsibility for this crime while maintaining, credibly, that he is "not the same guy" who committed it and declaring that he "wouldn't do it again."

8. The History of the Applicant Since the Incident.

Edgerton committed the subject crimes a long time ago—— nearly 30 years in the case of the trafficking charge and approximately 22 years in reference to the conspiracy charge. Edgerton thus has had ample time fully to restore his reputation

and usefulness to society as a law abiding citizen following his felony convictions. There is persuasive evidence that he has done just that.

9. In 1993, Edgerton became licensed by the Florida Department of Health as a paramedic. His license, numbered PMD 13086, was active as of the final hearing in this case.

10. In October 1995, Edgerton received a Certificate of Compliance from the State Fire Marshal authorizing him to work as a firefighter in this state. As of the final hearing in this case, Edgerton continued to be a state-certified firefighter.

11. For more than 15 years, Edgerton has worked without adverse incident as a first responder in the emergency medical and fire rescue fields. He has done so under the constant regulatory supervision of two separate state agencies. These facts demonstrate persuasively (and the undersigned finds) that Edgerton——who has not, as far as the evidence shows, harmed or endangered actual persons served in the past decade-and-a-half——is, at this time, an honest man whom the public can safely trust, and who will *not* present a danger in the future, should he become licensed as a Firesafety Inspector.

12. The Restoration of Edgerton's Civil Rights.

By Executive Order dated July 2, 1987, the Governor and Cabinet, exercising the governor's constitutional authority to grant clemency, restored all of Edgerton's civil rights, with

the exception of the specific authority to possess or own firearms, which were lost by reason of any prior felony convictions.

13. By Executive Order dated September 1, 1993, the Governor and Cabinet restored all of Edgerton's civil rights, with the exception of the specific authority to possess or own firearms, which were lost by reason of his felony conviction in the U.S. District Court for the Southern District of Florida.

14. Ultimate Factual Determinations.

The undersigned has determined, based on the greater weight of the evidence, including the circumstances surrounding Edgerton's prior convictions and the persuasive evidence of his full and complete rehabilitation, that Edgerton currently conforms his behavior to societal norms, possesses good moral character, and is otherwise morally fit to serve as a Firesafety Inspector.

15. Edgerton meets all of the requirements for certification as a Firesafety Inspector except one: a passing score on the state certification examination, which DCF has not yet permitted him to take.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

17. Section 633.081(2), Florida Statutes, sets forth the requirements that an applicant must meet to be found eligible for a firesafety inspector's certificate. This statute provides as follows:

> (2) Every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal. Such person shall:
>
> (a) Be a high school graduate or the equivalent as determined by the department;
>
> (b) Not have been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States, or of any state thereof, which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases;
>
> (c) Have her or his fingerprints on file with the department or with an agency designated by the department;
>
> (d) Have good moral character as determined by the department;
>
> (e) Be at least 18 years of age;
>
> (f) Have satisfactorily completed the firesafety inspector certification examination as prescribed by the department; and
>
> (g)1. Have satisfactorily completed, as determined by the department, a firesafety inspector training program of not less than 200 hours established by the department and administered by agencies and institutions

> approved by the department for the purpose of providing basic certification training for firesafety inspectors; or
> 2. Have received in another state training which is determined by the department to be at least equivalent to that required by the department for approved firesafety inspector education and training programs in this state.

(Emphasis added.)

18. In addition, Section 633.081(6) provides in pertinent part as follows:

> (6) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector or special state firesafety inspector if it finds that any of the following grounds exist:
>
> * * *
>
> (d) Having been found guilty of or having pleaded guilty or nolo contendere to a felony, whether or not a judgment of conviction has been entered.

19. The Department contends that both of Edgerton's convictions were for drug related crimes which, as a matter of law, involved moral turpitude, making him *per se* disqualified pursuant to Section 633.081(2)(b), Florida Statutes. In the alternative, the Department argues that even if Edgerton's felonious conduct were not stained with moral turpitude, he may still properly be denied a license under Section 633.081(6)(d). (With regard to its alternative position, the Department did not offer any evidence, other than proof of Edgerton's convictions

(which were never disputed), upon which a discretionary denial might be based.)

20. The Department's intended use of the licensing statute as an absolute bar to Edgerton 's being certified as a Firesafety Inspector, which seems reasonable on its face, is nevertheless contrary to settled law. In Sandlin v. Criminal Justice Standards & Training Comm'n., 531 So. 2d 1344 (Fla. 1988), the Florida Supreme Court held that because neither "the legislature nor the judiciary may infringe upon the executive's authority to grant pardons," id. at 1346, a statute which purports absolutely to bar *all* convicted felons from practicing a certain profession——and thereby to impose a legal disability that would diminish the effect of a pardon——must if possible be construed as reaching only felons *who have not been pardoned*, so as to achieve a constitutional result. Id. at 1346-47. The court added the caveat, however, that a pardoned felon may be refused certification or licensure if he fails to "demonstrate rehabilitation and good moral character and fitness," id. at 1344, and the agency in its discretion consequently "deems him to be of bad character, a poor moral risk, or an otherwise unfit appointee." Id. at 1347. In making this latter determination, the agency "may take into account and rely upon the facts of

. . . the pardoned convictions and may give weight to the general policy [against certifying felons] expressed in the" licensing statute. Id.

21. The First District Court of Appeal has expanded the rule of Sandlin, holding that the executive's constitutional authority to restore civil rights, no less than the authority to grant pardons, may not be abridged by the legislature or the judiciary. See Padgett v. Estate of Gilbert, 676 So. 2d 440, 443 (Fla. 1st DCA 1996). Thus, "statutes may not constitutionally provide an absolute disqualification of a convicted felon who has had his or her civil rights restored[.]" Id. at 442; see also G.W. Liquors, Inc. v. Department of Businss Regulation, 556 So. 2d 464, 465 (Fla. 1st DCA 1990)(applicant for alcoholic beverage license not *per se* disqualified by prior conviction where his civil rights had been restored). The agency may deny a restored felon's application for licensure if the circumstances surrounding his prior conviction (or other facts) support a finding that the applicant is of bad character or otherwise a poor moral risk. G.W. Liquors, 556 So. 2d at 465.

22. The decisions in Sandlin, Padgett, and G.W. Liquors constrain the undersigned to construe Section 633.081(1)(b), Florida Statutes, as an absolute bar to licensure with respect only to felons whose crimes involved moral turpitude and whose

civil rights have *not* been restored, and Section 633.081(6)(d) as a discretionary bar that may be applied, based solely on the fact of a criminal conviction, against *unrestored* felons only. This is because, as the referenced authorities make clear, neither statute may be applied *constitutionally* as a prohibition against licensing a convicted felon, *qua* convicted felon, if the felon's civil rights have been restored.

23. The controlling precedents discussed above add a constitutional dimension to the matter of interpreting and applying Section 633.081, Florida Statutes, which is sufficient, in itself, to support the conclusion that Edgerton is not *per se* disqualified, as a convicted felon, from becoming licensed as a Firesafety Inspector, even if his crimes involved moral turpitude. There is, however, an independent *statutory* basis for reaching the same conclusion. Section 112.011(1)(b), Florida Statutes, provides as follows:

> (b) Except as provided in s. 775.16,[2] a person whose civil rights have been restored shall not be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person whose civil rights have been restored may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction

> for a crime if the crime was a felony or first degree misdemeanor and directly related to the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

24. In Section 112.011(1)(b), the legislature effectively has disclaimed any intention of traducing the executive's constitutional authority to grant clemency, by specifically excluding felons whose rights have been restored from any statute that purports generally to disqualify convicted felons from obtaining a license, permit, or certificate. Therefore, when examining a licensing statute, such as Section 633.081, Florida Statutes, which seemingly would disqualify all convicted felons (or subject them to possible disqualification) based solely on their prior convictions and without regard to subsequent executive actions removing such legal disabilities, it is necessary simultaneously to consider Section 112.011(1)(b), because the two statutes are *in pari materia*. As the Florida Supreme Court has explained:

> [It is a] well-settled rule that, where two statutes operate on the same subject without positive inconsistency or repugnancy, courts must construe them so as to preserve the force of both without destroying their evident intent, if possible. It is an accepted maxim of statutory construction that a law should be construed together with and in harmony with any other statute relating to the same subject matter or having the same purpose, even though the statute were not enacted at the same time.

Mann v. Goodyear Tire & Rubber Co., 300 So. 2d 666, 668 (Fla. 1974)(footnotes omitted); see also, e.g., Mehl v. State, 632 So. 2d 593, 595 (Fla. 1993)(separate statutory provisions that are *in pari materia* should be construed to express a unified legislative purpose); Lincoln v. Florida Parole Comm'n, 643 So. 2d 668, 671 (Fla. 1st DCA 1994)(statutes on same subject and having same general purpose should be construed *in pari materia*).

25. When Sections 633.081(2)(b) and 633.081(6)(d) are read together with Section 112.011(1)(b), it becomes apparent that, as a matter of statutory construction, the latter provision, which deals with a specific situation (the licensure of convicted felons whose rights have been restored), operates as an exception to the former provisions, which prohibit (or authorize the discretionary denial of) licensure based solely on an applicant's criminal record. Thus, while it might seem otherwise at first blush, the two statutes——Sections 633.081 and 112.011——actually are not in conflict or inconsistent with one another. At bottom, in Section 112.011 the legislature simply has circumscribed the reach of other enactments, e.g. Section 633.081(2)(b), Florida Statutes, that, absent the limitation in Section 112.011, would apparently disqualify a convicted felon, as such, from pursuing a business, occupation, or profession,

without regard to whether the person's civil rights had been restored. See Calhoun v. Department of Health & Rehabilitative Services, 500 So. 2d 674, 678-79 (Fla. 3d DCA 1987)(seemingly unconditional statutory bar to licensure construed, in light of § 112.011(1)(b), Fla. Stat., to give rise only to presumption of moral unfitness, which can be overcome by restoration of rights); cf. Knowles v. Beverly Enterprises-Florida, Inc., 898 So. 2d 1, 9 (Fla. 2004)(plain language of statute unambiguously limiting the availability of newly created remedy only to specific situations in the event of the injured party's death was enforceable, despite other statute which saves all causes of action belonging to a person at death). Lending credence to this understanding of the statutes is that Section 112.011(1)(b) is roughly coterminous with the constitutional limitation on the legislature's authority to disqualify pardoned felons, or those whose civil rights have been restored, as stated in Sandlin, Padgett, and G.W. Liquors.

26. It is therefore concluded, based on Section 112.081(1)(b), Florida Statutes, that Edgerton is not *per se* disqualified, as a convicted felon, from becoming licensed as a Firesafety Inspector, even if his crimes involved moral turpitude.

27. The foregoing conclusion is, of course, contrary to the Department's view of the law, which the undersigned has not

overlooked. DCF argues that Section 112.011(1)(b) does not prevent the legislature from enacting absolute bars to licensure, and that, if the legislature had wanted to restrict the operation of Section 633.081(2), (6), Florida Statutes, to unrestored felons only, it could have done so explicitly. Therefore, DCF contends, because Section 633.081 is not by its terms limited to unrestored felons, it should be applied as an "absolute" bar to licensing convicted felons whose crimes involved moral turpitude. There is, to be sure, plausible logic behind DCF's position, and so the undersigned will briefly explain why the Department's argument is unpersuasive.

28. To begin, the argument's first premise is plainly true, as far as it goes. Section 112.011(1)(b) does not itself prevent the legislature from enacting a statute that would purport to disqualify a convicted felon from being licensed to pursue a particular occupation, even if his civil rights have been restored. As discussed above, however, the *constitution* has been held to check the legislature's power to impose such an unconditional bar. Under the present state of the law, therefore, there is good reason to doubt that a statute purporting to disqualify *restored* felons based solely on their prior convictions would pass constitutional muster.

29. The second premise of DCF's argument is also true: the legislature undeniably could have explicitly restricted the

operation of Section 633.081(2), (6) to unrestored felons. That it did not do so, however, is an extremely weak basis for inferring legislative intent that the statute apply to felons whose rights have been restored because, *first*, Section 112.011(1)(b) unambiguously and specifically provides that such felons are not disqualified from licensure based solely on their prior convictions; and, *second*, a statute having such reach probably would be unconstitutional.

30. Thus, the conclusion that DCF urges, i.e. that Section 633.081(2), (6), Florida Statutes, be applied as an "absolute" bar to licensing convicted felons whose crimes involved moral turpitude, is not supported by the premises, which fall short of supplying a persuasive basis to enforce the statute in a constitutionally suspect manner that effectively would negate Section 112.011(1)(b).[3]

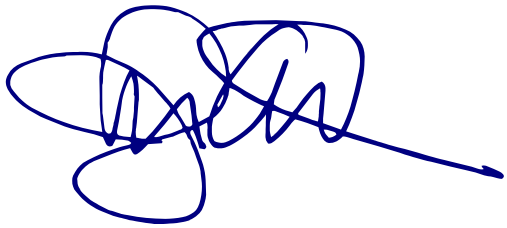
31. The question remains, notwithstanding the absence of an unconditional bar to licensure, whether Edgerton demonstrated rehabilitation and good moral character. These are matters of fact for the undersigned to decide in his capacity as the trier of fact. See, e.g., Village Zoo, Inc. v. Division of Alcoholic Beverages & Tobacco, 450 So. 2d 920, 921 (4th DCA 1984); Aquino v. Dep't of Prof'l Regulation, 430 So. 2d 598, 599 n.3 (Fla. 4th DCA 1983). As set forth above, the fact-finder, having considered all of the evidence presented, including the facts

and circumstances surrounding Edgerton's convictions, has determined that Edgerton is, as a matter of fact, fully rehabilitated and morally fit for licensure as a Firesafety Inspector.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services enter a Final Order approving Joseph Edgerton to sit for the firesafety examination, which he must pass to satisfy the last remaining requirement for his certification as a Firesafety Inspector.

DONE AND ENTERED this 19th day of June, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of June, 2009.

ENDNOTES

[1]/ A third allegation was later withdrawn and is not relevant to this case.

[2]/ This exception does not apply to Edgerton.

[3]/ DCF's reliance on Yeoman v. Constr. Indus. Licensing Bd., 919 So. 2d 542 (Fla. 1st DCA 2005), is misplaced. In that case, the First DCA held that Section 112.011(1)(b), Fla. Stat., does not implicitly prohibit the licensure of convicted felons whose rights have not been restored, solely due to such lack of restoration. Id. at 545; see also, accord, Vetter v. Dep't of Bus. & Prof'l Regulation, Elec. Contractors' Licensing Bd., 920 So. 2d 44 (Fla. 2d DCA 2005). In its opinion, the court enumerated several statutes which it called "absolute bars to licensure." Yeoman, 919 So. 2d at 544. The Department has taken this phrase out of context in asserting, based thereon, that the legislature is free to "absolutely" prohibit felons whose rights have been restored from obtaining licenses based on their prior convictions. In actuality, nothing in the Yeoman decision suggests that the court meant the term "absolute bars" to mean statutes exceeding restrictions imposed by the constitution, § 112.011(1)(b), Fla. Stat., or both. Indeed, one of the so-called "absolute bars" identified in Yeoman, namely § 561.15(2), Fla. Stat., was held by the First DCA in G.W. Liquors *not* to be a *per se* disqualification of a convicted felon whose rights had been restored, as a matter of constitutional law. Moreover, if (contrary to the undersigned's reading of the opinion) the court *were* saying that the legislature may disqualify from licensure convicted felons, as such, irrespective of the restoration of their civil rights, then its commentary in this regard was clearly a dictum (for that issue was not germane to the issue before the court)——and an unpersuasive one at that, given the clear constitutional law to the contrary, which the court did not address, as set forth in cases including the First DCA's own decisions in Padgett and G.W. Liquors.

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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.