

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL LAND SURVEYORS

IN RE: Petition for Declaratory
Statement Filed by T.S. Madson d/b/a
Florida Land Surveyor's Council

LS/Dec St: 93-2

**FINAL ORDER
DENYING PETITION FOR DECLARATORY STATEMENT**

Background

On or about March 18, 1993, T.S. Madson d/b/a, Florida Land Surveyor's Council (FLSC) filed a petition for declaratory statement (attached) asking the following question of the Board:

QUERY: By what authority does Respondent deny Petitioner the requested Florida Minimum Technical Standards (II) credit hours for this course?

In its petition, FLSC alleges the following facts:

1. T.S. Madson is a professional land surveyor with registration number 1847.
2. FLSC's primary business is teaching seminars to land surveyors.
3. On February 12, 1993, FLSC submitted a seminar course ¹

¹ The course in question is the FLSC's continuing education seminar titled, "Minimum Technical Standards II: How to meet the Standards, Keep out of trouble with the Board, and survive an investigation/prosecution by the Board."

to the Board with a request for approval of the course for 6½ hours MTS required continuing education (CE) credit.² In a letter submitted with its course outline, FLSC stated, "This course contains information which is 100% related to the practice of land surveying."

4. On March 12, 1993, the Board denied FLSC's application for approval of its course for the requested credit.

Discussion

The purpose of a declaratory statement is very limited, i.e., it is a means for an agency, in response to a question presented by a petitioner, to express its opinion regarding the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances only. Section 120.565, Florida Statutes.

By its rule (21HH-1.008), the Board has adopted the Model Rules of administrative procedure. Under Rule 28-4.001(d) and (e), Florida Administrative Code, a petition for declaratory statement must include the agency rule, order, or statutory provision on which the declaratory statement is sought and it must also describe how the rule, order or statute may or does affect the petitioner in his or her particular set of

² Rule 21HH-5.003(1), F.A.C., requires professional land surveyors, as a condition of biennial license renewal, to complete 24 hours of board-approved continuing education courses. Twelve of the 24 hours must be in required courses and 6 of the 12 required hours must be a course on Minimum Technical Standards (MTS) as contained in Rule 21HH-6.003, F.A.C.

circumstances only. Even assuming that the facts alleged in the petition are accurate, the petition does not ask the Board's opinion as to the applicability of a specified statutory provision or of a rule or order of the Board as it applies to the petitioner in his particular set of circumstances only. However, the thrust of the petitioner's query, in light of the last paragraph³ of the petition, suggests that the petitioner is more interested in challenging the Board's decision not to grant continuing education credit to the course in question.

Aside from the fact that the Board's order denying CE credit had not yet been rendered at the time FLSC filed its petition, a petition for declaratory statement is an inappropriate means to challenge agency decisions. BJL v. HRS, 558 So.2d 1078 (Fla. 1st DCA 1990).

Findings of Fact

1. The petition does not specify a statutory provision or a rule or order of the Board.
2. The petition does not ask the Board's opinion regarding the applicability of a specified statutory provision or of any rule or order of the Board as it applies to the petitioner in his particular set of circumstances only.

³ That paragraph reads:

WHEREFORE, pursuant to § 120.68(1), Florida Statutes, this Declaratory Statement is final agency action and renders this matter available for judicial review in a court of proper jurisdiction.

Conclusions of Law

1. The petition fails to comply with Rule 28-4.001, F.A.C., and should be denied.

2. The petition is contrary to the unambiguous language of s.120.565, F.S., and should be denied.

In consideration of the foregoing, it is

ORDERED by the Florida Board of Professional Land Surveyors that the petition filed by T. S. Madson d/b/a Florida Land Surveyor's Council is **DENIED**.

THIS ORDER TAKES EFFECT UPON FILING WITH THE AGENCY CLERK.

DONE AND ORDERED on this 29th day of June, 1993.

BOARD OF PROFESSIONAL LAND
SURVEYORS


MARGARITA G. WEIDENER, P.L.S.,
CHAIR

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 AGENCY CLERK OF THE DEPARTMENT OF PROFESSIONAL REGULATION, 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 THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of this Final Order was furnished by U. S. Mail to T. S. Madson II, Post Office Box 13158, Gainesville, Florida 32604-0158; and by interoffice mail to Cathy Green, Joint Administrative Procedures Committee, Room 120, Holland Building, Tallahassee, Florida 32399-1300, and to Virginia Daire and William J. Bakstran, Department of Legal Affairs, Administrative Law, 308 Alexander Building, 2020 Capital Circle S. E., Tallahassee, Florida, on this 29th day of June, 1993.
