Business operating without business license

Number: INFORMAL

Date: December 13, 2006

The Honorable Mike Fasano
Senator, District 11
8217 Massachusetts Avenue
New Port Richey, Florida 34653-3111

Dear Senator Fasano:

You ask this office whether a business may legally operate without renewing its business license. Attorney General Crist has asked me to respond to your letter.

According to your letter, a constituent contacted your office, after speaking with the Department of Business and Professional Regulation, to express her concern about the position she believed the department was taking. It was her understanding that the department allowed regulated businesses a grace period of two years to operate without having to take steps to renew their licenses.

As you note, section 455.271(1), Florida Statutes, clearly states that "[a] licensee may practice a profession *only* if the licensee has an active status license." (e.s.) The section further provides that a licensee who practices a profession without an active status license is in violation of sections 455.271 and s. 455.227, Florida Statutes, and the board, or the department if there is no board, may impose discipline on the licensee.

A licensee is generally required to biennially renew an active license.[1] Section 455.271, Florida Statutes, sets forth the procedure and requirements for maintaining a license in an active or inactive status. Failure to renew before the expiration of the term of the license causes the licensee to be in delinquent status.[2] If the licensee further fails to renew the license as active or inactive before the expiration of the licensure cycle, the license becomes void by operation of law.[3] A person whose license has been voided is required to meet all prerequisites for an initial license if subsequent licensure is desired. A board, or the department if there is no board, however, may reinstate an individual's void license if it determines that the individual made a good faith effort to comply with this section but failed to comply because of illness or unusual hardship.[4]

Thus, the statutes clearly require that a licensee may practice a profession only if the licensee has an active status license. If the license becomes delinquent, the board, or the department if there is no board, may take appropriate action against a business or individual who is operating without an active license.

The two year period referred to by the department appears to relate to the steps a person must take to renew his or her license if he or she has not timely renewed the license and not to whether a person, without an active license, may continue to practice or operate legally. As

noted above, section 455.271 prohibits a licensee from practicing without an active license. The statute does permit an individual or business with a delinquent license to renew within the licensure cycle (normally two years) without going through all the steps required for initial licensure if the delinquent licensee files a complete application, the renewal fee, *and a delinquent fee*, with the board or department. If, however, the delinquent licensee fails to renew the license within this period, the license becomes void by operation of law. In such cases, the person whose license has been voided would be required to meet all prerequisites for an initial license if subsequent licensure is desired unless the board or the department determines that a good faith effort to renew was made and that the failure to comply was due to illness or unusual hardship.

This office has contacted the Department of Business and Professional Regulation on this matter and requested the department to also respond to your concerns. I trust that the above informal comments may be of assistance to you and your constituent in this matter.

Sincerely,

Joslyn Wilson
Director, Opinions Division

JW/tfl
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[1] *See* s. 455.203(1), Fla. Stat., authorizing the department, for the boards under its jurisdiction, to "[a]dopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary." *And see* Ch. 61-6, Fla. Admin. C., relating to biennial licensing. *See also* s. 455.01(5), Fla. Stat., defining "Licensee" to mean "any person issued a permit, registration, certificate, or license by the department."

[2] *And see* Rule 61-6.002(1), Fla. Admin. C., stating that any license renewal application except for a license described in Rule 61-6.006, which for any reason is not submitted in a timely and complete manner shall revert to delinquent status.

[3] Section 455.271(6)(a), Fla. Stat. *See* Rule 61-6.004(1), Fla. Admin. C., providing:

"A delinquent status licensee may apply for active or inactive status any time during the biennial licensure cycle. As defined by rule of the board, or the Department when there is no board, a complete application, the renewal fee, and a delinquent fee shall be required. The license of a delinquent licensee that does not achieve active or inactive status before the end of the current biennial licensure period shall be null, and subsequent licensure will require meeting all the requirements for initial licensure."

[4] Section 455.271(6)(b), Fla. Stat., as amended by s. 1, Ch. 05-249, Laws of Fla. The individual must apply to the board, or the department if there is no board, for reinstatement in a manner prescribed by rules of the board or the department, and must pay a fee in an amount determined by rule. The board or the department, shall require that such individual meet all continuing

education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under the chapter. The subsection does not apply to individuals subject to regulation under Ch. 473, Fla. Stat., *i.e.*, certified public accountants.