

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

IN RE:

SEPTEMBER 11, 2019 PETITION FOR
DECLARATORY STATEMENT

ELIAS MAKERE,

FCHR Order No. 19-065

Petitioner

FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT

Preliminary Matters

On September 11, 2019, Petitioner Elias Makere filed a Petition for Declaratory Statement with the Florida Commission on Human Relations (“Commission”). Notice of the Petition was published in the *Florida Administrative Register*, Volume 45, Number 179, September 13, 2019. The Commission has not received a petition to intervene in this action from any other person. The Commission did not receive any comments on the matter. No hearing on the Petition was requested and none was held.

The Commission undertook action to resolve the Petition for Declaratory Statement at a duly noticed public hearing on December 10, 2019.

Petitioner states that he has “well-founded uncertainty” as to whether the Florida Commission on Human Relations can accept gifts/bequests during the investigative phase of his case under Florida Statutes 760.06(4). This scenario – where someone questions a statutory right – is precisely the scenario that the declaratory statement process is designed to cure. See Rosekrantz v. Feit, 81 So. 3d 526 (Fla. 3rd DCA 2012). “*The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes which an administrative agency enforces, adopts, or enters*”. Citizens of the State ex rel. Office of Public Counsel v. Florida Public Service Commission, 164 So.3d 58, 59 (Fla. 1st DCA 2015).

Petitioner concludes his September 11, 2019 petition, stating,

“Petitioner respectfully requests a declaration on whether the applicable section of Florida Statutes – 760.06(4) – allows Respondent in his case to give the Agency (FCHR) gifts/bequests/etc. during the investigative phase of Petitioner’s (his) complaint.”

Comments

The Commission has not received any comments subsequent to the filing of the Notice of Petition in the Florida Administrative Register.

Conclusions of Law

The Florida Administrative Procedure Act states, "any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." Section 120.565(1), Florida Statutes (2019). It also states, "the petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances." Section 120.565(2), Florida Statutes (2019). When acting on the petition, the agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. See Florida Administrative Code, R. 28-105.003.

A declaratory statement is a device for resolving controversies, questions, or doubts regarding the applicability of statutes, rules, and orders within the agency's authority to a petitioner's circumstances. See Florida Administrative Code, R. 28-105.001. Use of this device, however, is for a particular purpose and is to be used for that limited purpose.

To grant a declaratory statement petition, there need be a live case or controversy on the interpretation of a statute to meet the requirements for standing. There must be applicable law in doubt – doubt which is not present in this petition. Under the Florida Civil Rights Act of 1992, the Commission has the power to accept gifts, bequests, grants, or other payments, public or private, to help finance its activities. Section 760.06(4), Florida Statutes (2019). There are no limitations in the text of the statute, nor is there cabining language in other applicable areas of law suggesting alternative interpretations aside from the plain text. Acceptance of funding for the agency from public and private sources was not a driving force for the Florida legislature crafting this statute; therefore, there was not robust debate within the legislative history on the Commission's powers suggesting possible limitations on receiving gifts. Under standard theories of statutory interpretation, the Commission is to assume that the legislature intended to exclude language creating time-based exceptions.

Additionally, Petitioner claims uncertainty as to the motivations of the investigative branch of this agency. Petitioner questions the permissibility of bequest submissions, which could create the appearance of impropriety for receiving financial support from Petitioner or Respondent in his case. Assuming that such bequests were received at any point – although the Commission has no knowledge that any bequests were received during the investigation of this case – Petitioner would still lack the statutory support suggesting doubt over when the Commission can accept gifts. There is no applicable case law suggesting that the Commission cannot accept bequests during the investigation of a claim, nor is there any textual support that such a hypothetical scenario would be barred by the governing statute.

Declaratory statements are not to be issued addressing hypothetical questions lacking a fact-specific case or controversy. Federation of Mobile Home Owners v. Dep't of Business Regulation, et. al., 479 So. 2d 252, 253 (Fla. 2nd DCA 1985). There need be a showing beyond that of curiosity to suggest there be an actual present practical need for a declaratory statement. Id. at 254. Although the Administrative Procedure Act broadens public access to agency activities, there still need be a fact-specific inquiry addressing ambiguity over interpretation of an existing statute for Petitioner to meet the standing requirements to grant a declaratory statement petition. Fla. Home Builders Assoc. v. Dep't of Labor & Employment Sec., 412 So. 2d 351, 352 (1982). Given that the answer to Petitioner's question of law on whether the Commission can accept gifts during the investigation phase of a claim is such an emphatic yes, there is no doubt to resolve, no controversy to address. Absent such ambiguity, accordingly, the Commission must deny the petition for declaratory statement.

Denial of Petition

The Petition for Declaratory Statement is DENIED, because Petitioner does not meet the prerequisite requirements of standing. For the Commission to rule on a petition for declaratory statement, there must be a 'live case or controversy' in the specific question of law seeking relief. The statute in question and its accompanying relevant case law do not indicate more than one interpretation of the provision in question; therefore, Petitioner lacks standing to bring such declaratory statement given this lack of legal ambiguity to be resolved. Accordingly, the Petition for Declaratory Statement on the question of the Commission accepting gifts/bequests during an investigation is DENIED.

Petitioner has the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 10, day of December,
2019 FOR THE FLORIDA COMMISSION ON HUMAN
RELATIONS

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Mario Garza; and
Commissioner Rebecca Steele

Filed this 10, day of December, 2019 in Tallahassee, Florida



Clerk

Florida Commission on Human
Relations

4075 Esplanade Way, Room 110

Tallahassee, FL 32399

(850) 488-7082

Copies furnished to:

Elias Makere

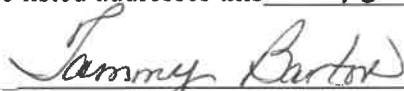
3709 San Pablo Rd. S # 701

Jacksonville, Florida 32224

Stanley G. Gorsica, Legal Advisor for Commission Panel

I HEREBY CERTIFY that copy of the foregoing has been mailed
to the above listed addresses this 10, day of December, 2019

By:



Clerk of the Commission

Florida Commission on Human Relations