

073-317—September 5, 1973

EMPLOYMENT OPPORTUNITIES

EMPLOYMENT OF VISUALLY AND PHYSICALLY DISABLED PERSONS

To: *Mattox Hair, Representative, 22nd District, Jacksonville*

Prepared by: *Jan Dunn, Assistant Attorney General*

QUESTIONS:

1. Do the penalty provisions of §413.08, F. S., apply to §413.08(3) as amended by Ch. 73-110, Laws of Florida, and if not, are there other penalty provisions which would apply to this subsection?
2. Does the wording of §413.08(3), F. S., as amended refer to and include private employers as well as those firms, school systems, etc., supported by public funds?
3. What courses of action are available to a person who feels that he or she might have been discriminated against in order to force an employee to comply with §413.08(3), F. S., as amended, or to invoke any penalties which may be applicable?
4. Does §413.08, F. S., as amended by Ch. 73-110, Laws of Florida, apply to and include epileptics?

SUMMARY:

The penalty provisions of §413.08, F. S., apply to §413.08(3), as amended, with regard to the visually disabled only—not to the otherwise physically disabled.

The wording of §413.08(3), as amended, does not refer to and include private employers.

A criminal action by the state or a discrimination action for an injunction might be utilized in order to force compliance with §413.08(3).

Section 413.08(3), F. S., as amended by Ch. 73-110, Laws of Florida, applies to and includes epileptics.

AS TO QUESTION 1:

Section 413.08(3), F. S., as amended by Ch. 73-110, Laws of Florida, reads as follows:

It is the policy of this state that the blind, visually handicapped, and otherwise physically disabled shall be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and no employer shall refuse employment to the blind, the visually handicapped, or the otherwise physically disabled on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

Section 413.08(2), F. S., provides a penalty for anyone who "denies, or interferes with, admittance to or enjoyment of the public facilities enumerated in subsection (1) or otherwise interferes with the rights of a totally or partially blind person *under this section*" (Emphasis is supplied.) Section 413.08(3), *supra*, is "under this section," *i.e.*, §413.08. Therefore, anyone who refuses employment to the blind and the visually handicapped solely on the basis of the disability, as stated in §413.08(3), would be subject to the provided penalty.

Section 413.08(3), F. S., provides in part that "no employer shall refuse employment to the blind, the visually handicapped, or the otherwise *physically*

disabled." (Emphasis supplied.) However, the *only* penalty mentioned in §413.08 is for interfering with the enumerated rights of a "totally or partially *blind* person." (Emphasis supplied.) Since there is no mention of physically disabled persons in the penalty section, it would seem that §413.08(2) does not apply to the physically disabled. I can locate no other penalty provisions which would apply to such persons.

AS TO QUESTION 2:

Section 413.08(3), F. S., says that it is the policy of the state to employ the visually and physically handicapped in the service of the state and "in all other employment *supported in whole or in part by public funds.*" (Emphasis supplied.) The subsection goes on to say that "*no employer* shall refuse employment" The words "no employer" refer back to the first part of the subsection so that they mean no employer whose business is supported in whole or in part by the state. This subsection does not regulate employment by purely private businesses unsupported by any public funds.

This question is answered in the negative.

AS TO QUESTION 3:

If a person wishes to invoke the penalty provisions of §413.08, F. S., a valid complaint to a state attorney should provide grounds for a state action against the offending party. An action requesting the court to enjoin an employer from discriminating against the visually or physically handicapped might also be brought in order to compel compliance with §413.08(3).

AS TO QUESTION 4:

According to Black's Law Dictionary, 4th Ed. 1951, "a physical disability is a disability or incapacity caused by physical defect or infirmity, or bodily imperfection, or mental weakness or alienation." In Webster's Seventh New Collegiate Dictionary, epilepsy is defined as:

. . . any of various disorders marked by disturbed electrical rhythms of the central nervous system and typically manifested by convulsive attacks usually with clouding of consciousness.

It has also been defined as "a symptom of a neurological disorder characterized by seizure, convulsions or temporary loss of consciousness." *People v. Maiten*, 216 N.E.2d 170 (1 D.C.A. Ill., 1966). Based on the above definitions, epilepsy is a physical disability and should be included as such under §413.08(3), F. S.

073-318—September 6, 1973

PUBLIC PROPERTY

SOVEREIGNTY LANDS NOT PUBLIC PROPERTY FOR PURPOSES OF §705.16(2)(c)

To: Richard Stone, Secretary of State, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Does the Miami River, its feeder canals, the submerged lands under both, and the uplands adjacent to both up to and including the mean high-water mark, come within the definition of "public property" in §705.16(2)(c), F. S.?