

objectionable §1. The rule on severability is stated: "The court will uphold the remainder [of a partially invalid enactment] if that which is left is complete in itself, sensible, capable of being executed, and wholly independent of that which is rejected" [See] 30 Fla. Jur. *Statutes* §138. None of these sustaining characteristics appears applicable when §2 is removed from the context of §1.

073-96—March 29, 1973

HOUSING AUTHORITY

RESIDENT OF HOUSING PROJECT AS MEMBER OF AUTHORITY'S GOVERNING BOARD

To: James W. Vance, City Attorney, West Palm Beach

Prepared by: Joseph C. Mellichamp III, Assistant Attorney General

QUESTION:

May a tenant residing in a housing project built by a city housing authority pursuant to Ch. 421, F. S., be appointed to the governing board of such housing authority?

SUMMARY:

A tenant residing in a housing project built by a city housing authority pursuant to Ch. 421, F. S., may be appointed to the governing board of such housing authority.

Your question is answered in the affirmative.

It is assumed from your inquiry that the housing authority in question is duly established and is operating under the provisions of Ch. 421, F. S.

Once a housing authority has been properly established by the governing body of a city, five commissioners are appointed to transact the business of the authority. Section 421.05, F. S. Section 421.05 provides for the length of the commissioners' terms of office and provides further that they are to serve without compensation but will be entitled to the necessary expenses incurred in the discharge of their duties.

The only disqualifying factor contained in the statutes which would affect the appointment of a person to the commission is that no commissioner of an authority may be an officer or employee of the city for which the authority was created. Section 421.05(1), F. S. This disqualifying factor in the appointment of persons to the commission in no way places any other limitation on the power of the mayor (with the approval of the governing body) to appoint commissioners or to fill any expired term of office. *Accord:* Attorney General Opinion 060-204.

As to the question of owning or controlling an interest in the housing project, §421.06, F. S., provides that if any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included in or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority; and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office and shall be grounds for removal. Section 421.07, F. S. However, it would seem that the mere owning or controlling an interest in the housing project (when disclosure has been made) is not, by itself, a disqualifying factor for appointment to the commission.

Section 421.06, *supra*, also provides that no commissioner or employee shall acquire any interest, direct or indirect, in any housing project or in any property included in or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

It would seem from this language that the statutes prohibit the acquisition of any pecuniary interest in a housing project *after* a person has either been appointed to or employed by the housing authority.

In both of these situations, it is felt that the statutes are speaking of pecuniary interest and are seeking to prevent and prohibit a person with inside information or control from taking undue advantage of his position in order to turn a profit to the detriment of the public and the project. Further, it is my opinion that these sections are not meant to disqualify tenants of a project from being appointed to the housing authority's commission, assuming that there is a vacant seat on the commission.

Thus, in view of the above-cited authorities and in the absence of any local or special law to the contrary, it is my opinion that a tenant residing in a housing project built by a housing authority pursuant to Ch. 421, F. S., is not disqualified from being appointed to the commission of the authority by the mayor (with the approval of the governing body) solely because of his lease interest in the project.

073-97—March 30, 1973

AUDIOLOGY

ACTIONS BY NONPROFIT CORPORATION NOT CONSTITUTING AUDIOLOGY

To: Granville H. Crabtree, Jr., Representative, 73rd District, Sarasota

Prepared by: Henry George White, Assistant Attorney General

QUESTION:

Are the provisions of part IV, Ch. 468, F. S. (the Speech Pathology and Audiology Act) applicable to a nonprofit corporation, supported by charity, which performs hearing tests on adults without charge and recommends medical attention if needed?

SUMMARY:

The provisions of part IV, Ch. 468, F. S. (the Speech Pathology and Audiology Act), are not applicable to a nonprofit corporation which performs hearing tests on individuals free of charge and recommends medical attention if needed, because such testing does not constitute the practice of audiology within the purview of §§468.140 and 468.141.

You previously sought my opinion on a question which, though concerned with the testing of school children, was essentially the same as the question now presented. In answering that inquiry, I stated in a letter dated April 7, 1971 that:

The intent and purpose of the Speech Pathology and Audiology Act as set out in Section 468.140, Florida Statutes, is to require educational training and certification of any person who engages in the practice of audiology. Section 468.141 defines an audiologist as any person who examines, tests, evaluates, treats or counsels persons with disorders in hearing *for which a fee may be charged*.

Based on the foregoing, I concluded that part IV, Ch. 468, F. S., did not govern hearing tests which are conducted without charge and for which no medical treatment is given.

The provisions of part IV, Ch. 468, F. S., have not been amended since the date of the letter referred to above. And the language of §§468.140 and 468.141 which was cited in my previous letter does not require or justify a distinction between hearing tests for adults as opposed to school children. The standards for determining whether an individual or organization engages in the practice of