

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

IN RE: PETITION FOR DECLARATORY STATEMENT BY
JACK A. BUTLER
Petitioner,

and

FLORIDA SURVEYING AND MAPPING SOCIETY, INC.,
JAMES H. HUMPHREY, JOSEPH RICKE, T. JEFFREY YOUNG
JOHN N. BREED, and ISAAC ROOKS, JR., and MANAGEMENT ASSOCIATION FOR
PRIVATE PHOTOGRAMMETRIC SURVEYORS, INC.,
Interveners.

Agency Clerk #A71189

FINAL ORDER DENYING PETITION

Mr. Jack A. Butler, ("Petitioner") has petitioned the Board of Professional Surveyors and Mappers ("Board") for a declaratory statement pursuant to Section 120.565, *Florida Statutes* (2010). On January 6, 2011, the Agency Clerk for the Department of Agriculture and Consumer Services ("Department") received a Petition For Declaratory Statement ("Petition") filed by the Petitioner. Notice of the Receipt of the Petition was published in *Florida Administrative Weekly* on January 14, 2011 at Vol. 37, No. 2. On January 14, 2011, Florida Surveying and Mapping Society, Inc., Mr. James H. Humphrey, Mr. Joseph Ricke, Mr. T. Jeffrey Young, Mr. John N. Breed, and Mr. Isaac Rooks, Jr., filed a joint Petition For Leave To Intervene. On January 26, 2011, a Joinder In Petition to Intervene was filed by Management Association for Private Photogrammetric Surveyors, Inc. ("MAPPS"). All of the parties seeking to intervene in this action shall be referred to collectively in this Order as ("Interveners"). The Petitioner was present for a public hearing held on February 3, 2011. Intervener MAPPS was not present at the hearing.

The remaining interveners were represented by their counsel, Ms. Claire Duchemin, Esq. The Board was represented by Mr. Bennett M. Miller, Esq.

PRELIMINARY STATEMENT

Section 120.565, F.S. provides the authority for administrative agencies to issue declaratory statements:

- (1) 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.
- (2) 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.
- (3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

This statutory provision has been incorporated into the Florida Uniform Rules of Administrative Procedure as Rule 28-105.001, *Florida Administrative Code* (2010), "Purpose and Use of Declaratory Statement":

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.003, F.A.C., "Agency Disposition," provides:

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. The agency may rely

on the statements of fact set out in the petition without taking any position to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Thus, according to the language of §120.565, F.S. and the underlying administrative rules, the Legislature clearly intended the use of declaratory statements to be limited in scope.

JURISDICTION

Because the Petitioner requests a declaratory statement regarding the applicability of statutes and administrative rules regulating the practice of surveying and mapping in the State of Florida, this Board has jurisdiction. See generally, §§472.001, 472.007, F.S.

PETITIONER

The Petitioner stated at the public hearing that he is engaged in the active practice of providing professional services related to mapping and geographic information systems. According to the Petition, the Petitioner holds several academic degrees and professional credentials relating to the mapping and geographic information systems industry.

PETITION

The Petition asserts that the Petitioner requires clarification regarding the application of certain provisions of Chapter 472, F.S. and related administrative rules. In summary, the Petitioner asks a total of eight (8) questions in the Petition. First, the Petitioner asks for a clarification regarding the definition of the practice of surveying and mapping contained in §472.005(4)(b), F.S. and whether professional activities involving mathematics and physical sciences fall within the scope of such practice. Second, the Petition asks whether licensure is required to compile vector objects from raster images. Third, the Petition asks whether licensure is required to engage in photogrammetry. Fourth, the Petition asks whether the process of LiDAR data collection and analysis falls within the definition of surveying and mapping. Fifth,

the Petition asks whether only a Florida licensed professional surveyor and mapper may utilize handheld GPS units to collect data on the location of natural and manmade objects. Sixth, the Petition asks whether the production of certain map products must be produced under the supervision of a Florida licensed professional surveyor and mapper. Seventh, the Petition asks if licensure is required to produce metadata describing the method of compilation and analysis resulting in a spatial dataset. Last, the Petition asks if other professions are allowed to utilize the tools and techniques frequently used by persons engaged in the practice of surveying and mapping without the requirement to obtain a license.

THE BOARD FINDS AS FACT:

1. The Interveners are substantially affected by the subject matter set forth in the Petition.
2. The substance of the Petition, the pleadings filed in support of the Petition, and the Petitioner's testimony at the public hearing, all demonstrate that the Petitioner has requested a broad statement of agency policy, where the applicable statutes and administrative rules have a plain and unambiguous meaning.

THE BOARD MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. A petition for a declaratory statement is similar to a petition for declaratory judgment. *Sutton v. Department of Environmental Protection*, 654 So.2d 1047 (5th DCA 1995), *Couch v. State*, 377 So.2d 32, 33 (Fla. 1st DCA 1979).
2. Declaratory statements determine a narrow range of issues that are the direct result of the application of agency authority to a particular set of circumstances as alleged by the petitioner. *Carr v. Old Port Cove Property Owners Ass'n, Inc.*, 8 So.3d 403 (Fla.

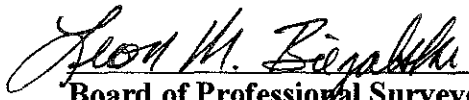
4th DCA 2009); *Novick v. Dept. of Health, Board of Medicine*, 816 So.2d 1237, 1240 (5th DCA 2002).

3. An administrative agency may not use a declaratory statement to provide statutory or rule interpretations that apply to an entire class of persons. *Regal Kitchens, Inc. v. Florida Dept. of Revenue*, 641 So.2d 158, 162 (Fla. 1st DCA 1994).

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. The Petition For Leave to Intervene and the Joinder In Petition to Intervene is hereby **GRANTED**.
2. The Petition filed by the Petitioner in this cause is hereby **DENIED**.

DONE AND ORDERED this 4th day of March, 2011.


Board of Professional Surveyors and Mappers
Leon M. Biegalski, Executive Director,
For Arthur A. Mastronicola, Jr., Chair

NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to §120.68, F.S. and Rule 9.110, *Florida Rules of Appellate Procedure*. Review proceedings must be instituted by filing a Petition or Notice of Appeal with the Clerk, Room 509 Mayo Building, Tallahassee, Florida 32399-0800, and a copy of the same with the appropriate District Court of Appeal within thirty (30) days of rendition of this Declaratory Statement.

Filed with the Clerk, this 7th day of March, 2011.


Agency Clerk

Copy mailed by Certified U.S. Mail, RRR# 7010 2780 0000 9453
6826, on March 8, 2011 to:

Mr. Jack A. Butler, Jr.
150 North Lakeshore Dr.
Ocoee, FL 34761

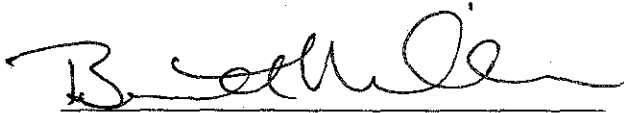
Copy mailed by Certified U.S. Mail, RRR# 7010 2780 0000 9453 on March 8, 2011 to:

Ms. Claire Duchemin, Esq., who agreed to accept service at:
1615 Village Square Blvd. Suite #7
Tallahassee, FL 32309

Copy mailed by Certified U.S. Mail, RRR# 7010 2780 0000 9453
6840, on March , 2011 to:

Management Association for Private Photogrammetric Surveyors
1856 Old Reston Ave. Suite 205
Reston, VA 20190

I certify that true copies of this Final Order were mailed to the above individuals on the above referenced dates.



Bennett M. Miller
Board Counsel
Florida Board of Professional Surveyors and Mappers