

The following is the full text of the Declaratory Statement. The original is in poor condition and difficult to photocopy.

State of Florida
Department of State

DS 80-04

DECLARATORY STATEMENT

Petitioner, Interscience, Inc., by and through its attorney, Bruce A. Walkley, has filed a Petition for Declaratory Statement seeking a determination as to whether Chapter 493, Florida Statutes, is applicable to persons engaged solely in a technical or scientific capacity and the rendering of expert advice as it relates to scientific causes of physical events, such as fires and other injuries to real or personal property.

Petitioner is engaged in the business of providing trained scientists whose function is to ascertain the scientific causes of physical events and render advice thereon. The above cited statute, which is enforced by the Department, has a direct impact on Petitioner thereby entitling it to a Declaratory Statement.

Chapter 493, Florida Statutes, in Part I thereof, deals with the regulation and licensing of private investigative agencies. Section 493.01, Florida Statutes, defines private investigation as follows:

(6) "Private investigation" means and includes investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:

* * *

(f) The causes and origin of, or responsibility for fires, or libels, or slanders, or losses, or accidents, or damage, or injuries to real or personal property."

Section 493.02(2), Florida Statutes, prohibits any person, firm, company, partnership or corporation from furnishing private investigative services without first obtaining a license from the Department.

Section 493.11, Florida Statutes, provides for certain exemptions from the operation of Chapter 493, Florida Statutes, Part I, none of which are applicable to the subject situation.

The entire crux of this question centers on the interpretation of the legislative language and intent of Section 493.01(6)(f), Florida Statutes, i.e., whether for the purpose of regulatory licensing as required by Section 493.02(2), Florida Statutes, this language is specifically intended to include scientific and technical investigation into the physical causes/origins of fires.

While no Florida court has yet ruled on the application of legislative intent of the definition section found in Section 493.01(6)(f), Florida Statutes, there is a fundamental rule of construction which states:

Where the language of a statute is plain and unambiguous there is no occasion for construction and the statute must be given effect according to its plain and obvious meaning. 83 C.J.S., Statutes, page 577.

It has also been stated that legislative intent should be determined from outward manifestation of the Legislature and should be found from the words which the Legislature has sought to use and define its enactments (1967 Op. Att'y. Gen. Fla. 067-1).

Furthermore, the Florida Supreme Court held in Segal v. Simpson, 121 So. 2d 790 (Fla. 1960), that:

Courts will generally uphold legislative classifications of businesses for license purposes if there are substantial differences between those in a particular class and those otherwise classified or omitted, but classifications must not be arbitrary or capricious (emphasis added)

The Legislature has defined "private investigation" to mean and include investigation with reference to "causes and origin of, or responsibility for fires . . . or injuries to real or personal property." It has not seen fit to extend the definition of "private investigations" to one furnishing technical and scientific advice as it relates to the causes of physical events. Therefore, it must be assumed that the Florida Legislature did not intend to extend Chapter 493, Florida Statutes, to include experts and other professionals engaged in scientific and technical determinations. To do so under the present law would be constitutionally objectionable, arbitrary and capricious, and not truly designed to carry out the real purpose of the act.

Petitioner for Declaratory Statement cited the California Appellate Decision in Kennard v. Rosenberg, 273 P.2d 839 (Cal. 4th Dist. Ct. APpl. 1954). Said case dealt with a similar California licensing statute which defined a private investigator as:

A person [who] . . . for any consideration . . . accepts employment to furnish . . . any investigation for the purpose of obtaining, information with reference to: . . . the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer, or investigating committee.

Furthermore, Kennard v. Rosenberg, *supra*, dealt with a person hired as a consultant in an expert capacity to determine the scientific origin of a fire. The California Court held that persons engaged solely in a technical or scientific capacity are not subject to the requirement of obtaining a private investigator's license. The Court stated:

We conclude that it was the intent of the Legislature to require those who engage in business as private investigators and detectives to first procure a license to do

so; that the statute was enacted to regulate and control this business in the public interest; that it was not intended to apply to persons who, as experts, were employed as here, to make tests, conduct experiments and act as consultants in a case requiring the use of technical knowledge.

The Department concurs that Kennard v. Rosenberg, supra, is persuasive, and that when taken together with the previously cited Attorney General's Opinion and Florida Supreme Court case, demonstrates that the intent of the Legislature in writing Chapter 493 was not to require every person conducting technical and scientific investigation into the cause of physical phenomena or events to first obtain a private investigator's license.

Accordingly, it is the finding of the Department that Chapter 493, Florida Statutes, Part I, does not apply to Interscience, Inc. to the extent that its experts or other professionals are engaged in scientific and technical investigations as to the causes of physical events. Should Interscience, Inc. wish to expand its investigatory functions beyond this relatively narrow scope, it would require licensing as a private investigator or investigative agency pursuant to Chapter 493, Florida Statutes.

DONE AND ENTERED this 1st day of April 1980 in Tallahassee, Florida.

STATE OF FLORIDA
DEPARTMENT OF STATE

//SIGNED//

George W. Firestone, Secretary