

**AGENCY FOR WORKFORCE INNOVATION  
TALLAHASSEE, FLORIDA**

**PETITIONER:**

Employer Account No. - 2917156  
BERKELY PREPARATORY SCHOOL INC  
4811 KELLY ROAD  
TAMPA FL 33615-5020

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2009-139374L**

**ORDER**

This matter comes before me for final Agency Order.

Having fully considered the Special Deputy's Recommended Order and the record of the case and in the absence of any exceptions to the Recommended Order, I adopt the Findings of Fact and Conclusions of Law as set forth therein. A copy of the Recommended Order is attached and incorporated in this Final Order.

In consideration thereof, it is ORDERED that the determination dated August 27, 2009, is AFFIRMED.

DONE and ORDERED at Tallahassee, Florida, this \_\_\_\_\_ day of **June, 2010**.



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**TOM CLENDENNING**  
Director, Unemployment Compensation Services  
AGENCY FOR WORKFORCE INNOVATION

**AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals**

MSC 345 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**PETITIONER:**

Employer Account No. - 2917156  
BERKELY PREPARATORY SCHOOL INC  
CHARLES S SIMPSON JR  
4811 KELLY ROAD  
TAMPA FL 33615-5020

**RESPONDENT:**

State of Florida  
Agency for Workforce Innovation  
c/o Department of Revenue

**PROTEST OF LIABILITY  
DOCKET NO. 2009-139374L**

**RECOMMENDED ORDER OF SPECIAL DEPUTY**

TO: Director, Unemployment Compensation Services  
Agency for Workforce Innovation

This matter comes before the undersigned Special Deputy pursuant to the Petitioner's protest of the Respondent's determination dated August 27, 2009.

After due notice to the parties, a telephone hearing was held on December 29, 2009. The Petitioner's Business Manager and Chaplain both appeared at the hearing. The Joined Party and a Tax Specialist for the Respondent appeared and provided testimony at the hearing.

The record of the case, including the recording of the hearing and any exhibits submitted in evidence, is herewith transmitted. Proposed Findings of Fact and Conclusions of Law were not received.

**Issue:**

Whether services performed for the Petitioner by the Joined Party and other individuals as teachers constitute insured employment pursuant to Sections 443.036(19), 443.036(21); 443.1216, Florida Statutes, and if so, the effective date of the liability.

**Findings of Fact:**

1. The Petitioner is a private school which was formed in 1961. The school provides classes from prekindergarten through twelfth grade. While the school is affiliated with a church, the school is operated for educational purposes rather than religious purposes. While the church does have oversight of property sales by the school and the appointment of a headmaster, the school is not owned or operated by the church. The school and church have separate Federal Employer ID

numbers. The school funding comes primarily from tuition payments and is supplemented by contributions.

2. The school maintains an ordained chaplain from the church. The chaplain's role is to act as a spiritual advisor and to teach religious studies courses. The religious studies courses offered by the school are required for students of the appropriate grade levels. The courses include ethics courses, courses on world religions, and religious history courses. The purpose of the religious studies courses is to educate and not to proselytize.
3. The school has operated under a non-profit 501(c)(3) exemption granted by the Internal Revenue Service. By a letter dated February 15, 1982, the Florida Department of Labor and Employment Security notified the Petitioner that the Petitioner was not liable to pay Florida unemployment compensation taxes. The Petitioner has approximately 130 full time teachers and 20-30 part time teachers.
4. The Joined Party was employed by the Petitioner as a part time substitute teacher and off campus coach from December 2002, through December 2009. The Joined Party was paid \$100 per day and issued a W-2 form by the Petitioner. The Joined Party received \$6,239.16 in wages from the Petitioner in 2008. The Joined Party was covered by the Petitioner's worker's compensation insurance.

#### **Conclusions of Law:**

5. Section 443.1216(3), Florida Statutes, provides:

The employment subject to this chapter includes service performed by an individual in the employ of a religious, charitable, educational, or other organization, if:

- (a) The service is excluded from the definition of "employment" in the Federal Unemployment Tax Act solely by reason of s. 3306(c)(8) of that act; and
  - (b) The organization had at least four individuals in employment for some portion of a day in each of 20 different weeks during the current or preceding calendar year, regardless of whether the weeks were consecutive and whether the individuals were employed at the same time.
6. The evidence demonstrates that the Petitioner is a nonprofit educational organization with at least four individuals in employment. The fact that the Joined Party was employed by the Petitioner is not in dispute. The matter to be resolved is whether the Petitioner is an employer subject to the Unemployment Compensation Law as set forth in s. 443.1216(3). There is no conflict concerning the fact that the Petitioner employs approximately 130 full time teachers and 20-30 part time teachers. The question to be resolved is whether the employees have performed services in insured employment. In order to determine that the employment is insured, it must be established that the Petitioner has had at least four employees performing services for any portion of a day within twenty weeks of a calendar year. It was demonstrated that the Petitioner's school maintains 130 full time teachers throughout the school year.
  7. Section 443.1216(4)(a), Florida Statutes, provides:

(4) For purposes of subsections (2) and (3), the employment subject to this chapter does not apply to service performed:

- (a) In the employ of:

- (1) A church or convention or association of churches.
  - (2) An organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches.
    - (b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order.
8. The evidence presented in this case reveals that the Petitioner is a school run primarily for educational purposes. The Petitioner's funding comes from tuition payments and contributions. While the Petitioner is associated with a church and does have a chaplain, neither the church nor the chaplain controls or otherwise runs the Petitioner's school. Therefore, the Petitioner is not exempt from unemployment taxation under Section 443.1216(4)(a).
9. The preponderance of the evidence presented in this case reveals that there were 4 or more individuals performing insured work as employees for the Petitioner in 20 weeks during the current or preceding calendar year. Therefore, the Petitioner meets the liability requirements for Florida Unemployment Compensation contributions. Accordingly, the Petitioner meets the liability requirements for Florida unemployment compensation contributions, effective September, 15, 2007.

**Recommendation:** It is recommended that the determination dated August 27, 2009, be AFFIRMED.

Respectfully submitted on April 9, 2010.



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KRIS LONKANI, Special Deputy  
Office of Appeals