

**AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE, FLORIDA**

PETITIONER:

Employer Account No. - 2918617
THE HOLY NATIVITY EPISCOPAL
PRIVATE SCHOOL OF BAY COUNTY, INC
205 HAMILTON AVENUE
PANAMA CITY FL 32401-3817

RESPONDENT:

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

**PROTEST OF LIABILITY
DOCKET NO. 2009-139372L**

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 September 10, 2009, is AFFIRMED.

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



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. - 2918617
THE HOLY NATIVITY EPISCOPAL
PRIVATE SCHOOL OF BAY COUNTY INC
205 HAMILTON AVENUE
PANAMA CITY FL 32401-3817



**PROTEST OF LIABILITY
DOCKET NO. 2009-139372L**

RESPONDENT:

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

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 September 10, 2009.

After due notice to the parties, a telephone hearing was held on March 16, 2010. The Petitioner was represented by its attorney. The Petitioner's Head of School testified as a witness. The Respondent, represented by a Department of Revenue Tax Specialist II, appeared and testified. The Joined Party was represented by her attorney. The Joined Party appeared and testified.

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 received from the Petitioner.

Issue:

Whether the Petitioner meets liability requirements for Florida unemployment compensation contributions, and if so, the effective date of liability, pursuant to Sections 443.036(19); 443.036(21), Florida Statutes.

Findings of Fact:

1. The Petitioner, Holy Nativity Episcopal Private School of Bay County, Inc., is a Florida nonprofit corporation which was formed in February 2003 to operate a school consisting of pre-kindergarten through eighth grade. From 1959 until 2003 the school was part of the Holy Nativity Episcopal Church. Holy Nativity Episcopal Private School of Bay County, Inc. was formed in 2003 due to issues and concerns about the relationship between the church Rector and the head of the school

and their ability to get along. It was decided that the school should have a closer affiliation with the Episcopal Diocese of the Central Gulf Coast.

2. The school is accredited by the Florida Council of Independent Schools and the Kindergarten Council. The school was accredited by the same organizations when it was owned and operated by the church.
3. The Petitioner has a 501(c)(3) exemption issued by the Internal Revenue Service that is separate from any exemption obtained by the church or the Diocese. The Petitioner has its own Federal Employer Identification number.
4. From its inception in 2003 the Petitioner has always had more than four employees. Generally, the Petitioner has had between thirty to forty employees at any one time.
5. The Petitioner charges tuition to the students ranging from \$3,500 to \$5,500 per year. Approximately 95% of the Petitioner's income is derived from tuition. Approximately 5% of the income is derived from gifts from parents and from the church.
6. The Petitioner does not own the property where the school is located. Part of the property is owned by the Diocese and part of the property is owned by a separate foundation. The Petitioner pays rent to the Diocese for use of the school property.
7. Neither the students nor the teachers are required to be members of the Episcopal Church. The students are not required to be Christian.
8. The school curriculum is geared toward academic studies such as reading, writing, and arithmetic, similar to the subjects taught in public schools. A religious studies class is provided for older students. The students are provided with a bible verse to learn each week. The school has chapel for thirty minutes on one day each week and the bible verse is discussed at that time. The students are not required to attend chapel.
9. No Diocese employees are employed at the school. The Bishop visits the school from time to time.
10. The Joined Party was employed as a preschool and first grade teacher beginning in August 1983. In approximately 2005 the Joined Party was transferred to the position of media specialist. The Joined Party was terminated in May 2009 when the position of media specialist was eliminated by the Petitioner.

Conclusions of Law:

11. Section 443.1216, Florida Statutes, provides in pertinent part:
 - (1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:
 1. An officer of a corporation.
 2. An individual who, under the usual common law rules applicable in determining the employer-employee relationship is an employee.
12. 443.1216, Florida Statutes, provides that Employment, as defined in s. [443.036](#), is subject to this chapter under the following conditions:
 - (3) 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.
- (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 a 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 a convention or association of churches.
- 13. The Petitioner, Holy Nativity Episcopal Private School of Bay County, Inc. is an educational organization, a school. The Petitioner is not a church or a convention or association of churches and is not operated primarily for religious purposes.
- 14. The Petitioner has had at least four individuals in employment for some portion of a day in each of 20 different weeks during a calendar year since the Petitioner's inception. Thus, the Petitioner is subject to the Florida Unemployment Compensation Law.

Recommendation: It is recommended that the determination dated September 10, 2009, be AFFIRMED.

Respectfully submitted on April 9, 2010.



R. O. SMITH, Special Deputy
Office of Appeals