

Student financial association commission

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Date: January 08, 1998

Subject:
Student financial association commission

Mr. Ernest E. Smith, Jr.
Executive Director
Florida Student Financial Association Commission
Knott Building
Tallahassee, Florida 32301

RE: ADMINISTRATIVE PROCEDURES ACT--Application of Act to Florida Student Financial Assistance Commission

Dear Mr. Smith:

This is in response to your request for my opinion on substantially the following question:

Is the Florida Student Financial Assistance Commission an "agency" within the scope and intent of Ch. 120, F.S., such that determinations made by the commission pursuant to Ch. 240, F.S., would be subject to the provisions of Ch. 120, F.S., the Administrative Procedure Act?

The Florida Student Financial Assistance Commission is a statutory body created by section 240.423(1), F.S., and assigned to the Department of Education. The commission serves as a state-chartered, nonprofit corporation to administer the comprehensive program of student grants, scholarships, loans and loan guarantees authorized by law. The commission is authorized to adopt rules for its own government, adopt and use an official seal in the authentication of its acts, administer the act which created it as well as rules adopted by the State Board of Education, maintain a record of its proceedings, and prepare an annual budget. Section 240.425(b), (c), (e), (g), and (i), F.S. The commission is further authorized to expend moneys from available trust funds in applicable student financial assistance programs, to sue and be sued, to enter into contracts for services or contracts to provide services with the federal government, state departments and agencies or individuals, to establish banking accounts under negotiated terms and to perform necessary financial transactions. Sections 240.431(2), 240.425(2)(a) and (b), and 240.435(1), F.S.

In the course of administering the Florida Guaranteed Student Loan and other financial assistance programs, the commission acts as guarantor of loans made by lending institutions under agreement to student borrowers attending eligible educational institutions, and has ultimate responsibility for the final disposition of a student loan debt to the lender. Section 240.429(3), F.S. The commission, through delegation, and/or rule, regularly makes determinations regarding both the financial institutions which will participate as lenders in the various programs as well as the students who are qualified to receive the programs' financial

assistance (See *e.g.*, Rule of the Department of Education 6A-7.292[1]). These decisions to enter into agreements with the financial institutions and to qualify or disqualify student borrowers are not in the form of recommendations to some other body or agency but have the nature of final determinations made by the commission itself.

Section 120.52(1)(b), F.S., defines "agency" to mean "[e]ach other state officer and each state department, departmental unit described in s. 20.04, *commission*, regional planning agency, board, district, and authority . . ." (e.s.) An "agency head" is defined as ". . . the person or *collegial body* in a department or other governmental unit statutorily responsible for final agency action." (e.s.) Section 120.52(3), F.S. "Person" is defined by s. 120.52(11) to mean any person described in s. 1.01(3), F.S., any unit of government in or outside the state, and any agency described in subsection (1) of s. 120.52, F.S.

Notwithstanding the unambiguous inclusion of a commission within the scope of state entities subjected to the provisions of the Administrative Procedure Act, the Florida Student Financial Assistance Commission is a collegial body within the Department of Education statutorily responsible for administering student financial aid in the state by, among other things, entering into contracts for services or contracts to provide services with respect to administering student financial assistance, administering the guarantee of student loans made by participating commercial financial institutions, and assessing a student loan insurance premium on each loan guaranteed by the commission. Sections 240.425(2)(b), 240.429(3), 240.431(7), F.S. Accordingly, the acts performed by the Florida Student Financial Assistance Commission under these statutes have the effect of finally determining the substantial interests of individuals and other entities and persons.

The Administrative Procedure Act generally applies to all agency action affecting the substantial interests of parties, and unless the agency is specifically exempted, the provisions of Ch. 120, F.S., will be binding upon it. See *Commercial Consultants Corp. v. Department of Business Regulation*, 363 So.2d 1162 (1 D.C.A. Fla., 1978), *Graham Contracting, Inc. v. Department of General Services*, 363 So.2d 810, (1 D.C.A. Fla., 1978). Because the Florida Student Financial Assistance Commission is statutorily charged with, and regularly engages in performing duties and activities which have the effect of finally determining the substantial interests of parties, I must conclude that the Florida Student Financial Assistance Commission, as established by s. 240.423(1), F.S., is an "agency" within the purview and for the purposes of the Administrative Procedure Act, Ch. 120, F.S., and subject to the provisions thereof.

Therefore, it is my opinion that the Florida Student Financial Assistance Commission is an "agency" within the purview and for the purposes of the Administrative Procedure Act, Ch. 120, F.S., and the determinations made by the commission under ss. 240.423-240.435, F.S., which have the effect of finally determining the substantial interests of parties, are subject to and governed by the provisions thereof.

Sincerely,

Jim Smith
Attorney General

Prepared By:

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