

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED

JUN 05 2017

INSURANCE COMMISSIONER
OKLAHOMA

STATE OF OKLAHOMA, ex rel., JOHN D.)
DOAK, Insurance Commissioner,)
)
Petitioner,)
)
vs.)
)
JESSICA DIANE SCHILLER, an applicant)
for a bail bonds license in the State of)
Oklahoma,)
)
Respondent.)

17-0347-DEN

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 31, 2017, this matter came on for hearing before the undersigned Administrative Law Judge. At issue is the claim of Respondent, Jessica Diane Schiller, that the action of the Insurance Department which denied her application for a license as a bail bondsman was erroneous. Petitioner, State of Oklahoma, ex rel., John D. Doak, Insurance Commissioner, appeared by counsel, Barron B. Brown, Assistant General Counsel. Respondent appeared in person and with counsel, Jeff Eulberg.

The evidence consisted of the testimony of two witnesses, Jessica Schiller and Renonda Stogstill, an employee of the Bail Bond Division of the Oklahoma Insurance Department, and multiple exhibits.

The material facts are not in dispute. On April 4, 2017, Ms. Schiller made application for a bail bonds license to the Oklahoma Insurance Department. Thereafter, Renonda Stogstill was tasked to investigate the application. Among other things, Ms. Stogstill was required to determine if Ms. Schiller met the statutory requirements for the issuance of such a license, one of which is that each applicant possess a high school diploma or its equivalent.

As part of her application, Respondent submitted a "Diploma of Graduation" indicating that she had graduated from the Bethany Christian Academy (herein, at times, referred to as Bethany) after completing a course of study prescribed for graduation from that institution. In addition, the Insurance Department was provided what was identified as Ms. Schiller's transcript from Bethany showing the courses she completed, all categorized under the general descriptions of Math, English, Social Studies, Science, Bible and Electives.

The evidence established that Bethany is a private school. Private schools may be accredited by an accreditation association approved through the Oklahoma Private School Commission (OPSAC). Accordingly, Ms. Stogstill inquired of OPSAC to determine if Bethany had been approved or accredited by OPSAC or any accreditation association it had approved. On April 3, 2017, Nicole Slaughter of OPSAC advised Ms. Stogstill, by email, that OPSAC did not have any listing for Bethany Christian Academy and that it had no other information pertaining thereto. (Petitioner's Exhibit A).¹

59 O.S., 2011, Section 1305(A) sets forth eight (8) specific requirements which must be met by all applicants prerequisite to securing a bail bonds license. One of the statutory requirements is that every applicant must have a high school diploma or its equivalent. The phrase "high school diploma or its equivalent" is not otherwise defined in the statute. Pursuant to authority granted to it by the legislature, the Oklahoma Insurance Department enacted regulations, one of which defines that phrase. Under the heading "High School Diploma or Equivalent," OAC 365:25-5-30 defines

¹After Respondent requested this hearing, Donnie Peal, Executive Director of OPSAC, provided the Insurance Department with a letter which said: "The Oklahoma Private School Accreditation Commission (OPSAC), per search from 1996 through 2005, does not have a record of Bethany Christian Academy as being accredited with an approved OPSAC accreditation association." (Petitioner's Exhibit C).

the term as follows:

The equivalent of a high school diploma, as described by 59 O.S. Section 1305(A)(8) shall be the successful completion of all parts of the General Education Development Program or completion of a similar program authorized and approved by the Oklahoma State Department of Education. An applicant shall provide documentation that the Oklahoma State Department of Education considers the applicant's educational qualifications [with or without a 'diploma'] to be the equivalent of a high school diploma if necessary.

Based on the information provided by OPSAC, the Insurance Department denied Ms. Schiller's application for license. In a letter dated May 1, 2017, Lewis Garrison, Director of the Bail Bond Division, advised her that "[t]he diploma of graduation from Bethany Christian Academy submitted by you is not authorized by the Oklahoma State Department of Education."

Respondent contends that she satisfied the statutory requirements for a bail bonds license by submitting her diploma and a transcript. She urges that since the definition set forth in OAC 365:25-5-30 only defines the "equivalent" of a high school diploma, and, since the word "diploma" is not otherwise defined, the evidence she submitted to the Insurance Department met the statutory requirement because she had a diploma. The Insurance Commissioner contends that her submission failed to demonstrate that she had a true high school diploma or qualifications which, otherwise, were considered to be the equivalent of a diploma by the State Board of Education.

The regulation in question has been in effect since 1993. The statute upon which it is based was enacted in 1965. It has been amended eleven (11) times since its enactment and two of the amendments occurred after the effective date of the regulation. In other words, two legislative sessions have come and gone and the legislature has taken no action to disapprove any part thereof. Therefore, legislative silence is deemed to be its approval. *McClure v. Conocophillips Company*,

2008 OK 42, 142 P.3d 390.

Respondent, however, does not contend that the regulation in question is invalid. She seeks a construction thereof which ignores the requirement that each applicant must be able to submit documentation showing that the State Department of Education considers her educational qualifications to be the equivalent of a high school diploma. The Insurance Department has construed the phrase "high school diploma or its equivalent" to require that the evidence submitted by an applicant must establish that a diploma or its equivalent has been approved or authorized by the Oklahoma State Board of Education. To construe the regulatory definition in any other way would frustrate the obvious intent of the legislature when it enacted 59 O.S., 2011, Section 1305(A), as well as the regulation, and, renders them meaningless.

Courts have shown great deference to an agency's interpretation of its own rules. When the terms of a regulation or statute are amenable to more than one meaning, deference should be given to the interpretation adopted by those charged with the duty of administration - in this instance, the Insurance Department. In addition, when choosing between two or more possible meanings of a statute or regulation, controlling weight may be given to long-continued usage unless it is plainly erroneous or inconsistent with the language thereof. *Estes v. Conoco phillips*, 2008 OK 21, 184 P.3d 518; *McClure v. Conocophillips, supra*; *Walker v. Group Health Services Inc.*, 2001 OK 2, 37 P.3d 749.

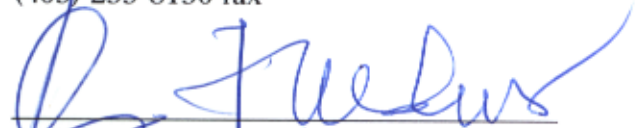
OAC 365-25-5-30 is susceptible of at least two interpretations, one of which would permit any applicant to meet the educational requirement for a bail bonds license by supporting his or her application with a diploma from *any* institution which professes to provide a high school education, regardless of any review or approval by the Oklahoma State Board of Education. The other is to read

the regulations definition to require approval by the State Board for all institutions or programs providing a high school diploma or its equivalent. This second interpretation is neither plainly erroneous nor inconsistent with the language of the regulation. Accordingly, the undersigned finds that to adopt the position of the Respondent would defeat the purpose and intent of both the statute and regulation, which is to ensure that all persons holding a state license to write or sell bail bonds have the education deemed necessary by the legislature.

In support of her position, Respondent testified and provided documents which established that her diploma had been deemed sufficient by another state agency, the Oklahoma Real Estate Commission. Her testimony is taken as true, but it does not provide a basis to compel the Insurance Department to issue a license to her if for no other reason than the Oklahoma Real Estate Commission has no such educational requirement. Moreover, the legislature was plainly within its power when it adopted the educational requirement by statute and, the department was authorized by the legislature to enact regulations to aid in its enforcement.

Accordingly, the undersigned finds and orders that the action of the Oklahoma Insurance Department which denied Respondent's application for a bail bondsman license is sustained. The undersigned further finds and orders that Respondent's application for a bail bonds license is denied. Respondent is assessed the cost of this proceeding in the sum of \$1,005.00, which shall be paid within thirty (30) days from the date of this order.

Charles F. Alden, III, OBA #0187
CHARLES F. ALDEN, III, INC., P.C.
309 N.W. 9th Street
Oklahoma City, OK 73102
(405) 235-5255
(405) 235-8130 fax


ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF MAILING

On the 5th day of June, 2017, I hereby certify that a true and correct copy of the above and foregoing Order was mailed via U.S. Mail, postage prepaid thereon, to:

Jeff Eulberg, Esq.
925 N.W. 6th Street
Oklahoma City, OK 73106
Attorney for Respondent

Barron B. Brown, Asst. General Counsel
Oklahoma Insurance Department
3625 NW 56th Street, Suite 100
Oklahoma City, Oklahoma 73112



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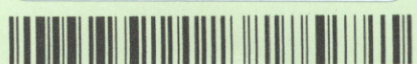
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