

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE

JAN 6 1989

AMERICAN INSTITUTE OF DEFENSIVE  
DRIVING, INC., A FLORIDA NOT  
FOR PROFIT CORPORATION,

Petitioner,

v.

TRAFFIC COURT REVIEW COMMITTEE,  
A COMMITTEE OF THE SUPREME  
COURT OF FLORIDA,

Respondent,

FLORIDA SAFETY COUNCIL  
EXECUTIVES ASSOCIATION,

Intervenor.

CLERK, SUPREME COURT

By \_\_\_\_\_  
73,413 Deputy Clerk

CASE NO. ~~83,413~~

ATTY NO. 244538 (Newton)

ATTY NO. 000546 (Adkins)

RESPONSE OF INTERVENOR, FLORIDA SAFETY COUNCIL

EXECUTIVES ASSOCIATION, TO PETITION FOR WRIT OF MANDAMUS

Introduction

The Real Issues

Money is the reason that American Institute of Defensive Driving (AIDD) is before this court. Since the enactment of Chapter 85-250, Laws of Florida, which allows traffic offenders to avoid adjudication of guilt, avoid imposition of points against drivers licenses, and, most importantly, avoid the accompanying increase in insurance rates, the market for driver improvement courses has increased greatly and has become more lucrative. AIDD wants to tap that market.

For over fifteen years local safety councils, like the members of Florida Safety Council Executive Association (FSCEA), were the only organizations which cared to offer driver improvement programs, or defensive driving courses. Traffic safety was a "do-gooder" sort of cause. Nobody but the safety councils cared about it. This is the reason that, as AIDD alleges on page twelve of its Petition, in the past seventeen years the only driver improvement programs certified by the Traffic Court Review Committee have been safety council programs. Until 1986 nobody even applied to the Committee for certification. When money was not available, only the safety councils cared enough to offer programs.

The recent amendment of Section 318.14(9), Florida Statutes (1987), has changed things. Ch. 85-250, §2, Laws of Florida. Now driver improvement programs have a steady, government conscripted, supply of customers. AIDD is just the first of many businesses which will seek to capture the customers' dollars.

California's experience indicates what Florida can expect. In California, according to the San Francisco Journal, eight hundred thousand people a year choose driver improvement programs to avoid insurance rate increases. The result has been a proliferation of schools including Lettuce Amuse U, operated by comedians, and Lunch N Learn at Fine Restaurants, incorporating a fine meal into the driver training program. (A-1) The court can expect similar developments as for-profit and not-for-profit

organizations recognize the revenue source offered by driver improvement programs.

AIDD is a good example of an organization entering the market to make money. According to AIDD's By-Laws, it was organized specifically to offer driver improvement programs. (A-2) A New York corporation, Honest Ballot Association, Inc., owns all of AIDD. (Petition for Writ of Mandamus, ¶1) Honest Ballot Association, Inc. is a non-partisan corporation created to ensure "clean elections in New York City and to prevent honest votes from being offset by trickery and fraud." (A-17). Revenue for Honest Ballot's election policing activities is the only conceivable reason for Honest Ballot's interest in Florida's traffic safety.

There is nothing inherently evil in private businesses offering driver improvement programs. There is nothing inherently evil in allowing driver improvement programs to compete for student dollars by offering chocolate mousse. There is nothing inherently evil in allowing not-for-profit corporations of all sorts to fill their coffers with revenue for driver improvement programs.

But there is also nothing inherently evil in requiring organizations offering driver improvement programs to be charitable organizations which return the income to the community in the form of safety programs. There is not even anything inherently evil or illegal in limiting the number of approved

providers to ensure quality of instruction, consistency of programs, and control over programs.

All of these possibilities, however, represent significant policy issues which the Traffic Court Review Committee and this court face for the first time in this proceeding. A mandamus proceeding is not the way to resolve these issues. They have been brought to the court in a jumble, upon an inadequate record, and without sufficient analysis.

This proceeding presents much more than whether AIDD should be certified. That fact should be recognized and treated properly by referral to a special master or a subcommittee. The present proceeding before Chief Judge Hurley in the Fifteenth Judicial Circuit is an appropriate means for determining if AIDD should be certified as a provider. The Traffic Court Review Committee's current review of the minimum standards is the proper way to consider the criticisms of the standards.

#### The Stated Issues

AIDD's petition jumbles together at least five different issues. They are:

(1) Whether AIDD undeniably met all of the Basic Driver Improvement School Minimum Standards and the Traffic Court Review Committee therefore has a ministerial duty to certify AIDD's driver improvement school;

(2) Whether the court should prohibit the Traffic Court Review Committee from enforcing the minimum standards because they amount to an illegal restraint of trade or are unreasonable;

(3) Whether the Traffic Court Review Committee has authority to impose minimum standards for driver improvement schools;

(4) Whether one member of the Traffic Court Review Committee, Frederick Heidgard, who is not a party to this proceeding, violated some unidentified prohibition against an alleged conflict of interest; and

(5) Whether during consideration of AIDD's petition for certification the Traffic Court Review Committee violated the Government in the Sunshine Law, Section 286.011, Florida Statutes (1987).

FSCEA's response will address the first two issues identified. FSCEA will defer to and adopt the response of the Traffic Court Review Committee to the other issues.

However, FSCEA notes that if the vague allegation of violation of Section 286.011 was established, the appropriate relief would not be the certification which AIDD seeks. Killearn Properties, Inc. v. City of Tallahassee, 366 So.2d 26 172 (Fla. 1st DCA 1979), cert. denied, 378 So.2d 343 (Fla. 1979). The relief would be reconsideration of the petition for certification. The petition for certification is currently being reconsidered in the circuit court proceeding referred to in paragraph 23 of AIDD's Petition for Writ of Mandamus.

### AIDD Did Not Meet The Minimum Standards

AIDD's claim that it met all of the minimum standards is not supported by the record which it presents to this court. It does not appear from the record that the claim was supported by the record provided to the Chief Circuit Judge below or to the Traffic Court Review Committee. The applicable minimum standards are reproduced and attached in the Appendix to this Response at page 19. AIDD did not meet at least two documentary requirements. Both are contained in standard 2.05. That standard requires an internal revenue exemption letter proving non-profit status under the requirements of Section 501(c) of the Internal Revenue Code and a certified CPA audit of the applying organization. The record before this court contains neither. Review of the petition originally filed with the Chief Judge of the Fifteenth Judicial Circuit shows that neither document was submitted to the Circuit Judge either. (App. p.8 of Petition for Writ of Mandamus) AIDD's petition to the Chief Judge identifies the documentation submitted. It does not identify a 501(c) letter or a certified audit for AIDD.

The pleading submitted to the Chief Judge as well as the Petition for Writ of Mandamus in this court artfully and somewhat misleadingly shifts back and forth between AIDD and its owner, Honest Ballot Association, Inc. In paragraph 2(c) the petition filed with the circuit court represents that a 501(c) exemption letter for Honest Ballot Association, Inc. is submitted.

Similarly, it appears that the certified audit submitted was one for Honest Ballot Association, Inc., not AIDD.

In the same fashion, AIDD's Petition for Writ of Mandamus creates the impression that AIDD is tax exempt under Section 501(c)(3) of the Internal Revenue Code by alleging in paragraph 1 that AIDD is a wholly owned subsidiary of Honest Ballot Association, Inc., "a not-for-profit corporation organized under the corporate laws of the State of New York, recognized as being tax-exempt under Section 501(c)(3) of the Internal Revenue Code." The tax exempt status of Honest Ballot Association, Inc. is not relevant to the status of AIDD. It tells nothing about whether AIDD, Inc. is organized in such a fashion and dedicated to such principles that it would qualify for this charitable exemption. In addition, there is no evidence that the Internal Revenue Service has been informed of the activities of Honest Ballot Association, Inc.'s subsidiary AIDD. This is particularly significant since correspondence from the Internal Revenue Service has emphasized to Honest Ballot Association, Inc. that its tax exempt status continues only as long as there have been no changes in its purposes, its form of organization, or its method of operation. (A-24)

AIDD's claim that it is entitled to certification on the basis that it has met the minimum standards fails by these two specifically identified documentation deficiencies alone. In addition, issuance of certification is not a matter to be remedied by a Writ of Mandamus. A Writ of Mandamus should issue

only for performance of ministerial duties involving no discretion. Department of Health and Rehabilitative Services v. Hartsfield, 399 So.2d 1019 (Fla. 1981). The minimum standards clearly require the exercise of discretion in evaluating the suitability of courses and the impact of the proposed course upon existing courses. Consequently, a Writ of Mandamus is not appropriate.

**The Existing Minimum Standards**  
**Are Not an Illegal Restraint of Trade**

The implication that the existing minimum standards are an illegal restraint of trade is presented by allusion and misinformation. AIDD cites no authorities to support the claim.

A major part of the implication that somehow the minimum standards illegally or even unfairly exclude providers from driver improvement program market is based upon a claim that in seventeen years the Traffic Court Review Committee has not approved certification of any driver improvement programs. Significantly, AIDD does not allege that any entity other than itself has been denied approval. Until 1985, when Chapter 85-250, Laws of Florida, made driver improvement programs an appealing option for traffic offenders, nobody wanted to get into the driver improvement school business. The schools were provided as a public service by the local safety councils.



As outlined by the Response of the Traffic Court Review Committee, in 1986 in reaction to the first application for approval since 1977 the Traffic Court Review Committee established the minimum standards. Until the application of AIDD only two providers had applied for certification. Those providers were National Corrective Training Institute and Driver Improvement Center, Inc. which applied in 1986. Both were rejected because their programs did not address any requirements of Florida law. (A-30)

Rather than the seventeen years of a jealously protected monopoly which AIDD tries to paint the picture of, there have been seventeen years in which driver improvement was a public service in which no one but safety councils was interested. It is only in the past two years that other providers have shown an interest. This is not a market from which legitimate providers have been excluded for non-competitive reasons.

As importantly there is nothing inherently illegal in the state regulating the providers of a service, allowing only a single provider, or requiring consideration of the impact upon an existing provider of a new provider. See, §1.46, Antitrust Adviser (C.A. Hills ed; 3rd Ed., 1985).

Driver improvement schools are sentencing alternatives which must be monitored by the court system and must communicate closely with it. They are essentially fulfilling a public function. The laws regulating restraint of trade do not prohibit restrictions on such a business.

### The Minimum Standards Are Not Unreasonable

The attack upon the reasonableness of minimum standards appears to be directed at the requirement that the provider be a 501(c) corporation. The phrase "501(c) corporation," refers to corporations which are exempted from paying income tax by Section 501(c) of the Internal Revenue Code of 1986. The exemption pertinent here is for corporations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual . . . ." I.R.C. §501(c)(3) (1986). Simply being a not-for-profit corporation does not ensure that the corporation operates for the public good. There is no requirement that a Florida not-for-profit corporation operate for altruistic purposes. §617.01(1), Fla. Stat. (1987). The minimum standard requirement that a provider have a 501(c) exemption assures that the money paid by the public at the coercion of the criminal justice system will be used for the public good.

This is not an uncommon provision. For example Part III of Chapter 154 of the Florida Statutes, which creates health facility authorities, has a similar limitation. Part III of Chapter 154 allows local governments to form health facilities authorities to build health facilities and then lease them to health care providers. But it only allows the health facilities to lease the facilities to not-for-profit corporations. §§154.205(8); §154.207; §154.209, Fla. Stat. (1987). These

sorts of provisions insure that the public benefits from the dollars which it spends.

The current system has served the public well. The local safety councils, which are the current providers of driver improvement programs, are using the income generated from those programs for programs dedicated to the public safety. The programs of the National Safety Council, Pinellas County Chapter, Inc.; The National Safety Council, Broward Chapter, and the Northeast Florida Safety Council are good examples. (A-33, 44, and 46).

Each of these safety councils relies in a large part upon income generated from driver improvement programs to fund other programs. They include awards programs, such as that conducted by the Pinellas County Chapter, for schools and operators of large vehicle fleets. They include babysitter training programs and car seat programs offered by all three councils.

In addition, the Pinellas County Chapter provides training for small truck drivers. (A-36) The Broward County Chapter provides fire safety and swimming safety programs. (A-44) The Northeast Florida Safety Council provides training for bar owners and their employees to help spot intoxicated patrons and to discourage them from driving. (A-47) The programs of all three safety councils are outlined in more detail in the appendix at pages 33 through 96. The programs share a common theme. The money generated by the driver improvement program is funneled directly back into public safety programs to benefit the

community from which the money came. This benefit would not accrue were it not for the requirement that the providers be charitable organizations. In the case of AIDD, the money it generates will go not back to the citizens of Florida but to Honest Ballot Association, Inc. in New York City. Trying to instead keep the money in the State of Florida benefitting the citizens of the State of Florida is not an unreasonable or illegal approach.

### Conclusion

AIDD has not presented a record which conclusively demonstrates that it is entitled to certification as a matter of law. Specific documentation missing from the record shows that AIDD has not met the minimum standards for certification.

AIDD has not presented facts or legal argument which supports determining the existing minimum standards are illegal or unreasonable. The standards serve several public purposes.

This proceeding is not the proper way to address the issues raised. Proper development of the issues raised requires extensive factual inquiry. Information about driver training, education, and economics must be considered. Testimony must be heard and documents examined.

There is pending before the Chief Judge for the Fifteenth Judicial Circuit a second opportunity for AIDD to prove that it meets the minimum standards. That proceeding is the appropriate

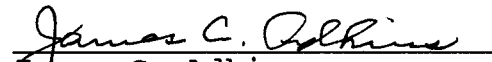
forum for AIDD's claim to certification. Its complaint about the rigors of the proceeding is not a reason not to rely upon the judge to make the evaluation. In part the rigors are of AIDD's own making since by attacking the minimum standard it is requiring consideration of the factual support for them.

The Traffic Court Review Committee is also reviewing the minimum standards. That is the appropriate way in which to address any complaints there may be about the standards.

This court and public would best be served by the court not addressing these issues at this time. The court should direct the Traffic Court Committee and the Chief Judge of the Fifteenth Judicial Circuit to continue the evaluation of the application of AIDD. It should direct the Traffic Court Committee to continue and complete its review of the minimum standards. After the minimum standards have been amended they should be brought to the court for its review and approval if the court deems it appropriate.

Respectfully submitted,

CARSON & LINN, P.A.  
Mahan Station  
1711-D Mahan Drive  
Tallahassee, Florida 32308  
904/878-2057

  
James C. Adkins

  
John D.C. Newton, II

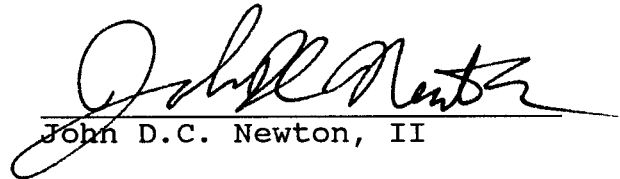
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by United States Mail this 6<sup>th</sup> day of January, 1989, to:

Marc L. Barbakoff  
2450 N.E. Miami Gardens Drive  
Second Floor  
Miami, Florida 33180

Richard E. Cox  
Executive Secretary  
Traffic Court Review Committee  
Supreme Court Building  
Tallahassee, Florida 32399

Joseph S. Karp, P.A.  
Post Office Box 3225  
West Palm Beach, Florida 33402

  
John D.C. Newton, II

3/7/hhp