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**OFFICIAL OPINION 2002-3**

Mr. Phillip H. Roush  
Commissioner  
Proprietary Education Committee  
302 W. Washington Street, Room E201  
Indianapolis, IN 46204-2767

RE: Jurisdiction of the Committee over computer software/hardware training programs.

Dear Mr. Roush:

This letter responds to your request for an answer to the following question:

Are organizations that offer instructional services for a fee in a variety of the popular software and mainframe operation programs exempt from the jurisdiction of the Proprietary Education Committee by virtue of offering instruction that may be used for self-motivational or avocational purposes?

**BRIEF ANSWER**

The types of computer software/hardware training programs your office presented to our office for review meet the statutory definition of a post-secondary proprietary educational institution. The governing statute provides that "no person shall do business as a post-secondary proprietary educational institution in the state of Indiana without accreditation." In order to gain accreditation, a person must file an application and be approved by the Proprietary Education Committee. The only exceptions to the requirement for accreditation for individuals doing business in Indiana by offering to the public instructional or educational services or training in any of the technical, professional, mechanical, business, or industrial occupations for a fee are found at Indiana Code section(s) 20-1-19-1(1)(A) through (E). The programs presented to our office for review did not fall under any of the listed exceptions.

Your office additionally, specifically asked whether any of the programs presented to our office would be exempt from jurisdiction under Indiana Code section 20-1-19-1(1)(D)(iii). This subsection provides that any organization that offers *exclusively* instruction that is self-improvement, motivational, or avocational in intent is not deemed a post-secondary proprietary educational institution for purposes of the chapter.” It is our opinion that the programs presented to our office for review did not offer *exclusively* instruction that was clearly self-improvement, motivational, or avocational in intent. Therefore, the software/hardware computer training programs presented to our office for review should fall under the jurisdiction of the Proprietary Education Committee.

### ANALYSIS

IND. CODE § 20-1-19-1 provides in pertinent part:

“Post-secondary proprietary educational institution” means any person doing business in Indiana by offering to the public for a tuition, fee or charge, instructional or educational services or training in any technical, professional, mechanical, business, or industrial occupation, either in the recipient’s home, at a designated location, or by mail.”

IND. CODE § 20-1-19-5 provides that “[o]n or after July 1, 1972, no person shall do business as a post-secondary proprietary educational institution in the state without having obtained accreditation.” The exceptions to the requirement for accreditation from the committee are found at IND. CODE § 20-1-19-1(A) through (E). If any organizations’ instructional curriculum falls under one of the listed exceptions, jurisdiction under the committee is not required. The exceptions listed include, but are not limited to educational institutions financed by public funds, institutions that are regulated by another state regulatory board, employer training for employees provided without charge, and training that is offered *exclusively* for self-improvement or avocational purposes. Because in Indiana, corporations, partnerships, limited liabilities, etc., can be defined as “persons,” anyone doing business in any of those manners are contemplated by the statute, and potentially subject to jurisdiction.

Individuals may enroll in a variety of the computer software/hardware training programs exclusively for self-improvement, or avocational purposes. Because of this fact, you have asked our office if that qualified the organizations providing training or educational services from the requirement for accreditation by virtue of one of the listed statutory exceptions.

IND. CODE § 20-1-19-1(1)(D)(iii) specifically provides:

The following are not considered to be post-secondary proprietary educational institutions under this chapter:

(D) Any educational institution or educational training that:

“[o]ffers *exclusively* instruction which is *clearly* “self-improvement, motivational, or avocational in intent.”

The statute provides that to fall under this exception, the educational institution or training must only offer instruction that is *clearly* “self-improvement, motivational, or avocational in intent.” The authors use of the words *exclusively* and *clearly* must be assumed to be intentional. “There is a presumption that words appearing in a statute were intended to have meaning, and a court will give those words their plain and ordinary meaning absent a clearly manifested purpose to do otherwise.” *Indiana Dept. of Human Services v. Firth*, 590 N.E.2d 154, 157 (Ind. Ct. App. 1992) trans den. “Additionally, courts are given the authority to use the dictionary to determine the plain and ordinary meaning of a word.” *State Bd. of Accounts v. Indiana University Found.*, 647 N.E.2d 342,347 (Ind. Ct. App. 1995). Merriam-Webster’s Ninth New Collegiate Dictionary (1988) defines *exclusively* as “in an exclusive manner.” *Exclusive* is further defined as “limiting or limited to possession, control, or use by a single individual or group.”

Although the programs may provide educational training that any individual may choose to enroll in *exclusively* for self-improvement or avocational purposes, it is not the intended purpose of the enrollee that is contemplated by the statute. Based on the statutes’ language, it is clear that it is the intention of the provider that the statute addresses. The *provider* must intend to offer only instruction that is self-improvement, motivational, or avocational in intent. Based on the provider responses received, and the information gleaned from provider brochures, it appears clear that the instruction provided by the programs given to our office for review was not offered only for self-improvement, motivational or avocational purposes, as is required to fall under the statutory exception.

A majority of the programs we reviewed were costly. Typical packages range from one-thousand five hundred (\$1,500) to eleven thousand (\$11,000) dollars for a complete program that included testing and certification. The courses generally certified students to be at an alphabetic or numeric level of mastery for a specific type of software program, or hardware maintenance/operation after the successful completion of an examination. The programs were generally advertised as being able to either increase the marketability of an individual or qualify them for specific types of positions by virtue of their level of certification. Some courses were offered as a part of a comprehensive program, and many of the providers are accredited vocational schools in their states of origin.

The courses are generally purchased by individuals who are already using information technology skills in their respective jobs and who are attempting to improve their skill level for promotion or employment, or to become qualified for a specific job. The majority of the courses offered are in classroom facilities with intensive instruction. Some courses may be able to be purchased over the internet or by mail order and are self-paced for completion at home. Whether there are attendance or hour requirements to qualify to sit for testing was not made clear from the materials presented. The programs at minimum appear to offer a benefit of improved competency with a particular software

package even if an individual fails to achieve a specific certification level. However, organizations that provide these training services do not appear to be regulated by any agency, and it is therefore not clear where a dissatisfied consumer would turn for a grievance. Although the extent of job placement services provided was also not made clear, many of the brochures mentioned job placement assistance. Based on those facts, it does not appear as if a majority of the providers are offering their educational services *exclusively* for self-improvement or avocational purposes.

“Vocational education,” is defined at IND. CODE § 20-10.1-1-11(a) as “any education the major purpose of which is to prepare a person for profitable employment.” The Indiana Court of Appeals has addressed the question of what constitutes a vocational education. In the case of *Sweet v. Art Pape Transfer, Inc.*, 721 N.E.2d 311 (Ind. Ct. App. 1999) transfer dismissed by *Sweet v. Art Pape Transfer, Inc.*, 735 N.E.2d 232 (Ind. 2000), the court found that a nontraditional school of natural health, in which a 21-year-old decedent was enrolled in at the time of her death, was a vocational school for purposes of a wrongful death statute. That statute permitted parents to bring an action for the death of a child under twenty-three (23), if that child was enrolled in vocational school or program at the time of death. The court looked to the statutory definition of vocational education for assistance in basing their decision. Because the wrongful death statute did not offer its own definition of a vocational school or program, the court looked to definitions applicable to public schools and non-public schools which have voluntarily become accredited at Ind. Code § 20-10.1-1-11(a).

That statute defines vocational education as “any education the major purpose of which is to prepare a person for profitable employment.” The court went on to look at the rules in place at the time at 511 IAC 6-1-1 that established the curricular requirements for commissioned schools, and their definition of vocational education program areas. These areas included among other areas “the recognized occupational fields of ...consumer and homemaking;...home economics;... [and] ...health... “for which organized educational programs are developed that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.” See *Id* at 314.

The court found the statute and the rules instructive. The court noted that the natural health program was not accredited or financially supported by the state of Indiana and that credits earned from the program could not be transferred to an accredited school. The court noted that the coursework was self-study with no required deadlines. The court noted that the program was preparing students for opportunities that did not require licensure or diplomas, nor did the program maintain a job placement bureau. The court still found the natural health program in which the decedent was enrolled in at the time of her death a vocational school. The court considered the language of the law defining vocational education and held that the facts of the decedent’s case met the statutory definition of vocational education. The court found Trinity, a non-traditional school of natural health a vocational school. The court found this way because the instruction provided by Trinity was offered to prepare students to advise clients about natural health in jobs with chiropractors and medical doctors, in health food stores, and etc., and that

students from that particular school were employed in such jobs. Because the student was enrolled in a program that was preparation for profitable employment, the Court of Appeals found the program to be vocational.

If there were a challenge to a decision to have these programs fall under the jurisdiction of your committee, the same type of analysis should be applied. The organization of the information technology software/hardware training programs given to our office for review is similar to the natural health program's organization discussed in the *Sweet* decision. A majority of the programs appear to be training to work in the field of information technology, either in the area of software applications, or hardware configuration or maintenance. Just as in *Sweet*, although the majority of the schools are not accredited, and a diploma or licensure is not required for many of these jobs, enrollees are receiving training in a field that will prepare them for a specific type of profitable employment. Some of the brochures provided did contain testimonials from satisfied customers who had found employment in these fields.

Because of these facts, the education offered by the providers sent to our office for review should be found to be vocational, as opposed to avocational. Additionally, although some may argue that the programs can be offered for avocational purposes, it is highly unlikely that the provided training will be found to be offered *exclusively* or only for self-improvement, motivational, or avocational purposes, as is required by the statute. The key to the analysis is not the intention of the enrollee, but that of the provider. And because the programs do not appear to be offered *exclusively* for such purposes, they do not meet that particular statutory exception for jurisdiction.

### CONCLUSION

Therefore, because the programs meet the statutory definition for post-secondary proprietary educational institution, because by law to operate one of these institutions a person must be accredited by the committee, and because the information technology training programs reviewed by our office do not meet any of the statutory exceptions to jurisdiction, these training programs should fall under the jurisdiction of the Committee.

Sincerely,

Stephen Carter  
Attorney General

Tracy L. Richardson  
Deputy Attorney General