



REPRESENTING  
**ALEX SINK**  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

**FILED**

FEB 19 2010

Docketed by 

In The Matter Of:

ANTHONY C. APFELBECK  
Fire Marshal/Building Official  
City of Altamonte Springs

Case No.: 107974-10-FM

Petition for Declaratory Statement to the  
Florida Department of Financial Services.

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DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement from Anthony C. Apfelbeck, Fire Marshal/Building Official, City of Altamonte Springs, ("Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal ("Department"), on December 9, 2009. An amended petition ("Amended Petition") was received on December 22, 2009. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Amended Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being answered as purely hypothetical. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Amended Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

#### BACKGROUND AND FACTS ASSERTED

4. This Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Rules 28.105 and 69A-60.007, *Florida Administrative Code*, which authorize an authority having jurisdiction and a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory or rule provision as it applies to the Petitioner's particular set of circumstances.

5. The Rule at issue in the Amended Petition is Rule 69A-60.0081, *Florida Administrative Code*, "Notice Required for Structures With Light-frame Truss-type Construction."

6. The Amended Petition alleges the following facts:

A. The Petitioner is a fire official with the City of Altamonte Springs, Florida, responsible for enforcing of the Florida Fire Prevention Code ("Code")

B. The subject property is located at 175 Newburyport Avenue, Altamonte Springs, Florida. The structure is a two story office building known as the 'City Hall Annex.' The building was constructed in 1984 and utilizes steel joists in the floor/ceiling and roof assemblies. The steel joists are of the type defined in Section 2202.1 of the *Florida Building Code, 2007 Edition*.<sup>1</sup>

7. Receipt of the Petition herein was published in Volume 35, Number 51 of the *Florida Administrative Weekly*, on December 24, 2009.

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<sup>1</sup> Pictures of the building were included with the Petition.

8. A duly noticed hearing was conducted before the Florida Fire Code Advisory Council on January 20, 2010, in Daytona Beach, Florida. The Petitioner and members of the audience spoke at the hearing.

#### QUESTIONS

9. The Amended Petition poses the following questions:

A. Is it the intent of Section 633.027, *Florida Statutes*, and Rule 69A-60.0081(2)(a), *Florida Administrative Code*, that a “steel joist,” as defined in Section 2202.1 of the *Florida Building Code 2007 Edition*, be included within the definition of “light-frame truss-type construction?”

B. If the owner of the building fails to comply with the local authority’s order to install a sign or symbol as required by Section 633.027(1), *Florida Statutes*, is the only enforcement route referral to the State Fire Marshal’s Office and enforcement by the State Fire Marshal’s Office in accordance with Section 633.161, *Florida Statutes*, as referred to by Section 633.027(3), *Florida Statutes*?

C. If the answer to question B above is “no,” may the local jurisdiction utilize the provisions of Section 633.052, or Chapter 162, *Florida Statutes*, as authorized by Section 633.052(2), *Florida Statutes*, to enforce compliance with Section 633.027(1), *Florida Statutes*?

#### DISCUSSION

10. The Department of Financial Services is authorized by Section 120.565, *Florida Statutes*, to issue a Declaratory Statement when requested by a substantially affected person regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the Petitioner's particular set of circumstances. The Department is required to issue a declaratory statement when requested by an authority having

jurisdiction and the request involves the application of the *Florida Fire Prevention Code* (“Code”) to the petitioner’s particular set of circumstances.<sup>2</sup>

11. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Code, and update it every three years. Section 633.025, *Florida Statutes*, provides that the Code is deemed adopted by each municipality, county, and special district with firesafety responsibilities, and directs that the Code be enforced by the local authority.

12. Section 633.027, *Florida Statutes*, directs the owner of any commercial, industrial or multiunit residential structure that uses light-frame truss-type construction to mark the structure with a sign or symbol approved by the State Fire Marshal in a manner sufficient to warn persons conducting fire control and other emergency operations of the existence of light-frame truss-type construction in the structure. The statute does not define the term “light-frame truss-type construction.” The Department is authorized to adopt rules to implement the law.

13. The Department adopted Rule 69A-60.0081(2)(a), *Florida Administrative Code*, which provides:

(a) “Light-frame truss-type construction” means a type of construction whose primary structural elements are formed by a system of repetitive wood or light gauge steel framing members.

14. The term ‘steel joist’ is defined in Section 2202.1, *Florida Building Code, 2007 Edition* as:

any steel structural member of a building or structure made of hot-rolled or cold-formed solid or open-web sections, or riveted or welded bars, strip or sheet steel members, or slotted and expanded, or otherwise deformed rolled sections.

15. The enforcement mechanism for failure to post the required sign is provided in Section 633.027(3), *Florida Statutes*, which states:

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<sup>2</sup> Section 633.01(6), *Florida Statutes*.

The State Fire Marshal, and local fire officials in accordance with s. 633.121, shall enforce the provisions of this section. Any owner who fails to comply with the requirements of this section is subject to penalties as provided in s. 633.161.

16. Section 633.121, *Florida Statutes*, delegates the authority to enforce laws and rules of the State Fire Marshal to:

The chiefs of county, municipal, and special-district fire departments; other fire department personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire departments are authorized to enforce this law and all rules prescribed by the State Fire Marshal within their respective jurisdictions. Such personnel acting under the authority of this section shall be deemed to be agents of their respective jurisdictions, not agents of the State Fire Marshal.

17. Section 633.161(1), *Florida Statutes*, sets forth enforcement actions that may be taken by the State Fire Marshal and his or her deputies, including:

[To] issue and deliver to the person committing the violation an order to cease and desist from such violation, to correct any hazardous condition, to preclude occupancy of the affected building or structure, or to vacate the premises of the affected building or structure.

18. It is suggested that there exists an apparent conflict within Section 633.027(3), *Florida Statutes*, because it references both 633.121 and 633.161, *Florida Statutes*, and, whereas Section 633.121, *Florida Statutes*, authorizes local authorities to enforce statutes and rules of the State Fire Marshal, the remedies provided in Section 633.161, *Florida Statute*, authorize the State Fire Marshal and his or her deputies to issue orders to cease and desist, take corrective action, and to vacate an affected building or structure. Section 633.121, *Florida Statutes*, is clear that when the local authority takes action, it is that of the local jurisdiction, not the State Fire Marshal. The local enforcement authorities referenced in Section 633.121, *Florida Statutes*, therefore, cannot be the same as the agents referenced in Section 633.161, *Florida Statutes*, who are clearly agents of the State Fire Marshal.

19. Both Sections 633.027(3) and 633.121, *Florida Statutes*, authorize local firesafety officials to enforce Section 633.027, *Florida Statutes*. Harmonizing the internal provisions of the law leads to the logical conclusion that the reference to Section 633.161, *Florida Statutes*, within Section 633.027, *Florida Statutes*, is a reference to the remedies provided, not a limitation of the authorities who may impose the remedy. If such a conflict theoretically existed, the rules of statutory construction direct that when a specific statute conflicts with a general statute, the more specific statute prevails.<sup>3</sup> In this case, Section 633.027(3), *Florida Statutes*, authorizes both the State Fire Marshal and local fire officials to enforce the signage requirements. This statute is more specific to signage than is Section 633.161, *Florida Statutes*, which applies to the authority of the State Fire Marshal to take action in general.

20. Section 633.052(2), *Florida Statutes*, provides:

A county or municipality that has created a code enforcement board or special magistrate system pursuant to chapter 162 may enforce firesafety code violations as provided in chapter 162.

The remedies provided are civil fines. This provision does not conflict with Section 633.027(3), *Florida Statutes*, which provides specific performance remedies.

21. NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

A. The Petitioner is a substantially affected person entitled to the issuance of this Declaratory Statement.

B. Questions and Responses:

Question A. Is it the intent of Section 633.027, *Florida Statutes*, and Rule 69A-60.0081(2)(a), *Florida Administrative Code*, that a “steel joist,” as defined in Section 2202.1 of

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<sup>3</sup> Knowles v. Beverly Enters.-Fla., 898 So.2d 1, 5 (Fla. 2004) .

the *Florida Building Code 2007 Edition*, be included within the definition of “light-frame truss-type construction?”

Answer: No. The definition of “steel joist” provided by the Petitioner does not restrict its meaning to either “light gauge” or “repetitive framing members”. Therefore, it cannot be said that “steel joist” meets the definition contained in the Department’s rule.

Question B. If the owner of the building fails to comply with the local authority’s order to install a sign or symbol as required by Section 633.027(1), *Florida Statutes*, is the only enforcement route referral to the State Fire Marshal’s Office and enforcement by the State Fire Marshal in accordance with Section 633.161 as referred to by Section 633.027(3), *Florida Statutes* ?

Answer: No. The local fire official’s order can be enforced by the State Fire Marshal and his or her agents, or the local fire official in accordance with the straightforward language of Section 633.027(3), *Florida Statutes*, and rules of statutory construction.

Question C. If the answer to question B above is no, may the local jurisdiction utilize the provisions of Section 633.052, or Chapter 162, *Florida Statutes*, as authorized by Section 633.052(2), *Florida Statutes*, to enforce compliance with Section 633.027(1), *Florida Statutes*?

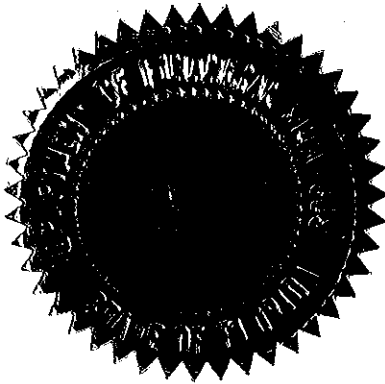
Answer: Yes. Section 633.027, *Florida Statutes*, and Rule 69A-60.0081, *Florida Administrative Code* are part of the Florida Fire Prevention Code, which is deemed adopted by every local government with firesafety responsibilities, and enforceable by the local firesafety authorities on their own behalf pursuant to the authority of Section 633.025, *Florida Statutes*.

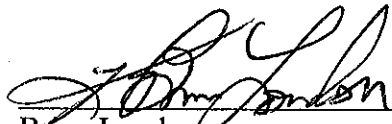
#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, *Florida Rules of Appellate*

*Procedure*, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, *Florida Statutes*. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, Agency Clerk, Division of Legal Services, 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, on the 19 day of February, 2010.



  
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Brian London  
Deputy Chief Financial Officer

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