



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Wesley W. Hayes, Jr.,
Fire Marshal
Polk County, Florida

Case No.: 41431-01-SP

Petition for Declaratory Statement to
The Florida Department of Insurance

_____ /

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on March 27, 2001, by the Department of Insurance, hereinafter referred to as the Department, from the Wesley W. Hayes, Jr., Fire Marshal of Polk County, Florida, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The Insurance Commissioner, 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 Petition for Declaratory Statement. 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 question is being answered purely as a hypothetical one. 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. The Petition for Declaratory Statement 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. The 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.

4. Petitioner asserts that:

- A. Certified firesafety inspectors certified under Section 633.081, Florida Statutes, but not certified under Sections 633.521-633.547, Florida Statutes, are in some cases performing the inspections required by NFPA (National Fire Protection Association) 25, which are the annual inspections required for fire protection systems.
- B. Because of the situation described in paragraph 4.A., certified fire protection contractors certified under Sections 633.521-633.547, Florida Statutes, are not performing the NFPA 25 inspections on those fire protection systems inspected by certified firesafety inspectors certified under Section 633.081, Florida Statutes.

5. Petitioner requests the Department to render a Declaratory Statement on the following issues:

- A. Is it permissible for certified firesafety inspectors to conduct NFPA 25 inspections of fire protection systems under Section 633.541, Florida Statutes, and Section 4A-46.041, Florida Administrative Code?
- B. If the answer to the question in 5.A. is no, can a certified firesafety inspector be charged with a second degree misdemeanor for performing inspections for which he or she is not a certified fire protection system contractor?

Please note that the Division of State Fire Marshal declines to answer this question. Criminal charges are within the jurisdiction of the office of the state attorney for the appropriate circuit. Please consult with the office of the state attorney in your particular circuit.

- C. If the answer to the question in 5.A. is no, can the certified firesafety inspector lose his or her certification as a firesafety inspector for performing inspections for which he or she is not certified?
- D. If the answer to the question in 5.A. is no, can a certified firesafety inspector be held personally liable for performing inspections for which he or she is not licensed?

Please note that the Division of State Fire Marshal also declines to respond to this question. Issues of personal liability are not within the purview of Chapter 633, Florida Statutes, or Rule Chapter 4A-46, Florida Administrative Code, or the jurisdiction of the State Fire Marshal. Please consult private counsel.

6. Section 633.541(1), Florida Statutes, states:

633.541 Contracting without certificate prohibited; violations; penalty.—

(1) It is unlawful for any organization or individual to engage in the business of layout, fabrication, installation, inspection, alteration, repair, or service of a fire protection system, other than a preengineered system, act in the capacity of a fire protection contractor, or advertise itself as being a fire protection contractor without having been duly certified and holding a valid and existing certificate, except as hereinafter provided. The holder of a certificate used to qualify an organization must be a full-time employee of the qualified organization or business. A certificateholder who is employed by more than one fire protection contractor during the same period of time is deemed not to be a full-time employee of either contractor. The State Fire Marshal shall revoke, for a period of time determined by the State Fire Marshal, the certificate of a certificateholder who allows the use of the certificate to qualify a company of which the certificateholder is not a full-time employee. A contractor who maintains more than one place of business must employ a certificateholder at each location. Nothing in this subsection prohibits an employee acting on behalf of governmental entities from inspecting and enforcing firesafety codes, provided such employee is certified under s. 633.081. (Emphasis supplied).

7. The first sentence provides that only certified fire protection contractors may engage in the business of "...layout, fabrication, installation, inspection, alteration, repair, or service of a fire protection system...."

8. The last sentence provides an exemption for firesafety inspectors certified under Section 633.081, Florida Statutes, to perform their firesafety inspections for code enforcement.

9. The exemption in the last sentence for certified firesafety inspectors is solely for the purpose of permitting the certified firesafety inspectors to perform code enforcement inspections required by the municipality, county, or special district.

10. The exemption in the last sentence does not under any circumstances permit the certified firesafety inspector certified only under Section 633.081, Florida Statutes, to engage in the business of "...layout, fabrication, installation, inspection, alteration, repair, or service of a fire protection system..." for any purpose other than code enforcement.

11. The only persons permitted to engage in the business of "...layout, fabrication, installation, inspection, alteration, repair, or service of a fire protection system...." are certified fire protection system contractors, certified under Sections 633.521-633-547, Florida Statutes.

NOW, THEREFORE, in response to your questions, it is the position of the Department of Insurance, Division of State Fire Marshal, that:

Question. Is it permissible for certified firesafety inspectors to conduct NFPA 25 inspections of fire protection systems under Section 633.541, Florida Statutes, and Section 4A-46.041, Florida Administrative Code?

Response. No. The only person permitted to engage in the business of "...layout, fabrication, installation, inspection, alteration, repair, or service of a fire protection system..." and thus perform NFPA 25 inspections of fire protection systems under Section 633.541, Florida Statutes, are certified fire protection system contractors, certified under Sections 633.521-633.547, Florida Statutes.

By the same token, the only persons permitted to perform firesafety inspections for code enforcement purposes are certified firesafety inspectors, certified under Section 633.081, Florida Statutes.

Question. If the answer to the above question is no, can the certified firesafety inspector lose his or her certification as a firesafety inspector for performing inspections for which he or she is not certified?

Response. Any person who engages in the business of "...layout, fabrication, installation, inspection, alteration, repair, or service of a fire protection system..." without being certified under Sections 633.521-633.547, Florida Statutes, is subject to any applicable penalties provided in Chapter 633, 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 Section 120.565, Florida Statutes, and 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 the General Counsel, acting as the agency clerk, at 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 at Tallahassee, Leon County, Florida, this ____ day of _____, 2001.

GREG GAY
Deputy Commissioner,
Treasurer and State Fire Marshal

Copies furnished to:

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