



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

STEPHEN M. HODGE

Case No.: 87041-06-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") from Stephen M. Hodge (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on August 2, 2006. Upon consideration thereof, and being duly advised in the premises, 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 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 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. The Petitioner, located at 808 Zack Street, Tampa, Florida 33602, is a Municipal Fire Inspector with the City of Tampa Fire Rescue, charged with inspections of all public schools within the jurisdiction of the City of Tampa. He works in the Office of the Fire Marshal. The Petition was signed by Todd A. Spear, Fire Marshal, City of Tampa.

5. A Declaratory Statement is requested pursuant to the provisions of Section 120.565, *Florida Statutes*, and Fla. Admin. Code Rule 28.105, which authorize 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. The term "person" includes "any unit of government."¹

6. The subject of the Petition is the applicability of Florida Administrative Code Rule 69A-58.008(1)(a), to the Petitioner's set of circumstances. In furtherance of its request, the Petitioner asserts that:

A. Petitioner cited nine schools with violation of the above rule because at each school the media center is located on the second floor of the building.

B. The Hillsborough County School Board has not responded to the citation because they do not think it applies to their circumstances.

¹ Section 120.52(13), *Florida Statutes*.

7. Notice of receipt of the Petition herein was published in Volume 32, Number 35 of the *Florida Administrative Weekly*, on September 1, 2006.

QUESTIONS

8. The Petition poses the following questions:

A. Is it the intent of this rule to preclude pre-kindergarten through first grade students from using media centers that are located on the second floor?

B. Is the local authority having jurisdiction (Fire Department) allowed to require correction of deficiencies utilizing the local code enforcement board?

C. May the local authority having jurisdiction (Fire Department) require financial compensation for state mandated inspections of the local school board?

DISCUSSION

9. The Department of Financial Services, Division of State Fire Marshal, has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements, and is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements relating to the Code, when requested.

10. The purpose of a declaratory statement is to enable the public to secure definitive binding advice as to the applicability of agency enforced law to a particular set of facts. A Petition for Declaratory Statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the Petitioner's particular circumstances. A Declaratory Statement is not the appropriate means for obtaining a policy statement of general applicability from an agency. Investment Corp. of Palm Beach v. Division of Pari-Mutual Wagering, 714 So.2d 589 (Fla. 3rd DCA 1998); Mental Health Dist. Bd. v Dept. of HRS, 425 So.2d 160 (Fla. 1st DCA 1983); Sutton v. Department of Env'tl. Protection, 654 So.2d 1047 (Fla. 5th DCA 1995).

11. Florida Administrative Code Rule 69A-58.008(1)(a), formerly provided that rooms “used for pre-kindergarten through grade 1 shall not be located above or below the level of exit discharge.” Effective November 26, 2006, the referenced rule was amended and no longer contains the specific language quoted above. Instead, the issue is addressed through Florida Administrative Code Rule 69A-58.002(4) which provides that existing “educational and ancillary facilities shall comply with the applicable provisions of NFPA 1 and NFPA 101, the Florida editions adopted in Rule 69A-3.012, F.A.C., except as modified by Chapter 1013, F.S., and this rule chapter.”

12. NFPA 101-15.2.1.2 provides that rooms “normally occupied by preschool, kindergarten or first-grade students shall be located on a level of exit discharge, unless otherwise permitted by 15.2.1.4,” which provides that rooms “or areas located on floor levels other than as specified in 15.2.1.2 and 15.2.1.3 shall be permitted to be used where provided with independent means of egress dedicated for use by the preschool, kindergarten, first-grade or second-grade students.”

13. Florida Administrative Code Rule 58.003 (17) defines the phrase student-occupied space to mean, “any area planned primarily for use by six or more students.”

14. NFPA 101-3.3.64.1 defines the phrase “level of exit discharge” as (1) “[t]he lowest story from which not less than 50 percent of the required number of exits and not less than 50 percent of the required egress capacity from such a story discharge directly outside at grade; (2) the story with the smallest elevation change needed to reach grade, where no story has 50 percent or more of the required number of exits and 50 percent or more of the required egress capacity from such a story discharge directly outside at grade.”

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

1. The Petitioner is a substantially affected person within the meaning of Section 120.565, *Florida Statutes*.

2. Question A. The clear language of the rule reflects that its terms apply to rooms designated as “media centers.” However, the Petition does not contain sufficient facts to allow the Department to answer this question. Although the Petition states that the media rooms in question are on the second floor, it contains insufficient information to determine where the media rooms are located in relation to the level of exit discharge, or whether the rooms meet the exception found in NFPA 101-15.2.1.4.

3. Question B. Yes, Section 1013.12(5), *Florida Statutes*, prescribes two methods of addressing violations of fire safety standards for use by local fire officials. The first method is the inclusion of such violations in a plan of action developed in accordance with Subsection 1013.12(2)(c), *Florida Statutes*. Second, if the plan is not adhered to, the local fire official must report such outstanding violations to the State Fire Marshal, who shall have enforcement authority in accordance with the provisions of Chapter 633, *Florida Statutes*.

4. Question C. Subsection 633.081(1), *Florida Statutes*, provides that each county, municipality, and special district that has firesafety enforcement responsibilities employ or contract with a firesafety inspector to conduct those firesafety inspections required by law, and authorizes the governing body to provide a schedule of fees to pay the costs of inspections and related administrative expenses.

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 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 in the City of Tallahassee, Leon County, Florida, this ____ day of _____, 2007.

Eric W. Miller
Deputy Chief Financial Officer

Copies furnished to:

Stephen M. Hodge
c/o Todd A. Spear, Fire Marshal
City of Tampa Fire Rescue
808 Zack Street
Tampa Florida, 33602

Lesley Mendelson, Assistant General Counsel
Department of Financial Services
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340