



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

JSS INTERNATIONAL, INC.,

Case No.: 61972-02-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 August 4, 2002, by the Department of Insurance, hereinafter referred to as the Department, from JSS INTERNATIONAL, INC., hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the State Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The State Treasurer and 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. If 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. 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

4. Petitioner asserts that:

A. Petitioner operates a delicatessen in an office building.

B. Although with different names, this small fast food, breakfast lunch operation has been functioning inside the building for many years.

C. Petitioner purchased the deli over a year ago.

D. Among the appliances purchased as part of the fixed assets was a portable skillet or grill which has been used by all previous owners for the last 10 years.

E. The grill's primary use is to cook scrambled eggs and grilled cheese sandwiches.

F. The local authority having jurisdiction is asking Petitioner to install a hood with grease removal devices and a duct system to take the "grease-laden vapors" out of the cooking area.

QUESTIONS

5. Petitioner requests a declaratory statement on the following question:

DOES AN ELECTRICAL PORTABLE GRILL SIMILAR TO THE GEORGE FOREMAN BRAND BUT WITH A FLAT COOKING SURFACE USED TO COOK SCRAMBLED EGGS REQUIRE THE INSTALLATION OF A HOOD AND DUCT SYSTEM FOR VAPOR EXTRACTION?

6. NFPA 101, the *Life Safety Code*, 2000 edition, requires that commercial cooking equipment be in compliance with NFPA 96, *Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations*.

7. The 1998 edition of NFPA 96 has been adopted by reference in the Florida Fire Prevention Code.

8. The Petitioner's question is centered around the requirement for a particular type of appliance to require the added protection associated with commercial cooking equipment.

9. The Code requirement is based on a cooking process and its resultant by-products and not the appliance itself.

10. NFPA 96, 1998 edition in Section 7-1.2 states:

7-1.2 Cooking equipment that produces grease-laden vapors (such as, but not limited to, deep fat fryers, ranges, griddles, broilers, woks, tilting skillets, and braising pans) shall be protected by fire-extinguishing equipment.

11. The Standard defines grease as:

Grease. Rendered animal fat, vegetable shortening, and other such oily matter used for the purposes of and resulting from cooking and/or preparing foods. Grease might be liberated and entrained with exhaust air or might be visible as a liquid or solid.

12. First the reference to the appliance being electrically supplied or to the fact that it is considered portable is of no significance.

13. The test applied to determine the applicability of the requirement is (1) whether the appliance is used in a commercial setting, and (2) does the cooking appliance or process generate grease laden vapors.

14. It appears that the first question has been answered by the petitioner in the assertion that the appliance was being used in a deli located in an office building; therefore, the remaining question can only be determined by a review of the actual cooking operation by the authority having jurisdiction.

15. This review may or may not involve a thorough analysis of the by-products from the cooking process.

16. The Petitioner states that its use is “basically to cook scrambled eggs and grilled cheese sandwiches.”

17. The preparation of eggs usually involves the use of some type of non-stick or oil coating.

18. Many grilled sandwiches also use butter or other type of oil based substances.

19. In conclusion, the determination of whether grease-laden vapors are being generated must be made through an evaluation of the cooking process in use. If the process generates smoke or grease laden vapors, the added protection of a hood and extinguishing system is required.

Therefore, in response to your questions, it is the position of the Florida State Fire Marshal that:

IF THE COOKING PROCESS PRODUCES OR GENERATES SMOKE OR GREASE LADEN VAPORS, THE ADDED PROTECTION OF A HOOD SYSTEM IS REQUIRED.

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 _____, 2002

GREG GAY
Deputy Commissioner, Treasurer and State Fire
Marshal

Copies furnished to:

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