



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

APR 15 2009

Docketed by

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In The Matter Of:

LEESBURG FIRE DEPARTMENT

Case No.: 100712-08-FM

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

FINAL ORDER OF DENIAL

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (hereinafter "Petition") by Leesburg Fire Department (hereinafter "Petitioner"). The Petition was received by the Department of Financial Services, Division of State Fire Marshal (hereinafter "Department"), on November 26, 2008. 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 to enter this Order.
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 would 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. Petitioner is the authority having jurisdiction responsible for fire code enforcement in Leesburg, Florida.

5. The Declaratory Statement was requested pursuant to the provisions of Section 633.01(6), *Florida Statutes*, and Rules 28.105 and 69A-60.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's interpretation of its statutes, rules, and orders, as they apply to the Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the Department to issue a declaratory statement when requested by a substantially affected person and the petition relates to the Florida Fire Prevention and Life Safety Code (hereinafter referred to as "the Code").

6. The subject of the Petition herein is the application of National Fire Protection Association 101-31.3.4.1.1, 2006 edition, adopted in Rule 69A-60, *Florida Administrative Code*. Notice of receipt of the Petition was published in Volume 34, Number 51 of the *Florida Administrative Weekly*, on December 19, 2008.

7. The Petition **alleges** as follows:

A. This Petition involves a ruling of the authority having jurisdiction.

B. The buildings affected by the ruling are located at 2311 Griffin Road, and 815 Washington Street in Leesburg, Florida.

C. NFPA-101.31.3.4.1.1 mandates that all apartment buildings with more than three stories or with more than 11 dwelling units be provided with a fire alarm system.

D. The structures are existing buildings. Due to the type of tenants living in these apartments, the required initiation devices could create a malicious false alarm problem. Also, the construction type

under the Florida Building Code is IIIB, which is solid concrete including floor/ceiling assembly. Though the code doesn't consider this in the equation, could it have any importance in the final decision?

QUESTIONS

8. The Petition poses the following question: Does building construction type, specifically IIIB, allow the waiver of the fire alarm system requirement in NFPA 101-31.3.4.1.1?

DISCUSSION

9. The Department is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue declaratory statements relating to the Code, when requested by a substantially affected person or a local enforcing agency.

10. Rule 69A-60.007, *Florida Administrative Code*, provides that an authority having jurisdiction is substantially affected for purposes of Section 633.01(6), *Florida Statutes*.

11. Section 633.215(2), *Florida Statutes*, directs the Department to adopt the current edition of National Fire Protection Association ("NFPA") 101, the Life Safety Code by rule. The Department adopted the 2006 edition of NFPA 101 in Rule 69A-60.004, *Florida Administrative Code*.

12. NFPA 101-31.3.4 addresses the protection of existing apartment buildings through detection, alarm and communications systems. NFPA 101-31.3.4.1.1 provides:

Apartment buildings with more than three stories or with more than 11 dwelling units, other than those meeting 31.3.4.1.2 or 31.3.4.1.3, shall be provided with a fire alarm system in accordance with Section 9.6, except as modified by 31.3.4.2 through 31.3.4.5.2.

13. NFPA 31.3.4.1.2 provides an exception where "each dwelling unit is separated from other contiguous dwelling units by fire barriers having a fire resistance rating of not less than ½ hour, and where each dwelling unit has either its own independent exit or its own independent stairway or ramp discharging at grade." NFPA 31.3.4.1.3 provides an exception for buildings that are "protected

throughout by an approved, automatic sprinkler system . . .” NFPA standards 101-31.3.4.2 through 31.3.4.5.2 relate to the form of initiation of the fire alarm system.

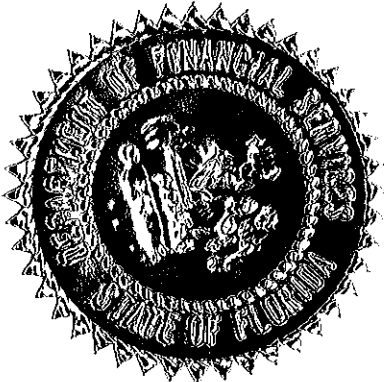
14. A Petition for Declaratory Statement is not the appropriate means for obtaining a policy statement of general applicability from an agency, *Tampa Electric Company v. Florida Department of Community Affairs*, 654 So.2d 998 (Fla. 1st DCA, 1995). As this discussion discloses, there are exceptions to the fire alarm system requirement in existing apartment buildings; however, the Petition does not allege sufficient facts to determine whether any of the exception apply.


NOW, THEREFORE, in accordance with the foregoing, and the statutes, rules and case cited therein, the Petition for Declaratory Statement herein is hereby DENIED.

NOTICE OF RIGHTS

This Declaratory Statement constitutes a final order of the Department. Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review pursuant to Rule 9.110, *Florida Rules of Appellate Procedure* and Sections 120.565 and 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, on April 15, 2009.





Brian London
Deputy Chief Financial Officer

Copies furnished to:

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