



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

AUG 1 1 2010

Docketed by

In The Matter Of:

MIAMI-DADE COUNTY FIRE RESCUE
DEPARTMENT

Case No.: 111448-10-FM

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

FINAL ORDER DENYING
PETITION FOR DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (“Petition”), by Miami-Dade County Fire Rescue Department (“Petitioner”), received by the Department of Financial Services, Division of State Fire Marshal (“Department”), on July 6, 2010. 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 party 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. 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 (“AHJ”) 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 subject of the Petition is changes made to Section 633.0215(13) and 633.0214(14), *Florida Statutes*, in the 2010 legislative session.

6. The Petition alleges the following facts:

A. Petitioner has fire code enforcement authority within unincorporated Miami-Dade County and thirty municipalities within Dade County.

B. Section 633.0215(13), *Florida Statutes*, as amended by CS/CS/CS/SB 1196, effective July 1, 2010, (hereinafter “SB1196”) provides, “[A] condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under s. 9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code.”

C. Section 633.0215(14), *Florida Statutes*, added by CS/CS/CS/CS/HB 663, effective July 1, 2010, (hereinafter “HB 663”) provides, “[A] condominium that is one or two stories in height and has an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code.”

7. No litigation is currently pending on this matter.

8. Receipt of the Petition herein was published in Volume 36, Number 29 of the *Florida Administrative Weekly*, on July 23, 2010.

QUESTIONS

9. The Petition poses the following questions:

Relating to the exemption provided by SB 1196

A. Does the exemption for, “[A] condominium, cooperative, or multifamily residential building” apply only to residential buildings, and not to condominiums and cooperatives that contain commercial establishments?

B. Does the exemption for, “[A] condominium, cooperative, or multifamily residential building” apply to multifamily residential buildings which are rented to the public, or to all multifamily residential buildings whether or not they are rented to the public?

C. NFPA 101-9.6 does not require fire alarm systems, but rather describes the type of fire alarm system, and the occupancy section wherein the alarm systems are required (i.e., NFPA 101-31.3.4.1). Therefore, does the statement, “is exempt from the requirement to install a manual fire alarm system under s. 9.6. of the Life Safety Code adopted in the Florida Fire Prevention Code,” exempt the relevant buildings from having a manual fire alarm system, or merely exempt them from installing and maintaining a manual fire alarm system in accordance with NFPA 101-9.6?

D. Does the exemption for a relevant building that “has a corridor providing an exterior means of egress” include only buildings for which an exterior means of egress is available to all occupied spaces, or does it extend to buildings for which an exterior means of egress is available to some units of the structure, but not all units of the structure?

E. Does the exemption set forth in paragraph D above apply to both new and existing buildings, as well as those under modification, renovation, change of use, and additions?

F. Does the exemption set forth in paragraph D above abate citations relative to the need for manual fire alarm systems issued by the AHJ before July 1, 2010?

G. Does the exemption allow the removal of fire alarm systems in existing buildings even though the fire alarm systems were required by NFPA 101-31.3.4 at the time they were installed?

Relating to the exemption provided by HB 663

H. Does the exemption apply only to the condominium form of ownership, and not other forms such as cooperative, individual and joint ownership?

I. Section 633.0215(14), *Florida Statutes*, enacted by HB 663 conflicts with Section 633.0215(13), *Florida Statutes*, amended by SB 1196. How is the AHJ to enforce conflicting state laws?

J. In the case of conflict, should the AHJ apply the provisions of HB 663 or the provisions of SB 1196?

K. Are all occupancy types with condominium ownership exempt from installing manual fire alarms systems if they meet the exterior exit requirements, or only multi-family residential occupancies with a condominium form of ownership?

L. If SB 1196 supersedes HB 663 regarding condominium multi-family dwellings, and if HB 663 does not cover other occupancies in buildings owned in condominium form, does HB 663 still apply to other occupancy types owned in condominium form?

DISCUSSION

10. The Department of Financial Services has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements 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 AHJ or a substantially affected person and the request involves the application of the Code to the Petitioner's particular set of circumstances.¹

11. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Code, and to update it every three years. National Fire Protection Standards ("NFPA") 1 "Uniform Fire Code, Florida Edition" and 101, "Life Safety Code, Florida Edition," are adopted by reference in the Code. Section 633.025, *Florida Statutes*, provides that the Code is deemed adopted by each municipality, county, and special districts having firesafety responsibilities, and enforced at the local level.

12. The Department has the authority to interpret the relevant statutes; however, in order to apply the interpretations in a declaratory statement, the Department must be provided with a specific fact scenario presenting itself to the petitioner. *Florida Optometric Ass'n v. Department of Professional Regulation, Board of Opticianry*, 567 So.2d 928, (Fla. 1st DCA, 1990).

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

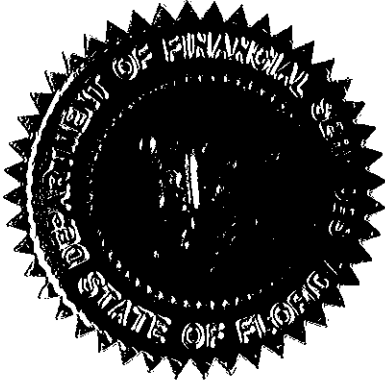
NOTICE OF RIGHTS

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

¹ Section 633.01(6), *Florida Statutes*.

appeal with Julie Jones, Agency Clerk, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-0333, 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 11 day of August, 2010.



A handwritten signature in black ink, appearing to read "Brian London". The signature is written in a cursive, flowing style.

Brian London, Deputy Chief Financial Officer

Copies furnished to:

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