



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

TODD S. OLSON

Case No.: 89113-07-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") filed by Todd S. Olson (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on January 30, 2007. 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 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 is Todd Olson, Fire Marshal of Big Corkscrew Island Fire Rescue, located in Naples, Florida. Fire Marshal Olson is charged with enforcement of fire safety statutory and rule requirements.

5. This Declaratory Statement was requested pursuant to the provisions of Section 633.01(6), *Florida Statutes*, which requires the State Fire Marshal to issue declaratory statements relating to the Florida Fire Prevention Code and the Life Safety Code (“the Code”), when requested by a local enforcing agency.

6. The subject of the Petition is the applicability of the Chapter 69A-58, *Florida Administrative Code*, to the Petitioner’s set of circumstances. In furtherance of its request, the Petitioner asserts that:

A. The 2004 edition of Rule 69A-58.003, *Florida Administrative Code*, clearly stated that the authority having jurisdiction was the local fire official. The rule was amended effective November 26, 2006, and the referenced section was removed.

B. Representatives of the Collier County School Board have advised the fire district that they are now the authority having jurisdiction with respect to both new and existing school facilities within Collier County.

7. Notice of receipt of the Petition herein was published in Volume 33, Number 7 of the *Florida Administrative Weekly*, on February 16, 2007.

QUESTIONS

8. A. Which agency, local fire official, or school board official, is the authority having jurisdiction for new school construction?

8. B. Which agency, local fire official, or school board official is the authority having jurisdiction for existing school facilities?

8. C. If the local fire official is not the authority having jurisdiction for existing school facilities then where is the local fire official's enforcement ability while inspecting school facilities?

DISCUSSION

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

10. Section 633.022, *Florida Statutes*, directs the Department to establish uniform firesafety standards that apply to new, existing, and proposed public schools. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt by rule the Florida Fire Prevention Code (hereinafter "FFPC"), which shall contain or incorporate by reference "all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules." Subsection (2) thereof directs the State Fire Marshal to adopt within the FFPC the standards adopted pursuant to Section 633.022, *Florida Statutes*.

11. Section 633.121, *Florida Statutes*, provides that the “chiefs of county, municipal, and special-district fire departments; other fire department personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire departments are authorized to enforce this law and all rules prescribed by the State Fire Marshal within their respective jurisdictions.”

12. Section 1013.12, *Florida Statutes*, regulating educational facilities, provides that the State Board of Education shall adopt and administer rules prescribing standards for the safety and health of occupants of educational and ancillary plants:

...except that the state fire marshal in consultation with the Department of Education shall adopt uniform firesafety standards for educational and ancillary plants and educational facilities, as provided in s. 633.022(1)(b), and a firesafety evaluation system to be used as an alternate firesafety inspection standard for existing educational and ancillary plants and education facilities. The uniform firesafety standards and the alternate firesafety evaluation shall be administered and enforced by local fire officials.

13. Section 1013.38, *Florida Statutes*, places responsibility on the board to ensure that all new construction, renovation, remodeling, day labor, and maintenance projects conform to the appropriate sections of the FFPC.

14. Section 633.01(7), *Florida Statutes*, directs the State Fire Marshal to “adopt and administer rules prescribing standards for the safety and health of occupants of educational and ancillary facilities pursuant to ss. 633.022, 1013.12, 1013.37 and 1013.371.”

15. The State Fire Marshal adopted Rule 69A-58, *Florida Administrative Code*, pursuant to the foregoing authority. The phrase “authority having jurisdiction” is neither defined nor used in the rule. However, the terms “local fire official” and “fire official” are defined and have application to the statutes and rules cited herein.

16. With regard to new construction, Rule 69A-58.003(2)(a), *Florida Administrative Code*, provides that prior to new construction, “the board shall approve the plans drawings, designs, proposals, blueprints, and other construction or remodeling documents and evaluate the same for complete compliance with the FFPC in compliance with Section 1013.38(1).”

17. With regard to existing buildings, Rule 69A-58.004, *Florida Administrative Code*, provides that both the board and the local fire official shall conduct an annual firesafety inspection of each building of each education plant and each ancillary plant. The inspections can be conducted jointly or individually. The local fire official is responsible for developing a plan of correction of any deficiency noted in the inspection report, which shall be complied with by the board.

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 entitled to the issuance of this Declaratory Statement.
2. The district school board is responsible for ensuring that all new construction projects conform to the Florida Fire Prevention Code.
3. The board and the local fire official are jointly responsible for inspecting existing school facilities to ensure they conform to the Florida Fire Prevention Code. The local fire official is responsible for developing a corrective action plan, and the board is responsible for complying with the plan developed by the local fire official.
4. The local fire official’s authority to enforce the Florida Fire Prevention Code is found in the laws and rules enumerated above.

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, on the _____ day of _____, 2007.

Eric W. Miller
Deputy Chief Financial Officer

Copies furnished to:

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