



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

EDWARD RILEY

Case No.: 89217-07-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") from Edward Riley (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on February 6, 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 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. The Petitioner is the fire code official for Collier County Fire Control & Rescue Districts, charged with enforcement of Rule 69A-60, *Florida Administrative Code*, the “Florida Fire Prevention Code” (hereinafter the “Code”).

5. The Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Chapter 28.105, *Florida Administrative Code*, 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.

6. The subject of the Petition is the identity, authority and certification of the “appropriate” firesafety inspector as referenced in Section 553.79(2), *Florida Statutes*, and Section 105.13 of the *Florida Building Code*, as they relate to Sections 633.121 and 633.081, *Florida Statutes*. In furtherance of his request, the Petitioner asserts that the local building official has issued numerous phased permits without the approval of the fire code official.

7. Notice of receipt of the Petition herein was published in Volume 33, Number 9 of the *Florida Administrative Weekly*, on March 2, 2007.

QUESTIONS

8. The Petition poses the following questions:

A. Does the local building official have the authority to issue phased permits without the approval of the “appropriate” firesafety inspector?

B. Section 533.79(2), *Florida Statutes*, refers to the “appropriate” firesafety inspector. Would the “appropriate” firesafety inspector be a person certified pursuant to Section 633.081, *Florida Statutes*, who must also be authorized pursuant to Section 633.121, *Florida Statutes*?

C. If the answer to B is no, who would qualify as the appropriate firesafety inspector?

DISCUSSION

9. The Department 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 by a substantially affected person or a local enforcing agency.

10. Section 553.79(2), *Florida Statutes*, provides that:

Except as provided in subsection (6), an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. **In addition, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.081 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code.**

11. Subsection 105.13, *2004 Florida Building Code*, entitled “Phased permit approval”,

provides:

After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder’s own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

12. Subsections 633.081(1) and (2), *Florida Statutes*, provide that:

Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. The firesafety inspector must conduct all firesafety inspections that are required by law.

Every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal.

13. 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. Such personnel acting under the authority of this section shall be deemed to be agents of their respective jurisdictions, not agents of the State Fire Marshal.

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. Question A. No, the local building official lacks the authority to issue phased permits without the approval of the appropriate firesafety inspector. A phased permit is nonetheless a permit

subject to Section 553.79(2), *Florida Statutes*, which clearly states that the enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to Section 633.081, *Florida Statutes*, has reviewed the plans and specifications required by the *Florida Building Code*, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code.

3. Question B. Yes. Section 533.79(2), *Florida Statutes*, clearly states that the firesafety inspector rendering the required finding must be certified pursuant to Section 633.081, *Florida Statutes*. Section 633.121, *Florida Statutes*, states in pertinent part, that the chiefs of county, municipal, and special-district fire departments and other fire department personnel designated by their respective chiefs, are authorized to enforce the laws in their respective districts. In this case, the appropriate firesafety inspector is the certified firesafety inspector designated by the Chief of the Collier County Fire Control and Rescue Districts.

4. Question C. An answer to this question is rendered unnecessary based upon the answer to question B, 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, this ____ day of _____, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

Edward Riley, CFPS
Fire Code Official
Collier County Fire Control & Rescue Districts
2800 North Horseshoe Drive
Naples, Florida 34104

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