



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Z.K. Roberts,
Northeast Florida Fire
Prevention Association

Case No.: 43434-01-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 September 12, 2001, by the Department of Insurance, hereinafter referred to as the Department, from Z.K. Roberts on behalf of the Northeast Florida Fire Prevention Association, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The 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. 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. The 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.

4. Petitioner asserts that:

- A. An authority having jurisdiction in one county does not require a hood and extinguishing system in that particular county for fair concession trailers.
- B. If the fair concession trailer moves to an adjoining county, even a few feet away, the trailer is not then permitted to open because the authority having jurisdiction in that adjoining county requires full compliance with NFPA 96.

5. Petitioner requests the Department to render a Declaratory Statement on the following questions:

- A. Are temporary concessions (i.e., food service establishments located in mobile units, tents, trucks, etc.) within the Uniform Standards, as provided in Section 633.022, Florida Statutes, and Rule Chapter 4A-55, Florida Administrative Code?
- B. If so, then whose responsibility is it to make a decision as to whether the public food service establishment should be exempt from the requirements of Section 1-3.1.4, of NFPA 96?

6. Public food service establishments are subject to the “uniform rules” pursuant to Section 633.022, Florida Statutes, which states that “(1) The Department of Insurance shall establish uniform firesafety standards that apply to: (a) All new, existing,

and proposed...public food service establishments... of which standards the State Fire Marshal is the final administrative interpreting authority.”

7. In Section 4A-55.005, Florida Administrative Code, the Department of Insurance adopted NFPA 101, the *Life Safety Code*, as the uniform firesafety standards for public food service establishments.

8. NFPA 101, Section 2.1.1 adopts and makes mandatory NFPA 96, “*Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations.*”

9. Although the term “public food service establishments” is not defined in Chapter 633 or Chapter 509, Florida Statutes,¹ a review of Rule Chapter 61C-4, Florida Administrative Code,² “*Public Food Service Establishments,*” indicates that mobile and transient food service units of the kind described by Petitioner are included in the term “public food service establishments.”

10. Section 633.022(2)(b), Florida Statutes, states in part: “All such local authorities shall enforce, within their firesafety jurisdiction, the uniform firesafety standards for those buildings specified in paragraph (1)(b)...” which includes public food service establishments.

11. Therefore, the buildings, structures, and other entities listed in Section 633.022(1)(b), Florida Statutes, are regulated by the local authority having jurisdiction.

¹ Section 509.211, Florida Statutes, requires public food service establishments to conform to the requirements of the rules of the Department of Insurance under Chapter 633, Florida Statutes.

² Administered by the Department of Business and Professional Regulation.

12. The State Fire Marshal is the final administrative interpretive authority if a dispute arises between the owner of one of the entities listed in Section 633.022, Florida Statutes, and the local authority having jurisdiction.

NOW, THEREFORE, in specific response to your questions relating to the interpretation of Section 633.022(1)(b), Florida Statutes, Section 4A-55.005, Florida Administrative Code, and NFPA 96 and NFPA 101, it is the position of the State Fire Marshal that:

A. Are temporary concessions (i.e., food service establishments located in mobile units, tents, trucks, etc.) within the Uniform Standards, as provided in Section 633.022, Florida Statutes, and Rule Chapter 4A-55, Florida Administrative Code?

Answer: Yes; however, the authority having jurisdiction over these public food service establishments is the local authority, not the State Fire Marshal.

B. If so, then whose responsibility is it to make a decision as to whether the public food service establishment should be exempt from the requirements of Section 1-3.1.4, of NFPA 96?

Answer: The decision as to whether the public food service establishment should be exempt from the requirements of Section 1-3.1.4, of NFPA 96, is with the local authority having jurisdiction. In addition to its designation in Section 633.022(2)(b), Florida Statutes, the local authority having jurisdiction is the in the best position, being the inspector of the public food service establishment, to make a determination as to whether the public food service establishment should, in fact, be exempt from NFPA 96, because the inspectors are "on the scene," they can tell whether "...all necessary provisions that impact on the personal safety of the occupants are considered," which is the standard NFPA sets in A-1-3.1.4 for exempting the food service establishment from part or all of its requirements.

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 _____, 2001.

GREG GAY
Deputy Commissioner,
Treasurer and State Fire Marshal

Copies furnished to:

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