



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In re the Matter of

MARSHAL A. SEYMOUR,
Petitioner.

Case No.: 79485-04-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 received on December 13, 2004, by the Department of Financial Services, hereinafter referred to as the Department, from Marshal A. Seymour, hereinafter referred to as Petitioner. 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 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. If 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. 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 asserts that:

A. Certain companies in Florida referred to herein as “management companies” manage accounts of other companies, referred to herein as “clients.”

B. These management companies employ licensed fire equipment dealers to install and service fire equipment for their clients.

C. However, the management companies require that the billing for the fire equipment sales and service come from the fire equipment dealer to the management company.

D. After receiving the bill, the management company then issues a bill to its client for the fire equipment dealer’s work.

E. The client pays the management company which then turns around and pays the fire equipment dealer.

F. The management companies control the selection of the fire equipment dealer who will do the work for the client by, among other ways, putting signs on the fire

equipment such as fire extinguishers which state, "Authorized [Name of Client] FIRE EXTINGUISHER SERVICE Contact [Name of Management Company] 1-800-xxx-xxxx," and similar wording.

QUESTIONS:

6. Petitioner's question is: Is it legal for a company in Florida which is not a licensed fire equipment company to "manage" accounts and get paid for them after getting a "licensed company" to do the work?

DISCUSSION

7. Section 633.061, Florida Statutes, requires any individual or firm engaging in the business of providing servicing, repairing, recharging, testing, marking, inspecting, installing, or hydrotesting portable fire extinguishers must possess a Fire Equipment Dealer License.¹

8. Section 633.065, Florida Statutes, provides that portable extinguishers must be serviced and maintained in accordance with this chapter (Chapter 633, F.S.) and the standards of the National Fire Protection Association and the manufacturer's specifications.²

9. Chapter 69A-21, Florida Administrative Code, provides that each licensee shall maintain a specific business location. A separate application and license are required for each business location. *Any advertisement that the services of installing,*

¹ Section 633.061(1), Florida Statutes: "It is unlawful for any organization or individual to engage in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, or hydrotesting any fire extinguisher or preengineered system in this state except in conformity with the provisions of this chapter. Each organization or individual that engages in such activity must possess a valid and subsisting license issued by the State Fire Marshal."

² Section 633.065(1)(a), Florida Statutes, requires that fire equipment dealers shall be licensed under s. 633.061.

*recharging, repairing, or inspecting or other maintenance of portable fire extinguishers or pre-engineered systems are available shall indicate that the premises, business, room, shop, store or establishment in or upon which it appears or to which it refers are a separate business location.*³

10. Section 69A-21.251, Florida Administrative Code, provides that invoices shall include the business name, physical business address and license number of the fire equipment dealer. The license number on the invoice shall coincide with the permit number on the tags which are attached to the extinguishers being invoiced for service. Invoices for servicing fire extinguishers shall include serial numbers of each extinguisher and identify, per serial number, the services performed and any parts replaced for each extinguisher. This information is permitted to be on a separate sheet attached to the invoice.

RESPONSE

WHEREFORE, it is the position of the State Fire Marshal that:

³ Section 69A-21.102(1), Florida Administrative Code: "The dealer applicant shall submit an application on form DI4A-32, "Application for Fire Equipment Dealer License" revised 11/99 as adopted and incorporated herein by reference furnished by the Regulatory Licensing Section, Bureau of Fire Prevention, Division of State Fire Marshal which shall conform with Section 633.061, F.S., identifying the class of license requested. Each licensee shall maintain a specific business location. A separate application and license are required for each business location."

Section 69A-21.203, Florida Administrative Code: "Licensed fire equipment dealers are required to install, inspect, maintain, or recharge portable fire extinguishers in accordance with NFPA 10, Standard for Portable Fire Extinguishers, the edition as adopted in Rule Chapter 69A-3, F.A.C. The provisions of NFPA 10, the edition as adopted in Rule Chapter 69A-3, F.A.C., are mandatory. Copies of NFPA 10, the edition as adopted in Rule Chapter 69A-3, F.A.C., may be obtained from: National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269."

11. Question: Is it legal for a company in Florida which is not a licensed fire equipment company to “manage” accounts and get paid for them after getting another “licensed company” to do the work?

Response: Based on the statement of facts which you have submitted, the following principles apply:

A. If the management company does not engage in the business of providing servicing, repairing, recharging, testing, marking, inspecting, installing or hydrotesting of portable extinguishers, or advertise to perform this type service, **and if** the management company does not appear on the invoice which must be provided to the owner of the equipment and the owner is provided with an invoice meeting the requirements of Section 69A-21.251, the statute does not prohibit the owner of the equipment making payment to a third party which, in turn, pays the licensed dealer.

B. **However,** if the licensed fire equipment dealer providing the service invoices the management company and the management company separately invoices the owner of the equipment with its own invoice without providing the invoice from the fire equipment dealer, the fire equipment dealer and the management company would both be in violation of Chapter 633, Florida Statutes.

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 at Tallahassee, Leon County, Florida, this ____ day of

_____, 2005.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

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