



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

TODD SPEAR,

Case No.: 88105-07-FM

Petition for Declaratory Statement

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed by Todd Spear (hereinafter "Petitioner"), and received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on November 1, 2006. 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 the Fire Marshal, City of Tampa, charged with enforcement of the Florida Fire Prevention Code and Life Safety Code within the jurisdiction of the City of Tampa.

5. The Petition for 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 Code when requested by a local enforcing agency.

6. The subject of the Petition is the applicability of Rule 69A-58.008(1)(a), *Florida Administrative Code*, and NFPA 101, Life Safety Code, Sections 15.2.1.2 and 4, to the Petitioner's set of circumstances. In furtherance of its request, the Petitioner asserts the following:

A. As City Fire Marshal, he is required to enforce the provisions of the rule as they apply to private, public and charter schools within the corporate limits of the City of Tampa.

B. NFPA 101, Life Safety Code, Section 15.2.1.2, applied to private and certain charter schools, prohibits the use of rooms "normally occupied by students above the first floor for students in kindergarten and first grade" unless there is an independent exit for those students. Rule 69A-58.008(a), *Florida Administrative Code*, which applied to public and certain charter schools formerly provided that "rooms used for pre-kindergarten through grade 1 shall not be located above or below the level of exit discharge." That language was deleted from the rule, and the issue is currently governed by Rule 69A-58.002(4), *Florida Administrative Code*, which provides that existing "educational and ancillary facilities shall comply with the applicable provisions of NFPA 1 and NFPA 101."

7. Notice of receipt of the Petition herein was published in Volume 32, Number 49 of the *Florida Administrative Weekly*, on December 8, 2006.

QUESTIONS

8. The Petition poses the following questions:

A. Is it the intent of NFPA 101, 15.2.1.2, that “rooms normally occupied” include nonclassroom areas such as media centers, auditoriums, and lunchrooms?

B. Is it the intent of Rule 69A-58.008(a), *Florida Administrative Code*, that “rooms used for pre-kindergarten through grade 1” include nonclassroom areas such as media centers, auditoriums, and lunchrooms?

C. If the answer to question B is yes, does NFPA 101, 15.2.1.4 require an “independent exit” as one additional exit beyond the two or more otherwise required?

DISCUSSION

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

10. Rule 69A-58.008(1)(a), *Florida Administrative Code*, formerly provided that rooms “used for pre-kindergarten through grade 1 shall not be located above or below the level of exit discharge.” Effective November 26, 2006, the referenced rule was amended and no longer contains the specific language quoted above. Instead the issue is addressed through Rule 69A-58.002(4), *Florida Administrative Code*, which provides that existing “educational and ancillary facilities shall comply with the applicable provisions of NFPA 1 and NFPA 101, the Florida editions adopted in Rule 69A-3.012, F.A.C., except as modified by Chapter 1013, F.S., and this rule chapter.”

11. NFPA 101-15.2.1.2 provides that rooms “normally occupied by preschool, kindergarten or first-grade students shall be located on a level of exit discharge, unless otherwise permitted by 15.2.1.4.” NFPA 101-15.2.1.4 provides that rooms “or areas located on floor levels other than as specified in 15.2.1.2 . . . shall be permitted to be used where provided with independent means of egress dedicated for use by the preschool, kindergarten, first-grade or second-grade students.”

12. Rule 58.003 (17), *Florida Administrative Code*, defines the phrase student-occupied space to mean, “any area planned primarily for use by six or more students.”

13. NFPA101-3.3.64.1 defines the phrase “level of exit discharge” as “(1) [t]he lowest story from which not less than 50 percent of the required number of exits and not less than 50 percent of the required egress capacity from such a story discharge directly outside at grade; (2) the story with the smallest elevation change needed to reach grade, where no story has 50 percent or more of the required number of exits and 50 percent or more of the required egress capacity from such a story discharge directly outside at grade.”

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 within the meaning of Section 20.565, *Florida Statutes*.
2. Question A. Yes. The clear language of the rule, which adopts NFPA 101, reflects that its terms apply to rooms designated as media centers, auditoriums, and lunchrooms.
3. Question B. Yes, if the second floor is not the level of exit discharge.
4. Question C. Yes. The Code recognizes that small children can safely navigate stairs if they do not have to compete with older and more mobile students. The additional stairway for the

kindergarten and first grade students, must be dedicated to the space (media center, auditorium, lunchroom), and be in addition to any other required egress stairways.

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 W. Miller
Deputy Chief Financial Officer

Copies furnished to:

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