



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

TAMARAC FIRE RESCUE

Case No.: 87261-06-FM

Petition for Declaratory Statement
_____ /

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed by Tamarac Fire Rescue (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on August 31, 2006. On September 12, 2006, the Department advised the Petitioner that a Declaratory Statement could not be issued without additional information, which was provided by the Petitioner, in writing, on October 16, 2006. Upon consideration thereof, and being duly advised in the premises, 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, as amended. 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 on a hypothetical basis. 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 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 Tamarac Fire Rescue, located at 6000 Hiatus Road, Tamarac, Florida 33321. The Petition is signed by Jim Budzinski, Fire Chief, who is charged with enforcement of the applicable firesafety statute and rules.

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 Section 633.061(1), *Florida Statutes*, to the Petitioner’s set of circumstances. In furtherance of its request, the Petitioner asserts that:

A. Captive-Aire, Inc. is an out-of-state manufacturer of kitchen hood systems, which has sales offices in Florida where sales are solicited and made.

B. Cheddars, a newly constructed restaurant, located at 7951 W. Commercial Blvd, purchased a kitchen hood system through a Captive-Aire, Inc. office in Florida.

C. After the order was taken in Florida, it was sent to an out-of-state factory. A Captive-Aire, Inc. factory representative contacted Cheddars to learn the appropriate specifications for the

fire suppression system to be installed; for example, the type of appliances to be operated under the hood and the location of the hood in the kitchen.

D. Based on the information provided to the factory by Cheddars, Captive Aire, Inc. formulated the plan for the fire suppression system by comparing the information provided by Cheddars to the requirements in the UL manual, and drew up a plan to incorporate a UL 300 listed preengineered fire suppression system into the cooking stove hood ordered by Cheddars.

E. The factory cut the pipes and holes in the hood, welded the pipe into the hood, welded the brackets for the fusible links onto the hood, and welded piping for the actuation and suppression lines. The factory also attached the requisite nozzles and the control head box to the cooking stove hood.

F. Captive-Aire, Inc. then shipped the parts and the partially assembled hood to Cheddars in Florida.

G. The hood was physically hung from the ceiling by a mechanical contractor, and the components of the system (the pull station, tanks, fusible links, etc.) were installed by a pre-engineering company licensed by the State Fire Marshal, that was engaged to perform the installation and submit the plans prepared by Captive-Aire, Inc. for the applicable permit.

7. Notice of receipt of the Petition herein was published in Volume 32, Number 37 of the *Florida Administrative Weekly*, on September 15, 2006. Additional facts were provided by the Petitioner on October 15, 2006.

QUESTION

8. The Petition, as amended, asks whether the above-described activities conducted by Captive-Aire, Inc. outside of the State of Florida, constitute the act of “installation” for which a license is required in the State of Florida.

DISCUSSION

9. The Department of Financial Services, Division of State Fire Marshal, 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 properly requested by a local enforcement agency.

10. Section 633.061(1), *Florida Statutes*, provides that it is unlawful for any organization or individual to engage in the business of installing a preengineered system in the State of Florida without a valid and subsisting license issued by the State Fire Marshal. Subsection (2) requires that each individual actually performing the work of installing a preengineered system must possess a valid and subsisting permit issued by the State Fire Marshal.

11. The terms “install” and “installing” are not defined in Chapter 633, *Florida Statutes*, or in the Department’s rules. Where terms are not defined by legislative enactment, or rule, they are accorded their ordinary dictionary meaning. Scutti v. State Road Dep’t, 220 So.2d 628 (Fla. 4th DCA 1969).

12. *Random House Webster’s Unabridged Dictionary* defines the term “install” as, “to place in position or connect for service or use.”¹ The term “installation” is defined as “something installed, as machinery or apparatus placed in position or connected for use. . . ,” and “the act of installing.”² The term “manufacture,” is defined as, “the making of goods or wares by manual labor or by machinery, esp. on a large scale.”³ The term “assemble,” meaning “to put together the parts of,” is related to the term “manufacture,” in that the assembly of mechanical parts into a complete

¹ *Random House Webster’s Unabridged Dictionary*, Second Edition, p. 987 (Random House, Inc., 1998).

² *Id.* at 988.

³ *Id.* at 1172.

unit is an activity consistent with the above definition, and one which is routinely performed by manufacturers' factory assembly lines.

13. Based upon the preceding analysis, connecting a mechanical unit for service or use, constitutes the act of "installing," and is distinguished from the term "manufacturing," which is the process of making and assembling goods or wares.

14. Thus, the act of "installing" fire safety equipment is an activity requiring a license as provided in Section 633.061(1), *Florida Statutes*, and is consequently distinguished from the term "manufacturing," which is an activity not requiring a license pursuant to Chapter 633.

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. As a local enforcement agency, the Petitioner is entitled to the issuance of this Declaratory Statement pursuant to the provisions of Section 633.01(6), *Florida Statutes*.

2. The activity of Captive-Aire, Inc., as described herein, is not a violation of Section 633.061(1), *Florida Statutes*. The Florida Legislature did not intend to include the activity of manufacturing within the meaning of the term "installing" as used in Section 633.061(1), *Florida Statutes*. The final connecting of the fire extinguishing system components for service at Cheddars in Florida does constitute the act of installing, which can only be performed by an entity properly licensed by the State Fire Marshal.

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 _____ day of _____, 2007.

Eric W. Miller
Deputy Chief Financial Officer

Copies furnished to:

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