THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Wayne Automatic Fire
Sprinklers, Inc.

Case No.: 61296-02-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 January 8, 2002, by the Department of Insurance, hereinafter referred to as the Department, from Wayne Automatic Fire Sprinklers, Inc., hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the State Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The State Treasurer and 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.

BACKGROUND

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.

4. Petitioner asserts that:

A. The Petitioner is a Florida licensed fire sprinkler contractor, providing design, fabrication and installation services for water based fire protection systems.

B. Interpretations of applicable statutes, rules, codes, and standards are not uniform throughout Florida jurisdictions.

C. Some authorities having jurisdiction require a “full blown” NFPA 13 fire sprinkler system throughout a new time-share building of the type described herein.

D. The questions to the Department of Insurance, which are the basis of this petition, are issues that substantially affect the ability of the Petitioner to effectively compete in the Florida fire sprinkler construction market.

E. The construction project involved is classified as Florida Building Code Type 5, 1 Hour, protected construction.

F. The authority having jurisdiction has determined that based on FS 509.215, the project in question is required to be equipped with an automatic fire sprinkler system designed per NFPA Standard 13.

G. An analysis of the code path begins with Chapter 4A-43, Uniform Fire Safety Standards for Transient Public Lodging Establishments, which references Florida Statute 509.215 for fire safety.

H. This chapter states the requirement for NFPA 13 for buildings with INTERIOR corridors.

I. The definition of interior could be debated.

J. A typical "exterior" corridor could be defined as having railings and being open to outside air and open to view, as are the corridors on the buildings in question.

K. Proceeding to the Florida Building Code (2001), these buildings are Type 5, 1 Hour, protected structures.

L. In accordance with Table 500 under Residential (R-1 Occupancy Assumed for transient), the buildings can be 5 Stories and 18,000 Sq Ft per Floor unsprinklered. (This project consists of 4-story buildings with about 10,500 Sq Ft per Floor).

M. So, it is apparent that as long as no other allowances were taken, on the basis of their construction materials and arrangement alone, these buildings would not be required by the building code to be sprinklered.

N. However, Chapter 9, Fire Protection Systems, 903.8.1 requires any building (with 3 non-applicable exceptions) three or more stories in height to be provided throughout with an "approved" automatic sprinkler system. Approved is defined as being acceptable to the authority having jurisdiction.

O. To paraphrase 633.022, Uniform fire safety standards, *the Department of Insurance shall establish fire safety standards that apply to transient public lodging establishments. The State Fire Marshal is the final administrative interpreting authority. In the event there is a dispute, the State Fire Marshal's interpretation regarding the uniform fire safety standards shall be considered final agency action.*

P. The State Fire Marshal is then the final authority having jurisdiction, with power of approval.

Q. Next, consider Florida Statute 553.895(2), which requires that all buildings 3 stories or more (except for certain parking garages and 1&2 Family dwellings) be sprinklered. Also in 553.895, the wording is repeated as stated in 509.215 re-emphasizing the "interior" corridor clause.

R 553.895(2) would appear to be the code or statute that forces the sprinklering of these buildings.

S. Referring at this point to the 2000 Life Safety Code, Chapter 28, New Hotels and Dormitories, Section 28-1.3 refers to 3.3.105, which defines a hotel as: Buildings or groups of buildings under the same management in which there are sleeping accommodations for more than 16 persons primarily used by transients (those who occupy accommodations for less than 30 days) for lodging with or without meals, whether designated as a hotel, inn, club, motel, or by any other name.

T. The Life Safety Code, NFPA 101, Section 28-3.5.1 is the extinguishment requirement for new Hotels.

U. This section allows 13R for buildings up to and including 4 stories.

V. Based on the above, and assuming that no more stringent local amendments have been implemented by the local Authority per 633.0215, one could propose that the construction project in question can be sprinklered using NFPA 13R systems since they have exterior corridors.

QUESTIONS

5. Petitioner requests a declaratory statement on the following questions:

A. Is the above referenced fire sprinkler project required to be designed exclusively per the parameters of NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition?

B. Is the use of NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 1999 edition, for this project in violation of Florida law?

DISCUSSION

6. Section 5-4 of NFPA 13 provides: “Sprinklers shall be selected for use as indicated in this section. Sprinklers shall be positioned and spaced as described in Section 5-5.”

7. Section 5-4.5.1 goes on to say, “Residential sprinklers shall be permitted in dwelling units and their adjoining corridors provided they are installed in conformance with their listing and the positioning requirements of NFPA 13D, *Standard for the Installation of Sprinkler Systems in One-and Two-Family Dwellings and Manufactured Homes, or NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.*”

8. When one NFPA standard references another, as in the above case in which NFPA 13 references NFPA 13D and 13R, as the source for positioning requirements when installing residential sprinklers, those sources referenced then become the primary authorities for the work being performed.

RESPONSE

9. Therefore, in response to your questions, it is the position of the Florida State Fire Marshal that:

Question: Is the above referenced fire sprinkler project required to be designed exclusively per the parameters of NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition?

Answer: No. Since NFPA 13 references NFPA 13D and 13R, 13D and 13R were intended to prescribe the standards used in the type of buildings described.

Question: Is the use of NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 1999 edition, for this project in violation of Florida law?

Answer: No, for the same reason indicated in response to the previous question. Section 553.895, Florida Statutes, references NFPA 13 and requires it to be followed. That means that Section 553.895, Florida Statutes, requires all of NFPA 13 to be the authority. If NFPA 13 then references another NFPA document, such as NFPA 13D or 13R, those alternative documents may be followed if consistent with Table 500 in Chapter 5 of the Florida Building Code, Building Volume.

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 _____, 2002.

_____
GREG GAY
Deputy Commissioner,
Treasurer and State Fire Marshal

Copies furnished to:

Wayne Automatic Fire Sprinklers, Inc.
222 Capitol Ct.
Ocoee, FL 34761

Peter T. Schwab, Representative
Engineering Department Manager
222 Capitol Ct.
Ocoee, FL 34761

Gabriel Mazzeo, Attorney
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340