

FILED

FEB 28 2011



Docketed by

A handwritten signature in black ink, appearing to be "JA", written over a horizontal line.

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

STATE FIRE MARSHAL

In The Matter Of:

ALL CHILDREN'S HOSPITAL

Case No.: 113821-10-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 (hereinafter "Petition") filed by All Children's Hospital (hereinafter "Petitioner"), with the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on December 2, 2010. Upon consideration thereof, and being duly advised, the Chief Financial Officer, finds as follows:

1. The Chief Financial Officer 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 supplemented by the Petitioner. 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 the questions are being answered as purely hypothetical. If any of the facts asserted by the parties 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 parties are entitled to have the Department issue this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. The Petitioner is a hospital located at 501 Sixth Avenue South, St. Petersburg, Florida.

5. The Declaratory Statement was requested pursuant to the provisions of Section 120.565 *Florida Statutes*, and Rule 28.105, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory or rule provision as it applies to the Petitioner's particular set of circumstances.

6. The subject of the Petition is the applicability of Chapter 554, *Florida Statutes*, "Boiler Safety Act," to the Petitioner's central energy plant ("subject property").

7. The hospital is a place of public assembly. The subject property is located in a separate building two blocks away from the hospital; however, the intervening property is all owned by the hospital and both buildings are on the hospital campus. There are no intervening property owners, except a small house and a physicians' office building which do not separate the central energy plant from the hospital campus. The subject property is located in the vicinity of a city sidewalk. The subject property supplies steam and vapor to the outpatient care center and the hospital.

8. Following an inspection, the Department cited the Petitioner for failing to register the boiler with the Department as required by law, and other violations of the Boiler Safety Code.

9. Notice of receipt of the Petition herein was published in Volume 36, Number 51 of the *Florida Administrative Weekly*, on December 23, 2010.

QUESTION

10. The Petitioner asks whether the subject building must comply with the requirements of the Boiler Safety Act, given that it is two blocks away from the hospital building.

DISCUSSION

11. The Department is authorized pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements when requested by a substantially affected person.

12. Chapter 554, *Florida Statutes*, “The Boiler Safety Act,” requires the owner of any boiler placed in use after October 1, 1987, to submit the A.S.M.E. manufacturer’s data report on such boiler to the chief inspector not more than 90 days following the inservice date of the boiler.¹ Thereafter, boilers in public assembly locations must be inspected by the Department or a certified inspector employed by the insuring company.²

13. The phrase “public assembly locations” is defined to include, “schools, day care centers, community centers, churches, theaters, *hospitals*, nursing and convalescent homes, stadiums, amusement parks, and other locations open to the general public.”³ (Emphasis provided.) The Department has further defined the phrase “other locations open to the general public,” in Rule 69A-51.005(24), *Florida Administrative Code*, as:

a building, facility, occupancy, or portion thereof, or an area open to the public for educational purposes or for trade or commerce including, but not limited to, public and private schools, universities, child care centers, city, county and state government buildings, commerce facilities, shopping malls, departmental stores, grocery stores, motels, hotels, resorts, vacation clubs, fitness centers, and restaurants; meeting rooms, game rooms, and similar places where the public is invited or permitted to gather, as well as boiler rooms, located in apartment complexes, condominiums, cooperatives, or similar multi-family dwellings; dry cleaners, laundries or laundromats; retirement homes; religious schools; bus or train stations; colleges and other institutions of higher learning; fraternal organizations; any club open to guests and the public; and any building or area in which

¹ Section 554.103(2), *Florida Statutes*.

² Section 554.108(1), *Florida Statutes*.

³ Section 554.1021(2), *Florida Statutes*.

persons may assemble for civic, educational, religious, recreational, entertainment or other purposes, or in which passengers may await public transportation. The term “public assembly locations” also means “places of public assembly” as used in this rule chapter.

14. It is clear from these definitions that a public assembly location can be more than a building, and can include surrounding buildings and property when they are open to the general public. For example, stadiums, amusement parks, shopping malls, and colleges and universities are all included in the definition, and include much more than the building housing the boiler, in recognition that the danger from a malfunctioning boiler is not contained to the four walls of a building. If the boiler is located on the campus of a public assembly location, as the subject boiler is, then it is subject to Chapter 554, *Florida Statutes*.

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 entitled to the issuance of this Declaratory Statement.

2. Petitioner’s question and answer:

Question: Must the subject building comply with the requirements of the Boiler Safety Act, given that it is two blocks away from the hospital building.

Answer: Yes, the subject building is located on the same campus as the hospital in the vicinity of a public sidewalk, and the subject property serves the hospital. Based upon the location of the boiler to public areas, public safety concerns are implicated. The definitions of “public assembly locations” and “other locations open to the general public,” make clear that areas surrounding the hospital, such as the subject property, are required to comply with the “Boiler Safety Act.”

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 Julie Jones, Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0333 and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement. A copy of the notice may also be served by email addressed to Julie.Jones@myfloridacfo.com or by facsimile transmission at 850-488-0697.

ENTERED in the City of Tallahassee, Leon County, Florida, this 28 day of February, 2011.



A handwritten signature in black ink, appearing to read "R. C. Kneip", written over a horizontal line.

Robert C. Kneip
Chief of Staff

Copies furnished to:

Mr. Frank Sharp
All Children's Hospital
501 Sixth Avenue South
St. Petersburg, Florida 33731

Don C. Bailey, P.E.
255 South Orange Avenue, Suite 1600
Orlando, Florida 32801

Lesley Mendelson, Assistant General Counsel
Department of Financial Services
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340