

STATE OF FLORIDA
DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL

In re the Matter of

CASSELBERRY FIRE
DEPARTMENT

Case No.: _____

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 December 20, 2000, by the Department of Insurance, hereinafter referred to as the Department, from the Casselberry Fire Department, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The 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.

3. 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. The 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 his community, which has an organized fire department, is in the process of having its firesafety inspection responsibilities, now under the Fire Chief, placed under, and be subject to, the community's building department. Specifically, Petitioner states: "If removed from the oversight of the Chief of the Fire Department, the local agency with firesafety responsibility (the Casselberry Fire Department) would be without any voice in matters of life safety, prevention, plans review, and code conflict resolution."

5. The Petitioner requests the Department to render a Declaratory Statement on the following issue:

Whether the responsibilities assigned to the chief of the fire department when there is an organized fire department may be delegated to any other department of the local government; i.e., Community Development Department, Public Works Department, or Building Department.

6. The controlling statutes are Sections 633.121 and 633.081, Florida Statutes.

a. Section 633.121, Florida Statutes, states:

633.121 Persons authorized to enforce laws and rules of State Fire Marshal. The chiefs of county, municipal, and special-district fire departments; other fire department personnel designated by their respective chiefs; and personnel designated by local governments having no organized fire departments are authorized to enforce this law and all rules prescribed by the State Fire Marshal within their respective jurisdictions. Such personnel acting under the authority of this section shall be deemed to be agents of their respective jurisdictions, not agents of the State Fire Marshal. (Emphasis supplied).

b. Section 633.081, Florida Statutes, in pertinent part states:

633.081 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. The firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

(2) Every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal. (Emphasis supplied).

7. Although not administered by the Department of Insurance, the Department must also be cognizant of subsection (7) of Section 553.73, Florida Statutes. That subsection states:

(7) (a) In the event of a conflict between the applicable minimum building code and the applicable minimum firesafety code, it shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(b) Any decision made by the local fire official and the local building official may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the applicable minimum building code or the applicable minimum firesafety code, the board may not alter the decision unless the board determines that the application of such code is not reasonable. If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials

and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.

(c) In the event that the local building official and the local fire official are unable to agree on a resolution of the conflict between the building code and the fire code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

(d) The local administrative board shall, to the greatest extent possible, be composed of members with expertise in building construction and firesafety standards.

(e) All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon all persons but shall not limit the authority of the State Fire Marshal pursuant to s. 633.161. Decisions of general application shall be indexed by building and fire code sections and shall be available for inspection during normal business hours. (Emphasis supplied).

8. When those provisions of the law are read together, the following conclusions must be reached:

a. Each firesafety inspection must be made by a certified firesafety inspector.

(Section 633.081(1) and (2), Florida Statutes).

b. Each chief of each county, municipal, and special district fire department having firesafety responsibilities has the authority to enforce Chapter 633, Florida Statutes, including but not limited to the responsibility for providing firesafety inspections. (Section 633.121, Florida Statutes).

c. Each county, municipality, and special district having firesafety responsibilities has a local building official and a local fire official. (Section 553.73, Florida Statutes).

d. In the event of a conflict between the local building official and the local fire official, the conflict must be resolved in accordance with subsection (7) of Section 553.73, Florida Statutes.

e. If a local fire official were subject to the control of a local building official, and the local building official had the right to overrule the local fire official on matters involving firesafety inspection, there would never be a conflict between the local fire official and the local building official because the local building official would have the final decision making authority which would render the provisions of subsection (7) of Section 553.73, Florida Statutes, meaningless.

f. Statutes should be read in such a way so as to give them meaning.¹

g. Subsection (7) of Section 553.73, Florida Statutes, must be read in a way that provides that the local fire official and the local building official are coequally in charge of, and coequally responsible for, their respective areas of jurisdiction, which are firesafety inspections and building inspections.

Therefore, it is the position of the State of Florida, Department of Insurance, State Fire Marshal, that

a. The local fire official must not be subject to, or under the control of, the local building official in matters involving firesafety inspections;

¹ "Statutory interpretations that render statutory provisions superfluous 'are, and should be, disfavored.'" *Johnson v. Feder*, 485 So.2d 409, 411 (Fla.1986) (quoting *Patagonia Corp. v. Board of Governors of the Fed. Reserve Sys.*, 517 F.2d 803, 813 (9th Cir.1975)). See *Unruh v. State*, 669 So.2d 242, 245 (Fla.1996); *City of North Miami v. Miami Herald Publ'g Co.*, 468 So.2d 218, 219-20 (Fla.1985). *OKEECHOBEE HEALTH CARE v. COLLINS*, 726 So.2d 775 (Fla. 1st DCA 1998).

b. The local building official is not permitted to overrule the local fire official in matters involving firesafety inspections;² and

c. If a dispute arises involving the firesafety code and the building code, the dispute must be resolved in accordance with subsection (7) of Section 553.73, Florida Statutes, and not solely by the building official.

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, Fla.R.App.P., 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 _____, 2000.

State Fire Marshal

Copies furnished to:

Bart Wright
Fire Protection Inspector
Casselberry Fire Department

² Nothing in this Declaratory Statement is intended to mean that the local fire official may not be subject to the local building official for strictly administrative or time-management purposes. For example, the local fire official may be subject to the local building official for purposes of scheduling firesafety inspections to coincide with building inspections. However, the local building official may not act in such a way that would in any manner frustrate or interfere with the local firesafety inspector in the performance of his or her duties or overrule him or her on any decisions involving firesafety or firesafety inspections.

95 Triplet Lake Drive
Casselberry, Florida 32707

xxx, Esquire
Attorney for the Department
200 East Gaines Street
Tallahassee, Florida 32399-0300