



In The Matter Of:

MARK CAVINEE,

Case No.: 91439-07-FM

Petition for Declaratory Statement Regarding
Horizon Middle School in Kissimmee,
Florida, to the Florida Department of
Financial Services.

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (hereinafter “Petition”) by Mark Cavinee (hereinafter “Cavinee”). The Petition was received by the Department of Financial Services, Division of State Fire Marshal (hereinafter “Department”), on August 10, 2007. The Petition was amended on August 22, 2007. 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. Cavinee is the authority having jurisdiction for new construction at Horizon Middle School, 1220 Betsy Ross Lane, St. Cloud, Florida, charged with enforcement of Rule 69A-60, *Florida Administrative Code*, the “Florida Fire Prevention Code” (hereinafter the “Code”).

5. The Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Rules 28.105 and 69A-60.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency’s interpretation of its statutes, rules, and orders, as they apply to the Petitioner’s particular set of circumstances, and requires the Department to issue a Declaratory Statement when requested by an authority having jurisdiction.

6. The subject of the Petition is the application of 69A-58.0082(1)(a), *Florida Administrative Code*, and Sections 1013.33(15), 1013.33(15)(a), 1013.33(13) and 1013.371(1)(a), *Florida Statutes*, to the placement of a temporary or portable classroom at Horizon Middle School.

7. Notice of receipt of the Petition was published in Volume 33, Number 36 of the *Florida Administrative Weekly*, on September 7, 2007.

8. The Petition states that in determining the proper placement of relocatable classrooms, the School District of Osceola County has adhered to the requirement of Rule 69A-58.0082(1)(a), *Florida Administrative Code*. Furthermore, the School Board has always submitted plans to the local fire fighting authority as required by the Code. A new fire marshal is interpreting the provision to mean that the School Board must follow the Land Development Code for local entities which is formulated through local ordinance. The School Board is exempt from local ordinances pursuant to Section 1013.371(1)(a), *Florida Statutes*. A local governing body may not deny the site application based on adequacy of the site plan as it relates solely to the needs of the school pursuant to Section 1013.33(13), *Florida Statutes*. The School Board is required to follow the requirements of the Code, not the local Land Development Code, for on-site compliance. The School Board designed the site plans based on the Code, and the plans were rejected by the local fire fighting authority based upon a requirement in their locally adopted Land Development Code.

QUESTIONS

9. The Petition poses the following questions:

A. Does the Code, Rule 69A-58.0082(1)(a), *Florida Administrative Code*, require a School Board to follow a local land development code?

B. Does the Code, Rule 69A-58.0082(1)(a), *Florida Administrative Code*, allow a local fire fighting authority to reject site plans based solely on distance to a fire hydrant affecting only the school site?

C. Does the Code, Rule 69A-58.082(1)(a), *Florida Administrative Code*, require the local fire fighting authority to review the plans for fire hydrant locations or for “access for emergency vehicles” only . . . as spelled out in the code?

D. Does the Code, Rule 69A-58.008, *Florida Administrative Code*, conflict with Section 1013.33(15)(a), *Florida Statutes*, which states, “[l]ocal government approval is not required for the placement of temporary or portable classroom facilities?”

DISCUSSION

10. The Department is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements relating to the Code, when requested by a substantially affected person or a local enforcing agency.

11. Rule 69A-58, *Florida Administrative Code*, is authorized by the provisions of Section 1013.12, *Florida Statutes*, which provides:

The State Board of Education shall adopt and administer rules prescribing standards for the safety and health of occupants of educational and ancillary plants as a part of State Requirements for Educational Facilities or the Florida Building Code for educational facilities construction as provided in s. 1013.37, ***except that the State Fire Marshal in consultation with the Department of Education shall adopt uniform firesafety standards for educational and ancillary plants and educational facilities as provided in s. 633.022(1)(b) and a firesafety evaluation system to be used as an alternate firesafety inspection standard for existing educational and ancillary plants and educational facilities. The uniform firesafety standards and the alternate firesafety evaluation system shall be administered and enforced by local fire officials. These standards must be used by all public agencies when inspecting public educational and ancillary plants, and the firesafety standards must be used by local fire officials when performing firesafety inspections of public educational facilities.*** (Emphasis added.)

12. Chapter 69A-58, *Florida Administrative Code*, promulgated in consultation with the Department of Education, governs fire safety in educational facilities. The purpose and scope of the chapter is to provide a reasonable degree of safety from fire in new construction and existing buildings located in educational facilities.¹ Section 633.022, *Florida Statutes*, referenced in Section 1013.12, *Florida Statutes*, also directs the Department to establish uniform firesafety

standards in educational facilities. With respect to Rule 69A-58, *Florida Administrative Code*, local authorities may not require more stringent uniform firesafety standards than those in 69A-58, *Florida Administrative Code*, except standards for sprinkler systems.² Rule 69A-58.0082, *Florida Administrative Code*, addresses relocatable buildings; Subsection (1)(a) thereof provides:

- (1) Relocatable buildings: Relocatable buildings sited after March 1, 2002, shall be separated as required by the Florida Building Code.
- (a) Relocatable buildings shall be located to allow access by emergency vehicles to at least one elevation of each building as approved by the local fire fighting authority that services the site in accordance with Chapter 18 of NFPA 1.

13. Section 1013(15)(a), *Florida Statutes*, provides:

Existing schools shall be considered consistent with the applicable local government comprehensive plan adopted under Part II of chapter 163. If the board submits an application to expand an existing school site, the local governing body may impose reasonable development standards and conditions on the expansion only, and in a manner consistent with s. 1013.51(1). Standards and conditions may not be imposed which conflict with those established in this chapter or the Florida Building Code, unless mutually agreed. ***Local government review or approval is not required for: (a) The placement of temporary or portable classroom facilities.*** (Emphasis added.)

14. Sections 69A-58.002(8), (9) and (10), *Florida Administrative Code*, contain provisions to resolve disputes between the local fire marshal and the School Board regarding interpretation of the Code. However, the instant dispute does not appear to concern an interpretation of the Code, but rather whether a local land development code can supersede the provisions of the Code in such an instance. As declared in *Citrus County Builder's Association, Inc. and Citrus County, Florida*, Case No.: 87995-07-FM, if the ordinance in question has the

¹ Rule 69A-58.002(1), *Florida Administrative Code*.

² Section 633.022(2), *Florida Statutes*.

effect of amending the Code, then it does not matter where the ordinance is housed, it is still an impermissible amendment to the Code.

15. Section 633.025, *Florida Statutes*, contains a provision for challenging local amendments to the Code. It provides that a local government which adopts amendments to the minimum firesafety code must provide a procedure by which the validity of such amendment may be challenged. The decision of the local government may be appealed to the Department. If the Land Development Code provision is indeed an amendment to the Code, it would be invalid unless it meets the limited exemptions contained in Section 633.022(2)(c)1., 2., 3., *Florida Statutes*.

16. In conclusion, the Department has authority to issue declaratory statements relating to its statutes, rules, and orders. Rule 69A-58, *Florida Administrative Code*, governing fire protection in educational facilities, is a rule of the Department and part of the Code. Pursuant to Section 633.022(2)(b), *Florida Statutes*, a local authority may not require more stringent uniform firesafety standards with respect to educational facilities than those found in the Department's rule. If the ordinance in question has the effect of amending Rule 69A-58, *Florida Administrative Code*, and does not meet the limited exemption provided in Section 633.022(2)(c), *Florida Statutes*, then it is invalid. However, the Department lacks the requisite information to make the determination as to whether the limited exemption applies.

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

1. The Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.

2. Question A: Does the Code, Rule 69A-58.0082(1)(a), *Florida Administrative Code*, require a School Board to follow a local land development code?

Answer: No, the Code addresses issues of firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.

Question B : Does the Code, Rule 69A-58.0082(1)(a), *Florida Administrative Code*, allow a local fire fighting authority to reject site plans based solely on distance to a fire hydrant affecting only the school site?

Answer: Yes. The cited rule adopts NFPA 1, Chapter 18, which addresses fire hydrant assembly layout. The placement of a fire hydrant assembly could be significant enough to warrant rejection of construction plans. Water supplied by fire hydrants may have a severe tactical and operational impact on a first responder fire fighting agency. It is for this reason that fire officials and school officials should jointly determine the adequacy of fire department access and fire hydrant assembly layout in conformance with the provisions of NFPA 1, Chapter 18.

Question C: Does the Code, Rule 69A-58.082(1)(a), *Florida Administrative Code*, require the local fire fighting authority to review the plans for fire hydrant locations or for “access for emergency vehicles” only . . . as spelled out in the code?

Answer: Yes, for the same reason as set forth in the answer to question B, above.

Question D: Does the Code, Rule 69A-58.008, *Florida Administrative Code*, conflict with Section 1013.33(15)(a), *Florida Statutes*, which states, “[l]ocal government approval is not required for the placement of temporary or portable classroom facilities?”

Answer: No. The Department is without authority to issue a Declaratory Statement interpreting Chapter 1013, *Florida Statutes*; however, the Department interprets Rule 69A-58.008, *Florida Administrative Code*, not to be in conflict with Section 1013.33(15)(a), *Florida Statutes*.

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 November, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

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