



**TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA**

In re the Matter of

**GAINESVILLE FIRE RESCUE
DEPARTMENT,**

Petitioner.

Case No.: 82693-05-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 received on August 3, 2005, by the Department of Financial Services, hereinafter referred to as the Department, from the GAINESVILLE FIRE RESCUE DEPARTMENT, hereinafter referred to as Petitioner. 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 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. 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.

BACKGROUND and FACTS ASSERTED

4. Petitioner asserts that:

A. The local school board is planning to construct a new cafeteria/auditorium building at one of its school facilities.

B. The school district has stated that the building will be used as the school's dining hall, with ancillary rooms to be used for a commercial kitchen, performing stage, storage, offices, and flammable hazards storage area.

C. The Gainesville Fire Rescue Department and the Facilities Department of Alachua County Public Schools have both reviewed the plans for the building at issue.

D. There is disagreement on whether this building meets the conditions of the Florida Fire Prevention Code, NFPA 101, subdivision 12.3.5.2(2) which states the conditions of subdivision 12.3.5.1, requiring a sprinkler system, shall not apply to the following:

Assembly occupancies consisting of a single multipurpose room of less than 1115 m² (12,000 ft²) that are not used for exhibition or display and are not part of a mixed occupancy.

QUESTIONS:

5. We are requesting your ruling on this issue as it pertains to the referenced code, annex material, and handbook explanation. Our specific questions are as follows:

A. Is this assembly occupancy considered a single multipurpose room?

B. Is this assembly occupancy considered part of a mixed occupancy?

C. Are rooms such as those ancillary rooms within the building being used consistent with the intent of the code as explained in A12.3.5.2(2) relating to "certain small rooms as part of the single room," and consistent with the additional explanation stated in the Life Safety Code Handbook?

D. Based on the explanation given relating to this structure, is it required to have a fire sprinkler system?

DISCUSSION

6. NFPA 101,¹ adopted in the Florida Fire Prevention Code, defines the term “occupancy” in subdivision 3.3.152 as “the purpose for which a building or portion thereof is used or intended to be used.”

7. After having carefully reviewed the plans provided by the Petitioner but which are not included in this Declaratory Statement, it is apparent that, based on the position of the ancillary rooms together with their size and purpose, they each provide a support function for the multipurpose room and none is intended to function as a separate occupancy.

8. NFPA 101, subdivision 3.3.152.11, defines a “*Multiple Occupancy*” as a “building or structure in which two or more classes of occupancy exist.” (Emphasis supplied).

9. NFPA 101, subdivision 3.3.152.10, defines a “*Mixed Occupancy*” as a “multiple occupancy where the occupancies are intermingled.” (Emphasis supplied).

10. Since none of the attached rooms is designed with such functionality so as to be able to operate in absence of the multipurpose room, they cannot be considered a separate occupancy; therefore, the building cannot come within the definition of a “*multiple occupancy*” or a “*mixed occupancy.*”

¹ All references to NFPA 101 are to the version found in the 2004 Florida Edition of the Florida Fire Prevention Code.

11. NFPA 101, subdivision 12.3.5.1 requires that buildings used for an assembly occupancy with an occupant load in excess of 300 persons be equipped with an approved, supervised, automatic fire sprinkler system.

12. NFPA 101, subdivision 12.3.5.1(1) through (3) further describes the areas of such occupancy that shall be so equipped.

13. Subdivision 12.3.5.2(2) of NFPA 101, as quoted above, provides for the areas of an assembly occupancy which would not be required to be equipped with fire sprinklers, or the conditions under which such occupancy, or portions thereof, would not be required to be so equipped, one of which is if the occupancy is less than 12,000 square feet.

14. In consulting with the office of the architect for the subject project, the building enjoys a footprint of 13,802 square feet.

15. The building in this case is, therefore, a single occupancy structure over 12,000 square feet.

DECLARATORY STATEMENT

WHEREFORE, it is the position of the State Fire Marshal that:

16.A. Question 5.A: Is this assembly occupancy considered a single multipurpose room?

Response to Question 5.A: Yes, based on the above discussion and references, the room must be considered a single multipurpose room

B. Question 5.B: Is this assembly occupancy considered part of a mixed occupancy?

Response to Question 5.B: No. In accordance with the discussion above and the response to Question A., none of the attached spaces can be reasonably expected to function as a separate occupancy and therefore it is not a multiple occupancy which contemplates a building with more than one occupancy nor is it a mixed occupancy where several occupancies are intermingled.

C. Question 5.C: Are rooms such as those ancillary rooms within the building being used consistent with the intent of the code as explained in A12.3.5.2(2) relating to “certain small rooms as part of the single room,” and consistent with the additional explanation stated in the Life Safety Code Handbook?

Response to Question 5.C: The explanatory text in the Appendix of any code or standard adopted as a part of the Florida Fire Prevention Code is intended only to provide informal non-binding clarification of specific code provisions. It has not been adopted as a part of the Florida Fire Prevention Code, and as such is not subject to review or interpretation in a Declaratory Statement.

D. Question 5.D: Based on the explanation given relating to this structure, is the facility required to have a fire sprinkler system?

Response to Question 5.D: Yes, because the building is an assembly occupancy over 12,000 square feet and, therefore, does not qualify for an exemption to NFPA 101 under subdivision 12.3.5.2(2).

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 at Tallahassee, Leon County, Florida, this ____ day of _____, 2005.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

Gainesville Fire Rescue Department
1025 NE 13th Street
Gainesville, Florida 32601

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