

STATE OF FLORIDA
DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL

In re the Matter of

INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS

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 May 30, 2000, by the Department of Insurance, hereinafter referred to as the Department, from the International Association of Firefighters, 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:

- A. The municipality in which the Petitioner is located has a public service department.
- B. That municipal department consists of certified law enforcement officers who have completed 160 hours of training as a firefighter (in the Firefighter I program).
- C. The municipality now takes the position that its public service department employees who are certified law enforcement officers and who have had 160 hours of training as firefighters are qualified to act as certified firefighters under Chapter 633, Florida Statutes.

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

- A. Whether it is legal and safe for a municipality to have an employee who has been termed a public safety officer and who has been hired, trained and state certified as primarily a law enforcement officer and also trained and certified as primarily a firefighter to be assigned both full-time positions and perform the duties and responsibilities of both simultaneously on a continuing basis.
- B. Whether, if a public safety officer does not have the official basic state certification of a firefighter, he or she can be considered a qualified, certified, firefighter and also perform the duties and responsibilities required of a firefighter.

6. With respect to the first question, the Department is unable to respond because of the manner in which the question is presented.

7. Section 120.565, Florida Statutes, provides:

120.565 Declaratory statement by agencies.

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action. (E.S.)

8. The Petition did not specify a particular statutory provision, rule, or order which the Petitioner believes applies to its particular set of circumstances.

9. Therefore, the Department is unable to respond directly to the first question.

10. With respect to the second question, the statute cited was Section 633.35(1), Florida Statutes. That provision states:

(1) The division shall establish a firefighter training program of not less than 360 hours, administered by such agencies and institutions as it approves for the purpose of providing basic employment training for firefighters. Nothing herein shall require a public employer to pay the cost of such training.

11. The Division of State Fire Marshal has established a firefighter training program consisting of not less than 360 hours.

12. The firefighter training program is divided, for administrative purposes only, into two categories:

A. The Firefighter I program consists of 160 hours; and

B. The Firefighter II program consists of 200 hours.

13. Although a person may complete the 160-hour Firefighter I program without completing the 200-hour Firefighter II program, that person may not be certified as a firefighter in the State of Florida until he completes the full 360 hours.

14. Therefore, to become a certified firefighter and engage in those activities permitted to a certified firefighter, a person must have completed and passed the tests for all 360 hours as indicated above and as provided by law.

15. In addition, any person who has not completed the full 360 hours of training and passed all the required tests may not engage in those firefighter activities permitted to a certified firefighter.

The response to your second question is, therefore, no.

If a public safety officer does not have the official basic state certification of a firefighter, which consists of 360 hours as provided by Section 633.35(1), Florida Statutes, he or she cannot be considered a qualified, certified, firefighter and also perform the duties and responsibilities required of a firefighter.¹

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

¹ Accord: See **Attorney General Opinion 2000-12, February 22, 2000**. "Public Safety Officers' who perform the duties and functions of professional firefighters for the village must be qualified and certified as professional firefighters under Chapter 633, Florida Statutes." (E.S.) The only way to become certified as a professional firefighter is to complete the entire 360 hour course.

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.

Bill Nelson, Insurance Commissioner
State Fire Marshal

Copies furnished to:

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