



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

CHRIS M. ILES,

Case No.: 87741-06-FM

Petition for Declaratory Statement.
_____ /

**DENIAL OF PETITION FOR
DECLARATORY STATEMENT**

THIS CAUSE came on for consideration upon a Petition for Declaratory Statement (hereinafter "Petition") from Chris M. Iles (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on September 29, 2006. 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 Chapter 633, *Florida Statutes*.
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 hypothetically. 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. The Petitioner is located at 200 Broadway, Unit B, Osceola County Emergency Services, Office of the Fire Marshal, Kissimmee, Florida 34741. The Petition does not allege that Petitioner is authorized to file the Petition on behalf of the local enforcement authority, or that he is the local authority having jurisdiction. The Petition is signed by the Petitioner.

5. A Declaratory Statement is requested pursuant to the provisions of Section 120.565, *Florida Statutes*, and Florida Administrative Code Chapter 28.105, which authorize a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision as it applies to the Petitioner's particular set of circumstances. The term "person" includes "any unit of government."¹

6. The subject of the Petition is the applicability of Section 633.071(1), *Florida Statutes* to a set of circumstances described as follows:

A. During a required semiannual inspection, a hood and hood suppression system was found to be completely nonfunctional.

B. The inspection company tagged the system, filled out the inspection sheet and gave it to the owner.

¹ Section 120.52(13), *Florida Statutes*.

C. The inspection sheet noted that the cutting of a link did not fire the system, and that the system would not fire under any circumstances.

D. The owner did not repair the system and the inspecting company left the premises.

E. The owner proceeded to continue cooking and claimed he was not told to cease cooking by the inspector.

7. Petitioner states that his substantial interests may be affected in his particular set of circumstances because of his “responsibility of loss of life and/or property.”

8. Notice of receipt of the Petition herein was published in Volume 32, Number 44 of the *Florida Administrative Weekly*, on November 3, 2006.

QUESTIONS

9. The Petition poses the following questions:

A. Was the inspection report “completed in detail?”

B. Since the system was found to be totally nonfunctional, should it have been tagged by the inspecting company?

C. If yes, should the inspecting company have indicated on the tag that the system was nonfunctional and a hazard?

D. Once the servicing contractor has determined that the system is not functional, is the contractor required to advise the owner that cooking is not safe?

E. The inspecting authority has 30 days within which to notify the Authority Having Jurisdiction (“AHJ”) that the system is nonfunctional. Who is responsible for injuries, loss of life, or property damage due to the nonfunctioning system within the 30 days before the inspecting authority notifies the AHG of the hazard?

F. Once notified is the AJH authorized to order the owner to cease cooking until the system is repaired?

DISCUSSION

10. The Department of Financial Services, Division of State Fire Marshal, has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements. The State Fire Marshal is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code, and the Petition is filed by a substantially affected person, or a local enforcement agency.

11. The Petition does not allege that the Petitioner is filing the Petition on behalf of the local enforcement authority, and the Petition is not signed by the local authority having jurisdiction; therefore, the Department is not required by the terms of Section 633.02(6), *Florida Statutes*, to issue a Declaratory Statement on the Petition.

12. Nevertheless, the Department is authorized by the terms of Section 120.565(1), *Florida Statutes*, to issue a Declaratory Statement to a “substantially affected person” to resolve questions as to how statutes, rules, or orders may apply to the Petitioner’s particular set of circumstances. Florida Administrative Code Rule 28-105.001, provides that a “declaratory statement is not the appropriate means for determining the conduct of another person.” The First District Court of Appeal approved this interpretation of the term “substantially affected person,” as used in Section 120.565, *Florida Statutes*, in Manasota-88, Inc. v. State Department of Environmental Regulation, 481 So.2d 948 (Fla. 1st DCA 1986).

13. The Petition filed in this matter does not contain sufficient information to conclude that the Petitioner is substantially affected by the particular circumstances alleged. One could speculate that the owner of the facility might be substantially affected in his particular set of circumstances, or

that the certified inspection contractor might be substantially affected in his own set of circumstances; however, the Petitioner has not alleged that either situation applies, or that he is the authority having jurisdiction over the local enforcement agency.

14. A Petition for Declaratory Statement may be used only to answer questions concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. Florida Administrative Code Rule 28.105.001. The question posed in subparagraph 9E., relating to liability for injuries, loss of life and property is not one within the jurisdiction of the Department.

15. Finally, a Petition for Declaratory Statement is not the appropriate means for obtaining a policy statement of general applicability from an agency. Tampa Electric Company v. Florida Department of Community Affairs, 654 So.2d 998 (Fla. 1st DCA, 1995). Several of Petitioner's questions, as posed, are too general to answer through the vehicle of a Declaratory Statement.

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

A. The Petition does not set forth sufficient facts upon which to conclude that the Petitioner is a substantially affected person within the meaning of Section 20.565, *Florida Statutes*.

B. The Petition is therefore DENIED.

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, on the _____ day of _____, 2007.

Eric W. Miller
Deputy Chief Financial Officer

Copies furnished to:

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