



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

WILTON LEE

Case No.: 90318-07-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services.

DENIAL OF PETITION FOR
DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed by Lee Wilton (hereinafter "Petitioner"), with the Department of Financial Services (hereinafter the "Department"), on May 4, 2007. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

BACKGROUND AND FACTS ASSERTED

1. The Declaratory Statement was requested pursuant to the provisions of Sections 633.01(7) and 120.565, *Florida Statutes*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory or rule provision as it applies to the Petitioner's particular set of circumstances.

2. On February 5, 2007, Petitioner filed an appeal of the decision of a local electrical inspector to require a conduit on outdoor or under-chassis wiring based on NEC Article 550.15(H). The under-chassis in question is completely enclosed by a vented weather barrier and soil vapor barrier.

3. The Lake County Florida Building Division Director, Dale Griner, upheld the decision of the inspector and provided an appeal mechanism to the Lake County Florida Board of Building Examiners, who let Mr. Griner's ruling stand.

4. Notice of receipt of the Petition herein was published in Volume 33, Number 22 of the *Florida Administrative Weekly*, on June 1, 2007.

QUESTIONS

5. The Petition poses the following questions: Does the language in NFPA 70 – NEC 2002 and/or NEC 2005 Article 550.15(H) apply to all under-chassis wiring in all circumstances or only to under-chassis wiring exposed to weather?

DISCUSSION

6. The Department has authority pursuant to Sections 633.01(7) and 120.565, *Florida Statutes*, to issue declaratory statements relating to the application of its statutes, rules, and orders to a substantially affected person's particular set of circumstances.

7. Section 553.88, *Florida Statutes*, adopts the "National Electrical Code, NFPA No. 70" as the minimum electrical standard in the state, and directs the Florida Building Commission to update and maintain such electrical standards.

8. The Florida Building Commission is authorized by the provisions of Section 553.775, *Florida Statutes*, to issue declaratory statements relating to enforcement or administration of the Florida Building Code by local governments. NFPA 70 was duly adopted into the Florida Building Code at Chapter 27, and incorporated by reference in Rule 9B-3.047, *Florida Administrative Code*.

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

1. The Department is without jurisdiction to enter the requested Declaratory Statement because the question asked does not relate to the Department's statutes, rules or orders.

2. The Petition for Declaratory Statement is therefore DENIED, without prejudice to file the same with the Florida Building Commission.

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 _____, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

Mr. Wilton Lee

2470 Tomoka Farms Road

Port Orange, Florida 32128

Lesley Mendelson, Assistant General Counsel

Department of Financial Services

Division of State Fire Marshal

200 East Gaines Street

Tallahassee, Florida 32399-0340