



FLORIDA DEPARTMENT OF FINANCIAL SERVICES

TOM GALLAGHER
CHIEF FINANCIAL OFFICER
State Fire Marshal

In re the Matter of

Ricco Longo, Fire Code Official's
Office of Collier County, Florida,
Petitioner

Case No.: 66935-03-SP

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 January 29, 2003, by the Department of Financial Services, hereinafter referred to as the Department, from Ricco Longo, on behalf of the Code Official of Collier County, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Chief Financial Officer as State Fire Marshal, finds as follows:

1. Except as set forth below, 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. Our office is seeking clarification regarding the application of NFPA 101 (2000 ed.) Section 9.7.1.3 to Section 423.7.7 of the Florida Building Code 2001 (F.B.C.).

B. The Local School Board has submitted permit applications for various new elementary, middle and high schools slated for opening in August 2003.

C. The permit applications are reviewed for fire code compliance by the Collier County Fire Code Official's Office.

D This particular request for clarification comes specifically from the fire alarm review, but would seem to impact all our reviews once the State Fire Marshal issues a position regarding the aforementioned request.

E. Our office is requiring the engineer of record, who is responsible for the design of the fire alarm system, to comply with F.B.C. Section 423.7.7 as our office observed no exception permitting the omission of these detectors.

F. The School Board is challenging this requirement and has submitted to our office a copy of a formal ruling that was issued to TLC Engineering (for an unrelated project) by an official from the Florida Department of Education (D.O.E.).

G A D.O.E. official states in his letter to TLC Engineering that his "...office does not require a smoke detector or a heat detector in unoccupied rooms or concealed spaces which are equipped with a fully automatic sprinkler system."

H. The official cites [State Requirements for Educational Facilities] SREF 1999, 7(6)(g) and states "...that either a smoke detector or heat detector is required in these spaces; but not both" and that because Rule 6-2.001(1)(m) FAC incorporates NFPA 101 by reference into SREF, then NFPA 101, 7-7.1.3 can be used to omit the requirement for heat detector.

I. He concludes that since SREF 1999, 7(6)(g) does not require both a heat detector and a smoke detector to be installed, a smoke detector is not required in addition to the sprinkler head.

J. It is our understanding that when our office performs a fire alarm review of a permit submittal for a new public school, then we are to use Chapter 423 of the F.B.C.-2001.

K. It was further understood by our office that this was based on Florida D.O.E. document Rule 6-2 which stated in part that "...All educational and ancillary facilities constructed by a school board...shall comply with the State Uniform Building Code for Public Educational Facilities Construction (U.B.C.)

L. The U.B.C. shall supersede any other code adopted by a board, or any other building code or ordinance, for the construction of education and ancillary facilities and plants whether at the local, county, or state level rule. After January 1, 2001, the U.B.C. will be merged into the Florida Building Code."

M. Rule 6-2 continues in the next paragraph and indicates that "(1) In addition to "State Requirements for Educational Facilities, 1999 Volumes I and II," all, or the specific portions cited, of the following building codes are hereby incorporated by reference and made a part of this rule. "

N. If there should be conflicting requirements between these codes and the “State Requirements for Educational Facilities, 1999 volumes I and II,” the more, or most stringent requirement shall apply.”

O. It is our understanding that the following applies: Rule 6-2 requires compliance with the State Requirements for Educational Facilities, 1999 Volumes I and II, in which Volume II includes Section 7(6)(g), and that the State Requirements for Educational Facilities, 1999 Volumes I and II has been replaced by the new Florida Building Code, Chapter 423, as indicated in Rule 6-2 and as referenced in the Florida Department of Education’s Educational Facilities internet homepage.

P. And as Rule 6-2(1) specifies that the more, or most stringent requirement shall apply if there should be conflicting requirements between the codes incorporated by reference (NFPA 101) and the State Requirements for Educational Facilities, 1999 Volumes I and II (now Chapter 423).

Q. Then it would not appear that a “less stringent” requirement by NFPA 101, such as omitting heat detectors when there is a sprinkler head, can be applied to the requirements outlined in F.B.C. 423.7.7. (Rephrased from original petition).

R. The official’s letter, although dated August 29, 2002, appears to reference the outdated 1997 edition of NFPA 101 and not the 2000 edition of NFPA 101, which is currently the edition adopted by the State Fire Marshal’s Office.

S. NFPA 101 (2000 ed.), Section 9.7.1.3 states, “In areas protected by automatic sprinklers, automatic heat-detection devices required by other sections of this Code shall be permitted to be omitted.”

QUESTIONS

5. The questions are:

5.A. Do a D.O.E. official and/or the D.O.E. have the authority to render a formal interpretation regarding the application of the requirements of NFPA 101, 9.7.1.3 to Section 423.7.7 of the Florida Building Code 2001?

5.B. This question relates to NFPA 101, 9.7.1.3. Although the language in 9.7.1.3 appears to refer to the omission of devices only where required by NFPA 101...”automatic heat-detection devices required by other sections of this Code”...and not devices required by F.B.C. 423.7.7, can NFPA, Section 9.7.1.3 be used to permit the omission of heat or smoke detectors required and outlined in Section 423.7.7 of the Florida Building Code?

5.C. Does the DCA have sole purview in this matter or does the State Fire Marshal also have purview in this matter and able to render a declaratory statement regarding these matters?

5.D. Must all new schools, permitted through the local building department and whose plan submittals the local government code enforcement offices and Fire Code Official's office review, comply with the requirements of F.B.C., Section 423.7.7?

5.E. Are there any codes, standards or reference sections adopted by the State Fire Marshal that will permit the requirement for the automatic detector devices outlined in F.B.C. Section 423.7.7 to be omitted under any circumstances?

DISCUSSION

6. The fire official enforces and interprets the Florida Fire Prevention Code and all related fire codes, which includes NFPA 101.

7. Either the Department of Community Affairs or the Department of Education interprets the Florida Building Code and all related codes, which includes Section 423.7.7 of the Florida Building Code.

8. All of the questions posed by Petitioner, except Question 4.C., involve Section 423.7.7 of the Florida Building Code, and the interpretation thereof by the Department of Community Affairs or the Department of Education.

9. The questions in 5.A., the portion of 5.B. relating to the Florida Building Code, 5.D. and 5.E. must consequently be directed to the Department of Community Affairs or the Department of Education.

RESPONSES

10. Therefore, in response to Petitioner's questions:

A. Question 5.A.: Do a D.O.E. official and/or the D.O.E. have the authority to render a formal interpretation regarding the application of the requirements of NFPA 101, 9.7.1.3 to Section 423.7.7 of the Florida Building Code 2001?

Response to Question 5.A.: The Department of Community Affairs or the Department of Education render interpretations of the Florida Building Code which pertain to educational facilities, pursuant to Chapters 553 and 1013, Florida Statutes, and the State Fire Marshal has sole and exclusive jurisdiction to render interpretations of the Florida Fire Prevention Code, pursuant to Sections 633.01 and 1013.12, Florida Statutes.

B. Question 5.B.: Although the language in NFPA 101, Subdivision 9.7.1.3 appears to refer to the omission of devices only where required by NFPA 101..."automatic heat-detection devices required by other sections of this Code"...and not devices required by the Florida Building Code, Subdivision 423.7.7, can NFPA, Section 9.7.1.3 be used to permit the omission of heat or smoke detectors required and outlined in Section 423.7.7 of the Florida Building Code?

Response: (i) With respect to the portion of Question 5.B. relating to NFPA 101, under the Florida Fire Prevention Code, NFPA 101, 2000 edition, as adopted in Rule 4A-60.004, Florida Administrative Code, Subdivision 9.7.1.3 provides, "In areas

protected by automatic sprinklers, automatic heat-detection devices required by other sections of this Code shall be permitted to be omitted.” Under NFPA 101, therefore, which is the Code to which “...this Code...” refers, in areas protected by automatic sprinklers, automatic heat-detection devices required by other sections of NFPA 101 are not required. Firesafety inspectors are only permitted to enforce the Florida Fire Prevention Code, not the Florida Building Code.

(ii) With respect to the portion of Question 5.B. relating to the Florida Building Code, the appropriate building official should consult with the Florida Department of Community Affairs or the Florida Department of Education.

(iii) If a conflict exists between the Florida Building Code and the Florida Fire Prevention Code, the conflict must be brought to the attention of the State Fire Marshal for resolution pursuant to Section 633.01 and Chapter 553, Florida Statutes.

C. Question 5.C.: Does the DCA have sole purview in this matter or does the State Fire Marshal also have purview in this matter and able to render a declaratory statement regarding these matters?

Response. The State Fire Marshal only has jurisdiction to issue a declaratory statement on the Florida Fire Prevention Code. (Section 633.01, Florida Statutes). The Department of Education or the Department of Community Affairs should be consulted on matters relating to the Florida Building Code and educational facilities.

D. Question 5.D.: Must all new schools, permitted through the local building department and whose plan submittals the local government code enforcement offices and Fire Code Official's office review, comply with the requirements of F.B.C., Section 423.7.7?

Response: For an interpretation of Section 423.7.7 of the Florida Building Code, the Department of Community Affairs or the Department of Education should be consulted; however, firesafety officials have jurisdiction to interpret the Florida Fire Prevention Code, not the Florida Building Code.

E. Question 5.E.: Are there any codes, standards or reference sections adopted by the State Fire Marshal that will permit the requirement for the automatic detector devices outlined in F.B.C. Section 423.7.7 to be omitted under any circumstances?

Response: As previously indicated, the State Fire Marshal does not have jurisdiction to render an interpretation of the Florida Building Code. Also as previously stated, if a provision is located in the Florida Building Code, even if the provision relates to fire safety as may be the case with Section 423.7.7, that provision is to be enforced by building code officials, not firesafety code officials.

11. The Department of Financial Services recognizes that the above statements generally constitute an "...agency statement of general applicability that implements,

interprets, or prescribes law or policy...,” which is the definition of a “rule” as set forth in Section 120.52(15), Florida Statutes; therefore, the Department intends to incorporate the principles enunciated in this Declaratory Statement in the update to the Florida Fire Prevention Code, Rule Chapter 4A-60, Florida Administrative Code, effective July 1, 2004, pursuant to Section 120.54, Florida Statutes. See, Florida Department of Business and Professional Regulation v. Investment Corp. of Palm Beach, 747 So.2d 374 (Fla. 1999).

Therefor, it is hereby ORDERED:

A. Question 5.A., the portion of Question 5.B. relating to the Florida Building Code, Question 5.D., and Question 5.E. are dismissed for lack of jurisdiction over the subject matter.

B. Questions 5.B. and 5.C., as they relate to the Florida Fire Prevention Code, are further answered as follows:

(i) With respect to the portion of Question 5.B. relating to NFPA 101, under the Florida Fire Prevention Code, NFPA 101, 2000 edition, as adopted in Rule 4A-60.004, Florida Administrative Code, Subdivision 9.7.1.3, provides, “In areas protected by automatic sprinklers, automatic heat-detection devices required by other sections of this Code shall be permitted to be omitted.” Under NFPA 101, therefore, which is the Code to which “...this Code...” refers, in areas protected by automatic sprinklers,

automatic heat-detection devices required by other sections of NFPA 101 are not required. Any other matters contained in the Florida Building Code are for the building code officials to interpret and enforce.

(ii) The State Fire Marshal does not have jurisdiction to render an interpretation of the Florida Building Code.

(iii) Fire officials do not have jurisdiction to interpret, apply, or enforce the Florida Building Code or any building codes of this state.

(iv) If a question is raised to a fire official relating to the Florida Building Code, or if a fire official notes a problem relating to the Florida Building Code, the fire official must refer the question or the problem to the building official in the same manner that a building official must refer questions relating to the Florida Fire Prevention Code to the fire official.

(v) Fire officials only have authority to interpret, apply, or enforce the firesafety laws, rules, codes, and standards. Those include but are not necessarily limited to Chapter 633, Florida Statutes, Rule Chapter 4A-58, Florida Administrative Code, relating to existing educational facilities, Rule Chapter 4A-60, Florida Administrative Code, the “Florida Fire Prevention Code,” and the codes and standards adopted by the Florida Fire Prevention Code.

(vi) If there is a dispute or disagreement between a fire official and a building official, the dispute must be brought to the attention of the State Fire Marshal to be resolved in accordance with Section 633.01(5) and Chapter 553, 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 Section 120.565, Florida Statutes, and 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 July, 2003.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:
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