



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In The Matter Of:

FIRE BRIGADE ALARM SYSTEMS,
David Perna

Case No.: 89758-07-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 David Perna, President, on behalf of Fire Brigade Alarm Systems (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on March 13, 2007. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. 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 question is being answered as purely hypothetical. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

2. 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

3. Petitioner is the president of Sarasota Electric Corporation, d/b/a Fire Brigade Alarm Systems.

4. Authority to issue a Declaratory Statement is found in Sections 120.565 and 633.01(6), *Florida Statutes*, and Rules 28.105, and 69A-60.007, *Florida Administrative Code*, 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.

5. The subject of the Petition is the requirement for installing a voice evacuation fire alarm system in an existing high rise building.

6. Sarasota County has determined that owners of existing high rise buildings are not required to install voice evacuation when the building is upgraded with a new fire alarm system.

7. Petitioner is of the opinion that when suggesting a fire alarm upgrade for a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department vehicle access to the floor of the highest occupancy, it would be remiss not to include the requirement of a new voice evacuation system.

8. Notice of receipt of the Petition herein was published in Volume 33, Number 15 of the *Florida Administrative Weekly*, on April 13, 2007.

QUESTION

9. The Petition poses the following question: Whether an existing high rise building must install a new voice evacuation fire alarm system when upgrading to a new fire alarm system.

DISCUSSION

10. The Department 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. Section 633.025, *Florida Statutes*, and Rule 69A-60.007, *Florida Administrative Code*, entitled, “Enforcement of the Florida Fire Prevention Code,” invests the power to enforce the Florida Fire Prevention Code in the authority having jurisdiction of each municipality, county, and special district with firesafety responsibilities. Section 633.01, *Florida Statutes*, provides that the State Fire Marshal may issue, and if requested in writing by a substantially affected person or by a local enforcing agency (i.e., an authority having jurisdiction), the State Fire Marshal shall issue declaratory statements to interpret the Florida Fire Prevention Code. However, according to Rule 69A-60.007, *Florida Administrative Code*, a petition for declaratory statement requested under the provisions of Section 633.01, *Florida Statutes*, must be filed by either the local authority having jurisdiction, or by a person or entity that has proceeded through the local appeal process and received an adverse ruling from the local appeals board. Any petition for declaratory statement received by the State Fire Marshal from a person who is not an authority having jurisdiction and who has not proceeded through the local appeal process shall be dismissed.¹

¹ 69A-60.007(4)(d), *Florida Administrative Code*. Any petition for declaratory statement that has been received by the State Fire Marshal from a person who is not an authority having jurisdiction and who has not proceeded through the local appeal process shall be dismissed, without prejudice to re-bring the petition after such person has received an adverse ruling through the local appeal process.

12. The Petitioner is not the local enforcement authority, nor does the Petition allege that Petitioner has proceeded through the local appeal process and received an adverse ruling. Therefore, the Department must dismiss the Petition under the terms of Section 633.01(6), *Florida Statutes*, and the rule duly promulgated pursuant there under.

13. In addition to its authority under Section 633.01(6), *Florida Statutes*, 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 its statutes, rules, or orders may apply to the Petitioner’s particular set of circumstances. Rule 28-105.001, *Florida Administrative Code*, 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).

14. 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 a high rise building might be substantially affected in a particular set of circumstances; however, the Petitioner has not alleged such a circumstance, or other facts establishing that he is substantially affected.

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). Petitioner’s question, as posed, is too generalized to answer through the vehicle of a Declaratory Statement.

NOW, 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 Sections 120.565 or 633.01, *Florida Statutes*, and

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, this ____ day of _____, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

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