



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Piper Fire Protection, Inc.

Case No.: 62200-02-SP

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 August 25, 2002, by the Department of Insurance, hereinafter referred to as the Department, from Piper Fire Protection, Inc., hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the State Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The State 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. 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

4. Petitioner asserts that:

Petitioner has received a verbal interpretation from a Department representative which indicates that it may not be permissible for a licensed fire equipment dealer to subcontract to another licensed fire equipment dealer work on fire extinguishers and preengineered systems, and for a licensed fire sprinkler contractor to subcontract to another licensed fire sprinkler contractor work on a fire sprinkler system.

QUESTION

5. Petitioner requests a declaratory statement on the following questions:

A. Is it permissible for a certified fire equipment dealer to sub-contract a job involving a fire extinguisher or preengineered system to another certified fire equipment dealer?

B. Is it permissible for a certified fire sprinkler contractor to sub-contract a job involving a fire protection system to another certified fire sprinkler contractor.

DISCUSSION

6. The controlling statutes are Sections 633.061 and 633.065, Florida Statutes, for fire equipment dealers, and Sections 633.521-633.547, Florida Statutes, for fire sprinkler system contractors.

7. The controlling rules are found in Rule Chapter 4A-21, Florida Administrative Code, for fire equipment dealers, and Rule Chapter 4A-46, Florida Administrative Code, for fire sprinkler contractors.

8. Engaging in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, or hydrotesting, of any fire extinguisher or preengineered system must under all circumstances be done by a properly licensed fire equipment dealer, and such work is limited to the kind of license held under Section 633.061, Florida Statutes (Class A, B, C, or D), and Rule Chapter 4A-21, Florida Administrative Code.

9. Engaging in the business of layout, fabrication, installation, inspection, alteration, repair, or service of a fire protection system, other than a preengineered system, must under all circumstances be done by a properly licensed fire protection system contractor pursuant to Section 633.521, Florida Statutes, and such work is limited to the kind of license held (Contractor I, II, III, IV, or V) under Section 633.521-633.539, Florida Statutes, and Rule Chapter 4A-46, Florida Administrative Code.

RESPONSE

Therefore, in response to your questions:

Question 5.A.: Is it permissible for a certified fire equipment dealer to sub-contract a job to another certified fire equipment dealer?

Response to Question 5.A.: Yes, provided that each of the following conditions are met:

I. The subcontracting fire equipment dealer must know of his, her, or its own personal knowledge that the fire equipment dealer performing the work has satisfied all requirements of Sections 633.061 and 633.065, Florida Statutes, that it is properly licensed to do the work subcontracted to it, and that it carries the statutorily mandated insurance; and

II. The subcontracting fire equipment dealer must remain fully responsible along with the fire equipment dealer for the work performed.

Question 5.B.: Is it permissible for a certified fire sprinkler contractor to sub-contract a job to another certified fire sprinkler contractor.

Response to Question 5.B.: Yes, provided that each of the following conditions are met:

I. The subcontracting fire protection system contractor must know of his, her, or its own personal knowledge that the fire protection system contractor performing the work has satisfied all requirements of Sections 633.521 through 633.541, Florida Statutes, that it is properly licensed to do the work subcontracted to it, and that it carries the statutorily mandated insurance; and

II. The subcontracting fire protection system contractor must remain fully responsible along with the fire protection system contractor for the work performed.

In addition, please note that Section 633.541(2)(b), Florida Statutes, provides: "A fire protection contractor certified under this chapter may not: (b) Apply for or obtain a construction permit for fire protection work unless the fire protection contractor...has contracted to conduct the work specified for the permit." Therefore, the fire protection contractor which contracts for the work must also be the same fire protection contractor which pulls the construction permit.

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 _____, 2002

GREG GAY
Deputy Commissioner, Treasurer and State
Fire Marshal

Copies furnished to:

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