

FILED

MAR 31 2011



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

STATE FIRE MARSHAL

Docketed by JP

In The Matter Of:

Fire Equipment Service Center, Inc.
and Marshal A. Seymour

Case No.: 114886-11-FM

FINAL ORDER

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed by Fire Equipment Service Center, Inc. (hereinafter "Petitioner"), with the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on January 6, 2011. Upon consideration thereof, and being duly advised, the Chief Financial Officer, finds as follows:

1. The Chief Financial Officer has jurisdiction over the subject matter and the parties to this matter.
2. The Department issued an administrative complaint notifying the Petitioner of its intent to revoke his Fire Equipment Dealer Class A and Class C licenses and his Portable Extinguisher Permit.
3. Petitioner filed a response to the administrative complaint and requested a formal administrative hearing, citing disputes of fact and law.
4. The request for formal administrative hearing is currently in litigation.
5. Petitioner has also requested this Declaratory Statement pursuant to the provisions of Section 120.565, *Florida Statutes*, and Rule 28.105, *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.
6. Notice of receipt of the Petition was published in Volume 37, Number 09 of the *Florida Administrative Weekly*, on March 4, 2011.
7. The purpose of a declaratory statement by an administrative agency is to allow a petitioner to select a proper course of action in advance. In this case, the course of action is in the past, and the Department has

commenced an administrative action against the Petitioner which is currently pending. A petition for declaratory statement that seeks approval or disapproval of conduct which has already occurred is properly denied. *Novick v. Dep't of Health*, 816 So. 2d 1237 (Fla. 5th DCA 2002), *Padilla v. Liberty Mutual Ins. Co.*, 832 So.2d 916 (Fla. 1st DCA 2002).

NOW, THEREFORE, in accordance with the foregoing, it is hereby ordered that the Petition for Declaratory Statement herein is DENIED.

DONE and ORDERED this 31 day of March, 2011.



A handwritten signature in black ink, appearing to read "R. C. Kneip", written over a horizontal line.

Robert C. Kneip
Chief of Staff

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 Julie Jones, Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0333, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement. A copy of the notice may also be served by email addressed to Julie.Jones@myfloridacfo.com or by facsimile transmission at 850-488-0697.

Copies furnished to:

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