



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

SHIELDS FAMILY R.L.L.P.,

Case No.: 104405-09-FM

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

and

TAD DERR, ACTING CHIEF,
CITY OF SOUTH DAYTONA
FIRE DEPARTMENT,

Intervener.

FILED

JUL 7 2009

Docketed by 

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon receipt of a Petition for Declaratory Statement (hereinafter "Petition") filed by Shields Family R.L.L.P. (hereinafter "Petitioner"), received on or about May 15, 2009, by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"). Tad Derr, Acting Chief, City of South Daytona Fire Department (hereinafter "Intervener"), submitted a written request to intervene on June 11, 2009. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. 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 and the written request to intervene. 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 questions are being answered as purely hypothetical. If any of the facts asserted by Petitioner or Intervener are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition and written request to intervene contain various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not being used as a legal premise 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. The Declaratory Statement was requested pursuant to the provisions of 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 Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the State Fire Marshal to issue a Declaratory Statement when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code (hereinafter the "Code").

5. Petitioner is a property owner in South Daytona, Florida.

6. Intervener, the Acting Chief of the South Daytona Fire Department, requested intervention on June 11, 2009.

7. The Petition involves a ruling of the City Commission of the City of South Daytona rendered May 13, 2009. The subject of the appeal to the City Commission was a determination by Intervener that Petitioner's buildings must be retrofitted with hard-wired smoke detectors.

8. Petitioner's property consists of three two-story buildings having two units on each floor and one single-story building with two units. The property is located at 1700 South Palmetto Avenue, Daytona Beach, Florida 32119. The buildings were constructed in or about 1964 and have been operated as apartment buildings up to the present time.

9. The buildings currently have single-station smoke detectors outside every sleeping room in the vicinity of the bedrooms. Each unit is on one level only and none of the buildings have basements. The buildings are not equipped throughout with a complete automatic smoke detection system.

10. On December 31, 2008, Intervener notified the Petitioner that it must remove the battery operated single-station smoke alarms currently located in each unit and replace them with hard-wired interconnected smoke alarms. Intervener's requirement were upheld on appeal.

11. Petitioner contends that the relevant Code provisions do not require smoke detectors in existing apartment buildings to be hard-wired, and the requirement will cause unnecessary expense which cannot be passed along to tenants because of the currently depressed real estate market. Petitioner further contends that the battery operated smoke detectors currently in place provide the same level of protection to the tenants as hard-wired smoke detectors, and that no other authority in east Volusia County interprets the Code to require hard-wiring of smoke detectors in similar apartment buildings.

12. The subject property is one of 42 apartment complexes that Intervener inspected since adopting the rental inspection code in 2001. According to Intervener, South Daytona, unlike other cities in Volusia County, has a rental housing inspection program where every single and multifamily rental property is subject to an annual fire inspection.

13. According to Intervener, Petitioner agreed to retrofit smoke alarms to a hard-wire or lithium battery smoke alarm system as defined in National Fire Protection Association (“NFPA”) standard 72 in 2002.

14. Receipt of the Petition herein was published in Volume 35, Number 21 of the *Florida Administrative Weekly*, on May 29, 2009.

QUESTIONS

15. The Petition poses the following questions:

A. Do NFPA 101-31.3.4.5.2, and NFPA 101-31.3.4.5.1 permit single-station battery powered smoke alarms in the subject structures as long as they are installed in accordance with NFPA-101.9.6.2.9?

B. Do NFPA 101-9.6.2.9 and NFPA 101-31.3.4.5.1 require that all smoke alarms in the subject structures be hard-wired?

DISCUSSION

16. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements, and is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements relating to the Code, when requested by a substantially affected person or a local enforcing agency.

17. The Code is adopted by rule of the Department, and the Department has final interpretive authority over its provisions. The Code is enforced by local authorities.

18. The Request to Intervene was made by a “local authority” substantially affected by this Declaratory Statement. [Chiles v. Department of State, Div. of Elections, 711 So.2d 151 (1st DCA, 1998).]

19. NFPA standard 101 (2006 edition), is adopted by reference in Rule 69A-60.004, *Florida Administrative Code*, effective December 31, 2008, as part of the Code. Chapter 31 applies to existing apartment buildings.

20. NFPA 101-31.3.4.5 addresses smoke alarm requirements in existing apartment buildings.

NFPA 101-31.3.4.5.1 provides:

In buildings other than those equipped throughout with an existing, complete automatic smoke detection system, approved single-station smoke alarms shall be installed in accordance with 9.6.2.9, as modified by 31.3.4.5.2, outside every sleeping area in the immediate vicinity of the bedrooms and on all levels of the dwelling unit, including basements.

21. Smoke alarms can be either single or multiple-station alarms that are responsive to smoke. A single station alarm is defined at NFPA 101-3.3.10.1, as a “detector comprising an assembly that incorporates a sensor, control components, and an alarm notification appliance in one unit operated from a power source **either located in the unit or obtained at the point of installation.**” (Emphasis added). Thus, a single-station smoke alarm may be operated by either a battery, or hard-wired.

22. However, unless an exemption is available, Petitioner must comply with the provisions of NFPA 101-9.6.2.9 2 which provides:

Smoke alarms, other than battery-operated devices as permitted by other sections of this Code, or battery-operated devices complying with 9.6.1.3 and the low-power wireless system requirements of NFPA 72, ‘National Fire Alarm Code,’ **shall receive their operating power from the building electrical system.**” (Emphasis added)

23. Petitioner argues that battery operated devices are permitted by NFPA 101-31.3.4.5.2 which provides, “Single-station smoke alarms without a secondary (standby) power source shall be permitted.” In making this argument, an assumption is made that NFPA 101-31.3.4.5.2 refers to battery operated single-station alarms. In point of fact, single-station smoke alarms can be

either battery operated or hard-wired. NFPA 101-31.3.4.5.1 requires hard-wired smoke detectors. Additionally, Petitioner's interpretation would lead to an illogical conclusion. NFPA 101-31.3.4.5.1 requires that "approved single-station smoke alarms shall be installed in accordance with 9.6.2.9, as modified by 31.3.4.5.2." By implication, NFPA 101-9.6.2.9 requires single-station smoke alarms to be hard-wired. If NFPA 101-31.3.4.5.2 permitted battery operated single-station smoke alarms, the provisions of NFPA 101-31.3.4 5.1 would be negated. A more logical reading of NFPA 101-31.3.4.2 in this case would be that hard-wired single-station smoke alarms do not need secondary or backup power sources.

24. Petitioner next argues that NFPA 72-11.6.1(4), "National Fire Alarm Code," relating to power sources for smoke and fire alarms, allows for "a battery meeting the requirements of 11.6.6 (nonrechargeable primary battery) or the requirements of 11.6.7 (rechargeable primary battery)." However, a battery may only be used under the cited provisions if "a battery primary power supply is specifically permitted."¹ The only provision Petitioner cites as 'permitting' battery operated single-station smoke alarms is NFPA 101-31-3-4-5-2, which was discussed and refuted in Paragraph 22 above.

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

1. Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement. Intervener is also substantially affected and is therefore permitted to intervene.

2. Questions and Answers:

Question A. Do NFPA 101-31.3.4.5.2, and NFPA 101-31.3.4.5.1 permit single-station battery powered smoke alarms in the subject structures as long as they are installed in accordance with NFPA-101.9.6.2.9?

Answer A. No, nothing in either section permits battery operated single-station smoke alarms in the subject structures.

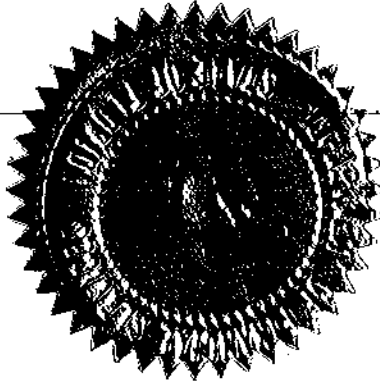
Question B. Do NFPA 101-9.6.2.9 and NFPA 101-31.3.4.5.1 require that all smoke alarms in the subject structures be hard-wired?


Answer B. Yes.

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*. Review proceedings must be instituted by filing a petition or notice of appeal with the Tracey Beal, Agency Clerk, Florida Department of Financial Services, 200 E. Gaines Street, Tallahassee, Florida, 32399-0390, within thirty days of rendition of this Declaratory Statement. A copy of the notice of petition must also be filed with the appropriate district court of appeal.

ENTERED in the City of Tallahassee, Leon County, Florida, on 7 day of July, 2009.





Brian London
Deputy Chief Financial Officer

¹ NFPA 72-11.6.1(4).

Copies furnished to:

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