



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Daniel Starbuck,
Fire Protection Technologist,
City of Gainesville

Case No.: 42384-01-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 June 11, 2001, by the Department of Insurance, hereinafter referred to as the Department, from Daniel Starbuck, Fire Protection Technologist, City of Gainesville, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The 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. 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. The 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.

4. Petitioner asserts that:

- A. The Petitioner is currently reviewing plans to allow a Class C Assembly Occupancy in a multi-tenant building to provide day care services in accordance with Section 10-7, National Fire Protection Association (NFPA) publication 101, 1994 edition, and Rule Chapter 4A-36, Florida Administrative Code, Rules of the State Fire Marshal.
- B. The declaratory statement is needed to determine whether fire alarm notification appliances are required to be installed in all tenant spaces or only in the day care center.

5. Petitioner requests the Department to render a Declaratory Statement on the following questions:

- A. If only one tenant in a multiple tenant building is required by the applicable codes to install a fire alarm system, must the fire alarm system notify every tenant in the building, or may fire rated separations as required by the building code for tenant and occupancy separations be utilized to limit the required areas of installation in the building?
- B. If fire rated separations are allowed to limit the required areas of installation, is there a minimum hourly rating that should be allowed for this purpose, and what is it?

6. Since the question was asked in the context of providing day care services, the response in this declaratory statement addresses only day care facilities, and not Class C Assemblies.

7. Chapter 4A-36, Florida Administrative Code, was adopted as a uniform standard pursuant to Section 633.022, Florida Statutes, and by authority of Section 633.01, Florida Statutes, and controls day care centers and child care facilities.

8. Section 4A-36.105, Florida Administrative Code, adopts the edition of NFPA 101, the Life Safety Code, which was adopted in Section 4A-3.012, Florida Administrative Code, which is the 1994 edition.

9. In addition, Section 4A-3.012, Florida Administrative Code, also adopts NFPA 72, the Fire Alarm Code, 1993 edition, which is controlling for the response to the second question.

NOW, THEREFORE, in response to your questions, Sections 4A-36.105 and 4A-3.012, Florida Administrative Code, and NFPA 72 require, and it is the position of the Department of Insurance, Division of State Fire Marshal, that:

Question: If only one tenant in a multiple tenant building is required by the applicable codes to install a fire alarm system, does the fire alarm system have to notify every tenant in the building, or may fire rated separations as required by the building code for tenant and occupancy separations be utilized to limit the required areas of installation in the building?

Response: The response depends on the kind of means of egress that is provided by the occupancy.

(i) When a multi-tenant building contains different occupancy classes that depend on a separate means of egress, only the affected tenant must meet the fire alarm requirement. For example, a strip center contains five business occupancies and one day care center of sufficient size to require a fire alarm system. The center

has an exterior means of egress with direct access to the outside from each occupancy. Only the day care center would be required to install a fire alarm system. NFPA 101, the Life Safety Code in 5-5.3.2, with reference to “Exterior ways of exit access,” states “The long side of the balcony, porch, gallery, or similar space shall be at least 50 percent open and shall be arranged to prevent the accumulation of smoke.”

(ii) In contrast, if the arrangement of the building is such that each tenant must depend on the same atmosphere such as an interior corridor, or if egress is arranged in such a manner that a fire in one area may affect egress in the other such as multiple tenant’s exterior egress opening into a small alcove, then the fire alarm must include all affected spaces.

Question: If fire rated separations are allowed to limit the required areas of installation, is there a minimum hourly rating that should be allowed for this purpose, and what is it?

Response: Assuming the situation in (i) above, that is, an exterior means of egress, the answer is yes.

Section 6-3.1.5 of NFPA 72, 1993 edition, states “Each section of a floor divided by a required 2-hour rated fire wall shall be considered as a separate area.” The tenant separation shall be in accordance the appropriate building code. Under the 1997 edition of the Standard Building Code, the separation would be required at 2 hours between a business or mercantile occupancy and a day care center. The explanatory text of NFPA 72, the National Fire Alarm Code, states as a presumption that the construction materials of a 2-hour wall would limit the transmission of sound.

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 _____, 2001.

GREG GAY
Deputy Commissioner,
Treasurer and State Fire Marshal

Copies furnished to:

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