



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In The Matter Of:

ALEX P. STUCKEY, JR.

Case No.: 90065-07-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 receipt of a Petition for Declaratory Statement (hereinafter "Petition") from Alex P. Stuckey, Jr., President of Fire Fighters Equipment Co., Jenkins Food Service Equipment & Supplies (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on April 24, 2007. 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.
2. 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 questions are 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.

3. 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

4. Petitioner is the president of Fire Fighters Equipment Co., Jenkins Food Service Equipment & Supplies. The company specializes in design, construction and installation of fire detection and suppression, card access, CCTV, fiber optics, restaurant equipment and professional chef's tools. Petitioner is the license holder and qualifier for the fire protection and dealers licenses for the company.

5. Petitioner installs and maintains gas-fired downdraft commercial cooking appliance fire protection systems regularly. He has received differing decisions from local authorities regarding approval of the systems based upon different applications of the Florida Fire Prevention Code (hereinafter the "Code").

6. Currently, only St. Johns County has refused to allow the operation of the systems. That decision was not appealed. Petitioner is currently applying for a permit in Duval County and the approval of the system has become an issue.

7. The subject of the Petition is a gas-fired downdraft commercial cooking appliance fire protection system, and draft rule 69A-21.305.

8. In January of this year, after due notice, the Department conducted two hearings regarding the subject of gas-fired downdraft commercial cooking appliance fire protection systems. One of the hearings was a rule development workshop conducted on January 17, 2007 at the Florida State Fire College Auditorium in Ocala, Florida. A draft of proposed rule 69A-21.305 was published and

distributed at the workshop for discussion purposes. A representative of Underwriters Laboratory, a nationally recognized testing laboratory, was present at the workshop and indicated that Underwriters Laboratory has not listed a system such as the one that was the subject of the workshop. The component parts of the fire suppression system are individually listed for their use; however, they are not listed in an entire system configuration.

9. After consideration of the comments received during the workshops and submitted thereafter, the Department determined that an additional rule on the subject was unnecessary because Chapter 633, *Florida Statutes*, clearly addressed the issue. If the system is pre-engineered, and installed in accordance with the manufacturer's instructions, it is approvable by the local authority. It is not pre-engineered unless the entire system, not just its component parts, is listed by an approved testing laboratory for the intended use.¹ If the system is not pre-engineered, it must be engineered in accordance with the Department's rules.

10. Petitioner states that he is substantially affected because a few counties will not allow the appliances to be installed due to their individual interpretations of the rule regarding the fire protection system installed in the appliance. By interpreting the rule as Petitioner suggests, the intent of the statute and implementing rule will be finalized, and any ambiguity and varying interpretations removed.

11. Notice of receipt of the Petition herein was published in Volume 33, Number 20 of the *Florida Administrative Weekly*, on May 18, 2007.

QUESTIONS

12. The Petitioner proposes that the Department issue the following declaratory statement:

¹ Section 633.021, *Florida Statutes*, describes a "pre-engineered system" as one which "must be listed by a nationally recognized testing laboratory." Section 633.065, *Florida Statutes*, addresses the installation of "pre-engineered systems."

This information has been compiled with the intent to help and assist local jurisdictional officials and other involved parties in the State of Florida with resolving the issues concerning the acceptance for permitting fire systems for appliances best described as gas-fired downdraft commercial cooking appliances.

After review of the applicable statutes and codes, it is the opinion of the Division of the State Fire Marshal for the State of Florida that fire protection systems for the appliance in question are in compliance as long as they are installed, inspected, serviced, and maintained in accordance with the fire system manufacturer's drawings and specifications and with the applicable standards of the National Fire Protection Association.

When installed correctly such device clearly falls under NFPA 96 2004. Since it complies with the current codes and statutes, the Department sees no reason to pursue rule making on downdraft systems and that no further rule is necessary or required.

DISCUSSION

13. 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.

14. 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(6), *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 must be dismissed.²

15. The Petitioner is not the local enforcement authority, and the Petition states that Petitioner has not proceeded through the local appeal process and received an adverse ruling. It is not suggested that there is no local appeals board, or that an appeals board refused the appeal. Therefore, the Department must dismiss the Petition under the terms of Section 633.01(6), *Florida Statutes*, and Rule 69A-60.007, *Florida Administrative Code*.

16. 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 a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or

² Rule 69A-60.007(5) (b), (c), and (d), *Florida Administrative Code*. “To request an interpretation of the Florida Fire Prevention Code from the State Fire Marshal through a declaratory statement, a person who is not an authority having jurisdiction must proceed through the local appeal process and receive an adverse ruling from the local appeals board. A person does not become a substantially affected person until such person receives an adverse ruling after having completed the local appeal process because the local interpretation with which the person disagrees, if challenged, cannot be enforced until after having been upheld in the local appeal process. If the person who is not an authority having jurisdiction receives an adverse ruling after proceeding through the local appeal process, such person then becomes a substantially affected person within the meaning of Section 633.01, F.S., and may at that time petition for a declaratory statement from the State Fire Marshal. 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.”

doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. 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).

17. 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 restaurant proposing to install a commercial downdraft appliance 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.

18. 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 proposed declaratory statement is too general 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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