



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

ROY TREMAIN,
Eustice Fire Chief

Case No.: 96217-08-FM

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

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (hereinafter "Petition") by Roy Tremain (hereinafter "Petitioner"). The Petition was received by the Department of Financial Services, Division of State Fire Marshal (hereinafter "Department"), on June 19, 2008. The Petitioner waived the 90 day period within which this Declaratory Statement should be entered. 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. 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 authority having jurisdiction responsible for fire code enforcement in Eustis, Florida.

5. The Declaratory Statement was requested pursuant to the provisions of Section 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 interpretation of its statutes, rules, and orders, as they apply to the Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the Department to issue a declaratory statement when requested by a substantially affected person and the petition relates to the Florida Fire Prevention and Life Safety Code (hereinafter referred to as "the Code.")

6. The subject of the Petition herein is the application of Section 509.215, *Florida Statutes*, to the Petitioner's particular set of circumstances. Notice of receipt of the Petition was published in Volume 34, Number 28 of the *Florida Administrative Weekly*, on July 3, 2008.

7. The Petition alleges as follows:

A. The Petitioner is the Eustis Florida Fire Chief, with the responsibility to enforce the Code.

B. The Oaks of Eustis Bed and Breakfast, located at 1390 E. Lakeview Avenue, Eustis, Florida, is a three story bed and breakfast public lodging establishment wherein more than fifty percent of the units of the building are advertised or held out to the public as available for transient occupancy.

C. The third floor of the facility is comprised of a single bedroom currently being held out to the public as available for transient occupancy.

QUESTIONS

8. The Petition poses the following questions:

A. If the owners stop offering the third floor of the establishment for transient occupancy to the public, does the building have to comply with the fire safety requirements of Section 509.215(1)-(3), *Florida Statutes*?

B. If the structure doesn't comply with the requirements of Section 509.215, *Florida Statutes*, are the owners limited to offering only fifty percent or less of the units for public use?

DISCUSSION

9. The Department 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.

10. Rule 69A-60.007, *Florida Administrative Code*, provides that an authority having jurisdiction is substantially affected for purposes of Section 633.01(6), *Florida Statutes*.

11. Section 633.022, *Florida Statutes*, directs the Department to establish by rule uniform firesafety standards that apply specifically to transient public lodging establishments, due to their specialized use and the special characteristics of the person utilizing or occupying them. The Department is the final interpreting authority over the rules, which are not subject to local amendment.¹

12. The Department adopted Rule Chapter 69A-43, *Florida Administrative Code*, as the firesafety standards that apply specifically to transient public lodging establishments. The purpose of the rule chapter is to specify measures to be used in conjunction with Sections 509.215 and 721.24, *Florida*

¹ Section 633.022(1)(b), *Florida Statutes*.

Statutes, to provide a reasonable degree of public safety from fire in transient public lodging establishments.²

13. Chapter 69A-43, *Florida Administrative Code*, applies to any transient public lodging establishment as defined and licensed by the Department of Business and Professional Regulation.³ Rule 69A-43.019(1), *Florida Administrative Code*, “[e]xcept as modified by Section 509.215, F.S.,” adopts the 2003 edition of National Fire Protection Association (hereinafter “NFPA”) 101, the Life Safety Code, as the uniform firesafety standards for “public lodging establishments,’ as defined in paragraph (a) of subsection (4) of Section 509.013, F.S., which are ‘public lodging establishments,’ as defined in subsection (10) [sic] of Section 509.013, F.S.”⁴

14. The structure that is the subject of this Declaratory Statement is classified as a “lodging or rooming house by the provisions of NFPA 101-6.1.8.1.2. Chapter 26 of NFPA 101 applies to “all buildings that provide sleeping accommodations for 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants. . . .” Sprinklers and other firesafety systems are required in both new and existing structures meeting the definition of a lodging or rooming house.⁵

15. Section 509.215(1)-(3), *Florida Statutes*, provides:

(1) Any:

(a) Public lodging establishment, as defined in this chapter, which is of three stories or more and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the guest area to exterior means of egress, or

(b) Building over 75 feet in height that has direct access from the guest area to exterior means of egress and for which the construction contract has been let after September 30, 1983, shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 "Standards for the Installation of Sprinkler Systems." The sprinkler installation

² Rule 69A-43.002, *Florida Administrative Code*.

³ Rule 69A-43.003, *Florida Administrative Code*.

⁴ Renumbered Section 509.013(11), *Florida Statutes*

⁵ NFPA 101-26.2.2.6 – 26.5.3.

may be omitted in closets which are not over 24 square feet in area and in bathrooms which are not over 55 square feet in area, which closets and bathrooms are located in guest rooms. Each guest room shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of NFPA-74 "Standards for the Installation, Maintenance and Use of Household Fire Warning Equipment," powered from the building electrical service, notwithstanding the number of stories in the structure or type or means of egress, if the contract for construction is let after September 30, 1983. Single-station smoke detection is not required when guest rooms contain smoke detectors connected to a central alarm system which also alarms locally.

(2) Any public lodging establishment, as defined in this chapter, which is of three stories or more and for which the construction contract was let before October 1, 1983, shall be equipped with:

(a) A system which complies with subsection (1); or

(b) An approved sprinkler system for all interior corridors, public areas, storage rooms, closets, kitchen areas, and laundry rooms, less individual guest rooms, if the following conditions are met:

1. There is a minimum 1-hour separation between each guest room and between each guest room and a corridor.

2. The building is constructed of noncombustible materials.

3. The egress conditions meet the requirements of s. 5-3 of the Life Safety Code, NFPA 101.

4. The building has a complete automatic fire detection system which meets the requirements of NFPA-72A and NFPA-72E, including smoke detectors in each guest room individually annunciating to a panel at a supervised location.

(3) *Notwithstanding any other provision of law to the contrary, this section applies only to those public lodging establishments in a building wherein more than 50 percent of the units in the building are advertised or held out to the public as available for transient occupancy.* (Emphasis Added.)

16. The subject bed and breakfast meets the definitions of a “transient public lodging establishment” found at Sections 509.013(4)(a), and 509.242(1), *Florida Statutes*.⁶

17. Clearly, the Code requires the subject property to be sprinklered, as well as requiring other firesafety protection systems. Section 509.215, *Florida Statutes*, contains similar requirements. Both

⁶ Section 509.013(4)(a), *Florida Statutes*, provides “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. . . License classifications of public lodging establishments and the definitions therefore, are set out in s. 509.242.”

Section 509.242(1), *Florida Statutes*, classifies a bed and breakfast inn as a public lodging establishment, defined at paragraph (h) as “a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.”

the Code and statutory requirements would be waived if subsection (3) of Section 509.215 applies to the subject bed and breakfast; however, the Department concludes that it does not.

18. The Department's rules distinguish between the terms "sleeping room" and "dwelling unit."⁷ Rule 69A-43.008(8), *Florida Administrative Code*, defines "Sleeping Room" as "a room that has the sole purpose of providing sleeping facilities, commonly referred to as a "bedroom," and does not include living rooms or dens having sofas that convert to beds." The term "dwelling unit" is defined at NFPA 101-3.3.50, adopted by reference in Rule 69A-43.019, *Florida Administrative Code*, as "one or more rooms arranged for the use of one or more individuals living together, providing complete, independent living facilities, including permanent provisions for living, sleeping, eating, cooking, and sanitation." Since the subject bed and breakfast is offering sleeping rooms to transients, and not dwelling units, the provisions of 509.215(3), *Florida Statutes*, do not apply.

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

1. The Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.
2. Question A. If the owners stop offering the third floor of the establishment for transient occupancy to the public, does the building have to comply with the fire safety requirements of Section 509.215(1)-(3), *Florida Statutes*?

Answer. Yes. Section 509.215, *Florida Statutes*, applies to public lodging establishments of three stories or more. Even if the owners were to stop offering the third floor for transient occupancy, the structure is still a public lodging establishment of three stories. Therefore, the owners would still be required to comply with the fire safety requirements of Section 509.215, *Florida Statutes*.

⁷ Chapter 509, *Florida Statutes*, does not define the term "unit," nor do the rules promulgated pursuant thereto.

3. Question B. If the structure doesn't comply with the requirements of Section 509.215, *Florida Statutes*, are the owners limited to offering only fifty percent or less of the units for public use?

Answer: If the structure doesn't comply with the requirements of Section 509.215(1), (2), *Florida Statutes*, the owners may not offer *any* sleeping rooms to the public. The Department interprets the Code as requiring compliance with Section 509.215(1), (2), *Florida Statutes*, and interprets the Code definitions to exclude the application of Section 509.215(3), *Florida Statutes*. The subject bed and breakfast is offering transient sleeping rooms to the public, not transient units. The exception found in Section 509.215(3), applies only to transient units. Therefore, under the facts presented, without prior compliance with Section 509.215(1), (2), *Florida Statutes*, no sleeping rooms may be offered to the public.

NOTICE OF RIGHTS

This Declaratory Statement constitutes a final order of the Department. Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review pursuant to Rule 9.110, *Florida Rules of Appellate Procedure* and Sections 120.565 and 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 _____, 2009.

Brian London
Deputy Chief Financial Officer

Copies furnished to:

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