



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

ROY VAN WYK,
CHIEF ELECTRICAL OFFICIAL,
MIAMI-DADE COUNTY BUILDING
DEPARTMENT

Case No.: 41983-01-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 April 23, 2001, by the Department of Insurance, hereinafter referred to as the Department, from Mr. Roy Van Wyk, Chief Electrical Official, Miami-Dade County Building Department, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the State Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The State Treasurer and 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. If 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. 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. Recent action by the Miami-Dade County Board of Rules and Appeals (BORA) has resulted in the building official and the fire official each being responsible for the plans reviews and inspections of the specific portions of fire alarm systems.

B. The BORA has assigned all electrical requirements of the National Fire Alarm Code[®], NFPA 72, to the Electrical Official, along with the requirements of the National Electrical Code[®], NFPA 70.

C. The fire official is responsible for the review of drawings for device placement only, in accordance with NFPA 72. The BORA asserts that the circuit loading, battery calculations, and wiring requirements are not under the authority of the fire official.

D. A recent declaratory statement in Department of Insurance in Case No. 35633 declared that only persons certified under Section 633.081, Florida Statutes, may perform firesafety inspections.

E. Section 633.01(2)(b), Florida Statutes, places the fire alarm under the jurisdiction of the fire marshal and Rule Chapter 4A-3, Florida Administrative Code, establishes rules and standards for proper installation.

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

A. Does Chapter 633, Florida Statutes, and the rules promulgated thereunder provide exclusive jurisdiction to the fire official on all fire alarm plans reviews and inspections?

B. If not, to what extent may the local electrical official enforce the provisions of the National Fire Alarm Code[®], NFPA 72?

C. Are persons performing plans reviews and inspections for compliance with NFPA 72 required to be certified under Section 633.081, Florida Statutes.

6. The controlling section of the Florida Statutes relating to the questions in Paragraphs 5.A. and 5.C. is Section 633.081, Florida Statutes.

7. Section 633.081, Florida Statutes, states in subsections (1) and (2):¹

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. The firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

(2) Every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal.

8. Under Section 633.081, Florida Statutes, all firesafety inspections must be conducted by a certified firesafety inspector.

9. The plans review prior to building is part of the inspection process, being simply the inspection of the structure in the form of plans prior to construction. During

¹ All emphasized portions of any quoted material is supplied.

or after construction, the inspection is of the structure, and the plans may continue to be consulted.

WHEREFORE, in response to the questions in Paragraphs 5.A., 5.B., and 5C., it is the position of the State Fire Marshal that:

I.

Question: Does Chapter 633, Florida Statutes, and the rules promulgated thereunder provide exclusive jurisdiction to the fire official on all fire alarm plans reviews and inspections?

Answer: Yes, with the following explanation and clarification.

A. All fire alarm system plans reviews and inspections for firesafety purposes must be performed by a firesafety inspector certified under Section 633.081, Florida Statutes.

B. This position does not prohibit plans reviews or inspections of fire alarm systems by other persons, such as electrical contractors or anyone else designated by the local building official, for purposes other than firesafety; for example, for compliance with the National Electrical Code[®], NFPA 70, or the National Fire Alarm Code[®], NFPA 72, as a general building code plans review or inspection.

C. However, for purposes of compliance with minimum or uniform firesafety standards applicable to fire alarm systems, only firesafety inspectors certified under Section 633.081, Florida Statutes, may perform such inspections, including the plans reviews, and may enforce such firesafety standards.

II.

Question: If not, to what extent may the local electrical official enforce the provisions of the National Fire Alarm Code[®], NFPA 72?

Answer: Based on the response to the question in Paragraph 5.A., this question has become moot noting, however, that the building official may enforce NFPA 70 and NFPA 72 for any purpose other than official firesafety inspections including firesafety plans reviews.

III.

Question: Are persons performing plans reviews and inspections for compliance with NFPA 72 required to be certified under Section 633.081, Florida Statutes.

Answer: Yes. Please see Paragraph I, above.

10. This declaratory statement supersedes any prior letter, pronouncement, statement or position statement, e-mail, communication or other opinion to the contrary, verbal or written, direct or implied, which is or may be in conflict with the positions stated herein.

11. The Department notes that the statements in Paragraphs I and III generally constitute an "...agency statement of general applicability that implements, interprets, or prescribes law or policy..." which is the definition of a "rule" as set forth in Section 120.52(15), Florida Statutes; therefore, the Department intends to initiate rulemaking proceedings as soon as feasible and practicable, pursuant to Section 120.54, Florida Statutes. (Fla. Dept. of Bus. & Prof. Reg. v. Investment Corp. of Palm Beach, 747 So.2d 374 (Fla. 1999)).

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:

Mr. Roy Van Wyk
Chief Electrical Official
Miami-Dade Building Department
111 NW First Street, Suite 1310
Miami, Florida 33128-1974

Gabriel Mazzeo, Attorney
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340