



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Clu D. Wright,
Clay County Public Safety Department

Case No.: 61297-02-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 May 22, 2002, by the Department of Insurance, hereinafter referred to as the Department, from Clu D. Wright, Clay County Public Safety Department, 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. Petitioner is responsible for enforcing the Florida Fire Prevention Code and its adopted standards throughout Clay County.

B. Fire stations are cooking on ranges or combination range/grill with no automatic fire protection.

C. A fire station is classified as a mixed occupancy, business, storage, rooming, and lodging.

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

A. Does NFPA 96, Sections 1-1.1, 1-2.1, 1-3.3, and 7-1 require that an automatic fire extinguishing system be installed to protect against grease laden vapors when using a residential range or a combination range/grill in a fire station?

B. Would businesses, industrial, mercantile, daycare occupancies, etc., have to comply with the automatic fire extinguishing system requirement under NFPA 96 to protect each range or combination range/grill from grease laden vapors.

6. Both questions may be answered with a single response, since the Code regulates the equipment and not the occupancy, although the type of occupancy in some cases may have a bearing on the type of equipment required.

7. The Life Safety Code, NFPA 101, 2000 edition, in several occupancies such as new and existing health care (18.3.2.6 & 19.3.2.6) provide specifically for an exception to residential style cooking appliances.

8. The explanatory text provides that such exception is intended to permit small appliances such as microwaves, hot plates, toasters and nourishment centers to be exempt from the requirements of commercial cooking equipment.

9. The Life Safety Code in other occupancies, such as day care, provides specific code language (16.3.2.2) that permits the use of domestic cooking equipment for food warming and limited cooking without the protection of an NFPA 96 system or the fire protection separation.

10. In both examples, approval of the authority having jurisdiction is required.

11. The Life Safety Code requires in subdivision 9.2.3 that commercial cooking equipment be protected in accordance with NFPA 96.

12. Chapter 9 of the Life Safety Code is applicable to all occupancies except as modified by the specific language of the occupancy chapter.

13. Therefore, the intent of the Life Safety Code is to require the protection for commercial cooking equipment while allowing the authority having jurisdiction to exempt certain installations based on (1) the cooking medium and (2) how it is used.

14. In addition, subdivision 9.2.3 provides for the continued use of existing unprotected commercial cooking equipment subject to approval by the authority having jurisdiction.

15. The deciding factor must include a thorough analysis of the potential to generate grease laden vapors.

16. It is the process that generates the vapors, not simply the type of equipment.

17. The authority having jurisdiction must consider the type of equipment, type of fuel, and the type and quantity of food products being prepared.

NOW, THEREFORE, in specific response to your questions, it is the position of the Division of State Fire Marshal that:

A decision regarding protection by an NFPA 96 system must be rendered by the authority having jurisdiction following an evaluation of the type of equipment and how the equipment is being used. The occupancy class has no bearing on the requirement for protection except that some occupancies are permitted to be exempted from protection based on an exception, while other occupancies are permitted to be exempted from protection based on the type of equipment installed. In all instances, the authority having jurisdiction may require protection when an examination of the cooking equipment and area indicates that a cooking hazard exist.

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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