DEPARTMENT OF COMMUNITY AFFAIRS,
Petitioner,
v.
THE BUCKINGHAM, AVON-BY-THE-SEA,
NEW JERSEY,
Respondent.

Decided February 19, 1982

Initial Decision
SYNOPSIS

The Department of Community Affairs sought to order the respondent to provide automatic smoke detection systems on common areas of its motel; while not denying the absence of smoke detectors, the respondent argued that the heat detectors it had in place were superior to the required smoke detector system.

The administrative law judge assigned to the case found that the Legislature had clearly provided that smoke alarms or detectors and not any other type of fire detection unit were required in hotels and multiple dwellings. The judge found no indication of any Legislative intent to provide for an exception from that requirement.

Accordingly, the respondent was ordered to comply with the Department's order.

MASIN, ALJ:
The Department of Community Affairs, Division of Housing, has ordered the respondent corporation, owners of a 100-room motel located in Avon-By-The-Sea, to provide automatic smoke detection systems in common areas and dwelling units of the motel. The respondent, through its vice-president, sought an exception to the Order, which was denied by the Bureau of Housing Inspection. Thereafter, the corporation requested a hearing and the matter was transferred by the Department to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seg. A hearing was scheduled before Administrative Law Judge Jeff S. Masin on January 6, 1982, at the Office of Administrative Law in Trenton.

At that time, the respondent's vice-president appeared to represent the corporation. Such appearances by non-attorney representatives of
corporations were permitted by the Department of Community Affairs prior to the creation of the Office of Administrative Law and, pursuant to N.J.A.C. 1:1-3.7(a), which permits representation by non-lawyer representatives of a party in matters in which such appearances were permitted prior to the establishment of the OAL, the corporate vice-president was permitted to appear and present the respondent's position.

The facts concerning the current state of the respondent's fire warning system are not in dispute. The respondent readily agrees that it does not have smoke detectors in its facility. Instead, it has heat detectors, which are set up in a system which the representative of the respondent characterized as superior to smoke detector systems required by the Department of Community Affairs. The discussions held between the parties and the court at the hearing established the state of the facts in such a manner that the court determined to consider the Department to have made a motion for summary judgment based on its allegation that the respondent was not in compliance with the regulations and could not obtain an exception thereto. The respondent claimed that it should be excepted from the requirement for the smoke alarms.

The requirement for the presence of smoke detectors in multiple dwellings was mandated by the New Jersey Legislature in 1979 when it passed L. 1979, c. 419.1, an amendment to N.J.S.A. 55:13A-7, which reads as follows:

Every hotel and multiple dwelling shall be equipped with smoke detectors or smoke alarms or both in conformance with rules and regulations promulgated by the Commissioner of the Department of Community Affairs. Such rules and regulations shall specify the number, location, specifications, maintenance and periodic testing of smoke detectors and smoke alarms based upon the construction, size and design of such building, and any other rules and regulations which the Commissioner considers necessary for the administration of the supplemental act.

The effective date of the above legislation, adopted as N.J.S.A 55:13A-7.1, was February 8, 1980.

The above-noted legislation was a supplement to paragraph 7 of N.J.S.A. 55:13A-1, the "Hotel and Multiple Dwelling Law." In paragraph 7, the Commissioner is mandated to issue and promulgate regulations deemed necessary to assure that every hotel and multiple dwelling will be constructed and maintained in a manner consistent with and protective of the health, safety and welfare of the occupants or intended occupants and the general public.
Paragraph 11 of the Law provides for a procedure by which owners of hotel and multiple dwellings may receive exceptions from the “literal requirements” of any “regulation issued pursuant to section 7 and 8 of this Act” (emphasis added). The statute states that:

no such exceptions shall be granted in any particular case unless the commissioner shall find: (1) that strict compliance with any such regulation, if required, would result in undue hardship to such owner; and (2) that the exception, if granted, will not unreasonably jeopardize the health, safety and welfare of intended occupants and the public generally (emphasis added).

In this case, the requirement of the Commissioner that the respondent install smoke alarms does not arise from a regulation adopted by the Department of Community Affairs, but instead flows directly from the specific wording of paragraph 7.1 of the Hotel and Multiple Dwelling Law. That statute specifically mandates that “smoke detectors or smoke alarms or both” be placed in hotels and multiple dwellings. The exception procedure contained in paragraph 11 of the Law does not, by its terms, provide for any exception procedure which would exempt one from the requirements of the statute itself. While the Commissioner may exempt owners from the Department’s regulations, upon a showing of qualification under the guidelines set forth in the statute, the Commissioner is not empowered by this paragraph to exempt an owner from the statute. Indeed, the Commissioner would not appear to have any authority whatsoever to permit someone to use a fire detection system other than that which is mandated by the statute itself.

I FIND that the Legislature, after presumably having given careful thought to the matter, has determined that smoke alarms and/or smoke detectors, and not any other system of fire detection, must be in placed in hotels and multiple dwellings such as the respondent herein. While it may be argued that a different choice may have been made, the Legislature has spoken. There is no indication in either paragraph 7.1 or 11 of the Hotel and Multiple Dwelling Law that the Legislature intended to provide the Commissioner with the power to exempt anyone from the requirements of the specific legislative direction of paragraph 7.1.

I CONCLUDE that the Commissioner properly exercised his power to order the respondent to comply with the mandate of the Legislature. I FIND no statutory basis for the Department to grant an exception from this requirement set by the Legislature and I, therefore, CONCLUDE that, since the respondent conceded that it does not now
comply with the requirements of the statute or with the Commissioner's order, there is no need for any further hearing in this matter.

The respondent is ORDERED to comply with the terms and conditions of the inspection report and order of the Commissioner issued on March 19, 1981. The respondent shall act expeditiously to bring itself into compliance with the statute and shall do so, in any case, not later than 60 days from the date of the issuance of the final decision of the Department of Community Affairs.

**After reviewing this Initial Decision,**
the Department of Community Affairs,
**March 15, 1982, issued the following Final Decision:**

Having reviewed the initial decision and any exceptions or replies submitted, I hereby adopt the decision of the administrative law judge in the above-captioned case as the final decision. In so doing, however, I must emphasize that the holding applies only to those cases in which no smoke detection equipment at all is present and that the right of the Department of Community Affairs to grant exceptions from requirements established by regulation, including, without limitation, requirements as to number, location and type of detector—including allowing of heat detectors in certain locations, remains unchanged and is hereby reaffirmed.