

Cause #00-11F

Name: Youth On Line

Administrative Law Judge: William K. Teegarden

Date: March 16, 2000

Action: Final Order: Administrative Law Judge ultimate authority

FINDINGS OF FACT

1. The OSFM is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and IC 22-14 apply to this proceeding.
3. IC 22-14-2-4 authorizes the OSFM to issue orders pursuant to IC 22-12-7.
4. IC 22-12-7-6 authorizes the issuance of emergency orders by the OSFM.
5. Administrative reviews of emergency orders are governed by IC 4-21.5-4.
6. IC 4-21.5-4 does not set a time limit for filing petitions for review of emergency orders.
7. IC 4-21.5-4-4 provides for expedited hearings once a request for a hearing has been made.
8. IC 4-21.5-4-4 also places the sole responsibility for voiding, terminating, modifying, staying, or continuing an emergency order on the administrative law judge.
9. At all times relevant to this proceeding, YOL owned property at 2101 College Avenue in Marion County, Indiana.
10. The property in question is a former grade school first constructed circa 1890.
11. The school was closed by the school corporation and sold in 1986.

12. In response to information received from neighbors and police department relating to large numbers of people attending parties or dances in the building, the OSFM looked at the exiting system, the lack of a fire alarm system, and the lack of a fire suppressant system and decided to issue an emergency order prohibiting large gatherings in the building.

13. At the hearing on February 2, 2000, the President of YOL testified that he had leased out the gymnasium area on occasion for concerts.
14. One major issue arising during the February 2, 2000, hearing was the issue of occupancy classification.
15. The OSFM inspected the records of the State Building Commissioner and did not find any design release which would change the occupancy from its initial use as a schoolhouse.
16. YOL introduced a design release dated May 8, 1997, which changed the occupancy classification to R-1, which is an apartment house.
17. The YOL president also testified, however, that the residential units were not yet completed and none were ready for occupancy.
18. 675 IAC 12-6-20(a) provides that design releases expire one year after issuance if no work is commenced on the project.
19. Further, IAC 12-6-20(6) provides that if work starts on the project but is suspended or abandoned for 180 days, the design release must be reinstated by the State Building Commissioner or it no longer is valid.
20. In part because of the confusion over occupancy classification, the hearing was suspended and resumed at a later date.
21. At that time, the uncontradicted testimony from YOL was that work on the conversion of the school to studio apartments was moving slowly but steadily and focusing on mechanical, electrical, and plumbing systems.
22. From this testimony, the conclusion is drawn that the 1997 design release has not expired and is still valid. Thus, the proper occupancy classification is R-1.
23. Common rooms, such as a gymnasium, that are part of an R-1 classification may be used for parties and dances, however prior to holding such a function, either the owner, lessee, or occupant must obtain an amusement or entertainment permit from the OSFM. See IC 22-14-3-3.

24. One purpose of such a permit is to provide for a fire inspection of the premises by the OSFM and the setting of an appropriate occupancy limit.
25. No such permit application has been submitted and the necessary fire inspection and approval has not been obtained.
26. Anyone using R-1 property for amusement or entertainment purposes without a permit commits a class C infraction. See IC 22-14-3-5.
27. The emergency order, therefore, was properly issued and should be continued.

IV. FINAL ORDER

The emergency order issued by the Office of the State Fire Marshal to Youth On Line, Inc. dated December 22, 1999, is hereby continued until such time as it expires as a matter of law.