

Cause #: 00-58A  
Name: Val Gorham and The Carnival Company  
Administrative Law Judge: William K. Teegarden  
Date: July 21, 2000  
Commission Action: Affirmed

### **FINDINGS OF FACT**

1. The Office of the SBC is an agency within the meaning of IC 4-21.5.
2. The SBC is the state agency responsible for licensing and inspecting amusement rides in Indiana.
3. IC 4-21.5, IC 22-15, and 685 IAC 1 apply to this proceeding.
4. The Fire Prevention and Building Safety Commission (“FPBSC”) is the ultimate authority within the meaning of IC 4-21.5 over orders issued by the SBC.
5. On September 24, the SBC issued an order (“Order I”) to The Carnival Company d/b/a Queen City Amusements and Monte Gorham. See exhibit 2.
6. The factual basis for the order primarily involved operating unlicensed rides at a carnival in Shelbyville, Indiana.
7. Order I provided a number of sanctions including an order that “. . . Respondents shall immediately be SUSPENDED for a period of two (2) years from the effective date of this Order from operating regulated amusement devices in the State of Indiana. . . .”
8. Administrative review was requested on Order I (Cause No. 99-50) and the administrative law judge takes official notice of his own records which show The Carnival Company d/b/a Queen City Amusements and Monte Gorham were defaulted and eventually had their case dismissed for failure to appear at a telephone prehearing conference and failing to provide good cause in writing as to why the matter should not be dismissed.
9. Order I became a final order on January 4, 2000, when the FPBSC entered a dismissal of Cause Number 99-50.
10. On June 7, 2000, Val who is Monte’s son, prepared an application to the SBC requesting permits for nine amusement rides. See exhibit 6.

11. Val's application was made on behalf of TCC and was received by the SBC on June 23, 2000.
12. Also included was a listing of six dates and locations in Indiana where some or all of the rides would be in service. See exhibit 7.
13. The first date and location on the itinerary was July 7, 2000, in Richmond, Indiana.
14. After some discussion with the SBC about Order I, on July 3, 2000, Val faxed a bill of sale dated July 3, 2000 to the SBC. See exhibit 9.
15. The bill of sale for \$175,000 transferred ownership of ten rides from Monte to Val.
16. Prior to receiving the bill of sale, the SBC issued an Order dated June 29, 2000 (Order II) to Val and TCC alleging violations of Order I and imposing additional sanctions.<sup>1</sup>
17. Val petitioned for administrative review on June 30, 2000, and the SBC stayed Order II to allow time for a hearing.
18. In the interim, the SBC inspected the rides in Richmond and issued permits subject to the outcome of the administrative review on Order II.
19. Val contends that since he was not the subject of Order I, he cannot be considered to have violated the terms of Order I and therefore Order II is inappropriate.
20. To some extent, Val is correct.
21. Order I does not prohibit Val from operating amusement rides in Indiana.
22. However, Order I does prohibit The Carnival Company from doing business in Indiana for two years.
23. As a successor in interest to prior ownership of The Carnival Company,

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<sup>1</sup> Because of the importance of Order I and Order II, copies are attached to this decision and are labeled Attachment A and Attachment B, respectively.

Val takes possession of the business subject to all outstanding orders of the SBC.<sup>2</sup>

26. Order I was issued in part because Monte operated the rides in question without a permit.
27. Order I was directed to Monte and The Carnival Company for violating administrative procedures; there never was a finding that the rides were unsafe since they were not inspected.
28. The rides, therefore, are not prohibited from operating in Indiana as long as they are inspected, receive permits, and are operated by someone other than Monte.
29. The application filed with the SBC by Val on June 23, 2000 (exhibit 6) identified the business entity as TCC.
30. The SBC could have refused permits without inspection for three reasons:
  - (a) The Carnival Company was banned from doing business in Indiana for two years by Order I.
  - (b) The application was not filed at least thirty days in advance of the first date of operation as required by 685 IAC 1-4-5, and
  - (c) the application was not filed at least sixty days in advance of the first date of operation also in violation of Order I.
31. Nevertheless, duly authorized agents of the SBC did inspect the rides and accompanying paper work and found the rides to comply with Indiana law.
32. The SBC issued Order II and after administrative review was requested, the SBC stayed Order II, inspected the rides, and issued permits for the rides.
33. At this point, there appears to be a violation of Order I and that portion

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<sup>2</sup> The SBC contends the sale to Val was a sham transaction. There is evidence to support this contention (a bill of sale signed after Order II was issued, a phone call to Monte when trouble arose during the inspection, and a bill of sale that does not appear to require Val to pay anything until December 2000), however, in light of the rest of this decision, this issue is immaterial.

of Order II dealing with TCC would be enforceable.

34. However, on the way back to the office, the SBC representatives learned that the insurance on the rides, which is mandatory under IC 22-15-7-2.5 had been canceled. See exhibit 8.
35. The representatives returned to Richmond to revoke the permits and issue a stop order pursuant to IC 22-15-7-2.5(f).
36. Upon arrival, Ken Detty (“Detty”), an owner of Funtastic Amusements, another amusement ride company, said the rides were included on his insurance policy and a binder was received the next day confirming this fact.
37. At the hearing, Val testified as to the working relationship between Funtastic and himself.
38. None of the facts presented by Val were seriously challenged by the SBC and the trier of fact concludes that the testimony is reliable and generally accurate.
39. Val’s testimony established the following:
  - a. Detty and Val are well acquainted from the amusement ride business.
  - b. Detty and Funtastic contract with a number of county fairs and other local carnivals to provide rides.
  - c. Val is fairly new to the business side, but not the operational side, of the amusement ride business.
  - d. Val has not contracted with any of the Indiana sites on his itinerary to provide rides.
  - e. Val helps Detty move rides and set up. Val then operates his rides under Detty’s contracts.
40. For all practical purposes, for the six sites in Indiana listed on his itinerary, Val is operating as part of Funtastic and not as TCC.
41. As long as TCC does not act as an independent company and seek out or accept contracts to provide rides, it is not in violation of Order I.

42. As long as Val, not Monte, operates the rides under the umbrella of Funtastic and is insured by Funtastic's policy, the permits should remain in effect and Order II should be withdrawn.<sup>3</sup>

### **NONFINAL ORDER**

Valdon Gorham is not prohibited from operating amusement rides in Indiana and his doing so is not a violation of any prior order of the State Building Commissioner.

The Carnival Company remains prohibited from operating rides, entering into contracts to provide rides, or engaging in any activity regulated under IC 22-15-7 until January 4, 2002.

The rides in question may be operated as long as they conform to Indiana law and are operated by an individual or entity in good standing with the State Building Commissioner and otherwise conform to law.

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<sup>3</sup> To be absolutely compliant with IC 22-15-7-2.5, the applicant (and therefore the permit holder) and the insured need to be the same entity or person. There are a number of legitimate business techniques which accomplish this. Since Order II does not refer to this potential problem and minimal evidence was introduced on this issue its resolution waits for another order and another day.