

Cause #: 01-9F
Name: Little Saints
Administrative Law Judge: William K. Teegarden
Date: November 2, 2001
Commission Action: Affirmed

FINDINGS OF FACT

1. The SFM is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-14, and 675 IAC 12 apply to this proceeding.
3. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 with respect to Orders issued by the SFM.
4. At all times relevant to this proceeding, Saints was a childcare provider in Michigan City, Indiana.
5. In June of 2000, while eating lunch in a strip mall in Michigan City, an inspector employed by the SFM noticed what appeared to be a childcare facility in a portion of the mall.
6. The inspector had not noticed this facility before and had not received a request to do an inspection.
7. The remainder of the mall houses eating places and retail stores.
8. The inspector contacted his superior and then entered the Saints establishment where the owner stated she had an architect who was drawing up plans.¹
9. The inspector left at that time to await a notice from the FSSA or SFM that a compliance inspection was needed.
10. In October of 2001, the inspector returned to Saints to respond to a complaint received by the SFM.
11. At that time, he noticed approximately 15 preschool age children and the owner stated she was working with the licensing agency on work which needed to be done.
12. The space in question was previously used to hold parenting classes and other family instructional type meetings.
13. Eventually, in January, the Order was written by the SFM.
14. Saints was established at this location to provide care for children before and after school including head start.

¹ By the time the hearing was held, the Saints representative testified that because of the cost, this was no longer an option and the lease for this property would not be renewed.

15. When school is not in session, older children use the basement for various activities.
16. Saints provides care for less than 25 hours per week per child.
17. Saints opens at 6 a.m. and children arrive anytime after that.
18. The ages include preschool and K-5 grade aged children.
19. Around 8:00 a.m., the grade school students and morning kindergarten and head start students leave.
20. The morning group then returns and the afternoon kindergarten children leave.
21. Then the afterschool program picks up.
22. Saints is not a licensed day care facility.
23. The Order states that Saints has violated 675 IAC 12-4-11(c) in that the premises are now being used as an E-3 occupancy without adding fire safety features which are required by an E-3 occupancy.
24. Saints contends that since it is not a licensed day care center, the rules for day care centers do not apply and the operation complies with the building code.²
25. The SFM contends that the building code does not distinguish between FSSA licensed and unlicensed establishment.
26. The SFM is correct.
27. All the Building Code requires for an E-3 occupancy is a building used for day care purposes for more than six persons. See 1997 UBC Sec. 305.1.
28. The testimony of the Saints representative establishes that care is provided for more than 6 persons.
29. Accordingly, the property must meet occupancy E-3 requirements for exiting, alarm systems and area separation walls.
30. Conflicting testimony was received about exiting but none was received about the alarm system.
31. To be used by more than 6 persons, the premises must be protected by a code compliant alarm system.
32. The only evidence in the transcript about the alarm system indicates there is none.
33. Likewise, the evidence shows that the basement area is sometimes used by some of the younger school age children, which also is a violation of E-3 occupancy requirements.
34. The Order should be affirmed.

² Whether or not Saints is required to be a licensed facility is a problem for FSSA, not the SFM. FSSA had recent success in the Court of Appeals in asserting a license pursuant to IC 12-17.2 is needed for fairly similar businesses. See FSSA v. Radigan, (2001 Court of Appeals) ___NE2d___.

NONFINAL ORDER

The Order of the State Fire Marshal issued January 17, 2001, to Little Saints is hereby affirmed.

A copy of the foregoing has been sent to the following:

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