

Cause No.: 03-66F
Name: American Legion
Administrative Law Judge: William K. Teegarden
Date: August 15, 2005
Commission Action: Affirmed

FINDINGS OF FACT

1. The SFM is an agency within the meaning of IC 4-21.5.
2. The SFM is the state agency charged with the responsibility of enforcing fire safety codes.
3. IC 4-21.5 the Indiana Building Code (“IBC”) and the Indiana Fire Code (“IFC”) apply to this proceeding.
4. The Fire Prevention and Building Safety Commission (“FPBSC”) is the ultimate authority with respect to orders of the SFM within the meaning of IC 4-21.5.
5. At all times relevant to this proceeding, the Legion was a typical American Legion Post located in Fishers, Indiana.
6. On August 22, 2003, duly authorized representative of the SFM conducted a routine inspection of the Legion premises which eventually resulted in the issuance of an Order by the State Fire Marshal (“Order”) on October 3, 2003.
7. The Legion filed a timely petition for administrative review on two issues.
8. The initial Construction Design Release was issued by the State Building Commissioner in May of 1990.
9. This makes the 1989 IBC (1988 Uniform Code) the applicable building code for the original building.
10. The applicable IFC at the time of the inspection was the 2003 IFC (2000 International Fire Code.)
11. The first violation for which review was sought involved wall coverings in violation of section 4205 of the IBC.¹
12. The building in question is not sprinklered.
13. Section 4205 of the IBC requires textile wall coverings in non-sprinklered buildings to meet the acceptance criteria of UBC Standard 41202.
14. A material which as met the proper acceptance criteria and laboratory flame tests contains that information in the manufacturer’s specifications.
15. The textile wall covering in question starts at the floor and extends approximately 4 feet up several walls.
16. The textile coverings were installed approximately 9 years prior to the order being written.
17. The Committee Chairman of the Committee in charge of improvements of building and grounds for the Legion Post testified.
18. The Chairman was familiar with the renovation project that included the wall covering.

¹ The order contains a typographical error and at one place, refers to the Section violated as 44205. Testimony at the hearing established this was a typographical error.

19. The Chairman could not find any documentation of the textile's fire rating in Legion files.
20. He contacted the person in the Legion who obtained the covering who is now physically incapacitated.
21. The invalid, having been in the carpeting business for 50 years, provided the Chairman with much information about the carpeting including the fact that he knew it was fire rated, but could not help the Chairman with any documentation.
22. This hearsay statement is admissible in an administrative hearing and cannot be ignored as having no credibility.
23. No matter how creditable it may be, however, it cannot substitute for the required documentation.
24. IC 4-21.5-3-26 allows the consideration of hearsay testimony but prohibits deciding a crucial issue solely on the basis of hearsay evidence.
25. The Legion also expressed its concern over the length of time the condition existed prior to a violation being written.
26. Clearly, the length of time from the installation of the wall covering to the writing of an order was somewhat prejudicial to the Legion.
27. Dismissals due to the passage of time are governed by statutes of limitations.
28. The Legion did not cite, nor did the trier of fact find a statute of limitations in IC 34 which arguably applies and which would limit the commencement of an action for enforcement to less than 9 years.
29. The first violation should be affirmed.
30. The second violation appealed involved exit doors.
31. Section 1003.3.1.8 of the IFC requires exit doors to be capable of being opened from the inside without the use of a key or any special knowledge or effort.
32. Several exit doors have slide bolts.
33. These bolts were installed about 5 years before the hearing after a couple of break-ins damaged the exiting panic hardware.
34. The policy in place is that the slide bolts are used only after the building is closed and no members or patrons remain in the area.
35. The policy may provide grounds for a variance, but as the building exists today, it has required exits which can be locked in such a way to prevent a person who is inside the building from getting out without special knowledge.
36. The second violation should be affirmed.

NONFINAL ORDER

The Order dated October 3, 2003, issued by the State Fire Marshal to American Legion Post 470 is affirmed.

