

Cause #: 97-14F

Name: Clay City-Harrison Township Volunteer Fire Department

Administrative Law Judge: William K. Teegarden

Date: February 28, 1998

Commission Action: Affirmed

III. FINDINGS OF FACT

1. IC 4-21.5, IC 36-8, and 675 IAC 22 apply to this proceeding.
2. While local fire authorities are not normally agencies within the meaning of IC 4-21.5, IC 36-8-17-9 authorizes the local fire department to issue orders for violations of the fire code and IC 36-8-17-11 provides for administrative review pursuant to IC 4-21.5.
3. The Fire Prevention and Building Safety Commission (“Commission”) is the ultimate authority with respect to fire code enforcement matters including orders issued by local fire departments.
4. On or about April 12, 1997, an authorized representative of the Clay City-Harrison Township Volunteer Fire Department (“FD”) issued an order (“Order”) to the Town of Clay City (“Town”) citing a violation of the State Fire Prevention Code (“FPC”).
5. The Town filed a timely petition for administrative review and later, on November 7, 1997, a motion for summary judgment.
6. To date no responses have been received to the motion.
7. IC 4-21.5-3-23 allows the disposition of an administrative review by way of summary judgment.
8. IC 4-21.5-3-23 also provides that “summary judgment may not be granted as a matter of course because the opposing party fails to offer opposing affidavits or evidence, but the administrative law judge shall make a determination from the affidavits. . . .”
9. In this particular case, an examination of the order and the materials provided by the town in the motion for summary judgment shows there is no dispute of facts and that the only issue involved is the interpretation of the IFC.

10. The order was written for the removal of a fire hydrant on the east side of Nye Street just east of Goshorn Park.
11. The hydrant in question (one of several in the area) was not within the town's corporate boundaries.
12. 675 IAC 22-2.1 adopts the Uniform Fire Code (UFC), as modified, as the Indiana Fire Code.
13. Section 10.301 (a) of the UFC provides that the local fire chief shall designate the number of fire appliances installed in the jurisdiction.
14. The local fire authority cannot order the Town to maintain a fireplug outside the Town limits.
15. The order should be revoked.

NONFINAL ORDER

The cease and correct order issued by the Clay City-Harrison Township Volunteer Fire Department to the Town of Clay City dated March 12, 1997, is hereby revoked.