

Cause #: 97-45A  
Name: Emerich Manual High School  
Administrative Law Judge: William K. Teegarden  
Date: November 12, 1999  
Commission Action: Affirmed

### **FINDINGS OF FACT**

1. The SBC is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-15 and 675 IAC 21 apply to this proceeding.
3. The Fire Prevention and Building Safety Commission (“FPBSC”) is the ultimate authority within the meaning of IC 4-21.5.
4. At all times relevant to this proceeding, the Company was involved in the business of installation and repair of elevators in Central Indiana.
5. The SBC is the state agency responsible for regulating elevator safety.
6. On September 23, 1997, the SBC received a complaint from a mother of a Manual High School student.
7. The complaint indicated the elevator that her handicapped child needed for access was inoperable.
8. A duly authorized representative of the IBC was sent to check out the complaint.
9. Upon arriving at the School on the southside of Indianapolis, the inspector discovered a representative of the Company was already there and was in the process of repairing the elevator.
10. Routine repair of an elevator does not require any notification to or permit from the IBC.
11. However, the inspector discovered that the repairman was also installing a new controller as part of the repair. This action took the work out of routine repair and service and made it an alteration.
12. IC 22-15-5-1 and 675 IAC 21-1-1 prohibit alterations of an existing elevator without a permit from the IBC.
13. The inspector told the Company that work would have to cease until a

permit was received.

14. The Company filed immediately for a permit and it was issued the same afternoon.
15. On September 26, 1997, the IBC wrote an order to the Company citing it for beginning alterations without a permit.
16. This order was correctly written and should be affirmed.
17. On October 7, 1997, an inspector from the IBC revisited the site to grant an approval for public use.
18. Upon visiting the site, he discovered that the elevator was being used.
19. The elevator was given approval but an order was written for violation of 675 IAC 21-1-3 and 3.1, which require approval from the IBC before an elevator may be used by members of the public.
20. This order was also correctly written and should be affirmed.
21. The fact that the Company was rushing the work in order to help a student with a disability is a mitigating factor but does not act as a legal excuse for the violations.
22. The IBC, in its order of October 9, 1997, sets forth its belief that the Company should be placed on probation and ordered to file quarterly reports with the IBC.
23. The trier of fact takes official notice of his docket of cases for the last two years which includes actions by the IBC against at least 6 other elevator companies, all for multiple violations of the elevator code.
24. Of the similar matters pending (or concluded), this case is far and away the least serious of the elevator cases and also presents the best mitigating circumstances.
25. Further, it is evident from the number of elevator code violation orders filed that the IBC is looking closely at the operations of the elevator companies throughout the state.
26. The fact that no other violations involving the Company have been discovered either prior to October of 1997 or subsequent to October, 1997, is also a

mitigating circumstance.

27. The purpose of filing orders by the IBC is to achieve compliance with the applicable codes.
28. It appears that this goal has been achieved in the case.
29. The trier of fact thus concludes that probation is unnecessary in this case.

**NONFINAL ORDER**

The orders of September 26, 1997, and October 9, 1997, issued to Home Elevator Company are affirmed. Since compliance with the Indiana Elevator Code was promptly achieved and no further violations have been discovered, no further penalty will be imposed.