

Cause #: 98-4F
Name: Showplace 6 Cinema I
Administrative Law Judge: William K. Teeguarden
Date: July 28, 1998
Commission Action: Affirmed

FINDINGS OF FACT

1. The OSFM and the FPBSC are agencies within the meaning of IC 4-21.5.
2. IC 4-21.5 applies to this proceeding.
3. On August 12, 1997, the OSFM mailed an order citing violations of the IFPC to Showplace.
4. Showplace filed a petition for administrative review by certified mail which was received on September 3, 1997.
5. The FPBSC, acting as the ultimate authority over OSFM orders, denied administrative review for the failure to timely file the petition for review.
6. Orders of the OSFM and the FPBSC (including initial determinations of untimely filing) are reviewable pursuant to IC 4-21.5.
7. IC 4-21.5-3 -7(a)(2) requires that a petition for administrative review must be in writing and filed within 15 days after a person is given notice of the order.
8. IC 4-21.5-3-2(e) adds 3 days to any time period if notice is served through the U.S. mail.
9. IC 4-21.5-3-2(c) provides that the running of time commences when notice is deposited in the U.S. mail.
10. In the matter in question here, the order of violation was thus served on August 12, 1998.
11. Since service was through the U.S. mail, a petition for administrative review, to be timely, would have to be filed by August 30, 1998.
12. The administrative law judge takes official notice pursuant to IC 4-21.5-3-26(f) of the fact that August 30, 1997, was the Saturday prior to Labor day, thus pursuant to IC 4-21.5-3-2(a) and (b), the petition for review was due on Tuesday September 2, 1997.

13. Based on over 10 years experience in dealing with mailed notices as an administrative law judge, the administrative law judge readily concludes that for certified mail to be delivered on the Wednesday after a holiday weekend, it must have been deposited with the Post Office prior to the weekend and therefore was mailed prior to August 30, 1997.¹
14. Since service is made pursuant to IC 4-21.5-3-2 (c) when the document is deposited in the mail, the preponderance of the evidence in this case requires a finding that the petition for review was timely.

NONFINAL ORDER

The petition for administrative review received by the OSFM on September 3, 1998, was timely filed. Administrative review of the order of August 12, 1997, of the State Fire Marshal should be granted and the matter decided on the merits.

¹ Showplace alleges in its brief that the date of mailing was August 23, 1997. This may well be true but the filing is unverified and the copy of the green card available to the administrative law judge has an illegible postmark. However, it makes no difference in this case as long as it was mailed on or before September 2, 1997.