

**STATE OF INDIANA  
FIRE PREVENTION AND BUILDING SAFETY COMMISSION**

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<b>LaPorte County,</b>	Administrative Cause No.: DHS-2312-003133
Petitioner,	
V.	Interpretation No.: ALB-2023-37
<b>Indiana Department of Homeland Security,</b>	
Respondent.	

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**OBJECTION TO NON-FINAL ORDER OF DISMISSAL**

COMES NOW, the Respondent, by counsel, and files this objection with the Ultimate Authority to the Non-final Order of Dismissal<sup>1</sup> that was issued in this matter by OALP. In support of this objection, the Respondent states as follows:

1. On 05/21/2024, OALP issued a non-final order of dismissal in this matter.
2. The ALJ concluded that OALP lacked jurisdiction to review this matter because the written interpretation, as authored by the State Building Commissioner, was not an “agency action” as defined by IC 4-21.5-1-4. Additionally, the ALJ found that the written interpretation was only “advisory” in nature.
3. Both conclusions by the ALJ are erroneous.
4. First, the written interpretation is an “agency action”<sup>2</sup> because it is an “order”<sup>3</sup> that determines the legal rights and duties of specific persons – namely the “interested person” and the “county or municipality” that disagree about the interpretation of a building or fire safety law.<sup>4</sup>

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<sup>1</sup> In form, the order is entitled as a “Non-Final Administrative Decision” – but it functions as a “non-final order of dismissal” of the matter.

<sup>2</sup> IC 4-21.5-1-4.

<sup>3</sup> IC 4-21.5-1-9.

<sup>4</sup> See IC 22-13-5-1.

5. Second, the written interpretation is NOT “advisory” in nature. To the contrary, IC 22-13-5-3 provides that a written interpretation “binds the interested person and the county or municipality with whom the interested person [has] [a] dispute.” Additionally, a written interpretation of a building or fire safety law binds all counties and municipalities in the State if published in the Indiana Register.<sup>5</sup>
6. Lastly, the “binding” nature of a written interpretation is subject to being overruled in a proceeding under IC 4-21.5 with the Fire Prevention and Building Safety Commission as the Ultimate Authority.<sup>6</sup> This provision clearly indicates that the General Assembly intended for written interpretations to be subject to administrative review.

WHEREFORE, the Respondent respectfully objects to the non-final order of dismissal issued by OALP in this matter – and requests that the Fire Prevention and Building Safety Commission dissolve the order and remand the matter for further proceedings.

Respectfully submitted,



Tyler Burgauer  
Attorney for Respondent

Date: 6/3/2024

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<sup>5</sup> See IC 22-13-5-4(a).

<sup>6</sup> See IC 22-13-5-3(a) & (b).

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on 06/03/2024 a copy of this objection was sent via email to the following:

- a. John Niegos (on behalf of LaPorte County – Petitioner) at [jniegos@laporteco.in.gov](mailto:jniegos@laporteco.in.gov)
- b. Douglas Biege (attorney for Petitioner) at [dlbiege@dbselaw.com](mailto:dlbiege@dbselaw.com)
- c. Jeff Wiers at [jeff@electricpowersolutions.com](mailto:jeff@electricpowersolutions.com)
- d. Office of Administrative Law Proceedings at [ualp@ualp.in.gov](mailto:ualp@ualp.in.gov)
- e. Fire Prevention and Building Safety Commission at [buildingcommission@dhs.in.gov](mailto:buildingcommission@dhs.in.gov)

/s/ Tyler E. Burgauer \_\_\_\_\_  
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