



**STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

**FILED:** May 21, 2024

**Laporte County,  
Petitioner**

Administrative Cause No.: DHS-2311-002838

v.

**Department of Homeland Security,  
Respondent**

**Ultimate Authority:** Fire Prevention and Building Safety Commission

**NON-FINAL AMINISTRATIVE DECISION**

**Procedural History**

On December 20, 2023, a Petition for Administrative Review was filed by John Niegos on behalf of LaPorte County (“Petitioner”) seeking administrative review of **DHS’ Indiana Fire Prevention and Building Safety Commission’s Complaint Number ALB-2023-37**. The Ultimate Authority granted review of the Petition and forwarded the Petition for Review to the Office of Administrative Law Proceedings (OALP) on December 20, 2023.

On February 21, 2024 an initial pretrial hearing was held in this matter, before ALJ Yeager. Tyler Burgauer appeared as counsel for the Indiana Department of Homeland Security. Douglas Biege appeared as counsel for LaPorte County, Indiana, Petitioner herein. Jeff Wiers, appeared as an interested party. After discussion by and from all parties, the matter was taken under advisement by ALJ Yeager.

**Findings of Fact and Conclusions of Law**

After having reviewed the record, ALJ Yeager now recommends that Petitioner’s Petition for Administrative Review be dismissed, and in support thereof states as follows.

OALP lacks the authority to review this matter because #ALB-2023-37, authored by the Indiana State Building Commissioner, is not an “agency action” as defined by IC 4-21.5-1-4, it is an advisory opinion provided by the State Building Commission at the request of a party or entity through the written interpretation process.

#ALB-2023-37 does not require the performance or prohibits the performance of any act by any person or entity, nor does it sanction a person or entity for their failure to abide by a rule or statute, nor does it deny the issuance of a license or revoke a granted license. *See IC 4-21.5-1-4 and IC 4-21.5-1-9.* It is an expression of the State Building Commission's interpretation of Article 210.8 of the 2009 Indiana Electrical Code, with the intent to provide guidance and/or clear up ambiguity. See 675 IAC 17-1.8. It is neither an order nor an agency action. As such this matter is not ripe for administrative review, and OALP lacks the authority to provide anticipatory administrative review of #ALB-2023-37.

### **Decision and Order**

For the foregoing reasons, the undersigned ALJ **recommends dismissal** of Petitioner's Petition for Review filed before the Indiana Fire Prevention and Building Safety Commission on December 20, 2023.

So Ordered: May 21, 2024



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Tracey Yeager, Administrative Law Judge  
Indiana Office of Administrative Law Proceedings

### **Appeal Rights**

In accordance with Ind. Code § 4-15-10.5-12(b), OALP's order disposing of this matter is not final. If you wish to raise and preserve an objection to this order, you must file an objection, in writing, within fifteen (15) days after service of this order. If served only by mail, however, three (3) days will be added to this period to object. See Ind. Code § 4-21.5-3-2 for how to compute the period to object.

Your objection must identify the basis of the objection with reasonable particularity and be served on all parties and filed with the ultimate authority:

1. By email at [buildingcommission@dhs.in.gov](mailto:buildingcommission@dhs.in.gov) or
2. By mail or personal service to:  
Building Safety Commission  
302 West Washington Street, Room E-208  
Indianapolis, IN 46204

If a timely objection is filed or a notice of intent to review the order is served by the ultimate authority in accordance with Ind. Code § 4-21.5-3-29, the ultimate authority will review the matter and either (1) issue a final order or (2) remand this matter back to the Office of Administrative Law Proceedings for additional proceedings. In the absence of an objection or notice of intent to review, the ultimate authority shall affirm the order in accordance with Ind. Code § 4-21.5-3-29(c).

**DISTRIBUTION:**

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