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BILLBOARDS, AESTHETICS, AND THE POLICE POWER

Charles F. Floyd

Charles F. Floyd is Professor of Real Estate in the Department of Real Estate and Legal Studies at the University of Georgia. He has written several articles on aesthetic regulation and the highway beautification act and a book with Peter J. Shedd, Highway Beautification: The Environmental Movement's Greatest Failure. He recently served on the National Advisory Committee on Outdoor Advertising and Motorist Information.

ABSTRACT

Judicial attitudes towards aesthetics have shifted rather dramatically during this centruy from one of outright hostility to general recognition of aesthetics as a sole justification for use of the use of the police power. The acceptable limits of these regulations are still being explored, the issue of possible conflicts with the right of commercial free speech being the most recent legal battleground.

The paper reviews the historical development of judicial attitudes towards aesthetic and billboard regulations, examining in some detail the recent case of Metromedia, Inc. v. City of San Diego. It also examines legislative developments during the same period which have largely negated judicial gains for scenic beauty proponents. It concludes that the realistic forecast for the foreseeable future is for more and larger billboards spread along more and more of both our urban and rural roadsides.

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Charles F. Floyd*

Aesthetic regulations in general, and billboard regulations in particular, have long been a matter of contention in the courts as well as in the legislatures. Judicial attitudes towards aesthetics have shifted rather dramatically during this century from one of outright hostility to general recognition of aesthetics as the sole justification necessary for use of the police power (power of regulation). The acceptable limits of these regulations are still being explored, however, the issue of possible conflicts with the right of commercial free speech being the most recent legal battleground. At the same time that aesthetic controls have been winning the battle of the courts, they have been losing their long battle in the legislatures, particularly in the United States Congress. Ironically, the instrument of these defeats has been the Highway Beautification Act, legislation which was supposed to rid our nation's rural highways of billboard blight.

Historical Development of Sign Regulation

Judicial attitudes towards regulations designed to protect aesthetics have gone through four fairly distinct periods during this century. In the early years, aesthetic regulations were usually struck down by the courts as not being a legitimate use of the police powers. During the second, the era of legal fiction, the legality of many ordinances protecting aesthetics were upheld, not on the basis that they protected the visual environment, but on the supposed basis that their primary function was to protect the health, welfare, or morals of the public. This era gradually led to one of partial acceptance of aesthetics as a justification for regulation, provided it could also be buttressed by

safety or economic considerations.[1] Finally, in the modern era regulation based on aesthetics alone has reached a level of general judicial acceptance.[2]

The Era of Nonrecognition

Courts in the early years of this century were very harsh towards the concept of protecting the visual environment through the use of the police power. For example, in 1903 the City of Passaic, New Jersey, enacted an ordinance establishing a ten-foot setback and an eight-foot height limit for billboards. In striking down the ordinance the Court commented:

> Aesthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power to take private property without compensation.[3]

In a similar vein, the California Supreme Court struck down a San Jose ordinance which prohibited billboards and required the removal of existing signs. The court reasoned:

> We find that the one ground upon which the town council may be thought to have acted is that appearance of billboards is, or may be, offensive to the sight of persons of refined taste. . . . It has never been held that these considerations alone justify, as an exercise of the police power, a radical restriction of an owner of property to use his property in an ordinary and beneficial way.[4]

The Era of Legal Fiction

Gradually, however, increasing urbanization and public demand for

controls over billboard blight and other visual polution led the courts to allow greater latitude in aesthetic regulation. They were willing to tentatively explore the realm of aesthetics, but were not ready to generally employ visual attractiveness as a legal basis for utilizing police power regulation. Thus, a billboard control ordinance in St. Louis was upheld not on the basis that it improved aesthetics, but that it protected health, safety, and morals. The argument maintained that billboards were firetraps, were easily blown over, and served as concealment for immoral acts and for criminals lying in wait for their victims.[5] An Illinois court used similar reasoning in upholding a Chicago ordinance that restricted the placement of billboards in residential areas.[6] This legal fiction rationale was widely accepted and served as the primary justification for sign regulation for several decades.

Partial Acceptance of Aesthetics

The courts moved away from the "legal fiction" justification for aesthetic regulation in the 1930's to acknowledging aesthetics when sufficiently interwoven with other facets of health, safety, or public welfare. Aesthetics could be considered and given weight, but such elements alone were not usually sufficient justification for the use of the police power. This position was clearly stated in Justice Pound's off-quoted opinion in Perlmutter v. Greene:

> Beauty may not be queen, but she is not an outcast beyond the pale of protection or respect. She may at least shelter herself under the wing of safety, morality, or decency.[7]

Thus, the court ruled that the state could lawfully construct a screen on the public right-of-way which blocked the view of a billboard facing

a state highway -- in order to benefit public travel. The Indiana Supreme Court upheld a prohibition of billboards within 500 feet of any park or boulevard; the decision noted a growing acknowledgement of aesthetics but based enforcement on the regulation of public safety.[8]

In 1935 a Massachusetts case upheld an ordinance prohibiting billboards within 300 feet of a park or 50 feet from a public way, further broadening the scope of the police powers while giving more direct recognition to aesthetics:

> We think that the preservation of scenic beauty and places of historical interest would be of sufficient support (for the advertising regulation). Consideration of taste and fitness may be a proper basis for action in granting and denying permits for locations for advertising devices.[9]

In this instance the court noted that areas of scenic beauty are a source of pride, comfort and enjoyment to the people. Since scenic beauty is an important factor to the public welfare, use of the police power would be valid. This case marked another stage in the evolution of the police power doctrine -- whereas the courts at first required regulations to be based wholly on protection of public health, welfare, and safety, it now became the rule that regulations with obvious aesthetic purposes would be upheld if <u>any</u> connection, however tenuous, with general welfare could be shown.

The Modern Rationale: Acceptance of Aesthetics

In 1954 the U.S. Supreme Court gave acceptance to aesthetic consideration as a proper subject for regulation, although the decision dealt with

eminent domain and not directly with police powers. The case, Berman v. Parker, involved the constitutionality of the taking of a Washington, D. C., retail store for an urban renewal project. Justice Douglas wrote:

> The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.[10]

This unequivocal acceptance of aesthetic considerations set the stage for future decisions from state courts. The issue generally remained shielded under the blanket of general economic or safety considerations, however, until recent years, rarely emerging as the primary justification for invocation of the police power.

In 1963 New York's highest court moved to full acceptance of aesthetics in the rather bizarre case of People v. Stover. The City of Rye, New York, passed an ordinance reading in part:

> No clotheslines, drying racks, poles or similar devices for hanging clothes, rags, or other fabrics shall be erected or maintained in a front yard or side yard abutting a street.[11]

This ordinance was aimed at Mrs. Webster Stover, who, unhappy with the city government, had erected a clothesline in her front yard as a protest and hung up battered clothing, old uniforms, underwear, rags, and scarecrows. Each year for five years she added another clothesline filled with more tangled linens. The Stovers refused to remove the clotheslines to comply with the ordinance, claiming it unconstitutionally

interfered with their freedom of speech and deprived them of property without due process of law.

The court rejected the Stovers' defense, based on the right of symbolic speech, and also brushed aside the city's argument that the ordinance was necessary on the basis of economic and safety considerations. It found that aesthetic considerations alone were sufficient to justify the ordinance, holding that it:

> simply prescribes conduct that is unnecessarily offensive to the visual sensibilities of the average person and tends to debase the community, and reduces real estate values.[12]

The New York Court of Appeals (the State's highest court) broke new ground in sign regulation, when in 1967, it upheld an ordinance prohibiting all off-premise signs in a community, even though the ordinance was based primarily, if not solely on aesthetic considerations.[13] In the same year the Supreme Court of Hawaii upheld the constitutionality of a comprehensive zoning ordinance passed by the City and County of Honolulu which provided, among other things, for the regulation and control of outdoor advertising signs.[14] The court stated:

> We accept beauty as a proper community objective, attainable through the use of the police power. We are mindful of the reasoning of most courts that have upheld the validity of ordinances regulating outdoor advertising and of the need felt by them to some basis in economics, health, safety, or even morality. We do not feel so constrained.[15]

The Superior Court of New Jersey followed in 1974, upholding a zoning ordinance limiting the size, number, and placement of signs in various districts of the Town of Westfield.[16] The court noted that the only purpose of the ordinance was the improvement of the town's aesthetic environment. Having isolated the issue, the court declared:

> This court today holds defendant town may within the scope of its police power, enact a zoning ordinance based solely upon aesthetic considerations.[17]

One of the clearest statements regarding aesthetic improvement as a basis for the use of the police power was delivered by the Supreme Judicial Court of Massachusetts in 1974. The Boston surburb of Brookline had adopted an ordinance prohibiting all off-premise advertising signs in the town. Brushing aside the usual public safety rationale, the court stated:

> The issue squarely before us is whether the town bylaws, enacted primarily or solely for aesthetic reasons, are within the scope of the police power. We conclude that aesthetics alone may justify the exercise of the police power; that within the broad concept of "general welfare," cities and towns may enact reasonable billboard regulations designed to preserve and improve their physical environment.[18]

Other recent favorable rulings regarding sign regulation include those in Maine (prohibition of billboards in the Town of Boothbay with a ten-month amortization period for non-conforming signs);[19] New York (probibition of all billboards in the Catskill and Adirondack Parks);[20] Colorado (comprehensive sign ordinance in the resort town of Steamboat Springs including a ban on off-premise signs);[21] and North Dakota (challenge to the state's Highway Beautification Law).[22]

A ruling unfavorable to proponents of aesthetic regulation occurred when the Colorado Supreme Court struck down as an unreasonable use of the police powers a Denver ordinance which totally prohibited the erection of new billboards within the City and required elimination of existing signs over a five-year amortization period.[23] However, the Federal Tenth Circuit Court of Appeals found that the amortization provision for non-conforming signs, including on-premise signs, did not constitute a taking of private property.[24]

In the first zoning case to be heard by the U.S. Supreme Court since 1928, Village of Belle Terre v. Boras, the Court removed any lingering doubts concerning the use of police power authority to control aesthetics. In upholding the constitutionality of a village ordinance limiting the occupancy of one-family dwelling to traditional families or to groups of no more than two unrelated persons, Justice Douglas wrote:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. . . The police power is not confined to eliminating filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion, and clean air make the area a sanctuary for people.[25]

This view was further strengthened in the case of Penn Central Transportation Co v. New York City, in which the Court upheld the city's historic preservation law.[26]

The Free Speech Issue

The constitutional guarantee of free speech has been an issue in sign-related cases over the years,[27] but it came to the fore after the

U.S. Supreme Court extended protection to commercial speech in the mid-1970's.[28] However, there is no reported case of a state court overturning a billboard control ordinance because it inhibits the right of free speech. The only successful challenges to commercial speech limitation have dealt with the content of advertising.[29]

Most of the state court decisions regarding the free speech issue have emphasized the captive nature of billboard audiences, and the fact that billboards are essentially a use of the public roads. Thus, in the Brookline case mentioned earlier the court pointed out:

> Regardless of the extent which constitutional protection is afforded commercial advertising . . . we believe that due to the intrusive quality of billboards, passers-by, whether willing or not, are compelled to see the advertisements. The advertiser's message is thrust upon them as a captive audience in violation of the "cardinal principle that no person can be compelled to listen (or hear) against his will." . . . Thus we conclude that the petitioner's mimimal free speech interest does not outweigh the interests of the unwilling audience.[30]

In upholding a prohibition on billboards within the Town of Southampton, the New York Court of Appeals stated:

> We reject the plaintiff's contention that the prohibition on non-accessory billboards constitutes a violation of the right of free speech guaranteed by the first amendment. While the Supreme Court has held that commercial speech falls within the protection of the First and Fourteenth Amendments, the Court recognized that a state may regulate the time, place, or manner of commercial speech -- as opposed to its content --

to effectuate a significant government interest. We believe that the regulation of aesthetics constitutes such an interest.[31]

The Supreme Court of Colorado rejected arguments that a ban on off-premises signs in the Town of Steamboat Springs violated first amendment rights.[32] A Lubbock, Texas billboard control ordinance was upheld using similar reasoning:

> Although commercial speech is accorded first amendment safeguards, the manner in which commercial advertising is disseminated is subject to regulation.[33]

Maine's State-wide Ban on Billboards

In 1977 Maine joined Vermont and Hawaii in enacting a state-wide ban on all off-premises advertising signs.[34] The statute prohibited billboards with a few exceptions including political signs erected within three weeks of an election, and signs for certain non-commercial activities, and substituted a system of small directional signs on the right-of-way. The Act, when challenged by two outdoor advertising companies, was upheld by the Federal District Court.[35] The sign companies appealed.

The First Circuit Court of Appeals reversed the decision of the lower court, holding the Maine law violated non-commercial free speech.[36] The decision was of little comfort to the outdoor advertising industry, however, since the ban on commercial billboards was upheld:

> Where commercial speech is concerned we could have little reservation in holding that the statute directly serves legitimate state interest and . . . that these interests could not be served as well by a more limited restriction on commercial speech.[37]

Following this decision, the legislation was revised and re-enacted in 1981 to allow more political and other non-commercial signs.[38]

The San Diego Case

San Diego enacted an ordinance in 1972 banning all off-premise advertising signs and requiring the removal of existing billboards following the expiration of an amortization period.[39] The sign industry attacked the validity of the ordinance, and the trial court held that it was an unreasonable exercise of the police power, and an abridgement of first amendment guarantees of free speech. The appeals court agreed. The California Supreme Court reversed, upholding the ordinance.[40] In doing so, the court specifically overruled the 1909 Varney & Green v. Williams decision, holding that decision was:

> Unworkable, discordant with modern thought and the scope of the police power, and therefore compels forthright repudiation.
>
> Because this state relies on its scenery to attract tourists and commerce, aesthetic considerations assume economic value. Consequently, any distinction between aesthetic and economic grounds as a justification for billboard regulation must fail.
>
> Present day city planning would be virtually impossible under a doctrine which denied a city authority to legislate for aesthetic purposes under the police power.[41]

The court also held that the ordinance did not abridge freedom of speech, relying on support from other state court decisions and the Supreme Court's affirmance of decisions in several state cases.[42]

In a decision involving five separate opinions, the United States Supreme Court upheld the ban on commercial billboards in the San Diego

ordinance, but ruled the restrictions on non-commercial advertising to be an unconstitutional restriction of free speech.[43] The decision, which could not be considered one of the Court's most outstanding, was characterized by Justice Rehnquist as, "a Tower of Babel, from which no definitive principles can be clearly drawn."[44]

The plurality, Justices White, Stewart, Marshall, and Powell, reviewed the four-part test for determining the validity of government restrictions of commercial speech as set forth in Central Hudson v. Public Service Commission.[45]

> (1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and (4) reaches no farther than necessary to accomplish the given objective.[46]

The four justices ruled the ban on commercial billboards in the San Diego ordinance met this test. They held the stated objectives of traffic safety and aesthetics definitely qualified as "substantial governmental interests."[47] They also held that:

> The city has gone no farther than necessary in seeking to meet its ends. Indeed, it has stopped short of fully accomplishing its ends: It has not prohibited all billboards, but allows on-site advertising and some other specifically exempted signs. . .
>
> In sum, insofar as it regulates commercial speech the San Diego ordinance meets the constitutional requirements of Central Hudson, supra.[48]

In their separate opinions, Justices Stevens, Burger, and Rehnquist agreed that the city could totally ban commercial billboards without violating commercial free speech.[49]

Because of the exceptions in the ordinance for on-site signs, however, the plurality concluded the ordinance gave greater protection to commercial than to non-commercial speech, and on this basis they declared the ordinance unconstitutional.[50] They also felt the ordinance was discriminatory because it permitted religious symbols, signs designating historical sites, time and temperature signs, governmental signs, and temporary political signs to the exclusion of other non-commercial messages.[51]

Justices Brennan and Blackmun concurred with the plurality. They disagreed in upholding the ban on commercial billboards in San Diego, however, concluding that the city had not demonstrated a total ban was necessary to achieve a substantial governmental purpose.[52] On the other hand, they did not rule out total billboard prohibitions if a community could demonstrate that this action was part of a larger community commitment to aesthetics. Specifically, they referred to Williamsburg, Virginia, as an example.

To summarize this confusing decision:

1. The San Diego ordinance was struck down because the Court felt it restricted non-commercial speech, a view shared by six of the justices.

2. Seven of the justices felt a total ban on commercial billboards was acceptable. The remaining two stated that a total ban could be permissible, if the community demonstrated an overall commitment to aesthetics.

The Highway Beautification Act

Perhaps no environmental or land-use issue evoked more discussion and debate during the 1950's and 1960's than did aesthetics and sign control. This movement culminated in the Highway Beautification Act of 1965 which promised to remove existing billboard blight from our rural roadsides and prevent its future spread.[53] In practice, however, the Act has largely been a failure, accomplishing neither objective and being used by the outdoor advertising industry to promote their own interests and to negate court decisions favorable to aethetic regulation.[54] Indeed, legislative proposals to repeal the Act have have led to the ironic situation in which environmental organizations that originally fought for the passage of the Act have been supporting its repeal while the billboard industry has become the Act's vigorous champion.

Control of New Signs

The Highway Beautification Act has been very ineffective in controlling the erection of billboards along our rural roadsides. New signs were supposed to be errected only in areas of commercial use and were made subject to size, spacing and lighting criteria. Unfortunately for the stated objectives of the Act, the Secretary of Transportation was not allowed to set any national standards, but was to enter into agreements with the states based on "customary use." Customary use was defined in a rather curious way.

The maximum allowable size in most states was set at 1200 square feet, approximately twice the size of the largest billboards normally erected along the interstate system, and as large as a medium-size three bedroom house.[55] "Customary spacing" in most of the states was defined as every 500 feet on the interestate system, every 300 feet on the

primary system outside cities, and every 100 feet on the primary system within municipalities. Since two billboards are permitted at each site, 42 billboards per mile are allowed under the Act along any portion of the interstate system that is is in a commercially or industrially zoned area. The comparable figure on the primary system is 70 faces per mile, while within municipalities the possible sign faces reach the somewhat absurd level of 212 per mile. To contend, therefore, that the size and spacing requirements serve as any effective control of billboards is obviously absurd.

Since the size and spacing requirements contained in most of the agreements with the states amount to virtually no control of outdoor advertising, the designation of commercial and industrial areas becomes all important. In practice, many local communities, and particularly rural counties, have attempted to circumvent the Act by zoning long stretches of rural highway as commercial and industrial. The absence of any requirement that such areas actually contain commercial or industrial land uses, and the acceptance by the Federal Highway Administration of such "phony zoning" has resulted in new billboards being erected in a great number of areas that are rural in character.[57]

Removal of Nonconforming Signs

As noted above, communities have traditionally eliminated nonconforming signs through amortization under the police power. Despite this, and the fact that twenty-two states were already removing nonconforming billboards under the earlier Bonus Law through this use of the police power, the 1965 Act required the payment of cash compensation for sign removals. This requirement, and particularly the 1978 amendment that mandated cash compensation whenever a nonconforming sign along an

or primary highway is removed under any state or local land-use control, environmental, or zoning law, was a tremendous triumph for the billboard industry.[56] Not only was the cost of the removal program raised beyond the realm of possibility, the latest estimate to complete the program being in the range of $1.3 to $3.7 billion depending upon assumed rates of inflation, the Act has been used by the outdoor advertising industry as the basis for passage of laws in many states requiring the payment of compensation for the removal of any off-premise sign wherever located.[57] Thus, the "beautification" act has been used as a vehicle to block local billboard removal programs, long one of the sign industry's most cherished objectives.

To summarize briefly, over the past twenty-five years or so, regulations designed to control billboard blight and other forms of visual ugliness have fared quite well in the courts. Prevailing judicial thought now holds that (1) aesthetic reasons alone are sufficient justification for the imposition of the police power, (2) a state or municipality can impose a total ban on billboards, and (3) forced removal of nonconforming signs after a reasonable amortization period does not constitute a "taking" of private property. At the same time, and particularly during the past decade, billboard control legislation has fared very poorly in the legislatures, the chief villian being the perverted Highway Beautification Act.

The Future of Billboard Controls

It has been conclusively established that a state or community can protect itself from billboard blight through the use of its police powers, even to the extent of totally banning outdoor advertising

signs. The remaining questions are:

(1) should billboards be severely controlled or abolished in certain communities and areas?

(2) do those who value scenic beauty have the will and political power to accomplish their objectives?

It has long been held that billboards are not a use of private property, but rather a use of the public roadways. This view was very clearly expressed in the classic case General Outdoor Advertising Company v. Department of Public Works:[58]

> (Outdoor advertising signs) constitute a franchise upon the public highways...(The billboard interests) are not asserting a natural right...They are seizing for private benefit an opportunity created for quite a different purpose by the expenditure of public monies.

Billboard advertisers create a negative externality for the public by thrusting their large intrusions on the privacy of those who use the public roads and highways. This impact is particularly severe in scenic areas, both rural and urban. Billboard control or prohibition regulations, therefore, are simply a use of the police power to prevent and eliminate visual polution and invasion of privacy, both worthy objectives of public policy.

The Highway Beautification Act experience vividly demonstrates how difficult a battle is the legislative and regulatory fight for achievement of scenic beauty through billboard controls. The outdoor advertising industry is known for having one of the most lavishly financed and effective lobbies in Washington. They can also mobilize relatively vast

resources to attack billboard regulations at the state and local level. Environmental groups, on the other hand, have largely abandoned the field to the billboard barons, having moved on to other issues they consider more pressing and more important. The realistic outlook for the foreseeable future, therefore, is for more and larger billboards spread along more and more of both urban and rural roadsides.

Footnotes

[1] These earlier periods were reviewed in Albert S. Bard, "Aesthetics and the Police Power," The American Journal of Economics and Sociology, Vol. 15, pp. 265-275.

[2] For a more complete discussion of the history of aesthetic regulation, see Norman Williams, Jr., American Planning Law: Land Use and the Polic Power, Chapters 11 and 119.

[3] City of Passic v. Patterson Bill Posting, 72 N.J.L. 285, 62 A. 267 (1905).

[4] Varney & Green v. Williams, 155 Cal. 318, 100 P. 867 (1909). Other similar cases include: Commonwealth v. Boston Advertising Co., 188 Mass. 348, 74 N.E. 601 (1905); Curran Bill Posting & Distributing Co. v. City of Denver, 47 Colo. 221, 197 P. 261 (1910); and City of Chicago v. Gunning System, 114 Ill. App. 377 (1904), affd. 73 N. E. 1035 (1905).

[5] St. Louis Gunning Advertisement Co. v. City of St. Louis, 235 Mo. 99, 137 S.W. 929 (1911), app. dismissed, 231 U.S. 761 (1913). The flavor of the reasonging of the court to avoid basing their decision on aesthetics is shown in the following excerpt from the decision:

> (T)his is a legitimate and honorable business, if honorably and legitimately conducted, but every other feature and incident thereto have evil tendencies, and should for that reason be strictly regulated and controlled. The signboards and billboards upon which this class of advertisement are displayed are constant menaces to the public safety and welfare of the city; they endanger the public health, promote immorality, constitute hiding places and retreats for criminals and all classes of miscreants. They are also inartistic and

unsightly. In cases of fire they often cause their spread and constitute barriers against their extinction; and in cases of high wind, their temporary character, frail structure and broad surface, render them liable to be blown down and to fall upon and injure those who may happen to be in their vicinity. The evidence shows and common observation teaches us that the ground in the rear thereof is being constantly used as privies and dumping ground for all kinds of waste and deletrious (sic) matters, and thereby creating public nuisances and jeopardizing public health; the evidence also shows that behind these obstructions the lowest form of prostitution and other acts of immorality are frequently carried on, almost under the public gaze; they offer shelter and concealment for the criminal while lying in wait for his victim; at last, but not least, they obstruct the light, sunshine, and air, which are so conducive to health and comfort.

[6]Thomas Cussack Co. v. City of Chicago, 267 Ill. 344, 108 N.E. 304 (1914), affd. 242 U. S. 526 (1917).

[7]259 N.Y. 327, 182 N.E. 5 (1932)

[8]General Outdoor Advertising Co. v. City of Indianapolis, 202 Ind. 85, 172 N.E. 309 (1930).

[9]General Outdoor Advertising Co. v. Department of Public Works, 289 Mass. 149, 193 N.E. 799 (1936).

[10]Berman v. Parker, 348 U.S. 26 (1954).

[11]People v. Stover, 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734, appeal dismissed, 375 U.S. 42 (1963).

[12]Id. at 48.

[13]Cromwell v. Ferrier, 279 N.Y.S.2d 22, 225 N.E.2d 749, 753 (N.Y. Ct. of App. 1967).

[14]State v. Diamond Motors Inc., 429 P.2d 825 (1967).

[15]Id. at 830.

[16]Westfield Motor Sales Co. v. Town of Westfield, 129 N.J. Super 538, 324 A.2d 113 (1974). This decision extended an earlier one by the court which had approved the prohibition of billboards in the Borough of Metuchen on the basis of aesthetics and economics: "The aesthetic impact of billboards is an economic fact which may bear heavily upon the enjoyment and value of property. It is a relevant zoning consideration." United Advertising Corp. v. Metuchen, 42 N.J. 1, 193 A.2d 447 (1964).

[17]Id. at 116.

[18]John Donnelly & Sons, Inc. v. Outdoor Advertising Bd., 339 N.E.2d 709 (1975).

[19]Inhabitants of the Town of Boothbay v. National Advertising Co., 347 A.2d 419 (Maine 1975).

[20]Modjeska Sign Studios, Inc. v. Berle, 402 N.Y.S.2d 359, 373 N.E.2d 255 (1977).

[21]Veterans of Foreign Wars v. City of Steamboat Springs, 575 P2d 835 (1978).

[22]Newman Signs, Inc. v. Hjelle, 268 N.W. 2d 741 (1978).

[23]Combined Communications Corp. v. City and County of Denver, 542 P.2d 79 (1975).

[24]Art Neon Co. v. The City and County of Denver, 488 F.2d 118 (1973), cert. denied 417 U.S. 932 (1974).

[25]Village of Belle Terre v. Boras, 416 U.S. 1 (1974).

[34]Traveler Information Services Act, 23 M.R.S.A. 1901-1925.

[35]John Donnelly & Sons v. Mallar, 453 F. Supp. 1272.

[36]John Donnelly & Sons v. Campbell, 639 F.2d 6, 16 (1980).

[37]Id. at 15.

[38]Charles F. Floyd, "Requeim for the Highway Beautification Act," Journal of the American Planning Association, Forthcoming.

[39]San Diego Ordinance No. 10795 (New Series), enacted March 14, 1972.

[40]Metromedia, Inc. v. City of San Diego, 154 Cal. Rptr. 212 (1979, 610 P.2d 407 (1979).

[41]Id. at 412.

[42]Id. at 416.

[43]Metromedia, Inc. v. City of San Diego, 49 USLW 4925, 101 S.Ct. 2882 (1981).

[44]Id at 4943.

[45]447 U.S. 557 (1980).

[46]Id. at 4930.

[47]Id.

[48]Id. at 4931.

[49]Id at 4937 and 4939.

[50]Id. at 4931.

[51]Id.

[52]Id. at 4936.

[53]23 U.S.C. Sec 131.

[54]For a more complete discussion see, Charles F. Floyd and Peter J. Shedd, Highway Beautification: the Environmental Movement's Greatest Failure, Westview Press, 1979, and Charles F. Floyd, "Requiem for the

[26]Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978). For a state-by-state analysis of judical rulings on aesthetics as a justification of the use of the police power, see Samuel Bufford, "Beyond the Eye of the Beholder: A New Majority of Jurisdictions Authorize Aesthetic Regulation," 48 UMKC Law Review 125 (1980).

[27]For example, the Court had upheld ordinances that banned the distribution of advertising handbills on New York City's streets (Valentine v. Chrestensen, 316 U.S. 52 (1942); that prohibited the use of sound trucks on city streets (Kovacs v. Cooper, 336 U.S. 77 (1949); that prohibited door-to-door solicitations of magazine subscriptions (Breard v. Alexandria, 341 U.S. 622 (1951); and that disallowed political advertising on city bus placards (Lehman v. City of Shaker Heights, 418 U.S. 298 (1974).

[28]Virginia Pharmacy Bd. v. Virginia Consumer Council, 425 U.S. 748 (1976), advertising of prices of pharmacists; Bigelow v. Virginia, 421 U. S. 809 (1975), advertising of abortion services; Bates v. State Bar of Arizona, 422 U.S. 350 (1977), advertising by attorneys.

[29]For example, the New York Court of Appeals struck down as an unconstitutional limitation on advertising content a Westchester County ordinance which forbade any signs in or near gas stations which referred directly or indirectly to price of gasoline. People v. Mobil Oil Corp., 48 N.Y.2d 192, 422 N.Y.S.2d 33, 397 N.E.2d 724 (1979).

[30]6 ELR 20127.

[31]Suffolk Outdoor Advertising v. Hulse, 43 N.Y.2d 483, 373 N.E.2d 263 (1977), appela denied 439 U.S. 808 (1978).

[32]Veterans of Foreign Wars v. City of Steamboat Springs, 575 P.2d 835 (Colorado 1978).

[33]Lubbock Poster Co. v. City of Lubbock, 569 S.W.2d 935 (1978).

Highway Beautification Act," Journal of the American Planning Association. Forthcoming.

[55]Bruce Brennan, Outdoor Advertising Control Under the Highway Beautification Act of 1965: A Review of State Statutory and Case Law, Transportation Research Board, NCHRP Project 20-6, Study No. 54, March 1979.

[56]23 U.S.C. 131(g).

[57]Federal Highway Administration, Projection of Outdoor Advertising Control Program Completion Costs, July 1980.

[58]General Advertising Co., Inc. v. Department of Public Works, 289 Mass. 149, 193 N.E. 799 (Mass. Sup Jud. Ct. 1935) app. dismissed 296 U.S. 542 (1935) and 297 U.S. 725 (1936). Similar views were expressed in Churchill and Tait v. Rafferty, 32 Philippine Rpts. 580, (Phil. Isl. Sup. Ct. 1915), app. dismissed 248 U.S. 591 (1918), and Modjeska Sign Studios, Inc. v. Berle, 402 N.Y.S.2d 359, 373 N.E.2d 255 (N.Y. Ct. of App. 1977).