

A G R E E M E N T

THIS AGREEMENT, made this 6th day of January, 196~~8~~⁷, between the State Road Commission of West Virginia, hereinafter called Commission, and The United States of America, by the Secretary of Transportation, acting through the Federal Highway Administrator, hereinafter called Administrator.

W I T N E S S E T H:

WHEREAS, the Congress of the United States has declared that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the Federal-aid Interstate and Primary Systems should be controlled in order to protect the public investment in such public highways, and to promote safety, recreational value and preserve the natural beauty; and

WHEREAS, Section 131(d), Title 23, United States Code, authorizes the Secretary of Transportation to enter into an agreement with the several States to determine the size, spacing and lighting of signs, displays and devices within zoned and unzoned commercial and industrial areas, consistent with customary use in the several States; and

WHEREAS, Section 131(d), Title 23, United States Code, further authorizes the Secretary to enter into an agreement relating to the definition of an unzoned commercial or industrial area with the several States; and

WHEREAS, Chapter 17, Articles 2A and 22, of the Official Code of West Virginia, 1931, as amended, authorizes the State Road Commissioner of West Virginia, to enter into an agreement with the Secretary of Transportation with respect to size, spacing and lighting, and a definition of an unzoned commercial or industrial area; and

WHEREAS, the Legislature of the State of West Virginia has found and declared that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways and that outdoor advertising is an integral part of the business and marketing function and an established segment of the national economy which serves to promote and protect private investments in commerce and industry; and

WHEREAS, the Legislature of West Virginia has further declared that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to Federal-aid Interstate and Primary highways should be regulated in order to protect the public investment, to promote the recreational value of public travel, to preserve the natural beauty and to promote the reasonable, orderly and effective display of such signs, displays and devices; and

WHEREAS, the Legislature further found and declared that fiscal actualities reflect that the people of the State of West Virginia would suffer economically if the State failed to participate in the allocation and apportionment of Federal-aid Highway Funds, more specifically, that a reduction as called for in Section 131(b), Title 23, United States Code, would necessitate increased local taxation to support and maintain the State Highway program and system; and

WHEREAS, the Commission and the Secretary of Commerce, acting through the Federal Highway Administrator, entered into an agreement dated the 19th day of June, 1961, relating to the erection, maintenance, and control of outdoor advertising signs, displays and devices in areas adjacent to the National System of Interstate and Defense Highways, in accordance with the provisions of Section 131, Title 23, United States Code, and the National Standards in effect as of June 30, 1965; and

WHEREAS, Section 131(j), Title 23, United States Code, provides that Commission shall be entitled to receive bonus payments as set forth in said agreement provided Commission maintains the control required under such agreement; and

WHEREAS, Commission desires to implement and carry out said agreement, in order to remain eligible to receive payment of the one-half of one per cent increase in the federal share payable on account of any project on the Interstate System within the State of West Virginia.

NOW, THEREFORE, in consideration of the covenants herein set out and the benefits resulting in full participation in the federal highway program by the people of West Virginia, Commission and Administrator agree as follows:

I. DEFINITIONS - for purposes of this agreement the following terms are herein defined:

A. Act. The term "Act" shall mean Title I, Section 131, Title 23, United States Code, (1965) commonly referred to as the Highway Beautification Act of 1965.

B. Sign or Signs. "Sign" or "Signs" shall mean and include any outdoor advertising sign, display or device as defined in Chapter 17, Article 22, Section 2, of the Official Code of West Virginia, 1931, as amended.

C. Interstate Highway. "Interstate Highway" shall mean that portion of the system of highways in West Virginia, which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as Interstate Highway and which are classified as Expressway, under the provisions of Chapter 17, Article 4, Section 2, of the Official Code of West Virginia, 1931, as amended.

D. Federal-aid Primary Highway. "Federal-aid Primary Highway" shall mean that portion of the system of highways in West Virginia, which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as a Federal-aid Primary Highway.

E. Controlled-Access Highway. A "Controlled-Access Highway" shall mean any State highway or portion thereof which for purposes of Federal-aid funding, has been designated a Federal-aid Primary highway and further which has been designated a controlled-access highway pursuant to the authority vested in the Commissioner in Chapter 17, Article 4, Sections 39, 40 and 41, of the Official Code of West Virginia, 1931, as amended.

F. Zoned Commercial or Industrial Area. A "Zoned Commercial or Industrial Area" shall mean an area zoned for business, trade, industry, or commerce, pursuant to State, county, municipal, or local law, ordinance or regulation.

G. Unzoned Commercial or Industrial Area. An "Unzoned Commercial or Industrial Area" shall mean those areas not zoned by State or local law, regulation or ordinances on which there is located one or more commercial or industrial activities and the area along the highway extending outward 800 feet from and beyond the edge of such activity.

Unzoned commercial or industrial areas shall not include land on the opposite side of the highway from said activities except as noted below:

On two-lane non-controlled access highways the unzoned commercial or industrial area may be located on the opposite side of the highway from the commercial or industrial activity if in the opinion of the Commission the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable, and provided the land on the opposite side of the highway has not been designated scenic by the Commission.

In no instance will the unzoned commercial or industrial area established by a single activity include land on both sides of the highway.

In determining unzoned commercial or industrial areas, measurements shall be made from the farthest or outermost edge of the used area of the commercial or industrial activity, structures, driveways, parking lots, storage areas, or other areas constituting an integral part of such commercial or industrial activity.

H. Commercial or Industrial Activity. A "Commercial or Industrial Activity" shall mean those activities generally recognized as commercial and industrial by zoning authorities in the State of West Virginia, except that none of the following activities shall be considered commercial or industrial:

- (1) Outdoor advertising structures.
- (2) Agricultural, forestry, grazing, farming, or other related activities, including, but not limited to wayside produce stands.
- (3) Activities conducted in a building or structure principally used as a residence.

- (4) Railroad tracks or minor sidings.
- (5) Activities more than 660 feet from the main traveled way.
- (6) Transient or temporary activities.

I. Intervening Building, Structure or Roadway. An "Intervening Building, Structure or Roadway" shall mean a building, overhead structure, or roadway which is located in such a manner that from any point along the highway, it obscures all signs, displays and devices on the same side of the highway within the minimum spacing distances set forth herein. Only roads, streets, and highways which enter directly into the main traveled way of the highway system being considered will be regarded as intervening roadways.

J. Main-traveled way. The "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

K. Commissioner. "Commissioner" shall mean the State Road Commissioner of West Virginia or his authorized representative.

L. Administrator. "Administrator" shall mean the United States Secretary of Transportation or his authorized representative.

II. SCOPE OF AGREEMENT

This agreement shall apply to all those portions of the highways within the State Highway System designated and classified or redesignated and reclassified for federal-aid funding purposes as Federal-aid Interstate or Federal-aid

Primary highways, which are located in zoned or unzoned commercial or industrial areas adjacent to and within 660 feet of the nearest edge of right of way of said highway.

III. CONTROL

The Commissioner hereby agrees that in all areas within the scope of this agreement, he shall control or cause to be controlled, the erection and maintenance of outdoor advertising signs erected subsequent to the effective date of this agreement, and visible as to informative content from the right of way of Federal-aid Interstate and Primary highways, other than those advertising the sale or lease of property on which they are located or signs, displays or devices advertising activities conducted upon the property on which they are located.

IV. SIZE, SPACING AND LIGHTING

The following criteria shall apply to all signs erected subsequent to the date of this agreement within zoned or unzoned commercial or industrial areas within the State of West Virginia.

A. SIZE

(1) The maximum area of any sign shall be 1200 square feet with a maximum height of 25 feet and a maximum length of 60 feet, inclusive of cutouts and extensions, excluding decorative bases, and structural supports.

(2) A sign may contain one or two advertisements per facing, not to exceed the maximum area.

(3) Back-to-back or V-type signs shall be permitted and shall be treated as one structure with an area of 1200 square feet permitted for each facing.

B. SPACING

(1) Federal-aid Interstate Highways and Controlled-Access Facilities Within Zoned and Unzoned Commercial or Industrial Areas:

- (a) No two signs shall be spaced less than 500 feet apart on the same side of the highway.
- (b) No sign shall be located within 500 feet of an interchange, measured along the interstate or controlled-access facility, from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way. The distance requirement from an interchange set forth above shall not apply within the boundaries of any incorporated municipality, ~~with a population of 25,000 or more if the Commissioner deems such to be consistent with customary use in the area.~~

EKB
or

(2) Other Federal-aid Primaries:

- (a) Outside an incorporated municipality - no two signs shall be spaced less than 300 feet apart on the same side of the highway.
- (b) Inside incorporated municipalities - no two signs shall be spaced less than 100 feet apart on the same side of the highway.

(3) The foregoing spacing requirements shall not apply to the signs which are separated by an intervening building, structure or roadway.

(4) Notwithstanding any other provision of this section, signs which are double decked, side-by-side, back-to-back, or V-type will be permitted if they meet the requirements of Subsection A above.

(5) Official and "on premise" signs as defined in Section 131(c), Title 23, United States Code, shall not be counted nor shall the measurements be made from them for the purposes of determining compliance of spacing regulations.

C. LIGHTING

Signs may be illuminated, subject to the following restrictions:

(1) No outdoor advertising may contain lighting which is not shielded and any lighting shall be of such low intensity as not to cause glare or impair the vision of an operator of any motor vehicle.

(2) No sign shall be illuminated by any rapid flashing, intermittent light or lights.

(3) No sign shall be illuminated so as to obstruct the view of any connecting road or intersection or to obscure an official traffic device or signal.

D. LOCAL AUTHORITY

In lieu of exercising control of size, spacing and lighting, of outdoor advertising signs in zoned commercial and industrial areas as set forth herein above, the Commissioner may certify to the Administrator that effective control has been established within such areas, including the regulation of size, spacing and lighting of outdoor advertising signs consistent with the purpose of the Highway Beautification Act of 1965, and with customary usage within the State of West Virginia.

V. BONUS ACT PROVISION

The provisions of this agreement shall not be considered to abrogate the terms and provisions of that certain agreement bearing the date of the 19th day of June, 1961, made and entered into by and between the Secretary of Commerce of the

United States and the State Road Commissioner of West Virginia, relating to the regulation of outdoor advertising adjacent to highways within the Interstate System and the terms and provisions of that said agreement are incorporated by reference into this agreement. In the event of a conflict between the provisions of this agreement and said agreement dated June 19, 1961, the agreement containing the more strict provisions shall prevail.

VI. AMENDMENTS

This agreement shall be subject to modification or amendment in accordance with Chapter 17, Article 22, Section 8, of the Official Code of West Virginia, 1931, as amended.

In the event the provisions of the Highway Beautification Act of 1965, are amended by subsequent action of Congress, or Chapter 17, Article 22, of the Official Code of West Virginia, 1931, as amended, is amended by subsequent action of the Legislature of West Virginia, the Administrator and the Commissioner reserve the right to renegotiate this agreement, and to modify it to conform with any such amendment of the Act or Chapter 17, Article 22, of the Official Code of West Virginia, 1931, as amended.

VII. INTERPRETATION

The provisions contained herein shall constitute the acceptable standards for effective control of outdoor advertising signs within the scope of this agreement.

In controlling outdoor advertising adjacent to the Federal-aid Interstate and Primary Highway Systems within the State pursuant to the Highway Beautification Act of 1965, and this agreement, the Commissioner shall not be required to remove

or cause to be removed any sign advertising natural wonders or scenic or historical attractions until a reasonable length of time subsequent to the promulgation of National Standards for such signs pursuant to Section 131(c), Title 23, United States Code.

VIII. EFFECTIVE DATE

This agreement shall become effective when executed on the behalf of the State of West Virginia and the United States of America.

IN WITNESS WHEREOF, the Commissioner and Administrator have executed this agreement as of the 6th day of January, 196~~8~~⁹.

STATE OF WEST VIRGINIA,
STATE ROAD COMMISSIONER

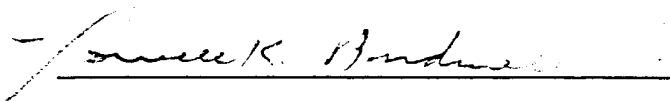


ATTEST:



EXECUTIVE SECRETARY

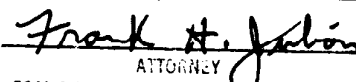
UNITED STATES OF AMERICA,
FEDERAL HIGHWAY ADMINISTRATOR



ATTEST:

Approved as to FORM this

16 Day of Dec., 19 68



ATTORNEY
LEGAL DIVISION, STATE ROAD COMMISSION
OF WEST VIRGINIA