

Sign Control News

Newsletter of the Center for Sign Control • A project of the Coalition for Scenic Beauty

Volume 1, Number 2, July-August 1984

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NAEGELE FILES SUIT AGAINST RALEIGH, N.C., SIGN ORDINANCE

Naegele Outdoor Advertising Co. of Raleigh-Durham has filed suit in a U.S. District Court to overturn the city of Raleigh's nine-month-old sign ordinance. As reported in the Raleigh Times (7/18/84), the suit charges that the ordinance takes property without due process of law, is an arbitrary and unreasonable exercise of police power, and abridges the rights of free speech and freedom of the press guaranteed in the First Amendment.

Raleigh officials and billboard control advocates expressed little concern about the Naegele suit. Raleigh's city attorney, Thomas A. McCormick, Jr., said he was confident the ordinance was drafted in a way that would be upheld. Norma DeCamps Burns, a member of a commission that pushed for the ordinance, told the Times the suit was "just saber-rattling" to intimidate other municipalities that are considering regulating signs.

Raleigh's confidence may well be justified. The Raleigh ordinance reduced the maximum size of billboards and required the removal of nonconforming billboards by amortization within 5 1/2 years. (The removal provision does not apply to the 40 percent of Raleigh's signs that are on federal-aid highways. Federal law requires a cash payment for removing such signs.) Last year, the North Carolina Court of Appeals upheld an even stricter billboard ordinance in Nags Head, N.C., that prohibited all off-premise commercial signs and provided a five-year amortization period for existing signs. The N.C. Supreme Court refused to review the decision. And in May, the U.S. Supreme Court ruled in favor of a sign ban in Los Angeles, saying that the "visual assault" caused by an accumulation of signs "constitutes a significant substantive evil within the City's power to prohibit" (City Council of L.A. v. Taxpayers for Vincent).

STATES GET TOUGH ON TREE-CUTTING

In June, Michigan and California showed they would no longer put up with the illegal cutting of trees in front of billboards.

According to the Vacaville Reporter (6/22/84), the California Department of Transportation has gone to court to collect \$192,000 from a tree-cutting service it says illegally cut trees that were blocking the view of a billboard on Interstate 80. The 30 trees cut were valued at \$30,752, but the department is asking for \$92,256 under a civil code provision that allows the awarding of triple damages for willful trespassing to collect timber. The department is seeking \$100,000 in exemplary damages to deter other illegal cutting. State officials say such cutting is a statewide problem, even though California has a process for billboard advertisers to request removal of trees blocking the view of billboards.

In Michigan, state officials have announced they plan to take a tougher stand against the illegal cutting of trees in front of billboards, according to the Detroit Free Press (6/8/84). Twelve hundred trees have been illegally cut on Interstate 75 between Bay City and Flint over the past decade--some of them planted 25 years ago by welfare workers to beautify the highway. Two years ago, Michigan passed a law allowing billboard companies to clear foliage in front of billboards if they make a formal request, but the illegal cutting has continued. State forester Timothy Chick said the state has decided to hold billboard companies responsible for the cutting, regardless of who actually did it. The companies will be required to landscape the damaged area or pay triple the cost of replacing the trees.

CONGRESS CONSIDERS NEW RESTRICTIONS
ON LOCAL AND STATE SIGN CONTROL

Congress is considering legislation that would further limit the ability of state and local governments to control billboards and provide another opportunity for outdoor advertisers to get public payments for removal of their signs.

o In 1965, Congress told states that unless they wanted to lose 10 percent of their highway funds, they had to pay just compensation for removing signs along federal-aid highways, interfering with the state's ability to remove signs through amortization.

o In 1978, Congress told local governments that they, too, had to pay just compensation to remove signs along federal-aid highways--even if the removal was under a local ordinance--or the state would lose a portion of its highway funds, thus interfering with the ability of local governments to remove signs using their traditional police powers.

o Now Congress is considering two amendments to federal transportation laws that would in some cases require state and local governments to pay outdoor advertisers for displacing privately owned signs from state highway or mass transit property--or they will lose their federal highway or transit funds--thus interfering with the right of state and local governments to manage their property as they see fit.

What the Amendments Do. The amendments in question have been approved by the House of Representatives as part of the Surface Transportation Act of 1984 (H.R. 5504), which provides federal funding both for highway and mass transit projects. The two amendments are very similar, but one (Section 148) applies to highways, while the other (Section 217) applies to mass transportation systems. Both amendments limit the state or local government's ability to remove from public property "privately owned structures" that provide rent to the state or local governments. "Privately owned structures" is not defined in the amendments, but could include signs on railroad rights-of-way, on transit stations, possibly on bus shelters and in subway stations, on buses and subway cars, and perhaps some signs along highways. It also could include buildings, parking lots, utilities, mobile homes--any physical presence allowed by a state or local government on its right-of-way.

The amendments prohibit state and local governments from requiring the removal of any such structures unless they pay the cost of relocating them. For highways, the Secretary of Transportation will not approve a highway project unless the state agrees to this provision. For mass transit, this is an out-and-out prohibition for any structure on the property of a mass transit system that receives federal assistance. The only exceptions to the relocation payment requirement are (1) if the structure's removal is necessary for the operation, maintenance, or construction of the project or (2) if the displacement is authorized by state law and is in accordance with the rental agreement.

Effects of the Amendments. The amendments could cause numerous problems for and place unfair burdens on state and local governments. First, they would have to pay relocation costs for the removal of rental structures even if the lease specifically allowed the government to require such removal or specifically required the structure to be removed at the end of the lease. No such requirement currently exists in federal law, which generally permits states and localities to administer their lands as would private landowners--a policy that has encouraged the use rights-of-way to the mutual benefit of the user and the state or local government.

In addition, many state and local governments may lack the legal authority to provide relocation costs in such circumstances, thus giving such rental structures permanent occupancy on highway and transit system property. In such cases, the state or local agency could fall back on the exception that allows such displacement if authorized by state law, but few if any states currently have such laws, and passing them over billboard industry opposition could be difficult.

Senate Action. The issue is now in the Senate. The Senate highway bill, S. 2527, is expected to go to the floor for a vote after Labor Day. Neither of the amendments is currently included in the bill (which addresses only highway funding, not mass transit), nor have any Senators have indicated an interest in adding them. The bill is likely to pass the Senate without the amendments, in which case the decision whether to include them in the final highway bill will have to be fought out in a House-Senate conference committee.

LOCAL CHAMBERS OF COMMERCE WANT BILLBOARD CONTROL

A survey conducted by the Boone Area Chamber of Commerce in North Carolina discovered that 78 percent of businesses in the county want some form of sign regulation, and 23 percent favor a total ban. Thirty-six percent of the 470 businesses that received the survey responded. According to a story in the Journal Patriot

(6/7/84), the chamber sent the survey results to the planning board, but made no recommendation for or against a sign regulation. The board has been studying sign regulations in response to a request from the Blowing Rock Chamber of Commerce for a moratorium on billboard construction on US 321 between the two towns. On July 2, the Watauga County Board appointed a committee to study the issue of sign control, according to the Winston-Salem Journal (7/4/84).

TOBACCO AND ALCOHOL DOMINATE BILLBOARD SPACE

More than 50 percent of the billboard industry's revenues in 1983 came from tobacco and alcohol beverage firms, according to a 1983 report by Leading National Advertisers, Inc. (LNA). The alcohol beverage industry spent \$31.4 million on outdoor advertising in 1983, accounting for about 15 percent of the total revenues. According to statistics in Beverage World (5/83), this represents a dramatic increase in outdoor advertising spending by the industry over the past 12 years--up 86 percent for beer and 590 percent for wine.

But the tobacco industry overshadows these figures. LNA says the industry spent \$204.1 billion--a full 30 percent of cigarette companies' advertising budgets--on outdoor advertising in 1983, providing 37.1 percent of all outdoor advertising revenues.

Some industry observers are concerned about the dependence of the outdoor advertising business on these two industries, and have been urging the billboard industry to seek out a broader range of advertisers. They may soon gain some converts. Tobacco companies and distilleries have cut back their budgets this year, at a potential loss to the billboard industry of \$70 million, according to the USA Today (7/11/84). William N. Wilkins, president of the Institute of Outdoor Advertising, told the newspaper, "This year, we're a little soft." Perhaps this helps explain why the outdoor advertising industry has so much "free" space to donate to charitable causes (see story, page 5).

ARKANSAS TOWN PASSES SIGN ORDINANCE WITH SUPPORT FROM LOCAL BUSINESS

The city council in Sherwood, Arkansas, voted unanimously to approve new sign restrictions following an appeal by the president of the local chamber of commerce for immediate adoption of the measure. According to the Sherwood Voice (6/28/84), the new ordinance restricts the number, size, and density of billboards, commercial signs, and portable signs. Existing signs have four years to come into compliance with the new restrictions. Tom Broks, of the North Pulaski County Chamber of Commerce, said that even though many of the chamber's members would have to alter their signs, most favored the restrictions.

The council members indicated that they might consider requirements for eliminating off-premise billboards in the future--a move supported by the town's former mayor and the local newspaper. A Sherwood Voice editorial (7/5/84) called sign controls "most appropriate to a residential community such as Sherwood because to keep residential property values high it is important for the city, including its business areas, to have an orderly, well kept appearance. Nothing can ruin such a community faster than sign clutter."

**FIBER OPTICS: ANOTHER DISTRACTION
SPONSORED BY THE BILLBOARD INDUSTRY**

The billboard industry has found a new way to get motorists to notice its ads while driving down the road at 55 mph: fiber optics. The industry bills this new development as an improvement over spot-lit, back-lit, or neon-lit billboards. Indeed, because of their high resolution, fiber optic billboards resemble a 20' by 20' television screen on the road.

In addition, fiber optics offers something regular poster billboards cannot: motion. Possible effects include exploding fireworks, messages being spelled out from left to right and back again, and moving company logos, according to Advertising Age (8/8/83). An unscientific survey of evening driver reactions quoted in Marketing and Media Decisions (8/82) found that "five out of seven drivers do a double-take as they pass the fiber optics displays" (emphasis added).

Fiber optics consists of a light source or lamp, several thousand acrylic fibers, and a display area made of a plexiglas-like material. The light travels from the source through these hair-like fibers and projects the picture on the display area. A color filter wheel provides the color.

You might think this elaborate new technology would be expensive. But promoters of the technology quoted in Advertising Age argue that fiber optic billboards allow ads to be changed simply and are much more cost efficient to run once the initial installation is paid for. These cost-cutting factors may entice outdoor advertisers to replace older billboards with fiber optics. Industry observers predict that fiber optics will become a billion-dollar industry by the 1990s.

In fact, a few of these signs are already in place on the West Coast and are now being introduced to some areas in the East. Advertising Age concludes that there are four "impressive advantages" to fiber optics: economic, practicality, visual impact, and esthetics.

BOAT BILLBOARDS

Just because there isn't a road doesn't mean you can't have a billboard. Now the outdoor advertising industry has found a new way to reach the beach crowd, once they've hit the sand: with boat billboards. According to a July 1 article in the Asbury Park Press, floating electronic billboards are now running in four locations along the New Jersey shore.

The electronic message is changed every hour so beach-goers don't see the same message twice, and advertisements are interspersed with the time, temperature, riddles, and even personal messages to hold the sunbathers' attention. Boat advertisers say their messages are more effective at reaching the beach crowd than airplane banners, because they can run longer messages and can operate along the boardwalk at night.

And you thought you were going to the beach to get away from it all.

BILLBOARD FREEBIES

Outdoor advertisers, always sensitive about their public image, are gaining some good press by donating billboard space for a variety of public service messages. In Pennsylvania, the Sharon Herald (5/26/84) reports that the state Association of Outdoor Advertisers has donated space on 100 billboards for a statewide campaign urging Pennsylvanian's to "greet a visitor" and "make a new friend." The campaign is intended to increase tourism by capitalizing on the state's friendly image. On the national scene, the national Outdoor Advertising Association of America has donated space on about 3,000 billboards for public service ads opposing drug abuse, featuring First Lady Nancy Reagan. The nationwide campaign is being conducted in conjunction with the Kiwanis Clubs.

The most controversial case is in Houston, where an outdoor advertising firm has donated space on more than 300 billboards to the Metropolitan Transit Authority to promote bus ridership. Local citizens, led by a local anti-billboard group, Billboards Limited, have protested the campaign because it works at cross purposes with efforts by the city of Houston and other local governments to reduce billboard blight.

The decision to advertise is also contrary to previous decisions on the issue. According to a June 28 article in the Houston Chronicle, voters rejected a proposal to place advertising on bus shelters in 1979, and in 1982, Metro's general manager removed advertisements from Metro buses, saying they detracted from Metro's image. The MTA board still decided to use the billboards through the summer, but has established a special committee to evaluate whether it would be appropriate to consider further use of outdoor advertising.

FAYETTEVILLE, ARKANSAS, GETS SUED AGAIN

In April, the U.S. Supreme Court in essence affirmed the right of Fayetteville, Arkansas, to remove 60 billboards when the court refused to review an Arkansas Supreme Court decision upholding the city's law. But Fayetteville still has to wait to take down these nonconforming signs, because it's been dragged into court again with a new challenge to its ordinance.

The initial suit against the city was filed by Donrey Communications Co., owner of 60 billboards that exceeded size and location limitations imposed by a 1972 Fayetteville sign ordinance. The ordinance amortized these signs over a four-year period, after which they were to be taken down without cash compensation. However, when Donrey went to court against the ordinance, the removal of its signs was delayed while the legal issues were being decided. But the Supreme Court decision in April not to review the Arkansas court's finding finally appeared to pave the way for the signs' removal and Fayetteville officials said they would give Donrey until mid-June to make some progress toward taking them down.

Meanwhile, a suit has been filed in U.S. District Court on behalf of 56 firms that use the signs to advertise and 45 landowners on whose property the signs are located, challenging the law once again. According to the Arkansas Gazette (6/26/84), the landowners charge that if the city's sign ordinances are enforced, they would be deprived of income (from \$100 to \$800 a year) without just compensation and that the ban represents an unconstitutional taking of property rights. The

suit names Donrey as one of the defendants, but some observers allege that Donrey is behind the new suit. Donrey has filed a cross-complaint against the city. The city of Fayetteville has filed a motion for summary judgment to speed a decision, and the court is expected to respond by the end of August.

NEW YORK LEGISLATURE PASSES JUST COMPENSATION BILL

Once again, the New York state legislature has passed a billboard compensation measure (S. 9935). Sources in New York said that the billboard industry was active in getting the measure passed just before a legislative recess.

One provision of the bill amends New York's sign law to prohibit the removal of billboards in commercial or industrial areas along federal-aid highways unless just compensation is paid. A state Department of Transportation official said this merely conforms New York law to the just compensation requirements of the Federal Highway Beautification Act.

A second provision, however, extends the just compensation requirement beyond federal-aid highways to cover any signs removed by local governments using their police power--except for signs in residential or agricultural areas, which could be amortized over a two to seven year period, depending on their fair market value.

The bill is now before New York Governor Mario Cuomo. Cuomo has vetoed two previous bills that would have nullified the municipalities' police power to remove signs without paying cash compensation. The state DOT has told Cuomo it has no objection to this bill. Other groups want Cuomo to veto it to protect the municipal police power. The outcome is anybody's guess.

NEWS AROUND THE COUNTRY

New Jersey -- The state of New Jersey is sponsoring an advertising campaign, including the use of billboards, to promote sales of New Jersey crops to state residents and to the New York city and Philadelphia markets, according to the New Brunswick Home News (6/23/84)...The Asbury Park Press (6/19/84) reports that Ocean Township is considering an ordinance to ban billboard construction, but a decision has been delayed to assure that the ban will not cause billboards to be moved to Route 18, which would not be affected by the ban.

Oregon -- The Albany Democrat-Herald (7/11/84) reports that the city of Albany is trying to revise its sign ordinance, but is facing considerable controversy. One issue is whether to require the removal of nonconforming signs. The city council rescinded a seven-year amortization period suggested in an earlier proposal in response to public outcry, but a city task force trying to devise a new code hasn't decided what course of action to take.

Kentucky -- The Kentucky Department of Highways is moving to clear illegal billboards from highways in its 1st District, according to the Paducah Sun (6/18/84). Apparently the problem of illegal signs is particularly serious in this district. If owners of illegal signs do not remove them within a reasonable amount of time, the state will take them down and bill the owner for the cost.

North Carolina -- North Carolina is a hotbed of activity on sign control these days--most of it in favor of stricter controls. Recent actions include the following:

-- In mid-July, Wake County commissioners approved restrictions on the height, location, and density of billboards and set new limits on the height and size of on-premise signs, according to the Raleigh News and Observer (7/17/84). The billboard restrictions were significantly tougher than those recommended by the Wake planning board, but fell short of restrictions favored by a North Carolina anti-billboard group, Vistas Unlimited. Nonconforming signs are to be removed after a seven-year amortization period, except those whose removal require "just compensation" under federal or state law. On July 30, the board broke a deadlock over size restrictions for billboards, voting 4 to 3 to allow a maximum size of 300 sq. ft. rather than the 150 sq. ft. favored by sign control advocates, according to the Raleigh Times (7/31/84).

-- In early June, the Orange County Board of Commissioners voted to prohibit billboards along Interstate 85 and the planned I-40 and to require the removal of existing signs after a five-year period of amortization. As reported in the Chapel Hill Newspaper (6/5/84), an attorney for Naegele Outdoor Advertising Co. told the commissioners the ban might violate freedom of speech, might not provide sufficient time for amortization, and might not meet the state's Supreme Court standards for banning signs, but the commissioners overrode an effort to delay the vote to investigate the claims.

A number of businessmen vehemently opposed the commissioners' action and after the ordinance's passage, the commissioners said they were willing to consider modifications. However, the actual impact of the sign removal may not be so serious, according to Orange County planning staff. The staff told the Chapel Hill Newspaper (6/6/84) that of 55 signs to be removed, about half were erected with a state permit and will have to be purchased by the county to be in accordance with the federal Highway Beautification Act. Those erected without the required permits will be subject to the five-year amortization clause. The planners also noted that half the signs advertise businesses in other counties.

-- The Hickory City Council approved new billboard restrictions in early June, but was criticized by area businessmen who said the restrictions were not tough enough. The merchants instigated the review of the city's billboard ordinance six months ago with complaints about billboard proliferation in a business area. The merchants objected to provisions that allow billboards to remain in general business zones and that require the removal of nonconforming signs within 15 years after their erection or six years from the ordinance's passage, whichever is later. The merchants wanted signs banned from business areas and requested only a 12-month amortization period.

Texas -- The Fort Worth City Council on June 12 approved strong billboard restrictions limiting the height, size, and spacing of billboards and banning illuminated signs near residential areas. Nonconforming signs must be removed within 6-1/2 years and special hearings must be held before new billboards can be erected. The ordinance also created a Scenic Preservation Commission that will consider applications for scenic architectural, cultural, or historical sites to be protected from billboards.... The League City Council is expected to approve a sign ordinance limiting size, height, and spacing of billboards and prohibiting the erection of any

new billboards unless another is taken down. Landowners will be allowed to keep existing nonconforming signs until their lease expires, at which time they can replace them with other signs that conform to the restrictions. (Clear Lake Citizen, 6/22/84).

Georgia -- The Atlanta City Council disappointed sign control supporters June 4 when it passed a weakened version of a billboard control ordinance. The original proposal called for a 1000-ft. separation between signs, height limits of 30-45 ft., and size limits of 672 sq. ft. on expressways, and required compliance within five years. The approved ordinance requires only a 500-ft. separation, height limits of 45-65 ft., no size limitations, and gives 10 years to bring signs into compliance. The Atlanta Constitution (6/6/84) criticized the relaxed ordinance saying that "Atlanta's visual appeal is one of its strongest selling points" in attracting development. The sponsors of the original measure have introduced an even stronger proposal and Billboards Limited of Georgia Says it has a 50-50 chance of passage.

Sign Control News is published by the Center for Sign Control, a project of the Coalition for Scenic Beauty. The center provides research, information, and counsel to associate members interested in improving the quality of America's urban and rural environments through the control of signs and billboards. For membership information, write the Center for Sign Control, 1511 K St., N.W., Suite 1100, Washington, DC 20005.