

Sign Control News

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

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BILLBOARDS COME DOWN IN FAYETTEVILLE

After twelve years of legal battles, the city of Fayetteville, Arkansas, has finally forced Donrey Inc. to begin to remove 58 billboards that are in violation of city ordinances, adopted in the early 1970s, which restrict billboard size and location. Donrey began to take down its billboards in late November and is scheduled to remove about 15 billboards a month until all 58 signs are down by the end of February 1985.

The battle is a model example of the outdoor advertising industry's strategy of keeping nonconforming signs up for as long as possible through repeated and extended litigation. But it also demonstrates the ability of a city to prevail in court if it has a well-constructed ordinance and if it refuses to back down in the face of industry threats.

The fight began in the early 70s when Donrey filed suit against city ordinances restricting billboard size and location. Donrey owned 58 signs that exceeded the restrictions, and the ordinances required that they be amortized over a four-year period (ending Jan. 31, 1977), after which they were to be removed without cash compensation. However, Donrey's signs were allowed to stand until the legal battle was finally resolved.

In 1983, the Arkansas Supreme Court upheld the city's sign ordinance, holding that it did not prohibit free speech, was not a prohibition of a lawful business, and that the amortization period was reasonable and did not constitute a taking. In addition, the court said that a provision in the Arkansas Highway Beautification Act that precludes a city from removing billboards without making cash payments

did not apply to this case because the law was passed in 1981, four years after Fayetteville's period of amortization expired. The court did not address whether the removal through amortization violated a similar provision in the federal Highway Beautification Act. Donrey Communications Co., Inc., et al v. City of Fayetteville, Ark., 280 Ark. 408, 660 S.W. 2d 754 (1983).

On April 30, 1984, the U.S. Supreme Court refused to review the Arkansas decision, and the case appeared to be closed. Fayetteville officials told Donrey they would give the company until mid-June to make some progress in taking its signs down. But Donrey found a way to go back to court once again. In June, some 56 firms that used Donrey's billboards to advertise and 45 landowners on whose property the signs were located filed suit in U.S. district court against the city and against Donrey. Donrey then essentially joined the plaintiffs by filing a cross-complaint against the city.

On October 23, the U.S. District Court for the Western District of Arkansas dismissed the new suit saying that any new questions of law or fact could have been presented in prior proceedings and that the rights and interest of the landowners and advertisers were sufficiently identical to Donrey's and were represented in the prior cases. In addition, the court said that the federal Highway Beautification Act did not provide any right of private action for just compensation, that it merely encouraged states to enact complementary legislation requiring just compensation to avoid the risk of losing a portion of their federal highway funds.

On October 24, Fayetteville notified Donrey to begin moving its signs immediately or the city would either seek a contempt citation or remove the signs itself. Donrey and the city subsequently agreed to a removal schedule.

The only remaining issue is the question of just compensation. Donrey still maintains it is entitled to cash payments under the federal and Arkansas Highway Beautification Acts. Donrey cannot pursue this issue further in court, but the one possible threat is that the Federal Highway Administration (FHWA) might invoke the 10-percent of federal highway funds penalty authorized in the Highway Beautification Act if a state fails to meet the requirements of the federal law. Since the law requires just compensation for signs removed along federal highways under local ordinances, the penalty theoretically could be applied. But Fayetteville has written FHWA stating that it believes the state should not be subject to the penalty, since the provision at issue in the law was enacted in 1978. The provision applies to signs which are "lawfully existing under state laws." Fayetteville says Donrey's signs became illegal on January 19, 1977, when the city's amortization expired, and therefore are not covered by the 1978 provision.

At press time, neither the state nor Fayetteville had received any communications from FHWA, and Fayetteville's attorney was optimistic that the city's reasoning would prevail.

FLORIDA STRENGTHENS HIGHWAY BEAUTIFICATION PROGRAM

The state of Florida has passed a new highway beautification law that significantly tightens the state's control over billboard blight. Among its most important provisions is a ban on billboards along new highways in rural areas.

The ban does not apply along existing roads, but should help stem the proliferation of new billboards. The law also strengthens the criteria for designating "unzoned commercial or industrial areas," areas in which the billboard prohibitions of the Federal Highway Beautification Act do not apply. This exception to the law has been one of the biggest loopholes in the Act. The previous Florida law required the existence of only one commercial or industrial establishment to qualify for this exception; the new law says these areas must include three separate activities that are within 1600 feet of each other and that are clearly capable of being seen and are generally recognized as being industrial or commercial.

Other provisions of the new law include the following:

1. The maximum size sign was reduced from 1200 square feet to 950 square feet and the maximum height was set at 50 feet in rural areas and 65 feet in cities.
2. Spacing between signs was increased to 1500 on the interstate system and 1000 feet on the primary system. This compares to 500-foot and 300-foot spacing in most states.
3. A statewide minimum setback of 15 feet from the right-of-way was adopted for all permitted signs.
4. Permit fees were increased, although the fees still are not large enough to constitute a "road user fee." All revenues generated by sign permit fees in excess of administrative expenses must be matched equally with state highway funds for use in the removal of nonconforming billboards.
5. The new law makes it easier to remove illegal signs.
6. It provides for alternative motorist information services, including "logo" informational signs and rest area tourist information services.

The new Florida law is seen as a great improvement, but it closes the billboard door after the state's highways have been massively polluted by billboard blight. Even so, new highways in rural areas are protected, and some existing signs should be removed over time.

BEAUFORT COUNTY VOTERS ASK FOR BILLBOARD BAN

On November 6, voters in Beaufort County, S.C., overwhelmingly urged the city council to abolish billboards in the county. The vote was on an "advisory referendum" which asked: "Should billboards be abolished in Beaufort County?" The vote was 10,079 in favor; 5,677 against.

The vote was prompted by council leaders who favor a ban on outdoor advertising signs. In mid-October, the council passed the second reading of a new sign ordinance that would restrict on-premise signs and would ban billboards. Existing billboards would be amortized over a seven-year period, after which they would have to be removed without cash compensation. The ordinance does not become final until the council passes it a third time. The city has proposed to establish a system of official directories and directional signs as an alternative to billboards.

Some council members said the referendum vote would help them decide how to proceed on the sign ordinance, but the main argument for the referendum was that it would help the city in its defense against future lawsuits. The general manager of Peterson Outdoor Advertising, which owns 76 signs in the city, was quoted by the Beaufort Gazette as saying the company will take the city to court "and it will cost you thousands and thousands and thousands and thousands of dollars....Banning billboards would be a direct violation of my constitutional rights to operate a business."

The county's attorney, however, noted that the U.S. Supreme Court has supported the right of a city to totally ban billboards. But he did say that the key to winning in court would be the legal validity of the ordinance, and that the referendum would carry little weight with the courts if billboard owners could prove their rights were violated.

Prior to the vote on the referendum, there was some discussion of a possible compromise on the billboard ban. The ban is being fought by Peterson Outdoor as well as the Greater Beaufort Chamber of Commerce, and the referendum appeared to have further heightened the controversy. Stay tuned for the city council's final vote.

MASSACHUSETTS TO RAISE FEES, REVISE REGULATIONS FOR BILLBOARDS

During the next six months, the Massachusetts Outdoor Advertising Board will raise its fees and rewrite its regulations, according to the board's chairman, Ann C. Gannett. The board also has named an executive director for the agency, filling a three-year vacancy, who will be instructed to modernize the board's operations and improve record-keeping.

Gannett said the increased fees on billboards will be necessary to meet the increased revenue needed to put the agency's data on computers. Regardless, Gannett told the Springfield News that she thought the billboard owners are getting "quite a bargain with the prices we charge." Currently billboard companies in Massachusetts pay an annual license fee of \$250 and pay a permit fee of \$20 to \$40 per sign. In comparison, billboard companies charge their advertisers anywhere from \$75 to \$1000 per month depending on the sign's size and location. Gannett refused to say how high the fees would be raised, but the president of Springfield Advertising Co., Sanden Pearson, told the News he thought the fees were too high already. Gannett did not specify what changes might be made in the board's regulations. But it certainly looks like a fight over these actions is in store for the state. (Springfield News, 10/27/84).

SOUTH CAROLINA EXTENDS LOGO SIGNS

The South Carolina Department of Highway and Transportation is expanding its logo sign program, which has proven popular with motorists and businesses along I-95, to the state's four other interstates. Sign installation will be completed along I-20 by next summer and along I-26 in 1986. I-85 and I-77 will follow, but timing has not been determined.

The South Carolina program furnishes information on gas, lodging, food, and camping facilities. At each exit a maximum of six gasoline stations and four of each of the other businesses may have their logos displayed on the official,

uniform signs. To be eligible for inclusion on the signs, the businesses must meet certain criteria. For example, service stations must be within a mile of the interchange; provide fuel, oil, tire repair, and water; operate at least 16 hours a day and seven days a week; and have restroom facilities, a drinking water fountain, and a telephone. Thus in addition to providing an attractive method of informing motorists of local services, the logo program also helps assure high quality services for interstate travelers.

Businesses pay a \$100 installation fee and a \$200 annual fee for exit signs, plus a \$100 annual fee if they also want a sign on the exit ramp. (Orangeburg Times and Democrat, 10/24/84).

CANTON CHAMBER OF COMMERCE PROMOTES SIGN DESIGN CONTROLS

The Chamber of Commerce in Canton, Connecticut, is working with town officials on a proposal intended both to improve the appearance of a local highway and to make it easier for business owners to get approval for on-premise signs. The focus of the action is Route 44, which is being widened by the state. As construction proceeds, a large number of signs will have to be removed.

Canton's Chamber of Commerce President Richard C. Sanger told the Hartford Courant, "We realized that this is our chance to do something about the signs along our busiest street." The chamber is developing 11 different sign designs, ranging in size from 15 to 32 square feet, that would be "pre-approved" by the zoning commission. Business owners that used one of these designs could get a permit for their sign from the town inspector without going through the current sign approval process, which requires a public hearing and zoning commission approval for each application. At the same time, it should provide for an attractive, uncluttered appearance along the newly widened highway.

HEALTH GROUP CALLS FOR LIMITS ON CIGARETTE ADVERTISING

The American Council on Science and Health says that serious consideration should be given to restricting cigarette advertising to a strictly informational format. Such a policy could have important ramifications for billboard advertising. Tobacco ads made up 37.1 percent of all outdoor advertising revenues in 1983, according to Leading National Advertisers, Inc.

ACSH says that current cigarette ads emphasize vitality -- with suggestions of health, outdoor activity, success, romance, or pleasure -- and tend to reassure smokers that their smoking is harmless. Although the organization says it does not question the industry's right to advertise, it suggests that such ads be limited to facts about the product, such as its name, number of cigarettes per package, tar and nicotine levels, and price.

An attorney for the council says that restrictions on print and billboard advertising would probably be constitutional. Writing in ACSH News and Views, Larry White said that the U.S. Supreme Court has made it clear that commercial speech, such as advertising, enjoys only a kind of "second class" protection under the First Amendment to the Constitution and can be prohibited if it is

false or misleading. ACHS says the ultimate legal issue might not be the tobacco companies' right to advertise, but its right to obscure health risks with misleading innuendos.

SMALLER BILLBOARDS GIVE HIGH VISIBILITY

According to a study by Perception Research Services, Inc., the so-called "eight-sheet" billboards, which are relatively small in size, deliver 77 percent of the visibility of the much larger 30-sheet panels. The research, conducted for a group of 25 eight-sheet plant operators, apparently shows that the smaller, less-expensive billboards are more cost-effective than the giant-sized versions.

GARDEN CLUB OF VIRGINIA FEATURES HIGHWAY BEAUTIFICATION AT CONSERVATION FORUM

The Garden Club of Virginia featured highway beautification at its 26th annual conservation forum in Richmond, Va., November 7. Coalition for Scenic Beauty board member Ross Netherton addressed the gathering on federal and state programs for control of roadside blight, including the problems and failures of the Highway Beautification Act in controlling billboards. Netherton also discussed the Coalition's activities and recommended several corrective measures need to strengthen billboard control.

Also on the program was Lady Bird Johnson, who received the club's distinguished service award and spoke about the new National Wildflower Research Center, which she helped found in Austin, Texas. Dr. Jacelyn Robertson, Dean of the University of Virginia School of Architecture, spoke on improving urban design practices as they relate to beautification of our cities and the highway approaches to urban areas.

LOUISIANA TREE-CUTTING RULE CALLED ILLEGAL AND HARMFUL TO WILDLIFE

An attorney in Baton Rouge, Louisiana, is campaigning against the state's practice of allowing trees to be cut down in front of billboards. Writing in Louisiana Out-of-Doors, Doris Falkenheimer charged that the state's regulation allowing the removal of vegetation in front of billboards is illegal, because it was adopted without public notice and without providing an opportunity for public comment.

In addition, Falkenheimer indicates the tree-cutting practice may be harmful to wildlife that has taken refuge in the highway rights-of-way as other available habitat has disappeared. For example, several red-cockaded woodpeckers, a federally protected endangered species, nest in trees at the I-55/LA 10 interchange near Fluker, Louisiana.

Falkenheimer says that since the regulation went into effect on February 3, 1983, about 70 permits have been granted for the removal of trees and other vegetation from a 500-foot strip in front of each billboard. These trees were originally payed for at taxpayers' expense and are being removed under a program that benefits the billboard companies--who make no payment toward the administrative costs of the program.

NEWSWEEK COVERS THE BILLBOARD ISSUE

The billboard issue -- long dormant in the national media -- made its first step toward a comeback in December when Newsweek (12/10/84) gave it full-page coverage. The story quotes Coalition board member Marion Fuller Brown, who says the 1965 Highway Beautification Act "was of absolutely no use. It had so many loopholes it became an umbrella to put up more billboards."

The article notes that some 500,000 billboards line the federal highways alone. It says the General Accounting Office will soon release a report denouncing the number of illegal billboards still standing, the cutting of trees on the public right-of-way to render billboards more visible, and the Department of Transportation's lax enforcement.

Newsweek sounds dubious that anything can be done about the proliferation of billboards. It quotes a representative of an outdoor advertising firm as saying the industry "is stronger than ever," and reports congressional staffers as saying that the billboard lobby is one of the five most effective on Capitol Hill.

TAXIGRAMS HARASS NEW YORKERS

Is there no surcease from visual pollution and "sign assault" in public places? Now taxicabs in New York City, home of Madison Avenue, are installing electronic sign boards in between the driver and the rider that advertise "everything from beer to Broadway shows," according to Time magazine. The boards sport 10-second-long, computerized messages in one-inch-high letters. The ads are intermingled with public service messages and trivia questions in order to hold the passenger's interest, and are repeated in four-minute cycles.

The commercials, called Taxigrams, sell for up to \$10.29 a minute per cab. Currently some 400 cabs in New York City contain the electronic boards, and their creator, Donald Chipman, plans to raise the number to 4,000 in 1985. He also is trying to expand into other U.S. markets, as well as Canada, and hopes to have Taxigrams in cities such as Los Angeles, Montreal, and Chicago by the end of next year. (Time, October 15, 1984).

NEWS AROUND THE COUNTRY

Arkansas -- Prompted by the Arkansas Supreme Court ruling earlier this year upholding the removal of signs in Fayetteville without cash compensation (see story this issue), the Capitol Zoning District Commission in Little Rock has decided to get tough on violations of its sign ordinances. The ordinance, adopted in 1977, allowed one year for removal of illegal signs and five years for removal of nonconforming signs, but to date the ordinance has not been strictly enforced. The commission has authorized its staff to enforce the removal requirements around the Capitol and the Governor's Mansion, the areas where it has jurisdiction (Arkansas Gazette, 9/28/84).

California -- The Sacramento City Council may soon be considering an ordinance to allow the placement of sandwich-board signs on sidewalks in front of businesses, including in the historic Old Sacramento district. The push for a change in the

current law, which makes sandwich signs illegal, came when the city cited a single store owner for having such a sign while allowing dozens of others to remain. City officials said they had had so many complaints about the one sign that they felt they had to initiate legal action against it, but the city's single sign enforcement officer was so busy on other sign matters that he had not been able to focus on sidewalk signs. City councilman Doug Pope was expected to propose an ordinance drafted by the Sacramento Downtown Association to legalize all the sidewalk signs, since the ordinance isn't being enforced (Sacramento Bee, 9/15/84).

Delaware -- Less than a week after Rehoboth Beach commissioners appointed an ad hoc committee to study the city's sign ordinance, the commissioners disbanded the committee and asked the Rehoboth Beach Chamber of Commerce to report to the city about what should be done on the question. The sign ordinance committee, which was composed of two members of the Chamber of Commerce and two members of the Rehoboth Beach Homeowners Association, was nixed after a newly appointed commissioner complained that the board should not turn over such decision-making responsibilities to other committees. The commissioner suggested the chamber of commerce come up with its own ideas on sign control and report back to the commissioners, a suggestion agreed to by the board. However, the chamber was not entirely happy about the turn of events. Local chamber president John Schroeder told The Whale he had no problem forming his own committee, but said that sign control "is not just a business problem -- it's a concern of the entire community -- that's why I wanted the Homeowners represented. If my committee comes up with a proposed revision, I hope they'll listen." (The Lewes Whale, 9/19/84).

Georgia -- Efforts to remove two large billboards on Wilmington Island have been delayed as the owner of the signs, Foster and Kleiser, has threatened to sue Chatham County over the matter. The signs were mistakenly granted permits by a zoning administrator who used an outdated zoning map when issuing the permits. The signs are in an area designated as a scenic highway, a designation that prohibits the erection of billboards. The county commission originally instructed Foster and Kleiser to remove the signs by mid-October. The company said it was willing to remove the signs, but needed time to negotiate when the signs will be removed and how much cash compensation, if any, the county will pay. The extension was granted, over the vigorous objections of a group of Wilmington Island residents, when Foster and Kleiser's attorney told the commission the company would take the county to court if the extension was not granted. (Savannah Press, 10/12/84) ... A city councilwoman in the Atlanta suburb of Marietta is working to ban portable signs from the town. According to a story by the New York Times News Service, more than 100,000 portable signs have appeared along U.S. highways over the past decade, especially along suburban and commercial strips. They often have flashing arrows and blinking lights and are among the most visually offensive of advertising signs -- a fact substantiated by the editor of a sign trade magazine who was quoted in the story as saying that "their very garishness makes them stand out." The city tried to ban the signs on the basis of safety concerns, but the ordinance was declared unconstitutional by a federal court of appeals. But city councilwoman Vicki Chastain said she is not deterred and will ask the city council to adopt a new ordinance that bans the signs outright.

Kentucky -- Elizabethtown is expected to have a new, stricter sign ordinance by the new year, although it appears that a number of changes may be made in the proposed ordinance to address concerns of local business. The ordinance is expected to ban temporary and mobile signs as well as streamers and pennants, which are most heavily blamed for the cluttered appearance of the area. Billboards

along the federal highways will be limited to 300 sq. ft. in size, and separation limitations will be included. The proposed ordinance also would prohibit painted wall and window on-premise signs and would place size, number, and location restrictions on on-premise signs. However, height and size limitations may be relaxed due to business owners' concern that their signs won't be visible from the interstate. And a proposal to phase-out nonconforming signs through amortization may be completely dropped in favor of simply "grandfathering" all existing signs and allowing them to remain indefinitely (Elizabethtown News-Enterprise, 10/5/84).

Michigan -- The state of Michigan is installing signs along the highway rights-of-way -- but these signs are meant to help protect rare and endangered plants. The state Department of Transportation is placing signs reading "Protected Plant Area" where endangered plants have been identified to alert state highway maintenance workers, as well as utilities and other rights-of-way workers that they must avoid the legally protected species (Bangor Trust Express, 9/25/84).

North Carolina -- Local businesses and the town's planner are asking the Boone Town Council and the Boone Area Planning Commission to revise the local sign ordinance. Among the changes suggested by the town planner are the following: relaxation of the amortization deadlines, since 85 to 90 percent of the nonconforming signs have been brought into compliance; an increase in size limitations from 40 to 48 square feet for on-premise signs in the central business district; limitations on free-standing, changeable copy and portable signs; and allowing corner businesses to put up an extra sign. Business owners voiced a variety of opinions, from calling for a rewrite of the entire ordinance to suggesting that it address only safety and not aesthetic concerns. The local Sierra Club and other community members supported the ordinance, but the planning commission does plan to develop some type of amendment (Watauga Democrat, 10/5/84)...Garner has kicked off a U.S. 70 beautification project with the support of the local Board of Aldermen and the Chamber of Commerce. Garner's Community Development Director has asked businesses and property owners to voluntarily correct all sign, nuisance, and zoning violations or they will be fined. In addition, the town will kick off intensive land-use and zoning studies along the highway, is encouraging voluntary landscaping, and is seeking to acquire maintenance responsibilities along the highway and obtain state funds for planting in the median (Garner News, 9/26/84).

Oregon -- The city of Portland is cracking down on businesses that use sidewalk signs without first obtaining a city permit as required by an ordinance adopted in June. Business owners must follow restrictions regarding the sign's shape and location as well as time and weather conditions for their use and must show proof of insurance to cover the costs of any damage or injuries caused by the signs. This latter requirement was included to limit city liability for such damages. Businesses were given a four-month grace period in which police handed out warnings to educate business owners about the new requirements (Portland Evening Express, 10/19/84).

South Carolina -- A Rock Hill City Council member wants to develop plans for a "golden corridor" on I-77 between Charlotte and Rock Hill. Councilman Henry Woods says the town should learn from the mistakes of Montgomery County in Maryland, which took 15 years to carry out plans for orderly development along its main corridor road leading into Washington, D.C. Woods also says he is interested in regulating billboards and said he hopes to call on the American Electric Sign Association for help (Rock Hill Evening Herald, 10/12/84). ...Charleston city officials have proposed new regulations that would eliminate all portable signs in the city and restrict billboards to industrial districts. The proposed ordinance was presented to the planning and zoning commission

by councilwoman Mary Ader and the planning department. It would ban all portable signs within six months, require all billboards outside of industrial districts to be removed within five years, and establish height and spacing limitations. Sign company owners immediately protested the proposal, which still must be approved by the zoning commission and the city council (Charleston Evening Post, 11/6/84).

Texas -- The Baytown City Council began to discuss making revisions to its ordinance banning portable signs. The ordinance, which go into effect in April 1985, is being challenged in court by a sign company owner who charges that the ban discriminates against small businesses, which can only afford portable signs. However, the city's attorney and other council members said that open discussion of a matter connected with pending litigation could cause trouble, and future action may be halted (Baytown Sun, 11/9/84).

Wisconsin -- The town of DePere is reviewing its sign ordinance, which has been criticized as being ambiguous and out-of-date. A chamber of commerce subcommittee is developing a recommendation for a new sign ordinance that will be based extensively on the Wisconsin Outdoor Advertising Association's "Guidelines to Sign Ordinances." Although this might not be considered the most objective source on sign control, a spokesman from the subcommittee said the new law will not make many conceptual changes. It probably will require that billboards be 300 feet apart rather than the current 100 feet, but may relax size limitations "to conform to new industry standards." The recommendation is expected to be ready sometime in December (News-Chronicle, 10/8/84).