

FILE

Subject

*State Boards
Highway Commission*



Copy to

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

March 28, 1974

Opinion No. 74- 105

Frank L. Johnson
Chief Attorney
Legal Department
State Highway Commission
State Office Building
Topeka, Kansas 66612

Dear Mr. Johnson:

You inquire whether K.S.A. 68-2240 authorizes the State Highway Commission to declare illegal, noncompensable and subject to removal those signs which have not complied with K.S.A. 68-2233 or -2234. K.S.A. 68-2240 provides in pertinent part thus:

"From and after March 31, 1972, any outdoor advertising authorized under sections 3 and 4 [68-2233 and 68-2234] which does not conform to the standards and requirements prescribed or authorized by this act, or does not comply with any authorized exceptions thereto, and any outdoor advertising prohibited by this act and not subject to compensation under other terms of this act, shall be subject to removal by the commission."

K.S.A. 68-2233 prohibits the erection or maintenance of any except enumerated classes of signs in an "adjacent area" after March 31, 1972. K.S.A. 68-2234 sets forth standards which must be met by any sign to be erected in a business area after March 31, 1972. K.S.A. 68-2238(a) states thus:

"From and after March 31, 1972, just compensation shall be paid upon the removal of any of the following signs which are not then in conformity with the provisions of this act:

(1) Signs lawfully in existence prior to March 31, 1972; and

Frank L. Johnson
March 28, 1974
Page Two

(2) Signs lawfully existing or lawfully erected on or after March 31, 1972."

After March 31, 1972, any sign erected or maintained in an adjacent area which does not fall within one of the five categories enumerated in K.S.A. 68-2233 is unlawful. Compensation may lawfully be paid for signs lawfully in existence prior to March 31, 1972, and for signs lawfully existing or lawfully erected on or after that date. K.S.A. 68-2240 renders all other signs, i.e., noncompensable signs, subject to removal.

That the state may, in the valid exercise of its lawful police powers, require the removal of outdoor advertising which does not conform with valid state regulation is well settled. Such removal does not constitute the taking of property without compensation. Markham Advertising Co. v. State, 73 Wash.2d 405, 439 P.2d 248 (1968), appeal dismissed for want of a substantial federal question, 393 U.S. 316, 89 S.Ct. 553, 21 L.Ed.2d 512, reh. denied, 393 U.S. 1112, 89 S.Ct. 854, 21 L.Ed.2d 813. See also Howard v. State Department of Highways of Colorado, 478 F.2d 581 (10th Cir. 1973).

Accordingly, it is our opinion that those signs "not subject to compensation" under the terms of the act are subject to removal under K.S.A. 68-2840.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm