

Subject

FILE
State Boards
Highway Commission



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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

June 10, 1974

Opinion No. 74-185

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 of Kansas to declare illegal, noncompensable and subject to removal at the owners' or advertisers' expense those signs which have not complied with the license and permit requirements of K.S.A. 1973 Supp. 68-2236. K.S.A. 68-2240 provides:

"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. The commission shall give notice by restricted mail to the owner of the sign, if known, or to the advertiser shown on the sign, ordering him to cause the outdoor advertising to comply with the provisions of this act or to remove the prohibited outdoor advertising. If the owner of the sign is known and fails to act within ninety (90) days after mailing of the notice, the commission shall remove the outdoor advertising at the expense of the owner of the sign, if known, and if not, at the expense of the advertiser shown on the sign."

The key to the question presented above appears to be the phrase "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." The search for signs subject to compensation under other terms of the act leads to K.S.A. 68-2238, which provides in pertinent part:

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

This language is clear concerning which signs shall receive just compensation. Therefore, any sign which falls within the purview of K.S.A. 68-2238(a) (1) or (2) would not be subject to removal under K.S.A. 68-2240 since these signs are subject to compensation under K.S.A. 68-2238.

The license and permit provisions of the Highway Advertising Control Act of 1972 are set forth in K.S.A. 1973 Supp. 68-2236, which in pertinent part provides:

"(a) From and after March 31, 1972, no person shall own or maintain outdoor advertising, except signs described in subsections (b) and (c) of section 3 [68-2233] of this act, without having a license to do so, which license shall be issued by the commission. . . ."

(b) From and after March 31, 1972, no sign, other than signs described in subsections (b) and (c) of section 3 [68-2233] of this act, may be erected or maintained in an unzoned commercial or industrial area located outside the corporate limits of any city without first obtaining a permit therefor from the commission, or in such an area within the corporate limits of a city without first obtaining a permit therefor from the authority designated by the governing body of such city."

Although this section does not specifically deem signs not in conformity with its provisions illegal and subject to removal, such signs would clearly not be lawfully existing or lawfully erected and would therefore be subject to removal under K.S.A. 68-2240 if such signs are not covered by K.S.A. 68-2238 (a) (1) or (2) or some other authorized exception in the act. However, under K.S.A. 68-2240 the owner or advertiser of a sign, for which a license or a permit (if necessary) has not been obtained, has ninety days from the mailing of the illegal notice to bring the sign into compliance, if possible, with the terms of the act. It should be noted that unless a sign erected after March 31, 1972 bearing a commercial message is located in a "business area" as defined in K.S.A. 68-2232, said sign would be illegal under K.S.A. 68-2233 and would therefore clearly be subject to removal under K.S.A. 68-2240.

You also inquire whether K.S.A. 68-2240 gives the State Highway Commission of Kansas the right to enter private property for the purpose of removing illegal signs without a court order. The phrase in the last sentence of this section of the act, "the commission shall remove the outdoor advertising" necessarily entails the entry on the siteowner's property to carry out the mandate of the statute. Therefore, we feel that the statute does give the commission the right to enter the "adjacent area" as defined in K.S.A. 68-2232(a) for the purpose of removing nonconforming outdoor advertising devices.

However, to avoid a confrontation between commission personnel removing signs and siteowners who may not agree with our interpretation, we recommend the following procedure: (1) attempt to obtain written permission to enter the property to remove the sign from the landowner. If this cannot be accomplished, (2) obtain a court order. We feel that this procedure would best serve the commission from a public relations standpoint.

In summary, the answer to your first inquiry is twofold; K.S.A. 68-2240 does authorize the commission to declare illegal, noncompensable and subject to removal signs in noncompliance with the provisions of K.S.A. 1973 Supp. 68-2236 unless such signs are subject to compensation under other terms of the Act. Therefore, signs vested with the right to just compensation under the provisions of K.S.A. 68-2238 are not subject to the removal provisions of K.S.A. 68-2240. In regard to your second inquiry, the procedures set forth above for obtaining either (1) written permission to enter the site owner's property or (2) a court order, should be implemented.

Very truly yours,


VERN MILLER
Attorney General

VM:WHW:pw