



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 14, 1975

Opinion No. 75-221

Mr. Thomas W. Regan, Chief Attorney
Highway Commission
7th Floor, State Office Building
Topeka, Kansas 66612

Dear Mr. Regan:

You, through your predecessor, have thus inquired concerning the following specific questions:

- (1) Is the 1968 Act enforceable against signs erected in violation of its provisions?
- (2) For purposes of 23 U.S.C. 131(g) amended, do signs erected contrary to the provisions of the Highway Advertising Control Act of 1968 constitute signs lawfully erected under State law, making them compensable, or are these signs illegal and subject to removal without compensation under either K.S.A. 68-2240 or K.S.A. 68-2225?

The inquiry focuses primarily upon whether a sign or billboard erected in violation of the provisions of the Highway Advertising Control Act of 1968 (former K.S.A. 68-2215 to K.S.A. 68-2230) constitutes an advertising sign, display or device unlawfully erected under State law for purposes of providing fair compensation for its removal pursuant to 23 U.S.C.A. 131(g). This latter statutory provision reads in pertinent part:

"(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law. "

* * * * *

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

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"(A) The taking from the owner of such sign, display or device of all right, title leasehold, and interest in such sign, display or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays and devices thereon."

You further state that the 1968 Act was never implemented or enforced as enacted by reason of the fact that former K.S.A. 68-2228 was activated by the failure of the State to receive the requisite federal funding. Prior to its repeal by the Highway Advertising Control Act of 1972, this statute provided:

"Notwithstanding any other provision of this act, no sign shall be removed or subject to removal, no compensation shall be payable, no licenses or permits shall be required, and no criminal action shall be brought, pursuant to this act, unless and until funds required for compensation for each such removal, including the federal share of such compensation pursuant to subsection (g) of section 131 of title 23, United States Code, are appropriated and available for such compensation."

Although the effect of this provision in its entirety relative to the 1968 Act is not altogether certain, it is clear that no sign shall be removed or subject to removal, nor shall it be compensable, and no criminal action shall be brought for an offending sign, unless and until funds required for the compensation for such removal are available, including the federal portion of that compensation. No sign becomes lawful or unlawful by virtue of this provision. It simply forestalls legal action for removal of any sign erected in violation of the Act pending receipt of federal money pursuant to the provisions of 23 U.S.C.A. § 131(g).

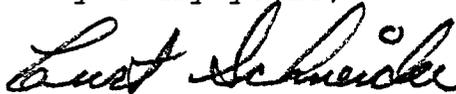
Noticeably absent from the language of this statute is any reference to or indication that the failure to receive federal funding similarly forestalls implementation of the remaining physical, spatial and legal requirements otherwise expressed in the context of the 1968 Act. It must be presumed that had the Legislature wished to forestall all effects of the 1968 Act pending receipt of federal money, the most appropriate means to accomplish such an objective would have been to make the Act's effective date contingent on and contemporaneous with the receipt

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of federal funding. Instead, the Legislature determined that only certain particulars of the 1968 Act were to be held in abeyance. The specific recital of these and the failure to include others clearly suggests that the non-included provisions were to be deemed enforceable irrespective of receipt of federal funds. In other words, any advertising sign, display, or device which was erected or maintained in violation of any provision of the 1968 Act presently constitutes a sign unlawfully erected under State law for purposes of compensable removal under 23 U.S.C.A. 131(g) except in those instances where the sole illegality of the sign stems from a failure to conform to adhere to a requirement which was held in abeyance under former K.S.A. 68-2228 by the failure to receive the anticipated federal funding. By way of example, the erection of a sign without obtaining the appropriate permit from the commission would not constitute such an illegality as would render the removal of the sign non-compensable since there was no existing available means to obtain such a permit. However, if in addition, the sign or display fails to conform to any other enforceable, applicable, and non-forested physical, spatial or legal requirement of the 1968 Act, it thereby becomes subject to noncompensable removal.

In answer to your specific questions, it is the opinion of this office that the Highway Advertising Control Act of 1968 is enforceable for purposes of 23 U.S.C.A. 131(g) in accordance with the above discussion against those signs erected in violation of its provisions.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv