

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at _____
Chairperson

9:02 a.m./~~pm~~ on February 20, 1991 in room 254-E of the Capitol.

~~Members present:~~ Members present:
Senators Morris, Doyen, Brady, Hayden, Kanan, F. Kerr, Martin, Sallee,
Thiessen and Vidricksen.

Committee staff present:
Ben Barrett, Legislative Research Department
Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:
Sen. Nancy Parrish
Bob Sebree, 6880 S.E. Highway 40, Tecumseh
Pat Barnes, Kansas Outdoor
Joseph Krahn, KDOT

Hearing on SB 169 - Highway advertising, removal of non-conforming signs.

Sen. Nancy Parrish said this bill was introduced because of problems residents were having with a portable flashing advertising sign. A constituent came in to describe the problem.

Bob Sebree said a portable sign had been erected by a race track in their area. They also had another flashing directional portable sign there. There should only be one sign in the area. KDOT was contacted and said their hands were tied because it is a seasonal thing. Now an advertiser has 90 days to remove the sign. The supporters of this bill want the time to be reduced to 30 days and a greater penalty for violations. They had no problem with fixed billboards. The problem was with the portable advertising signs.

Pat Barnes said this problem is with mobile advertising signs but it would also affect the fixed billboards. He spoke of the problems they would have concerning the language of "nonconforming" signs. He opposes the bill and said they also have problems with "logo sign" advertising on state highway right-of-ways. A copy of his statement is attached. (Attachment 1).

Joe Krahn said passage of this bill would be costly because of enforcement. At the present time they only have three field agents and they are required by law to have annual inspections of junkyards. He said these mobile signs are usually to give directions and they are mostly for local people. It should not be necessary to pass a state law with local implications.

Meeting was adjourned at 9:45. Next meeting February 21, 1991.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-20-91 Place 254-E Time 9:02

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Bob Debra	6880 S.E Hwy #40 - Tecumseh	
Jill Lebrun	6880 S.E. Hwy 40 - Tecumseh	
Peggy Schae	6880 S.E Hwy 40 Tecumseh	
PAT BARNES	3301 Van Buren, Topeka, KS	KANSAS Outdoors
Russell	KDOT	
William D. Munson	KDOT	
Joseph Krahn	KDOT	
Carl Hill	Topeka	Ks Motor Carriers Assn
Nancy Parrist	Topeka	Ks. Senate
Matt Truell	Topeka	AP

Statement Before The
SENATE COMMITTEE ON TRANSPORTATION & UTILITIES

by

KANSAS OUTDOOR

Wednesday, February 20, 1991

RE: Senate Bill 169

Amending the Highway Advertising Control Act of 1972

Mr. Chairman and Members of the Committee, I am Pat Barnes, Legislative Counsel for Kansas Outdoor, an association of companies which provide outdoor advertising services for the State of Kansas. We are a fairly new organization, which has essentially been formed to provide you information with respect to business problems and legislation which seem to affect us more today than in the past. There probably isn't anyone in this room who is not familiar with our operations and clientele, whether or not you actually realize it. We are the companies who generally own and operate billboard displays along many highways and streets in Kansas.

Kansas Outdoor advertisers are very proud of the product they supply the public. It is an interesting and important business to the people who own and operate these companies, and their employees. This is why we are here today.

Back in 1972, the Highway Advertising Control Act was passed. As part of the declared policy of the Act, found in

K.S.A. 68-2231, the Legislature recognized that outdoor advertising is a legitimate, commercial use of private property. It also recognized as a matter of policy, among other things, that the reasonable, orderly and effective display of outdoor advertising should be promoted. Finally, it was recognized that outdoor advertising is an integral part of the business and marketing function, and an established segment of the national economy. It has always been recognized that it should be allowed to operate, although it has been regulated.

The Highway Advertising Control Act of 1972 had another function, too. It was used as a method of implementing the Federal Highway Beautification Act passed back in the years of the Johnson administration.

For years the present law has allowed the State to prevent outdoor advertisers from replacing or building new billboards where older structures have become "non-conforming signs" as defined by the Act. There are a number of ways a sign can become non-conforming. Some of the ways a sign becomes non-conforming is with the addition of a sign, expansion of its existing size, upgrading of its quality, and other similar things, other than maintenance, which materially change the nature of the sign from the way it existed on March 31, 1972. (For an exception, see K.S.A. 68-2244, which deals with local

zoning authority and signs erected prior to November 6, 1978, which do not conform to local zoning standards.)

With this background, I will now turn to Senate Bill 169. As you can see by the stricken language of the bill, an owner presently has ninety (90) days after notice from the Department of Transportation to remove a non-conforming sign. This bill seeks to lower the period of time in question down to thirty (30) days. I understand the problem to be addressed is temporary on highly mobile signs, but the sweep of this bill also classifies fixed billboards. A solution could be to distinguish between the two classes of signs like some local ordinances do.

If this time period is lowered as indicated, it will cause great difficulty in our industry. Several of our companies, one based in Topeka, have advertising plants which are statewide. One of the members of Kansas Outdoor has a plant which encompasses the greater Kansas City Metropolitan area, Lawrence, Topeka, Emporia, Ottawa, I-35, and Interstate 70 from the Kansas line west to the Colorado line. Many of the members of Kansas Outdoor have facilities which are quite large, but yet are serviced by small and efficient staffs.

Due to scheduling and the press of day-to-day business, it is often not possible to make the proper arrangements to

locate and repair a sign many miles from the home office. Additionally, sometimes billboards are improperly identified as non-conforming, although it is also true that there are signs which are identified correctly as non-conforming. We try to deal with those signs in a timely fashion. This law has been on the books for nearly twenty (20) years and we can see no reason why our part of the industry should now be squeezed into such a short notice period.

Another problem which arises with signs in general is that over the last twenty (20) to thirty (30) years, some smaller sign companies have sold out to their neighbors and some of the larger companies have purchased some of the smaller companies in order to operate more efficiently. Many of the signs we have on the road today were acquired at a time when they were thought to be conforming without notice that they were actually non-conforming.

It has been our experience that there has only recently been an upsurge in enforcement with respect to these signs and many times a notice that a sign is non-conforming will come as a shock to the advertising company which owns it. In such instances, we need to have understanding with respect to dealing with the sign as it represents a major investment and an ongoing

contractual obligation. The ripple effect of a sign being declared non-conforming can mean the loss of many thousands of dollars to one of our members. The 90-day time period allows us to deal with this matter and, if available, negotiate a proper solution. In many cases the non-conformity is due to weather damage, oversight, predecessor additions to the sign (e.g., lighting) or other unexpected occurrences.

Part b of Senate Bill 169 is a particular concern to our members. This section would criminalize the erection or maintenance of another sign after a non-conforming sign is removed. We think this penalty is going a little too far for fixed plant advertisers in light of the fact that an injunction can be just as effective in policing this particular aspect of the Highway Advertising Control Act. Our companies and our signs are easily located. Disputes can and do arise as to whether or not a sign is non-conforming. The criminal penalty would eliminate the ability to deal with issues of non-conformity because of the threat of prosecution and stiff fines. Even more shocking is the fact that an innocent advertiser on a sign would also be prosecuted and punished by a fine of \$100.00 for each day the non-conforming sign continues to exist. We feel this is too oppressive and an unreasonable method of proceeding with this law if it is to

impact us. The State already has the power to remove these signs and in many cases there are legitimate reasons as to why one of our signs should remain.

There is also another issue which has heightened the attention of the outdoor advertising industry in Kansas. This bill deals with the area of the law which is involved and it provides us an opportunity to bring up a problem which we are experiencing at the hands of the State. We feel that this bill could be turned into a positive legislative enactment which would actually end up promoting Kansas business, rather than penalizing it.

In sum, with respect to the bill as it stands, I understand that the bill is designed for mobile advertising which may not be able to be effectively legislated if it can be left in place and moved before a notice period expires only to be moved back later, but we would ask more specific provisions be placed into the Act to deal with such mobile advertising as there are legitimate reasons as to why it should be left as it presently exists with respect to larger fixed billboards.

Because this area of the law opens up a section of the Highway Advertising Control Act, Kansas Outdoor would also ask that the Committee consider addressing a problem which has

recently begun to develop for our industry. This is a problem which we commonly refer to as "logo sign" advertising on State highway right-of-ways. Logo advertising is a State-sponsored program which directly competes with private enterprise and has the effect of severely undercutting free market pricing of our services.

Typically, logo advertising is a method whereby the State of Kansas places signs at strategic intervals, generally on the highway right-of-way near interstate exists, typically advertising nationally-franchised restaurants, gas stations and lodging facilities. These signs are, in fact, owned by the State of Kansas, and our information indicates that these signs rent for as little as \$250.00 annually.

A typical example of a sign would be a blue field with anywhere from 1 to 8 businesses advertised on the sign. The annual rent which I mentioned would in many cases equal the monthly rent on a sign offered for lease by an outdoor advertiser.

This is a problem because we are essentially in the business of making a return on investment and providing a service in the free enterprise system. We are already prohibited in many

respects and regulated under the Highway Advertising Control Act. Nevertheless, the State has stepped into the business, taking part of our market, and placing signs in the same exact areas where we are prohibited by law from placing signs. This is direct competition with us and we have no way around it or any way to compete with it.

We are essentially asking this Committee to authorize an amendment to either allow the State to contract with private enterprise to price, administer, and lease this outdoor advertising, or eliminate it altogether, thus returning the field of advertising to the private sector. With respect to the private companies handling State advertising signs, it is my understanding that the State of Wisconsin has done this.

We have researched the issue of logo advertising and its origin. We believe it found its way into the Kansas program administered by the Kansas Department of Transportation through their authority to provide for highway design and maintenance, including lighting, markings and traffic control. In so doing, Kansas has adopted the Manual on Uniform Traffic Control Devices, which also sets forth specifications for the signs which contain "logo" advertising. I have a few other items dealing with logo advertising which I will pass around for the benefit of the Committee.

In sum, while not trying to take away from the issues Senate Bill 169 primarily addresses, we also ask that the Committee give consideration to finding a remedy to reserve commercial advertising for the private sector, as opposed to the State entering this field. Because this bill deals with the Highway Advertising Control Act, we think it serves as an avenue for addressing this problem. Thank you for your courtesy. I would certainly be happy to address any questions you may have of me.