

**Responses to WSDOT query to NAHBA regarding 'Non-Commercial'
Advertising Signs
9/23/03**

WSDOT Request for Information –

The issue is 'non-commercial' signs. A billboard company has a 14X48 billboard sign visible to one of our controlled state highways that cannot qualify for a sign permit because the location does not meet spacing requirements. The company leases the location from a private property owner and displays copy for national 'public service' programs such as non-smoking crusades, literacy, give blood, etc.. I'm not sure, but I believe the billboard company receives some tax benefit from displaying this type of copy. I've been told that this is a common practice in the industry. The messages are generic in nature, but do not refer to 'on premise' activities. I'm not sure that this type of sign readily fits into any of the sign classifications under fed law or our state statutes.

I'm also not sure if the copy on this sign serves the public; but I do know that the sign is located in an area adjacent to a freeway interchange that is restricted for good reasons. Signs near interchanges are limited to our official guide signs; this allows the unfamiliar motorist the maximum opportunity to navigate by way of these signs without interference from other signs.

My question(s): Do other states have these 'non-commercial' signs? How do other states administer this type of sign, e.g., require permit? How do other states classify this type of sign? Any general comments about these signs?

Does NAHBA have information about this type of sign? Is there some way you could distribute my questions about this issue to other members?

Thanks in advance for your consideration on this matter.

Responses in the order received

West Virginia –

The State of West Virginia has this type of signs only on Licensed and permitted outdoor advertising locations.

New York -

This issue appears to be very cut and dry. The billboard companies often place public service messages on their signs when they do not have a commercial advertiser paying for the space. It stops the clock on the issue of the sign being abandoned, looks better to the traveling public, and probably provides them some type of tax benefit. Regardless of what the message content (Budweiser, Home Depot, World Team Tennis or Stop Smoking), this billboard would still meet the definition of a sign and as such would be

controlled under the outdoor advertising rules and regulations. In NY (and I believe in general throughout the country) we do not control content (the type of content control which you question would give rise to first amendment rights). All signs along the control routes are inventoried and classified. All signs classified as "off-premises" signs are subject to registration/permitting. Prior to issuance of a permit, the sign site would be tested for compliance with the requirements of the outdoor advertising control rules and regulations. The sign clearly fits the definition of an illegal sign based upon your explanation that it does not meet the spacing criteria and would be classified as such. We would send notice to the sign owner and to the owner of the property by certified mail requesting that the sign be removed in 30 days. If the sign were not removed, our process requires that we request our Attorney General's Office to seek a court order for removal of the sign (which we would do in this case).

In NY, this sign would be in direct violation of the outdoor advertising control statutes and removal sought.

Florida –

(1) Safety -- If it is determined the sign is a safety hazard, it should be removed immediately. Otherwise, there is no prohibition against public service advertising within the interchange area, unless your state law prohibits all signage except official signs in that area.

(2) Public Service Messages - The Constitution gives freedom of speech rights to property owners. If the property owner wants to make a statement on a sign (ie., give blood at the local blood bank, participate in the United Way campaign, etc.) and that message is not commercial in nature, then we believe the property owner is covered by first amendment rights and is exempt from state permitting. If the property owner leases the property to a sign owner and the sign owner places only public service messages (such as give blood, participate in United Way, etc.) those same first amendment rights are protected. If, however, the message changes from being free speech to commercial advertising (ie., John's Blood Bank, 2200 Commercial Boulevard, (850) 414-4605, will pay you \$200 for a pint of blood), then we consider the message commercial advertising and it must have a state outdoor advertising permit. If the sign does not meet current permitting requirements, then the sign must be removed.

New Hampshire –

In New Hampshire this type of sign would still fall under outdoor advertising control. Administrative Rules in New Hampshire specify that any sign which brings compensation to the landowner is not an on-premise sign and constitutes as Outdoor Advertising. For example if Coca-Cola compensates a store for the ability to put up a large Coca-Cola sign then regardless of the fact that they may sell the product in the store, the sign constitutes as a billboard based on the fact that the landowner is getting

compensated for the signs existence. We have a statute which basically states that any sign in violation of federal regulations is also illegal in NH. Therefore, in administrative hearings we have cited CFR23 Part 750.709.

Iowa –

We would consider the sign an off-premise advertising device under Iowa law. Our state law mirrors federal law in that no sign shall be erected or maintained adjacent to interstate and primary highways, except on-premise signs, for sale or lease signs and certain other signs such as off-premise signs located in commercial or industrial areas (subject to size, lighting, spacing and other permit requirements). Since a sign displaying a public service message does not qualify as an on-premise sign, it is an off-premise sign subject to all applicable permit requirements. In Iowa we have a blank sign policy that provides for the cancellation of the permit of a permitted off-premise sign that is blank (doesn't display an advertising message) for six months. Under this policy a "this space for rent" message does not qualify as an advertising message, however a public service message does. We would initiate removal procedures if such a sign were erected in Iowa.

Louisiana –

In response to your request, In Louisiana those signs would be considered Public Service because they do not generate income. I have a sign here that was built as a billboard, but It couldn't be used as that because of its location so we informed them that Public Service announcements and campaigns ONLY would be allowed. It is monitored on a regular basis to ensure they do ONLY Public Service Ads.

FHWA – Clyde Johnson

Clyde's initial response - These sometimes are referred too as "free speech" type displays if pushed too hard. I would look at the State/Federal agreement definition of what's a sign. In this case it's not really advertising anything but is conveying a message that may be subject to your S/F agreement and regulations.

WSDOT responded to Clyde, citing purview of CFR 750.709(b).

Clyde's final response - If the sign is generating an income to the land owner then it's considered a billboard for ODA purposes.

North Carolina –

Regarding the query on billboards displaying a "public service" message, the sign structure would need a state permit and meet all applicable rules for outdoor advertising. Only those signs that are exempt from a permit could be located where your company wants to locate (on-premise, on-property, for sale or lease, or an official sign).... we do not regulate message content on signs, so it is the sign structure that must have the permit and meet all criteria for size, spacing, etc.

Kansas -

Unfortunately here in Kansas, management has deemed such signs as “first amendment” signs and treat them similar to “on premise” signs. It has happened that when a large investment from a sign owner goes south, they generate income from such signs as a ”first amendment” sign.

One of our large “illegal signs” was resolved as an “official” sign for a State University. The advertisement is for their golf course located at the University which collects golfing fees.

Pennsylvania –

We don't have any of these, although this type of ad could appear on a non-conforming sign (pre-1971 Act). They cannot be permitted under existing rules, as they would be classified as off-premise signs.