

National Policy and Standards Relating to Control of Roadside Advertising Along The Interstate System

DAVID S. BLACK, General Counsel, Bureau of Public Roads, U.S. Department of Commerce, Washington, D. C.

• AS OF January 1962, 16 States have entered into agreements on roadside advertising control with the Federal Highway Administrator acting on behalf of the Secretary of Commerce. With the exception of Maryland and North Dakota, these agreements were all signed within the last 7 months. State-wide control pursuant to these 16 agreements is not yet effective in any of the States and no bonus payments have been paid or requested. There is hardly the benefit of a wealth of experience in administering the law. At present, problems are largely speculative. Problems and questions of rather general interest have, nonetheless, presented themselves.

It has been asked whether the 660-ft distance from the edge of the right-of-way (which section 131 (a) of title 23 designates as the area within which advertising must be controlled to qualify the State for the $\frac{1}{2}$ percent bonus payment) constitutes a firm and inflexible boundary. The answer, with respect to eligibility for the $\frac{1}{2}$ percent bonus payment is clearly "yes" to the extent that the signs are visible from the main-traveled way. As far as concerns Federal participation in the cost of acquiring advertising rights by purchase or condemnation pursuant to subsection (e) of the act, the answer is not so clear. It is true that certain of the conditions and limitations that must be met to qualify the State for the bonus have no application to such Federal participation. To illustrate, a State, though not entitled to the $\frac{1}{2}$ percent bonus, may receive the Federal pro rata share of the cost of acquiring advertising rights in areas adjacent to right-of-way acquired before July 2, 1956, traversing areas zoned commercial and industrial, and even though it does not enter into a State-wide agreement. The Comptroller General of the United States ruled in an opinion of August 25, 1960, that "Federal-aid highway funds may participate in the cost to a State of acquiring advertising rights if the purpose of such acquisition is to accomplish the objectives stated in subsection (a) even though the State has not entered into an agreement with the Secretary of Commerce as provided for in subsection (b), and even though the advertising rights are acquired in an area adjacent to a segment of the System which is excluded from the application of the National Policy and Standards by the terms of the law."

This language is subject to interpretation that the objectives of subsection (a) of the act might be met by the acquisition of advertising rights in those cases in which the bonus is not payable to distances of less than 660 ft from the edge of the right-of-way. This question is under study in the General Counsel's office at the present time.

The $\frac{1}{2}$ percent bonus will not be payable, however, on account of advertising control in an area encompassing less than 660 ft from the edge of the Interstate right-of-way, even though all the other conditions may be met. The express terms of the statute prevent such payment.

The argument has also been advanced that Federal funds should participate in the cost of acquisition of advertising rights, and that the increased Federal share should be payable for control of advertising in areas in excess of 660 ft from the edge of the Interstate right-of-way. Here the answer clearly is "no" with respect to both payment of the bonus and contribution toward the control rights acquired. The position is taken that the national policy precludes payment of the $\frac{1}{2}$ percent bonus for advertising control in areas beyond the 660-ft limit by the explicit language of section 131(a), and the Congress has established a lack of Federal interest in any advertising control beyond 660 ft.

In those States that may follow the practice of acquiring advertising rights in areas adjacent to the Interstate System by purchase or condemnation, as opposed to exercise of the police power, if the rights are acquired at the time new right-of-way is acquired—or at least before construction is completed—the problem of appraising the value of such advertising rights should not be great. If there is no highway in existence, the so-called advertising rights will be of little or no value. In this connection, it should be remembered that it is the highway that furnishes the value to outdoor advertising—highways built with public funds derived largely from highway user revenues.

Where segments of the Interstate System are constructed on old right-of-way, the acquisition of advertising rights will present an appraisal problem and there is probably not a great amount of precedent for evaluating such rights. However, this will undoubtedly not discourage those in the appraising profession.

Another problem arises in connection with segments of the Interstate System where in one side may be zoned commercial or industrial and the other side residential. Is the bonus payable with respect to that portion of project cost attributable to the "residential" side of the highway? Subsection (b) of section 131, as amended in 1959, excludes from coverage of the advertising control agreements those segments of the Interstate System that traverse commercial or industrial zones within boundaries of incorporated municipalities as they existed on September 21, 1959, and other areas where the land use as of that date was clearly established by State law as industrial or commercial. Inasmuch as it is the entire segment of highway traversing the excluded zones that is placed outside the perimeter of the advertising agreements, it is clear that there is no authority for making any bonus payments with respect to advertising control along the right-of-way involved. But, irrespective of the bonus payment, may the Federal Government contribute toward the cost of acquiring the right to control advertising on only one side of a highway in such a situation? Here again, as with the question concerning authority to contribute toward the cost of acquiring less than 660 ft of advertising control, a clear answer is not to be found in the law and the matter is under current study.

A related problem arises—or may arise in the future—in which an area zoned residential, or otherwise eligible for the Federal bonus payment, is later rezoned commercial or industrial. At least two States have questioned the Bureau's requirement for repayment of the $\frac{1}{2}$ percent in such a circumstance. Further, in at least one situation, the State law provides for continued control of outdoor advertising, even though the municipality may rezone the area in question commercial or industrial. The argument is advanced that the bare fact of rezoning would not affect the purpose for which the bonus was paid; that is, control of outdoor advertising. This argument ignores the fact, however, that the bonus is clearly not payable, by the express terms of the law, with respect to areas zoned commercial or industrial initially. So far, the contrary does not seem to have been suggested. If the municipality exercises its power to regulate or control land use by zoning commercial or industrial after payment of the bonus, the fact that the municipality is without the power to permit the erection of signboards, should not entitle the State to keep the money it could not have received had the zoning been in effect when the agreement was entered into. This problem may loom larger in the future, particularly with those New England States in which the entire area within the State is composed of incorporated municipalities (cities, towns, or villages) that control the use of land adjacent to the Interstate System throughout the State, except that the control of outdoor advertising rests with the State. In these situations, commercial or industrial zoning could indeed be extensive and could account for many miles along the Interstate System. In such cases, if refund of bonus payments were not required, the State would, in effect, have received a windfall to which it would not have been entitled had these same areas been zoned commercial or industrial before payment of the bonus.

For the most part, the responsibility to control outdoor advertising on a State-wide basis and the payment of the increased Federal share, or "bonus" as it is popularly known, coexist. There is one rather significant exception to this general rule, however, and that is with respect to toll highways incorporated in the Interstate System. The $\frac{1}{2}$ percent, though computed on the basis of the total cost of the project involved, is stated

in the law as an increase in the Federal share payable on account of any project on the Interstate System provided for by funds authorized under section 108(b) of the 1956 Act, as amended. There is no such Federal share payable because toll highways are not constructed with Federal-aid funds. Some toll-highway mileage has been constructed on right-of-way acquired since July 1, 1956, incorporated into the Interstate System. It is possible that more toll mileage may be constructed and incorporated into the System before 1972. Though no bonus payment will be made, all of this mileage must, nevertheless, be controlled, assuming that it meets the requirements for control. There is nothing in the act that would exclude toll roads from the application of the national policy.

Finally, there is the matter of computing the increased amount payable to a State that has agreed to control outdoor advertising in accordance with the national policy and standards. The national policy and the agreements between the Secretary of Commerce and State highway departments do not apply to certain industrial or commercial areas traversed by segments of the Interstate System nor do they apply to areas adjacent to portions of the Interstate System constructed on any part of right-of-way acquired before July 2, 1956. Inasmuch as such areas are excluded from control, incentive payments cannot be made with respect to such areas. The Interstate System will cross many highways, including streets in urban areas, where right-of-way was acquired before July 2, 1956. It is doubtful whether there will be many projects on the Interstate System that do not cross old right-of-way on which a portion of the Interstate System will be constructed. An example of the complexity of the problem may serve to convey the complications that may arise in computing the incentive payment. For purposes of illustration, it is assumed an Interstate project 10 mi in length costing a total of \$10 million. Further, 3 mi of that project will traverse a commercial area on which the $\frac{1}{2}$ percent bonus is not payable; the remaining 7 mi cross 5 highways and 10 streets that are on "old rights-of-way." How much is the State in this example to be paid? The right-of-way and construction costs of the segments that traverse the commercial areas must be deducted, of course, from the total project cost. In addition, the construction costs attributable to those small segments constructed on the rights-of-way and of the 5 highways and the 10 streets must also be deducted. If the right-of-way and construction costs of the Interstate highway are about the same for the length of the entire project, the costs can be prorated between the controlled and excluded areas. If, however, the project design calls for elaborate and costly interchanges and other structures at highway and street crossings, the costs in controlled and excluded areas are disproportionate and the costs probably cannot be prorated. Although the problem is likely to be a troublesome one, certainly a satisfactory solution can be found in every case that arises.

It is hoped that this outlining of some of the many problems that must be faced in administering the Federal statute relating to outdoor advertising does not discourage any State from enacting legislation that will permit it to enter into an agreement for the control of outdoor advertising.

President Kennedy's special message to the Congress February 28, 1961, contained the following quote:

The Interstate Highway System was intended, among other purposes, to enable more Americans to more easily see more of their country. It is a beautiful country. The System was not intended to provide a large and unreimbursed measure of benefits to the billboard industry, whose structures tend to detract from both the beauty and the safety of the routes they line. Their messages are not, as so often claimed, primarily for the convenience of the motorist whose view they block. Some two-thirds of such advertising is for national products, and is dominated by a handfull of large advertisers to whom the Interstate System has provided a great windfall.

No matter how irksome some of these problems may be—those visualized as well as those unforeseen—the end result of preserving the beauty of this country deserves every effort. Working together can accomplish that purpose.