Structure and Content of State Roadside Advertising Control Laws

DELBERT W. JOHNSON, Assistant Attorney General, State of Washington, Olympia

•WHEN CONGRESS acted to amend the Federal Aid Highway Act to provide an incentive to the States to regulate outdoor advertising along the Interstate system, it put into motion the forces of turmoil. In so doing Congress regenerated the hopes of those who wished for a more beautiful highway and welded together those who would make a business of attracting and distracting the motorist. It also placed the highway administrator in the middle of an intense conflict for which he was not altogether prepared. He was in the middle because he administered impartially the highways upon which the one group wished to ride without the intrusion of outdoor advertising and the other claimed a right to substitute the commercial artist's talents for scenery.

The highway administrator, with few exceptions, has not been the advocate of outdoor advertising regulations. For example, when the Washington State legislature passed on its regulation of outdoor advertising, it was apparent which side of the controversy it supported. Over the vigorous objection of the roadside commercial interests, a group backed by statewide pressure and support from naturalist and aesthetic—oriented groups lobbied through the essentials of their bill without the assistance of highway administration.

In fact, the administrator typically tends to view the control of outdoor advertising as unrelated to highways, drawing from the highway program both manpower and finances and employing a strange new planners' concept called zoning.[1]

There is a trend toward control of outdoor advertising along the modern highways. Administrative control over this new development is being tendered to the highway administrator by an expectant public.[2] He would do well to recognize and legitimize this child, this fact of modern life, and use his efforts and his position to secure a workable and realistic law.

What are the proportions of this trend toward control of outdoor advertising along the nation's highways and what are the characteristics of the State legislation?

As assistance to analysis of the legislation of the 18 States that have adopted substantial legislation, apparently calculated to qualify for the Federal inducement for control of highway advertising, Table 1 may help, to identify and provide a quick or surface comparison. This table attempts to show from both early law and post-1958 amendments some comparative features of current State advertising control legislation. Little detail can be shown in such manner, but it serves to illustrate that there are large areas of similar results in the legislation. There are also some unique provisions. The lunge into advertising control since 1958 is attributable to the Federal inducements; however, the idea had substantial roots before 1958.[3]

The comments following attempt analysis of the State legislation adopted to date, and offer some evaluation and suggestions.

Typically, the form of the new legislation is not a tidy package. Most of the States approached the regulation of advertising by amendment of their pre-1958 laws. Earlier

[1] Some highway lawyers have had little more sympathy or vision. For a timid start on the new Federal program, see 38 Neb.L.R. 541, and the reprint of a speech to the American Association of State Highway Officials, Dec. 1958.

[2] Of the 18 States requiring permits for erection of outdoor advertising devices prior to 1958, administration of the program was in highway administrators in 12. (HRB Special Report 41, "Outdoor Advertising Along Highways: A Legal Analysis.") All of the States adopting regulating legislation since 1958 have given administration to highway authorities (see Table 1).

[3] HRB Special Report 41, p. 18.

TABLE

SUMMARY OF STATE PROVISIONS ON

State (1)	Method of Control: Zoning (2)	Method of Control: Domain (3)	Agency Administering (4)	Rule Making Authority (5)	Highway and Area Affected (6)	Enforcement Device and Sanction: Sign Permit (7)	Fee (8)	License to Advertise (9)	Criminal Provisions (10)	Abatement Summary (11)	Other (12)
Conn.	Yes	Yes [1]	Highway Commission	Yes	Interstate	Yes	Yes	No	None	Yes	—
Del	Yes	Yes [1]	Highway Department	Yes	Interstate, within 25' of any pub. hwy, playground, school, etc.	Yes	Yes	No	$10–$50 fine	Yes	Any taxpayer may maintain injunction
Haw.	Yes	No	Director of Transportation	Yes	Interstate	No	Yes	Yes	$25–$500 fine	No	—
Ky.	Yes	No	Highway Commission	Yes	Interstate, ltd. access, turnpikes	No	No	No	$100–$500 fine	Yes	—
Me.	Yes	No	Highway Commission	Yes	Interstate and turnpikes (500'), within 300' of hwy and RR jcts., pub parks, etc; within 50' of any pub hwy	Yes	No	No	$10–$100 fine	Yes	Mandatory injunction
Md.	Yes	Yes	State Road Commission	Yes	Interstate, within 500' of Northeastern Expressway	Yes	Yes	Yes	None	Yes	—
Neb.	No	Yes	Department of Roads	Yes	Interstate [3]	Implies permits required by regulations	No	No	$25–$100 and/or 3 mo	No	—
N. H.	Yes	No	Commission of Public Works	Yes	Interstate	No	No	No	$100–$1,000 fine	Probably not	Expense of removal may be collected
N. Y.	Yes	No [4]	Thruway Authority and Spt. of Public Works	Yes	Interstate, Thruway	Yes	Yes	No	None	Yes	—
N. D.	No [7]	Yes	Highway Commission	No	Ltd. access hwys	No	No	No	None	No	—
Ohio	Yes	No	Director of Highways	Yes	Interstate	No	No	No	$100–$1,000 fine	Yes	Removal expense may be collected in civil action, also for abatement
Ore.	Yes	No	Highway Commission and Commissioner, Bur. of Labor [8]	Yes	Interstate, "within view" of all hwys and thruways, no spec. dist.	Yes	Yes	Yes	$100 fine and/or 30 days	Yes	Recover costs of removal
Pa.	Yes	Yes [10]	Secretary of Highways	Yes	Interstate	No	No	No	$100 fine or 30 days	Yes	Civil action for injunction, abatement correction, and expense of removal
Vt	Yes	No	Highway Department	No	Interstate and other ltd. access hwys	No	No	No	$100 fine or 30 days	Yes	Expense of removal collectable in "tort" action
Va.	Yes	Yes [11]	Highway Commission	Yes	Interstate; within 500' of Blue Ridge pkwy, Mt. Vernon Blvd. and any pub. cemetery, park, etc	Yes	Yes	Yes	$10–$50 fine	Yes	May collect costs of removal
Wash.	Yes	No	Highway Commission	Yes	Interstate; some other designated "scenic routes"	Yes	Yes	No	Fine and imprisonment	Yes	Mandatory injunction
W. Va	Yes	No	Highway Commission	Yes	Interstate, within 500' of any church, school, cemetery, public park, state or nat. forest, etc.	Yes	Yes	Yes	$10–$300 fine	Yes	—
Wis	Yes	No	Highway Commission	Yes	Interstate	Yes	Yes	No	None	Yes	—

[1] Occasionally provisions made to exclude certain types of signs not fitting concept of commercial advertising. Conn. exempts from license or permit small signs (6 sq ft or less) owned by public, service or church groups. Ky seems to exclude from control signs showing name and address of owner, lessee or occupant. Me excludes temporary political and agricultural fair posters not permanently affixed. Del. excepts notices concerning services of utilities and railroads. N. H. has specific provisions permitting signs to be within controlled area to be seen from a parallel or nearby hwy that is not Interstate.

[2] Has had statute since 1915; 1959 amendment permitted purchase of advertising rights within Fed. standards.

[3] Limited to Interstate highways.

[4] Has precluded use of, and leasing for, advertising purposes and renewals of existing leases after date of act. Leases have 3 yr to expire; lease interests not expiring within 3 yr to be acquired by purchase or condemnation. Use by landowner for on-premise activities may be done with permit from State Roads Commission, thus all off-premise advertising to be eliminated

[5] Seems to authorize hwy dept. to permit advertising on rights-of-way

[6] Art 3, Sec. 30, State Highways Law authorizing Spt of Public Works to acquire property "for other purposes to improve safety conditions on the state highway system" has been construed as not authorizing appropriation of general negative easement for elimination of advertising Schulman v People, 219 N Y S (2d) 241, 10 N Y. (2d) 249, reversing Schulman v People, 203 N Y.S (2d) 708, 11 A.D. (2d) 273, and Decker v. People, 203 N Y.S (2d) 718, 11 A.D. (2d) 888. Sec. 361A, Public Authorities Law is not eminent domain statute New York Thruway Authority v Ashley Motor Court, 210 N Y.S (2d) 193, 12 A D (2d) 223 Laws 1961, Ch 816, which amended hwy; law and apparently pertinent thruway laws has ominous addendum providing that agreement with Secretary of Commerce could also provide for certain aesthetic considerations

legislation on regulation of outdoor advertising in the States took several forms. In some States the acts were essentially licensing acts for regulation of businesses.[4] In others, the principal concern lay with elimination of signs within specified distances of certain public places, usually parks, playgrounds, forests or other areas of recreation, and cemeteries.[5] In the latter type of legislation some highways, notably scenic highways or parkways, were protected.[6] A third class of legislation existing prior to 1958 was a collection of highway safety measures. Typical provisions prohibited signs within certain distances of highway intersections and at railroad crossings and precluded certain types of hazard signs, those imitating traffic control devices or employing flashing lights.[7]

Starting with a wide variety of existing legislation and having the Federal standards as an objective, including its detailed classification of signs and spacing requirements, using amendment or remodeling rather than new construction as the method of attainment, the resulting lack of uniformity could be predicted.

The element of haste has also impressed itself on present legislation. The time target, a signed agreement by July 1, 1961,[8] may well have required amendment of existing acts rather than preparation of comprehensive new legislation. In addition, the urgency of the time schedule fostered an attitude that re-evaluation and revision of the acts in succeeding sessions would be required in any event. Maine labeled its amendment an "interim" provision,[9] and Washington required a report to the next legislative session, indicating that details of the new legislation were subject to revision.[10]

This is not to suggest that uniformity is desirable, but only that the typical product is not as concise, appropriate, or useful as it could be made. Identification of the time schedule adopted by Congress as the primary cause of this result, carries its tacit suggestion.

By far the greater number of States employ the police power and zoning mechanism to effectuate control than use eminent domain powers. Several States employ a combination of both methods; and only two States, Nebraska and North Dakota, use only eminent domain (Table 1, Cols. 2 and 3).

If a State is to control outdoor advertising to the extent that it can qualify for the Federal bonus, the first and major decision to be made is the choice of machinery. Shall the right to advertise upon the lands adjoining the right-of-way be purchased, or shall its use be regulated under the police power and zoning techniques? Analysis of the right to use one's land to advertise is helpful in making a choice. It has been said that among the abutters' rights, there is an "easement" of prospect and view, and that by use of this concept of property law the regulation of billboards might be accomplished.[11]

Is this a valid and useful proposition? Examination of the cases cited by the proponents of this theory to substantiate the abutter's right of view are, with but few exceptions, cases between adjoining property owners or occupiers. In some of these cases there is an express recognition that the relationship of the abutter to the public differs from the relationship between abutters competing for the public view.[12] The right to be seen is a right of the abutter against another abutter, not against the public.

A faint recognition is accorded the abutters' "easement of view" by the textwriters.[13]

---

[4] Revised Laws of Hawaii, Sec. 155-70 to 155-75.

[5] Code of West Va., Art. 22, Ch. 17, Sec. 1721 (57).

[6] Revised Stats. of Maine, Ch. 23, Sec. 149.

[7] N.D. Century Code, Sec. 24-01-12. A detailed analysis of State legislation antidating the 1958 amendment to the Federal act has been made previously. (Note HRB Special Report 41, pp. 18-31).

[8] 23 U.S. Code 131 (c).

[9] Revised Statutes of Maine, Ch. 23, Sec. 147A.

[10] Washington Laws 1961, Ch. 96, Sec. 15.

[11] "Billboards and the Right to Be Seen from the Highway," Ruth I. Wilson, 30 Geo.L.J. 723; 90 A.L.R. 733; 40 A.L.R. 1321; "Billboards Along the Highways," Nicholas v Olds, 26 Mich.S.B.J. 15; Kelbro v Myrick, 113 Vt. 64, 30 A. (2d) 527; 23 U.S.C. Sec. 131.

[12] See Brown-Rand Realty v Saks & Co., 214 N.Y.S. 230, 126 Misc. 336.

[13] 3 Tiffany, Real Property, 927 (3d ed.) "Besides the abutting owners' easements of light, air and access, there are occasional decisions or dicta to the effect that he has a right of unobstructed view from and over every part of the highway to and from his property." Supporting citations are those of Wilson.[11]

ADVERTISING ALONG HIGHWAYS

In-orma-tion Site (13)	Commercial Area (14)	Agreement with Secretary of Commerce Authorized (15)	Provisions for Control of Nonconforming Uses: Time to Remove (16)	Provisions for Control of Nonconforming Uses: Elimination (17)	Treatment of Local Zoning (18)	Form of Legislation [1]: Statement of Legislative Purpose (19)	Form of Legislation [1]: Definitions (20)
No	Interstate, may exclude indus. and commer while so zoned, other ltd access hwys must exclude such	Yes	None	None	Subject to local zoning besides provisions of act	No	Few in text
Yes	No control	Yes	On Interstate "forthwith" other hwys till Dec 31, 1966 (about 5½ yr)	Declared public nuisance	The more stringent state or local shall apply	Yes	Yes, separate
No	Controlled	No	None	None	No provisions	No	No
No	No control	Yes	5 years	Declared public nuisance	Subject to local zoning besides provisions of act	Yes	Yes, separate
No	Excludes "urban areas" and "compact or built up areas" of cities	No	None	None	Subject to local zoning	Partial	In text
No	Controlled	No	3 yr for leases to expire	Purchase of leasehold interests beyond 3 yr [4]	Subject to more restrictive local zoning	Partial	No
No	Excludes commer and indus. areas so zoned from agreement, thus implying from control	Yes	None	None	No provisions	No	No
Yes	No control	Yes	6 mo	Declared public nuisance	No provisions	Yes	Yes
No	No control	Yes	None	None	Subject to more restrictive munic. ordinances	Yes	Partial
No	No provisions	No	None	None	No provisions	No	No
No	Commer and indus. zones only within cities excluded	No	30 days after notice	Declared public and private nuisance	No provisions	No	Yes
No	No control	Yes	3-, 5- and 7-yr periods depending on type [9]	Public and private nuisance	No provisions	Yes	Yes
Yes	No control	No	Devices may be purchased or condemned		Subject to more restrictive local zoning	Yes	Yes, separate
No	No control	Yes	None	None	No provisions	Yes	Yes, adopts Federal regulations definitions
No	No control	Yes	Non-conforming signs on Interstate must be purchased, no provision on others		Local zoning to conform to act, permits issued by hwy commiss. to conform to local zoning	No	Yes
No	Controlled	Yes	3 yr	Declared public nuisance	Subject to more stringent county and city zoning	Yes	Yes
No	Excludes commer and indus areas so zoned from agreement, thus implies from control	Yes	30 days after notice	Public and private nuisance	No provisions	No	No
No	No control	Yes	1 yr	Declared public nuisance	—	Yes	Yes, separate

"to the extent that such provisions are within the existing powers of the Superintendent of Public Works."

[7] Sec 24-01-12, 4 N D Cent Code Anno, while regulating signs and advertising within hwy rights-of-way, also precludes maintenance of "any sign or billboard upon private property within one thousand feet of any highway grade crossing in such place or manner as to obstruct or interfere with a free and clear view of such crossing . . ." and authorizes hwy authorities summarily to remove from private as well as public property "any advertisement which may be deemed to be a hazard to traffic, or in the future may tend to create a hazard to traffic . . ."

[8] Under 1955 act, Bureau of Labor commissioner administered regulation of advertising along all state hwys "within view"; 1961 act gave supervision of regulation of advertising within 660' of Interstate to hwy commission

[9] Signs existing before 1955 permitted to remain until 1960, those existing in violation of 1961 act can remain till 1964, except ones violating spacing and size restriction which may remain 7 yr. Leases for outdoor advertising prohibited after date of act.

[10] Whether acquisition by purchase or condemnation applies as exclusive method of control or as one to eliminate nonconforming uses is not clear Act authorizes acquisition of "advertising devices and any property rights pertaining to or used for, or in connection with advertising devices." It will be interesting to learn how act is being construed Whether exceptions in line with Fed. standards are made to "rights" acquired or whether all "rights" are acquired and portions of them given or sold back to those desiring to advertise must present troubling policy decision.

[11] Amended existing law to make specific reference to Interstate system Prior law precluded erection or maintenance of signs within 500' of Blue Ridge Pkwy, Colonial National Pkwy, Mt. Vernon Blvd, and any public cemetery, park reservation, playground, national or state forest outside any municipality, prior to amendment there was no requirement such rights be purchased.

The theory is completed by application of the traditional prohibition against increasing the burden upon the servient estate (the highway).

The purpose of the inquiry by Wilson[11] was to find a method of avoiding the precedents that then hampered the use of the police power in regulation of billboards. The novelty of the theory was acknowledged. Since the article was published, only one court has followed the theory.[14] Two have rejected it, both cases in effect acknowledging the right to advertise was of the nature of an easement; however, they refused to limit the right to advertise to on-premise activities.[15] The remainder have ignored it,[16] and some students yet accept the logic of the theory without noting that a different use or application from the cases evolving the rule is being attempted.[17]

There are cases involving the abutter and the public where an easement of view was asserted and the courts have refused to recognize such, holding that the public is entitled to block the public's view of a distracting sign by construction within the public right-of-way.[18]

It seems, therefore, a proper conclusion that, although a right to be seen from the public street or highway exists as between competing, adjoining property owners abutting upon the public streets, there is no such generally recognized right against the public.

Even if there was in general recognition a theory that abutting property enjoyed an appurtenant easement of view only for the benefit of business or activities conducted on the land, little practical use could be made of it for the simple reason that abutting properties frequently do not extend away from the right-of-way line for the distance desired to be controlled. The 660-ft distance called for in the Federal standards is roughly equivalent to two average city blocks. Within the "protected area" under the Federal standards there frequently are found several ownerships that do not abut the highway. Said in a more direct manner, all lands within 660 ft of the highway right-of-way are not always contiguous with the highway and would not, therefore, be controlled by such a theory.

Much of the Interstate system is constructed on new location. The law is now clear that there is no abutter's easement of access created when a limited access highway is established and opened on new location.[19] There is no logical reason why, on newly located limited access highways, an easement of view should be created; therefore, there is nothing in this respect to distinguish the abutter from the non-abutter.

It would be an anomalous situation to find the abutter's right to advertise created by construction of a highway to be less valuable than the non-abutter's because it was limited to advertising only on-premise activities. There seems to be no recognition in the cases that the advertising value created by highways is as great in nearby non-abutting lands as in lands that abut the highway.

In the last analysis, it seems that the advertising value of lands near the highway is created by construction of the highway. Purchase of a general negative easement precluding the owner of lands within the area to be controlled from doing what he would otherwise be privileged to do, results in the public purchasing the value that it created in the lands. There is no more reason to purchase the right to advertise from lands in the vicinity of a highway than to do so within, for example, the areas of cities where, for other reasons, persons congregate in large numbers.

If there is no logic in purchasing such rights, are there reasons for not purchasing them?

The first and completely obvious reason for using some available alternate to purchasing such rights is that purchase costs highway dollars that need not be spent if the control can be exercised through other means.

---

[14] Kelbro v Myrick, 113 Vt. 64, 30 A. (2d) 527.

[15] Murphy Inc. v Town of Westport, 131 Conn. 292, 40 A. (2d) 177; Maryland Adv. Co. v Mayor & City Council, 86 A. (2d) 169 (Md. Ct. App. (1952). Query: Is the result a denial that the easement is appurtenant or that the burden of the easement cannot be increased?

[16] "Billboard Regulation Along the Interstate Highway System," Morton L. Price, 8 Kan.L.R. 81.

[17] Ibid, p. 83.

[18] Perlmutter v Greene, 182 N.E. 5, 259 N Y. 327.

[19] State v Calkins, 54 Wn. (2d) 521, 342 P. (2d) 620.

Real property law is highly technical, overlaid with historical, rather than logical, significance and inefficient for the present purpose of restriction of use of lands. Courts are prone to think of the old purposes.[20] There are the further problems of authority to condemn such interests and whether the taking of such interests is a highway purpose.[21]

Although the traditional concepts of real property law are ill adapted to restrictions on use of real property, the concepts of zoning have grown for the specific purpose of limitations upon land use based upon planning. And, while it is relatively young in comparison to real property law, its use is accepted in some degree in every State.[22]

Planning and zoning are constitutional uses of the police power[23] and a legislative determination that regulation of a particular activity is reasonably related to the health, safety and general welfare is accorded a presumption of constitutionality by the courts.[24] And the trend of the present decisions is increasingly to adhere to the legislative judgment.[25] In the present situation, the relationship of control of outdoor advertising along the Interstate highways, particularly to the public health, safety and welfare, is buttressed by the national, as well as a State legislative pronouncement to that effect. Although planning and zoning in the United States has grown principally to combat the congestion and to facilitate the planning of the municipalities, and drew its greatest impetus as a solution to that particular problem,[26] its use has not been so limited. In addition to municipal planning, the idea of zoning has been used frequently for prohibitive use protection of public areas.[27]

It seems then that the trend of the States to control outdoor advertising is towards use of the zoning concepts rather than eminent domain. That trend is well founded.

---

[20] In Ellis v Ohio Turnpike Comm., 120 N.E. (2d) 719, 162 Ohio 86, the court held as too vague and indefinite to be effective an attempted appropriation of "all rights to erect on any of the aforesaid remaining lands any billboard, sign, notice, poster, or other advertising device which would be visible from the travel-way of Ohio Turnpike Project No. 1...", forgetting that such signs were only objectionable when they could be seen, whether within 5 or 500 ft of the highway. The first case of Decker v People, 195 N.Y.S. (2d) 197, is also illustrative of that tendency. There the court held too uncertain language providing for removal of any signs "which in the opinion of the Superintendent of Public Works, ... is or would be visible and capable of being seen without visual aid by a person of normal visual acuity from the main-traveled way..."; yet see Schulman v People, 203 N.Y.S. (2d) 708, 11 A.D. (2d) 273, and Decker v People, 203 N.Y.S. (2d) 718, 11 A.D. (2d) 888, reversing the earlier county court decision.

[21] Ellis v Ohio Turnpike Comm., supra; Decker v People, supra; "Control of Outdoor Advertising Through Eminent Domain," HRB Special Report 41; however, see Berman v Parker, 348 U.S. 26, 75 S.Ct. 98, and Schulman v People, supra, where for reasons of safety, authority to condemn was found; reversed, 203 N.Y.S. (2d) 708, 11 A.D. (2d) 273; and reversed again reinstating the trial court holding that no authority existed. Schulman v People, 219 N.Y.S. (2d) 241, 10 N.Y. (2d) 249.

[22] "Comparative Digest, Municipal and County Zoning Enabling Statutes," U.S. Housing and Home Finance Agency; Pooley, "Planning & Zoning in the United States," p. 8; Appendix "The Master Plan," Charles M. Haar, 20 Law & Contemporary Problems, 353.

[23] Village of Euclid v Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114; "Constitutional Law & Planning," Corwin W. Johnson, 20 Law & Contemporary Problems, 199. New York State Thruway Authority v Ashley Motor Court, 210 N.Y.S. (2d) 193, 12 A.D. (2d) 223.

[24] Zahn v Board of Public Works, 274 U.S. 325, 47 S.Ct. 594; Marblehead Land Co. v City of Los Angeles, 47 F. (2d) 520; Rothkopf, The Law of Zoning and Planning, Sec. 18. New York State Thruway Authority v Ashley Motor Court, 210 N.Y.S. (2d) 193, 12 A.D. (2d) 223.

[25] Pooley, "Planning & Zoning in the United States," 82, Michigan Legal Publications 1961; "Regulation of Outdoor Advertising Under the Police Power," HRB Special Report 41.

[26] Village of Euclid v Ambler Realty, supra.

[27] Thomas Cusack Co. v Chicago, 242 U.S. 526, 37 S.Ct. 190 (1917); General Outdoor Advertising Co. v Indianapolis, 172 N.E. 309, 202 Ind. 85 (1930); General Outdoor Advertising Co. Inc. v Dept. of Public Works, 193 N.E. 799, 289 Mass. 149 (1935); "What the state is attempting to do here may well be referred to as zoning lands along the Thruway by special act of the legislature," New York State Thruway Authority v Ashley Motor Court, 210 N.Y.S. (2d) 193, 12 A.D. (2d) 223.

In order to comply with the Federal standards, unless the highway section is new location upon which no signs exist, there must be some method to eliminate the existing signs that do not conform to the standards.

Several methods have been used to eliminate the nonconforming use. A summary approach is to legislatively classify such as a public nuisance and provide for immediate removal.[28]

Most of the States adopting the zoning approach to control of advertising have employed this device (Table 1, Cols. 16 and 17), although few States have classified signs existing at the time of adoption of legislation separately from other signs that for other reasons do not conform to the legislation or the regulations adopted.

A second, increasingly popular, and probably sounder approach to eliminating the existing sign is to provide for a reasonable amortization period, after which nonconforming uses are prohibited. This idea has received implied recognition in the legislation of several States (Table 1, Cols. 16 and 17), notably Kentucky, Oregon, and Washington. For example, Washington's act provides a three-year period within which to remove nonconforming signs. Although this length of the period may be significant for other reasons,[29] it can give constitutional support to the legislation as a reasonable amortization period.[30] Except for the delay involved in waiting for a reasonable amortization period, it would seem desirable to assist a legislative declaration of nuisance with such a provision.

Where the billboard is neither expensive nor durable by comparison to most modern structures, relatively short periods of amortization should be approved.[31]

As a technique in the event that the nonconforming use is hopelessly entrenched, it may be that the eminent domain approach could be combined satisfactorily with a prospectively operative zoning statute to give the necessary control.[32] Some of the States seem clearly to have intended to eliminate the existing signs by purchase.[33]

The informational site as a device to satisfy to some extent the need of the motorist for information (or of business to advertise) is not attracting appreciable support. Only three States (Pennsylvania, Delaware and New Hampshire)[34] have expressly provided for informational sites.

It should be assumed, however, that in some of the States within the power to make rules and regulations consistent with the Federal standards, it may be concluded that there is authority to provide for informational sites.

Alaska, not yet an adherent of the Federal standards, has an interesting variation of this compromise effort to permit advertising yet preserve the safety and welfare of the

---

[28] State ex rel. Dema Realty Co. v McDonald, 121 So. 613, 168 La. 172. St. Louis Gunning Advtsg. Co. v St. Louis, 137 S.W. 929, 235 Mo. 99 (1911).

[29] Sec. 15 of the act requires a study and report to the legislature two years following passage of the act concerning application of Federal standards to outdoor advertising. Legislative argument held the effect of the three-year period would maintain the status quo until another legislative session could again consider the problems.

[30] "Elimination of Incompatible Uses and Structures," C. McKim Norton, 20 Law & Contemporary Problems, 303; "The Amortization Approach," Pooley, Planning and Zoning in the United States, 106.

[31] Grant v City of Baltimore, 129 A. (2d) 353, 212 Md. 301 (1956); City of Los Angeles v Gage, 274 P. (2d) 34, 127 Cal. App. (2d) 558 (1954); Harbison v City of Buffalo, 152 N.E. (2d) 42, 4 N.Y. (2d) 553; Standard Oil Co. v Tallahassee, 183 F. (2d) 410, Cert. denied 340 U.S. 892 (1950) "The Elimination of Nonconforming Uses," 7 Stan. L.R. 415. "The Amortization Approach," Pooley, Planning & Zoning in the United States, 106.

[32] Mich. Stat. Ann., Sec. 5.29331(1). Berman v Parker, 348 U.S. 26, 75 S.Ct. 98 (1954); See Laws of Pa. 1961 Regular Session, Act. No. 46, (which will apparently be codified as 36 Purdon Pa. Stats. Anno. Sec. 2718.1-2718.10), Sec. 3, which precludes erection of signs after the date of the act and Sec. 4 which authorizes acquisition of "devices" as well as rights used in connection therewith, apparently existing at the date of the act.

[33] Code of Virginia, Sec. 33-317.3; Ann. Code of Maryland, Art. 89b, Sec. 233, directs purchase or condemnation of leases not expiring within three years.

[34] Pa. Laws of 1961, Act. No. 46, Sec. 5(d); Delaware Code, Title 17, Ch. 11, Sec. 1126. It is interesting also to note that both statutes in effect anticipate financing the construction and maintenance from the users of the sites: N.H. Laws 1961, Ch. 269, Sec. 249A:11.

traveler. All advertising is prohibited[35] but the highway authority is directed to design uniform signs for use of rural businesses, listing type of establishment, service offered, and distance to the establishment, such to be installed by the owner 1 mile from and on the right side of all highway approaches.[36]

If States employing the informational site concept prove that fast through traffic will in fact drive off the highway and study the local advertising, the use of informational sites would be expected to expand appreciably.

Another financial feature of advertising control is the requirement that a fee be paid, either for issuance of a license to advertise or for sign permits. Most States require a permit or license to advertise, some both, but only 10 expressly require payment of fees. Some States provide the amount of the fees in the statute.[37] While others permit the amount of the fees to be adjusted by the administering agency to provide funds to defray the costs of administration.[38]

It would be unreasonable to expect that reliable statistics would be available with only few and initial years of experience to draw upon. At the close of Washington's first year of operation, the first biennial cost of administration was estimated at between $50,000 and $75,000, with income from fees estimated at $10,000. Although the initial cost of making an inventory of the existing signs, including pictures and detail location, setting up records, forms and procedures, would not be typical of succeeding bienniums, it seems obvious that, where the cost of administration is sought in the fee schedules, Washington's fees would, at least, have to be doubled. It would also seem that authority to set reasonable and necessary fees to cover the costs of administration would be more satisfactory than a statutory schedule.

In administration of a system of control of highway advertising, the availability of an array of enforcement devices would seem to be essential. The high cost, as well as the unavoidable delay incident to enforcement in the courts of record, would seem to preclude primary reliance on the ordinary civil action for injunction, mandatory injunction, decree of abatement, and like remedies. However, these methods certainly should be available.

Criminal sanctions against violation of the prohibitionary mandates of statutes and rules have been the favorite, with provisions for money fines in varying amounts and as an alternate, and, sometimes additional penalty, a term of imprisonment (Table 1, Col. 10). Although a criminal trial is the most technical of all legal actions, and successful prosecution rests with the county and city attorneys, rather than with the highway administrators and attorneys, that method has proven the only feasible approach to regulation of traffic, parking, and other minor violations.

Most States have also adopted provisions for summary or non-court abatement. Essentially, this approach is characterized by self help, permitting the removal of signs in violation of the laws and regulations. It is direct, inexpensive, and involves no delay to remove an offending sign with State crews, while to pursue every case through court, obtaining a court order for removal, could make enforcement an intolerable burden.

SUMMARY

The conclusions to be drawn from a review of the highway advertising control legislation adopted in response to the Federal urging are several. There are many common threads in the legislation but the patterns or forms vary with each State. This variation is attributable primarily to the lack of any commonly accepted standards before 1958 and insufficient time to develop comprehensive new legislation before July 1, 1961.

A zoning approach has been preferred over the use of eminent domain procedures and the attitude of the courts is generally sympathetic towards use of the police power. There is a rigidity about eminent domain procedure due in the main to historical development of property law that limits its usefulness in highway advertising control.

---

[35] Alaska Compiled Laws Ann., Ch. 12, Sec. 14 A-12-3.

[36] Ibid., Sec. 14 A-12-4.

[37] West's Wisconsin Stats. Ann., Sec. 84.30(5); Wash. Laws of 1961, Ch. 96, Sec. 12; New York's Schedule, $10.00 for each device, seems to be the most realistic.

[38] Delaware Code, Title 17, Ch. 11, Sec. 1104(d).

Elimination of existing signs should no longer be a problem if the legislative purpose is clear and the relationship between highway travel and advertising control is established. Particularly this is true where reasonable periods of amortization are provided for nonconforming signs.

The measure of enforcement and the sanctions adopted to date seem appropriate and generally sufficient for efficient administration of highway advertising control. It is anticipated that day-to-day enforcement will rely heavily upon criminal sanctions and self help with the customary civil actions being reserved for problem, unique, or test cases.

Financial considerations have fostered the early adoption of highway advertising control. The Congressional plan to encourage such regulation has proved effective. Financial considerations seem to have eliminated any real expectations for the informational site as a substitute for indiscriminate highway advertising. Fee schedules to defray the costs of regulation are not adequate for that purpose and should be increased.

A reasonable, though hasty start has been made toward control of roadside advertising. The structure and content of State laws will undoubtedly change with experience, as the pattern is yet evolving.