

3040

BILLBOARDS, INTERSTATE HIGHWAY SYSTEM; U. S. SECRETARY OF COMMERCE, BUREAU OF PUBLIC ROADS, RULES AND REGULATIONS—ADOPTION OF RULES AND REGULATIONS INCONSISTENT WITH CHAPTER 5515. R.C. IN ENTIRETY BY DIRECTOR OF HIGHWAYS PROHIBITED; §5531.05 R.C.; §122, PUBLIC LAW 381, 85TH CONGRESS, 2D SESSION—VIOLATORS, NOTICE SERVED BY COUNTY SHERIFF, §§5515.23, 5515.24 R.C.

SYLLABUS:

1. The Director of Highways may not enter into agreements with the Secretary of Commerce of the United States under the provision of Section 5531.05, Revised Code, and Section 122 of Public Law 381, 85th Congress, Second Session, whereby the State would adopt in their entirety a set of federal rules and regulations which are inconsistent with the provisions of Chapter 5515., Revised Code.

2. Any such agreements by the Director of Highways with the Secretary of Commerce of the United States under the provisions of Section 5531.05, Revised Code, must be limited to the adoption of rules and regulations or such portions of them as are consistent with Ohio law.

3. Under Section 5515.23 and 5515.24, Revised Code, notice should be served on the property owner by the Sheriff of county in which the property is located.

Columbus, Ohio, November 7, 1958

Hon. Charles M. Noble, Director of Highways
Columbus, Ohio

Dear Sir:

I have your request for my opinion, which reads as follows:

“The Last Special Session of the General Assembly enacted Sections 5515.21 to 5515.24, inclusive, and Sections 5531.05 and 5531.06 of the Revised Code in Amended House Bill 943, which will become effective October 2, 1958.

“Said act relates to the prohibition of the erection and maintenance of advertising devices on new locations of the interstate system as established by Public Law 627, being the Federal Highway Act of 1956, within 660 feet of the right of way line.

“Section 5515.24 provides that the director of highway shall give notice to all owners of land containing nonconforming uses,

etc. In the event that such devices are not removed within thirty (30) days after such notice they shall be abated and ordered removed by the Court of Common Pleas, etc.

“Section 122 of the Federal Highway Act authorizes the Bureau of Public Roads to make rules and regulations with reference to such advertising. Said bureau has given notice that it intends to promulgate such rules and regulations which, of course, will eventually be adopted in some form. A copy of said proposed rules and regulations is enclosed herewith.

“In order that this department may be in position to perform its obligations under said law, your advice is requested upon the following:

“1. May the director of highways enter into agreements with the Secretary of Commerce under the provisions of Section 5531.05, R.C. wherein the state adopts said rules and regulations in their entirety, notwithstanding the same are in some respects inconsistent with the Ohio Law?

“2. If your answer to question 1 is in the affirmative, may the director enforce said rules and regulations in accordance with the provisions of said Amended House Bill No. 943?

“3. In the event your answer to inquiry No. 1 is in the negative, please advise the limitations upon the director in entering into such agreements as are referred to in said Section 5531.05 R.C.

“4. Under Section 5515.21, R. C., the director is required to serve notice on the violator. Please advise in what manner said notice shall be served. It will also be appreciated if you will prepare and approve a proper form of such notice to be used in case of such violation.”

All of your questions appear to be a request for my opinion of the interpretation of Sections 5515.21 to 5515.24, inclusive, Revised Code, and Sections 5531.05 and 5531.06, Revised Code. Section 5515.21, Revised Code, is as follows:

“As used in sections 5515.21 to 5515.24, inclusive, of the Revised Code:

“(A) ‘Advertising device’ includes any billboard, sign, poster or display intended to attract or which does attract the attention of operators of motor vehicles on the interstate system, and also includes structures erected or used in connection with the display of any such devices and all lighting or other attachments used in conjunction therewith.

“(B) ‘Interstate system’ means all portions of the national

system of interstate and defense highways constructed on new locations in accordance with Public Law 627, the 'Federal Aid Highway Act of 1956' and in accordance with standards adopted and promulgated pursuant to such act."

Section 5515.22, Revised Code reads:

"No advertising device shall be erected within six hundred sixty feet of each edge of the right-of-way of the interstate system located outside of municipal corporations except the following:

"(A) Advertising devices which are to be erected or maintained on property for the purpose of setting forth or indicating:

"(1) The name and address of the owner, lessee, or occupant of such property;

"(2) Information required by law to be posted or displayed thereon;

"(3) The name of the business or profession conducted on such property, or which identify the goods or services produced or sold on such property;

"(B) Advertising devices indicating the sale or leasing of the property upon which they are placed;

"(C) Directional or other official signs and signals erected or maintained by the state or other public agency having jurisdiction."

Section 5515.221, Revised Code, contains exactly the same language as Section 5515.22, Revised Code, except the sixth word in Section 5515.22, Revised Code, is "erected" and the sixth word in Section 5515.221, Revised Code, is "maintained."

Section 5515.23, Revised Code, is as follows:

"Any advertising device erected or maintained in violation of Section 5515.22 or 5515.221 of the Revised Code is hereby declared to be a public nuisance and such device shall be abated and ordered removed by the court of common pleas of the county in which such advertising device is located upon complaint of the director of highways after a thirty day notice by the director to the owner of the land on which the device is located and a finding by the court that a violation of Section 5515.22 or 5515.221 of the Revised Code exists."

The language of Section 5515.24, Revised Code, is as follows:

"Advertising devices existing on the effective date of this section which violate section 5515.22 or 5515.221 of the Revised

Code are hereby declared to be nonconforming uses. Such nonconforming uses are hereby declared to be public nuisances and shall be discontinued and removed by the owners of the lands on which they are located within one year from the time such devices become nonconforming uses.

“The director of highways shall give notice thereafter to all owners of land containing such nonconforming uses stating the date by which such devices must be removed. If such devices are not removed within thirty days after such date, they shall be abated and ordered removed by the court of common pleas of the county in which such advertising device is located upon complaint of the director of highways upon a finding by the court that a violation of section 5515.22 or 5515.221 of the Revised Code exists.”

Section 5531.05, Revised Code, is quoted as follows :

“The director of highways may enter into agreements with the secretary of commerce of the United States as provided by section 122. of Public Law 85-381, the ‘Federal-Aid Highway Act of 1958’. Any expenditure of money by the director in connection with agreements authorized by this section shall be payable from any funds available to the director.”

Section 5531.06, Revised Code, reads as follows :

“The director of highways may accept any allotment of funds by the United States, or any department or agency thereof, appropriated under the ‘Federal-Aid Highways Act of 1958’ and any subsequent legislation either supplementary to or amending such act.”

Your attention is invited to the fact that Sections 5515.21 through 5515.24, Revised Code, are the only sections of the code dealing with the subject of the control and regulation of advertising devices on highways within the State of Ohio.

These statutes would naturally be classified as statutes in derogation of rights of private property. The law concerning the construction of such statutes is that they should be strictly construed but that exemptions should be liberally construed. The following is quoted from 37 Ohio Jurisprudence, 726 :

“Those statutes are generally subject to a strict construction which impose restriction upon the use of private property, or which regulate or restrain the disposition thereof, or which, in general, interfere with private property rights. On the other hand,

exemptions from such restrictive provisions are liberally construed. In such cases, all doubts are resolved in favor of the property owner, and the scope of such statutes is not to be extended to include limitations not therein clearly prescribed."

Paragraphs (a) and (b) of Section 122 of Public Law 381, 85th Congress, Second Session, are as follows:

"(a) National Policy.—To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, it is hereby declared to be in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to the Interstate System by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system. It is hereby declared to be a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within six hundred and sixty feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary, which shall include only the following four types of signs, and no signs advertising illegal activities:

"(1) Directional or other official signs or notices that are required or authorized by law.

"(2) Signs advertising the sale or lease of the property upon which they are located.

"(3) Signs erected or maintained pursuant to authorization or permitted under State law, and not inconsistent with the national policy and standards of this section, advertising activities being conducted at a location within twelve miles of the point at which such signs are located.

"(4) Signs erected or maintained pursuant to authorization in State law and not inconsistent with the national policy and standards of this section and designed to give information in the specific interest of the traveling public.

"(b) Agreements—The Secretary of Commerce is authorized to enter into agreements with State highway departments (including such supplementary agreements as may be necessary) to carry out the national policy set forth in subsection (a) of this section with respect to the Interstate System within the State. Any such agreement shall include provisions for regulation and control of the erection and maintenance of advertising signs, dis-

plays, and other advertising devices in conformity with the standards established in accordance with subsections (a) and may include, among other things provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance. Upon application of the State, any such agreement may, within the discretion of the Secretary of Commerce, consistent with the national policy, provide for excluding from application of the national standards segments of the Interstate System which traverse incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use is clearly established by State law as industrial or commercial: Provided, however, That any such segment excluded from the application of such standards shall not be considered in computing the increase of the Federal share payable on account thereof."

It will be noted that the above quoted portion of Section 122. authorizes the Secretary of Commerce of the United States to prepare and promulgate national standards.

I have examined the proposed National Standards for Regulation of State of Outdoor Advertising Signs, Displays, and Devices Adjacent to the National System of Interstate and Defense Highways which was attached to your letter, and note that in several respects these standards are inconsistent with the provisions of Sections 5515.21 through 5515.24, Revised Code. These inconsistencies include the following points:

1. Under paragraph 20.6 (a) erection of signs giving information about historic sites operated by non profit organizations is permitted in protected areas. I find no provisions in Ohio Revised Code permitting such signs.

2. Paragraphs 20.6, 20.7 and 20.8 of the proposed National Standards contain numerous regulations concerning the erection of signs that may be permitted in protected areas which rules and regulations are not found in Ohio Revised Code. Your attention is specifically invited to the following sections of the proposed Revised Standards which would be included in this category: Paragraph 20.6 (c), (2); Paragraph 20.7, (b) (1) (2), (3), (4), (5), (6); and Paragraph 20.8 (C), (D), (E) and (F). The rules and regulations contained in these citations pertain to restrictions as to size of signs, type of construction, lighting and amount

of signs, *etc.*, of those signs which are permitted under the proposed National Standards. I find no similar restrictions in the Ohio Revised Code of these signs which are permitted.

Applying our rule of strict construction of the statutes and liberal construction for the exemptions in these statutes, the above cited sections of the proposed National Standards would be illegal in Ohio. It is therefore my opinion that the Director of Highways may not enter into agreements with the Secretary of Commerce under the provision of Section 5531.05, Revised Code, which agreements would involve adopting the proposed National Standards in their entirety.

As the answer to your first question is in the negative, your second question is eliminated from our consideration.

Your third question reads as follows:

“In the event your answer to inquiry No. 1 is in the negative, please advise the limitations upon the Director in entering into such agreements as are referred to in said Section 5531.05, R.C.”

It is my opinion that the Director of Highways in entering into agreements with the Secretary of Commerce under the provisions of Section 5531.05, Revised Code, is limited to agreements which would involve adopting rules and regulations or portions of them which are consistent with the Ohio Law.

In answer to your fourth question, I enclose suggested forms of notice as required by Sections 5515.23 and 5515.24, Revised Code. I would suggest that notice be served on the property owner by the Sheriff of the County in which property is located.

Therefore, it is my opinion and you are advised that:

1. The Director of Highways may not enter into agreement with the Secretary of Commerce of the United States under the provisions of Section 5531.05, Revised Code, and Section 122 of Public Law 381, 85th Congress, Second Session, whereby the State would adopt in their entirety a set of federal rules and regulations which are inconsistent with the provisions of Chapter 5515., Revised Code.

2. Any such agreements by the Director of Highways with the Secretary of Commerce of the United States under the provisions of Section 5531.05, Revised Code, must be limited to the adoption of rules

and regulations or such portions of them as are consistent with Ohio law.

3. Under Sections 5515.23 and 5515.24, Revised Code, notice should be served on the property owner by the Sheriff of county in which the property is located.

Respectfully,

WILLIAM SAXBE

Attorney General