

OFFICIAL OPINION NO. 70-30, Erection of specific information signs on the Interstate Right-of-Way

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

July 10, 1970

Morris G. Hallock, Director
Department of Highways
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 70-30

Erection of specific information signs on the Interstate Right-of-Way

Dear Mr. Hallock:

I have your request for an official opinion on the following statement of facts:

The Highway Commission has proposed a section of Interstate 90 from Sioux Falls to Mitchell to test the effectiveness of specific information type signs. These signs would be placed on the shoulder of the roadway within the Interstate right-of-way and would recognize an available business such as Texaco, Conoco, etc.

Your question is:

Does the Highway Commission have the authority to erect specific information signs on the Interstate right-of-way containing the trademark or business name of a private business located within a reasonable distance from an interchange?

The answer to your question is in the AFFIRMATIVE.

Title 23 USC 131(f) provides as follows:

The secretary shall, in consultation with the states, provide within the rights-of-way for areas at appropriate distances from interchanges on the interstate system, in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained.

§31-29-19(7) SDCL provides as follows:

No outdoor advertising shall be erected within 660 feet of the nearest edge of the right-of-way and visible from the main travelled way of the interstate or primary systems except the following: (7) signs giving specific information in the interest of the traveling public located within the rights-of-way of the interstate system in areas at appropriate distance from interchanges on the interstate system, the location of which shall be determined by the Highway Commission in consultation with the secretary of transportation.

Article III, Sec. 23(9) of the South Dakota Constitution provides as follows:

The Legislature is prohibited from enacting any private or special laws in the following cases: (9) granting to an individual, association or corporation any special or exclusive privilege, immunity or franchise whatever.

Article VI, Sec. 18.

No law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities which upon the terms shall not equally belong to all citizens or corporations.

Practically all of the states of the United States have constitutional provisions similar to that of South Dakota forbidding the grant of special privileges or immunities to individuals or to classes of people.

The Secretary of Transportation quite obviously had this in mind in promulgating the regulations covering the national standards and criteria for official highway signs within interstate rights-of-way giving specific service information to the traveling public. See Part 22, Title 23, 49 Code of Federal Regulations 1.4(c). Section 22.1 thereof in setting out the purpose reads as follows:

The purpose of this part is to establish standards for the erection of signs and displays within the rights-of-way of the interstate highway system to give the traveling public specific information as to gas, food, or lodging available on the crossroads at or near an interchange.

Under definitions in Section 22.2(a) reads as follows:

'Specific' information 'panel' means a panel, rectangular in shape located in the same manner as the official traffic signs readable from the main travelled ways and consisting of (1) the words 'Gas', 'Food', or 'Lodging' and directional information; and

(2) One or more individual business signs mounted on the panel ...

(c) 'Business Sign' means a separately attached sign mounted on the specific information panel or roadside area information panel to show the brand or trademark and name, or both, of the motor service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants and motels shall be used when applicable. The brand or trademark identification symbol on the business signs shall be reproduced with the colors and general shape consistent with the customary use, any messages, trademarks, or brand symbols which interfere with, imitate or resemble an official warning or regulatory traffic signs, signal or device are prohibited.

As to the location of the signs, §22.3 reads in part as follows:

(a) The specific information panels are designed for application at rural interchanges where a number of motorists' services normally are not available. Specific information panels may not be installed within suburban or urban areas, except on circumferential, by-pass or beltway type routes where existing roadside development is not urban in character.

§ 22.4 sets out in detail the criteria that a particular business must meet in order to be eligible to place a sign on the specific information panel. This criteria is clearly for the protection, benefit and convenience of the public.

Grants of special privileges and immunities have been the subject of considerable litigation throughout the United States and it has been generally held that, "Statutes which are reasonably designed to protect health, morals, or public welfare, do not violate the Constitution," provided the statute operates uniformly on all those of a designated class. See 16 A CJS Constitutional Law 459, p. 175.

This is the general rule in South Dakota. See **Morrow v. Wipf**, 115 N.W. 1121. By Section 22.5 of the regulation six specific information signs for gas stations may be placed on the

panel and four business signs each for FOOD and LODGING. This should be more than sufficient in South Dakota's rural areas.

Respectfully submitted,

Gordon Mydland
Attorney General