

1978 S.C. Op. Atty. Gen. 139 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-107, 1978 WL 27769

Office of the Attorney General

State of South Carolina

Opinion No. 78-107

May 29, 1978

***1 Re: Proposed Vegetation Maintenance Agreements and Regulations Pertaining to Vegetation Obstructing the View of Outdoor Advertising Devices Across Highway Rights of Way**

Honorable Paul W. Cobb
Chief Highway Commissioner
S.C. Department of Highways & Public Transportation
1100 Senate Street
Columbia, South Carolina

Dear Mr. Cobb:

Reference is made to our recent conferences concerning the legality of proposed vegetation maintenance agreements and regulations establishing standards for controlling the problem of vegetation which obstructs the view of outdoor advertising devices located across highway rights of way on private property. The advice of this Office has been requested to alleviate the problem areas referred to in an opinion issued by former Assistant Attorney General Marvin C. Jones to you under date of February 22, 1978. The opinion of Mr. Jones concluded that the Department could establish regulations for removal of vegetation on rights of way, but that the Department could not permit the destruction of vegetation within rights of way owned in fee, for purely private benefit. The opinion in question reviewed the long standing legal restraints on using public rights of way for private benefit.

The “Highway Advertising Control Act” ([Section 57–25–110, et seq., of the 1976 Code](#)) was enacted by the General Assembly to control outdoor advertising along interstate and federal aid primary highways, with regulatory and rule making authority delegated to the Highway Department. The purpose of the Highway Advertising Control Act is stated in [Section 57–25–130 of the 1976 Code](#), as follows:

The General Assembly finds and declares that outdoor advertising is a legitimate form of commercial use of private property adjacent to the public highways. The General Assembly also finds and declares that outdoor advertising is an integral part of the business and marketing function and is an established segment of the national economy which serves to promote and protect investments in commerce and industry and is, therefore, a business which should be allowed to exist and operate where other business and commercial activities are conducted and that a reasonable use of property for outdoor advertising to the traveling public is desirable. In order, however, ... to promote the safety, convenience and enjoyment of travel on, and protection of the public investment in highways within this State, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly hereby declares it to be the policy of this State that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the rights of way of the interstate and federal aid primary systems within this State shall be regulated in accordance with the terms of this article which provide for standards consistent with customary use in this State;.... It is the intention of the General Assembly ... to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to interstate and federal aid primary systems declared by Congress in Title 23, United States Code, “Highways.”

***2** The basic question raised by the recent conferences relates to the authority of the Department of Highways and Public Transportation to allow owners of outdoor advertising devices adjacent to interstate and federal aid primary

highways to come onto the rights of way and cut trees and shrubs which obstruct billboards from the view of the motoring public. We are concerned with legally-constructed signs which include on-premise signs, legal conforming signs, and legal non-conforming signs, as those terms are used in the Highway Advertising Control Act.

The Highway Department has sent to the Legislature regulations revising maintenance standards for outdoor advertising devices within these three categories, with the intent being to allow the Department to enter into agreements for the purpose of maintaining vegetation within the limits of highway rights of way. The revised regulation as filed with the General Assembly by Chief Commissioner Cobb's letter of January 13, 1978, provides as follows:

No individual, company, corporation, public or private entity shall cut, trim, remove or otherwise cause to be removed, planted or natural vegetation from within the limits of highway rights of way unless specifically provided for by a properly executed agreement between the Department, individual, company, corporation, public or private entity. Signs that become overgrown by vegetation may be given priority consideration for acquisition. Permission shall not be granted to service signs or other structures across control of access lines of interstate and federal aid primary highways.

This regulation has been filed with the General Assembly for a period in excess of ninety days without disapproving legislative action, and it is therefore effective. See [Section 1-23-120 of the 1976 South Carolina Code of Laws](#).

Under earlier date of June 16, 1977, Deputy State Highway Engineer H.R. Caughman, Jr., submitted a copy of a proposed vegetation maintenance agreement to the Division Administrator for the Federal Highway Administration, covering the removal and/or maintenance of vegetation located within the limits of highway rights of way and in front of legal conforming signs. Mr. Cloyd, Division Administrator of the Federal Highway Administration, was requested to review the agreement and furnish comments. In a letter to Mr. Caughman, dated October 18, 1977, Mr. Cloyd advised that the regional and Washington offices had also been requested to review the proposed agreement. As a result of the review of the division, region, and Washington offices of the Federal Highway Administration, it was the Administration's opinion that "the agreement contains adequate safeguards for the Department to properly control and maintain the interstate and primary highway systems." Mr. Cloyd's letter also reflected that any regulations implementing the Outdoor Advertising Control Act must be reviewed and approved by the Federal Highway Administration in accordance with prevailing directives, before any agreements can be executed. It is my understanding that the regulation filed with the General Assembly was also submitted to the Federal Highway Administration, with letter from Mr. Caughman, dated January 13, 1978.

*3 We have reviewed the proposed vegetation maintenance agreements as contemplated by the Department's revised regulation which became effective on or about April 13, 1978. These agreements are detailed contractual documents which allow changes to be made in vegetation within certain areas of highway rights of way. The vegetation maintenance agreements contemplated by the regulation are available to owners of outdoor advertising signs who have agreed to procure or have procured a sign permit (covering legal conforming and legal non-conforming signs), as well as owners of on-premise advertising signs not requiring a sign permit. The grantee, or permittee, agrees further to prepare a drawing of the sign site in relation to the right of way, as well as a list of all vegetation to be trimmed or removed, including a sketch showing the limits of proposed removal. The sketch to be furnished by the grantee must also show the location and type of replacement plantings, which are contemplated by the maintenance agreement to be the obligation of the grantee to replace. The grantee further agrees to employ a reputable landscaping firm, and to hold the Department harmless for any claims or loss arising from the work, as well as reimbursing the Department for any expenses relating to supervision and inspection of the work performed.

The effect of the proposed vegetation maintenance agreement is to allow the Department to consider every request for a change in vegetation in detail, and in advance of any authorization to make the change in vegetation. The Department will therefore be in a position to insure that any proposed changes in vegetation in front of outdoor advertising devices will be in harmony with the purpose of highway vegetation to reduce highway maintenance expense, while also improving

highway aesthetics. The proposed vegetation maintenance agreement is a realistic plan to rationalize the legitimate need of owners of outdoor advertising signs serving a legitimate purpose as found by [Section 57-25-130 of the 1976 Code](#), while also recognizing that the Highway Department is custodian of right of way for the primary use and benefit of the public. It is the opinion of this Office that the vegetation maintenance agreements, as sanctioned by the regulation filed with the General Assembly, conform with the broad legal concepts as set forth in the earlier opinion of former Assistant Attorney General Jones. It is the recommendation of this Office that the Highway Department implement procedures contemplated by these vegetation maintenance agreements, as at least a legislatively authorized interim alternative panacea to a serious problem affecting the public interest.

The enclosed letter from Senator John C. Lindsay reflects that the members of the Transportation Committee of the South Carolina Senate concur with the regulations that have been promulgated by the Highway Department. Senator Lindsay also indicated that the members of the Transportation Committee will be willing to introduce and sponsor any permanent legislation that may be desirable in connection with this matter.

*4 I will be happy to discuss the scope of this opinion with you as requested.

Yours very truly,

Victor S. Evans
Deputy Attorney General

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