



President's Message

Dear Friend of Scenic Kentucky,

It is my pleasure to report that with your help, 2009-2010 have been banner years for Scenic Kentucky. Together we have accomplished the following:

- The by-laws were amended and approved. New members have been added to our Board.
- Through our Spring and Fall fund drives the number of new donors has increased; this has allowed us to address billboard and similar signage issues locally and in Frankfort.
- Of particular note, we have had a very demanding yet successful Winter 2010 legislature session. Several "off-site" billboard pieces of legislation were initiated. No proposed House or Senate billboard piece of legislation was approved. Exempting non-commercial billboards from regulation or for clearing of vegetation in a cone of vision to view billboards from the highway were two that did not pass.
- We have reached out to other groups that have similar goals and aspirations. These include several local and statewide groups such as Operation Brightside and Keep Kentucky Beautiful. We have had several speakers from these groups at our Board meetings. We all want a Commonwealth which respects and desires to improve the landscape and beautification of our communities for now and for the future.

Signs in the right-of-way and on telephone poles, etc. are rampant around our communities. In the future, we will be making an effort to contact the various Metro Louisville neighborhood groups to seek their support in removing these illegal signs. We are also encouraging the Board of Scenic Kentucky and all other citizens to spot, locate and call 311 in Metro Government to request removal of this right-of-way clutter.

Billboards also contribute to this signage litter. There are many vacant and deteriorating boards around town; we note that the situation greatly adds to the blight of the adjacent properties and the larger community. These boards need to be removed and we will work with the city towards this end.

Thank you very much for your prior interest, and we look forward to your comments and continuing support.

Sincerely,

Marlene Grissom
President,
Scenic Kentucky

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“HELL IS REAL”

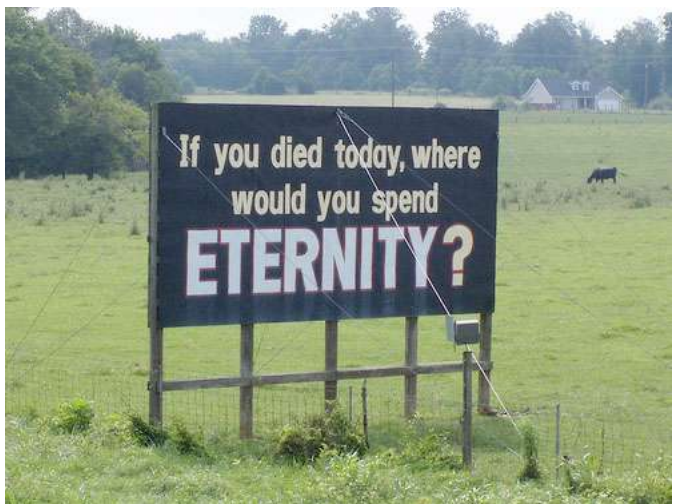
By Paul Whitty

If you have driven through Hart or Larue counties on I-65 you could not have missed the billboards proclaiming “Hell is Real”, “If You Died Today Where Would You Spend Eternity?” and “Thou Shall Not Commit Adultery...”. The landowners adjacent to I-65 leased their properties to individuals who failed to obtain billboard permits for these signs.

When taken to Court by the Kentucky Transportation Cabinet they argued that these were not “advertising devices” but rather expressions of constitutionally protected religious speech. They asserted the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), which protects individuals and institutions from the government placing substantial burdens on a religious exercise.

Citing clear case law precedent, the Court disagreed noting that the permit requirement is “content neutral” and has nothing to do with any attempt to control the substance of the message. The Court correctly noted that exceptions for political or religious messages would not only generate a proliferation of such billboards but would also jeopardize millions of dollars in federal transportation funds.

Taking up the noble cause of religious liberty the outdoor advertising industry attempted a legislative “end run” by proposing a bill to redefine “advertising device” as promoting the sale of goods or services. This would be a qualification that would allow an explosion of similar billboards as well as others not within that definition (“See Rock City” comes to mind). Thanks to the vigilance of our Scenic Kentucky lobbyist, Clyde Caudill, Paul Bergman, Keith Eiken, Roberta Henderson and Paul Whitty were able to testify before two legislative subcommittees which nevertheless passed the bill out of committee. Ultimately due to some eleventh hour contacts with legislators by various Scenic Kentucky board members, the legislation never came to a vote. The Circuit Court decision is now on appeal before the Kentucky Court of Appeals. Stay tuned. Rest assured that the outdoor advertising industry will not give up.



Kentucky Exposition Center Billboard

By Paul Bergmann and Paul Whitty

During the spring of this year, Scenic Kentucky received several comments about a new and large sign / billboard at the Kentucky Exposition Center in Louisville. The location is on a curve on the I-65 side of this state property. The double faced sign rises 76 feet above grade. It has a star on top, a curved site identification sign below and then below that two stacked LED lit boards. The higher and smaller one is 14 feet by 22 feet and is used for on-site messages. The lower and larger one is 14 feet by 48 feet it is used for off-site advertisement, i.e. a billboard. (Note that Scenic Kentucky not only questions the use here of a billboard but questions if LED billboards are permitted at this time.)

After examining the permit (Scenic Kentucky received a copy under the open records law) it appears that the permit raises more questions than it solves. In addition we are aware of and concerned that others now wish to match the Expo Center sign!

In reviewing the answers to several questions on the application, several inconsistencies are noted. They are:

- Question #9 -- asks if the sign is an on-premise advertising device. The answer is yes.
- Question # 10 -- asks if the device is a billboard or off-premise device. Sub-part A asks if it is adjacent to an interstate or parkway highway within 100 feet of a commercial or industrial area or spaced per state statutes. Sub-part B asks about either being within the area that was a commercial or industrial area or in a municipality as of September, 1959? The question and its sub-parts are not marked in any fashion - no answer yes or no.

- Question # 11 -- asks if the device is a billboard or off-premise device adjacent to an FAP or NHS route (federal highway designations), is the area zoned or unzoned commercial or industrial. The two parts of this question are not addressed either way - yes or no.

- Question # 16 -- in sub-part D, the question is what is the message on the advertising device. The answer is activities, services, businesses and products available on the KEC campus and property.

- Questions # 18 and # 19 are also informative. Question # 18 -- asks about on-premise devices and distances from the advertised activity and limited height and width or area. The answer is N. A. Question # 19 -- asks if the device is in compliance with applicable zoning and regulations of the city? The answer is yes. The form then asks to for a permit number and the submittal of a valid copy of the permit. The answer is that this will be done after KTC approval is given. Subsequently the form will be sent to the city. As of mid-August 2010 the after the fact seeking of a Metro Louisville review and granting of a city permit has not been done. The state permit was granted to the Kentucky State Fair Board on July 22, 2009.

These issues have been raised with the KTC Office of Legal Services several times since April of this year. We have been told it is under review and have received no answer to date.



The Exposition Center billboard

The Two Second Rule: What Every Community Should Know

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An analysis of the 100-Car Naturalistic Driving Study, conducted by the National Highway Traffic Safety Administration, released in 2006, showed that taking ones eyes off the road for more than two seconds for any reason not directly related to driving (such as checking the rearview mirror) significantly increased individual nearcrash/ crash risk.

What factors make drivers likely to look at an electronic sign for more than two seconds at a time, and therefore put themselves and others at risk?

- They are extremely bright and are designed to be visible in bright sunlight and at night. The eye is drawn to them far more strongly than to traditional illuminated billboards. They are designed to be eye-catching, and they are.
- They can be seen from great distances, even as far away as six-tenths of a mile, making them distracting even before they begin to communicate their messages.
- The images rotate every 610 seconds and drivers will naturally look at the sign long enough to see what comes up next. There may be as many as 10 messages in the rotation.
- The Florida Department of Transportations official position is that it takes a minimum of six seconds to comprehend the message on an electronic billboard, which is already three times the safe period for driver distraction.
- Because the messages change daily or even hourly, even commuters who pass by the signs every day will look to see whats new. Traditional signs become visual background noise for local drivers, and thus have less safety impact; but electronic signs never blend into the background.
- Younger drivers may be more easily distracted by electronic media, and older drivers may require longer viewing times to comprehend often confusing, elaborate, and colorful images.



Broadway near 2nd St. , Louisville

Are electronic signs especially attention-getting?

“Nothing’s as eye-catching as an electronic LED display. The brightly-lit text and graphics can be seen from hundreds of feet away, drawing the attention of everyone within view.”

Source: Voiceover narration of Trans-Lux promotional video (www.impactmovie.com/trans-lux)

Will people stare at a changing sign to see what’s next?

“The reason [electronic] advertising works is because it is impactful. If you see people parked at the stoplight watching it, you see their eyes waiting for it to change.”

Source: Clear Channel Outdoor Des Moines division president Tim Jameson, quoted in the Des Moines Business Record, Feb. 4, 2007

Digital Distress

By Lora Lucero, AICP

Advertising signs are a lucrative business, and digital signs raise the stakes even higher. Digital billboards can change messages every four to 10 seconds, accommodating multiple advertisers — and multiple rents — on the same structure. Even states could get in on the action. Earlier this year, The Sacramento Bee estimated that California could earn \$2 billion over 20 years for converting 500 public freeway signs to digital billboards.

Digital billboards are expensive, averaging \$200,000 to \$300,000 apiece, according to the Outdoor Advertising Association of America, but the potential revenue stream makes the investment — and frequent litigation — seem well worth the effort from the industry's perspective.



The industry touts the flexibility of digital signs, which can be changed quickly to announce Amber Alerts, local sports scores, and other public messages. The opposition, such as Scenic America, notes the aesthetic, environmental, and safety issues involved with digital billboards.

Digital billboards are designed to distract; if they don't grab the driver's attention, they have failed. Jerry Wachtel, an engineering psychologist who has studied the issue, says that taking one's eyes off the road for just 1.6 seconds leads to a substantially higher crash rate. Both the brightness and the movement associated with digital billboards attract drivers' attention for longer than that — and "dramatically longer than conventional billboards," Wachtel notes.

There are no conclusive studies on the potential traffic safety risks of digital billboards in the U.S. However, the Federal Highway Administration will soon release the findings of a research study that addresses the issue. Meanwhile, Wachtel and others urge communities to exercise caution and adopt moratoria on new digital billboards while they study the issue, because once these signs are erected, high compensation costs make them almost impossible to remove.

Several cities have adopted moratoria, including Los Angeles, El Paso, and St. Louis. A number of states and communities have enacted outright bans on such signs: Maine; Vermont; Montana; Pima County, Arizona; Amarillo, Texas; Durham, North Carolina; Knoxville, Tennessee; and most recently, Denver.

If communities do allow such signs, Wachtel advises that they look carefully at how to regulate operational characteristics, including luminance level, how quickly the message changes, and location. (continued)



The billboard industry often tries to win support for its signs by offering to display public service messages. But no amount of these inducements can compensate for the potential public safety consequences of these devices.

Digital Distress (continued)

A wave of billboard permit lawsuits has hit the courts in recent years. Bill Brinton, an attorney with Scenic America, explains how this “billboard shakedown” typically works. A little-known company comes into city hall with a stack of sign permit applications, knowing that the municipal sign code prohibits either the type or location of signs it wishes to erect.

Rather than lobby for ordinance changes or apply for variances, the company waits for the applications to be denied, then files a lawsuit to invalidate the entire sign code. If the court tosses out the code, the company will ask the court to approve all of its applications, along with damages and attorneys fees. To avoid litigation, the company will offer to settle the case if the city approves only a fraction of the sign permits.

Courts have repeatedly affirmed cities' First Amendment right to ban billboards, and to limit their size, location, and placement. Knowing this, the sign company will not attack the constitutionality of the sign code, but rather other sections in the code. If the judge invalidates the whole code, the company claims that the resulting regulatory vacuum entitles it to erect whatever it wants.



The Sixth Circuit rejected the billboard shakedown in the cities of Erlanger and Fort Wright, Kentucky, in 2009; the Ninth Circuit rejected the same strategy in Lemon Grove and Chula Vista, California, in 2006; and the Eighth Circuit turned away a similar ploy that year in an Eden Prairie, Minnesota, case. Since 2004, APA and its chapters have filed amicus briefs in 14 sign cases around the country, seeking to end assaults on local governments' ability to regulate the sign industry. (See www.planning.org/amicus.)

The courts have, without exception, found in favor of the municipality, concluding that a sign company cannot challenge sections of the sign code that are irrelevant to the denial of its permit application.

A word of caution: Planners should periodically audit their local sign codes to ensure they are current with the evolving technology. Attorneys knowledgeable in First Amendment sign law jurisprudence might be a wise investment, too.

Lora Lucero is a land-use attorney and the editor of APA's Planning & Environmental Law. She is the staff liaison to the APA Amicus Curiae Committee.

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Good News Department: Bench Billboards to be removed

By Paul Bergmann

Scenic Kentucky has been concerned about advertising placed on benches that are on our state roadway right-of-ways (ROW). The message is typically placed on the backrest portion of the bench. For approximately the past year, a company said to be out of Cincinnati has placed these benches in the public right-of-way along several major roadway corridors like Shelbyville Road, Dixie Highway, etc. It should be noted that the state has no record of these benches being placed in these locations. In October of 2009, Scenic Kentucky wrote letters to the Mayor, Metro Council and Editors of the C. J. and Business First supporting Metro Louisville's request for permitting authority over street furniture (i.e. benches, etc.) on all state roads in its jurisdiction. This transfer of authority/responsibility was approved this past spring (2010).

Based on a follow-up phone call on August 5th to Jim Mims of Metro Louisville's Department of Inspections Permits and Licenses (IPL), I am happy to report that Metro Government has assigned the Public Works Department the responsibility of cleaning up this roadway clutter. Starting in late August or September, Public Works will be checking the various highways and removing these benches as they are found. IPL will also be active in identifying these sites as well. In addition, the city of Middletown is working to remove these bench billboards. This is good news!!

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Kentucky's irreplaceable
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