

The State of South Carolina



Office of the Attorney General

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September 21, 1993

The Honorable David Wright
Member, House of Representatives
Post Office Box 2237
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Dear Representative Wright:

You have advised that a billboard, constituting a non-conforming use under various statutes, regulations, or ordinances in effect at the billboard's locality, recently underwent maintenance in that sign faces were changed and further that the hardware holding the sign faces in place was replaced with more modern hardware constructed of the same type of material. The structure supporting the billboard was not replaced or renovated. You have asked whether this work amounted to more than ordinary maintenance on the billboard, thus causing the non-conforming use to end, considering state outdoor advertising regulations.

It is our understanding that new metal sign faces were interchanged with old metal sign faces. Further, the metal nail clips which had held the sign faces in place were replaced with metal stringers.¹ The wooden poles which held the nail clips now hold the stringers, though with the latter we understand the sign faces to be located farther away from the wooden support poles. Replacement of nail clips with stringers will permit a more rapid interchange of sign faces because new faces can be more easily put into place rather than having to be nailed individually. Moreover, the change from nail clips to stringers represents an advance in technology of the billboard industry.

¹While the devices are called "stringers," we understand that the hardware consists of several pieces including a "sprit" and a "z" hanger plate. The sprits at the back of the section of billboard attach to hanger plates, which are bracketed to the wooden poles supporting the billboard with bolts.

Regulations promulgated pursuant to the Highway Advertising Control Act, S.C. Code Ann. § 57-25-110 et seq. ("the Act"), are found at R 63-341 et seq. Maintenance standards are set forth in R 63-350; as to non-conforming signs, part C of the regulation prohibits maintenance which will lengthen the life of the non-conforming billboard and requires that the sign remain substantially the same as it was on the effective date of the relevant statute or regulation. The regulation further provides:

Extension, enlargement, replacement, rebuilding, changing the materials of the sign structure's support, adding lights to an unilluminated sign, change the height of the sign above ground or re-erection of the sign will make the sign illegal. The maintenance will be limited to:

- (a) Replacement of nuts and bolts;
- (b) Additional nailing, riveting or welding;
- (c) Cleaning and painting;
- (d) Manipulation to level or plumb the device, but not to the extent of adding guys or struts for stabilization of the sign or structure;
- (e) A change of the advertising message, including changing faces, as long as similar materials are used and the sign face is not enlarged. If the sign face or faces are reduced, they may not thereafter ever be increased.

In addition, part A of R 63-350 requires that all signs subject to the Act be maintained in a good state of repair and in a manner that is structurally safe.

Construing the terms of the regulation literally, and considering the facts as previously stated, one may observe that the materials of the sign structure's support remain unchanged, as the supporting poles were and remain wooden. The boards carrying the advertising message were and remain metal, so that similar materials are still being used. Replacement of nuts and bolts and additional nailing, riveting or welding are permitted; when read with the requirement that billboards be structurally safe and in good state of repair, it is most probable that an interchange of the hardware which actually holds up the billboard panels would be permitted by the regulation in routine maintenance,

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particularly where the nailing had come loose and was no longer a safe method to use the advertising message. To determine otherwise seems to exalt form over substance.

While we have not located a judicial decision precisely on "all fours" with the situation presented above, we have located several decisions involving a non-conforming use under a particular zoning statute, ordinance, or regulation, in which the owner sought utilization of more modern or efficient instrumentalities to carry on the non-conforming use. The courts have determined that more modern or efficient instrumentalities may be used in such circumstances, if the original undertaking remains unchanged and if the renovation or use of more modern instrumentalities will not prolong the non-conforming use. See, as examples, decisions such as Gagne v. Lewiston Crushed Stone Company, Inc., 367 A.2d 613 (Me. 1976); De Felice v. Zoning Board of Appeals of Town of East Haven, 130 Conn. 156, 32 A.2d 635 (1943); Hawkins v. Talbot, 80 N.W. 2d 863 (Minn. 1957); Endara v. City of Culver City, 140 Cal. App. 2d 33, 294 P.2d 1003 (1956); Morin v. Board of Appeals of Leominster, 227 N.E.2d 466 (Mass. 1967). Based on the reasoning of these cases, it could easily be concluded that substituting hardware made of similar materials, which hardware serves the same purpose in holding up the billboard faces, would be viewed as using more modern, more efficient technologies to serve the same non-conforming use and thus would be permissible.

Considering all of the foregoing, this Office cannot conclude, as a matter of law, that the requirements of R 63-350 have been violated by the maintenance to the billboard in question.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

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