COUNTY COURT: Right to regulate directions and locations of billboards

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February 4, 1933

Honorable F. R. Weber
Representative from Tenth District
House of Representatives
Jefferson City, Missouri

Dear Mr. Weber:

We have your letter dated February 1, 1933, in which you make inquiry as follows:

> "As Attorney General for the State of Missouri, Honorable Quinn, chairman of the Committee on Criminal Justice, and myself request that your office submit to us an opinion on the constitutionality of House Bill No. 155, which is an act to license and regulate sign boards, bill boards, and other forms of out-door advertising within 300 feet of all county and state roads outside of any incorporated city town or village, by the county courts of all counties and providing a penalty for the erection and maintenance thereof without such licenses."

House Bill Number 155 in its title states it to be an Act,

> "To license and regulate signboards, billboards and other forms of outdoor advertising within 300 feet of all county and state roads outside of any incorporated cities, towns or villages by the county courts of all counties, and providing a penalty for the erection or maintenance thereof without such license".

The inquiry made involves the right of the state in the exercise of its police power through the legislature to enact the proposed bill.

There are numerous cases involving the right to license the erection of billboards through ordinances of cities. The primary Repository of police power is in the state. This same power may be transmitted to municipalities of the state by means of legislation.

The case of St. Louis Gunning Advertising Company v. City of St. Louis, et al, 235 Mo. 99, involved the validity of an ordinance regulating the erection, alteration, refacement and reconstruction of billboards in the city of St. Louis. The opinion by Woodson, J.,for the court en banc, discusses and reviews substantially all of the decisions of the courts of this country on the subject involved. At page 200-201 of the opinion the court said:

> "Because of the very great importance of the questions involved in this case, both to the public at large, and especially to the inhabitants of municipalities and to the real estate owners therein, I have reviewed and carefully considered at some length all of the authorities cited by counsel for both parties to this suit,and, in addition thereto, several, I found, which I thought bore upon some of those propositions.
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> While the authorities are conflicting upon some of the questions presented and discussed, yet it may be fairly said that all of them agree upon the following legal propositions:
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> First, that municipal corporations, even under their general police powers, may, by ordinance, exercise reasonable control over the construction and maintenance of billboards, house signs and sky signs.
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> Second, that said power to regulate said matters begins where the public safety, health, morals and good government demand such regulation, and ends where those public interests are not beneficially served thereby.
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> And, third, that the mere unsightliness of billboards and of similar structures, as well as their failure to conform to aesthetics, is no valid reason for their total or partial suppression.
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> But the division of the courts, as is often the case, was brought about in the application of those rules of law to the facts of concrete cases. Some of them were of the opinion that the ordinance as applied to a particular case was unreasonable, or was not necessary for the public safety, etc.,in that particular case; while other courts were of the opinion that similar ordinances, equally drastic, were reasonable and necessary.
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> In our opinion the latter cases are based upon more solid ground and are supported by better reason, though not by the greater weight of authority, if we determine weight by the number of adjudications,upon that subject".

See also Kansas City Gunning Co. vs.
Kansas City, 240 Mo. 659.

The above quotation is a brief but clear outline of the underlying principles of law controlling a situation such as is presented by your question, from which we understand the law to be that legislation such as House Bill Number 155 must have relation to public safety, health, morals or good government and that such public interest must be served by the legislation and that whether billboards are sightly or unsightly and whether they beautify the landscape or have a different effect on an eye or taste for beauty cannot be made the basis of such legislation as is under consideration here. As to how the reasonableness or unreasonableness of an act of the legislature may be tested, or, in other words, the process by which it is determined whether public safety, health, morals or good government are promoted by the legislation is stated in St. Louis Gunning Company v. St. Louis, supra, page 203, in the following language:

> "There is another class of cases which, in our opinion, announced the correct rule as regards the reasonableness and unreasonableness of this class of ordinances. That rule is, that all ordinances must be held valid by the courts except, first, where the unreasonableness appears upon the face of the ordinance itself; and, second, where the evidence introduced clearly shows that the ordinance is in fact unreasonable".

House Bill Number 155 seems to be directed more at the prevention of a certain character of advertising than as to whether a certain structure would affect the public health, safety, morals or good government. It is difficult to discern how the fact of whether a structure had any wording pasted or painted on it would affect public health or safety, since the aesthetic view does not prevail in this state. St. Louis Gunning Co. v. St. Louis, supra, 189 et seq.

The bill is general in its nature and applies to all roads and highways in the state, outside of incorporated cities, towns and villages. The word "road" may mean private roadways. Even under present travel conditions, it is not reasonable to assume there would be the same congestion of pedestrians or vehicles in the country as in cities, towns or villages. The size of the prohibited structure is not prescribed, nor are all structures that may be erected or maintained within 300 feet of a road or highway included nor is it provided that structures may not be erected or maintained when they would affect adversely

public health, safety, morals or good government but the county court is undertaken to be given the power to prevent the erection of the prohibited structures absolutely and the distance of 300 feet mentioned in the bill, standing alone, seems to be arbitrary.

While the use of private property may be regulated by the state, yet such regulation must be reasonable and so as not to encroach on the Constitutional rights of the owner in the use of his property. In Kansas City Gunning Co. v. Kansas City, supra, a provision of a city ordinance providing against the erection of structures within 100 feet of the line of any public park or boulevard was void for unreasonableness. To the same effect see, Curran Bill Posting & Distributing Co. v. City of Denver, 47 Colo. 231. Chicago v. Gunning System 214 Ill. 628. Crawford v. City of Topeka, 51 Kans. 756.

We think a bill of this character should show on its face that the acts prohibited cannot be done when they affect adversely public health, safety, morals or good government. If the bill here should be construed to apply to buildings or structures in existence at the time the same would go into effect, then no notice for or time of removal is provided for nor provision for compensation for destruction for public use as is required by the Constitution of this state.

We are of the opinion that House Bill Number 155, as drawn is unreasonable and arbitrary and would be unconstitutional if passed and approved.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

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Attorney General.

GL:LC