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MUNICIPAL CORPORATIONS-BILLBOARDS-PROHIBITION NEAR PARKS AND BOULEVARDS

MUNICIPAL CORPORATIONS—BILLBOARDS—PROHIBITION NEAR PARKS AND BOULEVARDS.—The defendant acting under statutory authority passed an ordinance prohibiting billboards within five hundred feet of any park or boulevard. *Held,* the ordinance was valid but unenforceable as to existing billboards except upon the payment of compensation. *General Outdoor Advertising Co. v. City of Indianapolis* (Ind. 1930) 172 N.E. 309.

The court in the instant case sustained the ordinance on the conventional grounds saying that aesthetic considerations could be auxiliary only, but also saying that a regulation applying merely to billboards "in close proximity to public parks and boulevards may properly have a relation to the public health, comfort, and welfare that it would not otherwise possess." In *Haller Sign Works v. Physical Culture Training School,* 249 Ill. 436, 94 N.E. 920, the court held invalid an ordinance identical with the one in the instant case on the ground that it bore no reasonable relation to public health, safety, and morals, and was prompted solely by aesthetic considerations. The court argued

that, "if the placing of such structures within five hundred feet of boulevards and parks is dangerous or otherwise detrimental to the public welfare, it is difficult to see why the same structures would not be equally so if placed within the same distance from any other public street or grounds." It is submitted that this view is logically sound. See also *Commonwealth v. Boston Advertising Co.*, 188 Mass. 348, 74 N.E. 601 (ordinance held invalid prohibiting billboards where letters, figures, etc., could be seen from a park with the naked eye); *State ex rel. Morton v. Rapp*, 16 Ohio N. P. (N. S.) 1 (ordinance held invalid prohibiting a billboard from facing a park or public building without a special permit.) As yet no court has held that aesthetic considerations alone are sufficient to support the validity of billboard ordinances, although two courts have apparently so held in respect to zoning ordinances. *State ex rel. Carter v. Harper*, 182 Wis. 148, 196 N.W. 451; *State ex rel. Civello v. New Orleans*, 154 La. 271, 97 So. 440. But it seems that such considerations are the only real basis of many billboard ordinances which have been held valid on other grounds. Ordinances prohibiting billboards in residential districts without the consent of a majority of the landowners have been declared valid. *Thomas Cusack Co. v. Chicago*, 267 Ill. 344, 108 N.E. 340, aff'd. 242 U. S. 526, 37 Sup. Ct. 190; *State ex rel. Morton v. Hauser*, 17 Ohio App. 4 (applying also to billboards fastened on buildings). *Contra, City of Chicago v. Gunning System*, 214 Ill. 628, 73 N.E. 1035. An ordinance prohibiting the erection of a billboard anywhere in the city without the consent of the common council was held valid. *Rochester v. West*, 164 N. Y. 510, 58 N.E. 673. It has been held that ordinances prohibiting billboards within a certain distance of the sidewalk or requiring conformity to the building line are valid. *Cream City Bill Posting Co. v. Milwaukee*, 158 Wis. 86, 147 N.W. 25; *St. Louis Gunning Advertising Co. v. City of St. Louis*, 235 Mo. 99, 137 S.W. 929; *Kansas City Gunning Advertising Co. v. Kansas City*, 240 Mo. 659, 144 S.W. 1099; *St. Louis Poster Advertising Co. v. City of St. Louis* (Mo. 1917) 195 S.W. 717, aff'd. 249 U. S. 269, 39 Sup. Ct. 274. Compare *Horton v. Old Colony Bill Posting Co.*, 36 R. I. 507, 90 Atl. 822; *Gilmartin v. Standish-Barnes Co.*, 40 R. I. 219, 100 Atl. 394. But there is a strong dissent on the ground that there can be no such prohibition where the billboard is safely and securely built. *State ex rel. Morton v. Rapp*, 16 Ohio N. P. (N. S.) 1; *Crawford v. City of Topeka*, 51 Kan. 756, 33 Pac. 476; *Curran Bill Posting and Distributing Co. v. City of Denver*, 47 Colo. 221, 107 Pac. 261; *State v. Whitlock*, 149 N. C. 542, 63 S.E. 123; *City of Passaic v. Paterson Bill Posting, etc. Co.*, 72 N. J. L. 285, 62 Atl. 267; *Federal Advertising Corporation v. Fairlawn* (N. J. 1930) 151 Atl. 285. The absolute prohibition of billboards has usually been held invalid. *Bill Posting Sign Co. v. Atlantic City*, 71 N. J. L. 72, 58 Atl. 342; *Bryan v. City of Chester*, 212 Pa. 259, 61 Atl. 894; *Varney and Green v. Williams*, 155 Cal. 318, 100 Pac. 867; *Cain v. State*, 105 Tex. Cr. App. 204, 287 S.W. 262 (prohibition applying to a part of the city only). *Contra, People v. Wolf*, 220 App. Div. 71, 220 N. Y. S. 656. In this case the court relied strongly on the aesthetic argument, and also on the analogy of the zoning cases upholding general city zoning laws. In *Liggett's Petition*, 291 Pa. 109, 139 Atl. 619, the maintenance and operation of billboards was held to be an "industry" within the meaning of the zoning ordinance, and they were accordingly excluded from the residential dis-

tricts. Compare *Town of Union v. Ziller*, 151 Miss. 467, 118 So. 293, where the court held that the word "buildings" as used in the zoning ordinance did not include billboards. It is submitted that the result reached in the instant case was correct, but that the real purpose of the ordinance is purely aesthetic. If billboards are as a matter of fact inimical to the public welfare there seems to be some justification for prohibiting them altogether or allowing them only upon consent of the landowners, but there seems to be no justification on the conventional grounds for an ordinance such as the one in the instant case, or one requiring a set-back from the sidewalk where the billboards are securely built. And while a comprehensive zoning plan in respect to billboards might be sustained as having a reasonable relation to public safety, etc., the same can hardly be said where the ordinance is made to apply only to parks and boulevards. It seems that it is only a question of time until the courts will discard the subterfuge of public health, safety, and morals, and will permit control of billboards based solely upon aesthetic considerations.