

TEXAS TRANSPORTATION COMMISSION

SUTTON County

MINUTE ORDER

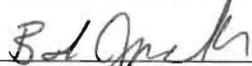
Page 1 of 1

SAN ANGELO District

On March 26, 2009 the Texas Department of Transportation considered the staff's proposed cancellation of Outdoor Advertising Permit Number 36452, held by Lamar Advantage Outdoor Company, L.P. (Lamar). Lamar requested an administrative hearing and the matter was referred to the State Office of Administrative Hearings. The proposal for decision concluded that the permit should not be canceled. Under the Administrative Procedure Act and the commission's rules, the matter is now appropriate for entry of a final order by the commission.

IT IS THEREFORE ORDERED that the commission issues the attached order in the case of Texas Department of Transportation v. Lamar Advantage Outdoor Company, L.P., Docket No. 601-07-1232, and directs the executive director to dismiss the enforcement action against Lamar.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

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Minute Number Date Passed

SOAH DOCKET NO. 601-07-1232

TEXAS DEPARTMENT OF
TRANSPORTATION
Petitioner

V.

LAMAR ADVANTAGE OUTDOOR
COMPANY, L.P.
Respondent

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BEFORE THE
TEXAS TRANSPORTATION
COMMISSION

ORDER

Came on for consideration this 26th day of March, 2009, the above-styled and numbered cause.

After proper notice was given to the parties, this matter was heard by an Administrative Law Judge who made and filed a proposal for decision containing the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Lamar Advantage Outdoor Company, L.P., (Lamar) holds Outdoor Advertising License No. 6508, issued by the Texas Department of Transportation (TxDOT).
2. Lamar erected and maintains an outdoor advertising sign on Interstate Highway 10 in Sutton County, Texas, for which TxDOT issued Permit No. 36452 (permit) to Lamar.
3. The sign was erected on private property that has remained private property since the sign was erected.
4. The sign can be maintained from private property.
5. The sign is a single-faced billboard and was erected in 1969.
6. On an unspecified date after TxDOT issued a permit for the sign, one or more Lamar employees drove a truck onto TxDOT's right-of-way. A Lamar employee then walked across the right-of-way to the sign, and repaired it using a hammer and nails.
7. By letter dated November 21, 2006, TxDOT Staff notified Lamar of its intent to cancel the permit because Lamar had performed repairs on the sign from within TxDOT's right-of-way.
8. Lamar timely requested a hearing.

9. On December 15, 2006, TxDOT filed a complaint against Lamar that alleged the facts recited in Findings of Fact Nos. 1, 2, 6, and 7, and requested that Lamar's permit be canceled and the sign ordered removed.

10. Lamar responded to TxDOT's complaint and engaged counsel through whom it has litigated the matter.

11. On October 1, 2007, Lamar filed a motion for summary disposition, and TxDOT filed a counter-motion for summary disposition October 19, 2007. Each motion contended that the case should be disposed of on summary disposition because there is no genuine issue as to any material fact and that each party is entitled to a decision in its favor as a matter of law.

CONCLUSIONS OF LAW

1. The Texas Department of Transportation (TxDOT) has jurisdiction over this matter pursuant to TEX. TRANSP. CODE ANN. §§ 391.034 and 391.068.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. ch. 2003.

3. Based on Findings of Fact Nos. 10 and 11, Lamar Advantage Outdoor Company, L.P., (Lamar) waived receipt of notice of hearing.

4. A contested case may be disposed of by summary disposition without evidentiary hearing if the pleading, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 TEX. ADMIN. CODE ' 155.57(a).

5. There is no genuine issue of material fact between Lamar and TxDOT.

6. Based on Findings of Fact Nos. 2-4, Lamar did not violate 43 TAC § 21.161(b).

7. Lamar is entitled to summary disposition of this proceeding in its favor.

8. TxDOT should not cancel Permit No. 36452 issued to Lamar Advantage Outdoor Company, L.P.

The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies. The department staff (through the Office of the Attorney General) filed exceptions. Lamar did not file a reply to the exceptions.

After full and complete consideration of the proposal for decision, including the opinion, findings of fact, and conclusions of law of the Administrative Law Judge, and of the

exceptions filed by department staff, the Texas Transportation Commission issues this Order. The findings of fact and conclusions of law of the Administrative Law Judge are adopted.

IT IS ORDERED that the department staff's proposed cancellation of Permit Number 36452 is dismissed.

Signed this 26th day of March, 2009.



Deirdre Delisi, Chair
Texas Transportation Commission



Ted Houghton, Commissioner
Texas Transportation Commission



Ned S. Holmes, Commissioner
Texas Transportation Commission



Fred Underwood, Commissioner
Texas Transportation Commission



William Meadows, Commissioner
Texas Transportation Commission

TEXAS DEPARTMENT OF
TRANSPORTATION,
PETITIONER

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BEFORE THE STATE OFFICE

V.

OF

LAMAR ADVANTAGE OUTDOOR CO.,
L.P.,

RESPONDENT

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION
DISPOSING OF CASE BY SUMMARY DISPOSITION**

Staff of the Texas Department of Transportation (Staff/TxDOT) canceled a permit for an outdoor advertising sign issued to Lamar Advantage Outdoor Company, L.P., (Lamar) because Lamar employees repaired the sign using the TxDOT right-of-way rather than doing so from the private property on which the sign is located. Lamar does not dispute the facts, but appeals the cancellation on the basis that TxDOT's interpretation of the rule goes beyond the plain meaning and scope of the rule. This proposal for decision finds that the rule at issue does not forbid Lamar's conduct and that TxDOT's interpretation of the rule is unsupported by the statute that authorizes permitting of signs. Accordingly, this proposal recommends that TxDOT take no action against Lamar.

I. BACKGROUND AND PROCEDURAL HISTORY

Lamar holds Outdoor Advertising License No. 6508, issued by TxDOT. Under TxDOT Permit No. 36452, Lamar maintained an outdoor advertising sign adjacent to Interstate Highway 10 in Sutton County, Texas. On an unspecified date after TxDOT issued the sign permit, one or more Lamar employees drove a truck onto TxDOT's right-of-way and parked it there. A Lamar employee then left the truck, walked across the right-of-way to the sign, and repaired it using a hammer and nails.

On November 21, 2006, TxDOT Staff notified Lamar that the agency intended to cancel Lamar's permit because Lamar had performed repairs on the sign from within TxDOT's right-of-way. Lamar timely requested a hearing. On December 15, 2006, TxDOT filed a complaint against

Lamar that alleged the foregoing facts and requested that Lamar's permit be canceled and the sign ordered removed.

Lamar filed a motion for summary disposition on October 1, 2007. Staff filed a counter-motion for summary disposition on October 19, 2007. The parties filed several additional briefs and responses, the last on November 13, 2007.¹

Lamar's motion for affirmative relief makes a single assertion of law: that 43 TAC § 21.161(b), the rule Staff seeks to enforce, does not forbid performing maintenance from within TxDOT's right-of-way. The rule states:

The department (TxDOT) will not issue a permit for a sign unless it can be erected or maintained from private property.²

Factually, Lamar asserts that TxDOT's responses to requests for admission prove that the disputed sign can be erected and maintained from private property and has always been capable of being erected and maintained from private property.³ Furthermore, TxDOT's responses to requests for admissions establish that TxDOT has never determined that the disputed sign cannot be erected or maintained from the private property on which it is located. Lamar asserts that, because these facts are the only ones addressed by 43 TAC § 21.161(b), this proceeding should be dismissed.

In response, Staff asserts that when TxDOT proposed 43 TAC § 21.161(b) in 1998 and again when it adopted the rule in 1999, its published interpretations of the rule stated TxDOT may cancel the permit of an outdoor advertising company that performs maintenance or repair of a permitted sign from public right-of-way. Staff's motion for summary disposition contends that the undisputed facts prove that Lamar violated 43 TAC § 21.161(b) as TxDOT interprets that rule. Staff, therefore,

¹ Staff filed a Response to Petitioner's Motion for Summary Disposition and Counter-Motion for Summary Disposition, and a Motion on Burden of Proof and Standard of Review, and Lamar filed a Response to TxDOT's Motion on Burden of Proof and Standard of Review, Response to TxDOT's Counter-Motion for Summary Disposition, Response to TxDOT's Motion on Burden of Proof and Standard of Review, and Brief Regarding Strict Construction of Forfeitures.

² 43 TAC § 21.161(b).

³ TxDOT admits that Lamar is correct in these two assertions. (TxDOT's responses to Request for Admissions Nos. 7-12, attached to Lamar's Motion for Summary Disposition)

requests a recommendation that Lamar's permit be canceled in accordance with TxDOT's published interpretation of that rule.

II. Analysis and Conclusion

A. Interpretation of 43 Tex. Admin. Code (TAC) § 21.161(b)

The facts concerning where the sign is placed and what Lamar's crew did are undisputed. TxDOT cites no *statute* that authorizes it to sanction Lamar's conduct, that of maintaining a sign from the public right-of-way alongside interstate highways. Therefore, the legal issue is not one of statutory interpretation.

Case law is clear that an unambiguous rule should be interpreted according to its plain language.⁴ The plain language of TxDOT's rule at 43 TAC § 21.161(b) forbids only erecting a sign on non-private property or at a place from which the sign cannot be maintained from private property. Therefore, the rule does not forbid Lamar's maintenance of the sign from the TxDOT right-of-way. This proposal recommends that Lamar's motion for summary disposition be granted and that TxDOT's motion be denied.

TxDOT bases its argument on the fact that it published its interpretation twice: first when it proposed the rule in December 1998, and again when it adopted the rule to become effective

⁴ *Texas Workers' Compensation Commission (TWCC) v. Harris County*, 132 S.W.3d 139 (Tex. App. – Houston [14th Dist.] 2004). In this case, the court made a finding that the rule at issue was ambiguous before relying on the Commission's statement of intent in the Texas Register along with the rule's language. Like the Commission in the cited case, TxDOT offers the Texas Register comments to clarify 43 TAC § 21.161(b). But, unlike the rule in *TWCC v. Harris County*, TxDOT's rule is not ambiguous. For that reason, the ALJ cannot access the explanations cited by TxDOT to both create and resolve an ambiguity. *Fiess v. State Farm Lloyds*, 202 S.W. 3d 744, 747-748. (Tex. 2006).

Fiess concerns an insurance policy term approved by the Texas Department of Insurance, which filed an *amicus* brief in that case. The Fiesses argued that a coverage clause was ambiguous and therefore open to interpretation. The brief argued in favor of the Fiesses' interpretation of the policy term. The court declined to consider the Department's interpretation because the provision, "We do not cover loss caused by mold," was unambiguous. The court cited other reasons for not following the agency's interpretation, including insurance law, but the case nonetheless controls the outcome here.

May 23, 1999.⁵ Its interpretation that was published with the adopted version of 43 TAC 21.161(b) is that:

It is illegal in Texas to maintain a sign from the State's right-of-way. These activities have become an increasing problem and may result in cancellation of the permit.⁶

TxDOT's comments accompanying the proposed version of 43 TAC 21.161(b) read as follows:

New § 21.161 establishes the department's policy concerning tree cutting and violation of access rights for maintenance of signs. It is illegal in Texas to remove vegetation from the right-of-way to make a sign more visible or to maintain a sign from the state's right-of-way. These activities have become an increasing problem and may result in cancellation of the permit.⁷

TxDOT also publishes a manual for outdoor advertisers on its website. The manual states that TxDOT's Director of Right-of-Way may cancel a permit if the sign:

- is not maintained in accordance with the applicable statutes and Commission rules; [or]
- ...
- is erected, repaired, or maintained from the highway ROW [right-of-way].⁸ Citing these interpretations, TxDOT argues that its established policy should be given "great weight" as an agency interpretation of its own administrative rule.⁹ Thus, TxDOT has stated its reason for adopting 43 TAC § 21.161. That goal is to reduce the hazard to traffic safety posed by private entities parking along the roadside and performing maintenance and repair.

⁵ TxDOT's Response to Petitioner's (Lamar's) Motion for Summary Disposition and Counter-Motion for Summary Disposition, at 2.

⁶ 24 Tex. Reg. 3733 (1999).

⁷ 23 Tex. Reg. 12271 (December 1998).

⁸ Ex. A to TxDOT's Response to Petitioner's (Lamar's) Motion for Summary Disposition and Counter-Motion for Summary Disposition, at 8-13 and 8-14.

⁹ TxDOT's Response to Petitioner's (Lamar's) Motion for Summary Disposition and Counter-Motion for Summary Disposition, at 1-4.

TXDOT asserts that an agency interpretation becomes part of its rule, citing two cases.¹⁰ In *USA Waste Services of Houston v. Strayhorn*, 150 S.W. 2d 491 (Tex. App. – Austin 2004), USA Waste Services contracted with a customer to clean its grounds. In performing the cleaning, the company spilled waste onto a carpet, which it hired a steam cleaning company to clean. USA Waste Services then sought an exemption from sales tax on the cleaning under the “sale-for-resale” statutory exemption. The court’s holding follows:

The facts demonstrate that USA seeks a sale-for-resale exemption for steam cleaning that it ordered after a customer called to complain that USA had spilled waste on the customer’s property and not as the basis of any bargain between USA and the customer. On these facts, we conclude that the steam cleaning is not an integral part of the waste removal service that USA provides to its customers. *Id.* at 497.

The court made no interpretation of the agency rule, but rather distinguished USA Waste Management’s facts from other cases in which the Comptroller’s office had granted a “sale-for-resale” exemption. In so doing, the court relied on a principle of statutory interpretation that requires strict construction of exemptions from taxation against the taxpayer.

TxDOT’s reliance on the second case it cites is similarly misplaced. TxDOT cites a sentence from *TWCC v. Harris County*, “Because it represents the view of the regulatory body that drafted and administers the rule, the agency interpretation actually becomes a part of the rule itself.” But the complete quotation, containing three lines of which TxDOT quotes only the third, reads as follows:

Generally, we construe agency rules in the same manner as statutes, striving to give effect to the agency’s intent and *following the plain language of the rule unless it is ambiguous*. [citations omitted]. But if there is vagueness, ambiguity, or room for policy determinations in th regulation, we will defer to the agency’s interpretation unless it is plainly erroneous or inconsistent with the language of the rule. Because it represents the view of the regulatory body that drafted and administers the rule, the agency interpretation actually becomes a part of the rule itself. *Id.* At 881. (Emphasis added.)

¹⁰ TxDOT’s Response to Petitioner’s (Lamar’s) Motion for Summary Disposition and Counter-Motion for Summary Disposition, at 4.

TxDOT does not dispute that Lamar's sign was erected on private property and can be maintained from private property, which is all the rule requires. Thus, it is immaterial that TxDOT has interpreted 43 TAC § 21.161(b) as forbidding outdoor advertising companies from using the public right-of-way to access such signs.

B. Burden of Proof and Standard of Review Issues

The parties disagree about placement of the burden of proof. Because the ALJ finds that all material facts are undisputed, burden of proof is not an issue for this proposal for decision.

In addition, each party briefed the issue of whether the standard of review at SOAH for administrative appeals should be "reasonableness" or "fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise honest judgment" ¹¹

In general, matters of statutory construction are questions of law rather than issues of fact. ¹² The same is true of the construction of rules. In this case, Lamar's "claim" is a purely legal issue concerning the applicability of a rule to its conduct. Thus, the standard of review is not an issue for this proposal. For the reasons stated, the ALJ makes no additional findings or conclusions regarding the burden of proof or the standard of review for this proceeding.

III. Conclusion

TxDOT's rule at 43 TAC § 21.161(b) states only that TxDOT will not issue a permit for a sign unless it can be erected or maintained from private property. The rule is unambiguous; it does not forbid maintenance workers from accessing a sign by using the public right-of-way. Therefore, based on the discovery responses included with each party's motion for summary disposition, the pleadings, and the applicable law, the ALJ concludes that there is no genuine issue of material fact between TxDOT and Lamar. The ALJ recommends that Lamar's Motion should be granted and that Staff's motion should be denied.

¹¹ The two standards are set out in 43 TAC §§ 1.26(c)(1) and 1.26(c)(2)(E), respectively.

¹² *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 357, 43 Tex. Sup. Ct. J. 303 (Tex. 2000).

IV. FINDINGS OF FACT

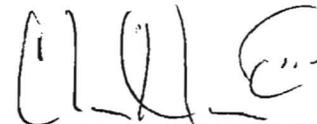
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3. The sign was erected on private property that has remained private property since the sign was erected.
4. The sign can be maintained from private property.
5. The sign is a single-faced billboard and was erected in 1969.
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7. By letter dated November 21, 2006, TxDOT Staff notified Lamar that of its intent to cancel the Permit because Lamar had performed repairs on the sign from within TxDOT's right-of-way.
8. Lamar timely requested a hearing.
9. On December 15, 2006, TxDOT filed a complaint against Lamar that alleged the facts recited in Findings of Fact Nos. 1, 2, 6, and 7, and requested that Lamar's permit be canceled and the sign ordered removed.
10. Lamar responded to TxDOT's complaint and engaged counsel through whom it has litigated the matter.
11. On October 1, 2007, Lamar filed a motion for summary disposition, and Texas Department of Transportation filed a counter-motion for summary disposition October 19, 2007. Each motion contended that the case should be disposed of on summary disposition because there is no genuine issue as to any material fact and that each party is entitled to a decision in its favor as a matter of law.

V. CONCLUSIONS OF LAW

1. The Texas Department of Transportation (TxDOT) has jurisdiction over this matter pursuant to TEX. TRANSP. CODE ANN. §§ 391.034 and 391.068.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. ch. 2003.

3. Based on Findings of Fact Nos. 10 and 11, Lamar Advantage Outdoor Company, L.P., (Lamar) waived receipt of notice of hearing.
4. A contested case may be disposed of by summary disposition without evidentiary hearing if the pleading, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 TEX. ADMIN. CODE § 155.57(a).
5. There is no genuine issue of material fact between Lamar and TxDOT.
6. Based on Findings of Fact Nos. 2-4, Lamar did not violate 43 TAC § 21.161(b).
7. Lamar is entitled to summary disposition of this proceeding in its favor.
8. TxDOT should not cancel Permit No. 36452 issued to Lamar Advantage Outdoor Company, L.P.

SIGNED April 14, 2008.



**CHARLES HOMER III
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SOAH DOCKET NO. 601-07-1232

TEXAS DEPARTMENT OF	§	BEFORE THE STATE OFFICE
TRANSPORTATION	§	
COMPLAINANT	§	
V.	§	OF
	§	
LAMAR ADVATAGE OUTDOOR CO., L.P.	§	ADMINISTRATIVE HEARINGS
RESPONDENT		

COMPLAINANT'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

**TO: AMADEO SAENZ, JR., EXECUTIVE DIRECTOR OF
THE TEXAS DEPARTMENT OF TRANSPORTATION**

The State Office of Administrative Hearings (SOAH) issued its Proposal for Decision with findings of facts and conclusions of law. The Proposal for Decision was forwarded to the Executive Director of the Texas Department of Transportation by letter dated April 14, 2008. The following exceptions are made to the Proposal for Decision disposing of the case by summary disposition in favor of Respondent.

STATEMENT OF FACTS

Lamar Advantage Outdoor Company, L.P., (Lamar) is a sign company operating off-premise signs or billboards throughout Texas. Lamar's sign, located adjacent to I-10 in Sutton County, Texas, is covered by permit number 36452 (permit).

TxDOT revoked the permit when Lamar, its agents, contractors, or employees did maintenance work on the above-described sign from the TxDOT highway right-of-way in violation of 43 TAC §21.161(b). As a result of these violations, by way of letter dated November 21, 2006, Director of Right of Way of the Texas Department of Transportation, John P. Campbell, P.E., canceled Respondent's Outdoor Advertising Sign Permit No. 36452 pursuant to the authority found at 43 TEX. ADMIN. CODE §§21.161(c), and 21.150(i)(9).

In response to the revocation, Petitioner made a timely written request for an administrative hearing on the question of permit cancellation in accordance with 43 TEX. ADMIN. CODE § 21.150(k).

EXCEPTIONS

Exception No. 1

Complainant objects to Conclusion of Law No. 6. This Conclusion of Law is not supported by the facts or the law. SOAH concludes in Conclusion of Law No. 6, that Lamar did not violate 43 TEX. ADMIN. CODE § 21.161(b).

Lamar contends that § 21.161(b) contains no restrictions or prohibitions regarding the parking of the vehicle and/or behavior of its employees who maintained the sign. TxDOT interprets the language “unless it can be erected or maintained from private property,” in § 21.161(b) to mean that a permit is given only when that private property requirement can be met and that such property is required to be used for all aspects of sign maintenance, including the parking of vehicles and behavior of employees. Texas courts have given great weight to an agency’s interpretation of their own administrative rules. *See USA v. Strayhorn*, 150 S.W.3d 491 at 495 (Tex. App.--Austin, 2004).

With respect to the location of the billboard in question, TxDOT’s right of way extends from the edge of the highway to the fence. Lamar’s private property, as required by the permit, begins behind the fence where the sign is also located. It is undisputed that the Lamar vehicle was parked in front of the fence on the right of way. The vehicle was an integral part of sign maintenance activities, such as carrying the tools and employees.

Lamar has sufficient private property to park its vehicles and maintain its billboard, but instead chose to disregard the regulation and park its vehicle on TxDOT’s right of way. TxDOT interprets sign maintenance to include the maintenance vehicle and actions of the Lamar employees,

including but not limited to, walking to and from the parked vehicle. Therefore, all maintenance must be conducted solely within the private property required for the permit. The regulation and its interpretation is for the safety of the sign company employees, TxDOT employees, and, most importantly, the traveling public.

Furthermore, TxDOT publishes a manual on its internet site, which is available to all billboard permit holders. In Volume 7, titled "Beautification", it states that "a permit may be cancelled if the sign is erected, repaired, or maintained from highway ROW". Along with, "TxDOT will cancel a permit for the erection and maintenance of an outdoor advertising sign if the owner, or someone acting on behalf of the owner, does not comply with state law or regulations". TxDOT Manuals, Volume 7 -Beautification (Revised April 2004), at <ftp://ftp.dot.state.tx.us/pub/txdot-info/gsd/manuals/bet.pdf>. See Texas Department of Transportation Manual, Volume 7 – Beautification.

In addition, Soah failed to apply the proper burden of proof and standard of review. The applicable burden of proof is found in 43 TEX. ADMIN. CODE § 1.26(d), which states:

(d) Burden of Proof. A party seeking monetary damages or penalties shall bear the burden of proof. In all other instances, the party challenging a department decision or action shall bear the burden of proof.

In the present case, neither party is seeking monetary damages or penalties. This is a case in which Lamar is challenging TxDOT's decision to cancel Lamar's billboard permit. Therefore, Lamar, in this case, has the burden of proof. What they must prove under that burden is contained in 43 TEX. ADMIN. CODE § 1.26(c), the standard of review.

The standard of review in 43 TEX. ADMIN. CODE § 1.26(c)(2), is:

(2) The standard of review is whether the agency's actions were based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment for: . . .

(E) claims related to cancellation of a permit under § 21.150(k) of this title relating to Permits . . .

As petitioner, Lamar has the burden of proving that TxDOT's cancellation of Lamar's billboard permit for violating § 21.161(b) was based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment.

Conclusion of Law No. 6 should be changed to state that "Lamar did violate 43 TAC §21.161(b) Furthermore, Conclusion of Law No. 10 should be changed to provide that "the cancellation of permit number 064709 should be affirmed."

PRAYER

WHEREFORE, PREMISES CONSIDERED, Complainant respectfully requests that the Executive Director affirm the cancellation of Sign Permit No. 064709 or in the alternative overturn the Summary Disposition and grant TxDOT a full evidentiary hearing on the matter.

Respectfully submitted,
GREG ABBOTT
ATTORNEY GENERAL OF TEXAS

KENT C. SULLIVAN
FIRST ASSISTANT ATTORNEY
GENERAL

DAVID S. MORALES
DEPUTY ATTORNEY GENERAL
FOR LITIGATION

KRISTINA SILCOCKS
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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing document has been served on this the 2nd day of May, 2008, on the following:

Mark Brown
Attorney at Law
121 South Irving Street
San Angelo, Texas 76903

VIA FAX: 1-325-659-6432

State Office of Administrative Hearings
300 W. 15th St., Ste. 502
Austin, Texas 78701

VIA HAND DELIVERY


CLAUDIA V. KIRK