

TEXAS TRANSPORTATION COMMISSION

WILBARGER County

MINUTE ORDER


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WICHITA FALLS District

On March 25, 2010, the Texas Department of Transportation considered the petition challenging the cancellation of Outdoor Advertising Permit Number 33925, held by Texas Outdoor Advertising (Outdoor). Outdoor requested an administrative hearing and the matter was referred to the State Office of Administrative Hearings. The proposal for decision concluded that the petition should be denied and the non-complying sign, located in Wilbarger County on Highway 287 near Vernon, Texas (Highway 287), should be removed at no cost to the state of Texas. Under the Administrative Procedure Act and the Texas Transportation Commission's rules, the matter is now appropriate for entry of a final order by the commission.

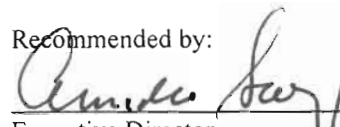
IT IS THEREFORE ORDERED that the commission issues the attached order in the case of Texas Outdoor Advertising v. Texas Department of Transportation, Docket No. 601-09-1742, and directs the executive director to deny the petition and order Outdoor to remove the non-complying sign on Highway 287 at no cost to the state of Texas within 90 days after the order is final.

Submitted and reviewed by:



General Counsel

Recommended by:



Executive Director

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Minute Number Date Passed

SOAH DOCKET NO. 601-09-1742

TEXAS OUTDOOR ADVERTISING,
Petitioner

V.

TEXAS DEPARTMENT OF
TRANSPORTATION,
Respondent

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BEFORE THE
TEXAS TRANSPORTATION
COMMISSION

ORDER

Came on for consideration this 25th day of March, 2010, 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. Texas Outdoor Advertising (Outdoor) held Outdoor Advertising Permit Number 33925 (Permit) issued by the Texas Department of Transportation (TXDOT).
2. By letter dated December 31, 2007, TXDOT cancelled the Permit on the grounds that Outdoor had violated TXDOT's rules regarding outdoor advertising sign maintenance and continuance, discontinuance of signs and destruction of trees/violation of control access.
3. On January 8, 2008, Outdoor timely requested a hearing on this matter.
4. Outdoor has held the Permit since July 17, 1973. The permitted sign was located in Wilbarger County on Highway 287, near Vernon, Texas (the Sign).
5. The Sign was partially destroyed by a windstorm during the summer of 2007.
6. Outdoor re-erected the Sign without determining from TXDOT whether a new permit would be necessary.
7. Outdoor failed to remove the remaining Sign structure after the Permit was cancelled.
8. On December 22, 2008, TXDOT mailed a Notice of Administrative Hearing to

Applicant. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

9. The hearing on the merits was held on June 22, 2009, at the State Office of Administrative Hearings (SOAH) facility in Austin, Texas. All parties appeared and participated in the hearing. The record closed that day at the conclusion of the hearing.

CONCLUSIONS OF LAW

1. TXDOT has jurisdiction and authority over the subject matter of this case. TEX. TRANSP. CODE ANN. § 391.002.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
3. Notice of the TXDOT's allegations and of the hearing on the merits was provided as required. TEX. GOV'T CODE §§ 2001.051 and 2001.052.
4. Outdoor bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 1.26(d).
5. Outdoor rebuilt the Sign in violation of 43 TEX. ADMIN. CODE § 21.156(a)(1).
6. Outdoor did not remove the Sign after the Permit was cancelled in violation of 43 TAC § 21.156(a)(1)(B).
7. Outdoor failed to establish that TXDOT's action in cancelling the Permit was based on fraud, misconduct, or such a gross mistake as would imply bad faith or failure to exercise honest judgment.
8. Upon written notification by the executive director of TXDOT, Outdoor shall remove the Sign at no cost to the state of Texas. 43 TEX. ADMIN. CODE § 21.150(j).

The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies. Outdoor filed no exceptions. TxDOT staff (through the Office of the Attorney General) filed no 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, 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 petition by Texas Outdoor Advertising be denied and, in accordance with Conclusion of Law No. 8, Texas Outdoor Advertising is to remove the non-complying Sign, located in Wilbarger County on Highway 287 near Vernon, Texas, at no cost to the state of Texas within 90 days after this Order is final.

Signed this 25th day of March, 2010.



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