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**The Senate of
 The State of Texas**

**SENATOR FLORENCE SHAPIRO
 DISTRICT 8**

COMMITTEES:
 Education, *Chair*
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OPEN RECORDS DIVISION

November 11, 2003

Mr. Greg Abbott
 Attorney General of the State of Texas
 Office of the Attorney General
 PO Box 12548
 Austin, TX 78711-2548

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OPINION COMMITTEE

RQ-0129-6A

RE: Outdoor Advertising Regulations

FILE # ML-43337-03

I.D. # 43337

Dear General Abbott:

As you are aware, the outdoor advertising business is heavily regulated on the federal, state and local levels. At the federal level, Congress enacted the Highway Beautification Act of 1965 for the purpose of balancing public investment in roadways, safety and recreational value of public travel, and natural beauty with the rights and interests of outdoor advertisers. The Act directed the Secretary of Transportation to enter into agreements with the states to promote the reasonable, orderly and effective display of outdoor advertising.

As part of the federal regulations, each state, including Texas, was required to establish acceptable policies and procedures to implement a sign control program. Failure to implement and maintain an acceptable program jeopardizes federal funding of various road projects.

In accordance with the Act, Texas entered into an Agreement with the federal government dated May 2, 1972, which was supplemented July 17, 1972 and March 6, 1973. Pursuant to this agreement and mandate of the federal law, the Texas legislature enacted legislation for the regulation of outdoor advertising signs (now Codified in Chapters 391 and 394 of the Texas Transportation Code).

In accordance with the mandate of the Texas legislature, the Texas Transportation Commission adopted rules to implement Texas' compliance with the federal law and the state-federal agreement. These rules are found in Chapter 21 of Volume 43 of the Texas Administrative Code.



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In addition to the federal and state regulations, local governments are authorized to enact ordinances which are not inconsistent with the state law. Put another way, as one court has found, the federal and state law "do not prevent, but rather leave the door open and encourage strict regulation by other governmental agencies in the lawful exercise of their power." City of Houston v. Harris County Outdoor Advertising Association, 752 S.W.2d 42 (Tex.App.-Houston [14th Dist.] 1987, no writ). The converse is also true, that no local governmental agency can permit something otherwise prohibited by Texas state law.

In order to allow for an efficient permitting scheme, the Texas regulations allow the Texas Department of Transportation to certify that a local government's ordinance and permitting process is in complete compliance with state law. See Sect. 21.43 TAC 321.151. If the local government is "certified," it is not necessary to obtain a permit from TxDOT if a permit has been obtained from the local government.

Many local governments are not certified by TxDOT for failure to comply with one or more of the regulations of the state law. In some instances, the local law is more liberal than the state law. For example, state law does not permit the replacement of nonconforming signs (i.e. a sign which was lawfully erected but does not comply with the provisions of a later created law or current law as a result of a change in conditions). 43 TAC Sec.21.143 (c)(2) provides "[a] new permit will not be issued for a nonconforming sign." While Sec.21.143 allows the maintenance and construction of a nonconforming sign, Sec.21.143(c)(2) expressly prohibits the issuance of a sign on a site which previously held a non-conforming sign. 43 TAC Sec.21.511(a) contains a similar provision.

The replacement of non-conforming signs are in violation of state law and place federal funds for Texas in jeopardy. Therefore, an Attorney General's opinion is requested on the following issues:

1. Is a local ordinance which allows a permit to be issued to replace a nonconforming sign with a new nonconforming sign invalid under state regulations? Put another way, does Texas law prohibit the issuance of a new nonconforming sign permit to allow the replacement of an existing nonconforming sign with a new nonconforming sign?
2. Does the right to the nonconforming use belong to the landowner or the sign owner?

Obviously, these issues are important to the state's interests, as improper implementation of the federal law, the state-federal agreement, and state law would jeopardize millions of





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dollars in federal funding for the state, specifically, ten percent of Texas' Federal Highway Funds.

I look forward to your response.

Very truly yours,

A handwritten signature in black ink that reads "Florence Shapiro". The signature is written in a cursive style with a large, prominent initial "F".

Florence Shapiro

