WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266−1946

Richard Sweet
Assistant Director
(608) 266−2982

David J. Stute, Director
Legislative Council Staff
(608) 266−1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701−2536
FAX: (608) 266−3830

CLEARINGHOUSE RULE 94−202

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

The legal authority and the rationale for Clearinghouse Rule 94-202 need to be clarified. Section 84.30 (3), Stats., generally restricts the placement of signs visible from the main-traveled way of any interstate or federal aid highway but provides certain exceptions. Some of the exceptions are for signs erected in "business areas," as defined in s. 84.30 (2) (a), Stats., signs located in "urban areas" outside the "adjacent area" as those terms are defined in s. 84.30 (2) (a) and (km), Stats., and signs outside the adjacent area that are not erected with the purpose of their message being read from the main-traveled way of an interstate or primary highway.

Under s. Trans 201.07, persons may obtain permits from the department to erect signs at locations that are visible from the traveled lane of a "controlled highway" (although this term is not defined). Under s. Trans 201.16, political signs may be erected without a permit if certain conditions are satisfied, one of which is that the sign is not located adjacent to an interstate highway or a freeway. Clearinghouse Rule 94-202 would provide that political signs that meet the conditions under s. Trans 201.16 may be erected without a permit even if the sign is located adjacent to an interstate highway or a freeway.

If the circumstances under which a political sign may be erected fall within the exceptions of s. 84.30 (3), Stats., there appears to be statutory authority for the rule. The exceptions under s. 84.30, Stats., do not require that a person wishing to erect such a sign obtain a permit from the department and so an exemption from that requirement for political signs adjacent to an interstate highway or a freeway would appear to be authorized by s. 84.30 (14), Stats. However, in the analysis of Clearinghouse Rule 94-202, the department explains that the U.S. Supreme

Court "has invalidated a Wisconsin restriction on otherwise qualifying political signs on private property." This statement is confusing because it implies that Clearinghouse Rule 94-202 would authorize the erection of political signs under circumstances that are not within the exceptions of s. 84.30 (3), Stats. In addition, it does not appear that the court decision requires the amendment to s. Trans. 201.16 that is proposed in Clearinghouse Rule 94-202.

In the case [City of Ladue, et al., Gilleo, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994)], the U.S. Supreme Court held that a municipal ordinance prohibiting homeowners from displaying all but certain specified types of signs on their property violated the free speech guarantees of the First Amendment. In the case, the municipal ordinance completely prohibited political, religious or personal messages from being placed upon an individual's property. In its opinion, the court stated:

> Here, in contrast, Ladue [the municipality] has almost completely foreclosed a venerable means of communication that is both unique and important. It has totally foreclosed that medium to political, religious, or personal messages. Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident's support for particular candidates, parties or causes [City of Ladue v. Gilleo, op. cit., p. 22].

Current s. Trans 201.16 (2) (e) only requires that a person wishing to erect a political sign adjacent to an interstate highway or a freeway obtain a permit from the department and does not completely disallow these signs. Therefore, it is not clear that the U.S. Supreme Court case cited is legal authority for the rule. The department should further explain the legal authority and rationale for Clearinghouse Rule 94-202.