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September 2, 1983

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ARIZONA ATTORNEY GENERAL

Carlie Bowmer, P.E.
Assistant State Engineer
Arizona Department of Transportation
206 South 17th Avenue
Phoenix, AZ 85007

Re: I83-101 (R83-102)

Dear Mr. Bowmer:

We are writing in response to your letter of July 22, 1983, in which you inquired whether constitutional or statutory provisions prohibit the Arizona Department of Transportation from placing specific services ("logo") signs on State right-of-way to indicate the names of the businesses providing certain services near an intersection or interchange.

Logo signs are presently prohibited by A.R.S. § 28-648, which provides in pertinent part that:

. . . no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising . . .

Logo signs, by showing brand, symbol, trademark, name or a combination of these, clearly bear commercial advertising.

Whether a logo sign is a "traffic sign" is resolved by referring to the Manual on Uniform Traffic Control Devices (MUTCD), adopted by the Arizona Department of Transportation pursuant to A.R.S. § 28-641. The MUTCD on page 1 defines the broader term "traffic control device" as follows:

Traffic control devices are all signs, signals, markings, and devices placed on, over, or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn, or guide traffic. (Emphasis added)

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Part II F of the MUTCD is entitled "Guide Signs-Freeway" and contains section 2F-34 which provides that "State policy may prescribe the use of special panels or displays to provide motorists with specific services information. . . ." Because the MUTCD treats logo signs as "guide signs" which are, in turn, "traffic control devices", logo signs are advertising-bearing "traffic signs" prohibited within the scope of the prohibition of A.R.S. § 28-648.

Although we conclude that logo signs are prohibited by statute, we note that with respect to the constitutionality of logo signs, Ariz. Const. Art. 4, pt. 2, § 19 provides in pertinent part:

Section 19. No local or special laws shall be enacted in any of the following cases, that is to say:

* * *

13. Granting to any corporation, association, or individual, any special or exclusive privileges, immunities, or franchises.

Thus, in order to be constitutionally permissible, a law authorizing logo signs would have to establish reasonable and rational criteria for participation in a logo sign program. Chevron Chemical Co. v. Superior Court, 131 Ariz. 431, 641 P.2d 1275 (1982), Arizona Downs v. Arizona Horsemen's Foundation, 130 Ariz. 550, 637 P.2d 1053 (1981), Eastin v. Broomfield, 116 Ariz. 576, 570 P.2d 744 (1977).

Sincerely,



BOB CORBIN
Attorney General

RKC:JLH:lm