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Informational and  
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Jill Shelley  
Principal Analyst  
785-296-3181  
Jill.Shelley@klrd.ks.gov

# Kansas Legislator Briefing Book 2014

## Transportation and Motor Vehicles

### W-3 Informational and Traffic Control Signs

Signs along highways fall into three general categories: outdoor advertising, tourism-related, and traffic control. This article provides summary information about major state and federal requirements and guidance for each type of signage.

#### Outdoor Advertising Signs

In the wake of the federal Highway Beautification Act of 1965 (Title 23, U.S. Code, Section 131), Kansas initially adopted its Highway Advertising Control Act in 1968 but replaced it in 1972 (KSA 68-2231 *et seq.*). The federal Highway Beautification Act requires states to regulate outdoor advertising, in ways that meet minimum federal standards, or risk loss of federal highway funding.<sup>8</sup> The Kansas Highway Advertising Control Act was significantly amended in 2006; those amendments added a permit process for signs and made additional changes. The Kansas Department of Transportation (KDOT) administers the law and provides guidance on its implementation.<sup>9</sup>

Signs are controlled in the area adjacent to the right-of-way and visible from the main traveled way (KSA 68-2232). The Secretary of Transportation entered into an agreement with the U.S. DOT to control outdoor advertising near interstate and federal-aid primary highways (as authorized by KSA 68-2235). Federal law (23 CFR 750.102(k)) defines “protected areas” “as all areas . . . which are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System.” Signs intended to be seen from the interstate but beyond that limit also are prohibited (KAR 36-17-7, 23 USC §131).

State law includes these provisions:

- No sign may be erected or maintained in the right of way or in an area adjacent to the right-of-way on any interstate or primary highway,<sup>10</sup> with these exceptions:

8 A history and overview of the federal program is available from the Federal Highway Administration website: [http://www.fhwa.dot.gov/real\\_estate/practitioners/oac/oacprog.cfm#HBAAMND](http://www.fhwa.dot.gov/real_estate/practitioners/oac/oacprog.cfm#HBAAMND). The Highway Beautification Act is Pub. L. 89–285, 23 USC §136 and amending 23 USC §131 and 23 USC §319 (control of junkyards). The Kansas Highway Advertising Control Act includes many provisions mirroring those of 23 USC §131. Federal regulations on this topic may be found in 23 CFR Part 750.

9 That guidance includes the booklet “Outdoor Advertising in Kansas,” available through <http://www.ksdot.org/burrow/beaut/>.

10 A “primary highway” is one part of the federal-aid primary system in existence on

- Directional and official signs, including signs pertaining to scenic or historical attractions (which must conform to requirements including those in KDOT rules and regulations) (KSA 68-2233(a));
- Signs advertising the sale or lease or property on which the sign is located (KSA 68-2233(b));
- On-premise signs advertising activities conducted on the property on which they are located (KSA 68-2233(c));
- Nonconforming signs lawfully in existence on March 31, 1972 (KSA 68-2233(d)); and
- Signs that conform to all other requirements (KSA 68-2233(f));
- No sign may be erected adjacent to any roadway designated as a scenic highway or byway; within 1,000 feet of a park or wildlife refuge; within 400 feet of a public park, church, school, or recreation area; within 500 feet of any strip of land owned by the state for purposes of scenic beauty; or in any place that obstructs the driver's view of traffic or of any official traffic sign or signal (KSA 68-2233(g); KAR 36-17-8(C));
- No sign may be erected outside of an urban area beyond 660 feet from the nearest edge of the right-of-way, visible from the main traveled way and erected with the purpose of its message being read from the traveled way, except directional and other official signs (KAR 36-17-7; also see 23 USC §131(c));
- An area may not be zoned specifically ("spot zoned") to allow a sign (KSA 68-2232(w); KSA 68-2234(g) and (h));
- Signs are limited in size, configuration, spacing, and lighting (KSA 68-2234(a) – (e));
- A local zoning authority may control the erection, maintenance, size, spacing and lighting of signs in all areas under

its jurisdiction, except along interstate highways (KSA 68-2234(f));

- A permit must be obtained before a new sign is erected and a sign license must be obtained and renewed; certain signs advertising nonprofit, religious, civic or educational organizations are exempt (KSA 68-2236);
- Illegal signs (e.g., nonconforming signs on private property) may be removed following notice; removal may be appealed (KSA 68-2240(a) and (e)); and
- A sign that sustains damage exceeding 60 percent of its replacement costs, including signs damaged or destroyed by natural causes but not including those destroyed in criminal acts, may not be replaced (KSA 68-2240(b)).

Also prohibited is commercial advertising on any official traffic control device, except for business signs included as part of official motorist service panels or roadside area information panels approved by the secretary of transportation (KSA 8-1512).

KDOT policy has been to review individually any sign in the right of way that appears to be intended to be temporary. KDOT has stated in election-year press releases that "all political campaign signs or billboards are prohibited on the state right of way" and business and political signs in the right of way "will be removed immediately without notice" and taken to KDOT offices. KDOT officials have noted that fences should not be understood as marking right of way boundaries; anyone with a question about a right of way boundary should contact KDOT.

The Kansas Supreme Court has held, "The [Highway Advertising Control] Act does not attempt to regulate noncommercial speech or noncommercial signs, does not conflict with the First Amendment to the Constitution of the United States, and is a constitutional enactment." *Roberts Enterprises, Inc. v Secretary of Transportation*, 237 K. 276 (1985). No more recent cases have challenged that ruling.

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June 1, 1991, and any highway on the national highway system. This includes most state highways. KDOT provides a map of the applicable highways on the website <http://www.ksdot.org/burrow/beaut/>.

## Tourism Signage

The size, placement, and other specifics of “directional signs” and other “official signs and notices” along highways also are regulated. Federal guidance states tourist-oriented directional signs and specific service signs are not considered advertising; rather, they are classified as motorist service signs.<sup>11</sup> Tourism-oriented signs are coordinated by KDOT; the Department of Wildlife, Parks and Tourism, Division of Tourism; and a private company under contract to the state (for logo signs only). Brochures and guidelines are available from official websites and explain criteria (e.g., attendance at an attraction noted on an official sign usually must be 2,000 or more) and the application process.<sup>12</sup>

- Other “official signs and notices” include signs and notices from public agencies erected within their jurisdiction, historical markers, public utility warning and information signs, and service club and religious notices (KAR 36-17-8). Cities may furnish their own tourism attraction signs along conventional highways (not freeways or expressways) within city limits.
- A “directional sign” is one “containing directional information about public places . . . ; . . . natural phenomena, historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public” (KAR 36-17-8). Official brown “supplemental guide signs” (the term used in the current approval process) are installed at interchanges or intersections at KDOT expense. Only one such sign with two destinations per direction is allowed at an interchange.
- “Tourist-oriented directional signs” along the state highway system provide directional information to tourist-oriented

businesses, seasonal agricultural products, services, and attractions that cannot be seen from the highway. An annual fee is charged for information on these blue signs.

- Eligible businesses may place information on “logo” signs at certain interchanges on the interstate highways. Attraction logo signs are coordinated by the Kansas sign contractor and are located at controlled access interchanges. If limited space is available, priority is given in this order: gas, food, lodging, camping, and attractions. The fee depends on the sign’s placement and the highway’s traffic count.

## Traffic Control Signs

Since 1937, state law has required KDOT to “adopt a manual and specifications for a uniform system of traffic-control devices” (KSA 8-2003), and KDOT has adopted the Manual on Uniform Traffic Control Devices (2009 Edition, with revisions from May 2012) (MUTCD), a publication of the Federal Highway Administration.<sup>13</sup> State and local officials are to place and maintain traffic-control devices in ways conforming to the MUTCD (KSA 8-2004, KSA 8-2005).

The MUTCD states that, “To be effective, a traffic control device should meet five basic requirements: A. Fulfill a need; B. Command attention; C. Convey a clear, simple meaning; D. Command respect from road users; and E. Give adequate time for proper response. Design, placement, operation, maintenance, and uniformity are aspects that should be carefully considered in order to maximize the ability of a traffic control device to meet the five requirements . . . . Vehicle speed should be carefully considered as an element that governs the design, operation, placement, and location of various traffic control devices. . . . The proper use of traffic control devices should provide the reasonable and prudent road user with the information necessary to efficiently and lawfully

11 From the Manual of Uniform Traffic Control Devices, Section 1A.01

12 KDOT, “Outdoor Advertising in Kansas,” available from <http://www.ksdot.org/burrow/beaut/>; “Signage Application and Guidelines,” available at <http://www.travelks.com/industry/signage/>.

13 The MUTCD is available at <http://mutcd.fhwa.dot.gov/>. Federal law (23 CFR §655.603) requires states to adopt uniform sign requirements in substantial compliance with the MUTCD and encourages adoption of the MUTCD in its entirety.

use the streets, highways, pedestrian facilities, and bikeways.”

The MUTCD includes standards for sign sizes, colors, reflectivity, height, borders, symbols used, and other features. Signs are illustrated.

The MUTCD states the placement of warning signs depends on the specific situation:

This Manual describes the application of traffic control devices. . . . *Guidance: The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment.* Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement. . . . ‘Engineering

judgment’ [is defined as] the evaluation of available pertinent information, and the application of appropriate principles, provisions, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. . . . Warning signs should be placed so that they provide an adequate Perception-Response Time.<sup>14</sup>

KDOT has issued additional guidance based on the MUTCD and available to local road engineers.

Section 2M.10, Memorial or Dedication Signing, limits the legend on memorial or dedication signs to “the name of the person or entity being recognized and a simple message preceding or following the name, such as ‘Dedicated to’ or ‘Memorial Parkway.’ Additional legend, such as biographical information, shall not be displayed on memorial or dedication signs.”

<sup>14</sup> MUTCD, Sections 1A.09, 1A.13, 2C.05

For more information, please contact:

Jill Shelley, Principal Analyst  
[Jill.Shelley@klrd.ks.gov](mailto:Jill.Shelley@klrd.ks.gov)

Conrad Imel, Research Analyst  
[Conrad.Imel@klrd.ks.gov](mailto:Conrad.Imel@klrd.ks.gov)

Aaron Klaassen, Senior Fiscal Analyst  
[Aaron.Klaassen@klrd.ks.gov](mailto:Aaron.Klaassen@klrd.ks.gov)

Kansas Legislative Research Department  
 300 SW 10th Ave., Room 68-West, Statehouse  
 Topeka, KS 66612  
 Phone: (785) 296-3181  
 Fax: (785) 296-3824