HALLORAN SAGE

Free Speech and Political Signs: A Crash Course

Mark K. Branse, Esq.
halloransage.com

Pursuant to Connecticut General Statutes § 8-2, a zoning commission may regulate, “the height, size and location of advertising signs and billboards.” Like other types of speech, restrictions on signs that are related to “time, place and manner” are permissible under the United States Constitution so long as those restrictions are *content neutral*. For example, in the context of commercial advertising signs, the Connecticut Supreme Court stated,

> [i]n *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770, 96 S.Ct. 1817, 1829, 48 L.Ed.2d 346 (1976), the United States Supreme Court ruled that commercial speech is protected by the first and fourteenth amendments to the United States constitution, but cautioned that its holding did not mean that commercial speech could not be regulated in any way. The court noted that it had approved restrictions as to time, place and manner, so long as they were justified without reference to the content of the regulated speech, served a significant governmental interest and left open ample alternative channels for communication of the information. Id., 770-71, 96 S.Ct. at 1830.

Friedson v. Town of Westport, 181 Conn. 230, 235 (1980). In *Friedson,* a zoning regulation requiring that signs be below the peak of the roof of the building to which they were affixed was held to be constitutional because it was silent as to the content of the sign. Note that this regulation regulated the *location* of a sign, as specifically allowed by Conn. Gen. Stat. § 8-2.

The same principle (that regulation of signs must be content neutral) also applies to signs of a political nature. In *Kroll v. Steere,* 60 Conn. App. 376 (2000), a homeowner opposed to a municipal meeting vote to allow deer hunting “with bows and arrows and shotguns” placed a sheet of plywood against her garage which read, “Who Asked the Deer?” *Id.* at 379. The relevant zoning regulations prohibited signs larger than one square foot; however, Ms. Kroll’s sign was a 20 square foot sheet of plywood. Ms. Kroll admitted that her sign was designed to attract the attention of passing motorists and the Connecticut Appellate Court found that the municipal corporation had a significant governmental interest in maintaining the safety of those motorists. The Court held that

the zoning regulation, “makes no attempt to regulate the content of residential signs. . . We conclude that the enforcement of [the regulation] did not infringe on the plaintiff's constitutional right to freedom of speech.” *Id.*

Time, place and manner restrictions placed on political signs may be no more restrictive than those placed on other types of signs. In *Burns v. Barrett*, 212 Conn. 176 (1989) (Department of Transportation scheme limiting signs abutting highways to advertising only activities conducted on-site upheld) the Connecticut Supreme Court stated that political signs are entitled to more protection that commercial signs.

> [t]he remaining sign the defendant was ordered to remove was that containing his statement concerning the debt we owe to veterans of the war in Vietnam. The right to display such a political message falls classically within the protection of the first amendment and any justification for its curtailment must be greater than for a restriction on commercial speech.

Id. at 186. Here, once again, the Court’s analysis turned on whether the regulation was “content neutral.“ A major criterion for a valid time, place, and manner restriction is that the restriction

> may not be based upon either the content or subject matter of speech. . . . Insofar as the city tolerates billboards at all, it cannot choose to limit their content to commercial messages; the city may not conclude that the communication of commercial information concerning goods and services connected with a particular site is of greater value than the communication of noncommercial messages.

Id. at 187, 189. While the *Burns* case concerned regulations of the Department of Transportation, the same constitutional analysis would apply to zoning regulations and their enforcement.

Zoning enforcement officers must also be aware of the sometimes murky distinction between signs and artwork. In the *Kroll* case, discussed above, Ms. Kroll claimed that her sheet of plywood was a mural. *Kroll*, 60 Conn.App. at 382 (2000). The Appellate Court held that it is a question of law whether “the object was a mural or a sign.” *Id.* The Court then turned to Webster’s New World College Dictionary, which defines a mural as, “a picture, esp. a large one, painted directly on a wall or ceiling, or a large photograph, etc; attached directly to a wall.” The Court’s analysis continued:

> There is no dispute that the piece of plywood was only placed against the plaintiff's garage wall; it was not a part of the wall. The plywood was movable, and the plaintiff in fact moved it to a different location. We cannot say that the

> court improperly rejected the plaintiff's claim that the piece of painted plywood was a mural.

Id. Because the Court determined that “the object” was a sign and not a mural, it was subject to the time, place and manner restrictions imposed by the municipal corporations sign regulations.

In *Schwartz v. Planning and Zoning Commission of Town of Hamden*, 208 Conn. 146 (1988), the Connecticut Supreme Court was asked to determine whether a thirty-two foot high brushed aluminum cylinder with the word “Landmark” on the side was a sign. *Id.* at 150. The cylinder was designed by Harold Lehr, a graduate of the Rhode Island School of Design and a noted sculptor. *Id.* The Commission did not dispute that the cylinder was a work of art entitled “Landmark.” *Id.* Instead, the Commission argued that when the work was placed at the entrance to the plaintiff’s shopping center, as proposed, it became a sign because “it can be seen by a passerby and thus it attracts attention.” *Id.* The Court held,

> Initially, we see nothing within the definition of a “sign” in the zoning regulations to indicate that the determination of whether an object is or is not a sign depends upon its placement. Further, while “Landmark” is a unique sculpture that will no doubt attract attention to itself, it nevertheless does not attract attention to any “use, product, service, or activity” as required by [the regulations].

Id. at 154. The Court found that “Landmark” was not a sign because it,

> contains no lettering, markings, insignia or other distinguishing features that would direct one's attention to Hamden Plaza as a shopping area, or to any specific use, service or activity being conducted there or to any particular products sold at the Hamden Plaza.

Id. The fact that the Commission only considered “Landmark” to be a sign if it was located at the entrance to the shopping center and the fact that “Landmark” contains no expressly commercial speech led the Court to determine that it is a work of art and therefore does not fall under the time, place and manner restrictions specific to signs in the Hamden Zoning Regulations.

The basic rules:

- Free speech issues are complicated, rapidly changing, and fact-based. *Whenever you are faced with a possible free speech claim, consult with your municipal attorney*.
- Zoning regulations should be *content neutral*, treating all signs for the same

class of uses under the same rules. Example: you can have one size of sign for residential uses and another for non-residential uses (or types thereof), but not different size signs for *public* schools than you have for a *private* schools.

- Don’t have stricter regulations for free speech signs than for other types.