



Since 1906

# SEIZ SIGN COMPANY

1231 Central Avenue  
Hot Springs, Arkansas 71901  
Telephone: (501) 623-3181  
Facsimile: (501) 623-4594

Outdoor Advertising and Signs of All Types

March 26, 2008

**VIA FAX: (501) 568-0085**

Greg Criner  
Lamar Outdoor  
3000 West 65th Street  
Little Rock, AR 72209

**Re: December 17, 2007 letter from AHTD**

Dear Greg:

Please find attached a letter I received this week regarding bus bench advertising. Mr. Flowers wrote this letter in December of 2007, but I just found out about it. I was not aware of the "Arkansas Transit Association" prior to the receipt of this letter.

Our attorney, on behalf of the AOAA, forwarded Mr. Flower's letter to the City Attorney in Hot Springs. He further explained why the advertising is illegal. All of the advertising is being conducted on AHTD right of way.

Please call with any questions.

Sincerely,

David Hamilton

c.c. Myron Liable  
Vice President, State, Local & Regulatory Affairs  
Outdoor Advertising Association of America, Inc.  
Via Fax: (202) 833-1522

# ARKANSAS STATE HIGHWAY COMMISSION



JONATHAN BARNETT  
CHAIRMAN  
SILOAM SPRINGS

CARL S. ROSENBAUM  
VICE CHAIRMAN  
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DAN FLOWERS  
DIRECTOR OF  
HIGHWAYS AND TRANSPORTATION

P.O. Box 2261  
LITTLE ROCK, ARKANSAS 72203-2261  
PHONE (501) 569-2000 FAX (501) 569-2400  
WWW.ARKANSASHIGHWAYS.COM

March 13, 2008

Mr. Brandon B. Cate  
Quattlebaum, Grooms, Tull & Burrow  
4100 Corporate Center Drive  
Suite 310  
Springdale, AR 72762

Dear Mr. Cate:

Reference is made to your March 5, 2008 letter regarding the placement of outdoor advertising signs on highway right of way in connection with bus stop benches.

The Department is aware of this activity and has communicated with the Arkansas Transit Association (ATA) and other transit providers within the state. Please find attached a copy of my December 17, 2007 letter to Ann Gilbert, Executive Director of ATA.

We will continue to work with the transit providers to resolve this matter.

Thank you for your comments.

Sincerely,

Dan Flowers  
Director of Highways  
and Transportation

Attachment (1)

- c: Highway Commission
- Deputy Director & Chief Engineer
- Assistant to the Director
- Assistant Chief Engineer-Planning
- Chief Counsel
- Environmental Division
- Ann Gilbert, Arkansas Transit Authority

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December 17, 2007

Ms. Ann Gilbert  
Executive Director  
Arkansas Transit Association  
620 West Broadway  
North Little Rock, AR 72114-5526

Dear Ms. Gilbert:

It was a pleasure to visit with you recently by telephone regarding advertising signs on highway right of way. We certainly appreciate your willingness to assist us in dealing with the matter of bus stop benches which have advertising signs that are attached to the benches.

As we discussed, our department has a continual problem with commercial advertising signs and other commercial activities encroaching upon the right of way limits of state highways. State law prohibits the placement of signs and/or conducting of commercial activities on highway rights of way.

When signs are removed from the right of way by department personnel or when parties are asked to remove commercial activities from state highway rights of way, there are obviously some sign and/or business owners who become quite upset.

Therefore, we are requesting your help in advising your members of the prohibition of placing advertising signs on state highway rights of way.

Attached, you will find a notice regarding state law and Highway & Transportation Department policy relative to commercial sign and commercial activity encroachments.

Hopefully, this notice will help your members understand our responsibilities and reduce the number of incidents when signs will have to be removed.

ARKANSAS STATE HIGHWAY COMMISSION  
LITTLE ROCK, ARKANSAS

Ms. Ann Gilbert

-2-

December 17, 2007

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We appreciate your assistance and if you have questions or comments, please advise.

Sincerely,



Dan Flowers  
Director of Highways  
and Transportation

Attachment (1)

- c: Highway Commission
- Deputy Director & Chief Engineer
- Assistant to the Director
- Assistant Chief Engineers
- State Maintenance Engineer
- Chief Counsel
- District Engineers
- Randy Ort – Public Affairs
- Central Arkansas Transit Authority
- Fort Smith Transit
- Hot Springs Intracity Transit
- Ozark Regional Transit
- Pine Bluff Transit
- Razorback Transit
- Texarkana Urban Transit District
- BRAD Public Transit
- Central Arkansas Development Council (CADC/SCAT)
- Eureka Springs Transit
- Mid-Delta Transit
- North Arkansas Transportation Service
- Southeast Arkansas Transportation

## ADVERTISING SIGNS AND COMMERCIAL ACTIVITIES NOT PERMITTED ON HIGHWAY RIGHT OF WAY

Arkansas Statutes address the matter of placing unauthorized signs and/or conducting commercial activities on highway rights of way.

Only official directional, informational and/or regulatory highway signs, placed by or authorized by the Arkansas Highway and Transportation Department (AHTD), are permitted on state-owned highway property. All other signs are subject to being removed.

The smaller type signs that are placed on the right of way are subject to removal by department personnel and will be stored at the nearest AHTD Area Maintenance Headquarters. Owners of larger type signs will be notified and given an opportunity to remove the sign. If not removed, the department will remove the sign and take it to the nearest Area Maintenance Headquarters. Sign owners may pick up their signs at the Area Maintenance Headquarters during normal business hours.

In addition, state law prohibits commercial activities such as roadside stands or the display of or the sale of items on highway right of way. Those conducting these type activities are subject to being asked to move the activity from the right of way.

Copies of the state laws, i.e., A.C.A. 5-67-101 and 27-67-304, relative to the above are attached.

### 5-67-101. Advertising signs generally.

(a) It shall be unlawful for any persons, firms, or corporations to place any advertising signs on the highway right-of-way in this state, excepting signs placed under direction of the State Highway Commission.

(b) Any person violating the provisions of this section or § 5-39-213 shall be guilty of a misdemeanor and on conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

History. Acts 1941, No. 359, §§ 2, 3; A.S.A. 1947, §§ 41-3355, 41-3356.

### 27-67-304. Use of right-of-way.

(a) The rights-of-way provided for all state highways shall be held inviolate for state highway purposes, except as provided in subsections (b) and (c) of this section. No physical or functional encroachments, installations, signs other than traffic signs or signals, posters, billboards, roadside stands, gasoline pumps, or other structures or uses shall be permitted within the right-of-way limits of state highways.

(b) Political subdivisions, rural electric cooperatives, rural telephone cooperatives, private television cables, and public utilities of the state may use any right-of-way or land, property, or interest therein, the property of the State Highway Commission, for the purpose of laying or erecting pipelines, sewers, wires, poles, ditches, railways, or any other purpose, under existing agreements or permits or such agreements or permits hereinafter made by the commission or under existing laws, provided that such use does not interfere with the public use of the property for highway purposes.

(c) No private television cable shall be placed upon the right-of-way limit of any state highway until such person, firm, association, partnership, or corporation first executes a bond payable to the commission in an amount to be determined by the district engineer located in the district in which such cable is to be located.

History. Acts 1953, No. 419, § 5; 1975, No. 654, § 1; A.S.A. 1947, § 76-544.



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Outdoor Advertising and Signs of All Types

August 19, 2008

**VIA FAX: (501) 569-2018**

Dan Flowers  
Director Arkansas State Highway and Transportation Department  
P.O. Box 2261  
Little Rock, AR 72203

**Re: Bus Benches**

Dear Dan:

Thank you for your letter dated August 15, 2008. Your letter cleared up the issues about which we were concerned. It also set the record straight with respect to statements made by representatives of Benches Etc. and statements attributed to you.

We appreciate the working relationship with the AHTD and your prompt and straightforward answers to the issues raised by Benches Etc.

Sincerely,

David Hamilton

c.c. Myron Laible, Outdoor Advertising Association of American  
Tom Gibbens, Lamar  
Connie Gray, Ozark Poster Company  
Greg Criner, Lamar  
Ron Blue, Clear Channel Communications  
Ryan Brown, SECO Advertising  
Creative Outdoor Advertising

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WWW.ARKANSASHIGHWAYS.COM

August 15, 2008

Mr. David Hamilton  
Seiz Sign Company  
1231 Central Avenue  
Hot Springs, AR 71901

Dear Mr. Hamilton:

Reference is made to your July 28, 2008 letter transmitting the comments made by Mr. Bryan Duke, Benches, Etc., before the Hot Springs City Council relative to the Department's position regarding bus stop benches, containing commercial advertising, which are located on state highway rights of way.

You were previously advised that in 2007 the Department noticed a significant number of "bus stop" benches containing commercial advertising showing up on state highway rights of way in the Little Rock area. This situation prompted us to write Ms. Ann Gilbert, Executive Director of the Arkansas Transit Association (ATA) on December 17, 2007 requesting that the ATA advise its members of the prohibition of placing advertising signs on state highway rights of way. In addition, a copy of the above mentioned letter was provided to you on May 22, 2008. You were also advised that it was our expectation that the transit operators would voluntarily remove the benches.

Shortly after the December 17, 2007 letter to Ms. Gilbert, Mr. Duke's attorney called the Department and asked for a meeting to discuss the Department's position regarding the benches. The meeting resulted in a protest from Mr. Duke and we were advised that they would be preparing draft legislation to change state law to allow these type benches on state highway rights of way on the basis that they serve a "public purpose" as well as being a revenue generator for the transit operators. Mr. Duke's attorney advised that they would share the draft legislation with the Department. They were told that the Department was obligated to comply with both state and federal laws and regulations regarding outdoor advertising but if they wanted to provide us a copy of the draft legislation, they could. They were not told that we would support the draft legislation in any way. As of this date the Department has received no draft legislation. Mr. Duke was also advised that it was our expectation that the transit operators would voluntarily comply with our December 17, 2007 request to remove the benches.



ARKANSAS STATE HIGHWAY COMMISSION  
LITTLE ROCK, ARKANSAS

It should be noted that a change in state law would not necessarily affect federal laws and regulations regarding outdoor advertising.

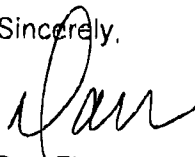
You have stated that your position is that any outdoor advertising sign should comply with both state and federal laws and regulations relative to the permitting of outdoor advertising. The Department agrees and expects compliance with these laws and regulations.

Regarding Mr. Duke's comments to the Hot Springs City Council, I want to make it clear that our position remains as stated in my December 17, 2007 letter to Ms. Gilbert. That is, the benches are in violation of Arkansas Statute and should be removed.

The Department is not "joining" to draft legislation to have an "exclusion" for these benches nor are we "ignoring" the problem because of "the public purpose of the benches." Furthermore, the Department does not have an "understanding" that we are going to have a "status quo" until acceptable draft legislation is prepared. This should be evident as we were the ones who initiated notice to the transit operators to remove the benches and we have not advised them to the contrary.

Should you have further questions, please advise.

Sincerely,



Dan Flowers  
Director of Highways  
and Transportation

Enclosure

- c: Highway Commission  
Deputy Director & Chief Engineer  
Assistant to the Director  
Assistant Chief Engineer-Planning  
Assistant Chief Engineer-Operations  
Chief Counsel  
Sandy Otto, Federal Highway Administration  
Mayor Mike Bush, Hot Springs  
Ann Gilbert, Arkansas Transit Association  
Bryan Duke, Benches Etc.



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July 28, 2008

**VIA: US MAIL and FAX (501-569-2018)**

Dan Flowers

Director

Arkansas State Highway and Transportation Department

P.O. Box 2261

Little Rock, AR 72203

RE: Benches Etc.

Unlawful Outdoor Advertising

Dear Dan:

I am writing this letter on behalf of the Arkansas Outdoor Advertising Association (AOAA) and our Company. It has come to our attention that Mr. Bryan Duke (Benches Etc.) made certain representations at the May 19, 2008 meeting of the City of Hot Springs Board of Directors. I have attached a copy of the relevant portion of that meeting for your review.

Specifically, Mr. Duke represented that 1) he is aware of the state law that prohibits outdoor advertising on AHTD right of way but that the AHTD has ignored the problem because of "the public purpose of the benches," 2) he further "advised they are joining together with Mr. Flowers' consent to draft legislation to have an exclusion to that policy for these benches because they serve a public benefit," and 3) "they have had an understanding from the Arkansas State Highway and Transportation Department that they are going to have a status quo for the present time while they try to draft legislation that would be acceptable to his company, the highway department, and the cities." See Minutes of Board Meeting, May 19, 2008.

These representations concern us because it was my understanding that the AHTD was unaware of Benches Etc.'s outdoor advertising violations until recently. It was our understanding that these unlawful advertising devices were not "tolerated" but rather were undetected until recently. These representations are also troubling because our Association has worked with the AHTD for the past several years in connection with policies and regulations governing off-premise outdoor advertising. We have worked with the AHTD in the development of regulations regarding tri-vision equipment, vegetations cutting, electronic message displays and other items. In our opinion, we had developed a good on-going working relationship with the AHTD. However, we were completely unaware that the AHTD was participating in legislation that would benefit an unlawful competitor.

Benches Etc. is engaged in unlawful off-premise advertising plain and simple. The following list partially explains the extent of their violations of the Arkansas Highway Beautification Act, the Regulations governing outdoor advertising, and other state statutes:

1. **Permits**. None of the bus benches have outdoor advertising permits. Almost all are located along primary federal aid highways.
2. **Property Owner Permission Statements**. None of the bench locations have properly authorized Property Owner Permission Statements.
3. **Public Right of Way**. All, or the vast majority, of the benches are on the state right of way in violation of state law. When on-premise business signs, off-premise outdoor advertising billboards, political advertising, real estate for sale signs, and other such items are placed on the right of way, the AHTD asks that they be removed or the AHTD removes them with its own crews even if the violation is inadvertent. Here, Benches Etc.'s actions are intentional and are simply a profit driven enterprise that is violating the law.
4. **Scenic Byway**. The benches are placed in numerous places along Highway 7 (Central Avenue) in the Hot Springs area, violating both state and federal legislation in connection with scenic byways.
5. **Malvern Overlay**. The benches have been placed along Highway 270 (Eastside), also called Malvern Avenue. These outdoor advertising devices violate the Malvern Overlay District in the Hot Springs Code of Ordinances.
6. **No Bus Stop**. Many of the benches are placed simply as advertising devices. Many are in locations that are not at public transportation bus stops. They are simply illegal and cannot seriously be argued to serve any sort of public purpose.
7. **County Locations**. Numerous benches have been placed outside the city limits in Garland County. They are not along any bus route. These locations do not have permits, are on the right of way, and have often been placed too close (i.e., within 300 feet) to properly permitted outdoor advertising billboards.

If there is a need for bus benches at actual bus stops for the public good and the AHTD believes it would be appropriate for its right of way to be used in such a way, we have no objection as long as there is no advertising material displayed on the benches. However, we believe you should be aware that the benches block all or part of the sidewalks in numerous locations.

There is no reason to allow a company to engage in these illegal activities. If Benches Etc. wants to move the benches back a few feet onto private property, contract with the property owner, comply with the city sign code, and comply with the regulations and state laws governing outdoor advertising, they should be allowed to do so. In fact, there is no reason or prohibition preventing the company from doing so other than it is easier, quicker, and more profitable not to comply with the law. Benches Etc. can, and should, simply become a proper and legal provider of outdoor advertising services under the existing regulations and laws.

The fact that the owner of Benches Etc. is an attorney is particularly troubling. Even a minimal amount of due diligence would reveal that his Company is not in compliance with state law governing outdoor advertising or state and federal regulations governing outdoor advertising along federal primary aid highways.

We believe it is inappropriate to draft legislations that will benefit only one company, especially when that company has been flagrantly ignoring or violating the law. We also believe some sort of "exemption" for these advertising benches violates both the spirit and intent of the Arkansas Highway Beautification Act (Ark. Code Ann. § 27-74-101 to 502).

Please keep our Association informed regarding the draft legislation Mr. Duke is working on with AHTD. We would appreciate a copy of any proposed statutes or regulations that have been generated.

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We appreciate the working relationship that has been fostered between the AOAA and the AHTD. We firmly believe the activities and plans set forth by Benches Etc. represent bad policy and unfair advantages.

Please call with any questions. We look forward to continuing to work with your Department.

Sincerely,



David Hamilton

- c.c. Myron Laible, Outdoor Advertising Association of American  
Tom Gibbens, Lamar  
Connie Gray, Ozark Poster Company  
Greg Criner, Lamar  
Ron Blue, Clear Channel Communications  
Ryan Brown, SECO Advertising  
Brian Duke (Benches Etc.) Friday Law Firm  
Creative Outdoor Advertising

A resolution entitled, "A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AN AGREEMENT WITH BENCHES ETC. INC. TO CREATIVE OUTDOOR ADVERTISING OF AMERICA, INC. AND APPROVING ADDENDUM NO. 1 TO SAID AGREEMENT," was taken from the agenda and read by title only.

A motion was made by Director Jones, duly seconded by Director Maruthur, that the resolution be adopted as read.

Upon discussion, Mr. Bryan Duke stated he is present to answer any questions, as well as Mr. Marc Oosterholt, from Creative Outdoor Advertising of America, Inc. He said they have had the contract and the former owner has had the contract with the City for approximately 20 years. He commented that the advertising on the benches is a way for the small, local advertisers to sell space in an off-premises yet regulated manner. He mentioned they were approached several months ago by Creative Outdoor Advertising of America, Inc. with an offer to purchase. He advised they have the Little Rock and Fort Smith markets in Arkansas and approximately 6,000 bench faces across the United States, having been in business 25 years. He stated they are based out of Ontario and Naples, Florida, and requested the Board's consent to assign their contract to Creative Outdoor Advertising of America, Inc. for the remainder of the term.

Director Daniel questioned how many blanks do they have at the present time, and Mr. Duke advised there are six. He added they have been running from six to ten over the last six months. Director Daniel asked how many benches do they have inside the city limits, and Mr. Duke replied there are 138. Director Daniel asked if the City has any opportunity to set the rates, and Deputy City Manager Lance Hudnell advised that the City does not in this contract. However, in the previous one that the Board just passed, the rates have to be approved by the Board. He added this is a previous, existing contract for this term and does not include that clause.

Director Daniel asked what is the understanding with the State of Arkansas, and Mr. Duke advised they have been working with them under a statute that has been around for 40 years. He explained it is a prohibition for the State Highway Department to have commercial advertising on their highway right-of-way; and because of the public purpose of the benches and at the bus stops and public rest benches, nothing has ever come of it. He said it came to light last year, and his law firm has been dealing with Mr. Dan Flowers, Director of the Arkansas State Highway and Transportation Department; and there are nine cities that have transit systems. He advised they are joining together with Mr. Flowers' consent to draft legislation to have an exclusion to that policy for these benches because they serve a public benefit to the cities. He stated they

generate revenues for the transit departments, plus they pay for the benches and bus shelters; and they have had an understanding from the Arkansas State Highway and Transportation Department that they are going to have a status quo for the present time while they try to draft legislation that would be acceptable to his company, the highway department, and the cities. He noted that he is getting all of the industry together and then will turn to the transit systems and the Mayors and City Councils of the different municipalities where there are transit systems.

Director Daniel pointed out that the City uses a different terminology; and since these are for the transit system, he is calling them bus benches, and Mr. Duke replied that they are bus and public rest benches. Director Daniel commented that the majority of the City's benches are on streets where buses do not run. Mr. Duke stated there are four individuals who own the company; and they may ultimately have to scale back and only put advertising benches at bus stop locations, which Creative Advertising is accepting and had plans to do possibly in the future anyway. He added that may be the outcome of what they are doing with the Arkansas State Highway and Transportation Department. He noted they may accept the plan where if it is approved by the City under a master plan, then it is looked at by the Arkansas State Highway and Transportation Department, and there may be benches at other locations other than at the bus stops and other approved locations. He stated they could reduce the benches from 138 to a number less than that.

Mayor Bush questioned why Director Daniel would want to reduce them if the City has 138 benches and all but six are filled; and Director Daniel commented he does not have a problem with that. He stressed that he is not against the benches and the quantity of benches. He mentioned a bench can be placed at a corner with an arrow pointing up indicating a certain business or company. He pointed out he could not have a sign there if it were not for that bench. He questioned the monthly rate on the benches, and Mr. Duke replied they are from \$54 to \$80, depending upon the location.

Director Daniel commented if it is \$960 a year, and that person cannot pay \$960 a year, then he is left out but still the sign is pointing to a business that is not on the street; and that person has outsmarted the Sign Code. He said he is not against the revenue and wants to have them and people to be able to rest on them.

Mayor Bush said he agreed with the benches and considers them playing a public role.