

DATE: November 2, 2006
TO: District/Section Commanders 06S-036
FROM: Colonel Mark A. Dunaski
Chief
PHONE: 651/201-7117
SUBJECT: RIGHT-OF-WAY USE: SIGNS AND BANNERS

Pending a review of the issue by the Minnesota Supreme Court, the following policy will guide our enforcement of Minnesota State Statute 160.2715 with regard to signs and banners within the right-of-way:

I. PURPOSE

To provide for a uniform policy of interpretation of Minnesota State Statutes regarding the placement of signs within the right-of-way of state highways, and to provide for uniform policy of enforcement of these statutes having due regard for constitutionally protected First Amendment rights of free speech.

II. AUTHORITY (M.S. 160.2715)

Except for the actions of the road authorities, their agents, employees, contractors and utilities in carrying out their duties imposed by law or contract, and except as herein provided, it shall be unlawful to:

(9) place or maintain any advertisement within the limits of any highway, except as provided in section 160.27, subdivision 7; and

(10) paint, print, place, or affix any advertisement or any object within the limits of any highway, except as provided in section 160.27, subdivision 7.

III. APPLICATION

Individuals who are holding signs in a location that is legal for them to walk or stand are in compliance with state statute and are permitted to hold signs without restriction.

Signs may not be placed into or upon the ground, held up against the fence or attached to a fence, post or other structure. Signs that are held up to a fence, placed into or upon the ground, held up to the fence or attached to a fence, post or structure are to be removed and the violator may be charged under MSS 160.2715.

The content of the sign is not relevant.

The key verbs here are "to place" and "to affix". Our department interprets this to mean that if the sign is entirely held by a person it is not placed or affixed and is, therefore, a form of speech that is protected by the First Amendment. However, if the sign is placed upon the ground, resting on the ground or against any fence, post or structure, it is "placed" and is illegal under subdivision 9.