

Page Two

If the sign is fastened, affixed or attached in any way to a fence, signpost, bridge, culvert or any other appurtenance, it is illegal under subdivision 10. This would include signs that are held to a fence by the sign holder, as the structure of the fence would be partially holding the sign in place.

The person holding the sign must be in an area that is not prohibited for pedestrians. For example, the pedestrian on a controlled access freeway that is holding a sign is in violation of Chapter 169.305 (Controlled Access Violation), but not in violation of Chapter 160.2715.

Some cities may also have ordinances that regulate signage on streets and highways within their jurisdiction.

The holding or waving of signs and other behavior upon the highway that is overly distracting to the public traveling upon the highway and is creating a public nuisance may be charged under MSS 609.74. Troopers are cautioned that the nuisance created must be substantial enough to outweigh the protection of free speech rights guaranteed under the First Amendment.

We believe that this interpretation is consistent with a recent unpublished Minnesota Court of Appeals decision from December 2005 in *State v. Otterstad*, Nos. A05-178, A05-179, 2005 WL 3527236 (Minn. Ct. App. Dec. 27, 2005) *rev. granted* (Minn. Mar. 28, 2006). In that decision, the Minnesota Court of Appeals held that a non-content-based sign restriction that furthers a substantial public interest and is not substantially broader than necessary does not violate constitutionally protected First Amendment rights. That case is currently on appeal to the Minnesota Supreme Court.

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cc: Radio Communications Supervisors