

MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 11, 1980

Honorable Bennett D. Katz
27 Westwood Road
Augusta, Maine 04330

Dear Senator Katz:

In your letter of September 5, 1980, you have asked whether 23 M.R.S.A. § 1913 and other relevant laws prohibit the placement of political advertisements and signs on transit buses as of September 1, 1980. Succinctly stated, we conclude that there is no such prohibition under Maine law.

The general ban against maintaining signs visible to the traveling public is contained in 23 M.R.S.A. § 1908 which provides as follows:

No person may erect or maintain signs visible to the traveling public from a public way except as provided in this chapter.

As the above language indicates, a sign may be placed in a location visible from a public way only if it falls within one of the exceptions in chapter 21 (the "Billboard Law").

To determine whether political advertisements on transit buses are exempted from the proscriptions of the Billboard Law, it is necessary to analyze 23 M.R.S.A. § 1913(1). That subsection states, in relevant part:

1. Types of signs. The following signs may be erected and maintained without license or permit as follows:

* * * *

B. Signs located on or in the rolling stock of common carriers, except those which are determined to be circumventing the intent of this chapter. Circumvention shall include, but not be limited to, signs which are continuously in the same location or signs which extend beyond the height, width or length of the vehicle;

* * * *

I. Signs erected for an election, primary or referendum. - These signs shall be erected no sooner than 3 weeks before the date of the election, primary or referendum and shall be removed no later than one week after that date;

* * * *

The answer to your inquiry turns upon the intended relationship among the exceptions recited in section 1913. If these exceptions are deemed to be mutually exclusive, then it is clear that political signs, like any other advertisements, may be placed on transit buses subject only to the "circumvention" limitation in paragraph B. If, on the other hand, the exceptions must somehow be read together, then it could be argued that paragraph I modifies paragraph B, with the result being that the four-week restriction on political signs^{1/} applies even when those signs are located on common carriers.

It is our view that the exceptions in section 1913(1) were intended to be mutually exclusive, and thus, any sign which falls within one of those exceptions is subject only to the limitations contained therein. As a result, if a sign is covered by more than one exception, its erection and/or maintenance is permissible as long as it meets all the requirements of any one of the relevant exceptions. The fact that it may exceed the restrictions of another relevant exception does not render it violative of the law.

^{1/} The "four-week restriction" refers to the requirement in paragraph I that signs not be erected more than three weeks before the election and be removed no later than one week after the election.

We predicate our conclusion primarily on a literal reading of section 1913, which clearly suggests an intent that each exception contained therein stand alone. We would add, however, that this result is consistent with the purposes of the Billboard Law. As expressed by the Legislature, those purposes reflect a recognition that while travelers need certain information and guidance, it is also necessary to control indiscriminate use of outdoor advertising to enhance and protect the natural scenic beauty of the State. See 23 M.R.S.A. § 1902. When read in this context, section 1913 reveals a legislative intent to create certain limited exceptions to the overall objective of preserving Maine's scenic beauty. Those exceptions are based either on the content (e.g., 1913(1)(I)) or the location (e.g., 1913(1)(B)) of the sign.^{2/}

Applying this analysis to your inquiry, it is clear that paragraph B is a "location" exception. We find no language therein which even suggests that the exception is in any way connected to the content of the advertisement. Furthermore, to read such a connection into paragraph B would not promote the purposes of the "Billboard Law." Once the Legislature has determined that common carriers may be used for advertising purposes, we can perceive no nexus between preserving Maine's scenic beauty and the general subject matter of the advertisements. In fact, in the context of your question, the contrary conclusion would appear to frustrate legislative intent. The very existence of paragraph I indicates that, with respect to content, the Legislature determined that there are reasons to give preferential treatment to political speech. Accordingly, it would run counter to this intent to interpret section 1913 as imposing greater restrictions on the placement of political messages on transit buses than are imposed on purely commercial messages.

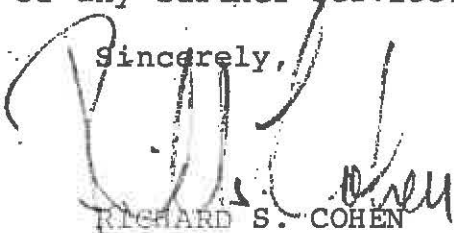
^{2/} The other exceptions in 1913, most of which are subject to certain limitations, include the following:

- A. signs of a governmental body;
- C. signs on motor vehicles;
- D. signs identifying bus stops;
- E. signs indicating meetings of churches and civic organizations;
- F. signs announcing certain types of events held by public, civic, philanthropic or religious organizations;
- G. memorial signs;
- H. signs erected by fairs and expositions; and
- J. signs erected by nonprofit historical and cultural institutions.

For the reasons stated above, then, we conclude that political advertisements and signs may be placed on transit buses without being subject to the four-week restriction in 23 M.R.S.A. § 1913(1)(I).^{3/} The only limitations are those contained in 23 M.R.S.A. § 1913(1)(B), which requires that the signs not circumvent the intent of chapter 21 by being located on rolling stock which is kept continuously in the same location or by exceeding the height, width or length of the vehicle.

I hope this information is helpful. Please feel free to contact me if I can be of any further service.

Sincerely,


RICHARD S. COHEN
Attorney General

RSC/ec

^{3/} We are informed by the Maine Department of Transportation that their administrative interpretation of the Billboard Law is consistent with the conclusions expressed in this opinion.