Why we do what we do. 
How we do what we do. 
What would you do?

A high-level refresher of OAC and its unique regulatory conundrums.

Brooks Glasnapp
Advertising Management Supervisor
Iowa DOT

Andy M. Frohardt
Assistant Attorney General
Colorado Office of Attorney General
Why we do what we do.
The Three Main Goals of Outdoor Advertising Compliance.

1. Highway Beautification / Preserving Scenery
2. Safety
3. Orderly Management of Billboards
Tucson, AZ - 1970

Photo by Michael Rougier – Courtesy of LIFE Online Photo Archives
Tucson, AZ - 1970

Photo by Michael Rougier – Courtesy of LIFE Online Photo Archives
For over three centuries the beauty of America has sustained our spirit and has enlarged our vision. We must act now to protect this heritage. In a fruitful new partnership with the States and the cities the next decade should be a conservation milestone. We must make a massive effort to save the countryside and to establish--as a green legacy for tomorrow--more large and small parks, more seashores and open spaces than have been created during any other period in our national history.

A new and substantial effort must be made to landscape highways to provide places of relaxation and recreation wherever our roads run,

Within our cities imaginative programs are needed to landscape streets and to transform open areas into places of beauty and recreation.

- Lyndon B. Johnson, January, 1965 State of the Union Address
Claudia Alta Johnson aka. “Lady Bird Johnson”
Highway Beautification Act
= “Lady Bird’s Bill”
By Michael Rougier – Courtesy of LIFE Online Photo Archives
The subject of Beautification is like a tangled skein of wool. All the threads are interwoven—recreation and pollution and mental health and the crime rate and rapid transit and highway beautification and the war on poverty and parks... everything leads to something else.

- Diary of Lady Bird Johnson
The environment is where we all meet; where all have a mutual interest; it is the one thing all of us share. It is not only a mirror of ourselves, but a focusing lens on what we can become.

- Lady Bird Johnson speech at Yale University, Oct. 9, 1967
The Honorable George D. Aiken
United States Senate
Washington, D.C.

Sir,
Aside from avoiding nuclear disaster, one of this country's most serious problems is reversing the trend that is threatening to turn the country into one vast dump. I urge your support.

Box 13

with the country's decay and dump. I urge your support of legislation aimed at controlling and eventually abolishing billboards, and strict control of junkyards. Our generation may be the last one to have a chance to pass on to posterity some of the beautiful God-given countryside we have been privileged to enjoy.

Very truly yours,
2. Safety

• Lots of complexity! But there are resources:
  • → FHWA Website for safety studies.
  • → “Digital Roadside Advertising and Traffic Safety” study
    • University of Alabama and Florida International University
    • 10-pages
  • → Scenic America home page, then to “Studies show direct link between billboards and crashes.”
2. Safety.
2. Safety.

Billingboard Study #10 by David Evers (License)
2. Safety.
### Digital Billboards and Traffic Safety Risks
Dr. Virginia P. Sisiopiku, University of Alabama at Birmingham

#### Are billboards distracting in general?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>46%</td>
<td>52%</td>
<td>23%</td>
</tr>
</tbody>
</table>

#### Do you slow down to read digital billboard messages?

<table>
<thead>
<tr>
<th></th>
<th>Rarely</th>
<th>Sometimes</th>
<th>Often</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>88%</td>
<td>11%</td>
<td>1%</td>
</tr>
</tbody>
</table>

#### Are digital billboards more distracting than static?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>68%</td>
<td>12%</td>
<td>20%</td>
</tr>
</tbody>
</table>

#### How often do you use info from digital billboard messages?

<table>
<thead>
<tr>
<th></th>
<th>Rarely</th>
<th>Sometimes</th>
<th>All the time</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>74%</td>
<td>24%</td>
<td>2%</td>
</tr>
</tbody>
</table>
3. Orderly Management of Billboards

- HBA represents consensus!!!
- Senate
  - September 16, 1965
  - Vote → 63-14
- House
  - October 8, 1965
  - Vote → 254-138
  - 1 AM
- Bill reapproved by Senate, then signed into law October 22, 1965
Congressman Tom Steed,
House Office Building
Washington, D. C.

Dear Sir:

I want to protest the passage of H. R. 8489 which will prohibit placing signs along the nation's highways.

In my opinion, it would be all right to have a few regulations concerning how close together signs are placed and how far back from the highway, but to legislate them completely out is wrong. This is legislating against free enterprise and advertising, which is part of the American way of life.

When I am traveling, the bill boards help me know where to plan to spend the night and where to eat. I also enjoy reading them--and many people feel the same.

I am not in the bill board business and do not own land where bill boards are placed--I just think this is wrong for you to pass legislation such as this!

Sincerely,
September 30, 1965

Dear Colleague:

The proposed Highway Beautification Act of 1965 (S. 2084) has been reported by the Committee on Public Works and is expected to come before the House in a few days. This legislation is a major stride toward highway beautification and deserves the support of all Members.

Millions of Americans use our highways daily. They pay for these highways as they are used. We believe they are entitled to see the beauty of our country as they travel. S. 2084, as reported, makes this possible while protecting business where business is done. In adopting this bill, we have the opportunity to show our interest in preserving America's beauty while protecting the needs of legitimate businesses that flourish along our highways.
The bill has made provision for the cost of this program from general funds. It will not be a burden on highway construction nor on the activities within the purview of the program. It provides just compensation and equitable treatment for those who may be affected.

We are convinced S. 2084 should be adopted without substantial modification or amendment. In this legislation, the House has a chance to go on record for beauty, as well as for equity. Your vote will serve once again to express the spirit of the Democratic Party as being one of progress in all areas of the life of this great Nation.

Sincerely,

JOHN W. MCCORMACK
JOHN W. MCCORMACK, SPEAKER

CARL ALBERT
CARL ALBERT, MAJORITY LEADER

HALE BOGGS, MAJORITY WHIP
Dear Colleague:

The undersigned Democratic members of the House Committee on Public Works will appreciate your support and vote for S. 2084, the Highway Beautification Act of 1965.

This bill, which is the result of extended hearings and committee consideration, will accomplish the important objectives of President Johnson's message of May 26, 1965, without diversion of highway construction funds. It requires agreement between each state and the Secretary of Commerce on the administrative decisions essential to accomplishment of the bill's objectives.

It should be emphasized that outdoor advertising in commercial and industrial zones and areas is permissible under this bill, and the bill does not interfere in any way with on-premise signs and advertising. In fact, the Secretary of Commerce and the committee are in full agreement that the advertising industry is an important and legitimate business enterprise, and the views of this industry will be sought in separate hearings in each state at the outset of the program’s administration. Judicial review is also assured in the bill.

We hope and trust you will join us in supporting this worthwhile measure.

John A. Kline
Bob Jones
Robert Poplawski

George H. Fallon
John A. Blatnik
This is not our job.
3. Orderly Management of Billboards
3. Orderly Management of Billboards
3. Orderly Management of Billboards

RTD v. CBS Outdoor, Inc. (2014) - Commission $390,000
3. Orderly Management of Billboards
3. Orderly Management of Billboards
3. Orderly Management of Billboards
3. Orderly Management of Billboards
3. Orderly Management of Billboards

Charlie by Joe Benjamin (License)
Our Enforcement Goals:

• Protect Public Health & Welfare.
• Punish Violators.
• Deter Would-Be Violators.
• Uphold Agency Integrity.
• Uphold Rule of Law /Maintain Fairness.
How we do what we do.
Enforcement Mechanisms

- Permit Denial.
- Illegal Sign Removal.
- Fines / Citations.
- Condemnation.
  (Nonconforming Signs)
- Injunction.
- Criminal Penalties(?).
(Informal) Enforcement Mechanisms

• Warnings / Compliance Advisories.
• Meetings or Phone Calls.
• Public Trainings.
• Voluntary Acquisition
Principles of Regulatory Enforcement

Citizens have a right to:

1. Notice
2. Right to a Hearing (Administrative Hearing)
3. Right to a Final, Appealable Agency Decision (Agency Decision/Determination/Order/Finding)
4. Right to Appeal (Review by a Higher Court)
Principles of Regulatory Enforcement

Citizens can raise arguments:

1. No Violation ("My sign doesn’t violate it.").
2. Equal Protection ("Treating me differently").
3. First Amendment ("Rule curbs my free speech").
4. Overbroad ("Can’t interpret the Rule without punishing legal conduct").
5. Void for Vagueness ("Can’t interpret the Rule consistently").
Principles of Regulatory Enforcement

Citizens can raise arguments (Cont.):

6. Due Process (“You didn’t follow required processes.”).

7. Arbitrary & Capricious (“You acted in an illegal, unreasonable or arbitrary way, or in violation of process.”). [A catch-all]
# Courtrooms 101

- **Lower Court**
  - Review of Agency Decision to ensure: (1) Law applied (reasonably) correctly; (2) Law or rule applied is constitutional; (3) Citizen received their due process.

- **Administrative**
  - Notice
  - Hearing (Rules of Evidence)
  - Administrative Law Judge (i.e., “ALJ”) or Hearing Officer
  - Agency Decision (Final Appealable Decision)
  - Creates Record

- **Appellate Court**
  - Same review as District Court (basically).
  - Can overturn District Court.

- **State High Court**
  - Same review as Appellate Court.
  - Can overturn Appellate Court.

- **U.S. Supreme Court**
Why administrative process?

1. **Reason → Legal.**

   “Agencies are separate entities vested with powers and duties in which courts should not interfere until the agency has completed its action or exceeded its jurisdiction.”

2. **Reason ➔ Agency Expertise.**

   - Agencies possess special knowledge and **expertise**.
   - Agencies are entitled to **deference**.


   - Burden of proof.
Why administrative process?

3. **Reason** ⇒ **Judicial Economy.**
   - Prevents piecemeal litigation
     - Arguments can be waived if not raised at administrative level!
   - Creates clear and coherent record for judicial review.
   - Agencies can correct their own errors.
Burden of Proof

• Administrative process creates the record.
• Most states ➔
  • Permit Denial ➔ Applicant has Burden of Proof
  • Violation ➔ Agency has Burden of Proof
What would you do?