

TEXAS TRANSPORTATION COMMISSION

FAYETTE County

MINUTE ORDER

Page 1 of 1

YOAKUM District

On February 22, 2007, the Texas Department of Transportation (department) canceled outdoor advertising permit Number 084978, which was held by John Gannon, Inc. John Gannon, Inc. filed a petition for an administrative hearing under the contested case rules of the Texas Transportation Commission (commission). The matter was referred to the State Office of Administrative Hearings. A proposal for decision, together with findings of fact and conclusions of law, was issued. The proposal for decision concluded that the permit was properly canceled. Under the Administrative Procedure Act and the commission's rules, the matter is now appropriate for entry of a final order by the commission.

IT IS THEREFORE ORDERED that the commission hereby issues the attached order in the case of John Gannon, Inc. v. Texas Department of Transportation, Docket No. 601-07-3501, and directs the executive director to take the necessary steps to implement this order.

Submitted and reviewed by:

Recommended by:

General Counsel

Executive Director

Minute
Number Date
 Passed

DOCKET NO. 601-07-3501

JOHN GANNON, INC.
Petitioner

V.

**TEXAS DEPARTMENT OF
TRANSPORTATION**
Respondent

§
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§

**BEFORE THE
TEXAS TRANSPORTATION
COMMISSION**

ORDER

Came on for consideration this 28th day of February, 2008, the above-styled and numbered cause.

After proper notice was given to the parties, this matter was heard by an Administrative Law Judge who made and filed a proposal for decision containing the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. John Gannon, Inc. (Petitioner), held Sign Permit Number 084978 under License No. 5942 issued by the Texas Department of Transportation (TxDOT).
2. On February 22, 2007, TxDOT's Staff canceled Petitioner's permit based on its conclusion that the sign was located within five feet of the State highway right-of-way, and within 1000 feet of a state highway interchange.
3. The Petitioner filed a timely request for hearing.
4. Notice of the hearing was provided to Petitioner informing it of the allegations, the time and place of the hearing, and the statutes and rules involved.
5. The hearing convened and closed on November 6, 2007, before Administrative Law Judge Steven M. Rivas. John Gannon appeared and represented Petitioner. TxDOT appeared and was represented by Sejin Brooks, Assistant Attorney General.
6. On May 5, 2006, John Gannon applied for and was granted Sign Permit Number 084978 for the outdoor advertising sign located on Interstate 10 at the interchange of U.S. 90 in Fayette County, Texas.
7. On February 12, 2007, Befco Engineering, Inc. completed a survey to determine the location of the sign at the request of TxDOT.
8. The survey concluded that the sign was located 4.6 feet from the right-of-way and the structure extended 13.8 feet over the right-of-way. The survey also determined that the sign was within 1000 feet of the interchange of U.S. 90 and Interstate 10.

CONCLUSIONS OF LAW

1. The Texas Department of Transportation (TxDOT) has jurisdiction over this matter pursuant to TEX. TRANSP. CODE ANN. § 391.002 *et seq.* (Highway Beautification Act).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner was afforded proper and timely notice of the hearing, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Petitioner's sign is in violation of 43 TEX. ADMIN. CODE §§ 21.153(c)(1), 21.153(h), and 21.148(3).
5. The permit should be canceled pursuant to 43 TEX. ADMIN. CODE § 21.150(i).
6. The sign is subject to removal pursuant to 43 TEX. ADMIN. CODE § 21.150(j).

The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies. No exceptions were filed.

After full and complete consideration of the proposal for decision, including the opinion, findings of fact, and conclusions of law of the Administrative Law Judge, the Texas Transportation Commission issues this Order. The findings of fact and conclusions of law of the Administrative Law Judge are adopted.

IT IS ORDERED that the decision to cancel Permit Number 084978 is hereby upheld and the permit is hereby cancelled. John Gannon, Inc. shall remove the sign formerly authorized by the permit no later than 30 days after this Order becomes final and appealable.

Signed this 28th day of February, 2008.

Hope Andrade, Chair
Texas Transportation Commission

Ted Houghton, Commissioner
Texas Transportation Commission

Ned S. Holmes, Commissioner
Texas Transportation Commission

Fred A. Underwood, Commissioner
Texas Transportation Commission