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DATE: May 23, 1994

SUBJECT: Tourist Oriented Directional Sign Rules and Regulations

REQUESTED BY: Allan L. Abbott, Director-State Engineer

WRITTEN BY: Don Stenberg, Attorney General
Warren D. Lichty, Jr., Assistant Attorney General

Your question is whether Tourist Oriented Directional Sign (TODS) panels may be erected within the right-of-way of highways inside the limits of incorporated municipalities. Your authority to erect such signs is contained in Neb. Rev. Stat. § 39-207 (1993 Supp.). It authorizes you to erect and maintain such signs " . . . within the right-of-way of rural highways as described in sections 39-2102 and 39-2103, which are part of the State highway system. . ." with certain exceptions.

Neb. Rev. Stat. § 39-2102 (1988) divides the functional classification of public highways, roads and streets into the two broad categories of rural highways and municipal streets. It defines rural highways as all public highways and roads outside the limits of any incorporated municipality and it defines municipal streets as all public streets within the limits of any incorporated municipality. Neb. Rev. Stat. § 39-2103 (1988) divides rural highways into eight functional classifications.

Thus, in § 39-207, in stating "rural highways as described in sections 39-2102 and 39-2103," we believe the legislature is doubly stressing that TODS signs may only be on rural highways. This excludes the other broad category mentioned in § 39-2102, i.e. municipal streets. Had the legislature intended to allow TODS signs on municipal streets, it would not, in §§ 39-207 and 39-208 have used the term "rural highways," and in § 39-207, in enumerating §§ 39-2102 and 39-2103, it would have included

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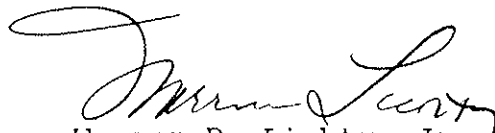
§ 39-2104 which is the section covering municipal streets and which includes extensions of expressways and major arterials, which outside municipalities would normally be State highways.

It should also be noted that of the rural highways described in §§ 39-2102 and 39-2103, there is a further limitation to such highways which are part of the State highway system. Jurisdiction is not a question; only classification is.

It is therefore our conclusion that TODS signs may only be erected on highways existing outside the municipal boundaries of municipal corporations. Following the remainder of the language in § 39-207, TODS signs may not be erected on freeways, as defined in § 39-1302, which, in subsection 17 of the version contained in the 1993 Supplement, means an expressway with full control of access. TODS signs are also prohibited on interchanges on expressways, as defined in § 39-1302, which, in subsection 13 of the 1993 Supplement, means a divided arterial highway for through traffic with full or partial control of access, which may have grade separations at intersections. Thus, by the plain language of the statute, it would appear that TODS signs may be erected on expressways, but not on the interchanges thereof and only outside of municipalities.

Sincerely,

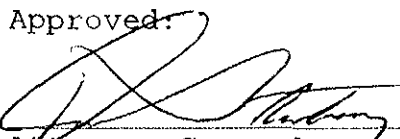
DON STENBERG
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Approved:



Attorney General