IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

RICHARD LANDSHEFT

vs. NO. 84-MCA-1157

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction for failing to have a valid permit on an alleged outdoor advertising display sign contrary to Section 2301.3 of the Standard Building Code (1982 Edition).

Appellant's point of error is whether this particular sign constitutes outdoor advertising under the above Section, thereby requiring a permit.

The city contends that the matter only involves an evidentiary issue and since no statement of facts is contained in the record, nothing would be presented for review.

This Court believes the legal question involved is whether this particular display constitutes a sign for which a permit is required.

The sign for which complaint is made is painted on a semi trailer with the words "BOOT SALE" in large white letters and is parked along the freeway here in El Paso. Appellant's contention is that the trailer is used primarily for storage and for on location sales of boots and other merchandise at different locations.

Section 2301.1 defining outdoor advertising displays is probably the broadest regulation that this Court has confronted, and includes nearly any type of outdoor display whatsoever. Although the Court is concerned with the validity of that Section because of its overbreath, the

issue has not been presented to this Court, and the Court will not consider same at this point.

However, in Section 2301.2 the regulations provide for different classifications for different types of sign. The classifications included in such Section do not speak to the type of sign involved in this case, and Section 2301.1 requires that every outdoor display shall be classified and conformed to the requirements of the classifications contained in 2301.2. Those classifications are: (1) spectacular signs, (2) ground sign, (3) roof sign, (4) wall sign, (5) projection sign, (6) marquee sign and (7) shingle sign. In each case, the type of sign as used in the classification is defined specifically, and none of those classifications include the type of display involved in this case.

Being bound by the law that specific provisions of the law control general ones, this Court holds that the ordinance in question does not condemn this type of display nor regulate it in any way. Therefore, the type of display involved in this case does not require a permit pursuant to the Section under which Appellant was convicted.

It seems apparent from the provisions of the ordinance in question that the city excluded this type of advertising from their classifications. But, if such was not their intent, this Court would hold that it would be necessary for them to amend such regulations to include this type of advertising and regulate it as they deem appropriate.

The Court notes that many companies use their vehicles, including semi-trailers to display their name and other information that could be construed as advertising. Whether those particular vehicles are mobile or stationary at any particular time may be determinative whether or not regulation is appropriate.

For the reason stated, the judgment of the Trail Court is reversed and rendered in Appellant's favor with

instructions that the Trial Court enter a judgment of acquittal in his behalf.

Signed on this 13 day of July, 1984.

JUDGE

JUDGMENT

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

Signed this 13 day of June, 1984.

JUDGE