

# MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

## Official Minutes February 7, 2003

### TABLE OF CONTENTS

#### **COMMISSION ITEMS**

Closed Meeting -----	3
Approval of Minutes, Regularly Scheduled Highways and Transportation Commission Meeting, January 10, 2003, and Special Minutes of January 6, 2003 -----	3
Reconsideration of Action -----	3
Consent Agenda -----	4
Reports of Commission Committees and Commission Related Boards -----	5

#### **MODOT STAFF ITEMS**

Missouri State Employees' Charitable Campaign -----	8
Overview of Motor Carrier Services -----	8
Rail Passenger Services -----	9
Repair of Paseo Bridge, Kansas City -----	10
Proposal to Transfer Division of Highway Safety To MoDOT -----	11
Interstate Route 70 Reconstruction -----	12
2002-2006 Statewide Transportation Improvement Program, 2003 Amendment -----	12
Transportation Corporation, US 36/I-72 Corridor, Transportation Corporation -----	14
Application to Form the Missouri Route 100 Transportation Corporation -----	15
Proposed Design Revision, Route 21, Jefferson County -----	16
Report and Recommendation Regarding Interim Policy Extension, Utility Service Lines -----	17
Fiscal Year 2003 Budget Update -----	18
Engineering Services Contract, ITS Deployment, Kansas City -----	18
Reflective Sign Sheeting Purchase Contract -----	19
Pavement Marking Paint and Beads, 2003 Striping Season, Award of Contracts -----	20
Herbicides for Roadside Maintenance -----	21
Corrugated Metal Pipe Contract -----	21

#### **CONTRACT AWARDS**

Award of Contracts on Federal-Aid and State Projects, Bid Opening of January 24, 2003 -----	22
Authority to Reject Bids -----	28

**ROADWAY LOCATION AND/OR DESIGN**

Roadway Location and/or Design Approval ----- 29

**ADMINISTRATIVE RULE**

Administrative Rule,  
Utility and Private Line Location and Relocation ----- 33

**RIGHT-OF-WAY PLANS**

Ratification of Approval of Right-of-Way Plans for Condemnation ----- 33

**-- REPORTS --**

FY03 Equipment Replacement Report ----- 35  
Capital Improvement Program Report ----- 35  
MoDOT Construction Contract Awards Report ----- 35

**-ADMINISTRATIVE HEARINGS -**

In the Matter of Request for Administrative Review  
Of Notice to Terminate Nonconforming Outdoor Advertising,  
Hearing No. 01-02-169, Alford Advertising Co., Applicant,  
Administrative Hearing No. 708 ----- 36  
In the Matter of Request for Administrative Review  
Of Notice to Terminate Nonconforming Outdoor Advertising,  
Hearing No. 01-02-170, Alford Advertising Co., Applicant,  
Administrative Hearing No. 709 ----- 39  
In the Matter of Request for Administrative Review  
Of Notice to Remove Outdoor Advertising,  
Hearing No. 02-03-157, Quincy Sign & Electric Co., Applicant,  
Administrative Hearing No. 721 ----- 43  
In the Matter of Request for Administrative Review  
Of Notice to Remove Outdoor Advertising,  
Hearing No. 02-04-531, Downtown Super 8, Applicant,  
Administrative Hearing No. 722 ----- 45  
In the Matter of Request for Administrative Review  
Of Notice to Terminate Nonconforming Outdoor Advertising,  
Hearing No. 02-08-604, Jerry Letterman, Applicant,  
Administrative Hearing No. 723 ----- 49  
In the Matter of Request for Administrative Review of  
Notice to Remove Outdoor Advertising,  
Hearing No. 02-10-415, Treasure Seekers Antique Mall,  
Applicant, Administrative Hearing No. 724 ----- 52

**MINUTES OF REGULARLY SCHEDULED HIGHWAYS AND  
TRANSPORTATION COMMISSION MEETING HELD IN  
JEFFERSON CITY, MISSOURI, ON FRIDAY, FEBRUARY 7, 2003**

A regularly scheduled meeting of the Missouri Highways and Transportation Commission held on Friday, February 7, 2003, in Jefferson City, Missouri, was called to order at 9:30 a.m. by the Chairman, Mr. Ollie W. Gates. The following members were present: Mr. W. L. (Barry) Orscheln, Vice Chairman, Ms. Marjorie B. Schramm, Mr. Bill McKenna, Mr. James B. Anderson, and Mr. Duane S. Michie.

The meeting had been called pursuant to Section 226.120 of the 2000 Revised Statutes of Missouri, as amended. The Secretary verified that notice of the meeting was posted in keeping with Section 610.020 of the 2000 Revised Statutes of Missouri, as amended.

\* \* \* \* \*

\* \* \* \* \*

Mr. Henry Hungerbeeler, Director of the Missouri Department of Transportation; Mr. Rich Tiemeyer, Chief Counsel for the Commission; and Mrs. Mari Ann Winters, Secretary to the Commission, were present on Friday, February 7, 2003.

\* \* \* \* \*

*"Department" or "MoDOT" herein refers to Missouri Department of Transportation.  
"Commission" or "MHTC" herein refers to Missouri Highways and Transportation Commission.*

**CLOSED MEETING**

The agenda of the closed meeting was posted in keeping with Sections 610.020 and 610.022, RSMo., including the following statutory citations allowing the meeting to be closed:

1. Section 610.021(11), (12) – Specifications for competitive bidding, sealed bids, or negotiated contracts.
2. Section 610.021(1) – Legal actions and attorney-client privileged communications.
3. Section 610.021(3), (13) – Personnel administration regarding particular employees.

The Commission met in the Closed Meeting from 8:30 a.m. until 9:30 a.m.

\* \* \* \* \*

**APPROVAL OF MINUTES, REGULARLY SCHEDULED  
HIGHWAYS AND TRANSPORTATION COMMISSION  
MEETING, JANUARY 10, 2003, AND SPECIAL MINUTES OF  
JANUARY 6, 2003**

Upon motion duly made and seconded, the Commission unanimously approved the minutes of its January 10, 2003, regularly scheduled meeting, and the minutes of its January 6, 2003, special meeting. The Chairman and Secretary to the Commission were authorized and directed to sign and certify said minutes and to file same in the office of the Secretary.

\* \* \* \* \*

**RECONSIDERATION OF ACTION**

Commissioner Orscheln moved for reconsideration of the January 10, 2003, Commission vote authorizing staff to assist the US 36 Group, as referenced on pages 9-10 of the meeting minutes. Subsequent to the action being taken, the Chief Counsel advised Commissioner

Orscheln that his company owns a retail property in the area of the proposed project, which presents a potential conflict of interest. Commissioner Schramm seconded the motion, and it was unanimously approved.

Commissioner Michie then moved approval of the staff recommendation regarding the US 36 Group as presented by the staff at the Commission's January 10, 2003, meeting. Commissioner Schramm seconded the motion and it was approved. Commissioner Orscheln abstained from voting on the motion.

\* \* \* \* \*

## **CONSENT AGENDA**

In order to make the most efficient use of Commission meeting time and to ensure the Commission members are well informed on issues requiring their action, the staff prepares and submits to the Commission members, in advance of their meeting, internal memoranda consisting of advice, opinions, and recommendations related to the items on the Commission meeting agenda. Those items considered by the staff to be of a routine or noncontroversial nature are placed on a consent agenda. During the meeting, items can be removed from the consent agenda at the request of any one Commission member. The items that are not removed from the consent agenda are approved with a single motion and unanimous vote by a quorum of the members.

Minutes reflecting approval of items on the consent agenda are singly reported herein and intermingled with minutes reflecting action on related subjects that were openly discussed. Reference to "consent agenda" is made in each minute approved via the process described in the paragraph above. Minutes reflecting action on items removed from the consent agenda and openly discussed reflect the open discussion and vote thereon.

No items were removed from the consent agenda. Upon motion by Commissioner Michie, seconded by Commissioner Schramm, the consent agenda items were unanimously approved by a quorum of Commission members present, except that Commissioner Orscheln abstained from voting on the following: (1) Job Nos. J5P0795B, J5P0785C, and J310683 of the “2002-2006 Statewide Transportation Improvement Program, 2003 Amendment,” (2) “Transportation Corporation, US 36/I-72 Corridor Transportation Corporation,” (3) “Transportation Corporation, Missouri Route 100 Transportation Corporation,” and (4) Job No. J5P0484 of the “Ratification of Approval of Right of Way Plans for Condemnation,” and Commissioner McKenna abstained from voting on (1) Job Nos. J6I1666 and J6I1669 of the “2002-2006 Statewide Transportation Improvement Program, 2003 Amendment,” and (2) “Highway Improvement Agreement, Route 21, Jefferson County.”

\* \* \* \* \*

## **REPORTS OF COMMISSION COMMITTEES AND COMMISSION RELATED BOARDS**

The Commission has five committees (Audit Committee, Bond Financing Committee, Building Committee, Compensation Committee, and Legislative Committee) and elects Commission representatives to two boards (Missouri Transportation Finance Corporation and Highway and Transportation Employees’ and Highway Patrol Retirement System). The following committee reports were made during the February 7, 2003, meeting.

### **Audit Report**

Commissioner Anderson noted that recently there had been media and legislative interest in the use of state aircraft by employees throughout state government. He stated that the audit committee is sensitive to the issue, as well, and will be asking MoDOT’s internal auditor to

review the business travel policies and guidelines used by the Commission and senior MoDOT management and to report back to the Audit Committee with any recommendations the reon.

Director Hungerbeeler noted that MoDOT had reviewed the effective use of aircraft several years ago and, as a result, reduced the number of aircraft. He noted that currently MoDOT owns one-half interest in an airplane with the Department of Conservation. He said the Chief Operating Officer was currently reviewing this issue and would work cooperatively with the internal auditor to provide the report requested by the Commission's Audit Committee.

### **Legislative Committee**

Commissioner McKenna reported that a number of bills had been filed in the state legislature. In response to his request, the staff made the following reports.

#### *Federal Legislation*

Director Hungerbeeler reported that the staff had met with Missouri's Congressional delegation to advise the members of specific projects and other transportation-related issues important to Missouri. The Congressional delegation has been working diligently to increase federal funding for transportation improvements in Missouri; the effort will be especially challenging given the federal budget concerns.

Commissioner Anderson noted that the federal reauthorization act currently being developed will cover a six-year period. He noted that the current base level of federal funding under the act is approximately \$32 billion annually. He moved that the Commission encourage the Congressional delegation to increase federal funding at a minimum average base level of \$40 billion over the next six-year period; Commissioner Schramm seconded the motion, and it was unanimously approved subject to the resolution being formally drafted and distributed to the Commission members for concurrence.

Chairman Gates suggested the Commission retain a consultant from the Washington, D.C., area knowledgeable of the federal legislative process and transportation issues who can coordinate closely between MoDOT and Missouri's Congressional delegation as the new federal transportation reauthorization act is being developed. The staff will pursue this issue further and report back to the Commission.

### *State Legislation*

Director of Governmental Affairs Jay Wunderlich reported that the state financial situation remains bleak for the remainder of this fiscal year and for the next fiscal year; therefore, considerable attention has focused on the budget. Mr. Wunderlich reported that the chair of the Senate Transportation Committee would soon be outlining his transportation accountability act, which is anticipated to focus on MoDOT/Commission governance issues.

Commissioner McKenna recalled that the Commission had been given authority by the General Assembly to use a bond-financing program for highway and bridge improvements. That authority stipulates that each year MoDOT will provide the members of the General Assembly with a list of its proposed bond-financing program projects. Since the Commission has determined that it would not be fiscally responsible to increase its level of bond indebtedness in Fiscal Year 2004, Commissioner McKenna suggested, and the Commission unanimously concurred, that a letter be forwarded to the members of the General Assembly advising of the current status of the bond-financing program and stating that no projects will be forthcoming in Fiscal Year 2004.

### **Retirement System**

Commissioner McKenna reported that the Retirement System Board of Trustees had held a regularly scheduled meeting. An issue of discussion at the meeting was a proposal by the Governor in his State of the State address to provide an incentive for early retirement as a means

to fund salary increases for state employees. A bill has not yet been filed setting forth the details of this proposal, therefore, the Board took no position thereon.

\* \* \* \* \*

### **MISSOURI STATE EMPLOYEES' CHARITABLE CAMPAIGN**

Director Henry Hungerbeeler advised the Commission that 20 percent of MoDOT employees had contributed over \$118,000 to the Missouri State Employees' Charitable Campaign. He recognized District 3 for the highest contribution and participation among the districts and the Headquarters Operations unit for the highest contribution and participation among the functional units. The Director's Office professional and support staff had 100 percent employee participation in the campaign.

\* \* \* \* \*

### **OVERVIEW OF MOTOR CARRIER SERVICES**

Larry Thomason, Motor Carrier Services Director, reported that as the state laws and regulations pertaining to commercial motor vehicles evolved over the years, new state agencies were created to administer the mandated functions. As a result, four different state departments, housing four divisions, administered these programs, causing a burden for motor carriers who had to contact the various divisions and supply redundant information to ensure they were in compliance with mandates. In late 1999, an effort to consolidate all motor carrier functions was initiated, and in May 2000 the Departments of Revenue, Economic Development, Natural Resources, and Transportation agreed to work toward a One Stop Shop to improve the efficient and economical regulation of the motor carrier industry. As a result, on July 2002, Governor

Holden signed a bill consolidating these agencies under the direction of the Department of Transportation. The new agency was named Motor Carrier Services.

Mr. Thomason briefly outlined each of the administrative functions performed by the Motor Carrier Services unit.

\* \* \* \* \*

## **RAIL PASSENGER SERVICES**

Brian Weiler, Director of Multimodal Operations, discussed passenger rail service in Missouri. Mr. Weiler advised that the state's cost to operate both the Ann Rutledge train, which provides service from Chicago to Kansas City, and the Missouri Mule train, which provides two daily round trips between St. Louis and Kansas City, is \$6.2 million for Fiscal Year 2003; however, only \$5 million had been appropriated. If a supplemental appropriation is not forthcoming, the Missouri Mule train will shut down on March 1, 2003. He noted that past experience has demonstrated that stopping service for several months has a negative impact on ridership that takes several years to overcome.

Mr. Weiler said Amtrak has revised its request for state funding for Fiscal Year 2004 from \$8.9 million to \$6.4 million. The new figure will cover expenses associated with operations; Amtrak will seek federal funding for overhead and depreciation costs. Mr. Weiler said the staff would be working with Amtrak to determine if even greater reductions can be made. MoDOT is continuing its effort to transition to a performance-based contract with passenger rail service providers to ensure on-time performance and appropriate service levels.

Mr. Weiler reported that private companies have expressed an interest in providing passenger rail service. He said MoDOT has some concerns regarding track access rights because the lines are not owned by the state; however, the staff is interesting in further pursuing the issue

with private companies, and legal review thereon is currently taking place. Because of the current economic situation, the staff has communicated very clearly that private providers should not look to the state for significant capital costs. Mr. Weiler stated that access to national passenger rail service is also an issue being reviewed.

Mr. Weiler recommended the staff be authorized to complete a formal Request for Proposal process to review Missouri's passenger rail options. Proposals would be solicited from both Amtrak and experienced private rail passenger service providers.

Commissioner Orscheln expressed concern that ridership has remained relatively steady over past years; however, the operating costs have increased significantly to a current level of \$32 per rider. Mr. Weiler acknowledged the increase and felt that pursuing a request for proposal from private companies and working closely with Amtrak to determine where cost savings might be found would ultimately identify the lowest cost for providing rail passenger service.

Commissioner Anderson commended the staff for pursuing innovative ways of financing transportation improvements and service.

After further discussion, Commissioner Schramm moved approval of Mr. Weiler's recommendation; Commissioner McKenna seconded the motion and it passed by unanimous vote of the Commission.

\* \* \* \* \*

## **REPAIR OF PASEO BRIDGE, KANSAS CITY**

Sabin Yanez, District Engineer, District 4, provided a detailed explanation on the recent emergency repair of the Paseo Bridge in Kansas City. The repair effort included extraordinary efforts of consultants, contractors, and material suppliers, as well as MoDOT District 4

employees and the Headquarters Bridge unit. Mr. Yanez noted that the reason for the repair could not have been detected in advance.

Mr. Yanez recognized Beth Wright, Assistant District Engineer--Operations, District 4, who led the Paseo Bridge effort, the MoDOT employees who closely worked on the project, and members of the transportation industry who participated in the project. He further pointed out that similar situations happen in districts throughout state, and he assured the Commission that like repair and reconstruction efforts by MoDOT employees and the transportation industry occur in those situations as well.

The Commission congratulated Mr. Yanez, Ms. Wright and others on the Paseo Bridge repair team on the successful repair effort and commended them for their outstanding, selfless effort for the betterment of over 100,000 motorists who use the Paseo Bridge each day. They further recognized MoDOT employees throughout the state for responding quickly to emergency situations.

\* \* \* \* \*

**PROPOSAL TO TRANSFER DIVISION OF  
HIGHWAY SAFETY TO MoDOT**

In response to an inquiry from Commissioner Anderson, Director Hungerbeeler reported that the Governor had issued an Executive Order that would transfer the Division of Highway Safety from the Department of Public Safety to MoDOT on August 28, 2003. This action will take place unless it is disapproved by the General Assembly. Commissioner Anderson asked the Director to keep the Commission informed on issues pertaining to this transfer.

\* \* \* \* \*

**INTERSTATE ROUTE 70 RECONSTRUCTION**

Commissioner Michie expressed concern with the scope of the I-70 reconstruction project currently being considered and suggested the private sector transportation industry be contacted with a view toward developing an alternate proposal. He noted that repair on other interstate routes in Missouri will be needed in the near future, and he suggested a proposal be prepared and presented to the General Assembly for its further consideration for funding these needs. He said the scope of the project should reflect a reasonable approach for the improvement that can be accomplished within the funds identified.

Chief Engineer Kevin Keith will review the issue further.

\* \* \* \* \*

**2002-2006 STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM,  
2003 AMENDMENT**

On behalf of the Director, Kyle Kittrell, Transportation Planning Director, recommended approval of the addition of 18 new highway construction projects and one rail/highway project to the 2002-2006 Statewide Transportation Improvement Program.

<b>County</b>	<b>Route</b>	<b>Job No.</b>	<b>Award Year</b>	<b>Description of Location/Improvement</b>	<b>Total Estimate (Dollars in Thousands)</b>
Montgomery	70	3I0682	2003	Coldmill and resurface eastbound and westbound lanes from 5.3 miles west of Warren County Line east to Warren County. Two disconnected sections	\$2,793
Warren	70	3I0683	2003	Ultrathin bonded wearing surface on eastbound and westbound lanes from 4.3 miles west of Warren County to St. Charles County. Three disconnected sections.	\$1,800

Clay	210	4P1589	2004	Pavement repair at I-435 interchange.	\$233
Boone	WW	5U0671	2005	Widen to four lanes, with left turn pockets and replace bridge from Old Route 63 to Route 63 in Columbia. Involves Bridge A-859. City of Columbia will design, administer project, and maintain roadway.	\$4,808
Various	Various	5P0795B	2004	Microsurfacing at various locations in Camden, Callaway, and Cole counties.	\$693
Various	Various	5P0795C	2004	Microsurfacing at various locations in Boone, Cooper and Pettis counties.	\$809
Franklin	47	6P1671	2003	Diamond grind bridge deck and replace approach pavement at Missouri River. Bridge No. K969.	\$141
Franklin	185	6S1580	2003	Remove bridge at old Route 185 over Bourbeuse River. County relinquished maintenance agreement.	\$71
Jefferson	55	6I1669	2003	Pave and install lights on two commuter parking lots at I-55 at Pevely and Route 67 at Festus Crystal City interchanges.	\$217
St. Louis	44	6I1672	2004	Bridge substructure repair on 13 bridges at Route 366 to Mississippi Street	\$40
St. Louis	70	6I1662	2003	Microsurfacing, pavement repair, fog seal shoulders, and striping St. Louis County – east of Missouri River to Fee Fee Road, St. Charles County – Peruque Creek to Route K.	\$1,132
St. Louis	170	6I1673	2003	Epoxy bridge deck seals on nine bridges at Airport Road to Galleria Parkway.	\$168
St. Louis	370	6P1664	2003	Repair fill slope failures due to slide at I-270/Route 370 intersection. Near ramp bridge eastbound Route 370 to eastbound I-270.	\$197
St. Louis	Various	6P1674	2003	Bridge painting seven bridges in St. Louis County.	\$523

St. Louis City	64	6I1666	2004	Removal of 8 <sup>th</sup> Street ramp at I-64. Funded from Economic Development funds.	\$306
Pulaski	44	9I0512	2003	Diamond grinding eastbound and westbound lanes west of Route 28 to Route D.	\$741
Shannon	60	9P0511	2003	Diamond grinding at Route M in Shannon County east 16 miles and two small sections in Carter County between Route C and Route J.	\$659
Butler	PP	0S0599	2003	Demolition and removal (three houses) .5 mile east of Route 67 and PP interchange. Let in combination with 0U0598D.	\$78

Via approval of the consent agenda, the Commission unanimously approved the recommendation, except that Commissioner Orscheln abstained from voting on Job Nos. 5P0795B, J5P0795C, and J3I0683 and Commissioner McKenna abstained from voting on Job Nos. J6I1666 and J6I1669.

\* \* \* \* \*

**TRANSPORTATION CORPORATION, US 36/I-72 CORRIDOR  
TRANSPORTATION CORPORATION**

On behalf of the Director, Mike Golden, Chief Financial Officer, and Kirk Juranas, District 3 Engineer, advised that Thomas M. Boland, Larry B. Craig, and Kimberly S. Thompson submitted a MoDOT Innovative Finance Pre-Application to form a transportation corporation, to be known as the US 36/I-72 Corridor Transportation Corporation. The proposed project consists of the construction of 52.3 miles of two additional lanes on US Highway 36 from the city of Macon to eight miles west of the city of Hannibal. The project is currently estimated to cost \$171,147,000 for design, right of way acquisition, and construction.

Following formation, the Corporation proposes to file a petition to form a transportation development district (the “District”). If approved by the District voters, the District would issue bonds to finance its portion of project costs, as needed, and enter into a cost sharing arrangement

with MoDOT and other entities for the balance. The Corporation proposes that debt service on the bonds would be provided by a combination of revenues from a voter-approved sales tax, local transportation authority funding and/or economic development initiatives.

Via approval of the consent agenda, the Commission unanimously acknowledged the application and ordered a local public hearing in accordance with the Missouri Transportation Corporation Act, after providing publication and written notice, pursuant to Sections 238.310.2 and 238.310.3 RSMo, and after receipt from the applicants of a MoDOT Innovative Finance Final Application for the project and the corporation, including preliminary plans and specifications for the project and a proposed plan for financing the project. Commissioner Orscheln abstained from voting.

\* \* \* \* \*

#### **APPLICATION TO FORM THE MISSOURI ROUTE 100 TRANSPORTATION CORPORATION**

On behalf of the Director, Mike Golden, Chief Financial Officer, and Ed Hassinger, District 6 Engineer, advised that Richard F. Stratman, Daniel Maschmann, and William L. Straatmann submitted an application to form a transportation corporation, to be known as the Missouri Route 100 Transportation Corporation. The proposed project consists of the construction of two additional lanes on Route 100 from I-44 to or through the City of Washington.

The ten-mile project is currently estimated to cost between \$50 million and \$63.5 million to construct. In its preliminary financing plan, the Corporation states that it would issue bonds to fund its portion of project costs and enter into a cost sharing arrangement with MoDOT and other

entities for the balance. Debt service on the bonds would be provided by a voter approved transportation sales tax not to exceed one percent.

Via approval of the consent agenda, the Commission unanimously acknowledged the application and ordered a local public hearing in accordance with the Missouri Transportation Corporation Act, after providing publication and written notice, pursuant to Sections 238.310.2 and 238.310.3 RSMo, and after receipt from the applicants of a MoDOT Innovative Finance Final Application for the project and the corporation, including preliminary plans and specifications for the project and a proposed plan for financing the project. Commissioner Orscheln abstained from voting.

\* \* \* \* \*

**PROPOSED DESIGN REVISION,  
ROUTE 21, JEFFERSON COUNTY**

On behalf of the Director, Ed Hassinger, District 6 Engineer, informed the Commission that since approval of the location and design for Route 21 in the vicinity of the Junior College District of Jefferson County (Jefferson College), concerns about access to the college have been expressed by citizens in the area. As a result of these concerns, Mr. Hassinger recommended an interchange be constructed at Haden Road and an outer roadway along the west side of Route 21 connecting Route A and Haden Road (Job Nos. J6P0876F and J6P0876K). Jefferson College will dedicate 41 acres of land for construction of the revised roadway design, but it will be reimbursed for only 31 acres, which was required for the original design. The college will also be responsible for closing a sewage lagoon that serves the property and constructing a replacement sewer treatment system.

Via approval of the consent agenda, the Commission unanimously approved the recommendation and authorized the Director, Chief Engineer, or Chief Operating Officer to execute the Highway Improvement Agreement with Jefferson College. Commissioner McKenna abstained from voting.

\* \* \* \* \*

**REPORT AND RECOMMENDATION REGARDING INTERIM POLICY EXTENSION,  
UTILITY SERVICE LINES**

On behalf of the Director, Diane Heckemeyer, State Design Engineer, reminded the Commission that the Department has been operating under an interim policy concerning department reimbursement for the adjustment of utility service line connections not owned by the utility company. The interim policy was first adopted on March 6, 1996, and subsequently extended to September 1, 2001. (See Commission meeting minutes dated February 13, 1997, September 5, 1997, July 2, 1998, August 6, 1999, and November 8, 2000).

Ms. Heckemeyer advised that subsequent to enabling legislation enacted in 1999, St. Louis County residents approved a ballot proposal on November 7, 2000, to establish a separate fund to pay for the repair or relocation and replacement of residential service lines, not owned by a utility.

Ms. Heckemeyer reported that MoDOT continues to operate under the Interim Policy while monies are generated to operate the St. Louis County program. It further relies on authorization in the policy to pay for necessary adjustments to the non-residential service lines inside St. Louis County and all service lines in other areas of the state that are not owned by the utility. She recommended that the Commission extend the interim policy regarding the utility

service line connections until November 1, 2003 (retroactively from September 1, 2001) in order to continue those payments.

Via approval of the consent agenda, the Commission unanimously approved the recommendation and extended the interim utility service line connection policy to November 1, 2003.

\* \* \* \* \*

### **FISCAL YEAR 2003 BUDGET UPDATE**

Mike Golden, Chief Financial Officer, and Herbert Wheeler, Director, Resource Management, provided an update on the Fiscal Year 2003 budget. They further reported on needed budget revisions in the various budget categories, and recommended the Commission authorize an increase in the budget from \$1,919,095,000 to \$1,956,876,000.

Via approval of the consent agenda, the Commission unanimously approved the revised budget as recommended.

\* \* \* \* \*

### **ENGINEERING SERVICES CONTRACT, ITS DEPLOYMENT, KANSAS CITY**

On behalf of the Director, Sabin Yanez, District 4 Engineer, reminded the Commission that on April 7, 2000, the Commission authorized staff to retain consultants on an hourly rate, “as needed” basis to perform certain engineering services, including ITS activities in an amount not to exceed \$100,000 for a single work order. In accordance with this direction, a work order was entered into with Burns and McDonnell Engineering Company pertaining to an Intelligent Transportation System (ITS) in Kansas City. This work was to be performed on Route I-70 in Jackson County from Route I-470 to Route 7 (Job Nos. J4I1306 and J4I1352). Mr. Yanez

indicated that as a result of these work activities, it has been determined that additional services of the consultant are required to provide for dedicated conduit, power supply revisions and additional changes to incorporate this work into future ITS projects in Kansas City. Therefore, Mr. Yanez recommended that the existing work order with Burns and McDonnell Engineering Company be increased to a new contract ceiling of \$103,306.86.

Via approval of the consent agenda, the Commission unanimously approved the supplemental work order with Burns and McDonnell Engineering Company and authorized the Director, Chief Engineer, Chief Operating Officer, Director of Project Development, State Design Engineer, or District Engineer to execute the supplemental work order, subject to approval as to form by the Chief Counsel's office.

\* \* \* \* \*

## **REFLECTIVE SIGN SHEETING PURCHASE CONTRACT**

On behalf of the Director, Steve McDonald, State Traffic Engineer, noted that the purchase of reflective sign sheeting would exceed the \$200,000 maximum authority extended to the staff for purchases. He recommended award of contracts as shown below for the 12-month period extending from January 1, 2003, through December 31, 2003, at an estimated total cost of \$1,011,800 (actual cost will be determined by amount used).

- Award of a contract to 3M Corporation for Type 1, Type 3, Type 5 reflective sign sheeting and Transparent Colored Acrylic Overlay films.
  
- Award of a contract to Avery Dennison for Type 7 reflective sign sheeting.
  - Type 1 Reflecting Sheeting - \$0.62 per square foot
  - Type 3 Reflective Sheeting - 1.098 per square foot
  - Type 5 Reflective Sheeting - 4.35 per square foot
  - Type 7 Reflective Sheeting - 3.75 per square foot
  - Transparent Colored Acrylic Overlay - 0.87 per square foot

Via approval of the consent agenda, the Commission authorized the Director, Chief Engineer, Chief Operating Officer, Director of Operations, or the State Traffic Engineer to execute the contracts.

\* \* \* \* \*

**PAVEMENT MARKING PAINT AND BEADS,  
2003 STRIPING SEASON, AWARD OF CONTRACTS**

On behalf of the Director, Jim Carney, State Maintenance Engineer, noted that the purchase of pavement marking paint and beads for the 2003 striping season would exceed the \$200,000 maximum authority extended to the staff for purchases. He recommended the following:

- Award contracts to Flex-O-Lite, Inc., of St. Charles, Missouri, for supplying glass beads in 2003 at a unit price of \$0.1998 per pound. The total cost is estimated to be \$1,932,865; however, actual cost will be determined by amount used.
- Award contracts to Cataphote, Inc., of Jackson, Mississippi, for supplying large glass beads in 2003 at a unit price of \$0.476 per pound. The total cost is estimated to be \$1,880,676; however, actual cost will be determined by amount used.
- Reject low bid of Lafarge Road Marking of Parsippany, Maryland, for supplying High-build traffic paint for 2003 because the paint failed to meet specifications, and award contracts to the second low bidder, Ennis Paint, Inc., at the following unit prices. The total price is estimated to be \$966,780; however, actual cost will be determined by amount used.
  - White waterborne paint - \$5.037 per gallon-bulk delivery \$5.215-totes.
  - Yellow waterborne paint - \$5.872 per gallon-bulk delivery, \$6.048-totes.
- Award contracts to Ennis Paint, Inc., Ennis, Texas, for supplying traffic paint during 2003, at the unit prices shown below. The total price is estimated to be \$5,437,096; however, actual cost will be determined by amount used.
  - White waterborne paint - \$3.427 per gallon-bulk delivery \$3.631-totes.
  - Yellow waterborne paint - \$4.158 per gallon-bulk delivery, \$4.362-totes.

Via approval of the consent agenda, the Commission authorized the Director, Chief Engineer, Chief Operating Officer, Director of Operations, or State Maintenance Engineer to execute the contracts subject to approval as to form by the Chief Counsel's Office.

\* \* \* \* \*

### **HERBICIDES FOR ROADSIDE MAINTENANCE**

On behalf of the Director, Jim Carney, State Maintenance Engineer, noted that the purchase of herbicides for roadway maintenance would exceed the \$200,000 maximum authority extended to the staff for purchases. He recommended the Commission award contracts to UAP Timberland, Chem Source, Alenza, Pro Source One, Brown's Agri, and Helena Chemical in keeping with their low bids received on January 8, 2003. The estimated total cost for herbicides for 2003 is \$1.2 million; however, the actual cost will be determined by the amount of herbicides needed.

Via approval of the consent agenda, the Commission unanimously approved the recommendation and authorized the Director, Chief Engineer, Chief Operating Officer, Director of Operations, or State Maintenance Engineer to execute the contracts subject to approval as to form by the Chief Counsel's Office.

\* \* \* \* \*

### **CORRUGATED METAL PIPE CONTRACT**

On behalf of the Director, Frank Abart, General Services Director, noted that the purchase of corrugated metal pipe would exceed the \$200,000 maximum authority extended to the staff for purchases. In keeping with the results of the competitive sealed bid process, he

recommended the Commission authorize the Director, Chief Operating Officer, Chief Engineer, Director of Administrative Services, or General Services Director, to execute the contracts needed to provide Corrugated Metal Pipe statewide at each of the District locations with Contech Construction Products, Inc., for a cost of approximately \$267,465.72 and Thompson Culvert Company for a cost of approximately \$160,450.46. These contracts are for a six-month period. He further recommended that in keeping with the contract provisions, the Commission authorize the General Services Director to execute a contract extension with Contech Construction Products, Inc., and Thompson Culvert Company, should the General Services Director determine it is in the best interest of MoDOT to do so. These extensions, if implemented, would cover the remainder of the year.

Via approval of the consent agenda, the Commission unanimously approved the above recommendations.

\* \* \* \* \*

**AWARD OF CONTRACTS ON FEDERAL-AID AND STATE PROJECTS, BID OPENING OF JANUARY 24, 2003**

On behalf of the Director, Diane Heckemeyer, State Design Engineer, stated that bids for road and bridge improvement projects had been received on January 24, 2003.

Ms. Heckemeyer presented a tabulation of the bids received on all projects and recommended awards be made to the lowest responsive and responsible bidder noted below. She also recommended the bid of C. Grantham Company on Calls 605, 606, 607, 608 and 609 be declared non-responsive because it failed to be in good standing with the Missouri Secretary of State at the time of bid opening.

<b>Route County Project</b>	<b>Bid Amount Plus 3% for Contingencies</b>	<b>Non- Contractual Costs</b>	<b>Contractor</b>
<b>Call 101</b> 29 and 71 Atchison/Holt/Nodaway J1M0034	\$113,642.99		Superior Rail System, L.L.C. Wellington, MO
<b>Call 102</b> 35 and 36 Various J1M0035	110,391.28		Superior Rail System, L.L.C. Wellington, MO
<b>Call 103</b> Various Andrew/Buchanan J1M0036	108,788.60		Superior Rail System, L.L.C. Wellington, MO
<b>Call 201</b> 63 Adair J2P0483G	72,326.08		SMD, Inc. Boonville, MO
<b>Call 202</b> 139 Carroll J2S0419	302,234.44	352.48	John Massman Cont. Co. Kansas City, MO
<b>Call 203</b> 6 Grundy J2U0474	2,344,099.54	990.92	Columbia Curb & Gutter, Inc. Columbia, MO
<b>Call 301</b> 61 Lewis J3P0425	9,554,756.52	377.90	Cedar Valley Paving Corporation Waterloo, IA
<b>Call 401</b> 269 Clay J4P1551 7 Cass J4P1581	698,271.44	278.80	Vance Brothers, Inc. Kansas City, MO

<b><u>Route County Project</u></b>	<b><u>Bid Amount Plus 3% for Contingencies</u></b>	<b><u>Non- Contractual Costs</u></b>	<b><u>Contractor</u></b>
69 Clay J4S1550 71 Jackson J4S1543			
<b>Call 402</b> 24 Jackson J4P1124	4,039,561.18	755.80	APAC-Kansas, Inc., Reno Division Overland Park, KS
<b>Call 404</b> 152 Clay J4S1392 H Clay J4S1540 H Clay J4L0324	1,021,546.86	4,455.35	APAC-Kansas, Inc., Reno Division Overland Park, KS
<b>Call 405</b> 350 Jackson J4P1525 350 Jackson J4S1422	9,845,217.13	485.49	Superior Bowen Asphalt, Company L.L.C. Kansas City, MO
<b>Call 501</b> E Osage J5L0326A U Osage J5L0326B	442,335.30		N. B. West Contracting Company Brentwood, MO
<b>Call 502</b> E Pettis J5L0325A	314,421.99		Hilty Quarries, Inc. Clinton, MO

<b><u>Route County Project</u></b>	<b><u>Bid Amount Plus 3% for Contingencies</u></b>	<b><u>Non- Contractual Costs</u></b>	<b><u>Contractor</u></b>
F Benton J5L0325B Park Roads Benton J5L03TRU			
<b>Call 601</b>			
70 St. Charles J6I0736	15,052,614.24	2,834.25	Millstone Bangert, Inc. St. Charles, MO
70 St. Charles J6I0736C			
70 St. Charles J6I1591			
<b>Call 602</b>			
70 St. Louis J6I1483	7,116,938.98	324.00	Fred Weber, Inc. Maryland Heights, MO
<b>Call 603</b>			
Z Franklin J6L0306A	1,818,761.97	2,091.00	N. B. West Contracting Company Brentwood, MO
B Franklin J6L0306B			
Y Franklin J6L0306C			
E Franklin J6L0306D			
AB Franklin J6L0306E			
44 O.R. Franklin J6L0306F			

<b><u>Route County Project</u></b>	<b><u>Bid Amount Plus 3% for Contingencies</u></b>	<b><u>Non- Contractual Costs</u></b>	<b><u>Contractor</u></b>
19 Crawford J9L0306G			
19 Crawford J9L0306H			
<b>Call 604</b> 67 St. Charles/St. Louis J6U1079B	2,630,252.73	324.00	Pace Construction Company, Inc. St. Louis, MO
<b>Call 605</b> 270 St. Louis J6M0057	42,426.98		Munie Outdoor Services, Inc. Caseyville, IL
<b>Call 606</b> 141 St. Louis J6M0058	38,522.00		Munie Outdoor Services, Inc. Caseyville, IL
<b>Call 607</b> 70 St. Charles J6M0060	60,641.86		Cut-N-Trim, Inc. Warrenton, MO
<b>Call 608</b> 70 St. Charles J6M0070	60,616.58		Cut-N-Trim, Inc. Warrenton, MO
<b>Call 609</b> Various St. Louis J6M0059	61,844.92		Cut-N-Trim, Inc. Warrenton, MO
<b>Call 701</b> 571 Jasper J7S0728	784,417.06	2,143.40	Sprouls Construction, Inc. Lamar, MO

<b>Route County Project</b>	<b><u>Bid Amount Plus 3% for Contingencies</u></b>	<b><u>Non- Contractual Costs</u></b>	<b><u>Contractor</u></b>
<b>Call 703</b>			
39 Lawrence J7L0328A K Christian/Stone J8L0328B	475,211.70	4,133.95	Blevin's Asphalt Construction Company Mt. Vernon, MO
<b>Call X01</b>			
91 Bollinger/Stoddard J0L0332A 51 Bollinger/Stoddard J0L0332B 25 Stoddard J0L0332C N Stoddard J0L0332D BB Stoddard J00332E Park Road Wayne J0L03WAP	839,999.41	4,147.15	Girardeau Contractors, Inc. Cape Girardeau, MO
<b>Call X02</b>			
155 Pemiscot J0I0862	1,083,356.09*	377.90	Robertson Contractors, Inc. Poplar Bluff, MO
<b>Call X03</b>			
EE New Madrid J0S0830	1,997,910.51	447.60	Gaines Construction Wentzville, MO
<b>Call XA4</b>			
412 Dunklin J0P0570B	4,151,123.55	365.12	Robertson, Incorporation Bridge & Grading Division Poplar Bluff, MO

<b>Route County Project Call XB4</b>	<b><u>Bid Amount Plus 3% for Contingencies</u></b>	<b><u>Non- Contractual Costs</u></b>	<b><u>Contractor</u></b>
412 Dunklin JOP0570C	2,354,287.56	1,152.94	Dumney Contracting, Inc. Benton, MO
Totals	<u>\$67,536,519.49</u>	<u>\$26,038.05</u>	

\*Funded 100 percent by the Corps of Engineers.

Construction speed limits conform to the standard work zone speed limits shown on Standard Drawing No. 616.10 as approved by the Commission.

After consideration and upon motion by Commissioner Michie, seconded by Commissioner Orscheln, the Commission unanimously (1) declared the bids of C. Grantham Company non-responsive on Calls 605, 606, 607, 608 and 609, (2) awarded the projects to the lowest responsive and responsible bidder, as recommended and noted above, and (3) authorized an additional three percent of the contract amount for contingencies. The Commission also approved the allocation of funds covering the non-contractual costs included in the various projects, as indicated, and authorized execution of the necessary contracts by the Director, Chief Engineer, or Chief Operating Officer.

\* \* \* \* \*

**AUTHORITY TO REJECT BIDS**

On behalf of the Director, Diane Heckemeyer, State Design Engineer, advised the Commission that bids were received January 24, 2003, on the following project. She recommended all bids on call number 403 be rejected because they were considered excessive.

<b><u>Route Call 403</u></b>	<b><u>County</u></b>	<b><u>Project</u></b>
78 and 24	Jackson	J4S1588

The Commission, by unanimous vote of all members present, rejected the bids received on the above-mentioned project.

\* \* \* \* \*

## **ROADWAY LOCATION AND DESIGN APPROVAL**

On behalf of the Director, District Engineers informed the Commission that preliminary plans and exhibits for the following projects had been made available to the public.

**Route U, Grundy/Livingston County Line  
Bridge Replacement over Union Pacific near Shearwood  
Job No. J2S0677  
No Public Hearing Held**

This proposed improvement will provide right of way, grading, paving and bridge replacement over the Union Pacific Railroad. The new relocation south of the existing bridge will allow the existing route to remain open to the public and both ends of the project can be constructed under traffic. This project is 0.4 mile in length.

Mr. Mike Bruemmer, District Engineer, District 2, recommended approval of the proposed improvement as advertised for a public hearing.

**Route I-70, Boone County  
Interchange at I-70 and Route 63 Connector in Columbia  
Job No. J5I0789  
Public Hearing Held December 17, 2002**

This proposed improvement will provide for grading, paving, drainage, and bridges to improve traffic flow at the interchange complex. Improvements include elimination of weave areas, addition of deceleration and auxiliary lanes, and signal improvements. Both I-70 and Route 63 will remain open during construction. In order to expedite construction and minimize impacts to traffic, much of the work will take place at night. Temporary bypasses will be employed for joining new and existing alignments. This project will also use an advertising campaign to provide motorists with construction and traffic flow information. This project is 0.9 mile in length.

Mr. Roger Schwartze, District Engineer, District 5, recommended approval of the proposed improvement as presented at the public hearing.

**Route 100, Franklin County  
5.0 Miles Northwest of New Haven  
Job No. J6P1006  
No Public Hearing Held**

This proposed improvement will replace the existing deficient bridge structure over Big Berger Creek. This improvement will replace the bridge at the north side of the existing structure. Traffic will be maintained by using the existing roadway, new pavement and temporary widening as necessary during the various phases of the proposed construction activities. This project is 0.5 mile in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the proposed improvement as advertised for a public hearing.

**Route 185, Franklin County  
3.3 Miles North of Route 50  
Job No. J6S0905  
Public Hearing Held December 11, 2002**

This improvement will replace the deficient bridge on the existing tangent alignment. The new bridge will be slightly longer (275 feet) and about five feet higher to improve the steep grade on the north side of the project. The road will be closed for approximately nine months during construction. Traffic will be detoured via state routes. Adequate signing will be provided and motorists will be advised through public information channels. This project is 0.3 mile in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the proposed improvement as presented at the public hearing.

**Route 185, Franklin County  
0.5 Mile South of I-44  
Job No. J6S1467  
No Public Hearing Held**

This improvement will replace the existing deficient bridge structure over Burlington Northern Santa Fe Railroad. This improvement will replace the bridge at the north side of the existing structure. Traffic will be maintained by using the existing roadway, new pavement and temporary widening as necessary during the various phases of the proposed construction activities. This project is 0.6 mile in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the proposed improvement as advertised for a public hearing.

**Route T, Franklin County  
4.0 Miles East of Route MM  
Job No. J6S1056  
No Public Hearing Held**

This improvement will replace the existing deficient bridge structure over Fiddle Creek. This improvement will replace the bridge at the south side of the existing structure. Traffic will be maintained by using the existing roadway, new pavement and temporary bypass as necessary during the various phases of the proposed construction activities. This project is 0.4 mile in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the location and design as advertised for the public hearing.

**Route T, Franklin County  
1.0 Mile West of St. Louis County Line  
Job No. J6S1057  
No Public Hearing Held**

This improvement will replace the existing deficient bridge structure over Tavern Creek. This improvement will replace the bridge at the north side of the existing structure. Traffic will be maintained by using the existing roadway, new pavement and temporary widening as necessary during the various phases of the proposed construction activities. This project is 0.3 mile in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the location and design as advertised for a public hearing.

**Route D, St. Charles County  
1.6 Miles East of Route Z in New Melle  
Job No. J6S1027**

**Public Hearing Held December 11, 2002**

This improvement will replace an existing deficient bridge structure over Aubert Branch and its tributary. This improvement will replace the deficient bridge with a new box culvert at a location 200 feet north of the existing road. It will also replace an inadequate pipe culvert in its existing location with a box culvert. Traffic will be detoured onto county roads during part of the construction. This project is 0.5 mile in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the location and design as presented at the public hearing.

**Route Z, St. Charles County  
1.7 Miles and 3.0 Miles North of Route D in New Melle  
Job No. J6S0711**

**Public Hearing Held December 11, 2002**

This improvement will replace two existing deficient bridge structures over Dardenne Creek and Little Dardenne Creek. This improvement will replace two deficient bridges approximately 100 feet west of the existing road. The new bridges and most of the roadwork will be constructed with traffic on the existing roadway. Traffic will be detoured onto county roads during construction of the tie-ins to the existing roadway at each end of the project. Time of closure will be kept to a minimum of approximately 30 days. This project is 1.3 miles in length.

Mr. Ed Hassinger, District Engineer, District 6, recommended approval of the location and design as presented at the public hearing, with modification of the detour as suggested by the fire district.

After full consideration of the favorable and adverse economic, social and environmental effects of the recommended locations and designs, the Commission, via approval of the consent

agenda, unanimously found and determined the recommended locations and designs would best serve the interest of the public and approved the recommendations.

\* \* \* \* \*

**ADMINISTRATIVE RULE,  
UTILITY AND PRIVATE LINE LOCATION AND RELOCATION**

On behalf of the Director, Diane Heckemeyer, State Design Engineer, advised that authorization was granted by the Commission on October 4, 2002, to file amended and proposed rulemaking for Utility and Private Line Location and Relocation rules. Ms. Heckemeyer recommended the Commission adopt final orders of rulemaking for amended rule 7 CSR 10-3.010 and proposed rule 7 CSR 10-3.040. The amended and proposed rulemaking clarify the type of utility facilities permitted and the distribution of costs in connection with the location, relocation, or removal of utilities. She recommended filing the rulemaking with the Joint Committee on Administrative Rules and the Office of the Secretary of State. She further recommended the Director, Chief Engineer, or the Chief Operating Officer be authorized to execute any document appropriate and necessary for initiating this rulemaking process.

Via approval of the consent agenda, the Commission unanimously approved the recommendations.

\* \* \* \* \*

**RATIFICATION OF APPROVAL OF RIGHT OF WAY PLANS FOR  
CONDEMNATION**

On behalf of the Director, Diane Heckemeyer, State Design Engineer, recommended the Commission ratify the approval by the Chief Engineer of the following right of way plans, which have been filed for condemnation.

<u>County</u>	<u>Route</u>	<u>Job Number</u>	<u>Date Commission Approved Design</u>
Miller	52	J5P0484	August 10, 2001(1 <sup>st</sup> Amended)
Cole	179	J5U0441J	November 2, 2001(4 <sup>th</sup> Amended)
Pulaski	Spur 44	J9S0492	April 5, 2002

In accordance with Section 227.050 RSMo, the Commission, via approval of the consent agenda, approved the right of way plans for the above noted projects and directed they be filed as necessary for the condemnation of right of way. Commissioner Orscheln abstained from voting on Job No. J5P0484.

\* \* \* \* \*

**-- REPORTS --**

**FY03 EQUIPMENT REPLACEMENT REPORT**

Frank Abart, General Services Director, submitted a Fiscal Year 2003 Equipment Replacement report regarding equipment purchases made on behalf of the Department from July 1, 2002, through December 31, 2002.

\* \* \* \* \*

**CAPITAL IMPROVEMENT PROGRAM REPORT**

Frank Abart, General Services Director, submitted a Capital Improvement Program Fiscal Year 2003 Report covering the period from July 1, 2003, to December 31, 2003.

\* \* \* \* \*

**MoDOT CONSTRUCTION CONTRACT AWARDS REPORT**

Diane Heckemeyer, State Design Engineer, submitted a report on construction contract awards.

\* \* \* \* \*

**- ADMINISTRATIVE HEARINGS -**

**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO TERMINATE NONCONFORMING OUTDOOR ADVERTISING,  
HEARING NO. 01-02-169,  
ALFORD ADVERTISING CO., APPLICANT,  
ADMINISTRATIVE HEARING NO. 708**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Terminate Nonconforming Outdoor Advertising issued under 7 CSR 10-6.069(3) by the Missouri Department of Transportation (hereinafter, Department) to Alford Advertising, Co. (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on November 14, 2001. The Department was represented by Megan Waters-Hamblin, Assistant Counsel. The Applicant was represented by Rob Angstead, Attorney at Law. The Applicant requested a continuance, but the Department objected to the request (T. 3). The Hearing Examiner denied the request (T. 3). The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

**FINDINGS OF FACT**

This hearing involves an outdoor advertising structure (T. 9-11; Commission's Exhibits F-H) owned and maintained by Applicant adjacent to Route 36 in Livingston County at County log mile 8.855180000000001 (T. 5, 11; Commission's Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route 36 which is a part of the primary highway system (T. 11-12).

The sign was erected on May 17, 1954 (T. 6-7, 12; Commission's Exhibit C).

Applicant filed a special application to maintain outdoor advertising dated June 1, 1972 (T. 6-7; Commission's Exhibit C). The permit was issued by the Department's District Engineer (T. 7-8; Commission's Exhibit D).

The Department issued an outdoor advertising permit after the biennial inspection (T. 8-9; Commission's Exhibit E). The permit classifies the sign as nonconforming (T. 8-9; Commission's Exhibit E).

The sign is located in an area which has been zoned for agricultural use by Livingston County, Missouri (T. 5, 13). The sign is not located within any city limits (T. 13).

On June 23, 2000, the sign was supported by three poles (T. 11; Commission's Exhibit H).

On April 12, 2001, the sign was completely on the ground with all supporting poles broken (T. 10; Commission's Exhibit G).

On April 12, 2001, the sign was in need of replacement of fifty percent (50%) or more of the poles or vertical support (T. 10; Commission's Exhibit G).

On October 23, 2001, the sign had three poles with no face (T. 9-10; Commission's Exhibit F).

The Department issued a Notice to Terminate Nonconforming Outdoor Advertising for the sign which was received by the Applicant (T. 5-6; Commission's Exhibit A-B).

## CONCLUSIONS OF LAW

The Commission has jurisdiction under 7 CSR 10-6.060(3), 23 CFR 750.707(d) and Section 226.150 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of-way, and visible from the main traveled way of a primary highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and 7 CSR 10-6.060.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

We conclude the sign was lawfully erected but is being maintained in violation of the location requirements of Sections 226.520(3) and 226.540(6) RSMo.

A sign which is lawfully erected but which does not conform to the requirements of state statutes enacted at a later date or which fails to comply with state statutes due to changed conditions is a nonconforming sign. See 7 CSR 10-6.015 (24). Such a sign may be repaired and maintained by the sign owner subject to the limitations of the Commission's administrative rules regarding maintenance of nonconforming signs. Violation of such rules, however, disqualifies the sign from being maintained as a nonconforming sign and subjects it to removal without compensation by the Commission. Boyce Industries, Inc., v. Missouri Highway and Transportation Commission, 670 SW 2d 147 (Mo. App. 1984). Knowledge of any of the violations is not required. Martin Oil Co. v. Missouri Highway and Transportation Commission, 2 SW 3d 144 (Mo. App. S.D. 1999).

We conclude the sign was a lawful nonconforming sign on June 23, 2000, but that the sign was a damaged nonconforming sign on April 12, 2001, which was repaired in violation of 7 CSR 10-6.060(3)(D)1.

The Department properly issued the Notice to Terminate Nonconforming Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

\* \* \* \* \*

**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO TERMINATE NONCONFORMING OUTDOOR ADVERTISING,  
HEARING NO. 01-02-170,  
ALFORD ADVERTISING CO., APPLICANT,  
ADMINISTRATIVE HEARING NO. 709**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Terminate Nonconforming Outdoor Advertising issued under 7 CSR 10-6.060(3) by the Missouri Department of Transportation (hereinafter, Department) to Alford Advertising Co. (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on November 14, 2001. The Department was represented by Megan Waters-Hamblin, Assistant Counsel. The

Applicant was represented by Rob Angstead, Attorney at Law. Applicant requested a continuance, but the Department objected (T. 3-4). The Hearing Examiner denied Applicant's request (T. 4). The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

#### FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 9-11; Commission's Exhibits F-G) owned and maintained by Applicant adjacent to Route 36 at County log mile 21.926 in Livingston County twelve miles west of Chillicothe, Missouri on the north side of the highway (T. 5-8, 11, 12; Commission's Exhibit A, D).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route 36 which is a part of the primary highway system (T. 12).

The sign was erected on March 10, 1961 (T. 7, 12; Commission's Exhibit C).

Applicant filed a special application for permit to maintain outdoor advertising dated June 16, 1972 (T. 7; Commission's Exhibit C). The permit was issued by the Department's District Engineer (T. 7-8; Commission's Exhibit D).

The Department issued to Applicant a permit after biennial inspection (T. 8-9; Commission's Exhibit E). The sign is identified on the biennial permit as a nonconforming sign (T. 8-9; Commission's Exhibit E).

The sign is located in an area which has been zoned for agricultural use by Livingston County, Missouri (T. 5, 13). The sign is not located within any city limits (T. 13).

On September 7, 2000, the sign was in good condition (T. 11; Commission's Exhibit H).

On April 12, 2001, the sign was in a damaged condition with all of the poles broken (T. 10-11; Commission's Exhibit G).

On April 12, 2001, the sign was in need of replacement of fifty percent (50%) or more of the poles or vertical support (T. 10-11; Commission's Exhibit G).

On October 23, 2001, the sign was in good condition (T. 9-10; Commission's Exhibit F).

The Department issued a Notice to Terminate Nonconforming Outdoor Advertising for the sign which was received by the Applicant (T. 6; Commission's Exhibit A-B).

#### CONCLUSIONS OF LAW

The Commission has jurisdiction under 7 CSR 10-6.060(3), 23 CFR 750.707(d) and Section 226.150 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of-way, and visible from the main traveled way of a highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and 7 CSR 10-6.060.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

We conclude the sign was lawfully erected but is being maintained in violation of the location requirements of Sections 226.520(3) and 226.540(6) RSMo.

A sign which is lawfully erected but which does not conform to the requirements of state statutes enacted at a later date or which fails to comply with state statutes due to changed conditions is a nonconforming sign. See 7 CSR 10-6.015(24). Such a sign may be repaired and

maintained by the sign owner subject to the limitations of the Commission's administrative rules regarding maintenance of nonconforming signs. Violation of such rules, however, disqualifies the sign from being maintained as a nonconforming sign and subjects it to removal without compensation by the Commission. Boyce Industries, Inc. v. Missouri Highway and Transportation Commission, 670 SW 2d 147 (Mo. App. 1984). Knowledge of any of the violations is not required. Martin Oil Co. v. Missouri Highway and Transportation Commission, 2 SW 3d 144 (Mo. App. S.D. 1999).

We conclude the sign was a lawful nonconforming sign on September 7, 2000 but that on April 12, 2001, the sign was in a damaged condition which needed replacement of fifty percent (50%) or more of the poles. We conclude that the sign was repaired after April 12, 2001 in violation of 7 CSR 10-6.060(3)(D)1.

The Department properly issued the Notice to Terminate Nonconforming Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

\* \* \* \* \*

**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO REMOVE OUTDOOR ADVERTISING,  
HEARING NO. 02-03-157,  
QUINCY SIGN & ELECTRIC CO., APPLICANT,  
ADMINISTRATIVE HEARING NO. 721**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Remove Outdoor Advertising issued under Section 226.580 RSMo. by the Missouri Department of Transportation (hereinafter, Department) to Quincy Sign & Electric Co. (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on October 16, 2002. The Department was represented by Megan Waters-Hamblin, Assistant Counsel. The Applicant appeared on his own behalf. The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 9, 11; Commission's Exhibits C, E) owned and maintained by Applicant adjacent to Route 61 in Marion County at County log mile 22.759 on the west side of the highway (T. 7-8, 12; Commission's Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route 61 which is a part of the primary highway system (T. 12-13).

The sign is located in an area which has been zoned for commercial use by Hannibal, Missouri and it is maintained pursuant to a permit issued by the city (T. 14-16).

The sign is located within 500 feet of an existing sign on the same side of the highway licensed by the Department (T. 10-15; Commission's Exhibits D, E).

The sign is being maintained without a permit issued by the Department (T. 10, 13).

The sign was erected on or about July 8, 2002 (T. 9, 13; Commission's Exhibit C).

The Department issued a Notice to Remove Outdoor Advertising for the sign which was received by the Applicant (T. 8-9; Commission's Exhibit A, B).

#### CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of-way, and visible from the main traveled way of a primary highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administrative rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

Signs erected or maintained on or after March 30, 1972, within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of any interstate or primary highway, and located in areas zoned commercial, industrial, or the like under local zoning authority are subject to the sizing, lighting, and permit requirements of Sections 226.540 and 226.550 RSMo.

Section 226.540(3)(b)b RSMo. 2000 prohibits signs adjacent to primary highways within incorporated municipalities from being erected within 500 feet of an existing sign on the same

side of the highway. We conclude the sign violates that prohibition and, thus, is subject to removal as an unlawful sign under Section 226.580.1(1) RSMo.

Section 226.580.1(2) RSMo. and 7 CSR 10-6.080(2)(B) prohibit signs for which a permit is not obtained as prescribed in Sections 226.500 to 226.600 RSMo. We conclude the sign violates that prohibition and, thus is subject to removal as an unlawful sign. Drury Development Corp. v. State Highway Commission, 637 SW 2d 354 (Mo. App. 1982); Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 677 SW 2d 389 (Mo. App. 1984).

The Department properly issued the Notice to Remove Outdoor Advertising.

#### ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

\* \* \* \* \*

**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO REMOVE OUTDOOR ADVERTISING,  
HEARING NO. 02-04-531,  
DOWNTOWN SUPER 8, APPLICANT,  
ADMINISTRATIVE HEARING NO. 722**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Remove Outdoor Advertising issued under Section 226.580 RSMo. by the Missouri Department of Transportation (hereinafter, Department) to Downtown Super 8 (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on October 16, 2002. The Department was represented by Megan Waters-Hamblin, Assistant Counsel. The Applicant filed an application for continuance of hearing (T. 5-7). The Department opposed the application for continuance (T. 7). The Hearing Examiner denied the application for continuance (T. 7-8). The Applicant did not appear. The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

#### FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 12-17; Commission's Exhibit C-G) owned and maintained by Applicant adjacent to Route I-29 in Jackson County at County log mile 1.832 on the right side of the highway in downtown Kansas City (T. 10, 19; Commission's Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route I-29 which is a part of the interstate highway system (T. 19-20).

The sign was erected in the fall of 1999 (T. 20).

The sign is located in an area which has been zoned for commercial use by Kansas City, Missouri (T. 22).

The sign is located within 30 feet of an existing sign, on the same side of the highway (T. 12-14; Commission's Exhibit C).

The sign is being maintained without a permit issued by the Department (T. 22).

The sign advertises Super 8 Motel (T. 12-13; Commission's Exhibit C). The Super 8 Motel sign is in the middle of a vacant lot (T. 12-13; Commission's Exhibit C). A north-south

roadway (Charlotte Avenue) is an intervening land use between the motel and the sign (T. 14-16, 18-19; Commission's Exhibit D-E). The sign is not an on-premise sign (T. 12-19; Commission's Exhibit C-G).

The Department issued a Notice to Remove Outdoor Advertising for the sign which was received by the Applicant (T. 10-12; Commission's Exhibit A-B).

#### CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of-way, and visible from the main traveled way of an interstate highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administrative rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

Signs erected or maintained on or after March 30, 1972, within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of any interstate or primary highway, and located in areas zoned commercial, industrial, or the like under local zoning authority are subject to the sizing, lighting, and permit requirements of Sections 226.540 and 226.550 RSMo.

Section 226.540(3)(b) RSMo. 2000 prohibits signs adjacent to interstate highways within incorporated municipalities from being erected within 500 feet of an existing sign on the

same side of the highway. We conclude the sign violates that prohibition and, thus, is subject to removal as an unlawful sign under Section 226.580.1(1) RSMo.

Section 226.580.1(2) RSMo. and 7 CSR 10-6.080(2)(B) prohibit signs for which a permit is not obtained as prescribed in Sections 226.500 to 226.600 RSMo. We conclude the sign violates that prohibition and, thus is subject to removal as an unlawful sign. Drury Development Corp. v. State Highway Commission, 637 SW 2d 354 (Mo. App. 1982); Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 677 SW 2d 389 (Mo. App. 1984).

Under 7 CSR 10-6.030(2)(E), signs on land separated from the advertised establishment by an intervening land use such as a highway do not qualify as on-premise signs. Since a roadway separates this sign from the Super 8 Motel, the sign does not qualify as an on-premise sign.

The Department properly issued the Notice to Remove Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

\* \* \* \* \*

**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO TERMINATE NONCONFORMING OUTDOOR ADVERTISING,  
HEARING NO. 02-08-604,  
JERRY LETTERMAN, APPLICANT,  
ADMINISTRATIVE HEARING NO. 723**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Terminate Nonconforming Outdoor Advertising issued under 7 CSR 10-6.060(3) by the Missouri Department of Transportation (hereinafter, Department) to Jerry Letterman (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on October 16, 2002. The Department was represented by Megan Waters-Hamblin, Assistant Counsel. The Applicant appeared on his own behalf. The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

**FINDINGS OF FACT**

This hearing involves an outdoor advertising structure (T. 9, 14-15; Commission's Exhibits C, D, H) on property owned by Applicant adjacent to Route I-44 in Laclede County at County log mile 20.459 approximately three miles west of Route 5 (T. 7-8, 12; Commission's Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route I-44 which is a part of the interstate highway system (T. 12-13).

The sign was erected on November 5, 1962 (T. 10-11, 13; Commission's Exhibit E).

Silver Dollar City, Inc. filed with the Department a special application for permit to maintain outdoor advertising adjacent to a primary or interstate highway dated June 23, 1972 (T. 10-11; Commission's Exhibit E).

The Department issued to Silver Dollar City, Inc. an outdoor advertising permit dated June 27, 1972 for the sign (T. 11; Commission's Exhibit F).

The Department on June 27, 1978 issued to Silver Dollar City an outdoor advertising permit (renewed after biennial inspection) (T. 11-12; Commission's Exhibit G). On the permit, the sign is identified as a nonconforming sign (T. 11-12; Commission's Exhibit G).

The area around the sign is unzoned (T. 14).

The sign is not located within 600 feet of a business (T. 19). The sign is not located within any city limits (T. 14).

The Department's outdoor advertising permit specialist conducts biennial inspections of the sign and drives by the sign usually twice a month (T. 6, 13-14, 19). According to the Department's records, an advertising message last appeared on the sign in 1996 (T. 10). The sign did not contain any advertising message on May 4, 2000, or May 15, 2002, or on October 15, 2002 (T. 9, 14-15; Commission's Exhibits C, D, H). The sign for a continuous period of twelve months or longer is maintained without an advertising message (T. 6, 9-10, 13-15, 19; Commission's Exhibits C, D, H).

The Department issued a Notice to Terminate Nonconforming Outdoor Advertising for the sign which was received by the Applicant (T. 7-8, Commission's Exhibits A, B).

#### CONCLUSIONS OF LAW

The Commission has jurisdiction under section 7 CSR 1-6.060(3), 23 CFR 750.707(d) and Section 226.150 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of

the right-of-way, and visible from the main traveled way of an interstate highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and 7 CRS 10-6.060.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

We conclude the sign was lawfully erected but is being maintained in violation of the location requirements of Sections 226.520(4) and 226.540(4), (5) RSMo.

A sign which is lawfully erected but which does not conform to the requirements of state statutes enacted at a later date or which fails to comply with state statutes due to changed conditions is a nonconforming sign. See 7 CSR 10-6.015 (24). Such a sign may be repaired and maintained by the sign owner subject to the limitations of the Commission's administrative rules regarding maintenance of nonconforming signs. Violation of such rules, however, disqualifies the sign from being maintained as a nonconforming sign and subjects it to removal without compensation by the Commission. Boyce Industries, Inc., v. Missouri Highway and Transportation Commission, 670 SW 2d 147 (Mo. App. 1984). Knowledge of any of the violations is not required. Martin Oil Co. v. Missouri Highway and Transportation Commission, 2 SW 3d 144 (Mo. App. S.D. 1999).

We conclude the sign was a lawful nonconforming sign in 1996 but that after the sign was maintained without an advertising message for a continuous period of more than 12 months because the sign's facing was blank in violation of 7 CSR 10-6.060(3)(F).

The Department properly issued the Notice to Terminate Nonconforming Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

\* \* \* \* \*

**IN THE MATTER OF REQUEST FOR  
ADMINISTRATIVE REVIEW OF NOTICE  
TO REMOVE OUTDOOR ADVERTISING,  
HEARING NO. 02-10-415  
TREASURE SEEKERS ANTIQUE MALL, APPLICANT,  
ADMINISTRATIVE HEARING NO. 724**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Remove Outdoor Advertising issued under Section 226.580 RSMo. by the Missouri Department of Transportation (hereinafter, Department) to Treasure Seekers Antique Mall (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on October 16, 2002. The Department was represented by Ms. Megan Waters-Hamblin, Assistant Counsel. The Applicant did not appear. The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

## FINDINGS OF FACT

This Hearing involves an outdoor advertising structure (T. 9-10, Commission's Exhibits C-D) owned and maintained by Applicant adjacent to Rt. 60 in Stoddard County at County log mile 3.263 on the right side of the highway. (T. 7-8, 10; Commission's Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route 60 which is a part of the primary highway system (T. 10-11).

The Department's outdoor permit specialist first noticed the sign on February 7, 2002. (T. 6-7, 8, 9, 11; Commission's Exhibit C). The sign was erected shortly before February 7, 2002. (T. 6-7, 9, 11; Commission's Exhibit C).

The sign is not within any city limits (T. 12). The area is unzoned (T. 12).

The Department issued a Notice to Remove Outdoor Advertising for the sign which was received by the Applicant (T. 7-8, Commission's Exhibits A-B).

The remedial action suggested on the Notice to Remove Outdoor Advertising was to submit an application for permit (T. 7; Commission's Exhibit A). The sign owner is responsible for filling out an application for permit (T. 12). Applicant has not filed an application for a permit (T. 12).

The sign is being maintained without a permit issued by the Department (T. 11-12).

## CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of way, and visible from the main traveled way of a primary highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administrative rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

Section 226.580.1(2) RSMo. and 7 CSR 10-6.080(2)(B) prohibit signs for which a permit is not obtained as prescribed in Sections 226.500 to 226.600 RSMo. We conclude the sign violates that prohibition and, thus is subject to removal as an unlawful sign. Drury Development Corp. v. State Highway Commission, 637 SW 2d 354 (Mo. App. 1982); Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 677 SW 2d 389 (Mo. App. 1984).

The Department properly issued the Notice to Remove Outdoor Advertising.

#### ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

\* \* \* \* \*

\* \* \* \* \*

By unanimous vote of all members present, the meeting of the Commission was adjourned.

\* \* \* \* \*