

ORDINANCE  
Madison Fiscal Court  
Commonwealth of Kentucky  
No. 85- 5

AN ORDINANCE relating to the removal of political advertising  
and commercial signs from the Madison County  
Right-of-Ways.

BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF MADISON,  
COMMONWEALTH OF KENTUCKY:

ITEM #1 DEFINITIONS:

- a) Advertisement- shall include all public notices, signs, billboards and printed matter designed to call public or private attention to political candidates, commercial products, issues or referendums.
- b) Right-of-Ways- shall mean all land next to County Roads owned and maintained by Madison County including overhanging limbs and structures over said property.

ITEM #2 Prohibition- There shall be no advertisement in the County Right-of-way promoting commercial products or service. All political advertisements shall be removed from the County Right-of-way within two weeks after the election for which they are applicable. No political advertisement shall be permitted in the County Right-of-way 30 days before the election for which they are applicable.

ITEM #3 Presumptions- It shall be presumed that all advertisements found on County Right-of-ways were placed by the political candidates or his agents promoted by said advertisement.

ITEM #4 Notice- Offenders of Item #2 of this ordinance shall receive notice from the Madison County Judge/Executive of each offending advertisement. Including location of each. Each offender has five(5) days to remove the named advertisement.

ITEM #5 PENALTY- Failure to remove said advertisement pursuant to item #4 of this ordinance shall be punished by a fine no less than five (\$5.00) and no more than \$500.00. Each day the advertisement is permitted to remain shall be a separate offense.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 198\_\_.

\_\_\_\_\_  
Madison County Judge/Executive

Attested by:

CROSS REFERENCES

See Brickey, Kentucky Criminal Law § 13.09, 23.06(4)

512.060 Criminal possession of noxious substance

(1) A person is guilty of criminal possession of a noxious substance when he possesses such substance under circumstances evincing an intent unlawfully to use or cause it to be used to inflict injury upon or to cause annoyance to a person, or to damage property of another, or to disturb the public peace.

(2) Criminal possession of a noxious substance is a Class B misdemeanor.

HISTORY: 1974 H 232, § 110, eff. 1-1-75

COMMENTARY (1974)

Note: See Commentary under 512.050.

CROSS REFERENCES

See Brickey, Kentucky Criminal Law § 13.09

512.070 Criminal littering

(1) A person is guilty of criminal littering when he: (a) Drops or permits to drop on a highway any destructive or injurious material and does not immediately remove it; or

(b) Knowingly places or throws litter on any public or private property or in any public or private water without permission; or

(c) Negligently places or throws glass or other dangerous pointed or edged substances on or adjacent to water to which the public has access for swimming or wading or on or within fifty feet of a public highway; or

(d) Discharges sewage, minerals, oil products or litter into any public waters or lakes within the state.

(2) Criminal littering is a Class B misdemeanor.

HISTORY: 1974 H 232, § 111, eff. 1-1-75

COMMENTARY (1974)

This section covers increasing environmental problems with littering. If there is to be a meaningful littering ban, strict liability is required under certain circumstances.

Strict liability is applied when "destructive or injurious material" is dropped on a highway and when sewage, minerals, oil products or litter is discharged into public waters. Placing or throwing litter must be done knowingly, while ordinary negligence suffices for culpability if glass or other dangerous pointed or edged substance is thrown in or near water or a public highway. In keeping with the purpose of the section, litter is given a broad definition.

KRS 512.070 broadens and clarifies pre-existing law on littering. KRS 433.450 listed items specifically prohibited "to be thrown on highways and contains the catch-all phrase "or any other substance likely to injure any person, animal or vehicle." KRS 433.753 prohibited littering or dumping on public highways and private property. KRS 433.757 prohibited littering or dumping in public waters.

CROSS REFERENCES

See Brickey, Kentucky Criminal Law § 6.02(2), 13.10, 23.06(4)

Littering public waters, reward for information, 433.757

512.080 Unlawfully posting advertisements

(1) A person is guilty of unlawfully posting advertisements when, having no right to do so or any reasonable ground to believe he has such a right, he posts, paints or otherwise affixes to the property of another person or to public property any advertisement, poster, notice or other matter.

(2) Unlawfully posting advertisements is a violation.

HISTORY: 1974 H 232, § 112, eff. 1-1-75

COMMENTARY (1974)

This section incorporates the judgment that advertising signs and other posters should not be placed without permission or legal right. All advertisements, posters and notices - commercial, political and charitable - are included.

Kentucky had no pre-existing statute proscribing the posting of advertisements. There were several statutes, however, relating to false and deceptive advertising and prohibiting the advertising of lotteries, treatment of diseases, etc. Billboard advertising within a certain distance from the right-of-way at interstate, limited access, turnpike and Federal Aid highways is prohibited by KRS 177.830.

CROSS REFERENCES

See Brickey, Kentucky Criminal Law § 13.11

Chapter 513

ARSON AND RELATED OFFENSES

- §13.010 Definition
- §13.020 Arson in the first degree
- §13.030 Arson in the second degree
- §13.040 Arson in the third degree

COMMENTARY (1974)

At common law, the offense of arson was defined as a "wilful and malicious burning of another's dwelling or adjacent structures." Model Penal Code § 220.1, Comment at 34-35 (Tent. Draft No. 11, 1960). Like burglary, this offense was designed to protect the habitation (i.e., a structure in which people ordinarily sleep). By judicial interpretation and legislative enactment, it has been extended to cover other types of buildings. In defining the category of crime known as arson, this chapter maintains as a frame of reference the one characteristic of this offense that distinguishes it from other offenses involving dam-

age to property, namely, the objective of proscribing conduct that endangers human life.

In using the words "wilful" and "malicious" to describe the mens rea for arson, the common law clearly contemplated the imposition of punishment for the intentional burning of another's property. The words were also construed to provide sanctions for certain unintentional arsons, i.e., those in which the actors did not desire the consequence of their actions. A combined description of the mental element for the offense had been stated as follows:

In brief, the state of mind which constitutes guilt of common-law arson, assuming the other elements of the crime are present and there are no circumstances of justification, excuse or mitigation, is either an intent to burn the dwelling of another, or an act done under such circumstances that there is obviously a plain and strong