

Richard Rothfelder successfully represented the Harris County Outdoor Advertising Association, a trade association consisting of the billboard companies in Houston, from trial through the Supreme Court against the City of Houston. The trial court's judgment, which was unanimously affirmed on appeal, held that the City's off-premise sign permit fees were unconstitutionally excessive, established a fee approximately one-sixth of the amount previously charged by the City, and awarded approximately 2.5 million dollars to Mr. Rothfelder's clients in permit fee refunds and attorneys' fees.

City charges too much for billboards

Owners could be awarded \$1.7 million

By ANDREA D. GREENE
Houston Chronicle

An attorney said Wednesday he will ask a state district judge to award more than \$1.7 million in damages to owners of billboards on Houston rights of way after the judge ruled the city overcharged for permits.

Richard Rothfelder, attorney representing Harris County Outdoor Advertising Association, said state District Judge Louis Moore ruled that \$40 — not the average \$120 to \$179 charged since 1985 — is a reasonable annual billboard permit fee.

A permit for a 14-foot by 48-foot billboard is \$278 per year, Rothfelder said.

Rothfelder said he would later this month submit a judgment for the judge's signature seeking the \$1.7 million in actual damages and attorney fees.

The city raised its permit fees in 1989, prompting the billboard owners lawsuit. The lawsuit was tried without a jury from July 20 and concluded with Moore's ruling Tuesday.

Rothfelder said the city has overcharged the owners, who are members of the Harris County Advertising Association, by about \$1.4 million for 17,432 permits since 1985. The association includes Patrick Media Group, which owns about 500 billboards in the city.

City Attorney Benjamin L. Hall III said the city expected an adverse ruling in the lawsuit because of indications the judge would not rule based on certain points of law established at the appeals court level. "We will appeal and will get a reversal," Hall predicted.

Hall also disputed Rothfelder's claim the judgment amount would be so high. "If they are playing Santa Claus, they should show what they've got in the sack," Hall said.

Rothfelder said the city has already lost at least one similar lawsuit at the state Supreme Court level.

Sign owners have fought city of Houston attempts to charge permit fees since at least 1987, when a ruling by Moore temporarily prohibited the collection of permit fees. Sign owners had asked the judge to force the city to set its billboard permit fee at \$14 per year, Hall said.

A permit fee was established to compensate the city for allowing outdoor advertising on city-owned rights of way, Hall said.

The legal battle over permits has resulted in hundreds of thousands of dollars due to the city being placed in a court-administered escrow account.

Judges agree fees too high on billboards

By R.A. DYER
Houston Chronicle

A state appeals court on Thursday upheld a \$1.7 million judgment against the city of Houston in a case brought by billboard owners who claimed their permit fees were excessive.

The 14th Court of Appeals agreed with a 1992 trial court decision that \$40 — not the average \$120.44 charged since 1985 — is a reasonable billboard permit fee.

The court concluded that the fees charged by the city constituted "an unlawful occupation tax" in violation of the state and U.S. Constitution.

"I am pleased to see that the court of appeals rendered a reasoned decision," said Richard Rothfelder, attorney for the Harris County Outdoor Advertising Association, a trade group of billboard owners that sued the city.

The judgment was calculated by subtracting \$40 — the permit fee declared to be reasonable — from \$120.44, which is the average permit fee paid by the plaintiffs between January 1985 and July 1992.

That was then multiplied by 17,442, which is the number of permits purchased during that period, then attorney's fees were added. With interest, the sum now comes to more than \$2.1 million, said Rothfelder.

"I think it is a positive development because businesses are constantly confronted with the cost of regulations," he said. "In cases like Houston, they use these fees as a new way to tax businesses."

The permit fees are assessed once every three years, said Rothfelder. Since the 1992 trial court decision, the difference between the city's rates and the \$40 rate considered reasonable by the court has been placed in an escrow account.

That arrangement likely will continue if the city appeals, said Rothfelder. City Attorney Benjamin L. Hall III said such an appeal is likely.

If the appeals court refuses to rehear the case, the city likely will take the case to the Texas Supreme Court, said Hall.

"I think the legal issues that we have put forward have not been properly focused upon," said Hall. "If (the court is) correct, then we would have the courts deciding the cost of city services, as opposed to the proper legislative body."

Friday, June 17, 1994

Houston Chronicle

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