

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

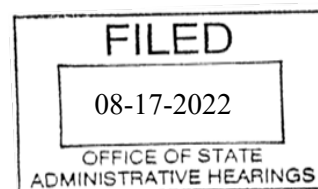
VICTORY MEDIA GROUP, LLC,
Petitioner,

v.

**GEORGIA DEPARTMENT OF
TRANSPORTATION,**
Respondent.

**Docket No.: 2215671
2215671-OSAH-DOT-OA-42-Barnes**

Agency Reference No.: 2215671



INITIAL DECISION¹

I. Introduction

On December 29, 2021, Respondent Georgia Department of Transportation (the “Department”) filed a Request for Administrative Hearing that Petitioner Victory Media Group, LLC (“Victory Media”) submitted to it on November 29, 2021. The Request concerned the Department’s denial of Victory Media’s application for an outdoor advertising sign permit for a multi-message sign. The Court held a hearing on April 14, 2022. The record was held open to allow the Parties to make post-hearing submissions. The Parties were represented by counsel at the hearing. Due to the complexity of the factual and legal issues and the ALJ’s hearing schedule, IT IS ORDERED that the deadline for issuance of this Final Decision be extended to August 8, as authorized by the Georgia Administrative Procedures Act, O.C.G.A. 50-13-41(a). For the reasons explained below, the Department’s determination that Victory Media was not entitled to the requested permit is **AFFIRMED**.

II. Findings of Fact

Based upon the record before it and the evidence and testimony that was received at the

¹ This Initial Decision is issued to correct the previous decision in this matter, which was erroneously titled “Final Decision.” Pursuant to GDOT Regs 672-1-.05(f) and OCGA § 50-13-41(d), the Administrative Law Judge’s decision is “Initial” and subject to a request for Agency Review. This Initial Decision is hereby in effect and supersedes any previous decision in this matter.

hearing, the Court finds the following material facts that inform its conclusions of law.

1. On September 14, 2021, Victory Media applied to the Department for standard and multi-message sign permits for a multi-message sign to be located within Dawson County, Georgia (“Sign”). [See OSAH Form 1-Attachments at 1].

2. The specific, proposed location of the Sign was at or near the intersection of GA-400 and GA-53, specifically at latitude 34.362661 west and 84.03525 north. [See OSAH Form 1-Attachment One, Exhibit A (denoting precise location)].

3. At Victory Media’s proposed location, GA-400, which generally runs north/south, intersects with GA-53, which generally runs east/west. The proposed location of the Sign would be on the eastern side of GA-400 and the northern side of GA-53.² Both GA-400 and GA-53 are controlled routes for purposes of the Act and the Department’s regulations.

4. On October 25, 2021, the Department granted Victory Media’s standard permit application for the Sign; however, the Department denied Victory Media’s multi-message application.³

5. In denying Victory Media’s multi-message application, the Department determined that existing permittees held multi-message sign permit numbers D3674 and D3675—both of which were within 5,000 feet of Victory Media’s Sign along GA-400, when measured according to the Department’s regulations for calculating the distances between signs. *See* Ga. Comp. R. & Regs. r. 673-6-.05(3).

6. Both signs permitted by D3674 and D3675 are located within 660 feet of the right

² The Court takes judicial notice of the general directions of the roads and the intersection as it is generally known and capable of accurate and ready determination from sources whose accuracy cannot reasonable be questioned. *See* O.C.G.A. § 24-2-201.

³ A standard permit is a condition precedent for a multi-message permit. *See* Ga. Comp. R. & Regs r. 672-6-.06(1) (requiring as a condition precedent to a multiple-message sign permit, a valid standard permit). The standard permit is not at issue in this case. [See OSAH Form 1 – Attachment One, at 1 n.1]

of way of GA-400 and on the same side of GA-400 as Victory Media's Sign.

7. Victory Media's Sign would be located 250 feet away from the right of way on the same side of GA-400 (its eastern side).

8. All three signs are on the same side of GA-400 and within 660 feet of GA-400.

9. The sign authorized by GDOT Permit No. D3674 is a multi-message sign, adjacent to GA-400 and south of Victory Media's Sign. That sign is located approximately 4,000 feet away from Victory Media's Sign.

10. The sign authorized by GDOT Permit No. D3675 was issued a multi-message sign permit by the Department in or around 2010 and continues to maintain a multi-message sign permit. This sign lies to the north of Victory Media's Sign on the same side of GA-400, approximately 1,000 feet away.

III. Conclusions of Law

1. This case concerns outdoor advertising in Georgia, which is governed by the Outdoor Advertising Control Act (the "Act"), codified at O.C.G.A. §§ 32-6-70 *et. seq.*

2. Victory Media bears the burden of proof. *See* Ga. Comp. R. & Regs. r. 616-1-2-.07(1)(b) ("[A]n applicant for a license that has been denied shall bear the burden [of proof]."). At the hearing, the Court received evidence and testimony in accordance with appropriate rules of evidence. *See* Ga. Comp. R. & Regs. r. 616-1-2-.18(1)(a).

3. The Department denied Victory Media's multi-message application pursuant to O.C.G.A. § 32-6-75(c)(1)(C). [OSAH Form 1-Attachment Two at 3]. That provision prohibits a multi-message sign from being located within 5,000 feet of another multi-message sign on the same side of the highway. *See* O.C.G.A. § 32-6-75(c)(1)(C). The Department determined that two multi-message signs holding valid permits were within 5,000 feet of Victory Media's Sign. The

distances between the other signs and Victory Media's Sign are not in dispute in this matter. Rather, Victory Media questions whether the presence of the permitted signs is even relevant for purposes of O.C.G.A. § 32-6-75(c)(1)(C) because those signs are adjacent to GA-400, while Victory Media's Sign is adjacent to GA-53. Thus, question at hand is one of interpretation of O.C.G.A. § 32-6-75(c)(1)(C).

4. The Court concludes the Department properly interpreted and applied O.C.G.A. § 32-6-75(c)(1)(C) when considering and denying Victory Media's application for a multi-message sign permit. That Code section provides, in relevant part:

(c)(1) Multiple message signs shall be permitted on the interstate system, primary highways, and other highways under the following conditions:

(C) No such multiple message sign shall be placed within 5,000 feet of another multiple message sign on the same side of the highway.

O.C.G.A. § 32-6-75(c)(1)(C). The plain language of the statute demonstrates that a multiple-message sign cannot be placed within 5,000 feet of another multi-message sign located "on the same side of the highway." Here, all three signs are located on the "same side" of GA-400, and there is no dispute Victory Media's Sign is within 5,000 feet of either sign when measured along the same side of GA-400. *Cf. Deal v. Coleman*, 294 Ga. 170, 172–73 (2013) (explaining that questions involving statutory interpretation begin with the "plain and ordinary" meaning of the words in the statute and end there when no ambiguity exists).

5. Victory Media contends that its Sign is located on GA-53, not on GA-400. Victory Media's Sign is located approximately 250 feet away from GA-400. Because the Sign is within 660 feet of GA-400, the Sign is considered to be located on GA-400 as well as GA-53. *See* O.C.G.A. § 32-6-72(4)–(5) (permitting outdoor advertising signs when they are "within 660 feet of the nearest edge of the right of way and visible from the main traveled way of the interstate or

primary highways in this state”); *cf.* O.C.G.A. § 32-6-75(a) (“No sign authorized by paragraphs (4) through (6) of Code Section 32-6-72 . . . shall be erected or maintained which . . .”). Thus, the spacing limitation in O.C.G.A. § 32-6-75(c)(1)(C) applies not only to outdoor advertising signs located on the same side of GA-53 as Victory Media’s Sign, but also to signs located on the same side of GA-400 as Victory Media’s Sign. Here, it is irrelevant that no multi-message sign is located within 5,000 feet of Victory Media’s Sign along GA-53, because there are two signs within 5,000 feet of Victory Media’s Sign along GA-400.

6. “The intent of the General Assembly, when the entire Act is read together, is to protect the public travelling along the highway from distractions, from aesthetic desecration and from nuisances all associated with the proliferation of signs in a concentrated area along the highway.” *Turner Comm’cns. Corp. v. Ga. Dept. of Transp.*, 139 Ga. App. 436, 438 (1976). Here, the Department’s interpretation of the Act comports with those purposes. The Act intends to control the proliferation of signs along the roadways, and the Department’s interpretation of O.C.G.A. § 32-6-75(c)(1)(C) furthers the purpose of preventing signs from concentrating too closely to one another. The Court finds here that the Department’s interpretation and application of the Code section is supported by the plain language of the text and comports with the purpose of the Act. *See Eagle West, LLC v. Ga. Dept. of Transp.*, 312 Ga. App. 882, 885–86 (2011) (explaining that the Department’s interpretation of the Act is entitled to deference when the interpretation is supported by the plain language of the text and the purposes of the Act).

7. At the hearing, Victory Media raised two additional arguments as to why the Department’s denial of its application was erroneous. Victory Media argued that GDOT Permit Nos. 3674 and 3675 were invalid permits because the signs were not constructed within 12 months of the permits having been issued. Additionally, GDOT Permit No. 03675 is a reader board, not a

multi-message sign, and thus it should not have factored into the Department's determination. The Court addresses those arguments below, beginning with the latter argument.

8. As Buddy Sanders, outdoor advertisement manager for the Department, testified at the hearing, GDOT Permit No. 3675 is a valid multi-message permit in good-standing with the Department. Although the sign currently operates as a reader board and would not currently require a multi-message permit if permitted today, nothing prevents the permittee from maintaining its multi-message permit that it has held since approximately 2010. Furthermore, Victory Media identified no basis in the law or the Department's rules that would allow the Department to simply invalidate a valid multi-message permit or otherwise ignore the permit for purposes of considering Victory Media's application. Had Victory Media pointed to support for such a conclusion, it still would not necessitate reversal of the Department's denial of Victory Media's application in light of GDOT Permit No. 03674, and the reasoning above.

9. The Court rejects Victory Media's other argument that GDOT Permit Nos. 3674 and 3675 are invalid because the signs were not constructed within 12 months of the issuance of such permits. The evidence presented at the hearing does not demand a finding that the two permits are invalid. As Mr. Sanders testified at the hearing, the Department's records do not indicate that the permits are invalid. Prior to the hearing, the Department was not notified of any potential issues with the permits. The Department has never considered the permits invalid, nor has the validity of the permits been questioned. As Mr. Sanders testified, both permits are active and in good standing with the Department. The permit holders operating these signs have relied and continue to rely on the Department's determination in this respect. Due process would require that they be given notice and an opportunity to be heard before their permits be revoked by the Department. The Department cannot simply revoke their permits without the permittees first

having been given notice and an opportunity to be heard on the issue. *See Goldrush II v. City of Marietta*, 267 Ga. 683, 693 (1997) (“Due process also requires that one . . . whose valid license is being revoked or suspended, be given notice and an opportunity to be heard.”).


10. Additionally, Beth Perkins, half-owner of Victory Media testified at the hearing. Ms. Perkins was the outdoor advertisement manager at the Department from July 2013 to November 2015, during which time Permit Nos. 3674 and 3675 remained in place. Ms. Perkins did not revoke the sign permits, a fact that buttresses the Department’s position in the instant action that revocation of Permit Nos. 3674 and 3675 is not required.

11. Based on the above, the Court concludes that Victory Media has not proven by a preponderance of evidence that the denial of its multi-message sign permit application was improper.

IV. CONCLUSION

For the reasons above, the Department’s decision to deny Victory Media’s application in this matter is **AFFIRMED**.

SO ORDERED, this 17th day of August 2022.



Shakara M. Barnes
Administrative Law Judge

