

Section 31—The supreme judicial and superior courts shall have jurisdiction in equity upon petition of the attorney general, of any town or any officer thereof, or of any interested party, to restrain the erection or maintenance of any bill board, sign or other device erected or maintained in violation of any rule, regulation, ordinance or by-law established or adopted under section twenty-nine, and to order the removal or abatement of such bill board, sign or device as a nuisance.

Section 32—Sections twenty-nine to thirty-one, inclusive, and thirty-three shall not apply to signs or other devices on or in the rolling stock, stations, subways or structures of or used by common carriers, except advertising signs or other advertising devices on bridges or viaducts, or abutments thereof.

Section 33—Whoever violates any rule, regulation ordinance or by-law established or adopted under section twenty-nine shall be punished by a fine of not more than one hundred dollars, and whoever after conviction of such violation unlawfully maintains such a bill board, sign or other device for twenty days thereafter shall be punished by a fine of not more than five hundred dollars.

### III—Limitations of the Law:

Under this head some peculiarities of section 30 should be noticed. First, its prohibition applies specifically only to advertisements of "any business, article, substance or any other thing," and therefore not to advertisements of persons—as, for example, of a political candidate or party; but this omission makes no difference, as the powers of regulation granted to the highway division and to cities and towns in section 29 are not so limited, and apply to all classes of advertisements. Second, the exemption granted by section 30 to devices that advertise only the person or business occupying the premises, or advertise only the property itself as for sale or to let, applies specifically to that section only. Therefore, it does not exempt such devices from any regulations established under section 29 or from the penalties prescribed in section 33. It follows that section 30 might be omitted without changing the effect of the law.

The power of the highway division and of cities and towns to establish regulations under section 29 are nevertheless limited in scope by section 32, which exempts certain property of railroads, and by section 33, which prescribes the penalties for violation of the regulations. It is probable that additional penalties could not be imposed by rules of the division or by municipalities, consistently with this section.

The penalties are further limited in certain cases by chapter 81, of which section 9 fixes a limit of fifty

dollars' fine for attaching an advertisement of any kind to a tree in a public way or place, except on a written permit from a tree warden or other officer having charge of such trees; and by chapter 85, section 8, which limits the fine for a breach of the rules of the local authorities over signs in public ways to not more than five dollars for each day that an unauthorized sign is maintained in a public way after five days' notice to remove the same has been given.

Otherwise this law puts no limit upon the authority of the state highway division to make regulations for outdoor advertising, or upon the power of cities and towns to make further regulations consistent therewith. The fundamental sanction for the law, however, is in the police power of the state, as limited by its constitution and by the constitution of the United States, and it is these documents, as interpreted by the courts, that will finally determine the limits to which restriction of outdoor advertising on private property can be carried.

The power of the state and of municipalities to make regulations to protect the public health, safety and morals has long been established; but, previous to 1918, certain Massachusetts court decisions had held that the right of an owner to do as he pleased with his own property could not be restricted on purely esthetic grounds. In that year the Constitutional Convention submitted to the people of Massachusetts an amendment which now forms Article 72 of the revised state constitution, as follows:

"Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law." The adoption of this article followed the recommendation of a special legislative commission, of three eminent lawyers, including the attorney general, which had reported that such an amendment was necessary to legalize the restriction of outdoor advertising "because of its unsightliness"—(H. doc. 1637 of 1915.) The ratification of this amendment by popular vote established the competency of the police power to regulate unsightly advertising on private property under the authority of our state constitution.

The qualifying phrase "within public view" clearly indicates unsightliness as a lawful reason for restric-