

IN THE COURT OF APPEALS OF IOWA

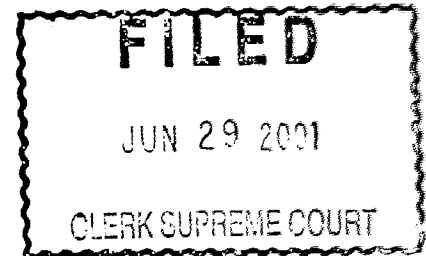
No. 1-197 / 00-1073

Filed June 29, 2001

CHANCELLOR MEDIA CORPORATION
and THE LAMAR CORPORATION,
Petitioners-Appellants,

vs.

IOWA DEPARTMENT OF
TRANSPORTATION,
Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, Linda R. Reade,
Judge.

The petitioners appeal from the district court's ruling affirming the respondent's decision revoking the permit for legal nonconforming billboards under Iowa Code chapter 306C (1999). **AFFIRMED.**

Richard A. Malm of Dickinson, Mackaman, Tyler & Hagen, A Professional Corporation, Des Moines, for appellants.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellee.

Heard by Sackett, C.J., and Huitink and Zimmer, JJ.

SACKETT, C.J.

Petitioner-Appellants Chancellor Media Corporation (Chancellor) and the Lamar Corporation (Lamar) challenge the district court's affirmance of an Iowa Department of Transportation ruling revoking permits for four advertising signs in Iowa County, Iowa. Appellants contend the district court erred in denying their application to remand for additional evidence and in sustaining the agency action. We affirm.

The four advertising signs were destroyed in a windstorm in June of 1998 following which Iowa and three neighboring counties were declared federal disaster areas. The signs, originally owned by Chancellor and now owned by Lamar, were reconstructed at a cost exceeding sixty percent of their initial value. There were no communications between appellants and the Iowa Department of Transportation (IDOT) until February 24, 1999, when the IDOT notified appellants that because the signs had been destroyed, permits for the signs were revoked. Appellants appealed the revocations to the Right of Way Director of the IDOT.

A hearing was held before an Administrative Law Judge who upheld the revocation. A petition for judicial review was filed by appellants asking the district court to remand the case for consideration of additional evidence in the form of an executive order issued by the Honorable Tom Vilsack after the administrative record had been closed but before the final agency decision. The district court denied the application for consideration of additional evidence and sustained the agency action.

We first address appellants' claim that the district court should have allowed evidence of the governor's executive order. That order required every

rule-making agency to promulgate a Uniform Waiver Rule allowing the agency, except when prohibited by statute, to grant a waiver of a rule adopted by that agency, subject to certain conditions.

The district court has discretionary authority to permit a party to present additional evidence not included in an agency record. *See Hollensbe v. Iowa Dep't of Job Service*, 418 N.W.2d 77, 80 (Iowa Ct. App. 1987).

The agency argues, the district court found and we agree that we are dealing with the enforcement and interpretation of statutes. The executive order issued does not make exceptions to the statutes. The executive order is not material to the issues in this appeal. The district court did not error in denying appellants application to present additional evidence.

Appellants next contend the agency made two errors at law, which the district court sustained. Appellants contend the agency decision is incorrectly based on a literal reading of Iowa Code section 306C.12. That section provides:

An advertising device shall not be constructed or reconstructed beyond the adjacent area in unincorporated areas of the state if it is visible from the main-traveled way of any interstate or primary highway except for advertising devices permitted in section 306C.11 subsections 1 and 2, and municipal recognition signs erected by any city. Any advertising device permitted beyond an adjacent area in unincorporated areas of the state shall be subject to the applicable permit provisions of section 306C.18.

Appellants do not contend the statute is unclear or ambiguous. Rather, they argue there should be an implied exception to restore a nonconforming billboard following its destruction by a natural disaster.

Under Iowa law principles of statutory construction are not invoked unless the statute is ambiguous. *City of Waukee v. City Development Board*, 590 N.W.2d 712, 717 (Iowa 1999). When the statute is not ambiguous, a court

should not search for a meaning beyond its expressed terms. *State v. Knowles*, 602 N.W.2d 800, 801 (Iowa 1999). The rules of statutory construction cannot be employed to raise ambiguity in a statute; rather, the ambiguity must be found prior to employing any rules of statutory construction. *Iowa West Racing Ass'n v. Iowa Racing and Gaming Comm'n*, 546 N.W.2d 898, 900 (Iowa 1996).

There is no basis to accept appellants' invitation to construe section 306C.12 to provide for an implied exception where, as here, a nonconforming sign has been destroyed by a natural disaster.

Appellants also contend the IDOT erred in refusing to give consideration to the consequences of the disaster. Administrative agencies such as the Department of Transportation "have only such power as is specifically conferred or necessarily implied from the statute creating them." *Iowa Dep't of Social Services v. Blair*, 294 N.W.2d 567, 569-70 (Iowa 1980). Consequently, if the relevant statute does not give the IDOT authority to exercise discretion on the question of which signs will be allowed to be reconstructed, then the IDOT has no such discretion. In such cases the failure to exercise discretion is not improper. *Cf. Barnes v. Iowa Dep't of Transp.*, 385 N.W.2d 260, 262 (Iowa 1986) (when agency performs action that is statutorily mandated, no allegation of arbitrary or capricious action can be made). Iowa Code section 306C.12 prohibits reconstruction of the signs at issue, therefore the IDOT had no discretion to exercise. We affirm on this issue.

AFFIRMED.