

*Be it enacted, etc., as follows:*

Chapter 223 of the General Laws is hereby amended by inserting after section 31 the following section: —

*Section 31A.* Personal service of a writ or summons upon a defendant while he is exercising his right to vote shall be null and void.

*Approved June 29, 1973.*

**Chap. 468.** AN ACT PROVIDING FOR A PENALTY FOR INDECENT ASSAULT AND BATTERY ON A MENTALLY RETARDED PERSON.

*Be it enacted, etc., as follows:*

Chapter 265 of the General Laws is hereby amended by inserting after section 13E the following section: —

*Section 13F.* Whoever commits an indecent assault and battery on a mentally retarded person knowing such person to be mentally retarded shall for the first offense be punished by imprisonment in the state prison for not less than five years or not more than ten years; and for a second or subsequent offense, by imprisonment in the state prison for not less than ten years. Except in the case of a conviction for the first offense for violation of this section, the imposition or execution of the sentence shall not be suspended, and no probation or parole shall be granted until the minimum imprisonment herein provided for the offense shall have been served. This section shall not apply to the commission of an indecent assault and battery by a mentally retarded person upon another mentally retarded person.

*Approved June 29, 1973.*

**Chap. 469.** AN ACT MAKING THE CONTROLLED SUBSTANCES ACT CONFORM WITH FEDERAL LAW CONCERNING THE CONFIDENTIALITY OF THE IDENTITY OF PERSONS SUBJECT TO CERTAIN RESEARCH.

*Be it enacted, etc., as follows:*

Section 24 of chapter 94C of the General Laws is hereby amended by adding the following subsection: —

(g) This section shall not apply to a practitioner who has been authorized by the Attorney General of the United States to withhold the names and other identifying characteristics of certain persons pursuant to 21 U.S.C. § 872 (c). *Approved June 29, 1973.*

**Chap. 470.** AN ACT ESTABLISHING THE OLD KING'S HIGHWAY REGIONAL HISTORIC DISTRICT AND THE OLD KING'S HIGHWAY REGIONAL HISTORIC DISTRICT COMMISSION IN BARNSTABLE COUNTY.

*Be it enacted, etc., as follows:*

**SECTION 1.** *Purpose.* — The purpose of this act is to promote the general welfare of the inhabitants of the applicable regional member

towns so included, through the promotion of the educational, cultural, economic, aesthetic and literary significance, through the preservation and protection of buildings, setting, and places within the boundaries of the regional district, and through the development and maintenance of appropriate settings, the exterior appearance of such buildings and places, so as to preserve and maintain such regional district as a contemporary landmark compatible with the historic, cultural literary and aesthetic tradition of Barnstable county, as it existed in the early days of Cape Cod, and through the promotion of these past historic associations of Barnstable county.

**SECTION 2.** *Establishment of the Old King's Highway Regional Historic District.* — There is hereby established in Barnstable county a regional historic district, to be known as the Old King's Highway Regional Historic District, hereinafter called the district, bounded and described as follows: —

Beginning at a point on the foreshores of Cape Cod Bay at the mean low water line, and on the boundary line between the town of Bourne, Barnstable county and the town of Plymouth, Plymouth county; thence southwesterly by said boundary line between the towns of Bourne and Plymouth to a point where said boundary line intersects with the center line of the layout of the state highway known as route 3; thence in a southerly direction by said center line of route 3 traversing the Sagamore rotary at its center and continuing along the center line of the Sagamore bridge, so called, spanning the waterway known as the Cape Cod Canal; thence continuing by the center line of the state highway layout of route 6-Mid-Cape Highway, in a southerly, southeasterly, easterly, northeasterly, and northerly direction, traversing the towns of Bourne, Sandwich, Barnstable, Yarmouth, Dennis, Harwich, Brewster, and Orleans, crossing above or below and intersecting, various public ways, ancient ways, rivers, streams, lakes, inlets, bays, and various appurtenances, to a point lying at the center of the state highway rotary layout at Eastham, Barnstable County, Massachusetts where said route 3 intersects with route 6A; thence to a point on the center line of route 6 at its commencement in the town of Eastham; thence in a northerly direction along the center line of route 6 traversing the town of Eastham to a point on the center line where route 6 intersects the boundary line between the towns of Eastham and Wellfleet; thence in a westerly and northwesterly direction along the aforementioned boundary line between the towns of Eastham and Wellfleet to a point on the foreshores of Cape Cod Bay where the Eastham, Wellfleet town boundary intersects the mean low water line; thence in a southerly, southwesterly, westerly, northwesterly, northerly, northeasterly, easterly and southeasterly direction along the mean low water line of Cape Cod Bay traversing all inlets, streams, rivers at their entrance to Cape Cod Bay to the point of beginning, meaning and intending to include all islands along the foreshores of Cape Cod Bay to a distance of three nautical miles from the shores thereof, and every bank, flat, marsh, meadow, swamp and island within the Great Marshes so called, lying within the town of Barnstable.

SECTION 3. *Definitions.* — As used in this act the following words and terms, unless the text otherwise requires, shall have the following meanings: —

“Building” — a combination of structural materials having a roof, forming a shelter for persons, animals or property.

“Building inspector” — the building inspector for the individual regional town.

“Erected” — shall include the words “built”, “constructed”, “reconstructed”, “restored”, “altered”, “enlarged” and “moved”.

“Exterior architectural feature” — the architectural style and general arrangement of such portion of the exterior of a building so designed to be subject to view from a public street, way or public place; including kind, color and texture of the building materials of such portion or type of all windows, doors, lights, and signs and other fixtures appurtenant to such portion.

“Heritage” — values in the cultural life of the past, because of their importance to the community life of Cape Cod, which have come down through the generations to make up our way of life. This has been achieved by means of old buildings, industry, furniture, utensils, old happenings and expressions. They have made the unique salty flavor of Cape Cod that will never be forgotten but will be preserved for future generations, as a means of insuring the integration of those qualities into a contemporary way of living.

“Person” — an individual, a corporation, or unincorporated organization or association.

“Structure” — a combination of materials other than a building, sign or billboard, but including stone walls, flagpoles, hedges, gates and fences.

“Town” — the individual regional town of Bourne, Sandwich, Barnstable, Yarmouth, Dennis, Harwich, Brewster, Orleans or Eastham.

SECTION 4. *Establishment and Organization of the Old King's Highway Regional Historic District Commission.* — There is hereby established the Old King's Highway Regional Historic District Commission, hereinafter called the commission, consisting of nine members, each of whom shall be a chairman of a member town historic district committee of the following towns: Bourne, Sandwich, Barnstable, Yarmouth, Dennis, Harwich, Brewster, Orleans and Eastham.

The commission shall elect a chairman and a secretary from its membership. In the case of the absence of the chairman from any meeting, the members present shall elect a temporary chairman.

Six members of the commission shall constitute a quorum.

The commission meetings shall be at the call of the chairman and shall be held at least monthly, and notice of such meetings shall be published at least seven days in advance of the date of such meeting in a newspaper published within Barnstable county and distributed in each member town, and additionally published at the discretion of the chairman in other newspapers of appropriate distribution.

The commission shall hear and make findings on the initial appeal

by aggrieved parties as provided in section eleven.

The commission shall establish criteria and maintain general policy from time to time in connection with the administration of the regional district, and may recommend changes in this act, which shall be submitted to the registered voters on referendum ballot during the annual election held in each member town. If the vote is in the affirmative, submission of such recommended changes shall be submitted to the general court for approval.

**SECTION 5. *Establishment and Organization of Town Historic District Committees.*** — There is hereby established within each of the member towns of the district a town historic district committee, hereinafter called the committee, consisting of five unpaid members, of whom four shall be residents of the district, excepting within the towns of Bourne, Harwich and Orleans, where at least three shall be residents of the district. At least one member on each committee shall be an architect, who need not be a resident of the district. In the event no architect is available for service on the committee, a building contractor with not less than five years' experience in the building trades may be appointed a member of the committee in lieu of the architect.

The initial members of the committee shall be appointed by the selectmen of each town for terms expiring, in the case of the architect or building contractor, whichever the case may be, at the end of one year, and in the case of the remaining members, at the end of one, two, three and four years, respectively, from the first day of January following such appointments. Thereafter, the architect or building contractor shall be appointed annually by said selectmen.

Upon expiration, the term of any of the members, other than that of the architect, shall be filled by the election of a successor at a meeting of registered voters residing in the district held annually at the call of the selectmen one to two months prior to such expiration. Said election shall be held in accordance with such rules and regulations as the selectmen may prescribe. The term of members so elected shall be four years.

The committee shall elect a chairman and a secretary from its membership. In the case of the absence of the chairman from any meeting, the members present shall elect a temporary chairman.

Three members of the committee shall constitute a quorum.

Any member may be removed for cause by the selectmen of any member town after a public hearing upon written charges.

Vacancies occurring in the committee other than by expiration of term of office, shall be filled by appointment by the selectmen. Such appointment shall be only for the unexpired portion of the term of the member replaced. The committee may expend such funds as may be appropriated annually.

**SECTION 6. *Limitations.*** — No building, structure or part thereof, except as hereinafter provided, shall be erected within the district unless and until an application for a certificate of appropriateness as to the exterior architectural features shall have been filed with the committee. Either a certificate of appropriateness or a certificate

that no exterior architectural feature is involved shall be issued by the committee before erection.

No building, structure or any part thereof within the district, except as hereinafter provided, shall be demolished or removed unless and until an application for a permit to demolish or remove the same shall have been filed with the committee.

No occupational, commercial or other sign, except as hereinafter provided, and no billboard shall be erected or displayed on any lot or on the exterior of any building or structure within the district unless and until an application for a certificate of appropriateness shall have been filed and shall have been issued by the committee. In the case of any sign or billboard erected or displayed prior to the effective date of this act, there shall be allowed a period of three years subsequent to said effective date in which to obtain such certificate.

Except in cases excluded by section seven, no permit shall be issued by the building inspector for any building or structure to be erected within the district, unless the application for said permit shall be accompanied either by a certificate of appropriateness or a certificate that no exterior architectural feature is involved has been issued under said section seven.

**SECTION 7. Exclusions.** — Nothing in this act shall be construed to prevent the ordinary maintenance and such repairs as do not change any exterior architectural feature of any building or structure within the district; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, restoration, alteration or demolition of any such existing feature which the building inspector shall certify is required by the public safety because of an unsafe or dangerous condition; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, restoration, alteration or demolition of any such feature under a permit issued by the building inspector prior to the effective date of this act.

The following structures and signs may be erected or displayed within the district without the filing of an application for, or the issuance of a certificate of appropriateness:—

1. Temporary structures or signs for use in connection with any official celebration or parade or any charitable drive in a member town; provided that any such structure or sign shall be removed within three days following the termination of the celebration, parade or charitable drive for which said structure or sign shall have been erected or displayed. Any other temporary structures or signs which the committee shall determine do not substantially derogate from the intent and purposes of this act may from time to time be excluded from the provisions of section six.

2. Real estate signs of not more than three square feet in area advertising the sale or rental of the premises on which they are erected or displayed.

3. Occupational signs of not more than one square foot in area and not more than one such sign, irrespective of size bearing the

name, occupation or address of the occupant of the premises on which such sign is erected or displayed where such premises are located within a residential area, as defined in the zoning by-laws of the member town.

The exterior color of any building or structure within the district may be changed to white without the filing of an application for, or the issuance of, a certificate of appropriateness or to any color or any combination of colors which the committee shall determine from time to time may be used without substantial derogation from the intent and purposes of this act.

SECTION 8. *Application to be Filed with Committee.* — Excepting cases excluded by section seven, any person, including the member town, who desires to erect, move or demolish or remove or change the exterior color features of any building or structure within the district, or to erect or display within the district any sign or billboard for which a certificate of appropriateness is required under section six, shall file with the committee an application for a certificate of appropriateness or a permit for demolition or removal, as the case may be, together with such plans, elevations, specifications, material and other information as shall be deemed necessary by the committee to enable it to make a determination on the application.

SECTION 9. *Meetings, Hearings, Time for Making Determinations.* — Meetings of the committee shall be held at the call of the chairman and also when called in such other manner as the committee shall determine by its rules.

The committee shall determine promptly after the filing of an application for a certificate of appropriateness as to exterior architectural features, whether the application involves any such features. If the committee determines that such application involves any exterior architectural features, the committee shall hold a public hearing thereon.

The committee shall fix a reasonable time for the hearing on any application and shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper at least fourteen days before said hearing and also, not less than seven days prior to said hearing, mail a copy of said notice to the applicant, to owners of property abutting the premises to be affected as they appear on the most recent local tax list, to the planning board of the town, and to such other persons as the committee shall deem entitled to notice.

As soon as convenient after such public hearing, but in any event within sixty days after the filing of the application, or within such further time as the applicant shall allow in writing, the committee shall make a determination on the application. If the committee shall fail to make a determination within said sixty days, or within such further time allowed by the committee shall be deemed to have approved the application.

SECTION 10. *Powers, Functions and Duties of Committee.* — The committee shall pass upon:—

(a) The appropriateness of exterior architectural features of build-

ings and structures to be erected within the district.

(b) The demolition or removal of any building or structure or any part thereof within the district. The committee may refuse a permit for the demolition or removal of any building or structure of architectural or historic interest, the removal of which in the opinion of the committee would be detrimental to the public interest.

(c) The appropriateness of the erection or display of occupational, commercial or other signs and billboards within the district wherever a certificate of appropriateness for any such sign or billboard is required under section six.

In passing upon appropriateness, demolition or removal, the committee shall determine whether the size, features, demolition or removal, sign or billboard involved will be appropriate for the purposes of this act, and, if it shall be determined to be inappropriate, shall determine whether, owing to conditions especially affecting the building, structure, sign or billboard involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this act. If the committee determines that the features, demolition or removal, sign or billboard involved will be appropriate or, although inappropriate, owing to conditions as aforesaid, failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without substantial detriment or derogation as aforesaid, the committee shall approve the application; but if the committee does not so determine, the application shall be disapproved.

In passing upon appropriateness, the committee shall consider, among other things, the historical value and significance of the building or structure, the general design, arrangement, texture, material and color of the features, sign or billboard involved and the relation of such factors to similar factors of buildings and structures in the immediate surroundings. The committee shall consider settings, relative size of buildings and structures, but shall not consider detailed designs, interior arrangement and other building features not subject to public view. The committee shall not make any recommendations or requirements except for the purpose of preventing changes in exterior architectural features obviously incongruous to the purposes set forth in this act.

The concurring vote of three members of the committee shall be necessary to make a determination in favor of the applicant on any matter upon which the committee is required to pass under this act.

SECTION 11. *Appeals.* — Any person aggrieved by the determination of the committee or by an approval of an application through failure of the committee to make a determination within the time allowed under section nine, whether or not previously a party to the proceeding, may, within twenty days after the filing of a notice of such determination with the town clerk, or within twenty days after approval by failure to make a determination within said time limit,

appeal to the commission. The commission shall, within thirty days after receipt of such appeal in writing from the aggrieved, hear all pertinent evidence and determine the facts, and if, upon the facts so determined, the commission finds that the committee exceeded its authority or exercised poor judgment, was arbitrary, capricious, or erroneous in its action, the commission shall annul the committee determination or approval and remand the case to said committee for further action.

Any person aggrieved by the action of the commission may, within thirty days after notice of said decision, appeal to the superior court sitting in equity for the county of Barnstable. The court shall hear all pertinent evidence and determine the facts, and if, upon the facts so determined, such determination or approval is found to exceed the authority of the commission, the court shall annul such determination or approval, and remand the case for further action by the commission. The remedies provided by this action shall be exclusive, but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission or the committee unless it shall appear to the court that they either acted in bad faith or with malice in the matter from which the appeal was taken.

Costs shall not be allowed against the party appealing from such determination or approval of the commission unless it shall appear to the court that said party acted in bad faith or with malice in making the appeal to the court.

**SECTION 12. *Enforcement.*** — Any person who violates any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars.

The superior court sitting in equity for the county of Barnstable shall have jurisdiction to enforce the provisions of this act and the determinations, rulings and regulations issued thereunder and may restrain by injunction violations thereof and issue such other orders for relief of violations as may be required.

**SECTION 13. *Severability of Provisions.*** — The provisions of this act shall be deemed to be severable, and in case any part of this act shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the validity of any other part.

**SECTION 14. *Apportionment of Expenses.*** — The commission may determine the expenses of the district and apportion the same equally among the member towns comprising such district, and shall promptly thereafter notify the treasurers of such towns of such apportionment. Every town treasurer so notified shall annually certify the amount of such apportionment to the board of assessors of his municipality, who shall include such amount in the tax levy of the following year. Upon order of the commission the town treasurer of each of the towns of the district shall from time to time pay to the district treasurer a sum or sums not exceeding, in the aggregate, the amount certified by the commission as its respective share of the

costs and expenses of the district.

SECTION 15. *Prior Historic Districts.* — Upon the establishment of the district, any historic district theretofore established in any member town within the district shall cease to exist.

SECTION 16. *Acceptance of Act.* — The following question shall be printed on the ballots of the member towns as listed in section four to be used in the biennial state election in November, nineteen hundred and seventy-four: —

“Shall an act passed by the general court in the year nineteen hundred and seventy-three, entitled ‘An Act establishing the Old King’s Highway Regional Historic District and the Old King’s Highway Regional Historic District Commission in Barnstable county’, be accepted?” If a majority of the voters present and voting in the regional district towns shall vote in the affirmative, this act shall become fully effective and the said district shall be deemed to be established forthwith, but not otherwise. If a majority of the voters present and voting in the member towns in the said election fail to vote in the affirmative, the said question shall be printed on the ballots to be used in the biennial state election in November, nineteen hundred and seventy-six. If a majority of the voters present and voting in the member towns shall vote in the affirmative at said election, this act shall become fully effective and the said district shall be deemed to be established forthwith, but not otherwise. If a majority of the voters present and voting in the member towns fail to vote in the affirmative in the said election, the said question shall be printed on the ballots to be used in the biennial state election in November, nineteen hundred and seventy-eight. If a majority of the voters present and voting in the member towns shall vote in the affirmative at said election, this act shall become fully effective and the said district shall be deemed to be established forthwith, but not otherwise. If this act is not accepted in the November, nineteen hundred and seventy-eight election, the question of acceptance may be placed upon the ballot of any subsequent state biennial election, provided that, prior to September first of the year it is to be voted upon, a petition signed by not less than fifteen per cent of the registered voters in each of the towns listed in section four has been filed with the selectmen of the respective towns. The selectmen shall refer the petitions to the registrars of voters for certification and the registrars of each town shall notify the state secretary of the percentage of valid signatures. The state secretary shall in turn notify the selectmen of each town whether or not sufficient signatures have been certified to place the question on the ballot. If a majority of the voters present and voting in the regional district towns in such subsequent state election shall vote in the affirmative, this act shall become fully effective and the said district shall be deemed to be established forthwith, but not otherwise. *Approved June 29, 1973.*

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**Chap. 471.** AN ACT FURTHER REGULATING THE WITHHOLDING OF RENT FOR PREMISES IN VIOLATION OF CERTAIN STANDARDS OF FITNESS FOR HABITATION.