

PI 19417

The State of South Carolina



Dumont 85-141

Office of the Attorney General

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December 11, 1985

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Dear Mr. Brown:

By your letter and accompanying memorandum of November 22, 1985, you have asked for the opinion of this Office on whether a municipality may purchase, own, and operate a cable telecommunication system and further whether the municipality may pledge its full faith and credit and revenues to pay the debt incurred in purchasing such a system. For the reasons following, we concur with your conclusion that each of the proposed actions would be permissible.

Municipalities have only such powers as are granted to them by the state in their charters or by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). These powers may be expressly granted or may be fairly implied from or necessarily incidental to those powers expressly granted. Marshall v. Rose, 213 S.C. 428, 49 S.E.2d 720 (1948). Furthermore, powers of a municipality are to be liberally construed in favor of the municipality. Section 5-7-10, Code of Laws of South Carolina (1976). With this framework in mind, relevant statutory and constitutional provisions will first be examined.

Article VIII, Section 16 of the State Constitution provides in relevant part:

Any incorporated municipality may, upon a majority vote of the electors of such political subdivision who shall vote on the question, acquire by initial construction or

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purchase and may operate gas, water, sewer, electric, transportation or other public utility systems and plants. ... [Emphasis added.]

In addition, a municipality is empowered by Section 5-7-30 of the Code to enact ordinances, regulations, or resolutions on any subject as may be necessary or proper for the convenience of the municipality and further to engage in the recreation function. Whether the purchase and operation of a cable telecommunication system is included within these provisions as an "other public utility system[]" or as a matter of convenience or recreation must thus be decided.

There is a split of authority as to whether a cable telecommunication system is a public utility. In White v. City of Ann Arbor, 406 Mich. 554, 281 N.W.2d 283 (1979), a cable television system was found to be a public utility, being similar to telephone services. In Greater Fremont, Inc. v. City of Fremont, 302 F.Supp. 652 (N. D. Ohio 1968), a community antenna television system was found not to be a public utility, but the system was owned and operated by a corporation rather than a municipality, a fact readily distinguishable from the situation you have presented. The court stated:

The things owned by a city are "public utilities" since the ownership and operation of them has been undertaken for the benefit and use of the general public. Usually the particular services are adopted by the city to fill some great public interest or need in an area where it is felt that governmental ownership can produce better service. ...

302 F.Supp. at 665. Citing constitutional provisions similar to South Carolina's, the court concluded that there was no question that a municipality could establish a CATV system. Thus, a cable telecommunication system could most probably be considered a "public utility."

The only case which we were able to locate in which a municipality owned a cable television system is City of Issaquah v. Teleprompter Corporation, 93 Wash.2d 567, 611 P.2d 741 (1980); a copy is enclosed for your use. The issue of whether a municipality might acquire, own and operate a cable television system within its municipal borders was decided affirmatively. While Washington statutes are somewhat different and the court concludes that cable television is not a utility but a luxury,

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the court concluded that cable television activity was within the broad range of powers granted to municipalities.

While a municipality could arguably operate a cable telecommunication system as a public utility under Article VIII, Section 16, if the required referendum were successful, the municipality might also do so under an alternative theory from the Teleprompter case, as a matter of luxury or convenience for the residents of the municipality. Considering that recreation is "a means of getting diversion or entertainment," Webster's Third New International Dictionary 1899, the provision of cable telecommunication services may be viewed as an aspect of engaging in recreation. Thus, under the broad grant of powers to a municipality under Section 5-7-30 of the Code, ownership and operation of a cable telecommunication system by a municipality would most probably be permissible.

We would note that Section 58-12-10 et seq. of the Code, would permit a municipality to issue franchise licenses to operators of cable television systems and otherwise regulate such systems. This grant of power does not appear to preclude a municipality from owning and operating its own system, however.

While the acquisition and operation of such a system by a municipality appears to be permissible under this State's constitutional and statutory provisions, there are other considerations. For example, you may wish to check with the Federal Communications Commission to determine the applicability of the Federal Communications Act of 1934, particularly 47 U.S.C. §§ 151 et seq. and regulations promulgated thereunder. In addition, the procedure to be used to acquire the system is not known to this Office. If a franchise is to be terminated, the Teleprompter decision enclosed herewith may be helpful. Depending upon the procedure to be followed, there may be other considerations of which you would be aware. We would note that this opinion comments only on the concept of a municipality owning and operating a cable television system, as no specific proposals or documents have been provided to this Office for review.

You have also asked whether the full faith and credit and revenues of the municipality may be pledged for the purchase of such a system. Section 5-7-30 of the Code permits a municipality to "pledge revenues to be collected and the full faith and credit of the municipality against its note." This express grant of power would permit a municipality to pledge its full faith and credit as well as revenues for payment of the debt incurred in purchasing a cable telecommunication system.

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Based on the foregoing, this Office concurs with your conclusions that a municipality may acquire, own, and operate a cable telecommunication system and further that the full faith and credit and revenues of the municipality may be pledged for the payment of the debt created by the purchase.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
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