1972 S.C. Op. Atty. Gen. 91 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3287, 1972 WL 20431

Office of the Attorney General

State of South Carolina
Opinion No. 3287
March 24, 1972

***1 Unless special legislation prohibits it, states have a basic, well established right to grant franchises in certain areas of public service and state legislatures may delegate this authority to political subdivisions.**

Governor
State of South Carolina

You have inquired as to the constitutional validity of a bill granting to Richland County the right to grant franchies in the area of cable television—with particular reference to its application where a private indivudal or company has expended large sums in the partial construction of a cable-tv system before the County was enabled to exercise the State's right to grant a franchise.

The basic right of a state to grant franchises in certain areas of public service is so well established that it is no longer vulnerable to attack on constitutional grounds. And it is equally well established, except where specific state constitutions have prohibiting provisions, that state legislatures may delegate this authority to political subdivisions. 36 Am. Jur. 2d, Franchises, Sec. 9 *et seq*. An inspection of the subject bill does not reflect any constitutional objection.

Question involving alleged vested rights of individuals or other legal entities who have expended effort and monies in creating facilities prior to the exercise by the state of its power to grant franchises should be directed to the lawful exercise of the franchise power, rather than to the validity of legislation delegating such power to a political subdivision. There are circumstances, for example, in which the grantor of franchise rights might be estopped from denying a franchise to a particular applicant. These matters are involved in the exercise of the right—not in its delegation.

The question related to prohibited special legislation, as usual, is somewhat more difficult to answer. Under the general rule, explained in *Townsend v. Richland County*, 190 S. C. 270, 2 S. E. 2d 777, judicial interference for Article 3, Sec. 34 (IX), reasons is not justified in the absence of clear, palpable, clearly unconstitutional infractions. The enactment of the subject bill is some evidence of the legislative belief that a general law could not have been made applicable. No doubt an involved, lengthy survey and research effort would be necessary to furnish sufficient facts upon which anyone could make a reasonably sound determination of the question either way. In the absence of such showing, an opinion as to the validity of the bill on prohibited local law grounds must be in favor of such validity.

In view of the foregoing, it is the opinion of this Office that the subject bill contains no patent constitutional defect.

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