



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 26, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79-303

Mr. Theodore H. Hill
Sedgwick County Counselor
Sedgwick County Courthouse
Suite 315
Wichita, Kansas 67203

Re: Counties and County Officers--Public Improvements--
Powers of Improvement Districts

Counties and County Officers--Home Rule Powers--
Cable Television Franchise Agreements

Cities and Municipalities--Interlocal Cooperation--
Interlocal Agreement for Coordinating Regulation
of Cable Television Services

Synopsis: An improvement district created pursuant to K.S.A.
19-2753 et seq. has no authority to enter into
cable television franchise agreements.

In the exercise of its home rule authority, a county
may enact local legislation by which the county may
regulate cable television services and grant fran-
chises to companies seeking to furnish such services
in the county outside the territorial jurisdiction
of cities which regulate cable television services
within their respective territories.

An interlocal agreement may be an appropriate device
for coordinating the regulation of cable television
services by the various municipalities in a county,
but the Interlocal Cooperation Act (K.S.A. 12-2901
et seq., as amended) imposes no requirement for
such agreements.

*

*

*

Mr. Theodore H. Hill
Page Two
December 26, 1979

Dear Mr. Hill:

You have requested our opinion whether Sedgwick County has authority, under its home rule power, to regulate and to enter into franchise agreements with cable television companies seeking to offer cable television services outside the territorial jurisdiction of cities in the county. You note that your request is prompted by your concern that preliminary negotiations are presently being conducted by at least one of the several improvement districts in Sedgwick County with one such cable television company for a franchise agreement between the company and the district. You advise that it is your opinion that said improvement districts (created pursuant to K.S.A. 19-2753 et seq.) have no legal authority to enter into such agreements, and you also have asked for our opinion on that subject.

We concur in your opinion that improvement districts created pursuant to K.S.A. 19-2753 et seq. have no authority to enter into such franchise agreements. An improvement district, once established, is a "body politic and corporate" pursuant to K.S.A. 19-2756. Created by public law, it is a public, or quasi-municipal corporation, and as such possesses only such power or authority as is expressly conferred by law. 62 C.J.S. Municipal Corporations, §§5, 115. K.S.A. 1978 Supp. 19-2765 enumerates the powers of improvement districts, but nowhere in that section is any provision made for entering into franchise agreements for cable television services or any other franchise agreements. As you have correctly noted, a franchise agreement is a contract, and K.S.A. 1978 Supp. 19-2765, Eleventh, empowers an improvement district to make contracts, but only "contracts . . . in relation to the affairs of the district necessary to the proper exercise of its corporate legislative or administrative powers and to the accomplishment of the purpose of its organization."

In State, ex rel., v. Rural High School District No. 7, 171 Kan. 437 (1951), the Court affirmed that

"[i]t has long been the rule that school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as to the existence of such power should be resolved against its existence."
(Citations omitted.) Id. at 441.

Mr. Theodore H. Hill
Page Three
December 26, 1979

Accordingly, there being no express grant of authority empowering an improvement district to make agreements, except in relation to the specific functions for which it is incorporated (e.g., sewage disposal improvements, waterworks improvements, law enforcement services), we conclude that an improvement district has no authority to enter into cable television franchise agreements authorizing the extension of such services into the territory of such district. Presumably, the legislature could authorize improvement districts to perform such regulatory functions but, at this writing, has not chosen to do so.

In contrast, a county's exercise of authority is not limited only to that which is expressly granted by the legislature. K.S.A. 1979 Supp. 19-101a empowers counties to "transact all county business and perform such powers of local legislation and administration as they deem appropriate," subject to certain limitations. In our judgment, none of those limitations on the exercise of the county's home rule power is applicable, and we agree with you that the county is free to enact local legislation by which the county may regulate cable television services and grant franchises to companies seeking to furnish such services in the county outside the territorial jurisdiction of cities which regulate cable television services within their respective territories.

As you have correctly noted, state law is silent concerning the county's authority to regulate by franchise. K.S.A. 1979 Supp. 12-2001 et seq. expressly empowers cities to exercise such regulatory authority, including regulation of cable television companies (K.S.A. 12-2006), but those statutes do not, in our opinion, limit the county's authority to enact similar local legislation as would best serve the county's interests. The public policy basis for a city's regulation of cable television services, as stated in K.S.A. 12-2006, applies with equal force to counties, in our opinion, since the furnishing of such services affects the public interest, in that cable service facilities are placed in the county's public ways and roads, thus justifying reasonable regulation by the county.

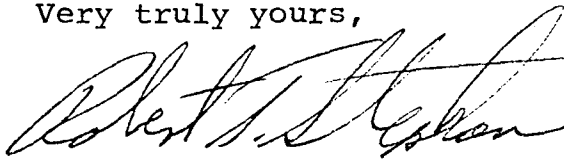
Also, we think it important to note, by way of analogy, that the Kansas Supreme Court concluded that, in the absence of enabling state legislation, a city could lawfully regulate cable television systems under its constitutional home rule authority. Capitol Cable, Inc. v. City of Topeka, 209 Kan. 152, 159-161 (1972). For the reasons stated in the Court's decision in that case, it is our opinion that such local legislation may be enacted under the county's home rule authority as well.

Mr. Theodore H. Hill
Page Four
December 26, 1979

Lastly, you ask whether the county must enter into an interlocal agreement with various municipalities in the county to effectuate and coordinate the regulation of cable television services in the county, apparently in anticipation of possible conflicts in the exercise of jurisdiction by the county and cities in Sedgwick County currently franchising cable television services in their respective jurisdictions. The Interlocal Cooperation Act, K.S.A. 12-2901 et seq., as amended, authorizes cities, counties and other "public agencies" (as defined by K.S.A. 12-2903) to enter into interlocal agreements for various purposes, as noted in K.S.A. 1979 Supp. 12-2904.

While we think that an interlocal agreement may be an appropriate device for coordinating the regulation of cable television services by the various municipalities in a county and resolving the anticipated conflicts, we find nothing in the Interlocal Cooperation Act imposing a requirement for such agreements. The Act enables public agencies to enter into such agreements if such serve the agencies' respective interests and the public convenience, but does not require such agreements.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk

cc: Mr. Frank Johnson
Shawnee County Counselor

Mr. Robert L. Roberts
Attorney for Sherwood Improvement District, Shawnee County