



STATE OF KANSAS

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October 5, 1979

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ATTORNEY GENERAL OPINION NO. 79- 224

The Honorable N. W. Bransom  
Mayor, City of Coldwater  
Office of City Clerk  
Coldwater, Kansas 67029

Re: Cities--Franchises--Cable Television Service

Synopsis: Under the terms of K.S.A. 12-2006 et seq., a city has the authority to require that any cable television system in business within its boundaries be operated under the terms of a franchise agreement, which agreement may provide for review of proposed rate increases by the city and the establishment of procedures to deal with complaints.

\* \* \*

Dear Mayor Bransom:

In your letter of July 31, 1979, you inquire as to the consequences that the expiration of a cable-television franchise would have on your city. You state that the current franchise has been in operation since 1963 and is due to expire in 1983. The city has responded to a request to extend the franchise by proposing that: 1) rates be subject to review by the governing body of the city (they are not now); and 2) a complaint procedure be established to deal with poor quality service. Negotiations have broken down, and you inquire what would happen if the current franchise expires. Specifically, you ask if the operator could continue to use the cable-television system and, if so, whether the city could charge the operator rent for the use of city streets and alleys.

The Honorable N. W. Bransom  
Page Two  
October 5, 1979

Before 1972, cities had no power to regulate cable-television systems within their borders. Community Antenna TV of Wichita, Inc. v. City of Wichita, 205 Kan. 537 (1970); Capitol Cable, Inc. v. City of Topeka, 209 Kan. 152 (1972). In that year, the state legislature enacted K.S.A. 12-2006 et seq., which dealt specifically with the problem and granted cities broad authority to regulate cable television systems. While allowed to remain private businesses, such systems were found to be affected with a public interest by reason of their use of the public ways, alleys and streets. K.S.A. 12-2005.

K.S.A. 12-2007 requires that anyone desiring to operate such a system receive the approval of the city through the obtaining of a franchise, and provides in part that:

"It shall be unlawful for any person, firm or corporation acting in its own behalf or under a lease with or pole contract from any public utility to construct, install, operate or maintain a cable television service in, on, over, under, upon, across, from and along the streets, alleys, sidewalks, public property and public ways within the corporate limits of any city without first obtaining from such city involved, a franchise authorizing the same under such reasonable conditions as the circumstances may require. (Emphasis added.)

Furthermore, K.S.A. 12-2011 provides that the construction, installation, operation or maintenance of a cable system without a valid franchise constitutes a class C misdemeanor, and each day that such unauthorized operation continues constitutes a separate offense. Therefore, in order to avoid these penalties, the operator must come to an agreement with the city and thereby receive an extension of the existing franchise. The operator's only legal alternative would be to cease doing business.

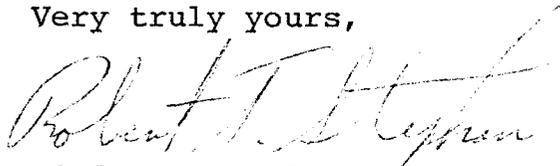
For its part, the city may charge a franchise tax on the cable-television operator, as your letter indicates is currently being done. This tax in effect serves as rent for the operator's use of city streets and alleys, and may be charged only to those holding a valid franchise from the city. Of course, anyone who does not hold a franchise is proscribed from operating, as was noted above, so in the event the current franchise expires the city would lose its tax while the operator is prevented by law from doing business. As the operator would therefore be unable to continue renting the cable-television system, the city would be unable to collect any "rent," as you term it.

The Honorable N. W. Bransom  
Page Three  
October 5, 1979

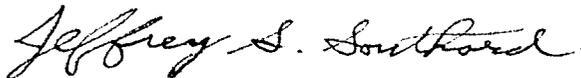
We also note that under the provisions of K.S.A. 12-2008 the city may require any franchise holder or applicant to submit a schedule of rates and charges to it. If the franchise agreement so provides, these rates and charges will be the maximum allowed, and may be exceeded only with the approval of the governing body of the city. Additionally, the franchise may contain provisions dealing with "reasonable conditions" of operation, and a procedure for processing complaints could be justified thereunder.

In conclusion, under the terms of K.S.A. 12-2006 et seq., a city has the authority to require that any cable-television system in business within its boundaries be operated under the terms of a franchise agreement, which agreement may provide for review of proposed increases by the city and the establishment of procedures to deal with complaints.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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RTS:BJS:JSS:gk