

N.D.A.G. Letter to Wheelihan (Oct. 22, 1985)

October 22, 1985

Mr. David M. Wheelihan
Diemert & Wheelihan, P.C.
Attorneys for City of Ellendale
P. O. Box 39
Ellendale, ND 58436-0039

Dear Mr. Wheelihan:

Thank you for your letter dated September 23, 1985, in which you requested an attorney general's opinion as to whether the North Dakota Century Code provides statutory authority to enable a municipality to own its own cable television system.

In 1984, Congress enacted the Cable Communications Policy Act of 1984. In the area of regulations as to cable television systems, this federal Act is controlling. Section 613 of the Act provides, in relevant part, as follows:

(e) Holding of ownership interests or exercise of editorial control by States or franchising authorities.

(1) Subject to paragraph (2), a State or franchising authority may hold any ownership interest in any cable system.

(2) Any State or franchising authority shall not exercise any editorial control regarding the content of any cable service on a cable system in which such governmental entity holds ownership interest (other than programming on any channel designated for educational or governmental use), unless such control is exercised through an entity separate from the franchising authority.

47 U.S.C. § 533(e).

This section of the Act allows a state or franchising authority to hold any ownership interest in any cable system. However, the Act specifically states that a franchise authority owning an interest in a cable system is prohibited from exercising any control regarding the content of any cable service in which it owns an interest, unless the editorial control is exercised by an entity apart from the franchising authority or is related to governmental or educational programming.

In addition, N.D.C.C. § 40-05-01 provides, in relevant part, as follows:

40-05-01. POWERS OF ALL MUNICIPALITIES. The governing body of a municipality shall have the power:

* * *

57. Franchises. To grant franchises or privileges to persons, associations, or corporations,. . .

This section allows the governing body of a municipality to grant a franchise to a "person."

N.D.C.C. § 1-01-28 provides as follows:

1-01-28. PERSON -- DEFINITION. The word "person", except when used by way of contrast, shall include not only a human being, but a body politic or corporate.

N.D.C.C. § 40-01-02 provides that municipalities shall be bodies politic or corporate. Therefore, a municipality is considered to be a "person" in terms of its corporate status.

N.D.C.C. § 40-05-01(57), as set forth above, allows the governing body of a municipality to grant franchises to "persons." Likewise, it is clear that a municipality is statutorily a "person." It would appear that though the North Dakota Century Code does not speak specifically to the question of whether or not a municipality may own its own cable television system, it permits a municipality to grant a franchise to itself. This would enable a municipality to own its own cable television system.

Therefore, both federal and state law allow a city to operate a cable television system subject to some editorial restrictions provided by federal law.

Sincerely,

Nicholas J. Spaeth

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