

OPINION NO. 79-095**Syllabus:**

1. A cable television system is a "communications business" for the purposes of R.C. 4931.11, and, consequently, a board of county commissioners may regulate the underground lines of a cable television system within the limited scope of R.C. 4931.03.
2. A cable television system is a "public utility" for the purposes of R.C. 303.21. As such, a cable television system is exempt from the regulatory authority granted to a board of county commissioners by R.C. 303.02.
3. A board of county commissioners may, as agent for a board of township trustees, contract with a cable television company as provided in R.C. 505.91 if the township trustees agree to permit the county to act as their agent pursuant to R.C. 505.92.

To: Richard G. Ward, Ross County Pros. Atty., Chillicothe, Ohio
By: William J. Brown, Attorney General, December 18, 1979

I have before me your request for an opinion concerning the authority of a board of county commissioners to grant a permit and license to a cable television system. Your specific questions are as follows:

1. Is a community television system a communication[s] business as described in ORC 4931.11?
2. If so, does the Board of County Commissioners have any authority to grant a permit and license, or in any other way enter into a contract with a cable television company? (Other than the general authority to regulate the use of the public right-of-way as provided in ORC 4931.03 and by implication in ORC 4931.01).
3. If not, is it some other type of public utility and what authority does a Board of County Commissioners have to contract with or regulate the conduct of a cable television system?

It is my understanding that the terms "community television system" and "cable television system" are interchangeable.

With respect to your first question, R.C. 4931.11 provides as follows:

Any company organized at any time to transact a telegraph, telephone, or communications business may construct, reconstruct, own, use, lease, operate, maintain, and improve communications systems for the transmission of voices, sounds, writings, signs, signals, pictures, visions, images, or other forms of intelligence, as public utility services, by means of wire, cable, radio, radio relay, or other facilities, methods, or media. Any such company has the powers and is subject to the restrictions prescribed in sections 4931.01 to 4931.23, inclusive, of the Revised Code, for telegraph or telephone companies.

The term "communications business" is not expressly defined for the purposes of R.C. 4931.11. I need not, however, ascertain the full import of this term in order to

respond to your specific question. Television is merely an advancement in the art of telegraphy and telephony and, consequently, clearly falls within the purview of R.C. 4931.11. Ohio Telephone & Telegraph Co. v. Steen, 54 Ohio Law Abs. 111 (C.P. Wood County 1949) (construing G.C. §919, now R.C. 4931.11). A cable television system may, therefore, be regulated in the manner described in R.C. 4931.01 et seq.

As your second question suggests, R.C. 4931.03 confers upon a board of county commissioners the limited authority to prescribe reasonable regulations governing the underground installation of telegraph lines and fixtures. The statute does not, however, confer upon a board of county commissioners any general authority to grant a permit or license to a cable television system, nor is such general authority expressly granted in, or necessarily implied from, any other provision in R.C. 4931.01 to R.C. 4931.23, inclusive.

On the other hand, recently enacted Am. Sub. H.B. No. 352 does have the potential of conferring some general authority to contract with a cable television system upon a board of county commissioners.

Am. Sub. H.B. No. 352 enacted R.C. 505.90 through 505.92. R.C. 505.90 defines "cable television system" and "cable television company." The first paragraph of R.C. 505.91 grants the following powers to a board of township trustees with respect to cable television systems:

A board of township trustees, or an agent designated by the board, may enter into a contract with a cable television company with respect to the establishment or operation of a cable television system in the unincorporated area of the township if the area proposed to be served by the cable television company includes at least five hundred potential subscribers.

Later paragraphs of R.C. 505.91 set forth procedures dealing with notice and hearings and provide exemptions for some previously established cable television systems.

Of crucial importance to your request regarding county commissioners is R.C. 505.92, which provides:

A board of township trustees may enter into an agreement with a county, municipal corporation, or other township under which the municipal corporation, other township, or county agrees to act as agent of the first township on such terms as the two political subdivisions mutually agree for the purposes of sections 505.90 to 505.92 of the Revised Code. Where a municipal corporation, other township, or county agrees to act as agent for a township, such agent shall abide by the notification and public hearing provisions of section 505.91 of the Revised Code.

Accordingly, it is clear that, through the recently enacted provisions of Bill No. 352, a board of county commissioners may exercise those powers granted a board of township trustees in regard to cable television systems by R.C. 505.91 if the township trustees agree to permit the county to act as their agent pursuant to R.C. 505.92.

With respect to your third question, a pertinent statute for perusal is R.C. 303.02, which provides as follows:

For the purpose of promoting the public health, safety, and morals, the board of county commissioners may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings

and other structures including tents, cabins, and trailer coaches and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such county, and for such purposes may divide all or any part of the incorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform, for each class or kind of building or other structure or use, throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

However, of overriding significance to your question is R.C. 303.21, set forth in pertinent part below, which exempts public utilities from any regulation pursuant to R.C. 303.02.

[Sections 303.01 to 303.25 of the Revised Code] do not confer any power on any board of county commissioners or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business.

In 1973 Op. Att'y Gen. No. 73002, I considered the question whether a cablevision corporation (which I understand to be merely a different name for a cable television system), was a public utility within the meaning of R.C. 519.21. In that opinion, I concluded that because the services of a cablevision corporation are available to the public generally and indiscriminately, such a system falls within the definition of "public utility" as set forth by the Ohio Supreme Court in Southern Ohio Power Co. v. Public Utilities Commission, 110 Ohio St. 246 (1924). Although R.C. 519.21 applies to townships, the language selected by the General Assembly is, in pertinent parts, virtually identical to that contained in R.C. 303.21. Because of the consistency in language, it is clear that the General Assembly intended both townships and counties to operate under the same limitations. Thus, it would be inconsistent to hold a cablevision, or cable television, system to be a public utility for the purposes of one and not the other. Therefore, it is my opinion that a cable television system is a public utility for purposes of R.C. 303.21.

It is, therefore, my opinion, and you are advised, that:

1. A cable television system is a "communications business" for the purposes of R.C. 4931.11, and, consequently, a board of county commissioners may regulate the underground lines of a cable television system within the limited scope of R.C. 4931.03.
2. A cable television system is a "public utility" for the purposes of R.C. 303.21. As such, a cable television system is exempt from the regulatory authority granted to a board of county commissioners by R.C. 303.02.
3. A board of county commissioners may, as agent for a board of township trustees, contract with a cable television company as provided in R.C. 505.91 if the township trustees agree to permit the county to act as their agent pursuant to R.C. 505.92.