

OPINION NO. 85-009**Syllabus:**

A metropolitan housing authority has no authority to contract with, or to impose a franchise fee upon, a cable television company.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 9, 1985

I have before me your request for my opinion on the following question:

Under current law, political subdivisions in contracting for cable television franchises have the authority to require a franchise fee of a certain percentage of the gross receipts received by the franchisee within a given year or time period. For the purposes of receiving a franchise fee from a cable television company is a County Metropolitan Housing Authority to be construed as a taxing district and/or a political subdivision?

It is my understanding that your question is based on certain requirements found in the Code of Federal Regulations. Cable television systems are involved in interstate commerce and are subject to regulation by the federal government. See United States v. Southwestern Cable Co., 392 U.S. 157 (1968); Telerama, Inc. v. United States, 419 F. 2d 1047 (6th Cir. 1969); TV Pix, Inc. v. Taylor, 304 F. Supp. 459 (D. Nev. 1968) (decision of a three-judge court), aff'd, 396 U.S. 556 (1970) (discussing the relative authority of the federal government and the states to regulate cable television). Local governmental authorities are not, however, precluded from granting franchises to cable television companies empowering such companies to operate a cable system within the local authority's jurisdiction. See, e.g., Telerama, Inc. v. United States. 47 C.F.R. §76.31 provides that, with certain exceptions, franchise fees imposed by a local authority may not be "more than 3 percent of the franchisee's gross revenues per year from all cable services in the community (including all forms of consideration, such as initial lump sum payments)." See 47 C.F.R. §76.30. While federal law does address the franchise fee that a local authority may impose upon a cable television company, the power of a metropolitan housing authority to contract with a cable television company must initially be determined under state law.

Metropolitan housing authorities are created by state statute as "bodies corporate and politic with all the powers, rights, and duties set forth in sections 3735.27 to 3735.50, inclusive, of the Revised Code." R.C. 3735.56. As a statutory body, a metropolitan housing authority has only such powers as are expressly granted by statute or which may be necessarily implied therefrom. 1940 Op. Atty Gen. No. 3188, vol. II, p. 1149. See generally Burger Brewing Co. v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975). R.C. 3735.31 sets forth the general powers of a metropolitan housing authority, and provides in pertinent part as follows:

To clear, plan, and rebuild slum areas within the district wherein the [metropolitan housing] authority is created, or to provide safe and sanitary housing accommodations to families of low income within such district, or to accomplish any combination of the foregoing purposes, such authority may:

.....
 (B) Determine what areas constitute slum areas, and prepare plans for housing projects in such areas; purchase, lease, sell, exchange, transfer, assign, or mortgage any property, real or personal, or any interest therein, or acquire the same by gift, bequest, or eminent domain; own, hold, clear, and improve property; provide and set aside housing projects, or dwelling units comprising portions of housing projects, designed especially for the use of families, the head of which or the spouse is 65 years of age or older; engage in, or contract for, the construction, reconstruction, alteration, or repair, or both, of any housing project or part thereof; include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government has attached to its financial aid of the project; lease or operate, or both, any project, and establish or revise schedules of rents for any projects or part thereof; arrange with the county or municipal corporations, or both, for the planning and replanning of streets, alleys, and other public places or facilities in connection with any area or project; borrow money upon its notes, debentures, or other evidences of indebtedness, and secure the same by mortgages upon property held or to be held by it, or by pledge of its revenues, or in any other manner; invest any funds held in reserves or sinking funds or not required for immediate disbursements; execute contracts and all other instruments necessary or convenient to the exercise of the powers granted in this section; make, amend, and repeal bylaws, rules, and regulations to carry into effect its powers and purposes. . . . (Emphasis added.)

¹ 47 C.F.R. §76.31 also sets forth recommended procedures and provisions to be included as part of the local franchising process.

Neither R.C. 3735.31 nor any other provision of which I am aware expressly authorizes a metropolitan housing authority to contract with, or to impose a franchise fee upon, a cable television company. R.C. 3735.31 does generally empower a metropolitan housing authority to execute contracts, but only those contracts which are "necessary or convenient" to the exercise of its other powers. While a metropolitan housing authority is given those broad powers specified in R.C. 3735.31 in order to "clear, plan, and rebuild slum areas," and to "provide safe and sanitary housing accommodations to families of low income," it does not appear that the power to contract with a cable television company is necessary or convenient to the exercise of those powers. Because the power to contract with a cable television company does not appear to be necessary or convenient to the exercise of a metropolitan housing authority's statutory powers or duties, I must conclude that a metropolitan housing authority's general authority to contract does not include the power to contract with a cable television company.

My conclusion is supported by the fact that where the General Assembly intended to authorize a statutory body to contract with a cable television company, it has expressly done so. See, e.g., R.C. 505.91 (authorizing a board of township trustees, or an agent designated by the board, to "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"); R.C. 505.92 (authorizing a board of township trustees to enter into an agreement with a county, municipal corporation, or other township whereby the county, municipality, or other township agrees to act as the agent of the first township for purposes of R.C. 505.91).

Furthermore, the power of a metropolitan housing authority to contract with or impose a franchise fee upon a cable television company cannot be implied from any of the other powers enumerated in R.C. 3735.31 or from any other statutory provision. Such a power is clearly not necessary to the execution of a housing authority's express statutory powers or duties. See R.C. 3735.31; 1940 Op. No. 3188.

Accordingly, it is my opinion, and you are hereby advised, that a metropolitan housing authority has no authority to contract with, or to impose a franchise fee upon, a cable television company.