

OPINION NO. 84-060**Syllabus:**

A board of township trustees has no authority 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 does not include at least five hundred potential subscribers.

To: David E. Lighttiser, Licking County Prosecuting Attorney, Newark, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 18, 1984

I have before me your request for my opinion on whether a township may, pursuant to R.C. 505.91, enter into a contract with a cable television company if there are less than five hundred potential subscribers in the unincorporated area to be served by the company.

R.C. 505.91 states in part that:

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. (Emphasis added.)

See R.C. 505.90 (defining "cable television system" and "cable television company").

A township, as a creature of statute, has only those powers which are expressly conferred by statute, or which may be necessarily implied therefrom. See Trustees of New London Township v. Miner, 26 Ohio St. 452 (1875); 1980 Op. Atty Gen. No. 80-028. R.C. 505.91 empowers a board of township trustees to enter into a contract with a cable television company with regard to operating or establishing a cable television system in the unincorporated area of a township "if the area proposed to be served by the cable television company includes at least five hundred potential subscribers."¹ R.C. 505.91 does not grant a township the

¹ The grant of authority to township trustees to enter into a contract with a cable television company is discretionary and the township trustees are not required to enter into such a contract if they do not wish to do so. See Medina Township Trustees v. Armstrong Utilities, Inc., 9 Ohio App. 3d 14, 457 N.E.2d 933 (Medina County 1983). See generally Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (the use of the word "may" in a statute renders its provisions discretionary or permissive).

authority to contract for a cable television system if the area proposed to be served by the cable television company includes less than five hundred potential subscribers.

You note in your letter of request that a township is not prohibited from contracting with a cable television company if there are less than five hundred potential subscribers. As noted above, however, in order to perform a particular function a board of township trustees must possess an express or implied statutory grant of power authorizing the board to perform that function. The absence of a statute prohibiting the board from exercising a particular power does not provide the requisite authority to so act. Neither R.C. 505.91 nor any other statute of which I am aware grants a township the authority to enter into a contract with a cable television company if there are less than five hundred potential subscribers. Under the rule of statutory construction, expressio unius est exclusio alterius, the express mention of but one class of persons or things in a statute implies the exclusion of all others. See State ex rel. Boda v. Brown, 157 Ohio St. 368, 105 N.E. 2d 643 (1952). Thus, by expressly empowering a township to contract with a cable television company when there are at least five hundred potential subscribers, the General Assembly has indicated that a township may not contract when there are less than five hundred potential subscribers.

My conclusion that a board of township trustees may not contract with a cable television company if the area proposed to be served does not include at least five hundred potential subscribers is supported by Medina Township Trustees v. Armstrong Utilities, Inc., 9 Ohio App. 3d 14, 457 N.E.2d 933 (Medina County 1983) wherein the court stated:

until the enactment of R.C. 505.91, township trustees did not have the authority to enter into contracts with cable television companies. However, the statute provides that before the trustees can exercise their discretionary power to contract, two conditions must exist. First, the cable television company must designate the area proposed to be served, and, second, such area must include at least five hundred potential subscribers. Once these two conditions are met, the board of township trustees may exercise its right to demand a contract.

... as used in R.C. 505.91, the language "the area proposed to be served by the cable television company" must be given its common and ordinary meaning. Stores Realty Co. v. Cleveland, *supra*. By the use of such language the legislature has given the cable television company the right to determine the area it proposes to serve. R.C. 505.91 does not make this a function of the township trustees; rather, it specifically makes it a function of the cable television company. (Emphasis added.)

9 Ohio App. 3d at 16, 457 N.E.2d at 936-937. The court went on to note that, "[i]f the number [of potential subscribers in the proposed service area] exceeds five hundred, the trustees may either demand a contract or refuse to contract. If the number is less than five hundred, [the cable television company] need not contract with the trustees, as R.C. 505.91 would be inapplicable." 9 Ohio App. 3d at 16, 457 N.E.2d at 937. Thus, the court in Medina Township Trustees also concluded that in order for a board of township trustees to exercise its power to contract under R.C. 505.91, the area proposed to be served must include at least five hundred potential subscribers.² See 1981 Op. Att'y Gen. No. 81-077 (syllabus) ("a board of township

² The court also pointed out in Medina Township Trustees v. Armstrong Utilities, Inc., that the phrase "in the unincorporated area of the township", as used in R.C. 505.91, is not a delineation of the service area but is a limitation on the township trustees' authority to contract. The use of such phrase "limits the ability of the township trustees to contract for service to the area of unincorporation only. This limitation, therefore, precludes the township trustees from contracting for the incorporated areas of the township." 9 Ohio App. 3d at 16, 457 N.E.2d at 936.

trustees may require a cable television company to enter into a contract with the township pursuant to R.C. 505.91 prior to the time that the company begins construction within the unincorporated area of the township if the area to be serviced by the cable television company contains five hundred or more potential subscribers").

In conclusion, it is my opinion, and you are advised, that a board of township trustees has no authority 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 does not include at least five hundred potential subscribers.