

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 87

CONTRACTS - County authority to grant franchises;
COUNTIES - Authority to grant franchises;

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COUNTY GOVERNMENT - Authority to grant franchises;
INTERGOVERNMENTAL COOPERATION - City-county interlocal
franchise agreements;
MONTANA CODE ANNOTATED - Title 7, chapter 3, part 4;
Title 7, chapter 5, part 21; sections 7-1-2102,
7-1-2103, 7-3-111, 7-3-144(1)(c), 7-3-402,
7-4-2611(2)(h), 7-5-2129, 7-11-103, 7-11-104
UNITED STATES CODE - 47 U.S.C. §§ 521, 522(9).

HELD: The County of Missoula has the power to grant
a television franchise and such franchise may
be the subject of an interlocal agreement
between the City of Missoula and the County of
Missoula.

1 June 1988

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have asked my opinion on an issue which I have
phrased as follows:

Does Missoula County have the authority to
grant a cable television franchise, and if so,
may the County of Missoula and the City of
Missoula enter into an interlocal agreement
regarding that franchise?

In 1984, Congress passed the Federal Cable
Communications Policy Act, P.L. 98-549, 47 U.S.C. § 521,
which granted franchise authority to "any governmental
entity empowered by Federal, State, or local law to
grant a franchise." 47 U.S.C. § 522(9). This broad
delegation of authority brings the focus to the first
issue of this request: whether Missoula County is
empowered by state law to grant a cable television
franchise.

Missoula County has an elected county official form of
government. Section 7-3-111, MCA, states that certain
provisions of Title 7, chapter 3, part 4, concerning
commission government, govern such a county. One of the
sections listed in section 7-3-111, MCA--section
7-3-402, MCA--explains that a county like Missoula
County is vested with general government powers.
General government powers are granted by specific

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statutory provision and include powers which are necessarily implied from those expressed. § 7-1-2101, MCA. The county's powers are to be liberally construed. Mont. Const. Art. XI, § 4. Included among the general government powers is the power of the county to enter contracts "as may be necessary to the exercise of its powers." Section 7-1-2103, MCA.

While section 7-1-2103, MCA, does not specifically grant Missoula County's commission form of government authority to grant franchises, other statutes by implication assume that the county may exercise that authority if it so chooses. This conclusion is supported by language in several statutes. First, in Title 7, chapter 5, part 21, entitled "Conduct of County Government":

The board of county commissioners must cause to be kept:

....

(3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required.

§ 7-5-2129, MCA.

Next, in section 7-4-2611(2)(h), MCA, the county clerk is charged to

preserve and file all petitions and applications for franchises and record the action of the board [of county commissioners] thereon[.] [Emphasis added.]

Finally, when a county merger is contemplated, the consolidation plan must include a provision

for the transfer or other disposition of property and other rights, claims, assets and franchises of local governments consolidated under the alternative plan[.] [Emphasis added.]

§ 7-3-144(1)(c), MCA.

When taken in light of the above-listed statutes, Montana's constitutional provision requiring that counties' powers be liberally construed, and case law stating that any doubt concerning such powers be resolved in favor of granting the authority, Tipco

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Corp., Inc. v. City of Billings, 39 St. Rptr. 600, 642 P.2d 1074 (1982), it is apparent that Missoula County, as a commission form of government, has by implication been given the authority to grant franchises.

The second issue in this request is whether the City of Missoula and the County of Missoula may enter into an interlocal agreement regarding a cable television franchise. Section 7-11-104, MCA, provides that public agencies (a term including cities and counties, § 7-11-103, MCA) may contract "to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform." Assuming the City of Missoula is so authorized, and noting the above discussion as to the County of Missoula's authority, an interlocal agreement pertaining to a cable television franchise is possible. Actual feasibility, of course, requires adherence to the pertinent statutes and depends upon factors unavailable at this writing. Hence, this opinion may only be interpreted as stating such an agreement is possible and is subject to the applicable statutory requirements.

THEREFORE, IT IS MY OPINION:

The County of Missoula has the power to grant a television franchise and such franchise may be the subject of an interlocal agreement between the City of Missoula and the County of Missoula.

Very truly yours,

MIKE GREELY
Attorney General