

FORMAL OPINION

to the jurisdiction of local boards.”

Finally, there appears to be no local interest which, when compared to the overwhelming evidence in support of immunity, would lead to the conclusion that the Legislature intended the Department of Transportation to be subject to local land use regulation in connection with this project. It must be emphasized, however, that legitimate local interests may not be arbitrarily disregarded. “And at the very least, even if the proposed action of the immune governmental instrumentality does not reach the unreasonable stage for any sufficient reason, the instrumentality ought to consult with the local authorities and sympathetically listen and give every consideration to local objections, problems and suggestions in order to minimize the conflict as much as possible.” *Rutgers v. Piluso, supra*, 60 N.J. at 154. This, in fact, is being done by the Department of Transportation. A series of public meetings have been held to explain the project and its impact to affected communities. Technical meetings with municipal engineers and administrators have been held to discuss the planned location of substations and possible alternatives. Furthermore, an environmental impact assessment is being prepared which will address itself to potential noise, aesthetic and land use impacts of the project and will include a discussion of suggested alternative locations for substations. The assessment will be distributed to all affected municipalities for comment and a public hearing will follow. Only after the above procedure is complete will a final decision be made.

In view of the above, you are advised that the Department of Transportation, in proceeding with the Erie Lackawanna reelectrification project is immune from local land use regulations.

Very truly yours,  
JOHN J. DEGNAN  
*Attorney General*

By: KENNETH S. LEVY  
*Deputy Attorney General*

---

JOHN CLEARY, *Director*  
Office of Cable Television  
Board of Public Utilities  
101 Commerce Street  
Newark, New Jersey 07102

May 16, 1978

FORMAL OPINION NO. 5—1978

Dear Director Cleary:

You have requested an opinion as to whether ownership of a cable television system by a municipality is permissible under the Cable Television Act. For the following reasons, you are advised that a municipality may own and operate a cable television system.

## ATTORNEY GENERAL

The Cable Television Act was enacted in 1972 to provide regulation of cable television companies in the public interest under the supervision of an Office of Cable Television [now in the Board of Public Utilities (Board) in the Department of Energy]. The Act defines a cable television company as any "person" owning, controlling, operating or managing a cable television system. A "person" in turn is defined to include specifically "any agency or instrumentality of the state or any of its political subdivisions." N.J.S.A. 48:5A-3(g). The legislative intent to authorize municipal ownership of a cable TV system is further evidenced by N.J.S.A. 48:5A-40 which provides:

[N]othing herein shall prevent the sale, lease or other disposition by any CATV company of any of its property in the ordinary course of business, nor require the approval of the Board to any grant, conveyance or release of any property or interest therein heretofore made or hereafter to be made by any CATV company to the United States, the State or any county or *municipality* or any agency, authority or subdivision thereof *for public use*. [Emphasis supplied.]

In addition, Board approval is not necessary to validate the title of a municipality to any lands or interest to be condemned under this statute for public use. It is thus clear from these provisions that the legislature has determined that a municipality is a "person" who can own and operate a cable television system for public use.

This legislative intent is additionally reinforced by regulations adopted by the Office of Cable Television. These regulations expressly state that municipalities and other local political sub-divisions are subject to the jurisdiction and regulatory authority of the Office of Cable Television and by definition they are "persons" who can own and operate a cable television system for public use.<sup>1</sup> It is well established that the interpretation of an administrative agency is entitled to great weight in the construction of a statute. *In re Application of Saddle River*, 71 N.J. 14, 24 (1976). These regulations adopted with apparent tacit legislative acquiescence are, therefore, an additional persuasive indication of the presumed legislative purpose to include a municipality within those entities authorized to own and operate a cable TV system.

The general regulatory scheme established by the Act does not present any impediment to a municipality franchising and operating its own cable television system. Although the initial consent is issued by the municipal

1. N.J.A.C. 14:18-1.1(c) provides as follows:

These regulations apply to:

1. Cable television companies which own, control, operate or manage a cable television system;
2. Municipalities, cities and counties where applicable.

N.J.A.C. 14:18-1.2 defines a "Cable Television Company" as "any person owning, controlling, operating or managing a cable television system." A "person" is defined to include: "any agency or instrumentality of the State of New Jersey or any of its political subdivisions."

FORMAL OPINION

governing body in which the facilities are to be placed, N.J.S.A. 48:5A-22, the pervasive regulation of rates, charges, services and facilities rests exclusively at the state level with the Office of Cable Television. N.J.S.A. 48:5A-16 to 21. Ample control and checks on the issuance of consents by a municipality to itself are apparent throughout the legislative scheme. A municipal consent must conform "in form and substance to all requirements of this act and all rules, regulations and orders duly promulgated by the director." N.J.S.A. 48:5A-25. The information required concerning an applicant's financial responsibility, technical competence and general fitness are regulated by statute. N.J.S.A. 48:5A-27, 28.

The statute provides procedures for the review of municipal consents and for the resolution by the Office of Cable Television of disputes between CATV companies, municipalities or citizens. N.J.S.A. 48:5A-39; 48:5A-10(b)(d)(e)(f) and (g). A municipality may designate the Office of Cable Television as the "complaint office" to hear complaints of local subscribers. N.J.S.A. 48:5A-26(b). Moreover, and most important, the Board reviews the application and issues the certificate for the construction, extension or operation of the system. N.J.S.A. 48:5A-15 through 21. Any person claiming to be aggrieved on the issuance of a certificate applied for, can demand a hearing, and such complaint, will be heard, if the Board deems that there is reasonable ground for the complaint. N.J.S.A. 48:5A-16(b). There is consequently no implicit statutory prohibition against, municipal ownership and operation of a cable television system.<sup>2</sup>

You are thus advised that municipal ownership of a cable television system is authorized by the Cable Television Act. A municipality may by ordinance franchise such operation, subject to the regulatory approval and continuing jurisdiction of the Office of Cable Television.

Very truly yours,  
JOHN J. DEGNAN  
*Attorney General*

By: BLOSSOM A. PERETZ  
*Deputy Attorney General*

2. If it deems it appropriate, the Board may, through the adoption of rules and regulations, set up separate procedures for municipal CATV approval. N.J.S.A. 48:5A-2, 6, 9, 10; *In re Cable Television*, 132 N.J. Super. 45 (App. Div. 1974).

---