

MAINE STATE LEGISLATURE

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Plantations: Authority of ~~Assessors~~

Cable Television Plantations

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30 MRS. 82151-2-14

30 MRS. 1901-7

30 MRS. 5410

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21 December 1976

Honorable Donald H. Burns
State House
Augusta, Maine 04333

Dear Representative Burns:

This is in regard to your request for an opinion of this office as to who, if anyone, can grant a cable television franchise in a plantation. For the reasons which follow, it is our opinion that the assessors of a plantation are the appropriate persons to grant a cable television franchise in a plantation.

30 MRS. § 2151, sub-§ 2 H, provides:

"H. The municipal officers may contract on such terms and conditions and impose such fees, as are in the best interests of the municipality, including the grant of an exclusive franchise for a period not to exceed 15 years, for the placing and maintenance of cable television systems and appurtenances or parts thereof, along public ways and including contracts with cable television companies which receive the services of television signal transmission offered by any public utilities using public ways for such transmission. Any cable television system so franchised shall be constructed and operated in accordance with Federal Communications Commission regulations. No public utility shall be required to contract with the municipal officers pursuant to this paragraph. Systems located in accordance with such ordinances and contracts are not defects in public ways."

Thus, it appears, that in the State of Maine, as in the majority of other jurisdictions,¹ the granting of cable television franchises has been left to local government officials,² subject to Federal Communications Commission regulations. In the State of Maine, it is the "municipal officers" who may contract to grant a cable television franchise. By statutory definition, "municipal officers" means:

the mayor and aldermen or councillors of a city,
the selectmen or councillors of a town and the
assessors of a plantation. [Emphasis added]
(30 MRSA §1901, sub-§7).

The only shadow cast over this apparent grant of authority to the assessors of a plantation comes from the introductory sentence to section 2151 of Title 30:

§2151. Police power ordinances. A municipality
may enact police power ordinances for the following
purposes.

The general grant of authority to enact police power ordinances herein is to the municipality which is defined to include "only cities and towns." (30 MRSA §1901, sub-§6). It is thus unclear whether a plantation can exercise the police powers of a municipality, even though assessors are municipal officers.

The doubt that is raised by this apparent conflict, whether it be grammatical, definitional, or schematical is, nevertheless, overcome by other factors. First, assessors of a plantation were added as "municipal officers" to 30 MRSA §1901, sub-§7, as recently as 1975 by P.L. 1975, chapter 531, section 2. Secondly, section 5610 of Title 30, provides:

1/ See Gerlach, *Toward the Wired Society: Prospects, Problems, and Proposals For A National Policy on Cable Technology*, 20 Me. L. Rev. 193 (1973); Barnett, *State Federal, and Local Regulation of Cable Television*, 47 Notre Dame Lawyer 685 (1972).

2/ In 1973 and 1975, attempts were made in Maine to impose some state regulation: An Act Regulating Community Antennae Television Systems by Public Utilities Commission. H.P. 227, L.D. 299. Soulas, Bangor, by request. Public Utilities, Leave to Withdraw (1973); An Act to Establish the Maine Telecommunications Commission. S.P. 440, L.D. 1505. Conley, Cumberland. Public Utilities. O.N.T.P. (1973); An Act to Create the Bureau of Community Antennae Television Within the Public Utilities Commission, S.P. 211, L.D. 738. Conley, Cumberland. Public Utilities Hearing 4/1/75. Majority O.N.T.P. Minority O.T.P. Indefinitely Postponed (1975); An Act to Establish the Maine Commission on Cable Television. H.P. 1344, L.D. 1800. Jacques, Lewiston. Public Utilities. LV/WD Accepted (1975).

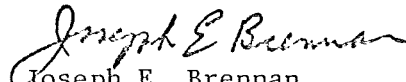
Assessors of plantations shall be considered the selectmen thereof for the purpose of performing such duties as selectmen of towns perform.

Thirdly, section 5609 of Title 30, states that laws relating to the duties and powers of town officers "apply to plantations and their officers".

Finally, the power to grant and require a franchise of a cable television operation is derived from the power of the local government to control the use of public ways. ³ Indeed, sub-§2 of section 1901, Title 34, under which falls the granting of cable television franchises, is entitled: Public ways and other public property. In an early case involving the payment for services and expenses incurred in relation to a road in the plantation of Argyle, it was pointed out by the court that the assessors of plantations were to perform all the duties and were invested with all the powers of town selectmen relating to highways. (Bernard v. Inhabitants of Argyle, 20 Me. 296).

If we can be of any further assistance, please let me know.

Very truly yours,


Joseph E. Brennan
Attorney General

JEB/reb

^{3/} See Barnett, supra, note 1; 3 Antieau, Municipal Corporation Law, 543, 544.