

CITY OF CAMBRIDGE

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OFFICE OF CABLE TELEVISION

November 3, 1982

TO: City Manager, Robert W. Healy and the Honorable
Cambridge City Council

FROM: Joseph G. Sakey, Commissioner JES

SUBJECT: Attorney General's Opinion and Contingency
Recommendation

This memorandum is a brief summary of the statutory authority for municipal ownership of cable television in Massachusetts; the reasons that the City of Cambridge has filed a memorandum with the Attorney General; and the next steps, with recommendations, the City of Cambridge might consider should the City wish to keep its options open for public ownership of cable television.

There are two statutory schemes for authorization of municipal ownership of cable television in the Massachusetts General Laws.

1. G.L. c. 166A section 20 expressly authorizes municipalities to construct and operate municipally owned systems, but it requires that the operation of such a system be in accordance with c. 166A (State Cable Law).
2. On the other hand, c. 164 section 34 (Municipal Light Plant) expressly authorizes municipalities to construct and operate cable television systems in accordance with that chapter.
 - 2a. The last line of section 34 makes the balance of c. 164 applicable to the operation of municipally owned cable systems "wherever opt."
 - 2b. Chapter 164 (Municipal Light Plant) also requires that there be an affirmative vote of two-thirds of the city council in two successive municipal years, followed by ratification of the voters in a referendum, before a municipality may construct and operate a cable system.

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Memo

November 3, 1982.

THE ATTORNEY GENERAL'S OPINION

At the suggestion of the City of Cambridge, Massachusetts Cable Television Commissioner, Thomas Steel wrote to Attorney General Bellotti last July to get clarification of the way in which these two statutes are to be reconciled, should the City of Cambridge decide on municipal ownership of cable television and should the ownership model be that of an independent cable television authority (which is the Advisory Committee's recommendation), then it is essential that there be some guidance from the Attorney General. Without some guidance, the probability that there will be litigation over these issues is very high.

CONTINGENCY PLANNING with RECOMMENDATION

In the absence of the Attorney General's ruling as to which of the municipal ownership statutes governs, it is essential that the City of Cambridge, if it wishes to keep its options open on municipal ownership, start the process of creating an entity which can be a viable cable television operator for the city.

It is recommended that the Cambridge City Council take the first of the two-thirds votes required under G.L. c. 164 section 34 (Municipal Light Plant) prior to December 31, 1982. The second of the two-thirds votes can be taken after January 1, 1983.

Should the Attorney General rule that the city is governed by Massachusetts General Laws Chapter 164A (The Municipal Light Plant Law), and should the city decide in favor of municipal ownership, a resolution would be needed pursuant to state regulations in M.G.L. Chapter 164A. The Cable Commissioner and Legal Counsel could meet with the City Manager and City Council to discuss this proposal.

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Memo Addendum
November 3, 1982

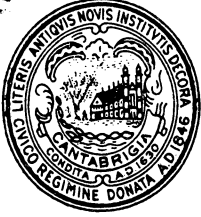
Addendum on the Independent Cable Television Authority

If the Attorney General rules that the City of Cambridge is governed by G.L. c. 166A and not by c. 164 (Municipal Light Plant), and should the City of Cambridge decide on an Independent Cable Television Authority as its ownership model, then the following process is recommended:

The City should begin to work on the design of the independent authority. The object should be to prepare a draft legislation to be filed as a special bill on behalf of the City of Cambridge under the Home Rule Amendment.

This legislation cannot be drafted by lawyers in isolation, but must be drafted in concert with the City Council, City Manager, Cable Advisory Committee, and the Citizens of Cambridge.

The creation of an independent authority would cover a large number of issues; management model, authority to construct and operate a CATV system, authority to sue and be sued, public bidding procedures to be used, authority to lease or sell services and appliances, removal of limitations on return and investment; and other matters.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

November 8, 1982

To the Honorable, the City Council:

Enclosed for your information is a copy of a summary of the Attorney General's opinion and contingency recommendation as related to municipal ownership of Cable TV in Massachusetts.

The contingency plan would require two-thirds vote of the City Council under the Municipal Light Plant Law, one prior to 12/31/82 and one after 1/1/83.

A resolution with the wording of these votes will be submitted to the City Council at a later date.

I recommend that the communication be referred to the Cable Television Committee of the City Council.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

S-691

Re: summary of the Attorney General's
opinion & contingency recommendation Re:
municipal ownership of Cable TV in Mass.

*Copy sent to the Chairman of
the Cable TV Committee 11/9/82 mh*

In City Council,

November 8, 1982

11/8/82

*Referred to the
Cable TV Committee
on Motion of Councilman
Rochon*