

Official Opinion No. 80-53, University of South Dakota Cable Television Contract

August 4, 1980

Commissioner of Higher Education
Board of Regents
Kneip Building
Pierre, South Dakota 57501

Official Opinion No. 80-53

University of South Dakota Cable Television Contract

Dear Commissioner:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

Vermillion Cable TV, Ltd., is a private, non-exclusive franchisee of the City of Vermillion, South Dakota, providing cable television service to the residents of the City. The Board of Regents, through the University of South Dakota, desires to enter into an agreement with said private enterprise whereby: the University of South Dakota would receive unconditional access to a cable television channel and Vermillion Cable TV, Ltd., would be provided space in and contiguous to the New Armory Building of the campus to allow for the location of its head-end equipment, receiving dish and transmission tower.

The Board believes that such an arrangement would provide a significant educational advantage to the University and its students, in that students would gain the experience and technical background involved in their production of a television program for distribution over the Vermillion area cable channel. Based on the above facts, you have asked the following question:

QUESTION:

Is the Board of Regents authorized to enter into such an agreement?

The South Dakota State Constitution, Article XIV, § 3 provides that the 'State University' shall be under the control of a board under such rules and regulations as the Legislature shall provide. Clearly, the board contemplated by such constitutional provision is the Board of Regents. Additionally, SDCL 13-57-1 provides that the University of South Dakota shall be under the general control of the Board of Regents. This statute is supplemented by SDCL 13-57-5, wherein the Board is authorized to expend appropriate funds as it shall deem expedient, for the purpose of procuring all necessary facilities for the giving of instruction.

It is also fairly clear that the Board of Regents has many of the corporate powers held by private corporations, inasmuch as SDCL 13-49-11 authorizes the Board to hold and manage property for the purposes for which the Board was established, in the legal form of a corporation. SDCL 13-49-13 further points out that the Board shall govern and regulate the institutions under its control as it shall deem best calculated to promote the purposes for which they were established, and provides that the Board have charge and supervision of all buildings and property connected therewith. This must be construed to include physical facilities adjacent to or within the New Armory Building, such as a receiving dish or head-end equipment suggested by your question. SDCL 13-49-15 grants to the Board the power to make contracts for services and erection of buildings, and to purchase lands, materials, and supplies. This statute would include the power of the Board to spend money and purchase or sell property as is deemed necessary and proper by the Board in the performance of its above-specified functions. More generally, SDCL 13-49-19 sets forth the intent of the Legislature in enacting 13-49-15, by stating that said intent was to give the Board all usual powers, and powers which are necessary to the proper legal maintenance of educational institutions within its control. As stated above, this would include the University of South Dakota.

The Attorney General's Office has issued previous official opinions which may be of some assistance in answering your question. In 1959-60 A.G.R. 99 it was the opinion of the Attorney General that the Board of Regents has the authority to designate the purpose and use of buildings within institutions under its control. Furthermore, in Official Opinion No. 69-19 it was the stated opinion of this office that legislative approval would not be needed to change the use of state buildings under the Board's control.

Therefore, based upon the foregoing authorities, it is my opinion that the Board of Regents has the authority to promote and establish the proposed educational television

facilities. The answer to your question is therefore, yes. Since no opinion is requested regarding the proper method of entering into such a contract, none will be expressed.

For informational purposes, you should be aware that SDCL 13-47-7 gives the State Board of Directors for Educational Television the power and duty to promote and sponsor a noncommercial educational television network, to serve a series of interconnecting units throughout the state. The specified powers and duties within Chapter 13-47 which are conferred upon the Board of Directors for Educational Television include, among others:

1. The power and duty to acquire, hold, and use property for educational television purposes;
2. The power and duty to construct, lease, and repair television facilities;
3. The power and duty to arrange for and provide standard broadcast and closed circuit noncommercial educational television programs to South Dakota citizens and institutions;
4. The power and duty to enter into contractual agreements for the purpose of sharing through lease arrangements, the cost of operating facilities, with private persons, organizations, and associations.

However, the Legislature was not entirely clear as to whether the Board of Directors for Educational Television or the Board of Regents would have primary jurisdiction in the promotion and operation of your proposed cable television system. Since no opinion is requested regarding such jurisdictional issue, none will be expressed.

Respectfully submitted,

Mark V. Meierhenry
Attorney General