



## The Attorney General of Texas

JIM MATTOX  
Attorney General

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Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

301 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

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Mr. Mark G. Goode  
Engineer-Director  
Department of Highways and  
Public Transportation  
P. O. Box 5075  
Austin, Texas 78763

Opinion No. JM-105

Re: Whether a community antenna or television service may be reimbursed under article 6674w, V.T.C.S., for the cost of relocation of its facilities where such relocation is necessitated by highway construction

Dear Mr. Goode:

You have asked the following question:

Can a person in the business of providing a community antenna or cable television service to the public be reimbursed under article 6674w-4, V.T.C.S., for the cost of adjustment or relocation of the facilities where such relocation or adjustment is necessitated by Interstate Highway construction when such person has no property interest in the existing location of such facilities?

Article 6674w-4 provides, in pertinent part:

Whenever the relocation of any utility facilities is necessitated by the improvement of any highway in this State which has been or may hereafter be established by appropriate authority according to law as a part of the National System of Interstate and Defense Highways, including extensions thereof within urban areas, such relocation shall be made by the utility at the cost and expense of the State of Texas provided that such relocation is eligible for Federal participation.

The statute defines "utility" to include

publicly, privately, and cooperatively owned utilities engaged in furnishing telephone,

telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer or pipeline service.

The relevant federal statute, 23 U.S.C. section 123, provides:

(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities.

(b) The term "utility", for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.

Thus, the federal statute apparently permits the states to determine which "utility" costs will be reimbursed. As a result, if a community antenna or cable television service engages in the business of "furnishing . . . communications . . . service," its cost of relocation may be reimbursed under article 6674w-4.

In our opinion, it is clear that a community antenna or cable television service engages in the business of "furnishing communications service." "Communication" is defined in article 9019, V.T.C.S., a statute which imposes penalties for interception of communication, as

speech uttered by any person and any information including speech transmitted in whole or in part with the aid of wire or cable.

In Independent Theatre Owners v. Arkansas Public Service Comm'n, 361 S.W.2d 642 (Ark. 1962), the court held that a television cable service provides a telephonic or telegraphic communication service. See Attorney General Opinion C-702 (1966). We conclude that a community

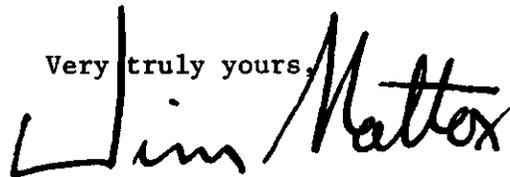
antenna or cable television service engages in the business of furnishing communications service and thus, its cost of relocation may be reimbursed under article 6674w-4.

It has been suggested that Senate Bill No. 643, Acts 1983, Sixty-eighth Legislature, chapter 556, at 3234, requires a different result. We disagree. This bill requires a utility which damages a road to "bear the expense of repairing" it. It applies only to "unincorporated area[s] of the state" and to "state highway[s] or county road[s]." As to such highways, the person providing the utility service must "bear the cost of repairing a state highway or county road damaged by a relocation." Article 6674w-4, on the other hand, is applicable not to state highways, but only to those highways designated as part of the interstate highway system.

S U M M A R Y

A person in the business of providing a community antenna or cable television service to the public may be reimbursed under article 6674w-4, V.T.C.S., for the cost of adjustment or relocation of the facilities where such relocation or adjustment is necessitated by interstate highway construction.

Very truly yours,



J I M M A T T O X  
Attorney General of Texas

TOM GREEN  
First Assistant Attorney General

DAVID R. RICHARDS  
Executive Assistant Attorney General

Prepared by Rick Gilpin  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Rick Gilpin, Chairman  
Jon Bible  
Colin Carl  
Susan Garrison  
Jim Moellinger  
Nancy Sutton