



HENRY McMASTER
ATTORNEY GENERAL

May 1, 2009

Barbara L. Skinner, Business Enterprise Director
South Carolina Commission for the Blind
P. O. Box 2467
Columbia, South Carolina 29202

Dear Ms. Skinner:

In a letter to this office you requested an opinion regarding Lexington County requiring the Commission for the Blind to return a percentage of the profits realized by a blind manager from sales from the commissary at the Lexington County Sheriff's Department. You stated that

[t]he Commission has determined its ability to operate the Commissary and has notified the County that the Commission wishes to exercise its option. The statement in the regulations that says the "property custodian shall issue to the Commission free of charge a permit for the operation of a vending facility and cooperate with the Commission in the installation of such facility" prohibits a return of profit. As well, the percentage that Lexington County is requiring is much too high for a blind manager to realize a reasonable income for the services.

In reviewing your question, S.C. Code Ann. § 43-26-50 states that

- (a) The property custodians for all public property shall:
 - (1) Prior to granting a permit or renewing a permit for the sale of articles listed in Section 43-26-60, on or in the public property within their control, grant the Commission an option to establish a vending facility operated by a blind person for the sale of such articles in a manner as such custodian may deem necessary....
 - (d) If the Commission shall determine to exercise its option, the property custodian shall issue to the Commission free of charge a permit for the operation of a vending facility and cooperate with the Commission in the installation of such facility. No charge shall be made for the installation or operation of a vending facility.

As to the definition of "public property" as used in such provision, Section 43-26-10(c) states that "public property" "...means any building or land owned, leased or occupied by any department or agency of the State or any instrumentality wholly occupied by the State or by any county or

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municipality or other local government entity.” A “vending facility” is defined by subsection (d) of such provision as

...such shelters, counters, shelving display and wall cases, refrigeration apparatus, heating or cooking apparatus, and other appropriate auxiliary equipment as is necessary for the vending of such articles as may be approved by the Commission. This definition specifically includes any manual or coin operated vending facilities, snack bars and cafeterias.

In reviewing your question, Lexington County has brought to your attention a provision of the Minimum Standards for Local Detention Facilities in this State. Such standards are established at least in part pursuant to S.C. Code Ann. §§ 24-9-10 et seq. and 2-48-60. Included among those standards is standard 2037 which states

[a] canteen/commissary may be operated in the detention facility. If a canteen/commissary is established, then an inmate welfare fund shall also be established...Profits from the canteen/commissary shall be used for overall inmate welfare.

Referencing such, you have requested an opinion regarding this section and whether it applies to the operation of a canteen by inmates, specifically questioning whether Regulation 2037 applies to a commissary operated under the priority of the Commission for the Blind.¹

In association with your request, the Lexington County attorney has questioned whether commissary services are included as part of the statutory definition of “vending facility” as set forth in Section 43-26-10. He also questioned whether Regulation 2037 of the Minimum Standards for Local Detention Facilities require that profits from the vending facility be used for inmate welfare or does Section 43-26-50(d) control so that the Commission for the Blind cannot be charged for operating a vending facility, and, therefore, no profits will go toward inmate welfare.

Please be advised that upon our review of the above questions, it appears that these questions are novel questions of law. Our research has not revealed similar questions having been definitively dealt with by courts of other jurisdictions or the opinions of other attorneys general. As set forth

¹It is specifically provided by S.C. Code Ann. § 43-26-90 that the provisions of S.C. Code Ann. §§ 43-26-10 et seq. dealing with the operation of vending facilities by blind persons do not apply to “...hospitals, four-year institutions of higher learning and their branches, public elementary and secondary schools, technical education institutions, the South Carolina State Museum, property under the Patriots Point Development Authority jurisdiction, facilities devoted primarily to athletics, or to state, municipal, county or civic center auditoriums and assembly halls....”

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above, there are competing provisions regarding the operation of commissaries/canteens at detention facilities and how their profits are to be utilized. It is unclear whether the provision that "...the property custodian shall issue to the Commission free of charge a permit for the operation of a vending facility and cooperate with the Commission in the installation of such facility" would necessary control as to a commissary/canteen at a local detention facility especially whether statutorily-authorized standards dictate that "[i]f a canteen/commission is established, then an inmate welfare fund shall also be established...(and)...[p]rofits from the canteen/commissary shall be used for overall inmate welfare." Also, the determination of the questions set forth above may be dependent upon facts and this office has repeatedly recognized that an opinion of this office cannot determine facts as investigations and determinations of facts are beyond the scope of an opinion of this office. See: Ops. Atty. Gen. dated November 12, 2008; March 19, 2008; and October 8, 2007. As a result, we suggest that consideration be given to seeking a declaratory judgment which would resolve any questions regarding these matters with finality.

We regret that we cannot be of assistance at this time.

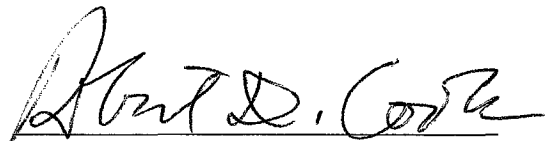
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

cc: Jeff Anderson, Esquire
Lexington County Attorney