



HENRY McMASTER
ATTORNEY GENERAL

October 8, 2008

Barbra L. Skinner, Business Enterprise Director
South Carolina Commission for the Blind
Post Office Box 2467
Columbia, South Carolina 29202

Dear Ms. Skinner:

We understand from your letter to Attorney General, Henry McMaster, that you desire an opinion of this Office on behalf of the South Carolina Commission for the Blind (the "Commission") concerning the validity of contracts between the Commission and public agencies. Specifically, you ask "whether or not a contract or agreement between South Carolina Commission for the blind and public agencies would supersede Social Services Regulation 43-26-50 that gives the Commission for the Blind priority to operate vending facilities in public facilities."

Law/Analysis

Chapter 26 of title 43 of the South Carolina Code governs the operation of vending facilities by blind persons. These provisions give the Commission the authority to license and establish vending facilities on public property to be operated by blind persons. S.C. Code Ann. § 43-26-20 (1976). According to section 43-26-50 of the South Carolina Code (1976), custodians of public property must give the Commission priority in establishing a vending facility in or on public property prior to granting a permit or renewing a permit to another party. This provision also sets forth the duties and responsibilities of the custodian with regard to the vending facility. S.C. Code Ann. § 43-26-50. Other provisions contained in title 43 describe the duties of the Commission with regard to the facility and pursuant to section 43-26-30 of the South Carolina Code (1976), the Commission shall promulgate regulations which are to be followed by blind persons operating such vending facilities. Thus, the provisions contained in chapter 26 of title 43 along with the applicable regulations provide details as to each party's authority and responsibilities.

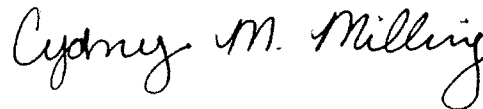
Nonetheless, we understand the Commission developed a practice of entering into agreements or contracts with public agencies who act as custodians of public buildings in which blind persons operate vending facilities facilitated by the Commission. Along with your request, you provided a copy of a sample agreement. In summary, the agreement allows the Commission to operate a vending facility on the public agency's premises and provides specifics as to the Commission's and the agency's responsibilities.

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While you have not asked us to review the terms of the sample contract sent along with your request letter, you generally inquire as to whether the contract or the statute are followed should a conflict arise between the terms in the contract and the statutory provisions. Numerous court decisions in this State adopt the general rule that "courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." Carolina Care Plan, Inc. v. United HealthCare, 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004). Accordingly, if a provision in a contract between a state agency and the Commission conflicts with a statutory provision, the statutory provision will prevail, and the Court will most probably not enforce the contractual provision.

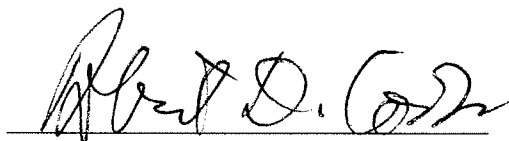
Very truly yours,

Henry McMaster
Attorney General



By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Deputy Attorney General