



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

January 11, 2006

The Honorable David L. Thomas  
Senator, District No. 8  
23 Wade Hampton Boulevard  
Greenville, South Carolina 29609

Dear Senator Thomas:

In a letter to this office you questioned whether the Department of Corrections is required to transfer its current vending machine operations to the State Commission for the Blind. Such letter was prompted in part by a letter to the Department of Corrections from the Business Enterprise Director of the Commission for the Blind indicating that the Commission "...would like to exercise its priority under Title 43-Social Services Section 43-26-50 for any facilities at the South Carolina Department of Corrections that are available or may becoming available."

S.C. Code Ann. §§ 43-26-10 et seq. provide for the operation of vending facilities by blind persons. Pursuant to Section 43-26-10(d), the term "vending facility" is defined 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. (emphasis added).

A similar definition is set forth by Commission for the Blind Regulation 18-1(18) which defines "vending facility" as

...automatic vending machines, cafeterias, snack bars, canteens, car service shelters, counters and other auxiliary equipment which may be operated by Blind Licensed Vendors and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws.

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Such definition is similar to that set forth in 20 USCA §107(e) which defines “vending facilities” for the blind in federal buildings as

...automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment as the Secretary may by regulation prescribe as being necessary for the sale of...articles or services...and which may be operated by blind licensees....<sup>1</sup>

Commission for the Blind Regulation 18-1(19) defines a “vending machine” as

a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature and telephones will not be considered to be vending machines.

Section 43-26-60 states that

(a) vending facility operated pursuant to this chapter shall be used for the vending of newspapers, periodicals, confections, chewing gum, tobacco products, picture postcards, hot and cold beverages, hot and cold foods, both prepackaged and fresh, any or all of these articles, and such other articles as are approved by the Commission and by the property custodian in charge of the property whereon the vending facility is located.

Section 43-26-20 provides that “...the Commission is authorized to promote the employment of blind persons, including the licensing and establishment of such persons as operators of vending facilities in or on public or other property.” Pursuant to Section 43-26-30, among the duties of the Commission are the promulgation of regulations governing “(t)he eligibility for licensing of blind persons as vending facility operators” and making surveys “to find locations where vending facilities may be properly and satisfactorily operated by blind persons.”

Section 43-26-50(a) 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 § 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.

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<sup>1</sup>20 U.S.C.A. § 107(b) states that “(i)n authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons....”

2. Cooperate with the Commission in surveys of property under its control to find suitable locations for the operation of vending facilities, and grant an option for the establishment of such facilities to the Commission as the needs are determined.

(b) The Commission shall, upon receipt of the notice of the option, determine the availability of blind persons capable and desirous of operating the vending facility in the manner proposed. The Commission shall notify the property custodian of its intent to exercise the option within thirty days of receipt thereof. Provided, however, that the actual establishment of the facility shall take place within a reasonable period of time.

(c) If the Commission determines not to exercise its option, it shall issue to the property custodian a certificate of this intent. No permit to any person, other than one licensed by the Commission, shall be issued or renewed for the sale of articles listed in § 43-26-60 on or in public property in the absence of this certificate.

(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.

(e) All contracts or permits entered into or issued after the effective date of this chapter shall be voidable if not in conformity with the provisions of this chapter.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Consistent with the above, in my opinion, the better reading of the referenced statutes supports the conclusion that a facility consisting of coin-operated vending machines is within the category of "vending facilities" for purposes of the provisions of Sections 43-26-10 et seq. Such construction is consistent with a prior opinion of the Maryland Attorney General, Op. No. 90-061 dated December 21, 1990, which concluded that the term "vending facility" as used in that state's statutes included facilities which consist solely of automatic vending machines. Similarly, in an opinion dated June 6, 1989 the Mississippi Attorney General concluded that vending machines would constitute a "vending facility". A prior opinion of this office dated December 9, 1993 recognized the opening of a vending facility at the South Carolina Fire Academy which consisted of vending machines. As a result of such construction, the operation of a vending facility consisting

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of coin-operated vending machines on public property, including the Department of Corrections, would appear to come within the authority of the Commission for the Blind in its efforts to promote the employment of blind persons as provided in Section 43-26-20. As stated by Section 43-26-50(a)(1), prior to granting or renewing permits to sell items listed in Section 43-26-60, "(t)he property custodians for all public property shall...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."

However, in my opinion, the manner of operation of a "vending facility" with regard to coin-operated vending machines is ambiguous. In particular, there is the requirement of Section 43-26-50(a) referenced above which states that the Commission may "...establish a vending facility operated by a blind person for the sale of such articles in a manner as such custodian may deem necessary." (emphasis added). Such provision could arguably be interpreted to require that a vending facility composed of coin-operated vending machines must be a separate facility maintained personally by a blind individual, i.e., a blind vendor must be physically present at all times during the operation of a vending facility composed of coin-operated vending machines. Such conclusion is consistent with the numerous provisions throughout such statutes referring to the establishment of a vending facility "operated" by a blind person and provisions referring to the "operation of a vending facility". See, e.g., Sections 43-26-50(a)(1) and (d) cited previously. Such construction is also consistent with the Regulations of the Commission for the Blind regarding the operation of a vending facility. Regulation 18-8(B)(1) and (2) provides that a blind vendor must agree to "(b)e responsible for having the vending facility open for business on the days and during the hours specified in the permit." and "(m)aintain a neat and clean businesslike appearance while working at the vending facility....". It is also provided by such regulation at subsection (D) that "(i)f a blind licensed vendor is not at his or her vending facility during the hours he or she has given his or her BEP Counselor, he or she will be considered absent from work." Such construction regarding the operation of a vending facility involving coin-operated machines by a blind individual would be consistent with the typical operation of canteens in public buildings by blind individuals where the blind individual actually sells products. However, admittedly, Section 43-26-50(a)(1) recognizes the right to operate a vending facility by a blind person "in a manner as such custodian may deem necessary", thereby supporting the conclusion that there may be discretion on the part of the blind person as to how he or she wishes to "operate" a vending facility.

Additional ambiguity as to the proper construction of the referenced statutes is the provision in Section 43-26-90 that "(a)s many as two coin operated vending machines may be placed in buildings on the public property if the machines are not located in a building where there is a vending facility operated by the commission." If the referenced statutes are read to conclude that a vending facility composed of just coin-operated vending machines may be established, without the physical presence of a blind person operating such facility, then the quoted provision of Section 43-26-90 would be superfluous in that it recognizes the right to place up to two coin operated vending machines in buildings as long as they are "not located in a building where there is a vending facility operated by the commission." If a "vending facility" is composed of vending machines where there

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is no presence of a blind operator, then arguably the presence of two vending machines could constitute a "vending facility operated by the Commission".

As a result of such ambiguities, consideration should be given to seeking a declaratory judgment to resolve the issue with finality. Of course, if it is the intention that a "vending facility" consist solely of coin-operated vending machines where there is no presence of a blind operator, legislative clarification could also be sought. Also, if it is desired that the Department of Corrections be exempt from the requirements of Sections 43-26-10 et seq., consideration may be given to expressly including that Department among the buildings and institutions expressly exempted from the provisions of such legislation.<sup>2</sup>

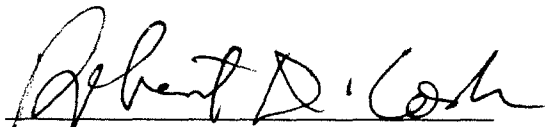
With kind regards, I am,

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General

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<sup>2</sup>Section 43-26-90 states that

This chapter shall 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, facilities devoted primarily to athletics or to state, municipal, county or civic center auditoriums and assembly halls.