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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 16, 1999

Gerry Urbanic, Director
Department of Legal Services
Charleston County School District
75 Calhoun Street
Charleston, South Carolina 29401

Re: Informal Opinion

Dear Ms. Urbanic:

Thank you for your letter to Attorney General Condon which has been referred to me for response. Therein, you seek an opinion from this Office concerning Chapter 26 of Title 43, Operation of Vending Facilities by Blind Persons.

You indicate that the Charleston County School District has two administrative facilities: one houses the Superintendent's Office, Instructional Services and Personnel; the other contains the Business Office. Both facilities have vending machines, the proceeds from which employee groups use for charitable donations and group functions.

The specific issue which you raise is whether the employees of the school district or the Commission of the Blind have the right to the proceeds from the machines when such machines are housed in these buildings owned by the school district.

LAW / ANALYSIS

The South Carolina Commission for the Blind is authorized by statute to license and establish blind persons as operators of vending facilities in or on public property. See, S.C. Code Ann. Sec. 43-26-30. However, the General Assembly has exempted certain buildings.

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Section 43-26-90 provides as follows:

[t]his chapter shall not apply to hospitals, four-year institutions of higher learning and their branches, **public elementary and secondary schools**, technical education institutions, facilities devoted primarily to athletics or to state, municipal, county or civic center auditoriums and assembly halls nor shall there be any prohibitions to the placement of up to two coin operated vending machines in buildings on the public property provided they are not located in a building where there is a vending facility operated by the Commission. (Emphasis added).

Thus, the issue is whether the term "public elementary and secondary schools" embraces the situation where school property is involved, but the purpose of the buildings concerned is primarily administrative, rather than providing education in the purest sense of the word.

I have searched the opinions file and can find no previous opinion of this Office which addresses this question or any other similar issue. Thus, the issue is novel in this State.

The statute is ambiguous and I am not at all certain how a court would apply the law in the context you have presented. On the one hand, it could be argued that Section 43-26-90 lists several large public facilities as exempted from the Chapter. Hospitals, "four-year institutions of higher learning and their branches," and "technical education institutions" are all typically comprised of many buildings. Often, as these facilities are outgrown, additional buildings are incorporated into these institutions and hospitals for the purpose of housing administrative offices. These offices, although perhaps once located within the confines of a single building, continue to function as part of their facilities despite their removed location. The term "public elementary and secondary schools," when placed in its context of a large campus setting, could thus be construed to include administrative offices or buildings. In many school districts today, as the buildings are becoming increasingly populated, the perimeters of the school are constantly changing. Thus, an administrative building owned by the school district, but housed separately from the classroom buildings could be considered by a court as part of the school. See, Yttrup Homes v. County of Sacramento, 73 Cal. App.3d 279, 140 Cal.Reptr. 680 (1977)[fact that dictionary did not define "schools" as incorporating administrative officer or warehouses did not establish that property used for such purposes is not a part of the schools]; Trustees of Cola. v. Bd. of Trustees of Rich. Co. Sch. Dist. No. 1, 265 S.C. 194, 217 S.E.2d 587 (1975) [administrative

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offices of the School District is a use for public school purposes].

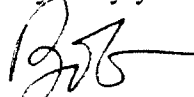
On the other hand, the language of the statute makes only "public elementary and secondary schools" exempt. An administrative building owned by the district, but entirely removed from the school campus, could thus be deemed by the court as not falling within the statute's terms. It could be argued that if the General Assembly had intended to include entirely separate administrative facilities within the exemptions, the statute would have used the more inclusive terms such as "branch" or "institution" to refer to these locations. The failure to use the inclusive terms for certain locations could be considered by a court as indicating the Legislature's intention to narrow the scope of the exceptions when referring to public school districts. Furthermore, it could be argued that if the Legislature had intended that the term "school" encompasses all district-owned buildings, it arguably would not have needed to include both "elementary" and "secondary" in the language of the section or would have phrased the section more in keeping with this all-inclusive intent.

In short, based upon the fact that Section 43-26-90 is ambiguous and that good arguments could be made for both interpretations outlined above, legislative or judicial clarification would be advisable. Thus, I would recommend that this matter be resolved either through a declaratory judgment or by statutory amendment to clarify the Legislature's intent. Typically, a court would deem the statute as remedial in nature and exceptions thereto would thus be narrowly interpreted. However, unless and until a court or the General Assembly speaks definitively to the question you have raised, I can only advise as to the statute's ambiguity and the need for judicial or legislative clarification.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph