

1983 WL 181832 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 5, 1983

***1 Re: House Bill H.2589**

Representative T. Moffatt Burris
Labor, Commerce and Industry Committee
P. O. Box 11867
Columbia, SC 29211

Dear Representative Burris:

House Bill H.2589, Section 2, is a proposed amendment to Act 565 of 1968, which is Chapter 26, Section 43-26-10, South Carolina Code of Laws, 1976, as amended, governing operation of vending facilities by blind persons. Section 2 of the House Bill would amend Section 43-26-90 so as to make the statutory provisions governing vending facilities operated by the blind applicable to technical education institutions. The provisions of the cited Chapter require basically in the context of your inquiry that any public agency give consideration to making space available for vending facilities to be operated by blind persons whenever those agencies undertake new construction remodeling, leasing, acquisition and improvements of public premises.

This amendment is, apparently, the result of a legal action which was filed in 1980 by this office at the request of the South Carolina Commission for the Blind seeking an injunction to prohibit Spartanburg Technical College from placing and operating three (3) vending machines adjacent to a vending stand operated by the Commission for the Blind. After almost eighteen (18) months of litigation, Judge James B. Stevens ruled that Section 43-26-90 specifically exempted technical education institutions from any restrictions under the statute, and that Section would not apply so as to prohibit the placement of any number of coin operated vending machines in buildings on technical school campuses. I am enclosing a copy of this Order for your review. Thereafter, General Daniel R. McLeod reviewed the matter with me, as I was the attorney handling the case for the Commission, and it was agreed that there was little hope for an appeal, particularly since part of the case had centered around the fact that the technical education schools housing blind operated vending facilities retained those facilities under contract. Section 43-26-100 states that a vending facility operated by a blind person on public property, including technical education institutions, may not be terminated or closed without the written approval of the Commission. The Court viewed this statute as being in derogation of contract rights and, as such, unconstitutional when applied to any contracts for vending facilities entered into prior to the enactment of the provision disallowing technical schools the right to close or terminate vending facilities operated by the blind without the approval of the Commission for the Blind. A later suit was filed by members of the Commission privately to restrain Spartanburg Technical College from closing down a vending facility, but this action was, apparently, unsuccessful. This office was not involved in that action.

The amendment about which you have written in your letter received by this office on March 12, 1983, is, apparently, an attempt to correct the removal of technical education institutions from the requirements of the state statute concerning vending facilities for the blind so as to require those institutions to make space available for vending facilities to be operated by blind persons in the course of new construction, remodeling, leasing, acquisition, the improvement of their premises, and to prohibit the placement of more than two (2) vending machines in buildings on public property where vending facilities operated by the Commission for the Blind do not exist.

***2** I find no constitutional ramifications in subjecting technical education schools to the requirements of Act 565 of 1978, particularly since this was the original intent of the Legislature.

I hope that this will assist you in your review. Please do not hesitate to contact me if I may aid you further.

Sincerely,

Judith Evans Finuf
Assistant Attorney General

A BILL

TO AMEND ACT 565 OF 1978, RELATING TO THE ESTABLISHMENT AND OPERATION OF VENDING FACILITIES BY BLIND PERSONS IN OR ON PUBLIC AND OTHER PROPERTY, SO AS TO GRANT THE SOUTH CAROLINA COMMISSION FOR THE BLIND OR AGGRIEVED PERSON A CAUSE OF ACTION AGAINST ANY PROPERTY CUSTODIAN FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS ACT, INCLUDING THE ASSESSMENT OF THE COSTS OF SUCH ACTION, AND REASONABLE ATTORNEY'S FEES IF PRAYED FOR, IN THE EVENT THE COMMISSION OR AGGRIEVED PERSON PREVAILS; AND TO DELETE 'TECHNICAL EDUCATION INSTITUTIONS' FROM THE LIST OF ENTITIES TO WHICH THIS ACT DOES NOT APPLY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 2 of Act 565 of 1978 is amended by adding at the end the following paragraph:

'The commission or any person aggrieved by the violation of any provision of this act is granted a cause of action against any property custodian, as defined in item (f) of Section 1 of this act, for the purpose of enforcing the provisions of this act. The costs of the action, including reasonable attorney's fees if prayed for, must be assessed against such property custodian in the event the commission or other aggrieved person prevails in the action.'

SECTION 2. Section 9 of Act 565 of 1978 is amended to read:

'Section 9. This act does not apply to hospitals, four-year institutions of higher learning and their branches, public elementary and secondary schools, facilities devoted primarily to athletics, or to state, municipal, county, or civic center auditoriums and assembly halls nor may there be any prohibitions to the placement of up to two coin operated vending machines in buildings on the public property so long as they are not located in a building where there is a vending facility operated by the commission.'

SECTION 3. This act shall take effect upon approval by the Governor.

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