

1978 WL 43318 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 30, 1978

*1 Mrs. Maxine R. Bowles
Interim Commissioner
S.C. Commission for the Blind
P. O. Box 11638
Columbia, South Carolina 29201

Dear Mrs. Bowles:

I am writing in response to your letter of January 10, 1978, in which you request the opinion of this office regarding three matters of concern to the Commission.

You ask whether it is legally permissible for the Commission to permit a blind stand operator to participate in the selection of applicants for new vending stands. The Commission for the Blind is vested with the authority to enter into contracts with public and private buildings for the placement of concession stands. The law vests the Commission with the authority to select the person on whose behalf such a contract is entered. The Commission is not authorized to delegate that responsibility to private persons. Such delegation would, in the opinion of this office, be in excess of the Commission's authority and would, therefore, be unlawful.

You have also inquired as to whether the Commission for the Blind is legally responsible for refunding to blind vendors back payments of rent on automatic vending machines, which had been previously deducted from the proceeds from the machines and which was paid to the private suppliers of the vending equipment.

It is my understanding that the situation to which you are referring is one in which the Commission has contracted on behalf of and as an agent for the blind vendors with private distributors of vending machines to lease such equipment for installation in the blind vendors' concession stands. Under general agency principles, the liability for rental payments under these contracts would fall on the principals, i.e. the blind vendors. See C.J.S. Agency, Section 231. Since the responsibility for rental payments is on the vendors, it is within the authority of the Commission to deduct this cost from the proceeds of the machines. Hence, the Commission is not responsible for refunding any back payments.

You have also inquired whether the law prohibits payments made for utilities costs connected with the operation of vending stands. It has been the opinion of this office that payment for utilities costs is not prohibited by S.C. Code of Laws, 1976, Section 43-25-70, as utilities costs do not constitute a charge for installation or operation of a concession stand nor does it constitute a charge for the maintenance of equipment. It merely constitutes overhead and as such is not an unlawful charge. It is, therefore, the opinion of this office that the payment of such costs is not prohibited by law. This question is not free from doubt.

I hope this letter has been of some assistance to you.

Very truly yours,

Katherine W. Hill
Assistant Attorney General

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