

1976 S.C. Op. Atty. Gen. 428 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4556, 1976 WL 23172

Office of the Attorney General

State of South Carolina

Opinion No. 4556

December 31, 1976

\*1 South Carolina Code §§ 1–33 and 1–34 are mandatory provisions, relating to the operation of vending stands by blind persons within public buildings.

TO: Henry F. Watts  
Commissioner  
South Carolina Commission for the Blind

### QUESTION PRESENTED

Are persons in charge of state, county, and municipal buildings and buildings supported by state funds required to first offer the operation of vending facilities to blind persons through the South Carolina Commission for the Blind?

### STATUTES AND CITATIONS INVOLVED:

Sections 1–33 and 1–34, South Carolina Code of Laws, 1962, as amended.

Act No. 958 of 1966.

[Moore v. Waters](#) 148 S.C. 326, 146 S.E. 92 (1928).

[Creech v. South Carolina Public Service Authority](#), 200 S.C. 127, 20 S.E. 2d, 645 (1942).

[City of Columbia v. Niagara Fire Insurance Co.](#) 249 S.C. 388, 154 S.E.2d 674 (1967).

### DISCUSSION

This inquiry concerns the statutory construction of S. C. Code §§ 1–33 and 1–34; specifically, whether these code sections mandate the placement of blind persons in vending stands within buildings owned by State, county and municipal governments or supported by State funds. These code sections provide:

§ 1–33.—The head of any department, board, agency or governing body in charge of any State, county or municipal building may, whenever in his judgment it shall be proper or suitable so to do, grant to the division for the blind, State Department of Social Services, a permit to operate in such building a stand for the vending of newspapers, periodicals, confections, tobacco products and such other articles as may be approved, such stand to be operated by a blind person under the supervision and control of said division for the blind. Such blind person must be twenty-one years of age, a citizen of the United States and resident of the State for one year immediately prior to the date of his application for a stand. In buildings where a stand existed on May 25, 1940, the person who was then operating such stand shall not be removed, but if and when such operator ceases to operate such stand the concession for further operation shall be granted to the division for the blind. No license fee, rental or other charge shall be demanded, exacted, required or received for the granting of such permit. (1952 Code § 1–33; 1942 Code § 2244–2; 1940 (41) 1840.) (emphasis added)

§ 1–34.—Any park, hospital, institution or building which is supported in part or in full by funds provided by the State which operates a stand for the sale of newspapers, confections, tobacco and similar articles shall offer the operation of such stand to the division for the blind, State Department of Social Services. The division for the blind shall select from the blind, crippled or other physically handicapped persons of the State a qualified operator for such stands who shall meet the qualifications set out in § 1–33. If the division for the blind is unable to furnish such a qualified operator and shall so advise in writing such an operator may be obtained elsewhere. But the Table Rock State Park stands or concessions are exempted from the provisions of this section. (1952 Code § 1–34; 1942 Code § 2255–2; 1940 (41) 1840; 1950 (46) 2388.) (emphasis added.)

\*2 It should be noted that the South Carolina Commission for the Blind has by virtue of Act 958 of 1966 succeeded to the authority granted the division for the blind, Department of Social Services.

If it were not for the word ‘may’ appearing in the first sentence of § 1–33 there would be no question but that the provisions are mandatory. Therefore, the rules regarding statutory construction must be resorted to to resolve the question.

Whether ‘may’ should be read as ‘must’ or ‘shall’ is a question of legislative intent. [Moore v. Waters](#) 148 S.C. 326, 146 S.E. 92 (1928). The legislative intent must be gathered from the language of the statute as a whole, read in the light of all the circumstances, the situation and relation of the parties, the subject of the grant and the purpose to be attained. [Creech v. South Carolina Public Service Authority](#) 200 S.C. 127, 20 S.E. 2d 645 (1942). Moreover, the true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose. [City of Columbia v. Niagara Fire Insurance Company](#) 249 S.C. 388, 154 S.E. 2d 674 (1967).

Reading Code § 1–33 as a whole to ascertain the legislative intent, it appears that this Code Section is permissive only so far as the person in charge of a building may decide whether a vending stand will be placed in the building. If any vending stand is to be established, it must be offered first to the Commission. This is clear from the mandatory word ‘shall’ appearing later in the section with respect to existing vending stands. The language in Code § 1–34 is clear and unequivocally mandatory throughout.

## SUMMARY

In summary it is the opinion of this office that persons in charge of public buildings, of the type enumerated in Sections 1–33 and 1–34, are bound by mandatory provisions requiring them to offer to the South Carolina Commission for the Blind the operation of vending facilities therein, except as exempted by the express terms of these statutes. The only discretion allowed by these statutes to such persons is with respect to determining whether a vending stand itself is proper or suitable, not as to who will operate it.

Harry B. Burchstead, Jr.  
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 428 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4556, 1976 WL 23172