



HENRY McMASTER  
ATTORNEY GENERAL

September 10, 2009

Michael S. Pitts, Esquire  
Anderson County Attorney  
P. O. Drawer 10648  
Greenville, South Carolina 29603-0648

Dear Mr. Pitts:

In a letter to this office you questioned whether the State Commission for the Blind is required to receive the first option of placing vending machines on county-owned property where the county does not issue permits for such machines. You also questioned whether it would be permissible to contract with a vendor other than the Commission for the Blind where that vendor will provide a portion of the proceeds from the vending sales to a 501(c)(3) charitable organization. Your question involves an interpretation of the provisions of S.C. Code Ann. §§ 43-26-10 et seq.

As set forth in an opinion of this office dated October 8, 2008,

Chapter 26 of title 43 of the South Carolina Code governs the operation of vending facilities by blind persons.<sup>1</sup> These provisions give the Commission the authority to license and establish vending facilities on public property to be operated by blind persons. S.C. Code Ann. 43-26-20 (1976). According to section 43-26-50 of the South Carolina Code (1976), custodians of public property must give the Commission priority in establishing a vending facility in or on public property prior to granting a permit or renewing a permit to another party. This provision also sets forth the duties and responsibilities of the custodian with regard to the vending facility. S.C. Code Ann. 43-26-50.

Reference was made in the opinion to Section 43-26-20 which states

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<sup>1</sup>The term "vending facility" is defined by Sections 43-16-10(d) 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.

[f]or the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and assisting blind persons to become self-supporting, 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 and other property. The Commission shall cooperate with the United States Government in the administration of the vending facility program for the blind on Federal property, and shall adopt such methods of operation and take such action as may be required to secure the full benefits of the Federal program. (emphasis added).

In your letter, particular reference was made to the provisions of Section 43-26-50 which state that

- (a) [t]he property custodians for all public property shall:
- (1) Prior to granting a permit or renewing a permit for the sale of articles listed in § 43-16-60, on or in the public property within their control,<sup>2</sup> 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.
  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,

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<sup>2</sup>Section 43-26-90 states that as to buildings not subject to these provisions, [t]his chapter does 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, property under the Patriots Point Development Authority jurisdiction, facilities devoted primarily to athletics, or to state, municipal, county, or civic center auditoriums and assembly halls. As 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.

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. (emphasis added).

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). The Tennessee Attorney General in an opinion dated October 9, 2009 stated that its State's statutory provision which gave the exclusive right to the operation of vending machines on public property to blind vendors "...is to be liberally construed." Such similar construction may be arrived at by the provisions of Section 43-26-20 noted above regarding the promotion of the employment of blind persons as operators of vending facilities on public property.

In your letter you stated that

Anderson County does not issue permits for vending machines. However, it does have a number of vending machines located in various County buildings. Absent a permitting process, does Section 43-26-50 nevertheless require the County to provide the Commission for the Blind with the first opportunity to place vending machines on County property before it allows another vendor to do so? Further, does the fact that another vendor has pledged a portion of the proceeds of the vending sales to a worthy charity alter the analysis?

Mr. Pitts  
Page 4  
September 10, 2009

While you stated that the County does not issue permits for vending machines, in our telephone conversation you indicated that a contract process is involved by which an individual is allowed to place vending machines in public buildings of the County. As referenced in an opinion of the Rhode Island Attorney General dated April 16, 1985,

[t]he definition of "permit" contained Black's Law Dictionary is "a written license or warrant issued by a person in authority empowering the grantee to do such act not forbidden by law, but not allowable without such authority.

Therefore, while a "permit" may not be typically issued by the County in association with the placement of vending machines in public buildings, in the opinion of this office, the contract process involved would come within the referenced definition of a "permit" for purposes of Section 43-26-50. As a result, consistent with such provision and the expressed legislative intent regarding the promotion of blind persons as operators of vending facilities, the Commission for the Blind must first be given the option to establish a vending facility operated by a blind person. Such construction is also supported by the provisions of Section 43-26-50(e) which state that "[a]ll 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."

As to your separate question regarding whether it would be permissible for the County to contract with a vendor where that vendor will provide a portion of the proceeds from vending sales to a 501(c)(3) charitable organization, in the opinion of this office, consistent with the first response, such an arrangement would not be authorized inasmuch as the Commission for the Blind must first be given the option to establish a vending facility in a public building.

With kind regards, I am,

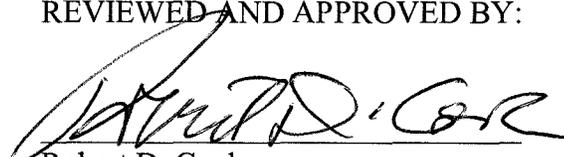
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
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REVIEWED AND APPROVED BY:



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