

LEGAL SERVICES

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MEMORANDUM

March 26, 2012

SUBJECT: Questions on CSSSB 51(L&C) relating to the operation of vending facilities on public property
(Work Order No. 27-LS0079\I)

TO: Representative Bill Stoltze
JB

FROM: Terry Bannister
Legislative Counsel

You have asked two questions regarding the bill described above. I am using the version described above because a version was not indicated on your request and the "I" version is the latest version on BASIS.

1. Review of bill. You have asked for a review of the bill, with a focus on the explanation of the impact this bill might have on certain contracts, activities, and facilities.

The bill primarily removes the eligibility of persons with severe disabilities from the state's vending facilities program for public property under AS 23.15.100 - 23.15.210. This program is based on and implements the vending facility program established under the federal Randolph-Sheppard Act described below. The removal of persons with severe disabilities leaves blind persons as the persons who are eligible and have the first priority to operate the program's vending facilities.

To accomplish limiting the program to blind persons, the bill amends or removes certain provisions relating to "persons with severe disabilities" throughout AS 23.15.100 - 23.15.21. These provisions include surveying the potential for vending facilities on public property,¹ licensing persons for operating vending facilities,² the provision of training and supervision for operating the vending facilities,³ the provision of equipment and stock provided to operate the vending facilities,⁴ removal of supervision of the

¹ AS 23.15.100(a)(5).

² AS 23.15.100(a)(6).

³ AS 23.15.100(a)(7).

⁴ AS 23.15.100(a)(8).

operation of the vending stands,⁵ certain regulation authority,⁶ hearing provisions for grievances,⁷ and the definition of "licensee."⁸

The bill also adds provisions directing the agency how to approach the situations when the agency cannot locate a blind person for a vending facility and when a vacancy occurs.⁹ If a blind person is not available for licensing to operate a vending facility, the bill allows the agency to contract with a non-blind person until a blind person can be located for the vending facility¹⁰ and directs the agency to attempt to contact blind persons directly about vending facilities.¹¹ This direction includes working with a private organization that specializes in the employment of blind persons.¹² The bill allows a blind person who is operating one vending facility to operate another vending facility if the agency cannot find a blind person to operate the vending facility.¹³

You have asked about the impact this bill might have on certain contracts, events, and facilities listed in your request. Your question appears to be directed primarily at municipal and school district facilities, events, and contracts. While the bill changes who is eligible for licensing and the operation of vending facilities, it does not change what public properties the vending facility provisions apply to. The bill does not amend the definition of "public property," which remains "real or personal property owned or leased by the state or federal government or an agency of the state or federal government." This definition does not appear to cover municipalities, since they are not usually considered state agencies, and the definition does not mention school districts (which are generally operated by municipalities). An earlier version, SSSB 51, did expand "public property" to cover municipalities and school districts, but the version that is contained in CSSSSB 51(L&C) does not. The bill does not appear to make changes that have an impact on municipalities or their school districts.

⁵ AS 23.15.100(b)(3).

⁶ AS 23.15.133(a)(2), and the repeal of AS 23.15.134.

⁷ AS 23.15.180(b).

⁸ AS 23.15.210(7).

⁹ Proposed AS 23.15.133(c) - (e).

¹⁰ Proposed AS 23.15.133(c).

¹¹ Proposed AS 23.15.133(d).

¹² Proposed AS 23.15.133(d).

¹³ Proposed AS 23.15.133(e).

Finally, the bill does not affect licenses and contracts entered into before the effective date of the bill. So the bill will not affect existing licenses and contracts. Unfortunately, I cannot provide you with any factual information on existing vending facility licenses and contracts or what might be anticipated to occur in the future.

2. Randolph-Sheppard Act. You have asked for information on the Randolph-Sheppard Act, 20 U.S.C. 107 - 107f ("Act"). In the bill, there are two references to the Act. The first occurs in bill sec. 2 relating to the issuance of licenses for operating vending facilities. The second occurs in bill sec. 5 in the definition of "licensee."

The Act is a federal law that authorizes a program for blind persons to operate vending facilities on federal property.¹⁴ The Act provides for state agencies to apply this Act in their respective states, although federal agencies have the principal responsibility for carrying out the Act.¹⁵ The federal government establishes in the Act and by regulation the requirements that state agencies must follow when applying the Act in their states.¹⁶ These requirements include accounting procedures, policies on the selection and establishment of new vending facilities, distribution of income to blind vendors, and the use and control of set-aside funds.¹⁷

The Act requires a state licensing agency to give preference to blind persons who need employment when issuing licenses.¹⁸ The Act requires that each license must be issued for an indefinite time, but may be terminated under certain conditions.¹⁹ The Act states that the licenses may only be issued to applicants who are blind within the meaning of the Act.²⁰ The state licensing agency may, under certain conditions, select a location for each facility and the type of facility.²¹ The Act requires, after January 1, 1975, that buildings acquired by ownership, rent, lease, or other occupation, or substantially altered, include satisfactory sites for the location and operation of vending facilities by blind persons;²² however, the Act does make some exceptions to this when, for example, the property

¹⁴ 20 U.S.C. 107.

¹⁵ 20 U.S.C. 107a(a)(1).

¹⁶ 20 U.S.C. 107a(a)(1).

¹⁷ 20 U.S.C. 107a(a)(1).

¹⁸ 20 U.S.C. 107a(b).

¹⁹ 20 U.S.C. 107a(b).

²⁰ 20 U.S.C. 107a(b).

²¹ 20 U.S.C. 107a(c).

²² 20 U.S.C. 107a(d)(1).

Representative Bill Stoltze

March 26, 2012

Page 4

cannot support the facility or the facility may affect existing restaurants or food facilities.²³

The Act requires that, in order for a state agency to become a designated licensing agency, a state agency must agree to cooperate with the federal agency,²⁴ generally provide vending facility equipment and stock for the facility,²⁵ to only set aside funds from the net proceeds of the facility's operation for certain reasons and under certain conditions,²⁶ to make reports to the federal agency,²⁷ to issue regulations as necessary for the operation of the Act's program,²⁸ to provide dissatisfied blind licensees with a fair hearing, and agree to submit grievances to arbitration if not resolved by the hearing.²⁹ The grievances of blind licensees are handled by a hearing at the state level and, if unresolved, by arbitration at the federal level.³⁰

The Act indicates how income from vending machine accrues to blind licensees.³¹ The Act directs the federal agency to prescribe regulations to establish a priority for the operation of cafeterias on federal property by blind licensees under certain conditions.³² And the Act directs that training programs be provided.³³

The Act defines "blind person," "federal property," "vending facility," and "vending machine income" for the Act.³⁴ "Vending facility" is defined as meaning "automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other

²³ 20 U.S.C. 107a(d)(2).

²⁴ 20 U.S.C. 107b(1).

²⁵ 20 U.S.C. 107b(2).

²⁶ 20 U.S.C. 107b(3).

²⁷ 20 U.S.C. 107b(4).

²⁸ 20 U.S.C. 107b(5).

²⁹ 20 U.S.C. 107b(6).

³⁰ 20 U.S.C. 107d-1 and 107d-2.

³¹ 20 U.S.C. 107d-3.

³² 20 U.S.C. 107d-3(f).

³³ 20 U.S.C. 107d-4.

³⁴ 20 U.S.C. 107e.

Representative Bill Stoltze
March 26, 2012
Page 5

appropriate auxiliary equipment as the Secretary may by regulation prescribe as being necessary for the sale of articles or services described" in the Act.³⁵

Regulations for the Act are spread throughout the federal regulations, but a representative sample can be found at 15 C.F.R. Part 5 ("Operation of Vending Stands"). A copy of the Act and a copy of these regulations accompany this memo.

If I may be of further assistance, please advise.

TLB:ljw
12-230.ljw

Enclosures

³⁵ 20 U.S.C. 107e(7).