CHAPTER 26

Operation of Vending Facilities by Blind Persons

**SECTION 43‑26‑10.** Definitions.

 For the purpose of this chapter:

 (a) “Blind persons” means persons who are visually handicapped as defined in Section 43‑25‑20 of the 1976 Code.

 (b) “License” means a written instrument issued by the commission pursuant to this chapter authorizing a blind person to operate a vending facility on State, Federal or other property.

 (c) “Public property” means any buildings or land owned, leased or occupied by any department or agency of the State or any instrumentality wholly owned by the State or by any county or municipality or other local governmental entity.

 (d) “Vending facility” means 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.

 (e) “Commission” means the South Carolina Commission for the Blind.

 (f) “Property custodian” means any person, officer or employee of a department, agency, board, commission, educational institution or any other branch of State, county, municipal or other local government who is charged with the responsibility of care, custody and control of public property.

HISTORY: 1978 Act No. 565 Section 1.

CROSS REFERENCES

Commission for the Blind, generally, see Section 43‑25‑10 et seq.

Attorney General’s Opinions

According to footnote 1 in Craft v. S.C. Commission for the Blind, 385 S.C. 560, 685 S.E.2d 625 (Ct. App. 2009), blind licensed vendors “are self‑employed and are not considered employees of the Commission [South Carolina Commission for the Blind].” S.C. Op.Atty.Gen. (Oct. 2, 2013) 2013 WL 5934121.

**SECTION 43‑26‑20.** Powers of commission.

 For 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.

HISTORY: 1978 Act No. 565 Section 2.

CROSS REFERENCES

Operation of concession stands by commission in public buildings and parks, see Section 43‑25‑70.

Rights of physically disabled persons, generally, see Section 43‑33‑10 et seq.

Library References

States 45, 67, 88.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 224 to 227, 249 to 251, 253, 261.

Attorney General’s Opinions

A blind vendor who has a license from the Commission for the Blind to operate a vending concession stand would be prohibited from serving on the governing board of the Commission for the Blind. 1994 Op.Atty.Gen., No. 94‑7, p. 24, 1994 WL 50425.

**SECTION 43‑26‑30.** Duties of commission.

 In carrying out this chapter, the commission:

 (a) shall promulgate regulations governing:

 (1) personal standards;

 (2) the protection of records and confidential information;

 (3) the eligibility for licensing of blind persons as vending facility operators;

 (4) termination of licenses;

 (5) the title to vending facility equipment and the interests in stocks of merchandise;

 (6) procedures for fair hearings; and

 (7) such other regulations as may be necessary to carry out the purposes of this chapter.

 (b) shall appoint such personnel as may be necessary for the administration of the vending facility program.

 (c) shall make surveys to find locations where vending facilities may be properly and satisfactorily operated by blind persons.

 (d) Shall furnish each vending facility established pursuant to this chapter with adequate, suitable equipment and shall be responsible for the maintenance and repair of such equipment to the operator without cost, and shall furnish each such facility with an adequate initial stock of merchandise.

 (e) Shall provide such management and supervisory services as are deemed necessary by the commission to assure that such vending facility will be operated in the most effective and productive manner possible without cost to the operator.

 (f) Shall take such other action as may be necessary or appropriate to carry out the purposes of this chapter.

 (g) May accept gifts and donations made unconditionally or subject to such conditions as the commission may deem appropriate, for the purpose of carrying out this chapter, and may use, hold, invest or reinvest such gifts for such purposes.

HISTORY: 1978 Act No. 565 Section 3.

CROSS REFERENCES

Powers and duties of Commission for the Blind, see Section 43‑25‑30.

Library References

States 67, 85, 88.

Westlaw Topic No. 360.

C.J.S. States Sections 224 to 227, 249 to 251, 253, 259, 261.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Estoppel and Waiver Section 14.1, Promissory Estoppel.

Attorney General’s Opinions

A blind vendor who has a license from the Commission for the Blind to operate a vending concession stand would be prohibited from serving on the governing board of the Commission for the Blind. 1994 Op.Atty.Gen., No. 94‑7, p. 24.

NOTES OF DECISIONS

In general 1

1. In general

Commission for the Blind could have expected and foreseen that blind licensed vendor would relinquish vending job at one location in reliance on Commission’s promise of employment at another vending site in correctional facility, so as to support vendor’s claim for promissory estoppel against Commission, where Commission promulgated rules preventing vendor from holding more than one vending position at a time. Craft v. South Carolina Com’n for Blind (S.C.App. 2009) 385 S.C. 560, 685 S.E.2d 625. Estoppel 62.2(2)

Blind licensed vendor who relinquished vending job at one location after accepting Commission for the Blind’s offer to operate proposed vending site in correctional facility reasonably relied on the Commission’s promise of employment, so as to support vendor’s claim for promissory estoppel against Commission; vendor was prohibited from operating more than one vending location at a time, and the promise of employment was not conditioned upon vendor entering into a formal contract with the Commission. Craft v. South Carolina Com’n for Blind (S.C.App. 2009) 385 S.C. 560, 685 S.E.2d 625. Estoppel 62.2(2)

**SECTION 43‑26‑40.** Licenses for operation of vending facilities; hearing and termination.

 In issuing licenses for the operation of vending facilities by blind persons, the commission shall give preference to applicants who are in need of employment. Licenses shall be issued only to applicants who are “blind persons” within the meaning of this chapter, who are eighteen years of age or older and are residents of this State. All licenses shall be for one year, but the commission may renew licenses upon application of the license holder prior to the expiration of the then existing license. A license may be terminated by the commission when the commission is satisfied that the vending facility is not being operated in accordance with the regulations promulgated by it.

 The commission shall be responsible for securing on behalf of its licensees the issuance of any license or permit required by another State agency or political subdivision of the State for the conduct of such business; but any such license shall be issued free of charge to a qualified blind person licensed by the commission.

 A hearing shall be granted by the commission if requested by the licensee. The license shall not be terminated unless a majority of all of the members of the commission after the hearing vote to terminate it.

HISTORY: 1978 Act No. 565 Section 4.

Library References

Public Assistance 178.

States 88.

Westlaw Topic Nos. 316E, 360.

C.J.S. Social Security and Public Welfare Sections 193 to 195.

C.J.S. States Section 261.

Attorney General’s Opinions

A blind vendor who has a license from the Commission for the Blind to operate a vending concession stand would be prohibited from serving on the governing board of the Commission for the Blind. 1994 Op.Atty.Gen., No. 94‑7, p. 24.

**SECTION 43‑26‑50.** Options to establish vending facilities operated by blind persons.

 (a) The property custodians for all public property shall:

 (1) Prior to granting a permit or renewing a permit for the sale of articles listed in Section 43‑26‑60, on or in the public property within their control, 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, 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 Section 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.

HISTORY: 1978 Act No. 565 Section 5.

Library References

States 88.

Westlaw Topic No. 360.

C.J.S. States Section 261.

Attorney General’s Opinions

The Commission for the Blind must first be given the option to establish a vending facility operated by a blind person. S.C. Op.Atty.Gen (Sept. 10, 2009) 2009 WL 3208467.

If a provision in a contract between a state agency and the Commission conflicts with a statutory provision, the statutory provision will prevail, and the Court will most probably not enforce the contractual provision. S.C. Op.Atty.Gen (Oct. 8, 2008) 2008 WL 4870543.

Discussion of whether the Department of Corrections is required to transfer its current vending machine operations to the State Commission for the Blind. S.C. Op.Atty.Gen. (Jan. 11, 2006) 2006 WL 148720.

The South Carolina Fire Academy is not a technical education institution for purposes of establishing vending facilities under the Business Enterprise Program of the South Carolina Commission for the Blind. S.C. Op.Atty.Gen. (Dec. 9, 1993) 1993 WL 560536.

House Bill 2134 requiring the custodian of new public buildings to offer the Commission for the Blind an option of letting a blind person run a vending facility before contracting with private parties is constitutional. 1976‑77 Op.Atty.Gen., No. 77‑105, p 94, 1977 WL 24447.

**SECTION 43‑26‑60.** Articles which may be sold at such facilities.

 A vending facility operated pursuant to this chapter shall be used for the vending of newspapers, periodicals, confections, chewing gum, tobacco products, picture postcards, hot and cold beverages, hot and cold foods, both prepackaged and fresh, any or all of these articles, and such other articles as are approved by the commission and by the property custodian in charge of the property whereon the vending facility is located.

HISTORY: 1978 Act No. 565 Section 6.

Library References

States 88.

Westlaw Topic No. 360.

C.J.S. States Section 261.

**SECTION 43‑26‑70.** Space for such facilities in new construction or remodeling of public buildings; costs.

 When new construction, remodeling, leasing, acquisition and improvement of public property subject to this chapter is authorized, due consideration shall be given to planning and making available suitable space and facilities for vending facilities to be operated by blind persons. When existing public property is altered or remodeled at the request of the commission to accommodate a vending facility, the cost of such alteration or remodeling shall be borne by the commission.

HISTORY: 1978 Act No. 565 Section 7.

Library References

States 88.

Westlaw Topic No. 360.

C.J.S. States Section 261.

Attorney General’s Opinions

1962 South Carolina Code Sections 1‑33 and 1‑34 [1976 Code Sections 1‑1‑520 and 1‑1‑530, sections now repealed.] are mandatory provisions, relating to the operation of vending stands by blind persons within public buildings. 1975‑76 Op.Atty.Gen., No. 4556, p 428, 1976 WL 23172.

**SECTION 43‑26‑80.** Blind vendors may have guide dogs on public property.

 Blind persons who are licensed by the commission to operate vending facilities shall be allowed to have their guide dogs present with them while on public property, any state, county or municipal laws, regulations, ordinances to the contrary notwithstanding. Provided, however, that this section shall in no manner affect or limit the provisions of Chapter 33 of Title 43 of the 1976 Code.

HISTORY: 1978 Act No. 565 Section 8.

CROSS REFERENCES

Right of blind person to use of public facilities, places of public accommodation and the like, see Section 43‑33‑20.

Library References

States 88.

Westlaw Topic No. 360.

C.J.S. States Section 261.

**SECTION 43‑26‑90.** Buildings not subject to chapter.

 This 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.

HISTORY: 1978 Act No. 565 Section 9; 2004 Act No. 205, Section 1, eff April 26, 2004; 2008 Act No. 353, Section 2, Pt 6A.1, eff July 1, 2008.

Library References

States 88.

Westlaw Topic No. 360.

C.J.S. States Section 261.

Attorney General’s Opinions

Discussion of whether the employees of the Charleston County School District or the Commission of the Blind have the right to the proceeds from the vending machines when such machines are housed in buildings owned by the school district. S.C. Op.Atty.Gen. (March 16, 1999) 1999 WL 397934.

**SECTION 43‑26‑100.** Effect on existing vending facilities operated by the blind.

 Notwithstanding any other provisions of this chapter, no vending facility operated by a blind person on public property, including technical education institutions, on the effective date of this chapter shall be terminated or closed without written approval of the commission and such approval shall not be unreasonably withheld.

HISTORY: 1978 Act No. 565 Section 10.

Library References

States 88.

Westlaw Topic No. 360.

C.J.S. States Section 261.

**SECTION 43‑26‑110.** Existing facilities may not be sold until option to lease given to commission.

 Notwithstanding any other provisions of this chapter a vending facility operated on public property prior to the effective date of this chapter may continue to operate but may not be sold or subleased by the lessee until the commission has been granted a thirty‑day option to lease the facility.

HISTORY: 1978 Act No. 565 Section 11.

Library References

States 88, 89.

Westlaw Topic No. 360.

C.J.S. States Sections 261, 263 to 264.