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February 6, 1990

Ms. Linda Moore-Cannon
Arizona Department of Economic Security
1717 West Jefferson
P.O.Box 6123
Phoenix, Arizona 85005

Re: I90-016 (R88-032)

Dear Ms. Moore-Cannon:

Your predecessor asked whether the vending machine income-sharing provisions of the Randolph-Sheppard Act (Act), 20 U.S.C. §§ 107 to 107f, are made applicable to non-federal property within this state by the provisions of A.R.S. § 23-504, relating to blind vendors operating on state, county, and municipal property. We conclude that the Act's vending machine income-sharing provisions, 20 U.S.C. § 107d-3, do not apply to income from vending machines on non-federal property in this state. Because this answer disposes of your remaining questions concerning the methods for applying the income-sharing provisions of the Act, we need not express an opinion on those subjects. We begin with a discussion of the Act.

The purposes and policy of the Act are set forth in 20 U.S.C. § 107, which provides, in pertinent part:

- (a) For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater

efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this chapter shall be authorized to operate vending facilities on any Federal property.

(b) In authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency as provided in this chapter; and the Secretary [of the Department of Education], through the Commissioner, shall, after consultation with the Administrator of General Services and other heads of departments, agencies, or instrumentalities of the United States in control of the maintenance, operation, and protection of Federal property, prescribe regulations designed to assure that--

(1) The priority under this subsection is given to such licensed blind persons (including assignment of vending machine income pursuant to section 107d-3 of this title to achieve and protect such priority), and

(2) wherever feasible, one or more vending facilities are established on all Federal property to the extent that any such facility or facilities would not adversely affect the interests of the United States.

(Emphasis supplied.)^{1/}

The state licensing agency referred to in the Act is a state agency for the blind designated by the Secretary of the Department of Education to license blind United States citizens "for the operating of vending facilities on Federal and other property in such state" 20 U.S.C. § 107a(a)(5); see 20 U.S.C. § 107b.

^{1/}The regulations promulgated pursuant to the Act are found in part 395 of title 34 of the Code of Federal Regulations.

To assure blind persons priority in operating vending facilities on federal property, the Act provides that blind vendors and their licensing state agencies share the following portions of the income from vending machines operated on federal property: 100 percent of income from vending machines which are in "direct competition," as defined by the Act, with a blind vending facility; 50 per cent of income from vending machines not in "direct competition" with such facilities; and 30 per cent of vending machine income where at least half the hours worked on the federal property are "other than normal working hours." 20 U.S.C. § 107d-3(b)(1).^{2/}

A.R.S. § 23-504(A) sets out the Legislature's delegation of responsibility for licensing blind vendors and otherwise implementing provisions of the federal act:

The department of economic security shall make surveys of merchandising business opportunities for and license persons who have no vision or acuity, or have a central visual acuity of 20/200 or less in the better eye, . . . to operate such businesses on state, county or municipal property where such businesses may be properly and satisfactorily operated by blind persons all in accordance with the provisions of the Randolph-Sheppard act, as amended by Public Law 93-516, title 20, United States Code, § § 107 through 107f.

(Emphasis supplied.)

Section 23-504(A) imposes duties upon the Department of Economic Security (DES) to survey business opportunities for and license blind persons to operate of merchandizing businesses on state, county, or municipal property. Because DES is also the designated state agency for carrying out the purposes of

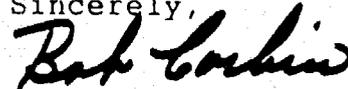
^{2/}Of this share, the blind licensee may receive income up to an amount which may be set by the Department of Education as a "ceiling" on the blind person's vending machine income. 20 U.S.C. § 107d-3(a). The state licensing agency is entitled to receive any amounts in excess of the ceiling, or the entire share if no licensee is operating a facility on the federal property where the vending machines are located. *Id.* The state licensing agency must use these revenues to subsidize certain employment benefits for blind vendors. 20 U.S.C. § 107d-3(c).

federal vocational rehabilitation statutes for the blind, A.R.S. §§ 23-503 and -504, it is also responsible for evaluating sites for blind vending facilities on federal property, 20 U.S.C. § 107a(d), and licensing blind persons eligible for services under the Act, 20 U.S.C. § 107a(a)(5). Noting these and applying the ordinary meaning of the language in section 23-504(A), we conclude that the Legislature, by requiring DES to perform its duties "all in accordance with" the Act, merely has required DES to perform its duties "in harmony with" or "in agreement with" the Act. See "Accord" and "Accordance" in Webster's Third New International Dictionary 12 (1976). This means that when the Act governs, as in the case of evaluating or licensing blind vendors on federal property, the Legislature has directed that DES act in conformity with the federal law.

Because the Act imposes duties only with respect to blind vending facilities on federal property, we cannot conclude that the Legislature, by a reference to the Act, intended to apply the provisions of 20 U.S.C. § 107d-3 to any property other than federal property in this state. "Courts will not read into a statute something which is not within the manifest intent of the legislature as gathered from the statute itself." State v. Bohannon, 101 Ariz. 520, 524, 421 P.2d 877, 881 (1966), appeal dismissed, 389 U.S. 1 (1967).

For the foregoing reasons, we conclude that A.R.S. § 23-504 does not make the income-sharing provisions of the Randolph-Sheppard Act applicable to vending machine income from state, county or municipal property in this state.

Sincerely,



Bob Corbin
Attorney General

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