S T A T E O F T E N N E S S E E
OFFICE OF THE
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February 21, 2006

Opinion No. 06-037

Applicability of the Blind Vendors Program, Tenn. Code Ann. §§ 71-4-501, *et seq.*, to fire stations

QUESTIONS

1. Can a fire station and its employees contract with a private vendor that is not part of the statutory blind vendors program if the vending facilities do not serve the general public?

2. Can a fire station have a vending machine that is owned by the employees and used for their personal use?

OPINIONS

1. No, unless the Department of Human Services decides not to make the fire station subject to the blind vendors program.

2. Yes, as long as the employees own the machine and supply it in their individual capacities.

ANALYSIS

1. Blind vendors are entitled to a statutory preference in the operation of vending facilities on most public property in Tennessee (the "Blind Vendors Program").[1] In your opinion request, you ask whether this preference applies if the vending facilities, specifically vending machines, serve only employees of a fire station and not the general public, and if not, whether the employees may contract with a third party for vending machines.

In general, the statutory language makes no distinction between whether the vending facility will serve the general public or be limited to employees who work at the public property. Rather, the focus is on the government's possessory interest in the property. The broad statutory definition of "public property," found at Tenn. Code Ann. § 71-4-502(4), includes most property owned or leased by local government, which under normal circumstances embraces fire stations. Pursuant to the Blind Vendors Program, whenever a new building or facility has been constructed on public property, or when existing contracts have expired or been changed in any way, the property manager must notify the Department of Human Services ("DHS"), which administers the Blind Vendors

[1]Tenn. Code Ann. §§ 71-4-501 to -508.

Program. DHS decides initially whether the property is suitable for being operated by a blind vendor, and, if so, DHS then handles the selection process for the blind vendor.[2] In general, the priority applies both to vending services with on-site management as well as to unmanned vending machines. Tennessee Code Ann. § 71-4-504(a) provides:

> If, after conducting a survey of the property, [DHS] determines that there is not sufficient population to support an on-site manager but the public property management desires vending machine services, the department shall have the right to place vending machines on the property and to make the necessary arrangements to ensure that vending machine services are provided and that the vending machines are properly maintained.

Based on the plain language of these statutes, the Blind Vendors Program applies to fire stations regardless of who uses the vending facilities. Therefore, assuming a fire station would not support a manned vending facility due to the fire station's small size, DHS would have the right to place vending machines at the fire station and make arrangements for qualified blind vendors to maintain the machines. If, on the other hand, DHS decided not to exercise its right to place vending machines at the fire station, the fire station (i.e., the municipal or county agency operating the fire station) would have the option to contract with a private vendor.[3]

2. You also ask whether the employees of a fire station could bypass the Blind Vendors Program by purchasing a vending machine for their personal use. The statute does not address this situation, but it would appear that the Blind Vendors Program would not apply so long as the fire station employees purchased the machine and supplied it in their individual capacities. [4] If, however, the fire station (i.e., the municipal or county agency operating the fire station) contracts with a third party vendor to lease a machine and/or supply a machine, the fire station could be in violation of the Blind Vendors Program.

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[2]Tenn. Code Ann. §§ 71-4-502(2) and (4) and -503(a).

[3]In Op. Tenn. Att'y Gen. 04-166 (Nov. 19, 2004) (copy attached), this Office addressed a related issue. The question was whether, if a public property has entered into a contract with a vending service provider, without giving the right of first refusal to DHS, DHS can require the public property to terminate the contract if DHS wishes to exercise its priority or require commissions be paid to DHS. This Office concluded that the Blind Vendors Program does not specify any specific remedies for a public property's failure to recognize the statutory preference. Instead, the statute includes a dispute resolution mechanism for disputes that may arise under its provisions between DHS and the management of public property. *See* Tenn. Code Ann. § 71-4-507.

[4]The question whether the employees of a particular fire department are authorized to place their own vending machine in the station is beyond the scope of this opinion and, in any event, would depend upon the rules, regulations and local ordinances applicable to such employees.

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