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Opinion No. 07-91

Applicability of the Blind Vendors Program, Tenn. Code Ann. §§71-4-501, *et seq.*, to County Sheriff's Office

QUESTIONS

1. When is the priority of the Department of Human Services (hereinafter "department"), as defined by Tenn. Code Ann. §71-4-502, to "the right of first refusal and the exclusive right to the operation of any and all vending machines" established?

2. Does the department's right of first refusal apply only when vending services are offered to outside sources for bid?

3. Can the County Sheriff's Office operate a commissary on public property internally without triggering the department's priority under Tenn. Code Ann. §71-4-502(3)?

4. To what extent may a Sheriff's Department outsource services to third parties for which they have no expertise before being considered to not be operating vending facilities internally?

OPINIONS

1. The department's priority under the Blind Vendors Program, Tenn. Code Ann. §§71-4-501, *et seq.*, of first refusal and exclusive right to the operation of vending facilities is established whenever any new buildings or other facilities are to be constructed on public property or when any existing contracts for vending facilities on public property expire or are changed in any way and the department determines that such property is suitable for the location of a vending facility.

2. No, under Tenn. Code Ann. §71-4-503, the department's priority applies to the operation of any and all vending facilities on public property whether or not such services are offered to outside sources for bid.

3. No, a commissary would fall within the definition of vending facility as defined in Tenn. Code Ann. §71-4-502(5) so as to trigger the department's priority even if operated internally by the County Sheriff's Office. Unless there is a pre-existing contract for the commissary or the

department determines such public property is not suitable for a vending facility, the department's priority would apply.

4. A Sheriff's Department will be considered to be operating vending facilities on public property for purposes of the Blind Vendors Program even if this is accomplished through contract with a third party.

ANALYSIS

1. As provided in Tenn. Code Ann. §71-4-502, the Department of Human Services has a right of priority to establish a vending facility to be operated by a blind individual on any public property. This statute provides, in pertinent part:

> This priority means that when the department has surveyed a public property and determined that such property is suitable for the location of a vending facility, it shall have the right of first refusal and the exclusive right to the operation of any and all vending facilities on any public property that it determines are capable of being operated by a blind individual[.]

Tenn. Code Ann. §71-4-502(3).

The department is required to be notified whenever any new buildings or other facilities are to be constructed by the State or on any other public property. Tenn. Code Ann. §71-4-503(a). In addition, the department shall also be notified when any existing contracts expire or are changed in any way. *Id.* At that time, the department shall promptly investigate and survey such property to determine if the location is suitable for one or more vending facilities. *Id.* If the department determines that such property is suitable for the location of a vending facility, its priority is established and may be exercised.

2. The term "priority" is defined in Tenn. Code Ann. §71-4-502(3) to apply to the operation of "any and all vending facilities" on any public property. There is no distinction between vending services operated by a County Sheriff's Office internally or through outside sources. Accordingly, the department's right of first refusal applies whether or not such services are offered by the County Sheriff's Office to outside sources for bid.

3. As noted above, the department's priority is not limited to situations where vending services are offered to outside sources for bid. A "vending facility" is defined in Tenn. Code Ann. §71-4-502(5) as a location or structure or space that sells "foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles and services that are dispensed automatically by a machine or manually by sales personnel or attendants." A "vending facility" may consist of vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, or counters. Tenn. Code Ann. §71-4-502(5). The operation of a commissary by

a County Sheriff's Office would fall within the definition of a "vending facility" for purposes of the Blind Vendors Program. Accordingly, unless there is a pre-existing contract for a commissary or the department determines that the public property is not suitable for a vending facility, the County Sheriff's Office may not operate a commissary on such public property whether internally or through outside sources.

4. As long as a vending facility, as defined by Tenn. Code Ann. §71-4-502(5), is operated on public property either through contract or directly by the County Sheriff's Office, the provisions of the Blind Vendors Program shall apply. *See* Tenn. Op. Atty. Gen. No. 06-037 (Feb. 21, 2006). Thus, a Sheriff's Department will be considered to be operating vending facilities on public property even if this is accomplished through a third party contract.

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