

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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April 28, 2011

Opinion No. 11-39

Applicability of Blind Vendors Program to Municipal Property

QUESTIONS

1. Does the Blind Vendors Program, Tenn. Code Ann. §§ 71-4-501, *et seq.*, apply to property owned by a municipality and operated by a joint venture between a municipality and a nonprofit corporation?
2. Is the “public property” management allowed to retain any percentage of profits from the operation of “snack bars, catering services, . . . [and] counters?”

OPINIONS

1. Yes, property owned or leased by a municipality is subject to the provisions of Tenn. Code Ann. §§ 71-4-501, *et seq.*, even if such property is operated as a joint venture between the municipality and a nonprofit corporation.
2. No, as provided in Tenn. Code Ann. § 71-4-503(b), the space for vending facilities and utilities must be provided at no cost. Public property management, however, may be entitled to a percentage of sales in cafeteria operations.

ANALYSIS

1. As provided in Tenn. Code Ann. §§ 71-4-501, *et seq.*, blind individuals are entitled to a preference in the operation of vending facilities on public property in Tennessee (the “Blind Vendors Program”). “Public property” is defined to include “all property owned or leased by the state of Tennessee, any county, municipality or any other entity which is created by act of the general assembly to perform any public function.” Tenn. Code Ann. § 71-4-502(4). This Office has previously opined that the requirements of the Blind Vendors Program apply to vending facilities operated on property owned or leased by local municipalities and counties even if accomplished through a third party contract. *See* Op. Tenn. Att’y Gen. No. 07-91 (June 8, 2007); Op. Tenn. Att’y Gen. No. 06-037 (Feb. 21, 2006); Op. Tenn. Att’y Gen. No. 01-128 (Aug. 17, 2001).

In the facts you have provided, the City of Memphis is the owner of the Pink Palace Family of Museums. The Museum is operated as a “joint venture” between the City of Memphis and a nonprofit corporation. Under the agreement for the operation of the Museum, however, the City of Memphis specifically retains ownership of this property.

As noted above, Tenn. Code Ann. § 71-4-502(4) defines “public property” to include all property owned or leased by a municipality. This statute does not include an exception for property owned by a municipality but operated by a third party. The Court of Appeals has recently recognized that the statutes regarding the Blind Vendors Program are to be liberally construed to give blind individuals “the greatest possible opportunities.” *Graybeal v. Tennessee Dept. of Human Services*, No. M2007-02320-COA-R3-CV, 2009 WL 1470473, *3 (Tenn. Ct. App. 2009). Accordingly, it is our opinion that the priority established by Tenn. Code Ann. §§ 71-4-501, *et seq.*, applies to property owned by a municipality even if that property is operated in a joint venture with a nonprofit corporation.

2. You have also asked whether public property management is allowed to retain any percentage of profits from the operation of vending facilities through the Blind Vendors Program. For purposes of the Blind Vendors Program, “vending facility” includes “automatic vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, counters, and any appropriate equipment necessary for the sale of articles or services described in this subdivision (5).” Tenn. Code Ann. § 71-4-502(5). Public property management must cooperate with the Department of Human Services “in whatever manner necessary” to establish a vending facility under the Blind Vendors Program and the space for vending facilities and utilities must be provided at no cost. Tenn. Code Ann. § 71-4-503(b). The only statutory provision for the payment of a percentage of sales to the public property management is for cafeteria operations. *Id.*

In construing statutes, courts must “ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used in the statute. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). In addition, it is a fundamental rule of statutory construction that the mention of one subject in a statute means the exclusion of other subjects that are not mentioned. *Phillips v. Tenn. Technological University*, 984 S.W.2d 217, 219 (Tenn. 1998).

In this case, the General Assembly has expressly allowed public property management to receive payment of a percentage of sales for cafeteria operations. Tenn. Code Ann. § 71-4-503(b). This statute, however, is silent as to any payment to public property management for the operation of any other type of vending facility. Therefore, it is our opinion that public property management is not allowed to retain any percentage of profits from vending facilities operated under the Blind Vendors Program other than cafeteria operations.

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