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November 14, 1990

Edward J. McHugh, Administrator
Idaho Commission for the Blind
341 W. Washington St.
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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Food Service Facilities in Public Buildings

Dear Mr. McHugh:

You have requested an analysis of the Food Service Facilities Act, Idaho Code §§ 67-6901 through 6905 (Attachment A), and its effect on the operation of food service facilities in public buildings by the Idaho Commission for the Blind ("Commission") or its clients. You have informed me that the Commission has met resistance from some agencies which prefer to operate vending facilities for the benefit of "fun funds," or which expect payment to employee "fun funds" by a vending machine operator, or which claim grandfather rights to operate vending facilities.

Generally, any governmental agency "which proposes to allow, to operate or to continue a food service facility in a public building" is required to notify non-profit organizations representing the handicapped of the opportunity, to give first priority to proposals submitted by the Commission, and priority to proposals submitted by non-profit organizations representing the handicapped other than the Commission. Idaho Code § 67-6903. The governmental agency may not charge rent for the food service facility. *Id.* Finally, the Act provides that it will not impair any valid contract existing as of March 1, 1982. Idaho Code § 67-6905. By its terms, this grandfather right does not apply to the renewal of contracts except contracts with the Commission, or the continuation of an agency's operation of a food service facility.

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The purpose of the Food Service Facilities Act is stated in Idaho Code § 67-6901:

It is the policy of this state to encourage and enable the physically and mentally handicapped to participate fully in the social and economic life of the state and to engage in remunerative employment.

The Act provides definitions of the terms "public buildings," "food service facilities," "handicapped" and "non-profit organization representing the handicapped." Idaho Code § 67-6902. The Act applies to all state, county or city buildings used primarily as governmental offices except public schools, institutions of higher education or vocational-technical training or facilities of the State Board of Correction. Buildings of the Department of Health and Welfare are not defined as public buildings by the Act, but are included by the Act for purposes of providing vending machine service. Idaho Code § 67-6904.

Attachment B is a copy of the Statement of Purpose for the Act. Clearly, the legislative intent of the Act was to allow all non-profit organizations representing handicapped persons to operate food service facilities in public buildings which previously could be operated only by the Commission.

The Act provides that "any governmental agency which proposes to allow, to operate or to continue a food service facility in a public building shall first attempt, in good faith, to notify non-profit organizations representing handicapped persons of the opportunity to operate a food service." Idaho Code § 67-6903. The Act provides a procedure for the selection of an organization if more than one organization responds to the notice, and provides priority for the Commission and other non-profit organizations representing the handicapped. A governmental agency may not grant a food service contract to any other party unless it "determines in good faith that no non-profit organization representing handicapped persons is willing or able to provide satisfactory food service." Idaho Code § 67-6903.

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Generally, the words of a statute must be given their plain, usual and ordinary meaning. Walker v. Hansley Trucking, 107 Idaho 572, 691 P.2d 1187 (1984). The term "good faith" is defined as "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry." Black's Law Dictionary, Revised 4th Edition. The phrase "in good faith" means:

[A]ctually; honestly; in an attitude of trust and confidence; innocently; in the absence of all information or belief of facts that would render the transaction unconscientious; really; without fraud, collusion or deceit; without pretense.

35 CJS "Faith" 608. Therefore, a governmental agency must make an honest attempt to notify non-profit organizations representing the handicapped of the opportunity to operate a food service facility in a public building. Before awarding the contract to another party, the governmental agency must actually find that no non-profit organization representing the handicapped is willing or able to provide satisfactory food service.

No rent may be charged for the operation of a food service facility by a non-profit organization representing the handicapped. The term "rent" means "consideration paid for use or occupation of property." Black's Law Dictionary, Revised 4th Edition. The prohibition against rent would include payments to an employee "fun fund."

The effect on employee "fun funds" by the operation of food service facilities by non-profit organizations representing the handicapped is not relevant under the Act. The only reason for not granting a food service contract to a non-profit organization is the agency's determination that no non-profit organization is willing or able to provide satisfactory service.

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Finally, the Act provides grandfather rights to valid contracts in effect on March 1, 1982, and renewals of such contracts by the Commission. These grandfather rights do not apply to renewals of contracts by any other organizations. Further, the grandfather rights do not apply to an agency's operation of food service facilities. Under Idaho Code § 67-6903, an agency which proposes "to operate or to continue a food service facility in a public building" must comply with the Act.

Should you have any questions concerning our response to your request, please let me know.

Sincerely,


W. DALLAS BURKHALTER
Deputy Attorney General

WDB/dks