

Vending machines at state facilities

Number: INFORMAL

Date: April 22, 1997

Mr. Edward A. Dion
General Counsel
Department of Labor and Employment Security
The Hartman Building, Suite 307
2012 Capital Circle, Southeast
Tallahassee, Florida 32399-2189

Mr. Richard E. Doran
General Counsel
Department of Children and Family Services
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

RE: BLIND SERVICES--LABOR AND EMPLOYMENT SECURITY, DEPARTMENT OF--
CHILDREN AND FAMILY SERVICES, DEPARTMENT OF--STATE PROPERTY--VENDING
MACHINES--vending machines at state hospital under jurisdiction of Department of Children and
Family Services. s. 402.18, Fla. Stat.; s. 413.051, Fla. Stat. (1996 Supp.).

Dear Mr. Dion and Mr. Doran:

On behalf of the Department of Labor and Employment Security and the Department of Children and Family Services respectively, you ask whether section 402.18, Florida Statutes, allows the Northeast Florida State Hospital (NEFSH) to perform vending activities on its facility to fund the residents' vocational needs. The question has arisen in light of the language of section 413.051, Florida Statutes (1996 Supplement), which grants the blind licensees of the Division of Blind Services the first opportunity to participate in the operation of vending stands on state properties.

Based upon the following discussion and until legislatively or judicially clarified, I am of the opinion that section 402.18, Florida Statutes, operates as a limited exception to the provisions of section 413.051, Florida Statutes (1996 Supplement). Accordingly, NEFSH may operate vending machines located in its facilities, the proceeds of which are to be placed in a welfare trust fund to be used for the benefit and welfare of the clients of the Department of Children and Family Services.

Section 413.051, Florida Statutes (1996 Supplement), the Little Randolph Sheppard Act, provides:

"Blind licensees shall be given the first opportunity to participate in the operation of vending stands on all state properties acquired after July 1, 1979, when such facilities are operated under the supervision of the Division of Blind Services of the Department of Labor and Employment Security." [1]

The Division of Blind Services (division) is responsible for conducting a periodic survey of all state properties and, where feasible, establishing vending facilities to be operated by blind licensees.[2] Property custodians and agents and employees of the state are directed to cooperate with the division in its survey and to make available appropriate space for such facilities on any state property designated as suitable by the division.[3] Pursuant to section 413.051(7), Florida Statutes (1996 Supplement),

"No person or persons shall be offered or granted any concession by any property custodian or person in charge to operate a vending stand on any state property acquired after July 1, 1979, unless the division is notified of that proposed concession."

While section 413.051(9), Florida Statutes (1996 Supplement), provides that the statute shall not operate to divest any person or organization presently operating a vending machine on state, county, or municipal property from continuing to do so, the property custodian or person in charge is required to notify the division at least 180 days prior to the expiration whether the vending facility location is suitable for operation by a blind licensee.

"State property" is defined to mean any building or land owned, leased, or otherwise controlled by the state, but does not include any building or land under the control of the Board of Regents, a community college district board of trustees, or any state correctional institution as defined in section 944.02(6), Florida Statutes.[4] Income from new vending machines or replacement machines installed on state property after July 1, 1979, accrues to the blind licensee who operates a vending facility on the same property or, if none, to the division.[5]

Section 402.18, Florida Statutes, however, requires the Department of Health and Rehabilitative Services (now the Department of Children and Family Services) to establish a welfare trust fund and to deposit into that fund all moneys from auxiliary, canteen, welfare, donated or similar funds in any state institution under the jurisdiction of the department. The statute provides that each such institution may accrue money for the fund by the establishment and maintenance of canteens or vending machines at the institution.[6] The department is required to deposit in a welfare trust fund "all receipts from the operation of canteens [and] vending machines . . . "[7] The moneys of the fund constitute a trust held by the department for the benefit and welfare of the clients of the department.[8]

It is a fundamental rule of statutory construction that statutes relating to the same subject are to be construed in harmony whenever possible, giving effect to both.[9] While the language authorizing institutions of the then Department of Health and Rehabilitative Services to establish and maintain vending machines was adopted prior to the adoption of the Little Randolph Sheppard Act in 1979,[10] both statutes have been subsequently amended and the provisions relating to the vending machines still are contained in section 402.18, Florida Statutes.[11] Moreover, while the language in the Little Randolph Sheppard Act is broad, other statutory exceptions to its terms exist.[12]

Generally, the repeal of a statute by implication is not favored in the law while a construction that gives each statute a field of operation will be favored.[13] In addition, when two statutes are in conflict, the more specific statute will generally control over the more general statute addressing the same subject.[14] Section 413.051, Florida Statutes (1996 Supplement), is the more general

of the two statutes, providing for vending machines located on state property while the provisions of section 402.18, Florida Statutes, are limited to vending machines located at institutions under the jurisdiction of the Department of Children and Family Services.

Accordingly, I am of the opinion that the provisions of section 402.18, Florida Statutes, operate as a limited exception to section 413.051, Florida Statutes (1996 Supplement). Thus, it is my opinion that the Northeast Florida State Hospital may operate vending machines located in its facilities and the proceeds from such machines are to be placed in a welfare trust fund to be used for the benefit and welfare of the clients of the Department of Children and Family Services.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 413.051(3), Fla. Stat. (1996 Supp.).

[2] Section 413.051(4), Fla. Stat. (1996 Supp.). *And see* s. 413.051(6), Fla. Stat. (1996 Supp.), requiring that the division be notified at least 180 days prior to the initiation of any new construction, expansion, leasing, or acquisition of property to be occupied by a state agency.

[3] Section 413.051(5), Fla. Stat. (1996 Supp.).

[4] Section 413.051(2)(d), Fla. Stat. (1996 Supp.).

[5] Section 413.051(8), Fla. Stat. (1996 Supp.).

[6] *See* s. 402.18(1), Fla. Stat., which provides in part:

"The money in the fund of each institution of the [Department of Children and Family Services], or which may accrue thereto, is hereby appropriated to the benefit, education, and general welfare of clients in that institution. The general welfare of clients includes, but is not limited to, the establishment of, maintenance of, employment of personnel for, and the purchase of items for resale at canteens or vending machines maintained at the state institutions"

[7] Section 402.18(3), Fla. Stat.

[8] *Id.*

[9] *See, e.g., Singleton v. State*, 554 So. 2d 1162 (Fla. 1990) (in reconciling conflict among statutes, court should give full effect to all statutory provisions and, where possible, harmonize related provisions with one another); *Wakulla County v. Davis*, 395 So. 2d 540 (Fla. 1981) (law

should be construed together and in harmony with any other statute relating to the same purpose, even though not enacted at the same time); *Villery v. Florida Parole and Probation Commission*, 396 So. 2d 1107 (Fla. 1980) (where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another).

[10] See Ch. 65-194, Laws of Florida.

[11] Section 402.18, Fla. Stat., was amended in 1985, see Ch. 85-167, Laws of Florida, while s. 413.051 has been amended in 1981, 1983, 1995 and 1996, see Chs. 81-91, 83-218, 95-327, and 96-423, Laws of Florida.

[12] Section 945.215, Fla. Stat., creates an inmate welfare and employee benefit trust fund which is to be funded by canteens and vending machines in a state institution under the jurisdiction of the Department of Corrections. While the definition of "state property" for purposes of s. 413.051, Fla. Stat. (1996 Supp.), excludes state correctional institutions, no exception is provided in the definition for vending machines located in buildings used by the Department of Highway Safety and Motor Vehicles. Yet s. 112.217, Fla. Stat., recognizes that the proceeds of vending machines located in buildings occupied and used by the department, or such portions as the department may by rule provide, shall be paid into an employees' benefit fund.

[13] See *Carawan v. State*, 515 So. 2d 161 (Fla. 1987) (in view of presumption that later statutes are passed with knowledge of prior laws, a construction is favored that gives each a field of operation as opposed to a construction that considers a former statute repealed by implication); *City of Punta Gorda v. McSmith, Inc.*, 294 So. 2d 27 (Fla. 2d DCA 1974).

[14] See, e.g., *McKendry v. State*, 641 So. 2d 45 (Fla. 1994); *Lincoln v. Florida Parole Commission*, 643 So. 2d 668 (Fla. 1st DCA 1994).