



New York State
Office of
Children &
Family
Services

September 30, 2010

Honorable Peter J. Kiernan
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

David Paterson
Governor

Re: CBVH implementation plan for A.6420

Gladys Carrión, Esq.
Commissioner

Dear Mr. Kiernan:

Capital View Office Park

52 Washington Street
Rensselaer, NY
12144-2796

This letter is to advise how the Commission for the Blind and Visually Handicapped (CBVH) Business Enterprise Program (BEP) intends to implement and interpret various provisions of the above referenced bill, which expands the potential sites for vending facilities for blind vendors under the State Randolph-Sheppard Act, should it be signed by the Governor. CBVH is a division within the Office of Children and Family Services (OCFS).

Under the existing New York State law implementing the Randolph-Sheppard Act, the BEP receives priority to establish, or receive a portion of the proceeds from, vending facilities located at certain state property sites where the number of state employees regularly employed at a site exceeds 400 people. The current law exempts the State University of New York (SUNY), the Department of Correctional Services (DOCS), and the NYS Thruway Authority (Thruway) as potential BEP vendor sites. This bill eliminates both the minimum employee threshold per site and the exemptions for SUNY, DOCS, and the Thruway as potential BEP sites. The bill also extends the BEP facility priority to airports located in NYS and to any building that houses any authority, agency, or entity whose board of directors or executives are appointed by the Governor. As used in this letter, a "covered entity" means any entity that covered by S.6420, and "newly-covered property" means any site which is covered by S.6420, but did not fall within the scope of Chapter 415 of the Laws of 1913, as amended by Chapter 693 of the Laws of 1992.



An Equal Opportunity Employer

CBVH will work in good faith with entities occupying newly-covered properties to provide meaningful employment opportunities for the blind in a manner that does not adversely impact the State's interests. If CBVH intends to establish potential BEP sites on newly-covered property of a particular covered entity where the property is not otherwise covered by the Master

Agreement between CBVH and the Office of General Services, CBVH will negotiate a Memorandum of Understanding (MOU) with that entity, setting forth the general parameters on how the legislation will be implemented in a manner that recognizes the unique circumstances of the entity. Such an MOU will include understandings regarding the method by which the entity will communicate with CBVH regarding the entity's capital plans involving the occupation, acquisition, leasing, renovation, or alteration of a building that, based on the scope of the project, may provide an opportunity for a new BEP vending facility. Such communication will be at least annually, as appropriate.

Given its existing resources, CBVH intends to phase-in the implementation of the legislation with the newly covered entities over several years. Initially, CBVH intends to seek permits from newly covered entities in locations, such as office buildings, that function primarily to house employees of the entity, and other mutually agreed-to properties.

In determining whether a particular location is feasible for the operation of a BEP vending facility or the scope of the permit to be issued, CBVH will consider the appropriateness of the available space for the operation of a BEP vending facility and the economic viability and profitability of the location as a BEP vending facility, as well as any concerns voiced by the entity occupying newly-covered property. A particular location will not be considered to be feasible if:

1. Applicable federal laws, regulations, or administrative policies would preclude granting priority to a BEP licensee or issuing a permit to a BEP licensee to operate a vending facility free of charge at a particular location;
2. The issuance of a permit would be inconsistent with, or require the termination or modification of, an existing and unexpired contract with a non-BEP vendor operating a vending facility;
3. The issuance of a permit would impair the ability of an entity occupying newly-covered property to provide services comparable to services currently being provided by a non-BEP vendor operating a vending facility;
4. DOCS or OCFS determine that placement of a BEP vending facility in a location in a correctional facility or juvenile justice facility operated by that agency creates security concerns; or
5. Operation of the vending facility in a building that is subject to tax exempt bond financing would cause the "private use" limitations associated with the tax exempt bonds to be exceeded, as determined by agency counsel or bond counsel.

In determining whether it would be adverse to the interests of the state to establish a vending facility in a particular location and the scope of the permit for the vending facility including the potential amount of any vending machine income to accrue to the blind licensee under the permit, CBVH will consider information provided by the newly covered entity, along with other available information. The information CBVH will consider shall include, but not be limited to:

1. The impact of the vending facility on the ability of the newly covered entity to derive revenue from the operation of vending services;

2. The projected amount of the reduction in revenue to the newly covered entity that could otherwise be used to provide public services to the people of the State of New York; and
3. The administrative costs to a newly covered entity.

CBVH will consider it to be adverse to the interests of the State if the issuance of a permit for a particular vending facility or the proposed scope of such permit would significantly reduce the revenue that is currently earned or could be earned by an entity occupying newly-covered property. CBVH will also consider the issuance of a permit to be adverse to the interests of the State where the total number of permits issued by the agency to CBVH would have a material adverse effect on that entity's financial plan.

CBVH will provide an entity occupying newly-covered property with notice when it identifies a satisfactory site for a vending facility on such property. It will provide an adequate opportunity for the entity to provide such information as it may regarding whether the proposed vending facility with the proposed scope of the permit is feasible or in the best interests of the State, as well as any alternatives to such site. If CBVH and an entity disagree as to whether the establishment of a vending facility, or the scope of a proposed permit for a particular vending facility would be adverse to the interests of the State, a joint meeting will be convened with the applicable staff from the Division of the Budget and the Governor's Office to try to resolve the issue.

A newly covered entity may condition the issuance of a permit on the agreement by OCFS and CBVH to terms similar to those that govern any contracts the newly covered entity has with other vendors relating to:

1. The ability to regulate prices for the benefit of the public;
2. Any requirement that the vendor use or sell, or refrain from using or selling, a particular type of product;
3. The right to allow other concessionaires to offer competing services;
4. The right to require the vendor to comply with facility safety and security standards, standards relating to public health and the health of employees and persons served by the covered entity, and standards relating to the safe operation of the facility.

It is not the intent of the Commission to seek permits for vending facilities where they will interfere with another State agency implementing a statutorily-authorized program that permits the income from similar facilities to be used for the benefit of individuals with disabilities who have significant employment barriers similar to individuals who are blind, in a manner consistent with the mission of that State agency.

Should the Governor sign this legislation, CBVH will seek to promulgate regulations consistent with information set forth in this letter. As part of the regulatory process, it will consider the input of the newly covered entities, as well as the State Committee of Blind Vendors and the public at large. CBVH will also propose including a waiver provision in

the regulations to allow for the modification of any provisions or procedures required by regulation that are not specifically addressed in the legislation.

The discussion above reflects CBVH's understanding of the construction of A. 6420, and its intentions regarding this legislation. Nothing in this letter shall be read to indicate that CBVH will adopt a comparable understanding or intention regarding any property that is not newly covered by A.6420.

Sincerely,

William T. Gettman, Jr.
Executive Deputy Commissioner
OCFS

Brian Daniels
Associate Commissioner
CBVH