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**MEMORANDUM**

**TO:** State Capitol Building Advisory Committee

**FROM:** Debbie Haskins

**DATE:** July 31, 2012

**SUBJECT:** Applicability of the federal Randolph-Sheppard Act and the state Business Enterprise Program to a proposed Capitol gift shop<sup>1</sup>

This memorandum responds to the Capitol Building Advisory Committee's questions about the applicability of the federal Randolph-Sheppard Act and the state Business Enterprise Program (BEP) to a proposed Capitol gift shop. The Office's understanding is that the Committee is exploring the idea of developing a gift shop that would be operated by the legislative branch in conjunction with the tour desk operations or perhaps in collaboration with the Colorado historical center. Currently, the tour desk sells a small assortment of books, ornaments, t-shirts, and souvenirs.

**Conclusion**

Colorado's Business Enterprise Program, modeled after the federal Randolph-Sheppard Act, gives priority to licensed blind vendors to operate cafeterias and vending facilities on state property and would apply to the proposed gift shop in the Capitol building. Therefore, the operation of the gift shop should be operated by a licensed blind vendor through the BEP. However, the statutory definition of "state property" for purposes of the BEP contains exclusions and the definition could be amended to exclude the operation of a Capitol gift shop operated by the legislative branch.

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<sup>1</sup> This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in its capacity as in-house counsel for the General Assembly. OLLS legal memorandums do not represent an official legal position of the General Assembly or the state of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

## **Background on federal law**

The federal "Randolph-Sheppard Act of 1936", now called the "Randolph-Sheppard Vending Stand Act", gives priority to legally blind individuals licensed under the provisions of the act to operate and manage business enterprises on federal property. (20 U.S.C. 107) The purpose of the act is to provide blind individuals with remunerative employment, increase economic opportunities, and enable them to become self-supporting. The business enterprises covered under the federal act include operating and managing cafeterias, snack bars, and convenience stores; managing automatic vending machines; and selling newspapers, periodicals, confections, tobacco products, food, and beverages.

## **Background on Colorado's Business Enterprise Program**

In 1977, the Colorado general assembly passed the "Business Enterprise Program Act", article 8.5 of title 26, C.R.S., which is similar to the federal act and which gives priority to blind persons to operate and manage food and vending services in state government office buildings and facilities. The BEP is operated by the Division of Vocational Rehabilitation (Division) in the Department of Human Services, which acts as the state licensing authority for the BEP and issues licenses to qualified blind individuals to operate food and vending services in state properties.<sup>2</sup> Pursuant to section 26-8.5-102, C.R.S., the licenses issued under the BEP are to be issued "in accordance with the criteria used for the licensing of operators of vending facilities on federal property pursuant to section 26-8-106 and the federal 'Randolph-Sheppard Vending Stand Act', as from time to time amended". The Division is also the state licensing authority that licenses blind persons to operate vending stands on federal property under the Randolph-Sheppard Act. Section 26-8-106, C.R.S., directs that the Department of Human Services cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation, "including the licensing of blind persons to operate vending stands on federal property".

## **Analysis**

Section 26-8.5-101 (3), C.R.S., defines a "vending facility", for purposes of the BEP, as "automatic vending machines, a café, a cafeteria, a restaurant, a snack bar, a concession stand, or any other facility at which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or other related items are regularly sold".<sup>3</sup> Novelties, souvenirs, and

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<sup>2</sup> The Capitol Cafeteria, located in the State Services building at 1525 Sherman Street with an annex location in the basement of the Capitol building, is currently operated by a blind vendor licensed through the BEP program who runs these two locations. The annex location in the Capitol building has in the past sold postcards and other Colorado souvenirs, however, those items are no longer being sold at that location.

<sup>3</sup> The definition of "vending facility" in the federal act does not mention novelties, souvenirs, or notions.

notions are the kinds of things that would be sold in the proposed Capitol gift shop.

Section 26-8.5-101 (2), C.R.S., defines "state property", for purposes of the BEP, as follows:

**26-8.5-101. Definitions.** As used in this article, unless the context otherwise requires:

(2) "State property" means any building, land, or other real property owned, leased, or occupied by any department or agency of the state of Colorado, but "state property" does not include any property owned, leased, or occupied by any institution of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., or the board of commissioners of the Colorado state fair authority.

Our conclusion is that under current law, the proposed gift shop would be selling items that fall under the definition of "vending facility" under the BEP, and the shop's location in the State Capitol building, which is state property, makes it subject to the BEP requirements. Therefore, the operation of the gift shop should be operated by a licensed blind vendor through the BEP. The Randolph-Sheppard Act, upon which the BEP is based, protects blind vendors against "direct competition" from other vending machines or vending operations selling similar products.

However, the Colorado statute excludes state property owned, leased, or occupied by an institution of higher education or the board of commissioners of the Colorado state fair authority. If the Committee wishes to pursue the creation of a Capitol gift shop that is under the auspices of the legislative branch and is not operated by a licensed blind vendor through the BEP, the Committee should seek legislation to amend the definition of "state property" in section 26-8.5-101 (2), C.R.S., to exclude a gift shop operated in the state Capitol building by the legislative branch.