STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL March 27, 2009	No. I09-002 (R08-048) Re: Application of Arizona Merchandising Businesses For the Blind Act

To: Linda Blessing, Acting Director
Arizona Department of Economic Security

Charles L. Ryan, Director
Arizona Department of Corrections

Questions Presented

DES has asked the following question:

1. If the Arizona Department of Economic Security ("DES") has surveyed and identified locations in state prison centers where licensed blind vendors properly and satisfactorily may operate merchandising businesses, (a) must the Arizona Department of Corrections ("ADOC") grant space to DES free of charge for the operation of such a business under Arizona Revised Statutes ("A.R.S.") § 23-504, or (b) may ADOC solicit and accept bids for operation of such a business from prospective vendors pursuant to the Arizona Procurement Code, without regard to A.R.S. § 23-504?

ADOC has asked the following related questions:

2. Does A.R.S. § 23-504 require ADOC to grant space to DES for operation of a merchandising business by a blind vendor, even if doing so would deprive the ADOC special services or inmate store proceeds funds of commissions they historically have received from operation of vending machines in institutions?

3. Does A.R.S. § 23-504 require ADOC to grant space to DES for operation of a merchandising business by a blind vendor, even if the vendor intends to subcontract with another business to provide certain operations services?

Summary Answers

1. If DES has surveyed state prison centers and has identified locations where licensed blind vendors properly and satisfactorily may operate merchandising businesses, including vending machine businesses, then A.R.S. § 23-504 requires ADOC to grant space to DES for the operation of such a business and to cooperate with DES in installation of the business. ADOC may not charge any assessment for the use of the space, and it may not solicit or accept bids for the use of the space from prospective vendors pursuant to the procurement code.

2. ADOC must grant the space to DES for operation of a merchandising business by a blind vendor, even if doing so would deprive the ADOC special services or inmate store proceeds funds of commissions they historically have received from operation of vending machines in institutions.

3. ADOC must grant the space to DES for operation of a merchandising business by a blind vendor, even if the vendor intends to subcontract with another business that will provide

certain operations services, as long as the vendor retains the ability to control or manage the business.

Background

A. Statutory History

In 1974, the Arizona Legislature enacted A.R.S. § 23-504, entitled "Merchandising Businesses For the Blind." This law and similar statutes in other states, which establish a preference to the blind in the operation of merchandising businesses on State, county, and local governmental property, are modeled after the federal Randolph-Sheppard Act, 20 U.S.C. §§ 107 to 107f, and are known informally as mini-Randolph-Sheppard Acts.

In 1936, Congress enacted the federal Randolph-Sheppard Act to "authorize the operation of [vending] stands in Federal buildings by blind persons [and] to enlarge the economic opportunities of the blind." *See* S. Rep. No. 93-937, at 5 (1974); *see also* Pub. Law 74-732, 49 Stat. 1559 (1936). This Act was intended to enhance employment opportunities for trained, licensed blind persons to operate vending facilities on federal property. *Kentucky v. United States*, 62 Fed. Cl. 445, 448 (2004). The United States Department of Education ("DOE") prescribes regulations implementing the Act. *See* 34 C.F.R. §§ 395.1-395.38. Under the Act, state rehabilitation agencies recruit, train, license and place visually impaired individuals to operate vending facilities located on federal and other properties. The states grant licensed blind individuals authority to operate specified vending activities in particular locations.

In its original form, the Act granted a preference to blind vendors to establish vending stands. After the development and proliferation of automatic, coin-operated vending machines, concern grew that blind vendors were being "fenced out" of their livelihood by vending machines that employees of various government buildings housing the vendors had installed.

See S. Rep. No. 93-937, at 5-7. In response, Congress amended the Act in 1954 to provide blind vendors already operating stands with a preference in the operation of any coin-operated vending machines in their respective federal buildings. *Id.* at 14.

In 1974, Congress, disenchanted that the program had not reached its full potential, again amended the Act, granting blind vendors a priority, rather than a mere preference, in operating all vending facilities in federal buildings, rather than merely vending stands.[1] *Id.* at 14, 25, 30; *see also* Pub. Law 93-516, 88 Stat. 1617 (1974). Congress believed that, prior to the 1974 amendment, agencies had failed to accord blind vendors the "preference" it had envisioned. *See* S. Rep. No. 93-937, at 14-15. The 1974 amendment also directed DOE, which administers the act, to promulgate regulations to ensure that, whenever feasible, one or more vending facilities were established on all federal properties. *NISH v. Cohen,* 247 F.3d 197, 200 (4th Cir. 2001). Finally, the 1974 amendments added a requirement that, with certain exceptions, income derived from vending machines on federal property be shared in specified percentages with blind vendor licensees or, if there was no licensee on the property, with state agencies for the blind. *See* S. Rep. No. 93-937, at 29; 20 U.S.C. § 107d-3; *see also Okla. Dep't of Human Servs. v. Weinberger,* 741 F.2d 290, 291 (10th Cir. 1983). This is commonly referred to as "the income-sharing provision."

By changing the blind vendor program's procurement "preference" to a "priority" and adding the income-sharing provision, Congress intended to "remov[e] some of the major obstacles to the growth of the blind vendor program" and to strengthen the program by assuring "that one or more blind vendors have a *prior right* to do business on [federal] property, and

[1] The 1974 amendments replaced the term "vending stand" with the term "vending facility" and expressly defined it to include automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other equipment that DOE might prescribe by regulation. *See* S. Rep. No. 93-937, at 41; 20 U.S.C. § 107e(7). Arizona's regulation similarly defines the term broadly. *See* Arizona Administrative Code ("A.A.C.") R6-4-301(22). The Arizona regulation also expressly includes the vending of lottery chances authorized by State law.

furthermore that, to the extent that a . . . non-blind operated vending machine competes with or otherwise economically injures a blind vendor, every effort must be made to eliminate such competition or injury." *See* S. Rep. No. 93-937, at 15.

Section 23-504, A.R.S., provides as follows:

> A. The department of economic security shall make surveys of merchandising business opportunities for and license persons who have no vision or acuity, or have a central visual acuity of 20/200 or less in the better eye, with the best correction by single magnification, or who have a field defect in which the peripheral field has been contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees, to operate such businesses on state, county or municipal property where such businesses may be properly and satisfactorily operated by blind persons all in accordance with the provisions of the Randolph-Sheppard act, as amended by Public Law 93-516, title 20, United States Code, sections 107 through 107f. For the purposes of this section "merchandising business" shall include but not be limited to food service operations, including cafeterias, snack bars and vending machines for food and beverages and souvenir and gift shops.
>
> B. The head or governing body of each department or agency and of each county or municipality or other local government entity having control of state, county or other local government property shall cooperate with the department of economic security in surveys of property under their control to find suitable locations for the operation of merchandising businesses by blind persons, and after it has been determined that there is need for a merchandising business and after the department of economic security has determined that such a business may be properly and satisfactorily operated by a blind person grant space to the department of economic security for the operation of a merchandising business by a licensed blind person and cooperate with the department of economic security in the installation of such merchandising business.
>
> C. Notwithstanding the provisions of section 41-792.01, the head or governing body of each department or agency of the state and of each county or city having control of public property shall not charge any rent or other assessment for the use or occupancy of the space granted for the operation of merchandising businesses by licensed blind persons.

When the Legislature enacted A.R.S. § 23-504 in 1974, it modeled the statute on the pre-1974 version of the federal Randolph-Sheppard Act. *See* Ariz. Att'y Gen. Op. I78-171. In 1985, the Legislature amended the statute to incorporate, at least in part, the 1974 amendments to the

federal Act. *See* 1985 Ariz. Sess. Laws, ch. 281, § 1 (adding the words "as amended by Public Law 93-516" to section A's reference to the Randolph-Sheppard Act). There is no legislative history discussing why the Legislature made the change or what it intended by the change, because it made the change via a strike-everything floor amendment to an unrelated bill.[2] *See* DeLong Floor Amend., Sen. Amends. to H.B. 2417, 37th Legis. 1st Reg. Sess. (4/11/85).

As noted above, A.R.S. § 23-504 establishes a preference to the blind in the operation of merchandising businesses on State, county and local government property in Arizona.[3] The statute requires DES to survey merchandising business opportunities on State, county and local government properties to determine whether there is need for a merchandising business and whether such a business properly and satisfactorily may be operated by a blind person. A.R.S. § 23-504(A). The statute also requires DES to license blind persons to operate such businesses. *Id.* After DES has determined that a merchandising business may be properly and satisfactorily operated by a blind person, the statute requires the State agency or other local government entity having control of the affected government property to "grant space to [DES] for the operation of a merchandising business by a licensed blind person and cooperate with [DES] in the installation of such merchandising business." A.R.S. § 23-504(B).

The regulations implementing the Arizona act are set forth at Arizona Administrative Code ("A.A.C.") R6-4-301 to -325. In Arizona the blind vendors program is administered by the Business Enterprise Program ("BEP") of the Rehabilitation Services Administration within DES.

---

[2] The Legislature did not intend to incorporate the income-sharing provisions of the Randolph-Sheppard Act when it added the reference to that Act's 1974 amendments. *See* Ariz. Att'y Gen. Op. I90-016. Accordingly, the income-sharing provisions apply only when implementing the Randolph-Sheppard Act on federal property and not when implementing A.R.S. § 23-504 on State and local government property.

[3] Although A.R.S. § 23-504 requires DES to survey merchandising business opportunities and to license blind persons to operate such businesses on state property "all in accordance with" the federal Randolph-Sheppard Act, the federal Act's grant of an absolute priority to blind persons applies only to vending facilities located on *federal* property. *See* 20 U.S.C. § 107; *see also* Ariz. Att'y Gen. Op. I90-016 (stating that federal Act imposes duties with respect to blind vending facilities on federal property only).

See A.A.C. R6-4-301(4). BEP prepares and enters into grantor's agreements with State agencies that grant space for the blind vendors program. A.A.C. R6-4-301(11); A.A.C. R6-302(C). BEP also prepares and enters into operator's agreements with blind vendor licensees that regulate the terms and conditions under which particular businesses will be managed. A.A.C. R6-4-301(2), (5); A.A.C. R6-4-312.

B. Factual Background

Pursuant to A.R.S. § 23-504, DES has surveyed ADOC facilities throughout the State and determined that the facilities are suitable for operation of merchandising businesses by the visually impaired.

In its vending machine solicitations, ADOC historically has required vendors to pay commissions and has deposited these commissions into either the inmate store proceeds fund provided for in A.R.S. § 41-1604.02 or the special services fund provided for in A.R.S. § 41-1604.03. ADOC asks whether it can require the blind vendors to pay commissions as a condition of granting the space.

The proposed grantor's agreement between DES and ADOC would permit blind vendors to subcontract for certain operations services. ADOC asks whether the subcontract provision means that the blind vendors should be required to compete on the same basis as other vendors to provide the service.

Analysis

A. Section 23-504 Requires ADOC to Grant Space to DES for the Operation of Vending Facilities by a Licensed Blind Person; ADOC Cannot Accept Bids Under the Arizona Procurement Code.

The primary goal in interpreting a statute is to discern and give effect to legislative intent. *Way v. State*, 205 Ariz. 149, 153, ¶ 10, 67 P.3d 1232, 1236 (App. 2003). If the statutory language is "'plain and unambiguous leading to only one meaning,'" statutory construction

principles direct courts to abide by that meaning unless an absurdity would result. *In re Maricopa County Superior Court No. MH2003-000240*, 206 Ariz. 367, 369, ¶ 6, 78 P.3d 1088, 1090 (App. 2003) (quoting *Sloatman v. Gibbons*, 104 Ariz. 429, 430-31, 454 P.2d 574, 575-76 (1969), *vacated in part on other grounds*, 402 U.S. 939 (1971)). Courts ordinarily interpret "shall" to mean a provision is mandatory. *Id.* As applied to each part of DES's multipart question, the language of A.R.S. § 23-504 is clear, unambiguous, and mandatory.

1. The Duty to Grant the Space

A.R.S. § 23-504(B) expressly requires that an agency having control of affected property "*shall . . . grant space* to the department of economic security for the operation of a merchandising business by a licensed blind person and cooperate with the department of economic security in the installation of such merchandising business," once the following has been determined: (1) there is need for a merchandising business and (2) such a business properly and satisfactorily may be operated by a blind person. (Emphasis added.)

Here, DES has made both determinations.[4] Accordingly, since the two predicates have been satisfied, the unambiguous and mandatory language of the statute requires ADOC to grant space to DES as requested for the operation of a merchandising business by a licensed blind person.[5]

---

[4] The statute does not establish the factors that DES should consider in determining whether a business properly and satisfactorily may be operated by a blind person. The implementing regulations do list factors DES must consider in conducting surveys with the purpose of determining whether a property meets the requirements for a satisfactory site for a merchandising business. A.A.C. R6-4-302(A). But the regulations do not identify the factors DES should consider in determining whether a business properly and satisfactorily may be operated by a blind person. We do not attempt to make such a determination here, because DES, as the agency with the expertise and the responsibility for implementing the statute, should make this determination in the first instance by rulemaking.

[5] The statute does not establish that a State agency has any right to challenge a DES determination that a business properly and satisfactorily may be operated by a blind person on property controlled by the agency. Judicial review of administrative decisions is not a matter of right except when authorized by law. *Allen v. Graham*, 8 Ariz. App. 336, 337, 446 P.2d 240, 241 (1968). The statute and regulations are also silent regarding the procedure or standard under which such a challenge, if it could be asserted, would be decided. *See* A.R.S. § 23-504; A.A.C. R6-4-301 to -325. With certain exceptions not applicable here, DES determinations are not appealable agency actions. A.R.S. § 41-1092.02(A)(9). A DES determination that a business properly and satisfactorily may be operated by a blind

This requirement clearly satisfies the Legislature's stated intent in enacting A.R.S. § 23-504:

> As introduced, S.B. 1261 is an emergency measure that would require the Department of Economic Security (DES) to license blind or near-blind persons who operate merchandising businesses on state, county or municipal property. The bill would also require public agencies controlling such property to cooperate with DES in making surveys to find suitable business locations for blind persons. Such agencies would also be *required to grant space to DES* for the operation of businesses by the blind and to cooperate with the department in the installation of such businesses. The establishment and operation of these businesses would be conducted in accordance with the Federal Randolph-Sheppard Act.

See Ariz. Legislative Council Summary Analysis of S.B. 1261 (2/22/74) (emphasis added).

2. Effect of the Arizona Procurement Code

As set forth in the previous subsection, pursuant to the language in A.R.S. § 23-504, if DES has determined that there is need for a merchandising business and that such a business properly and satisfactorily may be operated by a blind person, then ADOC must grant the space to DES. Section 23-504 does not contemplate further solicitation and acceptance of bids from prospective vendors pursuant the competitive bidding requirements of A.R.S. § 41-2533, the Arizona Procurement Code, once the two predicates have been satisfied. The procurement code itself provides that its competitive bidding requirements apply "unless otherwise authorized by

---

person is also not a contested case because no Arizona law entitles state agencies to an administrative hearing before DES makes its determination. A.R.S. § 41-1001(4). Therefore, the hearing requirements in Articles 6 and 10 of the Administrative Procedure Act would not apply. *See* A.R.S. §§ 41-1067, -1092.02(A). Similarly, the Administrative Review Act would not apply, because a DES determination under A.R.S. § 23-504 does not constitute a "case" or "proceeding." *See Ariz. Bd. of Regents ex rel. Univ. of Ariz. v. State ex rel. Ariz. Pub. Safety Ret. Fund Manager Adm'r,* 160 Ariz. 150, 154, 771 P.2d 880, 884 (App. 1989); A.R.S. § 12-902 (Administrative Procedure Act applies only to "decisions"); A.R.S. § 12-901(2) (defining "decision"). It appears that the only formal method that may be available to challenge a DES determination would be by special action. We do not render an opinion on whether there exists a valid substantive basis on which an agency could challenge a DES determination by special action. Such a review, if it were permitted, would be limited, and a court would determine only "whether the administrative action was arbitrary, capricious or an abuse of discretion and [would] only intervene where no evidence exists to support the decision." *Justice v. City of Casa Grande*, 116 Ariz. 66, 67, 567 P.2d 1195, 1196 (App. 1977); *accord Johnson v. Pointe Cmty. Ass'n, Inc.*, 205 Ariz. 485, 488, 73 P.3d 616, 619 (App. 2003); A.R.S. § 12-910(E). There may be alternative methods by which DES and an affected agency could negotiate a compromise informally with or without assistance from a paid neutral. We do not in this Opinion analyze the legality or efficacy of such alternative methods.

law." A.R.S. § 41-2532. Further, the procurement code does not apply here, because it "applies only to procurements." A.R.S. § 41-2501(A). "Procurement" means "buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services" and all related functions. A.R.S. § 41-2503(31). Because A.R.S. § 23-504 does not require DOC to spend public funds, but requires it only to grant space to DES for the operation of merchandising businesses that DES determines can be operated by blind persons, the procurement code does not apply.[6]

3. Prohibition Against Charging For Use of the Space

The plain language of the statute also prohibits ADOC from charging DES or the blind vendor any rent or other assessment for the use of the space. The statute expressly provides that agencies "having control of public property *shall not* charge any rent or other assessment for the use or occupancy of the space granted for the operation of merchandising businesses by licensed blind persons." A.R.S. § 23-504(C) (emphasis added); *accord Minn. Dep't of Jobs & Training v. Riley,* 18 F.3d 606, 609 (8th Cir. 1994) (holding the Randolph-Sheppard Act prohibits a federal agency from charging commissions on sales from blind vendor operations, relying on statutory language and Congress's concerns stated when amending the Act in 1974 "with federal agency abuses of blind vendor's operations, like forcing blind vendors to pay commissions").

B. The Statutes Governing Special Services Fund and Inmate Store Proceeds Fund Do Not Require That Commissions from Vending Machines in Visitor Areas Be Deposited into the Funds.

In its opinion request, ADOC states that A.R.S. § 41-1604.03 requires it to establish a special services fund and to deposit into it commissions from operation of vending services in institutions. Granting space to DES for operation of blind vending services would deprive the

[6] The procurement code does, however, apply to BEP's expenditure of funds for rehabilitation services pursuant to the Randolph-Sheppard Act except when procurement code conflicts with requirements of the federal Act, under which the State receives federal grant monies to implement the federal Act. *See* Ariz. Att'y Gen. Op. 188-132

special services fund of the revenue it historically has received from vending service commissions.

Section 41-1604.03 does establish a special services fund. However, the statute does not require that funds from the operation of merchandising businesses be deposited into it. Thus, there is no conflict between A.R.S. §§ 23-504 and 41-1604.03, and commissions from the vending machines need not be deposited into the special services fund.

ADOC also asks whether A.R.S. § 41-1604.02 evidences the Legislature's intent that vending machine commissions be deposited into the inmate store proceeds fund. Section 41-1604.02 permits ADOC to establish inmate stores at institutions, requires ADOC to enter into contracts with private entities to establish and maintain such stores, and requires all profits derived from the State's portion of privatization of such stores to "be deposited into an inmate store proceeds fund." *Id.*

Although the statute does not precisely define "inmate store," it does state that an inmate store shall offer sundries "for sale to the persons confined." A.R.S. § 41-1604.02(A). Thus, an inmate store is a store that is available to inmates. The vending machines that are the subject of the contract at issue, by contrast, are located in visitor areas that are off limits to inmates and require the use of currency, which prisoners are not permitted to have.

Because A.R.S. §§ 41-1604.02 and -1604.03 appear to have no application to the issue at hand, it is unnecessary to evaluate whether the requirements of A.R.S. § 23-504 would have priority over the requirements of A.R.S. §§ 41-1604.02 or -1604.03. As stated, ADOC must grant the space to DES, and the plain language of the statute prohibits ADOC from charging DES or the blind vendor any rent or other assessment for the use of the space. A.R.S. §§ 23-504(B), (C). Thus, ADOC must comply with A.R.S. § 23-504 even if doing so would deprive

the special services or inmate store proceeds funds of commissions they historically have received from operation of vending machines in institutions.

C. Subcontracting by Blind Vendors Constitutes "Operation" of Merchandising Business.

Section 23-504 requires that, once the prerequisites have been met, ADOC must grant space to DES for "the *operation* of a merchandising business by a licensed blind person." A.R.S. § 23-504(B) (emphasis added). ADOC asks whether a blind vendor is "operating" a merchandising business within the statute's meaning if it subcontracts out part or most of the operations services.

Although the statute and the regulations repeatedly use various forms of the term "operation," they do not define the term, and no reported Arizona opinion applying the statute has defined it. *See, e.g.,* A.R.S. § 23-504 (using the term in every subsection); A.A.C. R6-4-301, -311, -312, -315, -318, -319, -321. Because the Legislature modeled our statute after the federal Act and both the State and federal acts use the term "operate" similarly, the Randolph-Sheppard Act and federal cases that apply it provide guidance in ascertaining the meaning of the term. *See Estate of Walton,* 164 Ariz. 498, 500, 794 P.2d 131, 133 (1990) (federal interpretations are persuasive when Arizona courts interpret state counterparts to federal statutes).

Little guidance exists, but what is available indicates that the terms "operate" and "operation" as used in the Randolph-Sheppard Act have been interpreted to mean "manage" and "control." In *Washington State Department of Services for the Blind v. United States*, the court decided that a contract for custodial services in an Army cafeteria was not a contract for "operation" of the facility within the meaning of the Randolph-Sheppard Act. 58 Fed. Cl. 781, 796-97 (2003). The Department of Defense ("DOD") had argued that the plain meaning of "operate" was to "cause to function," that the word connotes a distinctly executive function, that

the function of a cafeteria is to serve food, and that providing custodial services does not rise to the level of "operating" a cafeteria. *Id.* at 789-90. In reaching its decision, the court extensively analyzed the meaning of the term "operate" as used in the statute and implementing federal regulations and also considered the legislative history, policy pronouncements by DOE (the agency charged with implementing the act), arbitration panel decisions, and the absence of guidance by DOE before concluding that there was no clear answer. *Id.* at 796. Because DOE's policy provided that DOD was entitled to determine on a case-by-case basis whether the Randolph-Sheppard Act applied, the court deferred to DOD's judgment and held that its determination had been reasonable. *Id.* at 796-97; *see also Miss. Dep't of Rehab. Servs. v. United States,* 61 Fed. Cl. 20, 30 (2004) (holding that the Navy's solicitation of a food services contract called for "operation" of a cafeteria within the meaning of Randolph-Sheppard Act, even though the Navy retained control over menu selection, purchase of food supplies, and quality control, because the contractor would be in charge of day-to-day management of the facility); *cf. Southfork Sys., Inc. v. United States,* 141 F.3d 1124, 1135 (Fed. Cir. 1998) (rejecting without explaining its reasoning a sighted vendor's claim that the Texas Commission for the Blind should not be given Randolph-Sheppard priority because Commission contemplated using sighted subcontractors).

Interpreting the term "operate" to require only the executive function of managing or controlling a business has been found appropriate under a wide variety of other statutes. *See Lario Enters., Inc. v. State Bd. of Tax Appeals,* 925 P.2d 440, 445 (Kan. App. 1996) (city qualified for tax exemption because it "operated" the property at issue even though it entered into a management agreement by which it designated another company to operate and manage the facility on its behalf); *see also Neff v. Am. Dairy Queen Corp.,* 58 F.3d 1063, 1066 (5th Cir.

1995) (holding that a franchisor with limited control over a franchisee's store could be held liable under the Americans With Disabilities Act for "operating" a place of public accommodation if the franchisor had a right to control the allegedly discriminatory conditions); *Ashland Refining Co. v. Fox,* 11 F. Supp. 431, 433 (S.D.W.V. 1935), *aff'd sub nom. Gulf Refining Co. v. Fox,* 297 U.S. 381 (1936) (holding that a refining company "operated" and "controlled" gas stations within the meaning of a tax statute, because lease and agency agreements between the company and station operators, which permitted station operators to manage station but permitted either party to terminate agreement at any time, gave the company "substantial control of the situation"); *United States v. High Point Chem. Corp.,* 7 F. Supp. 2d 770, 777 (W.D. Va. 1998) (holding that an individual corporate officer could be held liable as an "operator" of a company under the Comprehensive Environmental, Response, Compensation and Liability Act if the officer had the authority and ability to control or direct management of the company).

When the Legislature has not spoken definitively to the issue at hand, "'considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.'" *Ariz. Water Co. v. Ariz. Dep't of Water Res.,* 208 Ariz. 147, 154, ¶ 30, 91 P.3d 990, 997 (2004) (quoting *Chevron, U.S.A. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984)). DES has been entrusted to administer both A.R.S. § 23-504 and the Randolph-Sheppard Act. Accordingly, its interpretation must be accorded some deference. The conclusion reached in this opinion, that "operation" of a business includes the subcontracting of some or perhaps even most of the operations work involved, is consistent with the DES interpretation of A.R.S. § 23-504.

The principal rule of statutory interpretation is to determine and give effect to legislative intent. *Bigelsen v. Ariz. State Bd. of Med. Exam'rs,* 175 Ariz. 86, 90, 853 P.2d 1133, 1137 (App. 1993). When legislative intent is not entirely clear from the statutory language, courts look to the policy behind the statute and the statute's context, subject matter, effects, and consequences. *Id.* It is clear from the long history of the Randolph-Sheppard Act, on which the Arizona statute was modeled, and from the Arizona Legislature's express incorporation of the 1974 amendments to the federal Act, that the Legislature intended that the statute be given broad application to fulfill its policy objective of enlarging economic opportunities for the visually impaired. Concluding that blind vendors may "operate" a merchandising business by subcontracting out some of the work is consistent with such an application.

Finally, courts will avoid statutory interpretations that lead to absurd results the Legislature could not have anticipated. *City of Phoenix v. Superior Court,* 144 Ariz. 172, 177, 696 P.2d 724, 729 (App. 1985). Given the prevalence of subcontracting in today's business world and the practical obstacles that requiring a blind vendor to perform all or most operations work would create, it is unlikely that the Legislature intended to prohibit a blind vendor from subcontracting for some or perhaps even most of the operations work involved in the business, as long as the blind vendor retains control over the business.

Conclusion

ADOC must grant the space requested by DES for operation of a merchandising business by a licensed blind vendor; ADOC cannot require the blind vendor to pay commissions for using the space, nor can it solicit and accept competitive bids from sighted vendors pursuant to the procurement code. ADOC must grant the space even if the blind vendor intends to subcontract

out some or most of the operations work, as long as the blind vendor retains the ability to control or manage the business.

Terry Goddard
Attorney General