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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

HOUSE BILL No. 2858

(By Delegate Phillips & Hobbitzell)



Passed March 10, 1987

In Effect Ninety Days From Passage

ENROLLED
H. B. 2858

(By DELEGATES PHILLIPS and HOBLITZELL)

[Passed March 10, 1987; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and three, article ten-g, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections four, five, six and seven, all relating to operation of food service facilities in public office buildings by the division of vocational rehabilitation; definitions; effect on present facilities; licenses for operation of facility; vending machine income; appeals from decisions of the division of vocational rehabilitation; establishment of a committee of blind vendors; and responsibilities.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article ten-g, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend said article ten-g by adding thereto four new sections, designated sections four, five, six and seven, all to read as follows:

ARTICLE 10G. PROVIDING OF FOOD SERVICE IN PUBLIC OFFICE BUILDINGS BY THE WEST VIRGINIA DIVISION OF VOCATIONAL REHABILITATION.

§18-10G-2. Definitions.

1 For the purpose of this article:

2 (a) "Active participation" means an ongoing process of
3 negotiations between the division of vocational rehabil-
4 itation and the committee of blind vendors to achieve
5 joint planning of policies, procedures and standards
6 affecting the overall operation of the "food services
7 facilities program" prior to their implementation by the
8 division of vocational rehabilitation. It is understood
9 that the division of vocational rehabilitation bears final
10 responsibility for the administration and operation of
11 the "food services facilities program," including the
12 assurance of active participation by the committee of
13 blind vendors.

14 (b) "Blind person" means a person whose central
15 acuity does not exceed 20/200 in the better eye with
16 correcting lenses or whose visual acuity, if better than
17 20/200, but is accompanied by a limit to the field of
18 vision in the better eye to such a degree that its widest
19 diameter subtends an angle of no greater than twenty
20 degrees. In determining whether an individual is blind,
21 there shall be an examination by a physician skilled in
22 diseases of the eye or an optometrist, whichever the
23 individual shall select.

24 (c) "Blind vendor" means a blind licensee who is
25 operating a food services facility on federal, state, public
26 or private property.

27 (d) "Committee of blind vendors" means an officially
28 constituted body functioning in an advisory capacity of
29 the division of vocational rehabilitation's food services
30 facilities program. This committee is composed of
31 licensed blind vendors, elected biennially and estab-
32 lished, constituted and maintained in accordance with
33 applicable federal regulations.

34 (e) "Food service facility" means and includes a
35 restaurant, cafeteria, snack bar, vending machine for
36 the dispensing of foods, beverages, confections, tobacco
37 or other products for human consumption, and other
38 facilities for the sale or providing of goods and services
39 for the purposes customarily offered in connection with
40 the operation of any of the foregoing. The term "food
41 service facility" does not include, and there is expressly

42 excepted therefrom, goods and services sold, dispensed
43 from, or provided by the veterans administration and
44 the facilities for the sale, dispensing, or providing
45 thereof.

46 (f) "Governmental agency" means and includes the
47 state of West Virginia, each instrumentality and agency
48 thereof, and every county, city and town within and
49 every political subdivision within the state of West
50 Virginia, except county boards of education, the West
51 Virginia board of regents, the department of health, the
52 department of commerce and the department of
53 corrections.

54 (g) "Licensee" means all persons licensed under the
55 division of vocational rehabilitation to operate food
56 service facilities under the Randolph/Sheppert Act,
57 Title XX, United States Code 107, et seq.

58 (h) "Public office building" means and includes the
59 state capitol, all county courthouses, all city and town
60 halls, all buildings used primarily for governmental
61 offices of the state and of any county, city and town
62 within the state, but does not include buildings used for
63 institutions under the jurisdiction of the West Virginia
64 board of regents, the department of health, the depart-
65 ment of commerce and the department of corrections.

66 (i) "Vending machine income" means receipts other
67 than those of a blind licensee from the operation of
68 vending machines on public property after deducting
69 the cost of goods sold when machines are operated,
70 serviced or maintained by, or with the approval of the
71 division of vocational rehabilitation, or commissions
72 paid to other than a licensee by a commercial vending
73 concern which operates, services or maintains vending
74 machines on public property for or with the approval
75 of the division of vocational rehabilitation.

76 (j) "Designee" means an individual or an organization
77 of individuals legally constituted, and under the
78 jurisdiction of the division of vocational rehabilitation,
79 doing business in the state of West Virginia, to assist
80 the state agency with the administration and supervi-
81 sion of the food services facilities program.

§18-10G-3. Operation of food service in public office buildings by West Virginia division of vocational rehabilitation; operation of food service by governmental agency in violation of article prohibited.

1 (a) If a governmental agency proposes operating in a
2 public office building a food service facility, whether
3 such operation be of a food service facility in existence
4 on the effective date of this article or be one thereafter
5 to be instituted, the governmental agency, before
6 continuing such existing operation beyond the period of
7 six months immediately following the effective date of
8 this article or before instituting such proposed new
9 operation, shall in writing offer to the division of
10 vocational rehabilitation the opportunity to operate such
11 food service facility in such public office building. If
12 there is a food service facility in operation in a public
13 office building that is being operated by a blind person
14 not covered or supervised as part of the federal or state
15 rehabilitation program prior to the effective date of the
16 amendments to this article, the blind operator shall be
17 permitted to operate the food service facility until the
18 operator ceases to operate or control that food service
19 facility, after which time that food service facility shall
20 become a part of the food service facility program
21 administered by the division of vocational rehabilitation.

22 (b) If the division of vocational rehabilitation within
23 sixty days from the receipt of the offer mentioned in
24 subsection (a) of this section elects to operate such food
25 service facility as is mentioned in the offer and if the
26 governmental agency by which such offer was made
27 does not, within such sixty-day period, make the
28 determination mentioned in subsection (d) of this section
29 in the manner prescribed in that subsection, the division
30 of vocational rehabilitation, or its designee, may
31 institute and conduct the operation of such proposed
32 food service facility in such public office building
33 without the payment of rent or other compensation for
34 the premises occupied by it in the rendition of such
35 service or for the privilege of conducting such operation.

36 (c) If the division of vocational rehabilitation under

37 the authority of subsection (b) of this section institutes
38 and operates such food service facility as is mentioned
39 therein, the governmental agency shall not during the
40 course of such operation, operate a food service facility
41 in such public office building or by contract, lease,
42 license, or otherwise, permit any other person, firm,
43 corporation, or agency to do so.

44 (d) If the division of vocational rehabilitation within
45 sixty days from the receipt of the offer mentioned in
46 subsection (a) of this section rejects or fails to accept the
47 offer, or the governmental agency making the offer
48 determines, in good faith and after a full and thorough
49 study of the relevant circumstances, that the division of
50 vocational rehabilitation is unable to operate such
51 proposed food service facility, or that the division of
52 vocational rehabilitation accepted such offer, but, within
53 the period of six months from such acceptance, failed
54 to institute such food service facility, such proposed food
55 service facility may thereupon be provided in such other
56 manner as may be permitted by law, free from the
57 requirements of this article, and the division of voca-
58 tional rehabilitation may not thereafter, without the
59 express permission of the offering agency, institute such
60 proposed food service facility in the public office
61 building designated in such offer. If the governmental
62 agency which made the offer makes the determination
63 of inability of the division of vocational rehabilitation to
64 operate the proposed food service facility, the govern-
65 mental agency shall, within the aforementioned sixty-
66 day period, provide the division of vocational rehabili-
67 tation with a full written statement of the reasons upon
68 which such determination was predicated, and a food
69 service facility may not be operated in such public office
70 building free from the requirements of this article until
71 the written statement mentioned in this subsection is
72 first given.

73 (e) Notwithstanding any other provisions contained in
74 this article, no governmental agency may by reason of
75 the provisions of this article take any action which will
76 result in the violation of the terms of any valid contract,
77 lease or license existing on the effective date hereof, nor

78 may such governmental agency be precluded from
79 extending the period of such an existing contract, lease
80 or license upon the same terms, and with the same
81 contracting parties, as in the contract, lease or license
82 so extended.

§18-10G-4. Licenses.

1 The division of vocational rehabilitation shall issue a
2 license for the operation of a food service facility to any
3 blind person who qualifies for a license in accordance
4 with the criteria which has been established by the
5 division of vocational rehabilitation and the committee
6 of blind vendors. In issuing any license, the division of
7 vocational rehabilitation shall give preference to any
8 blind person who is a resident of the state of West
9 Virginia. Each license issued shall be for an indefinite
10 period but may be terminated by the division of
11 vocational rehabilitation after affording the licensee an
12 appeal in accordance with the applicable rules and
13 procedures, after the division of vocational rehabilita-
14 tion and the committee of blind vendors are both
15 satisfied that the food service facility is not being
16 operated in accordance with their rules and procedures.

§18-10G-5. Vending machine income.

1 (a) If an existing or a new vending machine or a
2 replacement for an existing vending machine is in-
3 stalled after the effective date of the amendments to this
4 article on any public property, vending machine income
5 shall accrue to the licensed blind person operating the
6 food service facility on the same property or, if none, to
7 the division of vocational rehabilitation. The licensed
8 blind person, by contract or otherwise, shall be respon-
9 sible for servicing and maintaining the vending machine
10 or machines from which vending machine income is
11 received.

12 (b) Vending machine income which accrues to the
13 division of vocational rehabilitation pursuant to subsec-
14 tion (a) may be used for the following:

- 15 (1) Maintenance and replacement of equipment;
- 16 (2) Purchase of new equipment;

17 (3) Management services;

18 (4) Assuring a fair minimum return to vendors; and

19 (5) Establishing retirement funds, health insurance
20 contributions, paid sick leave and paid vacation time for
21 blind vendors.

22 (c) If vending machine income which accrues to the
23 division of vocational rehabilitation pursuant to subsec-
24 tion (a) is limited, it may be used to earn federal funds
25 on a matching basis.

§18-10G-6. Appeals.

1 (a) Any blind person aggrieved by a decision of the
2 division of vocational rehabilitation under this article
3 may apply for an administrative review or a full
4 evidentiary hearing to be conducted in accordance with
5 the procedures established and approved by the division
6 of vocational rehabilitation and the committee of blind
7 vendors.

8 (b) The division of vocational rehabilitation or any
9 aggrieved blind vendor may appeal any unfavorable
10 ruling rendered in accordance with this article to the
11 circuit court of Kanawha County or to the circuit court
12 of the county in which the blind vendor resides.

§18-10G-7. Committee of blind vendors.

1 (a) The division of vocational rehabilitation shall
2 provide for the establishment and operation, including
3 the payment of all reasonable expenses, of a committee
4 of blind vendors to be elected biennially by the licensed
5 blind vendors. Members of the committee of blind
6 vendors shall be elected by secret ballot and the division
7 of vocational rehabilitation in cooperation with the
8 members of the committee of blind vendors shall adopt
9 rules and regulations pertaining to the election of
10 members and the filling of vacancies that may occur on
11 the committee of blind vendors that will assure every
12 blind vendor an opportunity to cast a secret ballot.

13 (b) The committee of blind vendors shall actively
14 participate in an advisory capacity in the carrying out
15 of all program management responsibilities assigned to

16 the division of vocational rehabilitation in this article,
17 and the division of vocational rehabilitation shall assure
18 active participation with this committee.

19 These advisory responsibilities include:

20 (1) Major administrative decisions in policy and
21 program development decisions affecting the overall
22 administration of the state's food services facilities
23 program;

24 (2) Receiving and transmitting grievances at the
25 request of blind vendors and serving as an advocate for
26 blind vendors in connection with such grievances;

27 (3) Development and administration of a state system
28 for the transfer and promotion of blind vendors;

29 (4) Development of training and retraining programs
30 for blind vendors; and

31 (5) Sponsorship of meetings and instructional confer-
32 ences for blind vendors within the state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

Chairman Senate Committee

Bernard V. Kelly

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Judd C. Felthi

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Anton Lovinski

President of the Senate

[Handwritten Signature]

Speaker of the House of Delegates

The within *approved* this the *19th*
day of *March*, 1987.

Arch A. Shaefer, Jr.

Governor

PRESENTED TO THE

GOVERNOR

DATE

3/14/87

TIME

11:26 AM.