

## Opinion No. 64-77

June 3, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** Leo T. Murphy, Director, Department of Public Welfare, 408 Galisteo Street, Santa Fe, New Mexico

### QUESTION

#### QUESTION

In carrying out the provisions of the "State Vending Stand Act." Section 59-12-1, et seq., what is the extent of the authority conferred on the Division of Services for the Blind of the Department of Public Welfare?

#### CONCLUSION

See analysis.

### OPINION

#### ANALYSIS

In answering your inquiry it is well to look first at the purpose of the Act, expressed as follows by the legislature in Section 59-12-1, N.M.S.A., 1953 Compilation:

"The purpose of this act is to provide blind persons with remunerative employment, to enlarge the economic opportunities for the blind, and to stimulate them to greater efforts in striving to make themselves self-supporting, by authorizing blind persons license in accordance with the provisions of this act to operate vending stands on any state property where such vending stands may be properly and satisfactorily operated by blind persons; by granting such blind persons a preference in the operation of vending stands on state property; by authorizing co-operation with the United States government in the Administration of the vending stand program for the blind on federal property; and by authorizing the division of services for the blind, department of public welfare, hereinafter referred to as the division **to establish, maintain, and operate a vending stand program for the blind.**" (Emphasis added).

It is clear from this express legislative mandate that the Division of Services for the Blind of the Department of Public Welfare has the primary responsibility for establishing, maintaining and operating the program. In order that the Division be able to achieve these ends, the legislature granted it broad powers. These powers and duties are

enumerated in Section 59-12-4, N.M.S.A., 1953 Compilation, some of which we will now discuss.

Initially, the Division is to prescribe regulations governing personnel standards, protection of records, eligibility for licensing of blind persons as vending stand operators, termination of licenses, title to vending stand equipment and inventory, procedures for hearings and other necessary regulations.

Secondly, the Division is to appoint the necessary personnel to carry out the provisions of the vending stand program. When this is done, the Division is to make surveys to find locations where vending stands may be properly and satisfactorily operated by blind persons, and to establish them where appropriate. In this connection, "the head or governing body of each department or agency and of each county or municipality or other governmental entity having control of state property **shall**. . . cooperate with the division in surveys of property under their control to find suitable locations for the operation of vending stands by blind persons." (Emphasis added). Section 59-12-3, N.M.S.A., 1953 Compilation. While there is to be a cooperative effort between the division and the agency it is the Division that makes the determination as to the need for a vending stand and the further determination that such stand may be properly and satisfactorily operated by a blind person.

When such determinations have been made by the Division, the head or governing body of the department or agency, etc., is mandated by the legislature to "adopt such policies and take such action as may be necessary to assure that blind persons licensed by the division will be given a preference in the establishment and operation of vending stands on property under their control. . ." Section 59-12-3, *supra*.

When the Division has determined that there is a need for a vending stand and that it can be properly and satisfactorily operated by a blind person, the Division is to furnish adequate and suitable equipment. Section 59-12-4 (D). The department or agency is to cooperate with the Division in the installation of the stand. Section 59-12-3 (B).

The Division is to furnish an initial stock of merchandise and the vending stand operator is to receive a fair minimum return, and in no case is the amount set aside from any vending stand for maintenance of equipment and purchase of new equipment to "exceed a reasonable sum in relation to the net profit to the operator of the stand in the opinion of the executive officer of the agency." Section 59-12-4 (J).

The Division is to cooperate with the United States Department of Health, Education and Welfare in the administration of the vending stand program on **Federal** property. Section 59-12-4 (F).

Annually the Division is to prepare and submit to the governor, through the Department of Public Welfare, reports of its activities and expenditures, and, prior to each regular session of the legislature, it is to report estimates of sums required for carrying out the

vending stand program and estimates of the amounts to be made available for this program from all sources. Section 59-12-4 (G).

The Division may enter into agreements with private non-profit organizations for furnishing services to the vending stand program, provided that supervision of such services rests with the Division. Section 59-12-4 (I).

The Division may accept gifts and donations to the program and may use, hold, invest or reinvest such gifts for the benefit of the vending stand program. Section 59-12-4 (K).