



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

January 25, 2016

Ms. Dacia Johnson  
Administrator  
Commission for the Blind  
535 SE 12<sup>th</sup> Avenue  
Portland, OR 97214

Re: Opinion Request OP-2016-1

Dear Ms. Johnson:

ORS 346.510 to 346.570 require the Oregon Commission for the Blind (Commission) to establish vending facilities on certain public property to be operated by blind persons. The Commission asks a question about the operation of those vending facilities. Below we set out the Commission's question and our short answer followed by a discussion.

**QUESTION**

May blind vendors licensed by the Commission to operate vending machines on one or more public properties lawfully subcontract with commercial vendors to service the machines?

**SHORT ANSWER**

To "operate" the vending machines within the meaning of ORS 346.520(1) the licensed blind vendor either must personally carry out the day-to-day vending machine work or control, direct and supervise the subcontractor's work. A licensed blind vendor may not lawfully subcontract with a commercial vendor if the licensed blind vendor does not control, direct and supervise the subcontractor's work.<sup>1/</sup>

**DISCUSSION**

**I. Statutory Interpretation Methodology**

Your question requires us to interpret the statutes governing the operation of vending facilities by blind persons. The methodology for interpreting statutes is set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993) as modified in *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009). Under that methodology, the goal is to determine the legislature's intent. We do so by examining the text, context and any pertinent legislative history.

*State v. Gaines*, 346 Or at 171-172. In interpreting the text and context, we apply statutory and judicially-developed rules of construction that bear on how to read the text and context. *PGE*, 317 Or at 611-12.

## II. Pertinent Statutes

The Commission establishes vending facilities on suitable public property. ORS 346.540(1)(b). “Vending facilities” is defined to include places such as cafeterias and snack bars and also things such as manual or coin operated vending machines. ORS 346.510(4).

The Commission must “select, train, license and install qualified persons who are blind as managers of such vending facilities.” ORS 346.540(1)(c). ORS 346.520(1) provides that “persons who are blind and who are licensed \* \* \* by the Commission \* \* \* shall operate [the] vending facilities.” The purposes for that requirement are to provide blind persons with remunerative employment, economic opportunities and a means of self-support. *Id.* State agencies, with one exception, may not charge the Commission or the blind operator for rent or utility costs to operate a vending facility. ORS 346.520(2).

## III. Meaning of to “operate” vending facilities

### A. Text

The Commission asks whether the persons they select, train and license to operate vending machines on public property may enter into subcontracts with third-party commercial vendors to service the machines. The answer depends on the meaning of the requirement in ORS 346.520(1) that the licensed blind person “operate” the vending facility. The legislature did not define “operate” for purposes of ORS 346.520(1). Courts usually give commonly-used words their ordinary meanings. *See, e.g., State v. Briney*, 345 Or 505, 511, 200 P3d 550 (2008) (stating rule). Two ordinary meanings of “operate” might apply: (1) “to cause to function usu. by direct personal effort: WORK;” and, (2) “to manage and put or keep in operation whether by personal effort or not <operated a grocery store>.” WEBSTER’S THIRD NEW INT’L DICTIONARY at 1581 (2002). To “operate” vending machines in the first sense of the word would appear to require the blind vendor to service them personally. The second sense of “operate” does not necessarily require personal effort, but it does require management. It is not clear from the text of ORS 346.520(1) alone which of those senses the legislature intended.

### B. Context

Courts do not interpret words in isolation, but in the context in which they are used. Other provisions of the same statute are context for interpreting statutory language. *Stull v. Hoke*, 326 Or 72, 79-80, 948 P2d 722 (1997). Although the legislature did not define the verb “operate,” it did define the noun “operator” for purposes of these statutes. We assume that the legislature intended the definition of “operator” to be consistent with the person who “operates” the vending facility. *See State v. Leslie*, 204 Or App 715, 721, 132 P3d 37, *rev den* 341 Or 245, 142 P3d 73 (2006) (“As a general matter of statutory construction, we ordinarily assume that, when the same

statute uses closely similar terms, those terms have a consistent meaning throughout.”). ORS 346.510(1) defines “operator” as “the individual person who is blind and who is responsible for the day-to-day conduct of the vending facility operation.” That definition demonstrates that the legislature intended the individual blind person to be responsible for the day-to-day operation of the vending facility. “Day-to-day” means daily. *See* WEBSTER’S THIRD NEW INT’L DICTIONARY at 578 (2002) (defining “day-to-day” as “[a] day at a time in unbroken succession : DAILY.”) “Conduct” as used in this provision could mean carrying out a task or carrying forward a business and is synonymous with management or direction. *See Id.* at 473 (defining “conduct,” as pertinent, to mean “the act, manner, or process of carrying out (as a task) or carrying (forward) (as a business, government or war): MANAGEMENT; DIRECTION.”). The thing conducted is the “vending facility operation.” Potentially pertinent definitions of “operation” are “the whole process of planning for and operating a business or other organizational unit” or “the operating of or putting and maintaining an action of something.” *Id.* at 1581. As the thing being operated here is the “vending facility” rather than a business, the latter definition better fits. Putting it all together, the legislature intended the individual blind person to be responsible for the daily act of carrying out or managing the carrying out of the vending machine operation.

Another statutory provision, ORS 346.540(1)(c), provides further context. That provision requires the Commission to “select, train, license and install qualified persons who are blind *as managers of such vending facilities.*” (Emphasis added). The relevant definition of “manager” is “one that manages: a person that conducts, directs, or supervises something[.]” WEBSTER’S at 1372. “Manage” means to “control and direct.” *Id.* Again, what is managed for purposes of ORS 346.540(1)(c) is the “vending facility” – not a business or organization. Accordingly, the “manager” of a vending machine facility is the person who conducts, controls and directs, or supervises the vending facility. That meaning is consistent with the definition of “operator” discussed above.

The manager or operator of a vending facility like a cafeteria or snack bar would be expected to be on site daily at the facility controlling and directing its operation either by personally carrying out the necessary tasks or by supervising the conduct of those that do. The manager or operator of vending machines similarly would be expected to control and direct the operation of the machines either by personally carrying out the daily tasks or by supervising the conduct of those that do. Servicing the machines is the primary daily task in a vending machine operation. The requirement either to personally service the machines or to control and direct the servicing of the machines is incompatible with subcontracting with a third-party commercial vendor to service the machines if the subcontractor’s daily work is not supervised and controlled by the blind vendor. That practice would also be inconsistent with the legislature’s apparent intent that the Commission control who operates the vending facilities as the Commission would not select, train, license or install the commercial vendor as the manager of the vending facility.

## CONCLUSION

Based on the text and context, we conclude that to “operate” vending machines for purposes of ORS 346.520(1), the blind individual licensed by the Commission to operate the vending machines either must personally carry out the day-to-day vending machine work or

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control, direct and supervise those who do. A licensed blind vendor who does not control, direct and supervise the work of a subcontractor who services the machines does not “operate” the vending machines within the meaning of ORS 346.520(1).<sup>2/</sup>

Sincerely,

**[Steve A. Wolf]**

Steven A. Wolf  
Chief Counsel  
General Counsel Division

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<sup>1</sup> This opinion addresses only the specific question raised by the Commission. This office is not legal counsel to individual licensed blind vendors and this opinion does not address any legal consequences that may arise from a licensed blind vendor’s contractual relationships other than the question asked by the Commission.

<sup>2</sup> We reviewed the legislative history, but found no discussion of the meaning of the issue.