

CALIFORNIA VENDORS POLICY COMMITTEE
MOTIONS FROM CVPC MEETING
March 27 & 28, 2008
San Diego, CA

MOTION 2008.014. Moved that the committee accept the minutes of the January 16, 2008 California Vendors Policy Committee meeting as distributed.

Moved: Delegate Brown
Seconded: Delegate Murphy
Vote: Passed Unanimously
Absent: Delegate Schamber
Delegate Begian
Delegate Collins

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.015. Moved that CVPC appoint Tom Linker as the Delegate representative from CVPC District One because there have been three elections in that district and Tom Linker has submitted his name for nomination twice and since there have been three elections with no satisfactory result, no result at all, that CVPC accept Tom Linker as Delegate for District one for the balance of this CVPC term.

Moved: Delegate Murphy
Seconded: Delegate Adams
Vote: Passed Unanimously
Absent: Delegate Collins

Response: No response required, motion applies to CVPC operating procedures. However, CVPC must comply with applicable regulations. California Code of Regulations (CCR) section 7226 (e) requires a delegate to be duly elected by a plurality vote of the licensed vendors within that district. Further, CCR section 7226 (h) prescribes the provisions under which a delegate can be appointed.

MOTION 2008.016. Moved that CVPC approve the purchase 10 Human Ware Victor Streams including 1-gigabyte memory cards with funds from the CVPC Convention Fund, for CVPC Delegates, not to exceed \$3500.00. The Victor Streams will be the property of CVPC and each Delegate will be required to sign a form guaranteeing their proper care, use, and return or replacement.

Moved: Delegate Brown
Seconded: Delegate Bedikian
Vote: Passed Unanimously
Absent: Delegate Collins

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.017. Moved to adjourn for the day at 5:02 p.m. on Thursday, March 27, 2008.

Moved: Delegate Linker
Seconded: Delegate Maestas
Vote: Passed Unanimously
Absent: Delegate Collins

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.018. Moved to accept Steve Adams as Chairperson for the CVPC Fiscal subcommittee.

Moved: Delegate Brown
Seconded: Delegate Linker
Vote: Passed Unanimously
Absent: Delegate Collins

Response: BEP supports the motion and welcomes the opportunity to work with the Chairman for the CVPC Fiscal Subcommittee.

MOTION 2008.019. Moved to that the CVPC approve the following position on Proposed BEP Regulations Sections 7213 through 7227.2 and

7217. CVPC further requests the Executive Committee to provide these positions in writing and/or in person for the intent of public comment for the BEP Regulatory hearing dated April 29, 2008.

Moved: Delegate Begian
Seconded: Delegate Linker
Vote: Passed Unanimously
Absent: Delegate Collins

General Comments

Article 7. Standards for the Establishment and Operation of Vending Facilities

§ 7216. Establishing a New Vending Facility.

(c)The Department shall seek to establish a new vending facility on federal, state or other property only if the Department first determines that a vending facility is feasible. The Department may shall consult with the California Vendors Policy Committee, herein CVPC, when evaluating whether a vending facility is feasible.

Rational: Change may to shall. Both Federal and State Law intent mandates Cap's active participation in establishing facilities. Welfare & I Code 19631 states:

The department shall not cause or permit the establishment or placement of any blind vendor in a vending facility unless the director, in consultation with the committee of licensed blind vendors, first determines that the facility produces, or is likely to produce within a reasonable time, an adequate net income for a blind vendor.

7216. (e) Any decision that the placement or operation of a vending facility is not feasible, or that placement or operation would adversely affect the interests of the state shall be in writing, only the Director or Chief Deputy Director may sign this agreement, and a copy shall be made available forwarded to the California Vendors Policy Committee, hereafter CVPC. The Chairperson of CVPC shall co-sign for receipt of deliverance of this agreement and return it to the Department. Where the placement or operation of a vending facility is not feasible, the Department shall not issue

a waiver permanently exempting the site or location from the priority established by the Randolph-Sheppard Act (20 USC 107 et seq.).

1. The Department shall establish and maintain a chronological list of waivers issued, with the date of termination for each waiver.
2. Waivers may only be issued for a period of 3 years or less.
3. Issuance or renew of a waiver shall only take place after CVPC has received a written copy at least 30 days prior to the granting of the waiver.
4. At a minimum waiver shall contain the following:
 - (a) Address, location or area including square footage, employee/customer population and normal hours of operation.
 - (b) Issuance timeframe, terms and conditions.
 - (c) The agency requesting a waiver shall provide a copy of all contracts pertaining to the space waived by the Department.
 - (d) For the purpose of approval and future evaluation by the Business Enterprises Program, the following financial information must be submitted quarterly to DOR. The financial information shall include but not be limited to:
 1. Total gross dollar sales.
 2. Total dollar sales tax.
 3. Total dollar or percentage cost of goods sold.
 4. Total dollar or percentage cost of labor.
 5. Total dollar or percentage cost of any miscellaneous items
 6. Total dollar amount for net income.

Rational: The blind have over a 70% unemployment rate. The BEP priority on Federal and State properties has been granted to the blind to provide economic remunerative opportunities. The waiver of this priority, should, not be granted unless the placement of a blind person would adversely affect the interests of the State. BEP has proven to have lost waivers, had them issued without regard to the length of time or to place any conditions to bring them to an end. The BEP has the responsibility of maintaining accurate recordkeeping. Priority granted W & I Code 19625. Existing policy were receipt of this information is verified by the attached document called attachment 1.

7216. (g) When establishing a new vending facility, the BEP, in consultation with the contracting agency, shall determine what type of

vending facility, as defined in section 7211(a)(54) of these regulations, shall be established on the property.

Rational: In consultation with the contracting agency should be removed. Both Federal and State Law require the director to make this determination. As found in W & I code:

W & I code 19627 (d) The director is authorized, subject to regulations developed pursuant to subdivision (a) and the requirements of the federal Randolph-Sheppard Act, to select a location for a facility and the type of facility to be provided.

If an agency is allowed to redirect the guidelines set forth by BEP, it could ultimately set up a facility for failure. Agencies have the right to challenge our programs guidelines through an arbitration process found in Welfare and I code:

19627 (i) If the director determines that any agency or department of the state fails to comply with this section, the director shall establish a panel to arbitrate the dispute and the decision of the panel shall be final and binding on all parties.

7216. (i) After the establishment of a vending facility, the BEP Manager may re-evaluate the income and expenses of the vending facility and approve a change in the type of vending facility in consultation with the contracting agency and CVPC.

Rational: The consultation process should include CVPC prior to any commitment to a contracting agency. CVPC has the right to be in this consultation process as shown in previous testimony for establishing facilities.

§ 7216.2. Vending Facility Closure.

(b) The decision to close a vending facility shall be made by the BEP Manager, with the active participation of the California Vendors Policy Committee, hereafter CVPC, considering factors specified in subsection (a) of this section and whether the site is feasible in accordance with Section 7216(c) of these regulations after making every effort to install vending machines.

Rational: CVPC wishes to insert regulatory language that would assure BEP efforts to place vending machines whenever possible when facilities are closed.

§ 7220.7. Vendor Incapacitated or Deceased

(a) If a vendor becomes incapacitated and is unable to operate his or her vending facility, or supervise a manager at his or her vending facility, the Department may place the facility into interim operation consistent with section 7215 of these regulations and select a licensee or vendor to operate the interim vending facility for a period of six months. The incapacitated vendor shall be allowed to keep their BEP group health insurance for a one-year period.

Rational: Licensed blind vendors, whom become incapacitated while operating a facility, will probably need to keep their existing health care provider to receive continued treatment in the restoration of their health. Cancer victims, stroke, or accident victims would be harmed, if made to change their treatment provider.

7226.2. Special Elections.

(a) If a delegate vacancy occurs, a special election shall be completed within 60 days of the vacancy to determine the successor for the remainder of the term. A special election shall be conducted, if any of the following situations occur:

(3) A delegate, or his or her alternate, fails to attend two regularly meetings per term. Regular meeting shall consist of two one day sessions. Attendance means participation in both days. A delegate has been removed for any violations of the CVPC Bylaws.

Rational: Previous regulatory language referred to only one type of violation of the CVPC bylaws. CVPC believes their bylaws should not be quoted in regulations. The Bylaws of CVPC, and the will of the majority of vendors, should set forth the conditions for removing their representatives.

§ 7227. General Provisions.

(a) Any Business Enterprises Program for the Blind, hereafter BEP, licensee or vendor, who is dissatisfied with any action or inaction of the Department arising from licensing, selection as a vendor, termination or suspension of a license or vendor operating agreement, probation, or administration of the BEP shall have an opportunity for a prompt informal administrative review by the supervisory staff of BEP and/or a full evidentiary hearing before a hearing officer in accordance with the provisions of Sections 7227.1 and 7227.2 of these regulations.

Rational: Add the words or inaction. John Westbrook, Program Manager denied a blind vendor the opportunity for his due process because, by not taking the action requested by the blind vendor, he did not consider it an action. If the State were allowed to take this position, it would not allow for vendors to file complaints of staff not doing their duties.

§ 7227. General Provisions.

(f) The CVPC may contract for professional services for training vendors in the preparation and submission of requests for review and hearings for all of the processes specified in subsection (a) herein, using vending machine income pursuant to Welfare and Institutions Code section 19630, subsections (d) and (g), and section 7225, subsection (b)(2) herein.

(f) The Department shall provide training in the preparation and submission of requests for review and hearings for all of the processes specified in (a) to the Grievance Subcommittee of the CVPC biannually. The CVPC may contract with a private attorney, or other knowledgeable persons, for the provision of additional training regarding these processes using vending machine income pursuant to Section 19630, Welfare and Institutions Code. When requested by a licensee/vendor, the CVPC and the Grievance Subcommittee shall:

Rational: Changing the funding source for CVPC's initial grievance procedural training, would cause a loss of Federal matching funds now used for this purpose. Both Federal and State Law declare that funds used for the purposes of the CVPC will be federally matched. Reference W & I Code 19629. If the Department of Rehabilitation does not wish to supply this training, CVPC believes they could contract with the Office of Administrative Law, as they have done in the past.

Response: No response required, motion applies to CVPC operating procedures. The comments will be received through and responded through the public comment period for the proposed regulations.

MOTION 2008.020. CVPC grants the authority to the CVPC Executive committee after consultation with the CVPC Rules subcommittee to represent in person or by correspondence the CVPC's position or believe stance for the Proposed BEP Regulations Sections 7213 through 7227.2 and 7217 until the next CVPC regular meeting.

Moved: Delegate Began
Seconded: Delegate Linker
Vote: Passed Unanimously
Absent: Delegate Collins

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.021. Moved that the CVPC approves the following: The chair of CVPC invites all the Sub Committees and Delegates to review the Strategic plan. Every Sub Committee according to their expertise can recommend plans and issues that will improve, enhance and provide better control for the future of this program. The Delegates can recommend any plan or issue that they are interested which will bring more prosperity and control to the future of this program. The Sub Committees and the Delegates are requested to forward their recommendations to the Rules Sub Committee by May 1, 2008

Moved: Delegate Began
Seconded: Delegate Linker
Vote: Passed Unanimously
Absent: Delegate Collins

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.022. Moved that the CVPC approves and will forward the attached “ Internal guidelines for true active participation” proposal to the Department for their approval. The CVPC is requesting the Chair to ask the Department in writing for a Memorandum of understanding to confirm their total commitment to this proposal.

Moved: Delegate Begian
Seconded: Delegate Murphy
Vote: Passed Unanimously
Absent: Delegate Collins

Response: BEP does not support this motion. The drafted guidelines can not supplant the requirements of the Randolph-Sheppard Act, the Welfare and Institutions code or the implementing regulations. Further, use of an memorandum of understanding is not applicable or appropriate. Nonetheless, BEP is committed to participation by CVPC.

MOTION 2008.023. Motion that CVPC will refund Janis Friesen \$986.89 for the purchase of the HP laptop computer that she purchased for CVPC business. Said HP laptop will be the property of the CVPC and will be used for CVPC business.

Moved: Delegate Murphy
Seconded: Delegate Maestas
Vote: Passed Unanimously
Absent: Delegate Collins

(This motion in accordance with the Bylaws required a 2/3 vote to be heard) (Vote to hear the motion carried unanimously.)

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.024. When CVPC is not able to convene in time to act on a waiver requests, it is moved that CVPC allow QLDC

the authorization to recommend to the department on a case-by-case basis whether a specific facility should be given a waiver of priority. QLDC will abide by any guidelines set out by CVPC to determine waiver appropriateness. If a waiver is recommended it will be for no more than 5 years and the recommendation would then be sent to the CVPC executive officers for review and then forwarded to the department. Waivers will be a standing report to the CVPC at each regular meeting during QLDC'S Subcommittee report.

Moved: Delegate Murphy
Seconded: Delegate Began
Vote: Passed Unanimously
Absent: Delegate Collins

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.025 It is moved that the department provide the Executive committee copies of letters or notices that prove that a vendor or former vendor has in fact had their debt to the trust fund discharged by a court through a bankruptcy. It is further moved that if there is no documentation supporting a discharge of debt from a bankruptcy court in behalf of a current or former vendor, or if in fact, he or she is in a chapter 11 bankruptcy and has not named the department as a creditor, then license revocation procedures should begin immediately, and all necessary steps be taken to recover the lost funds. We request this information be returned within 30 days of receiving this motion.

Moved: Delegate Murphy
Seconded: Delegate Maestas
Vote: Passed Unanimously
Absent: Delegate Collins

Response: BEP does not support this motion. As a matter of practice BEP does not share identifiable financial data, excluding summary information on location announcements with CVPC and vendors at large. However, CVPC is not restricted from securing the requested information from the

courts. Additionally, notwithstanding the request, BEP is obligated within applicable authorities, to pursue the collection. When applicable and as appropriate license revocation is considered and executed. As reported during the March 2008 meeting, within available resources, actions are being taken for failure to pay the required fees.

MOTION 2008.026. Moved that CVPC will postpone the 2008 CVPC/BEP Educational Conference until 2009.

Moved: Delegate Maestas
Seconded: Delegate Begian
Vote: Passed Unanimously
Absent: Delegate Linker
 Delegate Schamber
 Delegate Collins

(This motion in accordance with the Bylaws required a 2/3 vote to be heard) (Vote to hear the motion carried unanimously.)

Response: No response required, motion applies to CVPC operating procedures.

MOTION 2008.027. The Task force committee investigating the nominee agency proposal for the California BEP would like to submit the following motion:

Moved that the State will work in conjunction with the task force committee and the Deputy Director of Field Services for the Blind and the Program Manager for BEP in investigating the feasibility of a nominee agency administering the BEP.

The Deputy Director will send a letter within 45 days of receipt this motion to the Attorney General of California requesting his opinion on any road blocks of state procurement requirements, or state governmental personnel hiring requirements and for/or any other state requirements that would hinder a nominee agency for the Business Enterprise Program.

The letter to the Attorney General will include appropriate Federal and State statues regarding a nominee agency for BEP.

Moved: Delegate Brown

Seconded: Delegate Murphy
Vote: Motion Failed

District One – Absent
District Two – No
District Three - Yes
District Four – Yes
District Five – Chairperson

District Six – Absent
District Seven – No
District Eight – No
District Nine – Absent
District Ten - No

Response: No response required motion failed.

MOTION 2008.028. Moved to adjourn at 3:10 p.m.

Moved: Delegate Begian
Seconded: Delegate Maestas
Vote: Passed Unanimously
Absent: Delegate Linker
Delegate Schamber
Delegate Collins

Response: No response required, motion applies to CVPC operating procedures.