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**REPORT
ON THE
ACTIVITIES OF THE
ADVISORY COMMITTEE
ON
COMPETITION WITH PRIVATE ENTERPRISE**

JANUARY 15, 2003

**Prepared for: John Elias Baldacci, Governor
Joint Standing Committee on State and Local Government**

Prepared by: Advisory Committee on Competition with Private Enterprise

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TABLE OF CONTENTS

- 1. Executive Summary**
- 2. Complaint Process**
 - Appendix A: Complaint Form**
 - Appendix B: Government Agency Response Form**
 - Appendix C: Committee Work Sheet**
- 3. Summary of Complaint on Vending Machine Services**
- 4. Response to Complaint on CAP Agencies**
- 6. Conclusions and Recommendations**



EXECUTIVE SUMMARY

Government entities provide a wide variety of services to their constituencies. From time to time, some of those functions may adversely affect private enterprise. The 119th Legislature created the Advisory Committee on Fair Competition with Private Enterprise to review complaints where competition with private enterprise is potentially unfair.

The Advisory Committee consists of members appointed from government agencies, government employees and private sector representatives who meet to review complaints on government competition with private enterprise.

The Committee began its work shortly after appointment in the fall of 2000. It took several steps to organize a thoughtful process for interaction with persons or businesses, which were perceived as unfair competition by government agencies.

Forms were developed for capturing information from the parties. A protocol and procedure was established, including the opportunity for short presentations by both the complainant and the government agency. The Committee would then send a complaint summary and recommendations, if any, to all parties.

The Committee is staffed by the Division of Purchases. Division personnel provide guidance and assistance to those interested in pursuing a complaint. A web site was developed at www.maine.gov/purchase to further promote the Committee's purpose and process.

The Committee had three formal complaints filed and considered in Calendar Year 2002. Two complainants had an opportunity to make a presentation to the Committee and offer detailed evidence related to the impact of the potentially competing government service.

The first complaint was filed by Canteen Services Company (CSC) against the Maine Division for the Blind and Visually Impaired (MDBVI). CSC claimed the statutory preferences provided to the MDBVI for vending machine services were unfair. The Advisory Committee determined there was unfair competition and recommended that this preference be eliminated.

The second complaint was filed by Disney Environmental Services Inc. against Community Action Programs (CAP) who received sub grants from the Maine State Housing Authority (a quasi-state agency) to provide services in the community. At least some of the CAP agencies hired staff to complete this work. The Advisory Committee accepted the staff conclusion that this CAP agency was not a "State Governmental Agency or Institution," as detailed in the enabling statute. This Committee does not have jurisdiction over this matter.

The third complaint was filed by Acheron Engineering, Environmental & Geologic Consultants against the Health and Environmental Laboratory of the Department of Human Services. This complaint finding is at the deliberation stage. A written summary is anticipated in January or February of 2003.

ROSTER

Charles Jacobs	Deputy Commissioner of Administrative and Financial Services
Richard Thompson	Department of Administrative and Financial Services
John Veader	Representing State Employees
Stephen W. Cole, P.E.	Representing Private Enterprise
Diana George Chapin	Representing Private Enterprise
David McCausland	Representing Private Enterprise
Vacant	Maine Technical College System
Vacant	Commissioner of Economic and Community Development or designee
Vacant	Representative from State Government

COMPLAINT PROCESS

The committee organized its efforts around development of a process to allow sharing of information between the complainant, the government agency and the Committee. To avoid unspecific or frivolous complaints, the Committee chose to require a written complaint procedure.

A form was developed to capture key pieces of information about potentially unfair competition. It requires the complainant to disclose information about itself, the government agency (to the extent that information is known), the type and duration of the impact caused by the competition and a requested resolution. They are encouraged to submit additional documentation. (See Appendix A in this section.)

Another similar form was developed for response by the government agency. The process requires that the complaint information be forwarded to the agency for response, requesting (in addition to detailed agency information) a reason for the activity or business, the impact if the activity is altered or curtailed, and any statutory authorization for the practice. (See Appendix B in this Section.)

The Committee believed strongly that each complainant should have an opportunity to state its case to the decision makers. All parties are invited to a Committee meeting where each is given up to fifteen minutes to present evidence related to the complaint, after which the Committee asks questions without time limit.

The Committee established five basic criteria to evaluate the information obtained regarding each complaint:

- Is there competition?
- Why is the Government Agency engaged in this activity?
- Are there prohibitions to this activity?
- Is there a valid reason for the competition?
- Recommendations and Report to Governor/Legislature

This orderly decision process (Appendix C) allows for careful thought to determine if competition exists, why it exists and the threshold question is it unfair. The Committee analyzes the information made available to make its determinations.



**ADVISORY COMMITTEE ON FAIR COMPETITION WITH
PRIVATE ENTERPRISE**

Required Information/Complaint

▪ **Contact person**

Name: _____

Address: _____

Telephone: _____ **e-mail** _____

▪ **Private Enterprise(s) impacted (one entity, group, statewide impact)**

Business/Group Name _____

Address: _____

Telephone: _____

▪ **Government Agency causing impact**

Agency Name: _____

Address (if known): _____

Location of activity (if different): _____

Contact Person (if known): _____

▪ **Type of Impact (loss of work, market fluctuation, etc.)**

- **Duration of impact (start date if known, end date if known)**

- **Support – facts/proof**

Requested resolution

**ADVISORY COMMITTEE ON FAIR COMPETITION WITH
PRIVATE ENTERPRISE**

Required Information/Government Agency

▪ **Contact person**

Name: _____

Address: _____

Telephone: _____ **E-mail** _____

▪ **Location(s)**

▪ **Type of government activity**

▪ **Duration (start date, end date if known)**

- **Reason for activity/business**

- **Impact if activity altered or curtailed**

- **Identify all Applicable Statutes/Regulations/Policies that Authorize the Activity**

- **Pending Rulemaking – (if any)**

- **Suggested Resolutions**



**ADVISORY COMMITTEE ON FAIR COMPETITION WITH
PRIVATE ENTERPRISE**

Criteria for Evaluation

- Step 1. Is there competition?
 - A. What is the direct competing function?
 - B. What is the impact on private enterprise?

- Step 2. Why is the Government Agency engaged in this activity?
 - A. Statutory/Regulatory
 - B. Health and Safety
 - C. Educational Value (Students)
 - D. Staff Development
 - E. Cost Effectiveness
 - F. Duration

Step 3. Are there prohibitions to this activity?

A. Statutory

B. Regulatory

C. Other

Step 4. Is there a valid reason for the competition?

Fair market price?

Is it subsidized?

Are taxes/benefits/overhead paid?

Step 5. Recommendations and Report to General/Legislature



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
DIVISION OF PURCHASES
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AUGUSTA, MAINE 04333-0009

ANGUS S. KING
GOVERNOR

RICHARD B. THOMPSON
DIRECTOR OF PURCHASES

December 16, 2002

FACSIMILE AND MAIL

Lloyd Willey
Canteen Service Company
244 Perry Road
PO Box 895
Bangor, ME 04402-0895

Brenda Drummond
Department of Labor
Maine Division of Blind and Visually Impaired
54 State House Station
Augusta, ME 04333-0150

Dear Mr. Willey and Ms. Drummond:

On behalf of the Advisory Committee on Competition with Private Enterprise, I am forwarding the attached summary report. The report communicates the Committee's findings that there is competition that is unfair in some circumstances.

The summary and its recommendations are being forwarded to the Governor's Office and will be included in a report to the Legislature to be completed shortly.

Thank you for your patience as the Committee worked through this complaint.

Sincerely,

Richard Thompson, Director
Division of Purchases

CC: Charles Jacobs, Deputy Commissioner
Committee Members

RBT/slh

**Advisory Committee on Competition with Private Enterprise
Summary/Report
Canteen Service Company/MDBVI
October 31, 2002**

Complaint:

Canteen Services Company (Canteen) filed a complaint against the Maine Division for the Blind and Visually Impaired¹ (MDBVI), alleging that the MDBVI had an unfair statutory monopoly to provide vending machine services in public buildings. In addition, Canteen contends that the MDBVI solicits competition between vending service companies to provide equipment and services, but fails to diligently monitor the services provided to assure accurate reporting of sales and revenues.²

Hearing:

The MDBVI is authorized by statute³ to install a vending facility operated by a blind person into a public building and to place vending machines operated by the MDBVI in public buildings if operation by a blind person is not warranted. This second option is allowed specifically to achieve income to be used in support of MDBVI's programs.

The MDBVI issues request for proposals to acquire vending services for public buildings, which are not operated by blind persons. The selected vendor⁴ provides equipment, items for sale and the services necessary to keep the equipment full of product and operational. The contracted vendor reports sales and remits a portion of the money earned from sales to the MDBVI. These reports are reviewed and MDBVI does have the ability to audit vendor equipment and records but does not do so regularly.

Many public buildings are served directly by existing vendor service organizations such as Canteen. The MDBVI can require a public administrator in charge of a building to accept services bid by the MDBVI, replacing the existing equipment and service provider. This is perceived as unfair to Canteen who has lost accounts originally served by Canteen. The awards are made to competitors who may offer higher percentage revenue returns, but with no guarantee of quality, service level, pricing or revenue return.

In some limited number of cases, MDBVI acquires equipment to establish vending services using a blind person. This has happened in locations where snack bars or cafeterias exist, avoiding the competition between the blind person's food service operation and a vending service company with competing products. MDBVI has one location where a blind person provided the food service and vending service operations and subsequently closed the food service to manage only the vending services at that location.

¹ This is a state agency within the Department of Labor, Bureau of Rehabilitation.

² The Vending industry frequently refers to calculated underreporting of sales using technology as the "R" factor.

³ 26 MRSA, subsection 1418-F Business Enterprise Program.

⁴ Vendors are selected by a series of weighted criteria, including the percentage returned per dollar sales.

There are currently three (3) blind managers and four (4) blind or visually impaired workers in the food service program which employees approximately sixty (60) people under the State and Federal set aside regulations. Except for one college campus, which operates vending services only, there is a food service component in each of the locations where a blind manager is present.

Finding/Recommendation:

The Committee finds that competition does exist and is unfair in some circumstances. The clear, stated intent of Maine’s law is:

“to provide blind persons with remunerative employment, enlarge the economic opportunities of blind persons to become self supporting.....”⁵

The Committee understands the value of direct operation of a facility by blind persons and the need to restrict competition between vending and food service operations located in close proximity. There is clear competition, but the committee recommends no change in this area.

The contracting of vending services by MDBVI, where no blind person is involved, is merely a revenue generating system. It appears that these revenues subsidize the other food service operations and some of the MDBVI staff. The process used interrupts the normal business activities of competitors such as Canteen. MDBVI can argue that Canteen has the opportunity to bid for the service, but the bid and contract administration processes alter the usual balance of value and services offered by the private enterprises offering vending services.

The Committee recommends that paragraph 2 of 5 MRSA 1418-F be evaluated and recommends eliminating MDBVI’s exclusive right to operate vending services in public buildings where operation by a blind person is not warranted. This dramatically will reduce the revenues for the program. MDBVI would be required to compete for funding based on the merits of its program.

⁵ 5 MRSA 18-F



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GOVERNOR

RICHARD B. THOMPSON, DIRECTOR
DIVISION OF PURCHASES

DRAFT

December 6, 2002

Richard F. Disney, Sr.
P.O. Box 87
Lisbon Falls, ME 04252

Dear Mr. Disney:

The Advisory Committee on Fair Competition with Private Enterprise has investigated your March complaint and the circumstances you have raised.

The Maine State Housing Authority is a quasi-state agency, but the competing entities, the Community Action Programs are not. This Advisory Committee's purview is limited specifically to State governmental agencies and institutions by 5 MRSA §55.

The issues raised are pertinent to a procurement process. The Maine State Housing Authority is not subject to Title 5 MRSA, 1811-1826 which governs the mechanism, process and appeal rights of competitors when doing business with the State of Maine. The federal grant you referenced in your e-mail to me may provide some opportunity and guidance in that regard.

Respectfully,

Richard B. Thompson, Director
Division of Purchases

CC: Members of the Advisory Committee on Fair Competition with Private Enterprise

RBT/slh

CONCLUSIONS AND RECOMMENDATIONS

This report culminates the second full year of existence for the Committee. It includes the first recommendations legislatively to review a government agency in competition with the private sector. The committee recommends that the Governor and Legislature review the findings in the Vending Services complaint and take action as deemed necessary. The Committee stands ready to assist as needed.

The Committee plans to enhance its visibility to the public with the following strategies:

- Seek new appointments for vacant and expiring positions
- Develop an informational brochure for distribution to
 1. Chamber of Commerce
 2. Trade Organizations
 3. Legislators
 4. Web site
- Establish an “on-line” complaint filing process (held over from last year)