PRIDE--authority to engage in private sector business

Number: INFORMAL

Date: April 01, 2009

The Honorable Seth McKeel
1102 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

Dear Representative McKeel:

Thank you for your letter of March 17, 2009, requesting this office's assistance in determining the scope of authority of Prison Rehabilitative Industries and Diversified Enterprises, Inc. (the PRIDE program), to engage in private sector business. Attorney General McCollum has asked that I respond to your letter.

Prison Rehabilitative Industries and Diversified Enterprises, Inc., or PRIDE is the nonprofit corporation established pursuant to Part II, Chapter 946, Florida Statutes, to lease and manage the correctional work programs of the Department of Corrections.[1] Pursuant to section 946.504(1), Florida Statutes, the Department of Corrections "shall lease buildings and land to the nonprofit corporation authorized to operate the correctional work programs, the members of which are appointed by the Governor and confirmed by the Senate."

Part II, Chapter 946, Florida Statutes, controls the operation of inmate work programs that are leased or managed by PRIDE. PRIDE is also subject to federal legal provisions through the Ashurst-Sumners Act relating to the sale of prison-made goods in interstate commerce. The corporation may only sell goods it produces to the public sector or to foreign customers if it is operating its traditional prison industries pursuant to state and federal law. Florida law has provided PRIDE with the statutory authority to enter into contracts with the private sector to operate Prison Industry Enhancement or PIE Programs. PRIDE also has been certified by the federal government to administer PIE programs in Florida.[2]

Section 946.523, Florida Statutes, is the statute relating to PIE programs and provides:

"(1) The corporation may operate or contract with the private sector for substantial involvement in a prison industry enhancement (PIE) program that includes, but is not limited to, contracts for the operation of a direct private sector business within a prison and the hiring of inmates. Any contract authorized by this subsection must be in compliance with federal law governing inmate work programs and must not result in the significant displacement of employed workers in the community. The purposes and objectives of this program are to:
(a) Increase the benefits to the general public by reimbursing the state for a portion of the costs of incarceration.
(b) Provide purposeful work for inmates.
(c) Increase job skills.
(d) Provide additional opportunities for rehabilitating inmates who are otherwise ineligible to work

outside the prisons, such as maximum security inmates.
(e) Develop and establish new models for prison-based businesses that create jobs approximating conditions of private sector employment.
(f) Draw upon the economic base of operations for deposit into the Crimes Compensation Trust Fund.
(g) Substantially involve the private sector and its capital, management skills, and expertise in the design, development, and operation of businesses.
(h) Provide the financial basis for an inmate to contribute to the support of his or her family.
(i) Provide for the payment of state and federal taxes on an inmate's wages, which are paid at the rate of the prevailing or minimum wage rate.
(j) Provide savings for the inmate to have available for his or her use upon the inmate's eventual release from prison."

Clearly this statute authorizes PRIDE to operate or contract with the private sector for substantial involvement in PIE programs that include, but are not limited to, "contracts for the operation of a direct private sector business within a prison and the hiring of inmates." The Legislature also expressed its concern that any such program should not result in the significant displacement of employed workers in the community.[3]

I am enclosing a copy of the Senate Staff Analysis for CS/SB's 1604 and 1618, enacted as Chapter 99-260, Laws of Florida, which created section 946.523, Florida Statutes 1999. The staff analysis reflects the concerns of the Legislature during the process of enacting section 946.523, Florida Statutes, and may assist you in considering any amendments to the law. I would note that the staff analysis reflects PRIDE work assignments in Florida's Prison System and includes "tire remanufacturing."[4] You may also wish to contact the board of directors of PRIDE to determine whether they may be able to assist you in addressing your concerns.

Thank you for contacting the Florida Attorney General's Office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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Enclosure

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[1] Section 946.502(1), Fla. Stat.

[2] *See* s. 946.511, Fla. Stat., and Senate Staff Analysis and Economic Impact Statement for CS/SB's 1604 and 1618, dated April 12, 1999, copy enclosed.

[3] *And see* s. 946.515(5), Fla. Stat., providing that the corporation may contract to provide inmate goods and services to private enterprise where it has been determined by the Governor

that the corporation does not unreasonably seek to compete with other businesses in the state.

[4] *Supra,* n.2., p. 7.