* * * **FOR PUBLICATION** * * *
in West's Hawai'i Reports and the Pacific Reporter

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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MYLES TAMASHIRO, WARREN TOYAMA, HEATHER FARMER, FILO TU, JEANETTE TU, LYNN MISAKI, CLYDE OTA, MIRIAM ONOMURA, and YOSHIKO NISHIMURA, Plaintiffs-Appellees/Cross-Appellants,

vs.

DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI'I; STEPHEN TEETER, in his capacity as Business Manager for Ho'Opono, JOE CORDOVA, in his capacity as Administrator of the Division of Vocational Rehabilitation, State of Hawai'i, Department of Human Services; DAVE EVELAND, in his capacity as Administrator of the Services to the Blind Branch of the State of Hawai'i, Department of Human Services; and LILLIAN B. KOLLER, in her capacity as Director of the State of Hawai'i, Department of Human Services,[1] Defendants-Appellants/Cross-Appellees,

and

CITY AND COUNTY OF HONOLULU, Defendant.

NO. 24552

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 96-3011)

OCTOBER 27, 2006

MOON, C.J., NAKAYAMA, J., AND CIRCUIT JUDGE WATANABE, IN PLACE OF DUFFY, J., RECUSED; CIRCUIT JUDGE POLLACK, IN PLACE OF LEVINSON, J., RECUSED, DISSENTING, WITH WHOM ACOBA, J., JOINS

[1] Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c) (2004), Stephen Teeter, Joe Cordova, and Lillian B. Koller were substituted as parties to the instant appeal.

OPINION OF THE COURT BY MOON, C.J.

This case arises from the alleged failure of defendants-appellants/cross-appellees Department of Human Services (DHS), State of Hawai'i (the State), Lillian B. Koller, Joe Cordova, Dave Eveland, and Stephen Teeter[2] [hereinafter, collectively, the State defendants] to enforce Hawai'i Revised Statutes (HRS) §§ 102-14 (Supp. 2005) and 347-12.5 (1993), quoted infra, and the implementing regulation, Hawai'i Administrative Rules (HAR) § 17-402-17, quoted infra, [hereinafter, collectively, the Hawai'i Randolph-Sheppard Act (the Hawai'i RSA)] as against defendant City and County of Honolulu (the City). Briefly stated, the Hawai'i RSA is modeled after the federal Randolph-Sheppard Vending Stand Act, discussed infra, which grants priority to blind and visually handicapped individuals who desire to operate vending facilities on federal property. The Hawai'i RSA applies to state and county properties. The City allegedly (1) did not give priority to visually handicapped individuals licensed by DHS to operate vending facilities [hereinafter, the blind vendors] in its public buildings and (2) did not transfer to the State defendants the commissions

[2] The named individuals are sued in their official capacities of employment with the State. Lillian B. Koller is the Director of DHS; Joe Cordova is the Administrator of DHS's Division of Vocational Rehabilitation; Dave Eveland is the Administrator of DHS's Services to the Blind Branch; and Stephen Teeter is the Business Manager for the Blind in the branch of DHS known as "Ho'opono." See supra note 1.

collected from the City's own vending machine operation, both of which were allegedly in contravention of the Hawai'i RSA.

Plaintiffs-appellees/cross-appellants Myles Tamashiro, Warren Toyama, Heather Farmer, Filo Tu, Jeanette Tu, Lynn Misaki, Clyde Ota, Miriam Onomura, and Yoshiko Nishihara [hereinafter, collectively, the plaintiffs], who are licensed blind vendors, sought declaratory, monetary, and equitable relief (including injunctive relief) against the State defendants and the City[3] for their alleged failure to, respectively, enforce and comply with the requirements of the Hawai'i RSA. The plaintiffs maintained that the State defendants were required to ensure that: (1) vending machine income generated from state and county operations be paid into the Randolph-Sheppard Revolving Account [hereinafter, the RSR Account]; and (2) those funds were reserved for the use and benefit of the State's blind vendors.

The State defendants appealed, and the plaintiffs cross appealed, from the August 22, 2001 final judgment of the Circuit Court of the First Circuit, the Honorable Eden E. Hifo presiding, finding in favor of the plaintiffs and against the State defendants. The trial court awarded the plaintiffs, inter alia, money damages in the amount of approximately $3.67 million.

The State defendants, on appeal, and the plaintiffs, on their cross appeal, challenged various pre-trial and post-

[3] As discussed infra, the plaintiffs settled with the City; therefore, the City is not a party to the instant appeal.

judgment rulings made by the trial court. However, inasmuch as we hold that subject matter jurisdiction is lacking, we need not address the parties' challenge to these various pretrial and post-judgment rulings. Accordingly, we reverse the circuit court's August 22, 2001 final judgment.

I. BACKGROUND

A. Legal Background

1. The Randolph-Sheppard Vending Stand Act

Congress enacted the Randolph-Sheppard Vending Stand Act [hereinafter, the federal RSA] in 1936, amending the federal RSA twice, in 1954 and 1974. Pub. L. No. 74-732, §§ 1-7, 49 Stat. 1559, 1559-60 (1936); Pub. L. No. 83-565, § 13, 68 Stat. 652, 663-65 (1954); Pub. L. No. 93-516, §§ 200-11, 88 Stat. 1617, 1622-31 (1974); see also Pub. L. No. 93-651, §§ 200-11, 89 Stat. 2-3, 2-7 to 2-16 (1974) (codified as amended at 20 U.S.C. §§ 107 to 107f (2000)). The federal RSA establishes a cooperative federal-state program [hereinafter, the federal RSA program or the program] that "provid[es] blind persons with remunerative employment, enlarg[es] the economic opportunities of the blind, and stimulat[es] the blind to greater efforts in striving to make themselves self-supporting" by authorizing licensed blind persons "to operate vending facilities on any [f]ederal property" and granting them "priority" in such operation. 20 U.S.C. § 107(a)-(b).

Under the federal RSA, states can gain access to federal properties in their respective states to operate blind vending facilities by having one of its state agencies apply to the United States Department of Education (USDOE) to be designated as a "state licensing agency" (SLA), and, as discussed more fully infra, states must agree to a number of conditions. See New Hampshire v. Ramsey, 366 F.3d 1, 6 (1st Cir. 2004) ("States' participation in the program is voluntary."). The SLAs, in turn, license blind persons to operate vending facilities and match them with available contracts on federal property. 20 U.S.C. § 107b.

Examination of the evolution of this unique federal statutory scheme reveals that the original federal RSA was designed to create employment opportunities for the blind on federal property and for further federal rehabilitative efforts on behalf of the blind. H.R. Rep. No. 1094, 74th Cong., 1st Sess. 1, 2 (1936). As originally designed, no priority or preference was given to blind vendors to operate vending facilities on federal property. Id.; see also Pub. L. No. 74-732, §§ 1-7, 49 Stat. at 1559-60. The 1954 amendment, however, strengthened the federal RSA by, inter alia: (1) authorizing a preference, where feasible, to blind vendors to set up vending stands on federal property, Pub. L. No. 83-565, § 4, 68 Stat. at 663; see also 20 U.S.C. § 107a(b) (providing that SLAs "give preference to blind persons who are in need of

employment"); and (2) requiring that participating states (i.e., SLAs) agree "to provide any blind licensee dissatisfied with any action arising from the operation or administration of the vending stand program an opportunity for a fair hearing," Pub. L. No. 83-565, § 4, 68 Stat. at 664. The 1954 amendment did not, however, specify the nature of the hearing or the relief which should be afforded as a result of such a hearing.

In 1969, Congress proposed additional amendments

> because of the weak showing in the number of blind vendors operating on federal property, the growing trend toward installation of vending machines and the exclusive use of machines in some federal buildings, as well as increasing use of vending machine income by federal employees for recreation and welfare purposes. S. 2461 was designed to protect the blind preference established in the 1954 amendment[]. S. Rep. No. 1235, 91st Cong., 2d Sess. 2 (1970).

Texas State Comm'n for the Blind v. United States, 6 Cl. Ct. 730, 732 (1984) (footnote omitted), rev'd on other grounds, 796 F.2d 400 (Fed. Cir. 1986) (en banc), cert. denied, 479 U.S. 1030 (1987). Although hearings on Senate Bill No. 2461 were held in both the Senate and the House of Representatives, the 91st Congress adjourned without considering it further. See Delaware Dep't of Health & Soc. Servs. v. United States Dep't of Educ., 772 F.2d 1123, 1127 (3d Cir. 1985). In September 1971, a similar bill, Senate Bill No. 2506, was introduced in the 92d Congress. Id. However,

> Congress requested the General Accounting Office (GAO) to review vending operations on federally-controlled property and to determine if blind vendors were receiving preference as required by the 1954 amendment[]. . . .

> The report concluded that the program was languishing at the federal level while flourishing at the state level and in the private sector. GAO found that not only has little attention been paid to the blind vendor program, but that major abuses had occurred[, e.g., the parent Defense Department association at a major federal space installation demanded blind vendors give a portion of their income to the association; and the Department of Defense regulations, 32 C.F.R. § 260.4(b)(3)(ii) (1966), provided that no permits would be granted to blind vendors for the operation of vending stands if morale and welfare programs would be placed in jeopardy].

Texas State Comm'n for the Blind, 6 Cl. Ct. at 732-33 (footnote omitted). Consequently, another bill, Senate Bill No. 2581, which reflected some of the findings contained in the GAO's report, was introduced. Delaware Dep't of Health & Soc. Servs., 772 F.2d at 1127 (citing S. 2581, 93d Cong., 1st Sess. (1973)). Eventually, House Resolution No. 14225, substantially similar to Senate Bill No. 2581, was passed and became law on November 21, 1974. Id. (citing Pub. L. No. 93-651, 89 Stat. 2-3 (1974)[4]).

The 1974 amendment expanded the statute to increase the fair treatment of blind vendors and to provide oversight of the federal RSA's application in the federal government, among other

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[4] In the 1974 amendment, Congress specifically made the following findings:

> (1) [A]fter review of the operation of the blind vending stand program authorized under the [RSA] of June 20, 1936, that the program has not developed, and had not been sustained, in the manner and spirit in which the Congress intended at the time of its enactment, and that, in fact, the growth of the program has been inhibited by a number of external forces; [and]
> (2) . . . [T]he potential exists for doubling the number of blind operators on Federal and other property under the Randolph-Sheppard program within the next five years, provided the obstacles to growth are removed, that legislative and administrative means exist to remove such obstacles, and that Congress should adopt legislation to that end[.]

Pub. L. No. 93-651, § 201, 89 Stat. at 2-7 (emphasis added).

objectives. S. Rep. No. 937, 93rd Cong., 2d Sess. 9 (1974), reprinted in, 1974 U.S.C.C.A.N. 6417 [hereinafter, S. Rep. No. 93-937]; see also Pub. L. No. 93-651, §§ 200-11, 89 Stat. 2-3, 2-7 to 2-16 (1974). The 1974 amendment, in part, resulted in giving blind vendors priority (as opposed to preference) to operate vending facilities on federal property. 20 U.S.C. § 107(b). Thus, in sum and as more succinctly described by the United States Court of Appeals for the Sixth Circuit in Tennessee Department of Human Services v. United States Department of Education, 979 F.2d 1162 (6th Cir. 1992):

> The [federal RSA] grants priority to those blind persons who desire to operate vending facilities on federal property. 20 U.S.C. § 107(b). The [federal RSA] divides responsibility for the blind vendor program between the state and federal agencies. The Secretary of Education [[hereinafter, the Secretary]], is responsible for interpreting and enforcing the [federal RSA's] provisions, and more specifically, for designating [SLAs]. 20 U.S.C. § 107a(a)(5), [§] 107b; 34 C.F.R. §§ 395.5, 395.8. A person seeking a position as a blind vendor applies to the designated state agency and is licensed by that agency. The state agency in turn applies to the federal government for the placement of the licensee on federal property. 20 U.S.C. § 107b. Once the state and the federal government have agreed on an appropriate location for the vending facility, the [SLA] is responsible for equipping the facility and furnishing the initial stock and inventory. 20 U.S.C. § 107b(2). The blind vendor thereafter operates as a sole proprietor who is entitled to the profits of the vending facility and who is responsible for the facility's losses.

Id. at 1163-64.

The 1974 amendment also revised the remedial scheme for aggrieved blind vendors. See Pub. L. No. 93-561, §§ 204, 206, 89 Stat. at 2-10 to 2-11, codified at 20 U.S.C. §§ 107b(6) and 107d-1; S. Rep. No. 93-937. At that time, in addition to the 1954-requirement that participating states provide dissatisfied

blind licensees "an opportunity for a fair hearing," Pub. L. No. 83-565, § 4, 68 Stat. at 664, codified at 20 U.S.C. § 107b(6), Congress imposed the additional requirement that participating states "agree to submit the grievances of any blind licensee not otherwise resolved by [the fair] hearing to arbitration as provided in section 5 of this Act [20 U.S.C. § 107d-1]." Pub. L. No. 93-651, § 204, 89 Stat. at 2-10, codified at 20 U.S.C. § 107b(6) (emphasis added). The term "fair hearing" was defined as "a full evidentiary hearing" in section 5(a) of the 1974 amendment, which states:

> Any blind licensee who is dissatisfied with any action arising from the operation or administration of the vending facility program may submit to a [SLA] a request for a full evidentiary hearing, which shall be provided by such agency in accordance with section 3(6) of this Act [i.e., 20 U.S.C. § 107b(6)].

Pub. L. No. 93-651, § 206, 89 Stat. at 2-11, codified at 20 U.S.C. § 107d-1(a) (emphasis added). Additionally, Section 5(a) provides that:

> If such blind licensee is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 6 of this Act [i.e., 20 U.S.C. § 107d-2], and the decision of such panel shall be final and binding on the parties except as otherwise provided in this Act.

Id. (emphasis added). Section 6(a) of the 1974 amendment provides in relevant part:

> Such [arbitration] panel shall, in accordance with the provisions of subchapter II of chapter 5 of Title 5, give notice, conduct a hearing, and render its decision which shall be subject to appeal and review as such final agency action for purposes of chapter 7 of Title 5.

Id., codified at 20 U.S.C. § 107d-2(a) (emphasis added). The reference to chapters 5 and 7 of Title 5 are to the administrative procedures and judicial review provisions of the Administrative Procedure Act (APA).[5]

Thus, in sum, the remedial scheme mandated by the 1974 amendment include: (1) a full evidentiary hearing at the state level before the SLA; (2) an opportunity to appeal the SLA decision to the USDOE for review by an arbitration panel; and, finally, (3) judicial review of the USDOE's arbitration panel decision in the federal courts [hereinafter, collectively, the federal adjudication path]. Pub. L. No. 93-561, §§ 204, 206, 89 Stat. at 2-10 to 2-11, codified at 20 U.S.C. §§ 107b(6), 107d-1, and 107d-2(a).

2. The Hawai'i Randolph-Sheppard Act

As previously stated, the Hawai'i RSA, consisting of HRS §§ 102-14 and 347-12 and their implementing regulation, HAR § 17-402-17, is modeled after the federal RSA and applies to state and county properties.[6] HRS § 102-14 provides in relevant part:

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[5] Section 706 of 5 U.S.C. permits the reviewing court to set aside agency adjudicative actions which are, inter alia, "arbitrary, capricious, an abuse of discretion or otherwise not in accordance to law," or "unsupported by substantial evidence."

[6] The Hawai'i RSA was originally enacted in 1937. 1937 Haw. Sess. L. Act 208, § 1. Prior to a 1981 amendment, the Hawai'i RSA, like the federal RSA, gave blind vendors a "preference" regarding the operation of vending facilities on state and county properties. In 1981, the statute was amended consistent with its federal counterpart to provide blind vendors "priority" status.

> **§ 102-14 Use of public buildings by blind or visually handicapped persons.** (a) For the purpose of providing blind or visually handicapped persons, as defined in sections 235-1, 347-1, and 347-2[,] with remunerative employment, enlarging their economic opportunities and stimulating them to greater efforts in striving to make themselves self-supporting, blind or visually handicapped persons registered by [DHS] under section 347-6 and issued permits under subsection (c) shall be authorized to operate vending facilities and machines in any state or county public building[.]
>
> (b) [DHS], after consultation with authorities responsible for management of state or county public buildings, shall adopt rules in accordance with [C]hapter 91, necessary for the implementation of this section, including, but not limited to rules to assure that priority be given to registered blind or visually handicapped persons in the operation of vending facilities in state or county public buildings and to establish, whenever feasible, one or more vending facilities in all state and county public buildings.
>
> (c) Assignments of vending facilities and space for vending machines shall be by permit issued by [DHS].
>
> (d) No person shall advertise or otherwise solicit the sale of food or beverages for human consumption in any public building which is in competition with a vending facility or machines operated or maintained by a duly authorized blind or visually handicapped person . . . .
>
> (e) After July 1, 1981, or upon the expiration of vending machine contracts in existence on June 10, 1981, no vending machines shall be placed in any state or county public building in which there is a vending facility or machine assigned by permit to a blind or visually handicapped person except pursuant to a permit issued by [DHS].

(Bold emphasis in original.) HRS § 347-12.5 states:

> **[§ 347-12.5] Randolph-Sheppard revolving account.** (a) There is established within the state treasury the [RSR] [A]ccount. The revolving account shall be used by [DHS] for:
>
> (1) The provision of the following benefits for blind vendors:
> (A) A retirement or pension plan;
> (B) Health insurance; and
> (C) Sick and vacation leave;
>
> (2) The maintenance and replacement of equipment used in the blind vending program;
>
> (3) The purchase of new equipment to be used in the blind vending program; and
>
> (4) The provision of management services, which shall include, but not be limited to:
> (A) The hiring of consultants;
> (B) The sponsoring of training seminars;
> (C) Transportation;
> (D) Per diem for vendors to attend meetings of the state committee of blind vendors;

(E) Services for the state committee of blind vendors; and
(F) Other costs related to the blind vending program.

(b) Income from vending machines on federal, state, and county properties that are within reasonable proximity to, and in direct competition with, a blind vendor may be deposited into the account and then disbursed to the blind vendor.

(c) The revolving account shall consist of funds derived from:
(1) Vending machine income generated by federal, state, and county operations;
(2) Any other legally accepted source of income; and
(3) Donations.

(Bolded text in original.) HAR § 17-402-17(j) provides:

> **(j)** Evidentiary hearings and arbitration of vendor complaints shall be provided for in the following manner:
>
> (1) Each vendor shall have the right and opportunity to assert [a] claim and to secure, in an informal administrative proceeding, review of a grievance or dissatisfaction with a decision made or action taken. This shall be in accordance with the State's vocational rehabilitation rules and standards.
>
> (2) Each vendor or a personal representative or next of kin shall be given an opportunity for a full and fair hearing if [the] vendor is dissatisfied with any action arising from the operation or administration of the vending facility program. Such requests for a hearing shall be submitted in writing to the director.
>
> (3) A vendor shall have the right to be represented at the hearing by counsel or other representative.
>
> (4) The hearing shall be held in a place and time convenient to the vendor, personal representative or next of kin. There shall be notice to the vendor at least two weeks in advance, giving the date, time, and place of hearing.
>
> (5) The vendor shall have an adequate opportunity to present the case and to be cross-examined.
>
> (6) The hearing shall be held before the director or a designated agent. Authority to make the final decision based upon the record of the hearing shall be exercised by the department.
>
> (7) The verbatim transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and reports filed in the proceedings, and the hearing officer's recommendation, shall constitute the exclusive record for decision and shall be made available to the vendor at any reasonable time.

> (8) The decision shall set forth the issue, principle, and relevant facts brought out at the hearing, the pertinent provisions in law, agency policy and the reasoning that led to the decision. The individual shall be forwarded a copy of the section or shall be advised in writing of the content.
>
> (9) The vendor shall be informed of the right to request the [Secretary] to convene an ad hoc arbitration panel, if the vendor is dissatisfied with any action taken or decision rendered as a result of the full evidentiary hearing.[7]

(Bold emphasis in original.) (Underscored emphases added.)

Consequently, in Hawai'i, blind persons enjoy not only the benefits provided by the federal RSA, but also analogous benefits conferred by state law. In essence, the Hawai'i RSA affords blind persons vending opportunities on state and county properties similar to the opportunities afforded by its federal counterpart, 20 U.S.C. §§ 107 to 107f, with respect to federal properties, see HRS § 102-14(b), and provides a grievance procedure for vendor complaints, discussed infra. HAR § 17-402-12(j)(2) through (9). The Hawai'i RSA further establishes the RSR Account, in which income generated from

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[7] The current version of HAR § 17-402-17 (which recognizes the federal adjudication path) was adopted in 1981. The 1981 amendment replaced section 5, entitled "Fair Hearing," of Rule 9 of the "Department of Social Services Rules and Regulations for Vending Stand Program for the Blind on Federal and Other Property" that was originally promulgated in 1971. As originally promulgated, section 5 provided in relevant part:

> 5.1. Each operator or his personal representative or next of kin shall be given an opportunity for a full and fair hearing if he is dissatisfied with any action arising from the operation or administration of the Business Enterprise Program [(now known as the Vending Facility Program)]. . . .

(Emphasis added.) Inasmuch as the mandate to adhere to the federal adjudication path was not established until 1974, see Pub. L. No. 93-651, §§ 204, 206, 89 Stat. at 2-10, 2-11, section 5 of Rule 9 did not, obviously, contain any reference to it.

vending machines on federal, state, and county properties within the state of Hawai'i that "are within reasonable proximity to, and in direct competition with, a blind vendor may be deposited" and "disbursed to the blind vendor." HRS § 347-12.5(b).

B. Factual and Procedural Background

The following undisputed facts and procedural history are relevant to our resolution of this appeal.

1. Events Leading to Litigation

Sometime in or around March 1995, it came to the attention of the plaintiffs that the City was not making space in its public buildings for vending machines under the control of blind vendors, in violation of the Hawai'i RSA. Instead, the City had placed its own leased machines in such locations and kept the proceeds for its own use. DHS, serving as Hawaii's SLA,[8] sent written requests to county property managers to place blind vendor vending machines in county buildings on several occasions, but such requests were ignored, and DHS did nothing further.

[8] As previously indicated in supra note 7, the adoption of the federal adjudication path within HAR § 17-402-17(j) was made in 1981 after the federal RSA was amended to include such requirement. DHS, thereafter, applied to the USDOE to become an SLA on February 25, 1982. Its application contained, inter alia, the signature of then-director of DHS, Franklin Y.K. Sunn, and the chief executive of the State, George R. Ariyoshi, along with an attachment of the rules and regulations, as amended, for the USDOE's approval. On April 15, 1982, the USDOE approved DHS's application for "redesignation as the [SLA] under the [federal RSA] as amended."

Between mid-1995 to early 1996, plaintiffs and/or representatives on their behalf attempted to secure the City's voluntary compliance with the law by (1) making space available in its public buildings for blind vendor machines or (2) paying the State defendants, specifically, DHS, on behalf of the blind vendors, all the monies collected from the alleged unauthorized and illegal vending machines it controlled in its public buildings, but to no avail.

Eventually, on February 13, 1996, the Hawai'i State Committee for Blind Vendors, on behalf of blind vendors, including the plaintiffs, filed with DHS a request for a declaratory ruling "as to whether HRS § 102-14 and its implementing regulations authorize [DHS] to place [vending] machines in buildings where the agency head or building manager objects." DHS did not respond.

2. Circuit Court Proceedings

On July 22, 1996, the plaintiffs filed the instant action against the State defendants and the City for their alleged failure to enforce and comply with the requirements of the Hawai'i RSA. On August 19, 1996, the State defendants filed their motion to dismiss the complaint or, in the alternative, to stay proceedings pending the disposition of the declaratory ruling from the DHS. On August 29, 1996, the City joined the State defendants' motion to dismiss. On November 7, 1996, the

circuit court stayed the action to allow for administrative handling of the request for a declaratory ruling.

Thereafter, on June 6, 1997, then-DHS Director Susan Chandler, apparently without conducting a full evidentiary hearing, issued a decision and order, basically agreeing with the long-asserted position of the plaintiffs that, "[p]ursuant to sections 102-14 and 347-12.5, together with the implementing regulations, [DHS] has authority to control both the placement of vending machines in all state and county public buildings and the income derived therefrom." In other words, DHS has the authority to lawfully place vending machines on City property without the assent of the City.[9]

In June 1999, the plaintiffs entered a settlement with the City.[10] On July 15, 1999, the circuit court approved the settlement and granted the parties' request to maintain the action as a class action.

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[9] Although not relevant to the instant appeal, the City, on July 9, 1997, filed a Notice of Appeal to the First Circuit Court, pursuant to HRS § 91-14 (1993), appealing the June 6, 1997 decision and order of Director Chandler. The case was captioned City and County of Honolulu v. Susan Chandler, Civil No. 97-2827-07. Shortly after, the County of Hawai'i filed a separate administrative appeal of the June 6, 1997 decision in the Third Circuit Court, styled County of Hawai'i v. Susan Chandler, Civil No. 97-3201. Upon the request of DHS, the two administrative appeals were consolidated. Upon the request of the plaintiffs, the consolidated administrative appeal was ultimately consolidated with the plaintiffs' case on October 21, 1997.

[10] The City, inter alia, agreed to (1) remove and replace all non-blind vendor vending machines on its properties, (2) pay the amount of $150,000, and (3) dismiss its administrative appeal. Additionally, the parties agreed to obtain a commitment from the County of Hawai'i to dismiss its administrative appeal. On October 12, 1999, both administrative appeals were dismissed.

On August 2, 2000, a jury-waived trial commenced to determine two main issues: (1) the extent of loss and the amount of damages; and (2) declaratory and equitable relief. The trial lasted four days from August 2 through 4 and 8, 2000. On September 27, 2000, the trial court, inter alia, entered judgment in favor of the plaintiffs in the amount of $3,676,922.

3. The First Appeals

The State defendants and the plaintiffs both appealed the September 27, 2000 judgment, which appeals were docketed as appeal Nos. 23843 and 23997, respectively. This court, however, dismissed both appeals on February 5, 2001 and March 14, 2001, respectively, for lack of appellate jurisdiction because no dismissal or judgment of the plaintiffs' claims against the City had been filed.

4. Post-First Appeal Proceedings

On February 6, 2001, after their initial appeal had been dismissed, the State defendants filed a motion to dismiss at the trial level, asserting for the first time that the circuit court lacked subject matter jurisdiction. The State defendants argued that: (1) the terms and conditions of the State's consent to be sued define and restrict the court's jurisdiction; and (2) the court has no jurisdiction because the terms and conditions of the consent to suit require plaintiffs to pursue a full and fair evidentiary hearing, followed, if necessary, by arbitration under the auspices of the federal Secretary of

Education, followed, if necessary, by an appeal, pursuant the federal APA, as mandated by HAR § 17-402-17(j). The plaintiffs, on the other hand, argued, inter alia, that this court, in Hawai'i Blind Vendors Association v. Department of Human Services, 71 Haw. 367, 791 P.2d 1261 (1990), had already determined that "concurrent original jurisdiction" vested authority in both the court and the agency, i.e., DHS. Id. at 371, 791 P.2d at 1264. The plaintiffs, therefore, asserted that "there is no question that the court has subject matter jurisdiction."

A hearing on the motion to dismiss was held on March 27, 2001. At the hearing, the State defendants again argued that they "had to waive[their] immunity the way the federal government told [them to in order] to be a participating state licensing agency and to receive federal money," i.e., by adopting the federal adjudication path in the HAR. The plaintiffs essentially contended that "the grievance procedures in the [federal RSA] were not intended to and do not control how [the] State administers [its] own State laws relating to vending facilities on state and county properties." On April 18, 2001, the circuit court denied the motion, ruling that the prior order denying the State defendants' motion for summary judgment on

sovereign immunity grounds[11] is the law of this case "unless there exist cogent reasons to defer from it, and this [c]ourt does not find any such cogent reasons exist."

On August 22, 2001, the circuit court entered a final judgment. The August 22, 2001 final judgment essentially provides that: (1) as between the plaintiffs and the City, the July 15, 1999 order was entered in favor of the plaintiff and against the City in accord with the settlement agreement between them; (2) as between the plaintiff and the State defendants, judgment as to liability was entered in favor of the plaintiffs on March 14, 2000; and (3) the remaining non-liability issues were tried to the court in August 2000, in which the court entered its FOFs and COLs on September 27, 2000, adjudging that (a) the plaintiffs would be awarded $3,676,922.00 and (b) "declaratory and other equitable relief shall be entered." Consequently, "[a]ll claims as to all parties have been adjudicated." The circuit court also entered a separate Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b) (2005)[12] judgment

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[11] On January 6, 2000, the State defendants had moved for summary judgment on the ground that they are immune from suit under the doctrine of sovereign immunity, which was denied by the court, the Honorable Linda K.C. Luke presiding, on January 25, 2000.

[12] HRCP Rule 54 provides in relevant part:

> (b) Judgment upon multiple claims or involving multiple parties. When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no
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> (continued...)

concerning the plaintiffs' previously undismissed claims against the City.

Thereafter, on September 19, 2001, the State defendants appealed from the August 22, 2001 judgment. On September 20, 2001, the plaintiffs cross-appealed from the final judgment.

II. STANDARDS OF REVIEW

A. Subject Matter Jurisdiction

The circuit court's authority to hear the instant matter and, in turn, this court's authority to review the circuit court's rulings are questions of subject matter jurisdiction. "Whether a court possesses subject matter jurisdiction is a question of law reviewable de novo." Hawai'i Mgmt. Alliance Ass'n v. Ins. Comm'r, 106 Hawai'i 21, 26, 100 P.3d 952, 957 (2004) (internal quotation marks and citation omitted); see also Int'l Bhd. of Painters & Allied Trades Local Union 1944 v. Befitel, 104 Hawai'i 275, 281, 88 P.3d 647, 653 (2004) ("Subject matter jurisdiction is concerned with whether the court has the power to hear a case." (Internal quotation marks and citation omitted.)). We further note that:

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[12](...continued)
> just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any . . . form of decision . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties[.]

(Emphasis in original.)

> The lack of jurisdiction over the subject matter cannot be waived by the parties. If the parties do not raise the issue, a court sua sponte will, for unless jurisdiction of the court over the subject matter exists, any judgment rendered is invalid.

Chun v. Employees' Ret. Sys. of the State of Hawai'i, 73 Haw. 9, 14, 828 P.2d 260, 263 (1992) (citation and internal quotation marks omitted). When reviewing a case to determine whether the circuit court has jurisdiction, we "retain[] jurisdiction, not on the merits, but for the purpose of correcting the error in jurisdiction." Amantiad v. Odum, 90 Hawai'i 152, 159, 977 P.2d 160, 167 (1999) (citation omitted).

B. Statutory Interpretation

"The standard of review for statutory construction is well-established. The interpretation of a statute is a question of law which this court reviews de novo. Where the language of the statute is plain and unambiguous, our only duty is to give effect to its plain and obvious meaning." Liberty Mut. Fire Ins. Co. v. Dennison, 108 Hawai'i 380, 384, 120 P.3d 1115, 1119 (2005) (quoting Labrador v. Liberty Mut. Group, 103 Hawai'i 206, 211, 81 P.3d 386, 391 (2003)) (internal quotation marks omitted). "Additionally, the general principles of construction which apply to statutes also apply to administrative rules." Brown v. Thompson, 91 Hawai'i 1, 9, 979 P.2d 586, 594 (1999) (citation and internal quotation marks omitted).

III. DISCUSSION

A. Subject Matter Jurisdiction

As a threshold matter, the State defendants argue that the circuit court lacked subject matter jurisdiction because the federal adjudication path -- i.e., a full and fair evidentiary hearing by the SLA, arbitration conducted by the USDOE panel, and appeal and final review by the federal courts -- was imported into the Hawai'i RSA through HAR § 17-402-17(j). The State defendants argue that "[t]he arbitration required by the [federal] [a]djudication [p]ath is the mandatory, exclusive, statutory arbitration provision required by the [federal] RSA and the HAR and is not subject to circumvention." (Some emphases added.) The State defendants, therefore, submit that the state judiciary does not have jurisdiction over this case. The plaintiffs, however, respond that the federal adjudication path has no application in this case because the remedial path is associated with the federal RSA, which involves solely "vending facilities on federal property." The plaintiffs further maintain that this court has subject matter jurisdiction over the instant case because this court asserted its jurisdiction in Hawai'i Blind Vendors Association v. Department of Human Services, 71 Haw. 367, 791 P.2d 1261 (1990), wherein this court specifically stated that DHS and the circuit court "have concurrent original jurisdiction." Id. at 371, 791 P.2d at 1264.

Inasmuch as we are guided by the principle that, "[i]f a court lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid [and that,] therefore, such a question is valid at any stage of the case," Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 133, 870 P.2d 1272, 1277 (1994) (citation, internal quotation marks and brackets omitted), this court is obliged to first insure that it has jurisdiction. Id.; see also HRCP Rule 12(h)(3) (2005) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action".). Accordingly, we must examine the overall scheme of the federal RSA and its relationship to the Hawai'i RSA to determine whether the federal adjudication path applies to state and county properties, thereby depriving the circuit court of jurisdiction.

1. The Federal RSA

We begin with the federal RSA. As previously stated, "the [federal RSA] provides the framework for a comprehensive regulatory scheme giving blind persons licensed by state agencies priority to operate vending facilities on all federal property." Minnesota, Dep't of Jobs & Training v. Riley, 18 F.3d 606, 608 (8th Cir. 1994) (citing 20 U.S.C. § 107(a)-(b)) (emphases added). "The blind vendors became, in effect, third party beneficiaries of the agreements between the participating states and the

federal government." Delaware Dep't of Health & Soc. Servs., 772 F.2d at 1127.

States that choose to have their agencies become SLAs and participate in and administer the program must agree to several conditions enumerated in the federal RSA. Preliminarily, we note that, pursuant to 20 U.S.C. § 107a(a)(6)(B), the USDOE is mandated, "[t]hrough the Commission[er of the Rehabilitation Services Administration]," to "take such other steps, including the issuance of such rules and regulations, as may be necessary or desirable in carrying out the provisions of this chapter." Consequently, section 395 of Title 34 of the Code of Federal Regulations was promulgated and sets forth the requirements for states to become designated SLAs. Section 395.3, entitled "Application for designation as [SLA]; content," provides in pertinent part:

> (a) An application for designation as a [SLA] under § 395.2[13] shall indicate:
> (1) The [SLA's] legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

[13] Section 395.2 provides that:

> (a) An application for designation as a [SLA] may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under Part 1361 of this chapter.
> (b) Such application shall be:
> (1) Submitted in writing to the Secretary;
> (2) Approved by the chief executive of the State; and
> (3) Transmitted over the signature of the administrator of the State agency making application.

(Emphasis added.)

> (2) The [SLA's] organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program[;]
>
> . . . .
>
> (7) The policies and standards governing the relationship of the [SLA] to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a [SLA] action, and, where necessary, rights for the submittal of complaint to an arbitration panel.
>
> . . . .
>
> (11) The assurance of the [SLA] that it will:
>
> . . . .
>
> (iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the [SLA], its rules and regulations[;]
>
> . . . .
>
> (vii) Submit to an arbitration panel those grievance of any vendor unresolved after a full evidentiary hearing[.]

(Emphases added.) Section 395.4, in turn, obligates the SLAs to "promulate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings)[.]" Finally, Section 395.13 indicates, inter alia, that:

> (a) The [SLA] shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor . . . dissatisfied with any [SLA] action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. . . .

Moreover, notwithstanding the above promulgated rules, Congress, in enacting the federal RSA, also included the following sections:

> § 107b. Application for designation as [SLA]; cooperation with Secretary; furnishing initial stock.
>
> A State agency for the blind or other State agency desiring to be designated as the licensing agency shall[] . . . make application to the Secretary and agree -
>
> . . . .
>
> (5) to issue such regulations, consistent with the provisions of this chapter, as may be necessary for the operation of this program;
>
> (6) to provide to any blind licensee dissatisfied with any action arising from the operation or administration of the vending facility program an opportunity for a fair hearing, and to agree to submit the grievances of any blind licensee not otherwise resolved by such hearing to arbitration as provided in **section 107d-1** of this title.

(Emphases added.) Section 107d-1(a) provides in relevant part:

> Any blind licensee who is dissatisfied with any action arising from the operation or administration of the vending facility program may submit to a[n SLA] a request for a full evidentiary hearing, which shall be provided by such agency in accordance with section 107b(6) of this title. If such blind licensee is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to **section 107d-2** of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

20 U.S.C. § 107d-1(a) (emphases added). Section 107d-2, entitled "Arbitration," states in pertinent part:

> Upon receipt of a complaint filed under section 107d-1 of this title, the Secretary shall convene an ad hoc arbitration panel as provided in subsection (b) of this section.[14] Such panel shall, in accordance with the

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[14] Subsection (b) of section 107d-2 provides in relevant part:

> (1) The arbitration panel convened by the Secretary to hear grievances of blind licensees shall be composed of three members appointed as follows:
>
> (A) one individual designated by the [SLA];
>
> (B) one individual designated by the blind licensee; and
>
> (C) one individual, not employed by the [SLA] or, where appropriate, its parent agency, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

(continued...)

> provisions of subchapter II of chapter 5 of Title 5[, i.e., the APA, see supra note 5], give notice, conduct a hearing, and render its decision which shall be subject to appeal and review as a final agency action for purposes of chapter 7 of such Title 5.

20 U.S.C. § 107d-2 (emphases added).

Accordingly, taking into account the federal RSA and its regulations, we believe that, although states are not required to participate in the vending facility program, those that desire to gain access to federal properties to establish vending facilities for their blind vendors to operate must submit a state vending facility plan that conforms with the requirements of the federal RSA and its regulations. In turn, the language in each of the above provisions is clear: for a state agency to become an SLA and participate in the federal RSA program, it must agree to the federal adjudication path in dealing with blind licensees who are dissatisfied with the operation of the vending program. See Comm. of Blind Vendors of the Dist. of Columbia v. Dist. of Columbia, 28 F.3d 130, 135 (D.C. Cir. 1994) ("The inclusion of a detailed grievance procedure to resolve vendor disputes . . . is the strongest evidence of Congressional intent" that aggrieved vendors pursue their administrative remedies before resorting to judicial adjudication.); see also Randolph-Sheppard Vendors of America v. Weinberger, 795 F.2d 90, 103 (D.C.

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[14](...continued)
> If any party fails to designate a member under subparagraph (1)(A), (B), or (C), the Secretary shall designate such member on behalf of such party.

Cir. 1986). In consideration of the states' agreements to subject themselves to the federal adjudication path, the federal government grants to state agencies the right to place licensed blind vendors on federal sites and to receive federal funds, as discussed infra. See Ramsey, 366 F.3d at 6; Delaware Dep't of Health & Soc. Servs., 772 F.2d at 1127.

We fully recognize that the federal RSA, as previously mentioned, involves the operation of a "vending facility on **any [f]ederal property**." 20 U.S.C. § 107(a) (emphasis added). Thus, on its face, it appears that DHS is obligated to comply with the federal adjudication path only with respect to claims relating to its management of vending machines on federal property. However, in our view, it is the overall scheme of the federal RSA that dictates adherence to the federal adjudication path even in those situations involving non-federal property. See 34 C.F.R. § 395.

As previously noted, section 107a(a)(5) authorizes the Secretary to designate to the state agency in each state the responsibility of issuing "licenses to blind persons . . . for the operating of vending facilities on Federal and other property in such [s]tate[.]" 20 U.S.C. § 107a(a)(5) (emphasis added). Although Congress clearly intended the RSA program to apply to both federal and non-federal properties, see also supra note 4, the phrase "other property" is not defined anywhere in the federal RSA, i.e., 20 U.S.C. §§ 107 through 107f, including the pertinent definition section, 20 U.S.C. § 107e. However, because

Congress has delegated to the Secretary the power to "prescribe regulations designed to assure[, inter alia,] that - (1) the priority under this subsection is given to such licensed blind persons (including assignment of vending machine income pursuant to section 107d-3 of this title to achieve and protect such priority)," 20 U.S.C § 107(b), "we must defer to his regulatory interpretations of the Code so long as they are reasonable." Cottage Sav. Ass'n v. Comm'r of Internal Revenue, 499 U.S. 554, 560-61 (1991) (citation omitted). The term "other property" is specifically defined within section 395 of the Code of Federal Regulations, entitled "Vending Facility Program For the Blind on Federal and Other Property," (emphasis added), as "property which is not [f]ederal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any [f]ederal property." 34 C.F.R. § 395.1(n) (emphasis added). We note that, although

> [t]he principal benefit that a state receives for participating in the program is an opportunity to improve the lot of its blind population[, a] participating state also receives funds. For example, even if no blind vendor operates vending facilities on a particular federal property, the relevant SLA receives income from vending machines on that property; these proceeds can be used to fund retirement, health insurance, sick leave, and vacation time for blind vendors and to defray various costs associated with running the program. 20 U.S.C. §§ 107d-3(a), (c).

Ramsey, 366 F.3d at 6 (emphasis added). Section 107d-3 expressly provides that

> vending machine income obtained from the operation of vending machines on [f]ederal property shall accrue (1) to the blind licensee operating a vending facility on such property, or (2) in the event there is no blind licensee operating such facility on such property, to the [SLA] in whose State the [f]ederal property is located[.]

20 U.S.C. § 107d-3 (emphases added). Thus, if funds derived from the operation of vending facilities on any federal property are used to establish or operate a blind vendor facility on non-federal property, the provisions of the federal RSA apply. In other words, "[m]anifestation of a state's willingness to enter the program, which applied to both federal and 'other buildings in [the] [s]tate,' required that the [SLA] 'make application to the [Secretary] and agree' to federal requirements." Delaware Dep't of Health & Soc. Servs., 772 F.2d at 1126 (some brackets in original and some added) (quoting Pub. L. No. 74-732, 49 Stat. 1559).[15]

Based on the foregoing, we believe that the federal RSA mandates that the participating states, like Hawai'i, acknowledge and accept the federal adjudication path. Review of the Hawai'i RSA further confirms our conclusion. We, therefore, turn our attention to the Hawai'i RSA.

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[15] The phrase "federal and other buildings" was amended to "federal and other property" in the 1954 amendment. Pub. L. No. 83-565, § 13, 68 Stat. at 663 (emphases added). The revision was made to allow blind vendors to establish vending stands in locations that "would not have been encompassed" under the phrase "federal and other buildings." See S. Rep. No. 93-937 at 6.

2. The Hawai'i RSA

Preliminarily, we note that the legislature devoted HRS chapter 347 to blind and visually handicapped persons, wherein it generally authorizes DHS to

> administer work with and for the blind, including the registry of the blind, vocational guidance, training, and placement in employment[.]

HRS § 347-3 (1993) (emphases added). Under this chapter, DHS is specifically required to

> provide vocational rehabilitation for blind and visually handicapped persons **in accordance with the provisions of the federal Vocational Rehabilitation Act [(VRA)] and the Randolph-Sheppard Act** and in accordance with chapter 348[, which governs the state's vocational rehabilitation program], to the extent permitted by the amount appropriated, funds available from the federal government, and other donations, and grants.

HRS § 347-4 (1993) (emphases added).[16]

As indicated supra, Congress conditioned a state's participation in the federal RSA program upon, inter alia, adherence to the federal adjudication path. As mandated by section 107b(6), the state agency making application to the Secretary must agree to, inter alia,

> provide to any blind licensee dissatisfied with any action arising from the operation or administration of the vending facility program an opportunity for a fair hearing, and to agree to submit the grievances of any blind licensee not otherwise resolved by such hearing to arbitration[.]

20 U.S.C. § 107b(6). DHS applied to the Secretary to become an SLA on February 25, 1982. In so doing, DHS agreed to the above condition as evinced by the "[r]ules [g]overning the [v]ending

[16] Vocational rehabilitation, accordingly to the federal VRA, includes, inter alia, "increas[ing] employment of individuals with disabilities."

[f]acility [p]rogram," i.e., inter alia, HAR § 17-402-17, which were attached to the application. See supra note 8.

Section 395.3 of the Code of Federal Regulations explicitly provides that a state's application for designation as an SLA must contain, inter alia:

> (1) The [SLA's] legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;
> (2) The [SLA's] organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program[.]

34 C.F.R. § 395.3(a) (emphases added). The "legal authority to administer the program" and "description of the methods for coordinating the State's vending facility program" are found in HRS §§ 102-14 and 347-12.5 and HAR § 17-402-17. Further, as a condition to being licensed as SLAs, states must agree to conduct full evidentiary hearings on any complaint arising from the operation or administration of the blind vendor program and to submit to arbitration before a USDOE panel convened by the Secretary, if requested by a dissatisfied vendor. See 20 U.S.C. §§ 107b(6) and 107d-1(a); 34 C.F.R. § 395.3(a). Section 395.4 further provides that "[t]he [SLA] shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including [SLA] procedures covering the conduct of full evidentiary hearings)[.]" (Emphases added.)

The "rules and regulations" referred to above are found in HAR § 17-402-17, promulgated pursuant to HRS § 102-14(b) (DHS "shall adopt rules in accordance with [C]hapter 91, necessary for the implementation of this section, including, but not limited to rules to assure that priority be given to registered blind [vendors]"). As previously quoted, HAR § 17-402-17(j) provides in pertinent part that:

> Evidentiary hearings and arbitration of vendor complaints shall be provided for in the following manner:
>
> (1) Each vendor shall have the right and opportunity to assert [a] claim and to secure, in an informal administrative proceeding, review of a grievance or dissatisfaction with a decision made or action taken. This shall be in accordance with the State's vocational rehabilitation rules and standards.
>
> (2) Each vendor or a personal representative or next of kin shall be given an opportunity for a full and fair hearing if [the] vendor is dissatisfied with any action arising from the operation or administration of the vending facility program. Such requests for a hearing shall be submitted in writing to the director.
>
> . . . .
>
> (9) The vendor shall be informed of the right to request the [Secretary] to convene an ad hoc arbitration panel, if the vendor is dissatisfied with any action taken or decision as a result of the full evidentiary hearing.

(Emphases added.) By its plain language, the first step in the Hawai'i RSA's procedure for the resolution of disputes is an informal administrative proceeding conducted pursuant to "the State's vocational rehabilitation rules and standards." HAR § 17-402-17(j)(1). The vocational rehabilitation rule concerning complaints and fair hearings under that program is found in HAR

§ 17-400-4(d).[17] The rule, however, provides in relevant part that:

> The administrative review is not a prerequisite to the fair hearing process:
> (1) Administrative review shall be an informal procedure which may include the applicant or client or representative, conducted by the [vocational rehabilitation and services for the blind] division's [[hereinafter, the division]] supervisory or administrative staff, or both,[18] at the request of the applicant or client or their parent, guardian or representative. This request may be made orally or in writing.

(Emphasis added.) The administrative review, therefore, is not a precondition to a full evidentiary hearing before the SLA. Consequently, the full and fair hearing set forth in HAR § 17-402-17(j)(2) is the initial mandatory procedure. "[I]f the vendor is dissatisfied with any action taken or decision as a result of the full evidentiary hearing[,]" the administrative rule requires that the SLA inform the complainant (i.e., vendor) of "the right to request the [Secretary] to convene an ad hoc arbitration panel[.]" HAR § 17-402-17(j)(9). Thus, the next stage of the dispute resolution procedures under the Hawai'i RSA program is essentially an appeal to the Secretary, who, in turn, convenes an ad hoc arbitration panel to review the concerns raised by the dissatisfied vendor.[19]

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[17] HAR § 17-400-4 was promulgated pursuant to the authority provided in HRS § 348-6 (1993).

[18] DHS is "the sole state agency to administer the vocational rehabilitation program." HAR § 17-400-2; see also HRS § 348-3. The division is "the designated administrative unit of [DHS] to administer the vocational rehabilitation program in the State[.]" HAR § 17-400-2.

[19] As previously stated, 20 U.S.C. § 107d-2(a) provides that the decision rendered by the arbitration panel "shall be subject to appeal and (continued...)

By becoming an SLA and participating in the RSA program, Hawai'i -- like California -- agreed to comply with the federal adjudication path for its blind vendors' grievances. In a California case, reviewed by the United States Court of Appeals for the Ninth Circuit, the court was confronted with the issue of the enforceability of the USDOE arbitration panel's award against the state. Premo v. Martin, 119 F.3d 764, 766 (9th Cir. 1997), cert. denied, 522 U.S. 1147 (1998). Although the property involved is controlled by the federal government and the issue related to the enforcement of an arbitration award, the Ninth Circuit's analysis of the federal RSA as it relates to the California's RSA is relevant and instructive:

> The State of California has not expressly consented to suit. Nor has California enacted a statute that provides for waiver. The California statute establishing the state counterpart to the federal [RSA] does provide that the decision of an arbitration panel "shall be final and binding on the parties except as otherwise provided in the act." Cal. Welf. & Inst. Code § 19635 (West 1991).[20] While this statute clearly reflects California's intent to be bound by Randolph-Sheppard arbitral awards, it does not provide clear enough consent to suit in federal court to amount to an express statutory waiver of sovereign immunity.

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[19](...continued)
review as a final agency action for purposes of chapter 7 of such Title 5" by the federal courts.

[20] Section 19635 specifically provides in relevant part that:

> If [a] blind vendor is dissatisfied with any action taken or decision rendered as a result of [a full evidentiary] hearing, he may filed a complaint with the Secretary . . . who shall convene a panel to arbitrate the dispute pursuant to Section 6 of the Randolph-Sheppard Act[, i.e., 20 U.S.C. § 107d-2.]

> However, the evidence that Congress conditioned state participation in the Randolph-Sheppard program on consent to federal judicial enforcement of compensatory awards is overwhelming. The statute explicitly requires participating states to agree to a number of conditions. Specifically, each state agency "shall . . . agree" to provide any dissatisfied blind vendor with the opportunity for a fair hearing and "to submit the grievances of any blind licensee not otherwise resolved by such hearing to arbitration." 20 U.S.C. § 107b. The state further provides that arbitration "shall be final and binding on the parties." 20 U.S.C. § 107d-1(a) (emphasis added). . . .
>
> Under the circumstances, there is no "room for any other reasonable construction" of the statute. **The overwhelming implication of the statute is that[,] by agreeing to participate in the [RSA] program, states have waived their sovereign immunity to enforcement of such awards in federal courts.**

Id. at 770 (citations omitted) (emphases added). Like California, the State has incorporated the federal adjudication path into its RSA program and, in so doing, has acknowledged its obligation to the United States to conduct full evidentiary hearings at the agency level regarding blind vendor grievances and, thereafter, if requested, to submit to arbitration before a USDOE panel convened by the Secretary. Such acknowledgment is also consistent with the conditions for licensure as an SLA, discussed supra. In other words, by applying for and receiving the SLA designation and by issuing the regulations required by 20 U.S.C. § 107b(5), including the regulation providing the required remedies to dissatisfied vendors, i.e., HAR § 17-402-17(j)(2)-(9), the State, contrary to the dissent's contention, has implicitly surrendered its sovereign immunity to suits in federal courts -- not state courts -- via the federal adjudication path. See also Office of Hawaiian Affairs v. State, 110 Hawai'i 338,

360, 133 P.3d 767, 789 (2006) ("limits on the State's waiver of sovereign immunity . . . must be strictly construed and cannot [be] extend[ed]") (internal quotation marks omitted); Allied/Royal Parking L.P. v. United States, 166 F.3d 1000, 1003 (9th Cir. 1999) ("limitations and conditions of consent to suit must be strictly observed and exceptions thereto are not to be implied") (citation and internal quotation marks omitted). HAR § 17-402-17, therefore, does not contradict or contravene the legislative purpose behind the Hawai'i RSA nor the purpose behind the federal RSA.[21] See In re Wai'ola O Moloka'i, Inc., 103 Hawai'i

[21] The dissent contends that "[n]either HRS § 102-14 nor HRS § 347-12.5 can be read as delegating to the DHS the authority to divest the circuit courts of their jurisdiction over claims involving state law[,]" dissenting op. at 34; "such application of the rule would violate state law and well-established principles of agency law." Dissenting Op. at 38. Thus, the dissent maintains that, "if HAR § 17-402-17(j) attempts to divest the state courts of their jurisdiction, it is invalid." Dissenting Op. at 39. The dissent, however, fails to recognize that the Hawai'i Legislature delegated to the agencies the authority to

> accept, receive on behalf of the State, and receipt for, any and all grants or allotments for federal-aid moneys made available to the State by or pursuant to an act of Congress, and enter into or make such plan, agreement, or other arrangement with the agency designated by the act of Congress as is necessary to carry out the purpose of the Act[.]

HRS § 29-14 (1993) (emphases added). Specifically, with respect to the blind or visually handicapped persons:

> [DHS] may, as an agency of the State for the assistance of blind or visually handicapped persons, do all things which will enable the State and the blind and the visually handicapped in the State to have the benefits of all federal laws for the benefit of blind and visually handicapped persons.

HRS § 347-5 (1993) (emphases added). Under the federal RSA, Congress mandated states to agree to certain conditions, including the acceptance of the federal adjudication path, in order to gain access to federal properties and to obtain federal funds, which are derived primarily in the form of vending machine income from non-blind vendors' machines on federal properties, 20 U.S.C.
(continued...)

401, 425, 83 P.3d 664, 668 (2004) ("If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the rule implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning." (Citation omitted.)); see also State v. Kotis, 91 Hawai'i 319, 331, 984 P.2d 78, 90 (1999) ("Administrative rules, like statutes, have the force and effect of law." (Citations omitted.)).

The dissent, however, asserts that the legislature "vested jurisdiction in the circuit court for a claim arising under the Hawai'i RSA," dissenting op. at 40, because it mandated that rules be adopted in accordance with HRS chapter 91, which "specifically provides for judicial relief in the circuit court for persons aggrieved by an agency declaratory ruling or a decision in a contested case." Id. (citing HRS § 91-7(a) (1993)) (internal quotation marks omitted). We note that the provisions contained in HRS chapter 91 can essentially be divided into two parts that authorize (1) the promulgation of rules and (2) the

[21](...continued)
§ 107d-3. See Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 640 (1999) ("When Congress acts pursuant to its spending power, it generates legislation much in the nature of a contract: in return for federal funds, the States agree to comply with the federally imposed conditions." (Citation and internal quotation marks omitted.)); see also Office of Hawaiian Affairs v. State, 96 Hawai'i 388, 397, 31 P.3d 901, 910 (2001). Clearly, DHS was given the authority to enter into a contractual relationship with the United States to participate in the program for the benefit of the State's blind and visually handicapped persons. In turn, DHS promulgated HAR § 17-402-17 and incorporated one of the federal conditions within its rules, that is, the federal adjudication path. We note further that the USDOE, in 34 C.F.R. § 395.2(b)(2), see supra note 13, obligates the chief executive of the State to approve DHS's application for designation as an SLA. Here, the chief executive of the State, George R. Ariyoshi, approved DHS's application.

establishment of adjudicatory procedures. The rule-making procedures provide for, inter alia: (1) the adoption of rules by agencies, HRS § 91-3 (Supp. 2005); (2) the filing and effectuating of rules, HRS § 91-4 (1993); and (3) the publication of rules, HRS § 91-5 (Supp. 2005). The provisions governing the establishment of adjudicatory procedures provide for, inter alia: (1) declaratory rulings by agencies, HRS § 91-8 (1993); (2) contested case hearings, HRS § 91-9 (1993 & Supp. 2005); and (3) judicial review of contested cases, HRS § 91-14 (Supp. 2005).

HRS § 102-14(b) specifically states that DHS "shall adopt rules in accordance with [C]hapter 91," which the dissent maintains includes the authority to establish adjudicatory procedures of Chapter 91. However, had the legislature intended that the adjudicatory provisions of Chapter 91 be followed, it would have expressly indicated such intent as it has done in other statutes on various subjects. For instance, in enacting HRS § 174C-8 (1993), relating to the State Water Code, the legislature provided that rules concerning water resources "shall be adopted in conformity with [C]hapter 91," (emphasis added), mandating further that:

> All proceedings before the commission [on water resource management] concerning the enforcement or application of any provision of this chapter . . . or the issuance, modification, or revocation of any permit or license . . . shall be conducted in accordance with [C]hapter 91. . . .

HRS § 174C-9 (1993) (emphasis added). Similarly, other statutes demonstrate the legislature's express adoption of the rule-making

and adjudicatory procedures of Chapter 91. See, e.g., (1) HRS § 368-3 (Supp. 2005) (requiring the civil rights commission to "adopt rules under [C]hapter 91") and HRS § 368-14 (1993) (providing that civil rights commission hearings to be conducted in accordance with Chapter 91); (2) HRS § 431:10B-113(a) (2005) (adopting Chapter 91's rule-making procedures for credit life insurance) and HRS § 431:10B-108(k) (2005) (adopting Chapter 91's adjudicatory process for approval and denial of, inter alia, the schedules of premium rates by the insurance commissioner); (3) HRS § 431:10C-214 (2005) (adopting the rule-making procedures for the disposition of insurance claims arising out of motor vehicle accidents) and HRS § 431:10C-212(c) (2005) (adopting the adjudicatory procedures for the denial of claim by insurer); and (4) HRS § 432E-12 (2005) (adopting the rule-making procedures for patients' bill of rights) and HRS § 432E-6(4) (2005) (adopting the adjudicatory process for review of manage care plans). Here, the Hawai'i RSA statutes do not contain language demonstrating the legislature's intent that Chapter 91's adjudicatory provisions be followed.

Moreover, even when a statute's reference to Chapter 91 is silent as to the adoption of its adjudicatory provisions, it appears that the agency has the discretion to decide whether to adopt the adjudicatory provisions of HRS chapter 91 when promulgating its administrative rules. For example, although the Hawaiian Homes Commission Act (HHCA) -- specifically, HHCA § 222

(Supp. 2005) -- expressly indicates that the department of Hawaiian home lands "shall adopt rules and regulations and policies in accordance with [C]hapter 91," it is silent as to the adoption of the adjudicatory provisions. Nevertheless, the department adopted the adjudicatory provisions of Chapter 91. See HAR § 10-5-32. Similarly, HRS chapter 448B, concerning the licensure of dietitians, provides that the director of health shall "[a]dopt, amend, or repeal rules pursuant to [C]hapter 91 as the director finds necessary to carry out this chapter." HRS § 448B-3(2) (Supp. 2005). Yet, chapter 448B is silent as to the application of the adjudicatory provisions. Title 11, chapter 79 of the HAR, applicable to dietitians, however, clearly incorporated the adjudicatory provisions of Chapter 91 into its dispute resolution procedures. HAR § 11-79-13(f). Such is not the case here. HAR § 17-402-17 does not dictate that the grievance process is to be conducted in accordance with Chapter 91. In fact, HAR § 17-402-17 clearly establishes a procedure that is consistent with the purpose of the Hawai'i RSA and the federal RSA. As required by the federal RSA, HAR § 17-402-17 recognizes the federal adjudication path, a condition that the State must accept to become a designated SLA. Accordingly, we are unconvinced that the reference to the rule-making procedures of Chapter 91 in HRS § 102-14(b) mandates the adoption of the chapter's adjudicatory provisions.

We also note that HRS § 347-12.5 lends further support that jurisdiction lies with federal courts. Section 347-12.5, which establishes the RSR Account, provides that:

> (a) . . . The [RSR A]ccount shall be used by [DHS] for:
> (1) The provision of the following benefits for blind vendors:
> (A) A retirement or pension plan;
> (B) Health insurance; and
> (C) Sick and vacation leave;
> (2) The maintenance and replacement of equipment used in the blind vending program;
> (3) The purchase of new equipment to be used in the blind vending program; and
> (4) The provision of management services, which shall include, but not be limited to:
> (A) The hiring of consultants;
> (B) The sponsoring of training seminars;
> (C) Transportation;
> (D) Per diem for vendors to attend meetings of the state committee of blind vendors;
> (E) Services for the state committee of blind vendors; and
> (F) Other costs related to the blind vending program.
>
> (b) Income from vending machines on federal, state, and county properties that are within reasonable proximity to, and in direct competition with, a blind vendor may be deposited into the account and then disbursed to the blind vendor.
>
> (c) The revolving account shall consist of funds derived from:
> (1) Vending machine income generated by federal, state, and county operations;
> (2) Any other legally accepted source of income; and
> (3) Donations.

(Emphases added.) Thus, Hawaii's statute acknowledges its acceptance of the federal RSA program and sets out regulations, to the extent permitted by the federal RSA, that are applicable to federal, as well as state and county, properties. The RSR Account provides a strong implication that the state and county properties fall within "other property" because income generated from state and county vending facilities, as well as federal facilities, are deposited into one central account, from which

funds may be used for the benefit of blind vendors in Hawai'i. In other words, the Hawai'i RSA unequivocally authorizes the use of funds in the RSR Account "derived in whole or in part, directly or indirectly, from the operation of vending facilities on any [f]ederal property," 34 C.F.R. § 395.1(n), to, inter alia, provide management services, maintain and replace equipment, and purchase new equipment for vending facilities on non-federal property.

Moreover, pursuant to the authority granted by the legislature to promulgate rules and regulations, DHS recognized the legislative intent that state and county properties are to be considered "other property" when it defined the phrase to mean "property which is not federally controlled property and on which vending stands are established or operated." HAR § 17-402-17(a). It also defined "vendor" as "a blind licensee who is operating a vending facility on federal or other property." HAR § 17-402-17(a) (emphasis added). Thus, under the Hawai'i RSA's rules and regulations, "other property" clearly includes state and county properties.[22]

[22] The dissent suggests that reliance upon "other property" is "without factual basis" because "there is absolutely no evidence in the record to conclude that the City received funds from federal property and used those funds to establish or operate vending facilities on City property. It is also undisputed that the State did not operate vending machines on [C]ity property." Dissenting Op. at 23-24 (emphases omitted). It is undisputed that the City violated the Hawai'i RSA by placing its own leased machines in its public buildings, rather than providing blind vendors those spaces for their vending establishment. Had the City complied with the Hawai'i RSA, blind vendors would be given priority to place their vending machines in the City's buildings. In turn, the funds held in the RSR Account, i.e., "income

(continued...)

If we were to accept the dissent's flawed-theory that the federal RSA applies to federal property and the Hawai'i RSA applies to state and county properties, there would have been no need for DHS to define the phrase "other property." In fact, if the dissent's theory is correct, the above stated definitions are nonsensical. For example, if the Hawai'i RSA applies only to state and county properties, as the dissent maintains, then "other property" must necessarily be defined as "federally controlled property" -- rather than "not federally controlled property." Likewise, a "vendor" must necessarily be defined as "a blind licensee who is operating a vending facility on [state and county property] or other property [(i.e., federally controlled property)]." The fact that DHS, in crafting its administrative rules pertaining to blind vendors adhered to the federal "viewpoint," clearly demonstrates its recognition of the relationship between the federal and the Hawai'i RSAs, including its incorporation of the federal adjudication path.

Our conclusion that the federal adjudication path prescribed in HAR § 17-402-17(j) is applicable to vending

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[22](...continued)
[deriving] from vending machines on federal, state, and county properties," HRS § 347-2.5(b), would be used for "the maintenance and replacement of equipment" and the "purchase of new equipment," HRS § 347-2.5(a), thereby, rendering the vending machines on the City's properties as "other property." See also HAR § 17-402-17(m)(1) (DHS "shall furnish each vending stand with adequate suitable equipment and adequate initial stock of merchandise necessary for the establishment and operation of the facility."). Accordingly, the lack of "evidence in the record" bears no relevance to the determination as to whether the county property would constitute "other property." As discussed supra, the state and county properties clearly fall under "other propert[ies]" of the federal RSA.

operations in all state, county, and federal properties in Hawai'i is consistent with federal case law, where federal courts have reviewed decisions rendered by an ad hoc arbitration panel convened by the Secretary involving certain states' blind vendors' programs operating in state or county properties. For example:

a. *Smith v. Rhode Island State Servs. for the Blind & Visually Handicapped*, 581 F. Supp. 566 (D. R.I. 1984)

In Smith, the United States District Court for the District of Rhode Island (the U.S. district court) examined certain regulations promulgated by Rhode Island's Department of Social and Rehabilitative Services, Division of Services for the Blind and Visually Impaired (RISB), i.e., Rhode Island's SLA. There, the blind-vendor-plaintiff appealed from the decision of an ad hoc arbitration panel, such panel having (a) denied the plaintiff's request that he be appointed to a particular concession stand, Stand #54 at the Garrahy Judicial Complex in Providence, Rhode Island,[23] and (b) remanded for proper promulgation of clear and unambiguous regulations regarding the seniority system. 581 F. Supp. at 567.

[23] The Garrahy Judicial Complex houses both state and county entities, such as the family court, district court, workers' compensation court, traffic tribunal, county sheriff's office, and the public defenders.

> The U.S. district court expressly noted that:
> Under the neoteric federal regulations, an application for designation as a state licensing agency must contain a plan outlining the rules and regulations applicable to the state's blind vendor program, including the rules relating to the transfer and promotion of licensees [at issued in this case]. 34 C.F.R. §§ 395.3, 395.5. In accordance with this requirement, the RISB conceived, incubated, nurtured and thereafter submitted an ichnographic masterpiece yclept "Baby Randolph" as an adjunct to RISB's application for redesignation as a[n SLA] during the winter of 1979-1980. The rule governing the method of selection, transfer and promotion of blind vendors is found in Attachment IX-A, Paragraph C.1 of that plan. That section provides in substance that the transfer and promotion of vendors shall be based upon senority, and outlines the method by which senority is to be calculated.

Id. at 568 (emphasis added). Thereafter, in approximately 1977, in response to newly enacted federal regulations, "RISB began developing a state plan of rules and regulations for the Rhode Island blind vendor program." Id. at 569. The state's rules and regulations were eventually promulgated and subsequently approved by the federal government. Pertinent to this case, Article IX, entitled "Selection, Transfer and Promotion of Vendors" provided:

> The SLA . . . with the active participation of the State Committee of Blind Vendors, hereby establishes a selection transfer and promotion system for vendors which will be uniformly applied to all vendor vacancies that develop or occur in the vending facilities program as outlined in Attachment IX-A.

Id. at 570.

> Attachment IX-A, Paragraph C.1 addressed the method of selection, transfer and promotion of vendors in the following verbiage:
> In accordance with the standards as outlined in Paragraphs A and B, the selection, transfer and promotion of vendors shall be based upon seniority. The SLA shall establish and maintain a roster containing the name of each vendor, the date of his or her original licensing, any subsequent date(s) of relicensing and their vending facility address. Seniority, then, shall be calculated from the original date of licensing which shall be multiplied by the number of months during which the vendor was assigned and licensed to operate any vending facility which has been established by this SLA.

Id.

Subsequently, RISB compiled an updated seniority roster, wherein the plaintiff was ranked junior to another licensed blind vendor who eventually was assigned to Stand #54. RISB did not count employment at any agency stand towards seniority in the blind vendor program. The plaintiff appealed the decision of the RISB, arguing that his time in service at an agency stand should have been counted. Id. The hearing officer declined to disturb RISB's award of Stand #54. Id. Thereafter, the plaintiff appealed that decision to an arbitration panel pursuant to 20 U.S.C. § 107d-2. Therein, the arbitrator determined that the seniority rules as promulgated by RISB were ambiguous and ordered RISB to adopt a clear and unambiguous seniority scheme. Id. at 571. The arbitrator specified that Stand #54 was to remain with the other licensed blind vendor pending a permanent award of Stand #54.

On appeal to the U.S. district court, the plaintiff pressed his claims for monetary damages and for modification of the seniority list to reflect what he asserted was his proper rank. Id. at 572. The court denied and dismissed the plaintiff's claims, holding that the arbitrator's finding with respect to the ambiguity of the language contained in the state's seniority rule was supported by the evidence and was neither arbitrary nor capricious. Id. at 573-74.

b. *McNabb v. United States Dep't of Educ.*, 862 F.2d 681 (8th Cir. 1988)

The factual and procedural background in McNabb further indicates that disputes arising from the operation of the state's blind vending program on state property are reviewable by federal courts.

The facts are as follows:

> McNabb is a blind person licensed under the [RSA] to operate a vending facility in Arkansas. On September 12, 1980, McNabb bid for three telephone company vending facilities. In violation of applicable laws and regulations, two of these facilities, which were more profitable than the stand McNabb then operated, were awarded to blind vendors with less seniority than McNabb.
>
> On October 20, 1980, McNabb filed a grievance, requesting a full evidentiary hearing as provided for in 20 U.S.C. § 107d-1(a). On February 11, 1981, the hearing officer upheld the denial of the vending stands to McNabb.
>
> McNabb then filed a complaint with the [USDOE], also pursuant to 20 U.S.C. § 107d-1(a), requesting that an arbitration panel be convened to decide his entitlement to one of the facilities he had been denied. He later amended his complaint to request specific relief: assignment to one of the stands with damages for the period he was denied a stand, as well as attorney's fees and costs.

862 F.2d at 682. The USDOE arbitration panel took the position that neither compensatory relief nor attorney's fees were contemplated under the RSA and that such awards would be contrary to the principle of sovereign immunity. Id. at 683. Subsequently, another arbitration decision was issued, finding that McNabb had wrongfully been denied one of the stands. "As relief, the panel gave McNabb[, inter alia,] a continuing right of assignment to the first of the two stands at issue that became vacant." 862 F.2d at 683

Thereafter, McNabb requested that the USDOE arbitration panel reconvene to award him additional relief. The arbitration panel refused to reconvene, taking the same position that the RSA and the Eleventh Amendment to the United States Constitution precluded the panel from awarding compensatory relief or attorney's fees against state agencies. Id. McNabb appealed to the federal district court, wherein the court held that

> arbitration panels convened pursuant to the [RSA] have the authority to award compensatory relief and attorney's fees. Without specifically discussing the issue of whether the eleventh amendment barred such awards, the district court stated that it chose to follow the Third Circuit's decision in [Delaware Department of Health and Social Services, Divison for the Visually Impaired v. United States Department of Education,] 772 F.2d 1123 (3d Cir. 1985). In Delaware, the Third Circuit, which is the only circuit that has considered this question, held that: (1) the [RSA] impliedly authorizes compensatory damage awards against state agencies; (2) states that choose to participate in this federally-created program for blind vendors thereby waive their eleventh amendment immunity; and (3) attorney's fees are an appropriate element of compensatory damages for breach of contract between a blind vendor and a state agency.

Id. Accordingly, the USDOE and the Arkansas Department of Human Services appealed the federal district court's decision to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit essentially affirmed the judgment, holding that the arbitration panel, convened pursuant to the RSA, did not have authority to award retroactive money damages against the state for wrongful denial of stands to blind vendors, but was authorized to award prospective damages from the date of the arbitration panel's decision to the date vendor accepted assignment to a new vending facility. Id. at 683-88. For

subsequent history, see McNabb v. Riley, 29 F.3d 1303 (8th Cir. 1994).

c. *Delaware Dep't of Health & Soc. Servs., Div. for the Visually Impaired v. United States Dep't of Educ.*, 772 F.2d 1123 (3d Cir. 1985)

As mentioned supra, Delaware involves an action by the state agency designated to administer the blind vendor program in Delaware, challenging a USDOE arbitration panel's award of retroactive monetary damages and attorney's fees to a blind vendor who was found to have been improperly denied a vending facility by the SLA.

The facts in Delaware indicate the following:

> Albanese is . . . a blind vendor licensed by the Delaware Division of the Visually Impaired for participation in the Randolph-Sheppard program. . . . A federal regulation requires that [SLAs] establish in writing and maintain policies which govern transfer, promotion, and financial participation of vendors. 34 C.F.R. § 395.7(c) (1984). Delaware's rules set forth a comprehensive scheme for the distribution of funds generated to each blind vendor facility. Of particular significance to this case, is the state regulation which deals with transfer and promotion of blind vendors. . . .
>
> . . . .
>
> In August of 1979, the Delaware Division of Visually Impaired solicited applications for management of its food vending facility at the Paramount Poultry Company, in Georgetown, Delaware. Two applicants responded. Albanese claimed to be the most senior qualified applicant, but the Division of Visually Impaired in October, 1979 appointed the less senior applicant. Albanese, pursuant to the Delaware regulations, mandated by 20 U.S.C. § 107(b)(6) and 34 C.F.R. § 395.13(a) (1984), filed a grievance, which resulted in a full evidentiary hearing before a state hearing examiner on February 24, 1981.
>
> The hearing examiner found that Albanese was the most senior qualified applicant, and ordered the Delaware Division of Visually Impaired to install him as manager of the Georgetown facility. Albanese commenced work there on April 1, 1981. The hearing examiner also ordered the state agency to pay a portion of Albanese's legal expenses. . . . The hearing examiner declined, however, to award Albanese the increased income he would have earned between the time he should have been appointed and April 1, 1998, when he commenced work.

772 F.2d at 1132 (citations omitted). Accordingly, Albanese filed a complaint with the USDOE, alleging his dissatisfaction with the failure of the state hearing examiner to award back pay and full legal attorney's fees. Id. An arbitration panel was convened and awarded Albanese monetary damages in the form of back pay and full attorney's fees. Id. at 1134. On appeal to the federal district court, the court vacated the arbitration decision and granted the state agency summary judgment. Id. at 1136. On appeal to the United States Court of Appeals for the Third Circuit by Albanese, the Third Circuit Court essentially reversed the federal district court's decision.

d. *Fillinger v. The Cleveland Soc'y for the Blind*, 587 F.2d 336 (6th Cir. 1978)

In Fillinger, the blind-vendor-plaintiffs operated vending stands in Cleveland, Ohio, under the management of the Cleveland Society for the Blind (the defendant). The plaintiffs filed suit against the defendant, its executive director, and the Ohio Rehabilitation Services Commission, "which supervise[d] in Ohio a vending stand program established pursuant to federal law[.]" 587 F.2d at 337. The plaintiffs alleged numerous abuses in the operation of the program.

> The gist of their suit is that for many years the [defendant], acting without the consent of the blind vendors, has collected a higher percentage of gross sales than is "reasonable" under the [RSA] and has spent these funds for unauthorized purposes.

Id. The federal district court dismissed the complaint, and the plaintiffs appealed. Id. The United States Court of Appeals for

the Sixth Circuit reversed and remanded the case. The Sixth Circuit granted the plaintiffs "an opportunity to exhaust their administrative and arbitration remedies. After such remedies are exhausted, any party aggrieved by the arbitrator's decision may petition the district court . . . for review." Id. at 338.[24]

Therefore, based on our examination of the overall scheme of the federal RSA and its relationship to the Hawai'i RSA, as well as federal case law, we hold that, inasmuch as the federal adjudication path applies to disputes arising from the Hawai'i RSA, the circuit court lacks subject matter jurisdiction to decide the merits of the instant case.

3. Hawai'i Blind Vendor Ass'n v. Dep't of Human Servs., 71 Haw. 367, 791 P.2d 1261 (1990)

Lastly, the plaintiffs maintain that this court has jurisdiction to decide issues relating to the establishment of vending operations in state and county buildings for blind vendors under the Hawai'i RSA inasmuch as this state's only blind vendor case, Hawai'i Blind Vendors Association v. Department of Human Services, 71 Haw. 367, 791 P.2d 1261 (1990), has so

[24] As discussed supra, the foregoing cases involved disputes arising from the operation of vending machines on state properties or the administration of the state RSA program, which was established pursuant to the federal RSA. However, the dissent attempts to distinguish the above cases from the facts of this case by contending that these cases "involved federal claims brought under the federal RSA where the federal adjudication path was applicable." (Emphasis in original.) Dissenting Op. at 52. The dissent takes such position because of its reliance upon its flawed bright-line treatment of the federal and Hawai'i RSAs. As previously discussed, the federal and Hawai'i RSAs are closely intertwined in that the participation of the federal RSA requires the creation of the Hawai'i RSA and acceptance of certain conditions set forth in the federal RSA, such as the federal adjudication path.

determined. In that case, Maka'ala, a Hawai'i non-profit corporation that provides employment preferences to handicapped individuals, leased space at the airport for a retail concession. Id. at 370, 791 P.2d at 1263-64. Thereafter, DHS renewed the Maka'ala airport lease, without first providing notice of vacancy or opportunity for blind vendors to apply for the concession. Id. at 370, 791 P.2d at 1264. Consequently, the Hawai'i Blind Vendors Association (the plaintiff) brought action against DHS, alleging violations of the substantive and procedural law governing the blind vendor program. Id. at 368, 791 P.2d 1263. The circuit court granted summary judgment in favor of DHS, and the plaintiff appealed. Id.

On appeal, DHS argued that the issue must first be brought through an administrative hearing before bringing an original action in the circuit court. Id. at 370-71, 791 P.2d at 1264. This court, however, held that it "need not decide this issue" inasmuch as,

> [u]nder the doctrine of primary jurisdiction, when a court and an agency have concurrent original jurisdiction to decide issues which have been placed within the special competence of an administrative agency, the judicial process is suspended pending referral of such issues to the administrative body for its views. Thus, the DHS agency process, if available, is the appropriate forum for an initial determination of the issues raised in this case.

Id. at 371, 791 P.2d at 1264 (citation omitted). Consequently, this court "remand[ed the blind vendors' claims] to DHS for an agency full and fair hearing." Id. at 374, 791 P.2d at 1266. Notably missing from this court's discussion is an examination of

the interplay between the federal and the Hawai'i RSAs, which is understandable given the fact that the issue of subject matter jurisdiction was never raised. As a result, this court was not given the opportunity to examine the overall federal scheme and its relationship to the Hawai'i RSA as we have been compelled to do in the instant case. Thus, based on the foregoing examination and discussion, we overrule Hawai'i Blind Vendors to the extent that it can be interpreted to mean that this court has subject matter jurisdiction over issues arising from the Hawai'i RSA.

B. The State Defendants' Appeal/Cross-Appeal and the Plaintiffs' Appeal/Cross-Appeal

In light of our holding today, we need not address any of the remaining contentions raised by the State defendants and the plaintiffs' in their respective appeals and cross-appeals.

IV. CONCLUSION

Based on the foregoing, we reverse the circuit court's August 22, 2001 final judgment for lack of subject matter jurisdiction.

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