

Sec 13190 R S Mo 1929

11-23

November 13, 1933.

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Mis. Mary Edna Cruzen,  
Commissioner of Labor,  
Jefferson City, Missouri.

Dear Mrs. Cruzen:

We are acknowledging receipt of your letter in which you inquire as follows:

"Has the Interstate Employment System of Kansas City the legal right to send out letters as per the attached?

They have been issued a license to do business as a Fee Employment Agency and if this is not in accordance with the State Laws, their license will be revoked.

May I have your opinion as soon as possible?"

You do not call our attention to any particular matter contained in the attached letter as to why it would be illegal, so we assume that the matter referred to must be that of fixing the fee and whether the letter contains any false or fraudulent matters.

Section 13190, R. S. Mo. 1929, among other things, provides:

"\* \* \*Where a registration fee is charged for receiving or filing applications for employment or help, said fee shall, in no case, exceed the sum of one dollar, for which a receipt shall be given, in which shall be stated the name of the applicant, the amount of the fee, the date and the name or nature of the work to be done or the situation to be procured. In case the said applicant shall not obtain a situation or employment through such licensed agency within one month, after registration, as aforesaid, they said licensed agency shall forthwith repay and return to said applicant, upon demand being made therefor, the full amount of the fee paid or delivered by said applicant to said licensed agency. Any licensed agency shall not publish or cause to be published any false or fraudulent notice or advertisement, or give any false information or make any false

promise concerning or relating to work or employment to any one who shall apply for employment, and no licensed agency shall make any false entries in the register to be kept as herein provided. No person, firm or corporation shall conduct the business of any employment office or agency in, or in connection with, any place where intoxicating liquors are sold."

In *Bradford v. Hargis*, 45 Fed (2d) 223, the Federal court held invalid that part of the above statute which sought to regulate the fee charged. The court said at page 225:

"No distinction in principle can be drawn between the present case and the *Ribnik Case*. That case squarely holds that it is beyond the power of any state to regulate the fees charged for its services by an employment agency. The Missouri statute undertakes to do just that. It not only fixes the maximum fee which may be charged, thereby contravening the doctrine announced in the *Ribnik case*, but it offends still further against the due process clause by requiring an employment agency to return to applicants even such fees as the statute authorizes, if employment is not actually secured by applicants within one month after registration. If to prescribe a maximum fee which may be charged for registration is, as the Supreme Court holds, an unlawful interference with the right of private contract, and therefore a taking of property without due process, a fortiori to require the return of fees after the services for which they were paid have been rendered is a taking of property without due process."

"Our conclusion is that so much of section 6751 (now 13190) fixes a maximum registration fee to be charged by employment agencies is invalid. It follows that defendant's motion to dismiss must be overruled, and that a temporary injunction should issue restraining the defendant only from revoking complainant's license either on the ground that complainant charges a registration fee in excess of \$1 or on the ground that it does not return registration fees where situations are not procured for applicants."

In view of the foregoing decision, we conclude that it is not illegal for agencies to charge a fee in excess of \$1, and that the Interstate Employment System would not be doing anything illegal to charge fees in excess of \$1.

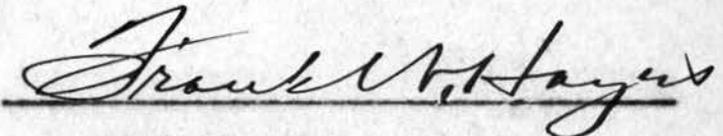
The last part of Section 13190 prohibits the publishing of any false or fraudulent notice or give false information or make false promises concerning or relating to work to anyone who might apply for employment. We have carefully

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read the letter sent out by them and do not believe that there is anything contained in the letter that would bring it within the prohibition of the above section. The letter seems only to point out the method used by this concern, and to explain the various different kinds of service rendered, according to the contract entered into by the applicant. We do not believe that the enclosed letter contains material which could be used as a basis for forfeiting the license of this concern; assuming, of course, statements of fact which they make are, as a matter of fact, true.

It is therefore the opinion of this Department that the enclosed letter is not illegal either because of provisions for a higher rate of fee than \$1, or as containing false information or false promises, as relating to work or employment.

Very truly yours,



Assistant Attorney General.

APPROVED:

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Attorney General.

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