

LABOR: Fee paid either by applicants or employer determines status as to whether one is operating an employment agency or office.

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April 7, 1934.



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

Dear Mrs. Cruzen:

This is to acknowledge your letter as follows:

"Has the Labor and Industrial Inspection Department a right to collect fees covering license fees for an employment Agency operating strictly on an exchange, as per the attached letter from Edna Deal of the Edna Deal-Grover LaRose Theatrical Exchange?"

The letter referred to by you (which was attached to your communication) in part reads as follows:

"We operate strictly an exchange. Whereby, our clientele buy shows including various types of performers for so much money and we in turn, pay these performers. Where there is a fee concerned the management hiring these people pay the fee themselves. You are at liberty to check up on this statement, by inquiring of our clients, just what position is in this matter."

Section 13190 R. S. Mo. 1929, is found in Article 2, Chapter 95, caption "Employment Bureaus and Employment Agents",

and said section in part reads as follows:

"No person, firm or corporation in this state shall open, operate or maintain an employment office or agency for hire, or where a fee is charged to either applicants for employment or for help, without first obtaining a license for the same from the state commissioner of labor and industrial inspection."

Whether one operates or maintains an employment office or agency for hire is a question of fact. For example, enclosure says this:

"We operate strictly an exchange. Whereby, our clientele buy shows including various types of performers for so much money and we in turn, pay these performers."

If such be the fact, then it would be our opinion that such theatrical exchange is not operating or maintaining an employment office or agency for hire. However, the letter further reads:

"Where there is a fee concerned the management hiring these people pay the fee themselves."

This is ambiguous. However, we construe it to mean that the management pays the fee to the exchange by virtue of the efforts of the exchange in furnishing theatrical talent to its clients. If such is a fact, then such exchange, in our opinion, is operating an employment agency or office for hire and would have to be licensed.

Thus, we cannot advise you in the premises because the facts, as stated in enclosure, sustain either an affirmative or negative answer. We, therefore, limit this opinion to a general statement of the law and request that you apply the true facts to the law and determine if such exchange is operating an employment agency or office for hire.

We find that on two occasions we answered these identical questions by formal opinions to your Department and a reading of same will support the conclusions above stated.

On October 13, 1933, this Department held:

"The statute, however, makes no distinction, and because of the broad wording of the statute we are of the opinion that you would be within your rights to collect a license fee under said section from persons maintaining an employment office and charging fees to applicants, even though the employment sought to be effected was the booking and hiring of the theatrical talent."

And on December 7, 1933, we said the following:

"It is therefore our opinion that unless the applicant pays a fee for the purpose of getting employment, or the employer pays a fee in order to acquire the employment, that this concern would not come within the statute."

Thus, we again conclude that the matter of payment of fee by either applicant or employer, to the end that the applicant will be employed by the employer, or the employer will be assisted in obtaining the services of the employee through a mutual agency, then such agency having effected such arrangement for a fee between the employer and employee constitutes the operating of an employment agency or office for hire and such must obtain a license so to do.

We are attaching hereto copies of opinions referred to herein.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

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