

LABOR: What constitutes "conducting an employment agency"--
Deception in advertising a misdemeanor.

February 25, 1935.



Mrs. Mary Edna Cruzen
Commissioner
Labor and Industrial Inspection
Jefferson City, Missouri

Dear Mrs. Cruzen:

This is to acknowledge your letter as follows:

"Has the department of Labor and Industrial Inspection the right to collect a fee for an employment service who advertises that if the employee will buy a truck they will furnish employment?"

For your further information I am attaching a letter hereto from the Better Business Bureau asking that I bring this matter to your attention."

The letter from the Better Business Bureau reads in part as follows:

"In accordance with our telephone conversation of recent date, regarding practices of certain motor truck and trailer concerns advertising to sell trucks and trailers, promising to furnish employment to purchasers of such equipment, we are wondering if such concerns would not be engaging in the employment business.

"Typical advertisements appearing in local newspapers, read as follows: 'Can use several reliable truckers, who will buy 2-ton trucks or larger with our refrigerated trailer; will furnish permanent, good paying haul.'

"The advertisers promise the purchaser of truck or trailer equipment employment to be secured from some long distance trucking concern with which the advertiser has no connection. The advertiser makes arrangements with the trucking concern to employ the purchaser of the equipment in long distance hauling. In other words, there is a condition precedent to the securing of employment which is the purchasing of a truck or trailer. While the purchaser of the equipment is not obligated to pay a specified fee for the securing of the job, nevertheless the advertiser is compensated for such services because of the fact a sale is made of his equipment.

* * * * *

"We shall appreciate it greatly if your office sees fit to ask for a ruling from the Attorney-General's office regarding this practice."

Section 13190, R. S. Mo. 1929, in part provides 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. * * *"

The right to charge a person a fee for operating an employment office must be derived from the statute and the test

for determining if one is operating an employment office depends upon the facts. We have so advised you in opinions dated April 7, 1934, and also on December 7, 1933. The opinion written to you on December 7, 1933, is analogous to the present inquiry and answers the question here under consideration. We quote from said opinion:

"We believe before this concern would come within the statute that they must charge and accept a fee or compensation, either from the applicant seeking the employment or from the employer seeking the help. The applicant does not pay any fee to be placed with these concerns, nor does the employer pay any fee for the persons employed. For the \$12.00 paid by the applicant each applicant receives a six weeks training course in salesmanship, which we do not believe would be considered a fee within the purview of the statute."

Assuming that you do not have a copy of this opinion in your files, we are attaching hereto copy.

The letter of the Better Business Bureau states, among other things:

"This Bureau has received complaints against this type of advertising for the reason that individuals purchase the equipment, sign notes, finance it through finance companies, and find that the promised employment is not as represented, and as a result, their investment has not proved satisfactory."

Section 13194, R. S. Mo. 1929, which in part provides, and to which we invite your attention, reads as follows:

"Every person who shall agree or promise or who shall advertise through the public press, or by letter, to furnish employment or situations to any person

"or persons, and in pursuance of such advertisement, agreement or promise, shall receive any money, personal property or other valuable thing whatsoever, and who shall be guilty of any deception to any person * * * * * shall be deemed guilty of a misdemeanor, and shall, on conviction, * * * * *."

In State v. Timeus, 232 Mo. 177, l. c. 182, the Supreme Court of Missouri said, in discussing the above statute:

"The statute is levelled against three classes of offenders: First: Every person who shall agree, promise or advertise to furnish employment to another, and in pursuance of the promise, agreement or advertisement, receive money, property or other valuable thing, and shall be guilty of any deception to the person applying * * * * *."

And further,

"If it was intended to charge the acts embraced within the first class, then one of the essential ingredients of the offense is that the defendant was guilty of deception to the person applying for the employment."

See also,

State v. Timeus, 160 Mo. App. 510.

CONCLUSION.

It is our opinion, from the facts stated in your letter, that said concerns are not conducting an employment agency.

Mrs. Mary Edna Cruzen

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However, if they are guilty of deception in advertising, even though not conducting an employment agency, then such could be prosecuted under Section 13194, supra.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

JLH:EG
Enc.