

EMPLOYMENT AGENCIES: Mandatory to issue license when all statutory requirements have been met.

*But see
315 Mo. 681*

May 1, 1936.

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

Dear Mrs. Cruzen:

This Department acknowledges receipt of your request for an opinion under date of April 28, 1936, as follows:

"The question has arisen whether or not it is mandatory upon me to issue a license to an employment agency provided they send in the proper bond and fee.

"Will you please tell me if I have any discretion as to whether or not the employment agency is needed if proper bond and fee is sent me, or should I issue license regardless."

Section 13190, R. S. Mo. 1929, provides in part 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. Such license fee in cities of fifty thousand population and over shall be fifty dollars per annum, and in all cities containing less than fifty thousand population, a uniform fee of twenty-five dollars per

annum. Every license shall contain a designation of the city, street and number of the building in which the licensed party conducts said employment agency. The license, together with a copy of sections 13190 to 13193, inclusive, shall be posted in a conspicuous place in each and every employment agency. The commissioner of labor and industrial inspection shall require with each application for a license a bond in the penal sum of five hundred dollars, with one or more sureties, to be approved by said commissioner and conditioned that the obligors will not violate any of the duties, terms, conditions, provisions or requirements of said sections. The said commissioner is authorized to commence action or actions on said bond or bonds in the name of the state of Missouri for any violation of any of its conditions, and he may also revoke, upon a full hearing, any license, whenever, in his judgment, the party licensed shall have violated any of the provisions of said sections. It shall be the duty of every licensed agency to keep a register in which shall be entered the names and addresses of every person who shall make application for help or servants, and the names and nature of such employment for which such help shall be wanted. Such register shall, at all reasonable hours, be open to the inspection and examination of the commissioner of labor and industrial inspection and his agent, or agents, deputies or assistants.

* * * 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 the case of State ex rel. Jones v. Laughlin, 73 Mo. 443, 1. c. 449, the court said:

"The proper rule of construction in cases of this sort, as we understand it, is that may is to be held as meaning shall whenever the statute requiring construction relates to a power conferred on public officers, concerning the public interest and the rights of third persons, who have a claim de jure that the power shall be exercised in this manner for the sake of justice and the public good."

In the case of State v. Stoddard, 189 N. W. (Neb.) 291, 1. c. 300, the court said:

"The powers conferred upon public officers are generally construed as mandatory though the language may be permissive, where the public are concerned in their execution or where they affect the rights of third persons. 22 R. C. L. 457, Sec. 116. As a matter of law, it is obligatory to do whatever act is authorized to be done, not necessarily for their own benefit, but for the benefit of others. * * *

"Statutes imposing duties and conferring powers on officers are either mandatory or directory. Permissive words in a statute are construed as mandatory where the exercise of the power granted is necessary to protect the public interest or the rights of third persons.' 29 Cyc. 1432."

And in the case of United States Sugar Equalization Board v. P. De Ronde & Co., 7 Fed. (2d) 981, 1. c. 986, the court said:

"What a public officer is empowered to do for others, and it is beneficial to them to have done, the law holds he ought to do."

There can be no question but that Section 13190, supra, confers upon the Labor Commissioner the power to issue a license

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for the maintenance of an employment office or agency for hire on the fulfillment of certain requirements, and we assume from your letter that these statutory requirements have all been met. The duty to issue licenses, however, is not expressed in either permissive or mandatory language, but we are of the opinion that even if permissive words were used, same would have to be construed as mandatory since it affects the rights of third persons, in this case the party seeking to obtain a license and who has met all the necessary requirements.

In view of the language of the foregoing cases declaring that "what a public officer is empowered to do for others, and it is beneficial to them to have done, the law holds he ought to do", we are of the opinion that you have no discretion as to whether or not the employment agency is needed, and that it is mandatory upon you to issue a license to the employment agency provided they have met all statutory requirements.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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