

LABOR: Division of Industrial Inspection does not have authority to make or promulgate rules and regulations.

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Mr. Lon N. Irwin, Director
Division of Industrial Inspection
Jefferson City, Missouri

Dear Mr. Irwin:

This is in reply to your request of recent date for an opinion as to the authority of the Director of the Division of Industrial Inspection to make and promulgate certain rules and regulations governing employment agencies licensed by the Division of Industrial Inspection and, if the authority exists, whether or not these rules are reasonable.

The rules which are set out below were filed in the office of the Secretary of State under date of November 28, 1947, to be effective ten days later:

1. The free employment offices and services afforded by the Division of Employment Security of the State of Missouri are recognized as the largest and best employment offices and services in the State. No employment office, service or agency licensed by the Division of Industrial Inspection of the State of Missouri shall advertise or represent, directly or inferentially, that it is the "largest" or "best" employment office, service or agency in the State, nor shall it by any means whatsoever misrepresent the scope or efficiency of its service or business.

2. Any employment agency licensed by the Division of Industrial Inspection which accepts a fee for securing employment for an applicant shall, upon the request of said applicant refund such fee in cash,

when said applicant has not accepted the employment to which he was referred by said agency.

3. The term "acceptance of employment" when used by any employment agency licensed by the Division of Industrial Inspection shall mean (1) referral of an applicant by said agency to an employer who has a bona fide job order with said agency, (2) and the employment of said applicant by said employer and the placing of said applicant's name on said employer's payroll and the payment of wages to said applicant for services rendered.

4. No employment agency licensed by the Division of Industrial Inspection shall in any manner whatever, verbally or in writing, threaten any applicant with a lawsuit or court costs because said applicant has not accepted any employment to which he was referred by said agency.

5. The term "applicant" as used in these rules shall mean any person who applies to a licensed employment agency for referral to work, a job or a position.

6. Any employment agency may have its license revoked at any time by the Director of the Division of Industrial Inspection when, after a fair hearing, he determines that it has violated any of these rules.

Because of the view this office takes of the authority of the Director to promulgate these rules and regulations, it will be unnecessary in this opinion to inquire into the reasonableness.

The authority to make the rules was purportedly contained in Section 6 of Senate Bill No. 246, found in Laws of Missouri, 1945, at page 1103. This section reads, in part, as follows:

"To approve or disapprove all rules or regulations promulgated by any division within the Department. Such rules or

regulations shall not become effective until ten days after their approval by the Commission and copies thereof have been filed in the office of the Secretary of State."

This section does not grant authority to make rules and regulations, but gives the Commission power to approve rules and regulations made by the various divisions in the department. Other subsections of Section 6 which pertain to rule-making powers are limited to the internal management of the Department of Labor and Industrial Relations. Thus it is seen that if the power to make rules and regulations exists in the Director of the Division of Industrial Inspection it must be found in some other legislative enactment.

Legislative enactments providing for the regulations of employment agencies are to be found in Article 2, Chapter 68, Revised Statutes of Missouri, 1939, Sections 10161 to 10165. At the outset, it is to be noted that the licensing officer and the officer upon whom the duty rests to enforce these regulations was the State Commissioner of Labor and Industrial Inspection. Section 10140, Laws of Missouri, 1945, page 1098, provides:

"The Division of Industrial Inspection of the Department of Labor and Industrial Relations shall have all powers and rights heretofore conferred upon the Department of Labor and Industrial Inspection, and the director of said division shall be chargeable with the duty of enforcing all the provisions of Chapter 68 of the Revised Statutes of Missouri, 1939, and all acts amendatory thereof and shall be liable to all the penalties to which the Commissioner of Labor and Industrial Inspection was amenable at the time this act becomes effective."

Thus it is seen that the Director of the Division of Industrial Inspection has succeeded to the powers, duties and liabilities of the State Commissioner of Labor and Industrial Inspection and his authority to make rules and regulations governing employment agencies must stem from the fact that said authority had been conferred upon the Commissioner of Labor and Industrial Inspection.

The principal section having to do with the regulation of employment agencies is 10161, Revised Statutes, 1939, originally enacted in 1909 and substantially the same today as when first enacted. It provides, in substance, that employment offices must obtain a license; give a bond; keep a register; not indulge in false or fraudulent advertisement; give any false information or make any false promises concerning or relating to work or employment; and other miscellaneous provisions for regulation of these agencies. It is to be noted that nowhere in this section, nor any of the other sections pertaining to regulation of employment agencies, is there found language delegating to the Commissioner, or any other board or officer, the authority to make reasonable rules and regulations for the carrying out of the provisions of the act.

Inasmuch as this authority has not been expressly conferred on the Commissioner, we must look to see if the power to make these rules and regulations may be implied. It is a familiar rule of law that in addition to the powers expressly given by statute to a public officer he has, by implication, such additional powers as are necessary for the due and efficient exercise of the powers expressly granted or as may be fairly implied from the statute granting the express powers. (State on inf. McKittrick vs. Wymore, 132 S.W. (2d) 979, 345 Mo. 169.)

Certain analogous factual situations such as is met by the Division of Industrial Inspection in carrying out its duties under the act regulating employment agencies are dealt with by health authorities in performing their duties. In 39 Corpus Juris Secundum the authority granted to health authorities is discussed on page 822 as follows:

"Health authorities, such as boards of health, have such powers, and only such powers, as are conferred on them, either expressly or by necessary implication. A power expressly conferred on them includes the necessary authority effectually to perform the duties delegated to them.
* * *"

Again, at page 823:

"Boards of health or other sanitary authorities have no inherent legislative power; they cannot, by their rules and regulations,

enlarge or vary the powers conferred on them by the law creating them and defining their powers, and any rule or regulation which is inconsistent with such law, or which is antagonistic to the general law of the state, is invalid. * * *

Under the section on Constitutional Law in 16 Corpus Juris Secundum the following language is found at pages 510, 511 and 512:

" * * * the power to alter or repeal laws is, as shown supra Sec. 106, a legislative power, and executive officers may not, by means of construction, rules and regulations, orders, or otherwise, extend, alter, repeal, or, ordinarily, set at naught or disregard, laws enacted by the legislature.

"However, the power to make rules and regulations to carry out the provisions or expressed purpose of a statute is not an exclusively legislative power, but is administrative in nature, and may be exercised by executive officers. The power conferred to make regulations for carrying a statute into effect must be exercised within the powers delegated, that is to say, must be confined to details for regulating the mode of proceeding to carry into effect the law as it has been enacted, and it cannot be extended to amending or adding to the requirements of the statute itself; * * *

(Underscoring ours.)

On the same subject the following language is expressed in 11 American Jurisprudence at pages 955, 957 and 959, respectively:

" * * * The legislature may not, however, delegate to administrative officers the determination of what the law shall be or what acts are necessary to effectuate the law. * * *

" * * * 'There can be no grant to the executive of any roving commission to inquire into evils and, upon discovering them, to do anything he pleases to correct them.' * * *

" * * * Moreover, regulations promulgated by administrative departments may not extend the statute or modify its provisions."

It will be noted upon an examination of the rules and regulations sought to be promulgated by the Division of Industrial Inspection that they enlarge and extend the provisions of Section 10161 and prescribe acts which are deemed to be violative of this section; they are not limited to prescribing a mode of procedure to carry out the provisions of the act but go farther and, we believe, encroach on the power of the Legislature to make laws.

Rule No. 6 provides that the Director of the division may revoke the license of employment agencies violating any of these rules.

In 16 Corpus Juris Secundum, at page 374, the general rule of law on this subject is expressed as follows:

"The legislature may ordinarily confer upon an executive officer or board the power to revoke licenses for causes stated by the legislature, the discretion exercised by the board in such circumstances being not legislative, but administrative, in character. On the other hand, the legislature cannot empower an executive body to determine what causes shall constitute grounds for revoking or suspending a license. * * *"

In Section 10161, Revised Statutes of Missouri, 1939, the Legislature has provided that the Commissioner (now Director) may revoke the licenses of those agencies which have violated any of the provisions of Sections 10161 to 10165. Under the above authority it is doubtful if the Legislature could even by express authority delegate to the Director the power to set up additional causes for the revocation of licenses. If it cannot be done by direct and express authority, it certainly cannot be done by implied authority.

Conclusion

It is therefore the opinion of this office that the Director of the Division of Industrial Inspection does not have the authority

Mr. Lon N. Irwin, Director

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to promulgate and enforce rules and regulations, governing the operation of employment agencies, such as have been submitted herewith.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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JRB:ml