

DIVISION OF INDUSTRIAL INSPECTION: Grant Cooper and Associates is
EMPLOYMENT AGENCIES: operating or conducting an employ-
LICENSES: ment agency and is required to be
licensed by the Division of Industrial
Inspections.

October 1, 1963

OPINION No. 293



Don L. Cummings, Director
Division of Industrial Inspection
Department of Labor and Industrial
Relations
Jefferson City, Missouri

Dear Mr. Cummings:

In your letter of July 8, 1963, you request an opinion from this office in the following language:

"Enclosed herewith you will please find copies of correspondence that I have had concerning Grant Cooper and Associates at 1015 Locust Street, St. Louis 1, Missouri.

"My question at this time is that I would appreciate greatly an opinion from you as to whether Grant Cooper and Associates would be liable under Chapter 289 RSMo, 1949; and if they should be forced to obtain a private employment agency license?

"In addition to the correspondence mentioned above, I would like to call your attention to the ad run in the St. Louis Post Dispatch newspaper, as well as the enclosed information from Kay Williams Personnel and Executive Service Incorporated."

Section 289.010, RSMo 1959, provides in part:

"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

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the same from the director of the division of industrial inspection of the state department of labor and industrial relations. 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 289.010 to 289.040, shall be posted in a conspicuous place in each and every employment agency."

An employment agency may be defined as an agency for brokerage of labor for a fee paid by applicant for employment or by a prospective employer to any person or group engaged in the business of finding positions of employment. Florida Industrial Commission v. Manpower, 91 So. 2d 197.

We believe it is clear that under Section 289.010, supra, when any person, firm or corporation opens, operates or maintains an employment office or agency for hire in this state (or where a fee is charged to an applicant for employment in securing a position for him or where a fee is charged an employer for obtaining help) a license must be secured from the Division of Industrial Inspection. The fact that other services may be furnished to either the employer or to the employee is immaterial if, in fact, service is rendered to either with the intent of creating or establishing a relationship of employment between them.

You enclose a letter you received from Grant Cooper and Associates dated November 6, 1962. In this letter Grant Cooper states that he is giving complete analysis of their operation and activities and lists numerous services rendered in connection with his business. On page 3 of said letter it is stated:

"2. Our clients often give us the name of an individual in whom they are interested and ask us to determine whether or not this

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individual would consider changing positions and if so, what his salary requirement would be. We establish contact with the individual by telephone, letter or in person. A full report of our contact with this individual is given to the client company. They make the determination as to whether or not to continue with negotiations and if so, complete the negotiations and hire or reject as they see fit."

On page 4, paragraph 5, it is stated:

"Client companies have had us run help wanted advertisements over our name. In some cases responses were not reviewed by us but all of them referred to the client. In other cases, we have reviewed the responses and made recommendations as to the individuals the company should consider as prospects."

Also, on page 4, paragraph 7, the following statement is made:

"Our clients have requested that we find prospects for a specific opening. This may be done through advertising, search letters, telephone calls, United States Employment Service, use of college placement services, free employment services, trade associations, company lay-offs, and private employment agencies. It must be clearly understood that on such an assignment we have never worked on a fee basis or on a retainer basis. We have been paid by the client only by the hour and for the amount of expenses involved. I would like to emphasize that we are paid in this instance for the prospects developed and not on a basis of whether or not the company hires any of the prospects. In the development of the prospect list we interview, eliminate and recommend those considered to be suitable for the position available. It is important to know that these prospect lists become the property of the client who paid for our service and are not used to expose such persons for other immediate employment."

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We believe that services rendered by Grant Cooper and Associates to employers by contacting prospective employees to let such employee know of job openings as stated on page 3, paragraph 2, constitutes employment agency work, even though the employer and employee make the final determination concerning such employment.

We also believe that the services rendered the employers under paragraphs 5 and 7 of page 4 also constitutes employment agency work which, under Section 289.010, supra, requires a license by such person, firm or corporation for rendering such service.

In our opinion, it is immaterial as to whether the employer or employee is obligated to pay for the services so long as one or the other is required to pay Grant Cooper and Associates for such service.

You also enclose with your letter an advertisement which appeared in the St. Louis Post Dispatch on June 23, 1963. This advertisement is headed "Manufacturing Manager" and states the type of work or employment offered by the "client" and training and experience required of the employee together with the salary range. The telephone number and the office address in St. Louis of Grant Cooper and Associates is given in this advertisement. Certainly, this advertisement is an invitation or a request for any person who thinks he meets the qualifications of the job offered and is interested in securing such a position to get in contact with Grant Cooper and Associates. Certainly, such services as offered by Grant Cooper and Associates in this advertisement constitute services rendered by an employment agency under Section 289.010, supra.

CONCLUSION

Based on the information you have submitted, it is our opinion that Grant Cooper and Associates are engaged in representing employers in obtaining employees as well as representing employees in securing employment; that they charge a fee from either the employer or employee for such services, and that under the provisions of Section 289.010, RSMo 1959, they are required to be licensed by the Division of Industrial Inspection.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, A. Moody Mansur.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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