

A private employment agency may charge a registration fee in connection with its service. Such fee, if charged, must be included in its "schedule of fees," and cannot be collected as a separate, advance fee.

March 3, 1941.

Mr. John F. White, Supervisor,
Private Employment Agencies,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

You request an official opinion upon a problem confronting your department stated in your letter of February 26th as follows:

"A controversy has arisen in this department relative to charges that have been filed against a private employment agency doing business in South Bend under the name "Nation-Wide Business Service," owned by Mr. A. T. Daniels. The agency has been accused of collecting a registration fee from all applicants for employment, such fee to have no relation to the fees charged for making placements but is collected as a separate charge, presumably to cover expense for certain stationery used in the service rendered and such items as postage.

"The agency, while admitting that such registration fees have been charged, is contending that since the law has no provision in relation to such fees it is, therefore, not forbidding them, and these fees, being no part of the fees for actual placements, do not come under the provisions in Section 7 of the law forbidding the collection of placement fees in advance.

"This department has uniformly ruled against the right of private employment agencies to charge a registration fee on the theory that such fees serve as an indirect charge for placements and, being collected in advance, was in violation of the law.

"This department has never had a direct ruling from the Attorney General's office on this question, but has been largely guided by a ruling on advance fee collection given by your office on September 24, 1935.

"A ruling from your office on this question in itself is, therefore, respectfully petitioned by this department. It would serve to clarify the situation in relation to registration fees and avoid other controversies."

Your ruling has been that private employment agencies were not authorized to charge a registration fee on the theory, as you state, "that such fees serve as an indirect charge for placements and, being collected in advance, was in violation of the law."

Section 6, Chapter 25, Acts of 1927, with regard to fees and charges by employment agencies seeking license, reads:

"Each applicant for a license shall file with his application a schedule of fees, charges and commissions which he expects to charge and collect for his service, together with a copy of all forms and contracts to be used in the operation of the agency. Such schedule of fees, charges and commissions may thereafter be changed by filing an amended or supplemental schedule showing such fees, charges and commissions, with the industrial board of Indiana, at least thirty (30) days before the date provided for same to become effective. * * * It shall be unlawful for any employment agent to charge, demand, collect or receive a greater compensation for any service performed by him than is specified in such schedule filed with the industrial board of Indiana."

This section not being specific or in any sense restrictive in its terms, I can see no reason why an agency, if disposed to do so, might not include a so-termed registration fee as a part of its "fees, charges and commissions" for the service which it renders. The section, however, being general, and all-inclusive, the agency, in the event of making a registration charge, would be obliged in my opinion to include such charge or fee in the "schedule" of fees, charges and commissions as required to be filed under the section.

Any such fee could not be looked upon as a charge by an agency for something disconnected with the service it offers. If any such separate charge is made as a registration fee in addition to the fees specified in the schedule, such separate fee in my opinion would be invalid and its collection would render the agency liable under the last sentence of the section.

With regard to the matter of advance payment, although a registration fee suggests payment in advance, Section 7 of the act definitely provides that no fees or charges shall be collected until a position is procured for the applicant, and this would apply to a registration fee the same as it applies to other fees or charges. I quote in part from the section:

“No agency shall send out any applicant, or collect any fee from any applicant without first having obtained a bona fide order for such employment. No charge nor advance fee of any kind shall be accepted until a position has been secured for the applicant by the agency or through the efforts of the agency. * * *”

This section is clear to the effect that fees are not to be collected in advance of a position having been procured for the applicant, and, incidentally, the collection can be made irrespective of whether the applicant has actually begun his employment. This was the substance of the Attorney General's opinion to which you refer, of September 24, 1935.

Summarizing, it is my opinion that a private employment agency is not forbidden by the act in question from charging a registration fee; that any such fee can not be made a separate charge but must be included in the agency's schedule of fees required to be filed by Section 6 of the act; that the rule would apply with respect to any such registration fee as applies to all other fees or charges, namely, that no fees may be collected until after a position is procured by the agency for the applicant.

Your attention is called to an opinion furnished you from this office, dated October 13, 1934, which, upon a somewhat more limited state of facts than embodied in your present inquiry, states a conclusion corresponding in effect with the opinion here expressed.