EMPLOYMENT SERVICE, STATE: Whether a club requiring membership fee to obtain services in securing employment is an employment agency requiring a license.

April 18, 1939.

Hon. John F. White,
Supervisor, Licensing Department,
State Employment Service,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein you set out the methods used by certain clubs to obtain employment for persons who first have been required to make an advance payment as a club membership fee. You also set out in your letter some advertising copy of such clubs whereby they have advertised as employment agencies furnishing help for various needs, including hotel, restaurant and household employment. You present the question as to whether or not such clubs are employment agencies within the meaning of Acts of 1927, chapter 25, p. 74, which provides that “no person, firm or corporation shall open, operate or maintain an employment agency in this State without first obtaining a license for that purpose.” (Sec. 40-701, Burns Ind. St. Ann. 1933.)

The statute which defines employment agencies for the purposes of the 1927 Act is section 40-711, Burns, etc., 1933.

"‘Employment agency’ defined—Charitable and benevolent organizations — Permit. — The term ‘employment agency’ as used in this Act, is defined and interpreted to mean any person, firm or corporation, who for hire or with a view to profit, shall undertake or offer to secure employment or help through the medium of card, circular, pamphlet or any medium whatsoever, or through the display or (of) a sign or bulletin, offer to secure employment or help, or give information as to where employment or help may be secured. Nothing in this Act shall apply to charitable and benevolent organizations and associations approved by the board of state charities. All charitable and benevolent organizations and associations approved by the board of state charities, shall, before being authorized to conduct such employment agency or department, secure a
permit from the industrial board by filing an application giving such information as may be required. No charge shall be made for the issuance of such permit, which may be revoked on the same terms as a license is revocable. (Acts 1927, ch. 25, sec. 11, p. 74.)”

The above section, by the language “for hire or with a view to profit” indicates that the precise method of making the charge for obtaining employment, is immaterial. You state that “while these clubs charge no specific fee for making placements, they do require an advance payment as a club membership fee, together with an agreement to pay certain monthly dues.” The name or designation which is given to the payment made to the club is of no consequence. The question is whether it represents payment for undertaking to secure or securing employment. The fact that it is called a club membership fee is not controlling if the principal activity of the club and the sole benefit afforded the so-called members is the obtaining of employment.

I assume that there is no contention that the clubs referred to constitute charitable and benevolent organizations and associations approved by the board of state charities which are required to secure a permit before they may conduct an employment agency or department. Whether the so-called membership fee constitutes in reality a fee for obtaining employment would depend upon what services other than offering to secure employment are made available to its so-called members.

It could not be successfully contended that a club operating as indicated in your letter and advertising as an employment agency is outside the statutory definition of offering to secure employment “for hire or with a view to profit” if its facilities for conducting a club for social, educational and recreational purposes are entirely disproportionate to its membership.

Under such circumstances as you have detailed in your letter, the club membership fee merely represents an attempted cloak to conceal the real activity of the club which is that of operating an employment agency without a license. This constitutes a misdemeanor as set out in section 40-718, Burns, etc., 1933.