The State of South Carolina

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The Honorable John T. Campbell
Secretary of State, State of South Carolina
Wade Hampton Office Building
P. O. Box 11350
Columbia, South Carolina 29211

Dear Secretary Campbell:

Attorney General Medlock has referred your recent letter to me for reply. You have stated that it is your position that regardless of whether or not a placement fee was paid by a prospective employee or employer to a personnel placement service, a prorated refund should be given to either the prospective employee or employer should the position end in less than ninety days. You have requested our opinion as to whether or not your interpretation is correct.

South Carolina Code of Laws, 1976, as amended, Section 41-25-40(c) provides that

> [e]very licensed private personnel placement service in the State shall:
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> * * *
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> (c) Guarantee, to the applicant through contractual agreement between the private personnel placement service and the applicant who pays a placement fee, every job placement for a minimum period of ninety calendar days. Should the position end in less than ninety calendar days, regardless of the cause for termination, the fee or service charge for services rendered must be adjusted to and shall not exceed the amount of the original fee prorated over ninety calendar days from the beginning date of employment. Should the applicant not report for work, regardless of the reason, there may be no fee charged to the applicant.

Although the first and third sentences of this subsection specifically refer to an applicant, the second sentence which refers to a refund if the position ends does not specify that it applies only to the applicant, nor is there any apparent reason why such a limitation should be read into this provision.

By statutory definition the personnel placement services may charge a fee from either a prospective employee or employer. South Carolina Code of Laws, 1976, as amended, Section 41-25-20(b) and (d). See also Section 41-25-70. There would not appear to be a legal reason why an applicant who has paid a fee for job placement would be entitled to a refund but not the employer, should the job end. The statute reads that the fee is to be adjusted "should the position end in less than ninety calendar days, regardless of the cause of termination...." (Emphasis added.)

The only foreseeable argument against this interpretation would be that because the employer has the power to terminate the job advertised he should not be entitled to a refund. However, there can be many reasons why an offered job could be ended other than purposeful termination of the job offer (although the actual reason would not make a difference to the statutory provisions); i.e., the person presently holding the job does not vacate it as expected, loss of funding for the position, etc. There is, therefore, no sound reason to refuse an employer a refund on the theory he controls the availability of the job. Further support for this statement may be found within the last sentence quoted above from Section 41-25-40(c) which provides that the applicant should not be charged a fee if the applicant does not report for work regardless of the reason. Obviously, deciding to report for work gives as much power to the applicant on determining whether a fee will be paid as the employer has over deciding to terminate the job offer and thereby receiving a fee adjustment. No cognizant reason could be asserted to differentiate the two as a basis of allowing an adjustment in the rate to one and not the other.

In statutory construction, it is required that words be given their ordinary and plain meaning. Boyd v. State Farm Mutual Automobile Ins. Co., 260 S.C. 316, 195 S.E.2d 706 (1973); Hartford Accident and Indemnity Co. v. Lindsey, 273 SC 79, 254 S.E.2d 301 (1979). Additionally the words used in a statute must be be construed as they are written and words cannot be added to them. 82 C.J.S. Statutes §344. It is further presumed that the legislature knew the meaning of the words used in the statute. 82 C.J.S. Statutes §316 (b).

Therefore, as the words used in the statute do not limit the adjustment of the fee to an applicant, there appears to be no reason why this adjustment would not also be due to an employer if the offered position is terminated.

Sincerely yours,

Ireva G. Ashworth
Senior Assistant Attorney General

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REVIEWED AND APPROVED BY:

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