1979 WL 42785 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 30, 1979

***1 RE: Opinion—Employment Agencies**

The Honorable Harry A. Chapman, Jr.
Senator
Greenville & Laurens Counties
Box 10224 FS
Greenville, S. C. 29603

Dear Senator Chapman:
You have asked whether an employment agency contract complies with the provisions of Section 41-25-50(g) of the 1976 Code, where the provisions of the contract are, in all conceivable circumstances, equally or more advantageous to the client than they are required to be under the statute.

It is the opinion of this Office that, if the contract is equally or more advantageous to the client than the statute, the contract should be deemed to be in compliance with the statute.

Section 41-25-50 of the Code provides in part as follows:
Every licensed employment agency in the State shall . . . (g) Guarantee, through contractual agreement between agency and the applicant, every job placement for a minimum period of 90 calendar days. Should the position end in less than 90 calendar days, regardless of the cause for termination, the fee or service charge for services rendered shall be adjusted to and shall not exceed the amount of the original fee prorated over 90 calendar days from the beginning date of employment. Should the applicant not report for work, regardless of the reason, there shall be no fee charged to the applicant.

This statute is clearly designed to protect the public by requiring employment agencies to place applicants in steady, reliable employment. To ensure good faith performance by the agency, the statute requires that the agency's fee be reduced proportionately in the event that an applicant's employment is terminated in less than 90 days. This is accomplished by prorating the amount of the original fee over 90 calendar days and paying the agency's fee according to the number of days the employment lasts.

If the refund provisions of the contract between an agency and an applicant are more beneficial to the applicant than is the foregoing statutory scheme, it seems clear that the contract should be deemed in compliance with Section 41-25-50(g). In construing statutes, the primary consideration is to ascertain and give effect to the intent of the legislature. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). The clear intent of the statute is to reduce, by as much as reasonably possible, the fee which an applicant must pay when employment is terminated within an unreasonably short period of time. If an agency wishes to voluntarily go further than the statute in effectuating this legislative intent, it would be absurd, and destructive of the intent of the legislature, to construe the statute to prohibit the agency from doing so. The literal meaning of the words of a statute will be rejected, when to accept that meaning would lead to a result so absurd, and so destructive of the legislative intent, that it could not possibly have been intended. State ex rel McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). It is difficult to conceive of the legislature intending to prohibit employment agencies from doing more for the benefit of their clients than they are required to do under the statute.

***2** This letter does not state any opinion as to whether the contract you sent is in fact more beneficial to an applicant than Section 41-25-50(g). That is a determination which must be made by the agency. If, however, the contract is equally or more beneficial to the client than Section 41-25-50(g), in all conceivable ways and without exception, then it is the opinion of this office that the contract should be deemed to be in compliance with that statute.

Very truly yours,

L. Kennedy Boggs
State Attorney

1979 WL 42785 (S.C.A.G.)

End of Document