

1975 S.C. Op. Atty. Gen. 215 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4145, 1975 WL 22441

Office of the Attorney General

State of South Carolina

Opinion No. 4145

October 2, 1975

***1** The Private Employment Agencies Act would allow certification of counselors and matters concerning complaints against individual private employment agencies and the explanation of their contracts to be promulgated by rules and regulations. Matters pertaining to Board expansion, refunds and statewide uniform fee schedules should be implemented by statutory mandate.

The imposition of fee schedules or maximum rates imposed in the contracts which private employment agencies enter into with their clients are not in themselves violative of Article 1, Section 4 of the 1895 South Carolina Constitution, as amended.

TO: Mr. Joe E. Lambeth
Chairman
S. C. Employment Agency Board

Questions Presented:

May the laws governing certification of counselors, Board expansion, refunds, contract explanation and complaints, and statewide uniform fee schedules in regard to private employment agencies be imposed by administrative rules and regulations or, would statutory authority be required?

Would the 'right to contract' provision of the South Carolina Constitution (Article 1, Section 4) allow the restrictions to be imposed in the contracts which private employment agencies enter into with their clients?

Statutes, Cases cited:

Code of Laws of South Carolina, 1962, as amended, Section 40-431 through 40-441. [Ol en v. Nebraska](#), 313 U.S. 236, 61 S.Ct. 862, 85 L.E. 1305; [Petstel Inc. vs. County of King](#), Wash., 459 P.2d 937; [Stone v. Salley](#), 244 S.C. 531, 137 S.E.2d 788. 20 A.L.R.3rd, 599.

Discussion of Issues:

Counselor certification, explanation of contracts and matters involving complaints in connection with private employment agencies concern areas in which administrative rules and regulations may be reasonably promulgated by the South Carolina Commissioner of Labor and the State Employment Agency Board pursuant to Section 40-437(c) of the 1962 South Carolina Code of Laws (1974 Cum. Sup.). It is felt that expansion of the Employment Agency Board to include consumer representatives outside the employment agency business along with the matter of refunds and statewide uniform fee schedules would require additional authority in the form of a statutory mandate.

The rule making power of a public administrative body is a power delegated to such body by the Legislature. The administrative body may not use this delegated power to enlarge the powers of such body or agency beyond the scope intended by the Legislature. A change in the Board makeup must be viewed as a fundamental change of the rule-

making power as set out in the Private Employment Agency Act and it is felt that such change would require statutory authorization.

In regard to refund policy, the question posed concerned the imposition of mandatory refunds under certain conditions as well as the requirement of a uniform refund policy for all private employment agencies in this State. Though Section 40–434(e) *supra*, requires that private employment agencies keep complete and accurately written records pertaining to refunds, it is my opinion that requiring refunds to be mandatory under certain conditions and uniform state wide would significantly broaden the scope of the Employment Agency Act beyond what was possibly contemplated by the Legislature. In my opinion, implementation by statutory authorization would be the preferred course.

*2 It is equally clear that the imposition of statewide uniform fee schedules should be accomplished by legislative mandate. The Private Employment Agencies Act, § 40–431, *et seq.*, *supra*, delegates to the Commissioner of Labor and the Employment Agency Board the function of overseeing the employment agencies within this State from the standpoint of reviewing the applications of those seeking to operate private employment agencies as well as reviewing the contract form, record-keeping activities and business responsibilities of the agencies. It is doubtful that the Legislature intended to delegate to the Commissioner and the Employment Agency Board the power to dictate the express terms of contracts or the ability to set uniform fee schedules or refund policies. This is not to say that the Legislature could not confer upon the Employment Agency Board and Labor Commissioner the authority to impose and regulate refund and fee schedule uniformity where the proper standards or guides are established by the Legislature. It is simply felt that this type of delegation was not here contemplated by the Legislature and that this act, which is of a highly regulatory nature, should not be extended by allowing administrative interpretations beyond the intended purpose of the Legislature.

An additional question posed was whether the ‘right to contract’ provision of the South Carolina Constitution (Art. 1, § 4), would allow fee restrictions to be imposed in the contracts which private employment agencies enter into with their clients? It is now universally held that the regulation of fees chargeable by private employment agencies does not *per se* violate the due process or equal protection provisions of the Constitution of the United States. [Petstel, Inc. vs. County of King](#), ____ Washington ____, 459 P.2d 937; 20 A.L.R.3rd 599. It is now recognized that the State may, in the proper exercise of its police powers, license and impose reasonable regulations upon the business of a private employment agency.

It has been affirmatively stated in this jurisdiction that the right of a citizen to engage in lawful business, to make contracts, and to dispose of his property is not absolute and is subject to reasonable regulations and control by the State in the exercise of its police power. [Stone v. Salley](#), 244 S.C. 531, 137 S.E.2d 788. And, our U. S. Supreme Court has held that an industry, such as the private employment agency industry, is subject to reasonable control for the public good. [Olsen v. Neb.](#), 313 U.S. 236, 61 S.Ct. 862, 85 L.Ed. 1305. Numerous cases affirm that the State has sufficient justifications to warrant reasonable regulation. The purpose of the regulations is to protect those individuals who deal with private employment agencies from exploitation, overreaching, and other possible abuses.

Conclusion:

Section 40–437(c) provides that the Commissioner and the Employment Agency Board may make such rules and regulations as may be necessary to carry out the purpose of the Private Employment Agency Act. It is my opinion that certification of counselors, requirement of the contract explanation and matters concerning complaints against individual private employment agencies, provided for in § 40–437(d), may be properly implemented by administrative rules and regulations duly promulgated by the Commissioner and the Employment Agency Board. Matters pertaining to Board expansion, refunds and statewide uniform fee schedules should be implemented by statutory mandate. The provisions of the Private Employment Agencies Act, § 40–431, *et seq.*, *supra*, refer primarily to the licensing and regulation of private employment agencies through the monitoring of the individual agencies record-keeping system, business forms and business responsibility. The regulation of essential contract terms, such as requiring set uniform refund policies and

fee schedules, should be implemented by express legislative authority. The present provisions of the Private Employment Agency Act, *supra*, neither provide nor indicate that the Legislature intended a broad grant of administrative power.

*3 The State may, in the exercise of its police power, allow fee restrictions to be imposed in the contracts which private employment agencies enter into with their clients without violating the provisions of Article 1, § 4 of the South Carolina Constitution of 1895, as amended, provided such regulation is achieved through proper legislative authority.

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