

EMPLOYMENT BUREAUS) The Department of Labor and Industrial
Inspection has no discretion to refuse
a license to applicant to operate an
employment agency. Its duty to license
is ministerial.

December 29, 1943



Honorable Orville S. Traylor
Commissioner
Labor and Industrial Inspection Department
Jefferson City, Missouri

Dear Sir:

This Department is in receipt of your letter of
December 14, 1943, wherein you make the following in-
quiry:

"W. W. Dawson, who says he is Director of
Organization of The National Employment As-
sociation, Division of The Dawson System,
Incorporated, located at the above address,
has applied to this office for an employment
agency license under the provisions of Section
10161, R. S. Missouri, 1939.

"We have been informed The Dawson System, In-
corporated, is a Missouri corporation of which
W. W. Dawson is President. This corporation
is engaged in the business of offering instruc-
tion in selling under the heading 'Dawson System
of Sales Training'. As part of the training
offered by this company, students are required
to purchase the 'System' which consists of a
five volume set of paper bound books entitled
'The Dawson System of Sales Training', 5 x 7
in size, and about 65 pages of printed matter
per volume. The System of Sales Training written
by Dawson, copyrighted by him in 1940, is repre-
sented to be sold to members of the National Em-
ployment Association at a special price of \$25.00.
Persons are invited to become members of the
National Employment Association, paying an annual
\$3.00 membership fee with an additional \$2.00 re-
instatement fee should the member become delinquent.
You will note the National Employment Association
is operated as a division of the Dawson System,
Incorporated.

"We are enclosing a copy of the 'application for

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membership' form used by these subjects, which constitutes the contract, when approved. Enclosed, also, is tear sheet from the Sunday, November 21, 1943, edition of the Kansas City Star, containing marked advertisement of The Dawson System, featuring their employment service, as well as other advertising material issued by the subject.

"We shall appreciate it greatly if you will give us your opinion on the following points:

"1. Does this plan of offering so-called free employment service to members of 'The National Employment Association' who are charged the membership fee above mentioned, constitute the operating or maintaining 'an employment office or agency for hire, or where a fee is charged' within the meaning of Section 10161, R. S. Missouri, 1939, so as to require a license and bond as provided by said section?

"2. Should your office determine that the operations of this business as herein described do require a license by this department, have we, the Department of Labor and Industrial Inspection, any discretion in refusing to issue a license should we determine the plan not to be in the public interest?

"3. Should it be determined that this office should issue a license, to whom should the license be issued? Should it be issued to 'The Dawson System, Incorporated', or to 'The National Employment Association'?"

Section 10161, R. S. Mo. 1939, page 246, provides in part as follows:

"No person, firm or corporation in this state shall open, operate or maintain an employment office or agency for hire, or where a fee is charged, to either applicants for employment or for help, without first obtaining a license for the same from the state commissioner of labor and industrial inspection. Such license fee in cities of fifty thousand population and over shall be fifty dollars per annum, and in all cities containing less than fifty thousand population, a uniform fee of twenty-five dollars per

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annum. Every license shall contain a designation of the city, street and number of the building in which the licensed party conducts said employment agency. The license, together with a copy of sections 10161 to 10164, inclusive, shall be posted in a conspicuous place in each and every employment agency. The commissioner of labor and industrial inspection shall require with each application for a license a bond in the penal sum of five hundred dollars, with one or more sureties, to be approved by said commissioner and conditioned that the obligors will not violate any of the duties, terms, conditions, provisions or requirements of said sections. * * *

The statutes provide that the employment agency must maintain an "office or agency for hire" or charge a fee to applicants for employment or for help. The National Employment System maintains an office and charges a fee. The other prerequisites consist of filing their application for a license accompanied with license fee and a bond in the penal sum of \$500.

This type of business for which a license is sought bears only an incidental relation to public health, welfare or morals. Generally the only statutory prerequisites for such a license are the performance on the part of the applicants of certain definitely specified acts and it has been held that in such cases the duty to license is ministerial. On the other hand discretionary power in the issuance of licenses is actually given under the statutes in cases involving a license to practice medicine or dentistry because of the intimate connection between the vocation and the public health.

Neither the fact that the motives of the National Employment Association might be other than commercial gain or advantage nor suspicion of intended violation of the provisions of the statutes constitute a basis for refusal to issue the license. And this would be true even if the statutes prescribed discretionary powers. A greatly reduced rate is charged for this employment assistance, no doubt, because the applicant has purchased a set of books and enrolled in the Dawson System. But a fee is definitely charged for employment assistance and the amount of the charge is immaterial.

Penalties are provided in Section 10162 R. S. Mo. 1939 for violation of Section 10161, R. S. Mo. 1939 after the license is issued. Section 10165 R. S. Mo. 1939 describes the penalties for certain violations before the license is issued. Free employment advertised by the Dawson System is certainly erroneous

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and probably deceptive, but the above mentioned statutes provide a penalty for violations of this nature.

CONCLUSION

It is our opinion that the National Employment Association is operating and maintaining "an employment office or agency for hire, or where a fee is charged" within the meaning of Section 10161 R.S. Mo. 1939, and requires a license and bond as therein provided.

Further, that the duty to issue the license is purely ministerial and must be issued by your department upon receipt of proper application, fee and bond and should be issued to the National Employment Association.

Respectfully submitted,

R. C. Lashly
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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