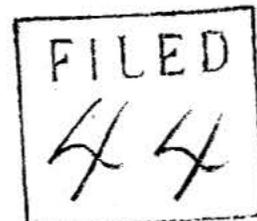


EMPLOYMENT BUREAUS:

The Baby Sitters Service, an organization furnishing sitters for its members, is subject to the provisions of Section 10161, R.S. Mo. 1939.

September 11, 1947

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Mr. Lon N. Irwin, Director
Division of Industrial Inspection
Department of Labor and Industrial Relations
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of August 11, 1947, wherein you requested an opinion of this department relative to the liability of a Baby Sitters Service to pay the license fee required by Section 10161, R.S. Mo. 1939. Said letter reads as follows:

"We have contacted the Baby Sitters Service, 3109 North Taylor, St. Louis, Missouri, which is owned and operated by Dorothy West, who refers baby sitters to people to watch their children.

"We have issued a license for this same thing in the City of St. Louis for which we have received a fee of \$50.00 under Section 10161, Employment offices or agencies to obtain licenses--license fees.

"This firm has obtained a ruling from James Singer of Lewis, Rice, Tucker and Chubb, 208 North Broadway, St. Louis, Missouri, who states this service is not subject to the \$50.00 license fee. This Division feels that we are entitled to it.

"I wish you would give us an opinion on this as we are about to take it to court to find out why this Baby Sitters Service is operating in what we believe a violation of the employment bureau and employment agency law in the State of Missouri.

"I would appreciate very much an opinion from your office as to whether or not we are entitled to this fee under this subscribers plan."

Section 10161, R.S. Mo. 1939, reads 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 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 said commissioner is authorized to commence action or actions on said bond or bonds in the name of the state of Missouri for any violation of any of its conditions, and he may also revoke, upon a full hearing, any license, whenever, in his judgment, the party licensed shall have violated any of the provisions of said sections. It shall be the duty of every licensed agency to keep a register in which shall be entered the names and addresses of every person who shall make application for help or servants, and the names and nature of such employment for which such help shall be wanted. Such register shall, at all reasonable hours, be open to the inspection and examination of the commissioner of labor and industrial inspection and his agent, or agents, deputies or

assistants. Where a registration fee is charged for receiving or filing applications for employment or help, a receipt shall be given, in which shall be stated the name of the applicant, the amount of the fee, the date and the name or nature of the work to be done or the situation to be procured. In case the said applicant shall not obtain a situation or employment through such licensed agency within one month, after registration, as aforesaid, then said licensed agency shall forthwith repay and return to said applicant, upon demand being made therefor, the full amount of the fee paid or delivered by said applicant to said licensed agency. Any licensed agency shall not publish or cause to be published any false or fraudulent notice or advertisement, or give any false information or make any false promise concerning or relating to work or employment to any one who shall apply for employment, and no licensed agency shall make any false entries in the register to be kept as herein provided. No person, firm or corporation shall conduct the business of any employment office or agency in, or in connection with, any place where intoxicating liquors are sold."

As is stated in 56 A.L.R. 1340, there would seem to be no dispute that those carrying on the business of an employment agency are subject to regulation and may be compelled to pay a license fee for the privilege of conducting such a business. At page 1341 of 56 A.L.R. it is stated:

"And in *People ex rel. Armstrong v. Warden* (N.Y.) supra, the court in holding that requiring the procurement of a license to conduct an employment agency was within the police power, and constituted no deprivation of a constitutional right to carry on business, said: 'A statute to promote the public health, the public safety, or to secure public order,

or for the prevention or suppression of fraud, is a valid law, although it may in some respects interfere with individual freedom. All business and occupations are conducted subject to the exercise of the police power. Individual freedom must yield to regulations for the public good. It may be laid down as a general principle that legislation is valid which has for its object the promotion of the public health, safety, morals, convenience, and general welfare, or the prevention of fraud or immorality.* * *

In line with this above quoted reasoning, the Legislature of this state has seen fit to so regulate employment agencies, and have required that a license be obtained from the State Commissioner of Labor and Industrial Inspection. Section 10161, R.S. Mo. 1939, supra. The authority of the Legislature to enact such a provision, we feel, cannot now be seriously questioned.

Attached to this opinion request is a copy of the application which the subscribers to this Baby Sitters Service sign, and which, in effect, sets out the purposes and plans of the organization. From this we herewith quote the pertinent paragraphs:

"Baby Sitters Service is an organization composed of its subscribers and formed for the purpose of finding persons for sitting with children and babies.

"It acts as a central office in obtaining for its members those who have been recommended to us as qualified sitters.

"The members pay Baby Sitters Service \$2.50 for registration and \$1.50 for six sitters in advance (which is 25¢ a sitter). The sitter pays no fee to the service.

"The sitter is not an employee of Baby Sitters Service but is the employee of the member and is paid directly by the member at the rate of 40¢ an hour and carfare. With a minimum wage of \$1.00 a visit.

"I wish to become a member of Baby Sitters Service for:

Registration Fee \$2.50
Six Sitters in Advance \$1.50

"Payment by check or cash, accompanies
this signed application.

Name"

It thus appears that the persons who desire sitters are the ones who make up the membership. The registration fee is paid by these members. The central office, on request from one or more members, finds desirable sitters for those members, who pay the sitter's wage to the sitter. Is the above such a transaction as was intended to, and does, come within Section 10161, R.S. Mo. 1939, supra? Such legislation as Section 10161 has been held valid and regulatory of employment agencies when it served the purpose of promoting the public health and safety, or of serving public order, or for the suppression of fraud. Such is the case, even though in some respects it may interfere with individual freedom. It is felt that the public good is better served in so regulating, and that individual freedoms may have to yield to the public good. We cannot help but feel that such is true in the case at hand; and especially so, since the wording of the statute would indicate the legislative intent as including such an organization as the one in question. Section 10161, supra, says:

"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.* * *" (Underscoring ours.)

From the facts in this case, it appears to us that this Baby Sitters Service is a "person, firm or corporation" which is maintaining "an employment office or agency where a fee is charged to either applicants for employment or for help." Our case being the latter; viz., the applicants (members) are seeking help (baby sitters), and the Baby Sitters Service is supplying same.

Mr. Lon N. Irwin

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CONCLUSION

It is, therefore, the opinion of this department that the Baby Sitters Service in question is subject to the provisions of Section 10161, R.S. Mo. 1939; and must, therefore, obtain a license from the State Commissioner of Labor and Industrial Inspection.

Respectfully submitted,

Wm. C. COCKRILL
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WCC:LR