

OPINION NO. 69-005**Syllabus:**

Firms who perform consultation and search services including interviews and preparation of a resume; search in the client's field to compile a list of possible enterprises; contact letters; continuing consultation, and other like services for a client, are "employment agencies" within the purview of Sections 4143.01 and 4143.02, Revised Code, and are required to be licensed if doing business for hire in Ohio, even though the consultation and search contract stipulates the firm is not an employment agency.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: Paul W. Brown, Attorney General, January 23, 1969

I have your request for my opinion concerning a particular type of agency related to the field of employment agencies known as a consultation and search agency, and you submit a sample contract which is illustrative. The question which you ask reads as follows:

"Are such 'consultations and search agencies', as described above 'employment agencies' within the purview of Sections 4143.01 and 4143.02 of the Revised Code?"

Chapter 4143 of the Revised Code sets out the provisions for licensing of employment agencies. Section 4143.01 of the Revised Code reads in part as follows:

"As used in sections 4143.01 to 4143.23, inclusive, of the Revised Code:

"(A) 'Employment agency' means a person, firm association, or corporation which secures, or, by any form of representation or by means of signs,

bulletins, circulars, cards, writings, or advertisements, offers or agrees to secure or furnish, employment, engagements of help, or information or service of any character concerning or intended or purporting to promote, lead to, or consummate employment.

"(B) 'Hire' means any charge, fee, compensation, service, or benefit exacted, demanded, or accepted, or any gratuity received, for or in connection with any act, service, or transaction comprehended by 'employment agency,' or for or in connection with any transaction or representation which includes matters comprehended by 'employment agency.'"

Section 4143.02 of the Revised Code reads as follows:

"License required to engage in business.

"No person, firm, association, or corporation shall engage in the business of an employment agency, for hire, within this state, without first obtaining a license from the department of commerce, paying to said department the annual license fee of one hundred dollars, and executing and filing with the department a bond as provided in section 4143.04 of the Revised Code."

The representative contract which you submit provides that the corporate consultation firm will provide for the client, presumably an executive, a long list of enumerated services to effectuate for the client's best interest a career management and planning and search program to determine what he has to "sell," to whom, where and for how much. These services include interviews and preparation of a resume; search in the client's field to compile a list of possible enterprises; contact letters to each of the individuals in the organizations selected by research; counselling along the way, and other like services. The contract expressly stipulates that it is not an agency contract and that fees payable shall not be construed as placement fees. A flat service fee is charged for these services. In the particular case submitted, the fee was \$1,500.

In the light of the stipulated fee required by the contract to be paid by the client, there can exist no doubt that this is a contract for hire.

Construing the contract provisions against the definitive language contained in Section 4143.01 (A), supra, it appears convincingly that the contract provisions bring the consulting firm well within the definition of "employment agency." Any person or firm who furnishes help, information or service intending or purporting to promote, lead to, or consummate employment is by statute included within the definition, and the agency must be licensed if doing business for hire within the state. A stipulation in the contract providing that the consulting firm is not

an employment agency cannot be of any legal effect in so far as the above quoted licensing provisions are concerned.

I am, therefore, of the opinion, and you are so advised, that firms who perform consultation and search services including interviews and preparation of a resume; search in the client's field to compile a list of possible enterprises; contact letters; continuing consultation, and other like services for a client, are "employment agencies" within the purview of Sections 4143.01 and 4143.02, Revised Code, and are required to be licensed if doing business for hire in Ohio, even though the consultation and search contract stipulates the firm is not an employment agency.