

OPINION NO. 70-028**Syllabus:**

Section 4109.41, Revised Code, does not prohibit a private employment agency, licensed by the State of Ohio, from being paid a fee for securing employment for a minor.

To: William O. Walker, Director, Dept. Industrial Relations, Columbus, Ohio
By: Paul W. Brown, Attorney General, March 6, 1970

You have requested my opinion as to whether Section 4109.41, Revised Code, prohibits a private employment agency, licensed by the State of Ohio, from being paid a fee for securing employment for a minor?

Section 4109.41, Revised Code, reads as follows:

"No person or officer, or agent of a company or corporation shall receive a guarantee, bonus, money deposit, or other form of security to obtain or secure employment for a minor or to insure faithful performance of labor, guarantee strict observance of rules, or make good losses which may be charged to such minor's incompetence, negligence, or inability."

No cases were found which interpret the aforementioned statute, nor has the Attorney General's Office issued any opinion dealing with this section. I have attempted to ascertain the legislature's intention in drafting this statute by investigating its legislative history, but my research has revealed nothing which might prove helpful.

Section 4109.41, supra, is a penal statute. Penal statutes are to be interpreted and applied strictly against the accuser and liberally in favor of the accused. Mentor v. Giordano, 9 Ohio St. 2d 140 (1967). This statute was passed in the late nineteenth century to remedy a problem relating to minors which apparently was in existence at that time but which is not apparent at this time. Sections 4109.40, 4109.41 and 4109.42, Revised Code, are in pari materia and must be construed with reference to each other. Section 4109.40, Revised Code, provides as follows:

"No person or officer or agent of a company or corporation doing business in this state shall retain or withhold from a minor in his employ the wages or compensation, or a part thereof, agreed to be paid and due such minor for work performed or services rendered because of presumed negligence or failure to comply with rules, breakage of machinery, or alleged incompetence to produce work or perform labor according to any standard of merit."

Section 4109.42, Revised Code, provides as follows:

"No person or officer, or agent of a company or corporation shall give employment to a minor, without agreeing with him as to the wages or compensation he shall receive for each day, week, month, or year, or per piece, for work performed and without furnishing such minor with written evidence of such agreement and, on or before each payday, with a statement of the earnings due and the amount thereof to be paid to him, or change the wages or compensation of a minor without giving him notice thereof at least twenty-four hours previous to its going into effect, when a written agreement thereof shall be given to such minor as for an original employment."

It is noted that both these sections involve prohibitions against the employer and do not involve a third party employment agency. The words "no person or officer, or agent of a company or corporation" are used in Sections 4109.40, 4109.41 and 4109.42, supra, and it is reasonable to assume that if these words are applicable to an employer in Section 4109.40, supra, and Section 4109.42, supra, they must also be construed to be applicable to an employer in Section 4109.41, supra, and not applicable to a third party employment agency. Also, the words "guarantee, bonus, money deposit, or other form of security" as used in Section 4109.41, supra, appear to relate to forms of security and not to a "fee" that an employment agency might collect for securing employment. Further, the words "company or corporation" would not encompass all private employment agencies, for example, a private employment agency operated by an individual owner.

In view of the foregoing, it appears that Section 4109.41, supra, does not prohibit a private employment agency, licensed by the State of Ohio, from being paid a fee for securing employment for a minor.

It is therefore my opinion and you are accordingly advised that Section 4109.41, Revised Code, does not prohibit a private employment agency, licensed by the State of Ohio, from being paid a fee for securing employment for a minor.