

OPINION NO. 80-082

Syllabus:

The Director of Commerce must refuse to issue an identification card to a person making application for registration as an employee of a private investigator when the applicant has been convicted of a felony within the past twenty years.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William J. Brown, Attorney General, December 2, 1980

I have before me your request for an opinion on a question regarding the authority of the Director of Commerce to proceed in the issuance of a license following the registration application of a private investigator's employee when it has been determined that the applicant has committed a felony within the previous twenty years.

To answer your question, it is necessary to consider the legislative scheme employed in R.C. Chapter 4749 concerning licensing requirements. Under R.C. 4749.03(A), no individual who has been convicted of a felony within the last twenty years may be licensed as a private investigator. That statute states: "Any individual may be licensed as a private investigator, provided he meets the following requirements: . . . [He] has not been convicted of a felony within the last twenty years. . ." (emphasis added). Furthermore, R.C. 4749.03(D) states in part: "If upon application, investigation, and examination, the director finds that the applicant meets the requirements. . . he shall issue applicant a private investigator's license" (emphasis added). Thus, the language of this statute does not permit the Director of Commerce to exercise discretion in the issuance of a private investigator's license. Rather, the statute clearly indicates that the Director must grant a private investigator's license to an applicant who meets the statutory requirements, including the requirement that he has not been convicted of a felony in the last twenty years. It provides the Director with no authority to license an applicant who does not meet the stated requirements.

Your question concerns the registration and issuance of identification cards to employees of private investigators. See R.C. 4749.06. Private investigators are prohibited by R.C. 4749.06(C) from allowing their employees to engage in investigative activities until an identification card has been received. To receive the card, an employee must go through the application procedures of R.C. 4749.06(B).

Although the provisions of R.C. 4749.06(B) are not as clear as the mandatory requirements for a private investigator's license, the language employed in R.C. 4749.06(B) is similar to that used in R.C. 4749.03(D) as quoted above. R.C. 4749.06(B) states in part: "If, after investigation, the bureau of criminal identification finds that the person making application has not been convicted of a felony within the last twenty years, the director of commerce shall issue an identification card. . ." (emphasis added). The use of the word "shall" clearly imposes a mandatory duty upon the Director to issue an identification card under the circumstances described therein. City of Niles v. Bernard, 53 Ohio St. 2d 31, 372 N.E.2d 339 (1978); Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971). Because the Department of Commerce is an administrative agency, the Department and its director have only the authority granted by the constitution or by statute. State ex rel. Funtash v. Industrial Commission, 154 Ohio St. 497, 96 N.E.2d 593 (1951). The authority given the Director of Commerce under R.C. 4749.06(B) is to issue an identification card only if there have been no felony convictions of the applicant in the previous twenty years. The statute does not indicate, nor may it be implied, that the Director has authority to issue an

identification card if the stated conditions are not met. I conclude, therefore, that the Director of Commerce must refuse to issue an identification card to a person making application for registration as an employee of a private investigator when the applicant has been convicted of a felony within the past twenty years.

You have suggested that, because the Director has discretion under R.C. 4749.04 to revoke or suspend a license if an investigator or employee who is already registered commits a felony when licensed, the Director may, similarly, have discretion under R.C. 4749.06(B) to issue an identification card to an individual who has been convicted of a felony within the last twenty years. I do not find this to be the case. R.C. 4749.04 treats investigators and their employees on an equal basis in terms of the revocation, suspension, or nonrenewal of licenses and registrations for certain specified situations, including the conviction for a felony. When a licensed private investigator or a registered employee is involved in the conduct set forth in R.C. 4749.04, the Director of Commerce has the discretion to respond by choosing one of several courses of action, including revocation. R.C. 4749.04 provides, in pertinent part: "The grounds for which the director of commerce may revoke, suspend, or refuse to renew the license of any private investigator or the registration of any employee includes any of the following: . . . (B) Conviction of a felony or a crime involving moral turpitude." The discretion given the Director under R.C. 4749.04 may not be carried over by implication to the registration and licensing procedures of R.C. 4749.06 and R.C. 4749.03, respectively, to allow the qualification of applicants recently convicted of felonies.¹ As indicated above, those statutes do not authorize the Director to issue a private investigator's license or employee identification card except to individuals who have not been convicted of a felony during the twenty years prior to application.

In light of the above, it is my opinion, and you are advised, that the Director of Commerce must refuse to issue an identification card to a person making application for registration as an employee of a private investigator when the applicant has been convicted of a felony within the past twenty years.

¹It should be noted that, notwithstanding the discretionary language of R.C. 4749.04, R.C. 4749.03(D) expressly provides: "No license shall be renewed if the licensee no longer meets the requirement of division (A)(1) ['has not been convicted of a felony within the last twenty years'] and (4) of this section."