

OPINION NO. 79-013**Syllabus:**

A temporary help company that provides assistance to customers by making available the labor of its own employees on a part-time or temporary basis, and that pays the wages of the employees, withholds all federal, state and city payroll taxes, pays the employer's share of social security taxes, provides workers' compensation benefits and pays the requisite unemployment compensation contributions to the state and federal governments is not an employment agency if it also assumes responsibility for the acts of its employees while they are fulfilling their part-time or temporary assignment and if its employment contract charges no fees or penalties in the event that an employee terminates employment with the temporary help company and accepts employment with the customer to whom that individual had been assigned on a part-time or temporary basis.

To: J. Gordon Peltier, Director, Dept. of Commerce, Columbus, Ohio
By: William J. Brown, Attorney General, May 9, 1979

I have before me your request for my opinion which reads, in pertinent part, as follows:

There are businesses conducted in the State of Ohio

which are commonly referred to as temporary help companies. This type of business provides assistance to customers in handling the excess or special workloads of customers. To do this, the temporary help company assigns its own employees to assist the customer who has contracted with the temporary help company for this type service. The temporary help company pays wages to its employees who are assigned to customers' premises, withholds all federal, state and city payroll taxes, pays the employer's share of social security taxes, provides worker's compensation benefits and pays the requisite unemployment compensation contributions to the state and federal governments. The temporary help company invoices the customer for this service.

Given this employment situation, do temporary help companies come within the present definition of "employment agency" in section 4143.01 of the Revised Code, thus making the companies subject to the licensure provisions of section 4143.02 of the Revised Code?

R.C. Chapter 4143, entitled "Employment Agencies - Public; Private", governs the subject of employment agencies. In particular, it has come to my attention that this question was resolved by the General Assembly subsequent to your request through the enactment of R.C. § 4143.03(D). That section provides:

Sections 4143.01 to 4143.23 of the Revised Code do not apply to:

* * *

(D) Any person engaged solely in the business of employing individuals to render part-time or temporary services to or for a third person, if the person employing the individuals, in addition to wages or salaries, pays social security and unemployment taxes, provides workers' compensation coverage, and is responsible for the acts of the individuals while rendering services to or for a third person, and if such person has no employment contract with any individual that requires the individual to pay the person a fee or any other form of liquidated damages upon termination of employment with the person engaged in such business and acceptance of employment with a third person to whom the individual has been assigned for part-time or temporary services.

Assuming that the "temporary help" companies described in your request are engaged solely in the business of employing individuals to render part-time or temporary services to third persons; that they are responsible for the acts of their employees while so employed; and that they do not seek to impose a fee or liquidated damages when an employee accepts employment with a third person to whom said employee has been assigned, they would not be an "employment agency" for purposes of R.C. §4143.01. It is my opinion, and you are so advised, that:

A temporary help company that provides assistance to customers by making available the labor of its

own employees on a part-time or temporary basis, and that pays the wages of the employees, withholds all federal, state and city payroll taxes, pays the employer's share of social security taxes, provides workers' compensation benefits and pays the requisite unemployment compensation contributions to the state and federal governments is not an employment agency if it also assumes responsibility for the acts of its employees while they are fulfilling their part-time or temporary assignment and if its employment contract charges no fees or penalties in the event that an employee terminates employment with the temporary help company and accepts employment with the customer to whom that individual had been assigned on a part-time or temporary basis.