

OPINION NO. 67-038**Syllabus:**

An independent contractor who contracts with potential employers to provide acceptable employees and who is paid a fee by the employer upon the consummation of an employment is an "employment agency" within the meaning of Chapter 4143, Revised Code.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William B. Saxbe, Attorney General, April 21, 1967

Your request for my opinion directs my attention to Chapter 4143, Revised Code, and sets out the fact situation as follows:

"Your advice is requested as to whether or not the following described activity on the part of an individual would fall within the above statutory definition and require the licensing by the Division of Private Employment Agencies of Ohio Department of Commerce.

"The individual proposes to work entirely as an independent contractor and entirely on behalf of several employers, but under no circumstances on behalf of any prospective employees of such employers. The employers would from time to time send job specification information to the individual and request that the individual locate a prospective employee with the qualifications to fit this position of employment. The services performed by the individual would include the interviewing and general evaluation of the prospective employee for the position of employment in question. The individual would thoroughly investigate the character and prior work record of the prospective employee and administer personnel tests to the prospective employee. These tests would normally be tests perfected by the individual. The individual would then make a complete report to the employer together with his expert recommendation regarding the advisabilty of the employer hiring the prospective employee.

"The continuing agreement between the individual and the employer would call for compensation from the employer to the individual on a fee basis. The fee for services of the individual to the employer would be determined by the individual, but would not exceed a specified maximum dollar amount which amount would be agreed upon in advance between the employer and the individual. If the employer did not hire a prospective employee suggested by the individual, then no fee would be due to the individual.

"Under no circumstances would any fee or charge be made by the employer or the individual to the prospective employee either directly or indirectly, nor would the prospective employee sign any application or contract regarding such matters.

"Our office is concerned about this problem in view of the fact that Section 4143.99 provides criminal sanctions for any violation proscribed in Chapter 4143, Ohio Revised Code."

Section 4143.02, Revised Code, reads as follows:

"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."
(Emphasis added)

Section 4143.01, Revised Code, defines the terms used in Chapter 4143, Revised Code, 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.'

* * * * *
(Emphasis added)

It would appear that the statute is comprehensive of every type of activity which leads to an employment. There is no differentiation made as to whom the service is rendered or as to who pays the fee. So long as a fee is paid to the person who has provided the service, such fee being based upon the consummation of an employment, he is in fact an "employment agency" within the meaning of Chapter 4143, Revised Code, and must be licensed pursuant thereto.

It is, therefore, my opinion and you are hereby advised that an independent contractor who contracts with potential employers to provide acceptable employees and who is paid a fee by the employer upon the consummation of an employment is an "employment agency" within the meaning of Chapter 4143, Revised Code.