

**OPINION NO. 81-058****Syllabus:**

The Division of Licensing lacks authority to collect registration fees from a licensed private investigator who has employed unregistered personnel when those unregistered personnel are no longer employed by that investigator.

**To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio**  
**By: William J. Brown, Attorney General, October 21, 1981**

I have before me your request for my opinion regarding a proposed application, by the Division of Licensing, of R.C. 4749.06, which states:

(A) Each private investigator shall register his employees, exclusive of clerical help, with the department, which shall compile and keep current a list of all licensees and registered employees and make it available, upon request, to any law enforcement agency.

(B) Each employee's registration application shall be accompanied by three complete sets of his fingerprints, three copies of a recent photograph of the employee, his physical description, and a ten dollar registration fee. If, after investigation, the bureau of criminal identification and investigation 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 bearing the license number and signature of the licensee and stating the name, address, age, physical description, right thumb print, or such other identifying mark as the director prescribes, a recent photograph of the employee, and his signature. The director may issue a duplicate of a lost, spoliated, or destroyed identification card issued under this section, upon payment of a fee fixed by the director, not exceeding five dollars.

(C) No private investigator shall permit an employee to engage in any private investigatory activity until the employee receives an identification card from the department of commerce, except that pending the issuance of an identification card, a licensee may offer for hire employees whose sole employment is the protection of life and property, if the licensee obtains a waiver from the person whose life or property is being protected acknowledging that the person is aware the employees have not completed their registration and agreeing to their employment. (Emphasis added.)

It is my understanding that the Division of Licensing desires to assess and collect the ten dollar registration fee from licensed private investigators who have had unregistered employees on their payrolls, where those people are no longer in such employment. Your question is whether the proposed action is within the Division's power under R.C. 4749.06.

It is a well-established tenet of law that a state department enjoys only those powers conferred on it by statute, or necessarily implied therefrom. Burger Brewing Co. v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975); State ex rel. Funtash v. Industrial Commission, 154 Ohio St. 497, 96 N.E.2d 593 (1951). Therefore, to determine whether the Division of Licensing may take the proposed action, one must consider the particular provisions of the Revised Code dealing with the licensing of private investigators.

R.C. 4749.06(C) prohibits a private investigator from permitting "an employee to engage in any private investigatory activity until the employee receives an identification card from the department of commerce," except that the

employee may be hired solely for the protection of life and property if the person whose life or property is being protected agrees to the employment of the unregistered individual. The employer's responsibility under R.C. 4749.06 is further delineated in 1 Ohio Admin. Code. 1301:4-5-11, which states:

Each licensee shall, except with respect to administrative and janitorial personnel, and to persons exempt from registration pursuant to section 4749.06 of the Revised Code:

(A) Within ten days after the employment of each new employee, file the appropriate registration form with the department of commerce, division of licensing.

(B) Within ten days after the termination of a registrant's employment, notify the division of such termination, giving the date thereof, and submitting said employee's identification card for cancellation. (Emphasis added.)

Reading R.C. 4749.06(C) together with 1 Ohio Admin. Code 1301:4-5-11, I find it clear that employees of private investigators are to be registered only during their employment. R.C. 4749.06 provides for the registration of employees, not of former employees, and rule 1301:4-5-11(B) provides for cancellation of an employee's identification card within a short time after the employment terminates. Hence, it is evident that the registration scheme is to be applied only to persons who are employed. In light of this fact, I can see no way in which a scheme for receipt of registration fees for people who are no longer employees would be permissible.

You have indicated that you seek to recover registration fees for persons not currently employed as part of your efforts to enforce the requirements of R.C. Chapter 4749. It is clear from the provisions of R.C. Chapter 4749 that the ten dollar fee provided by R.C. 4749.06 is to be received only in connection with registration; thus, if there is no registration there is no authority to recover the fee. Cf. R.C. 4749.06 ("[t]he director may issue a duplicate of a lost, spoliated, or destroyed identification card issued under this section, upon payment of a fee fixed by the director, not exceeding five dollars"). Rather, the General Assembly has provided a scheme apart from the collection of registration fees for enforcement of the requirements of R.C. Chapter 4749. As noted above, R.C. 4749.06(C) prohibits a private investigator from allowing anyone to work for him in a private investigatory activity, until such person is registered pursuant to R.C. 4749.06(A). R.C. 4749.10 provides further prohibitions, stating:

(A) No person shall engage in the business of private investigation unless he is licensed as provided in Chapter 4749. of the Revised Code. Each day of continuing violation constitutes a separate offense. Nothing in Chapter 4749. of the Revised Code shall be construed to require any director, officer, partner, or employee of a corporation, partnership, or person engaged in the business of private investigation, to obtain a private investigator's license, when such director, officer, partner, or employee is engaged only in administrative or clerical activities and does not act as a private investigator or directly supervise investigatory activities in this state.

(B) No private investigator or registered employee shall:

(1) Knowingly violate any provision of Chapter 4749. of the Revised Code;

(2) Knowingly make a false report with respect to any matter with which he is employed;

(3) Divulge any information acquired from or for a client to persons other than the client or his authorized agent without express authorization to do so or unless required by law;

(4) Knowingly accept employment which includes obtaining information intended for illegal purposes. (Emphasis added.)

Finally, R.C. 4749.99 states the penalties for violations of R.C. 4749.10: "Any

person who violates any provision of section 4749.10 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than one year, or both." It is apparent that efforts to enforce the registration requirements of R.C. 4749.06 may be taken under these provisions.

In addition, R.C. 4749.04 provides a means for the Department of Commerce to enforce the registration requirement. It states:

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:

(A) Violation of any of the provisions of division (B) of section 4749.10 of the Revised Code;

(B) Conviction of a felony or a crime involving moral turpitude;

(C) Violation of any regulation of the director governing the conduct of the business of private investigation;

(D) Testifying falsely under oath in any judicial proceeding or suborning perjury therein.

Any person whose license or registration is revoked, suspended, or not renewed may appeal in accordance with Chapter 119. of the Revised Code. (Emphasis added.)

Under this statute, the Department is empowered to move against the license of any investigator who employs nonregistered employees in violation of R.C. 4749.06, and who is thus in violation of R.C. 4749.10(B)(1). The criminal sanctions of R.C. 4749.99 may be imposed only pursuant to a criminal prosecution. R.C. 4749.04 allows the department to impose sanctions against violators directly, by way of an administrative procedure which meets the applicable statutory requirements of R.C. Chapter 119. See, e.g., R.C. 119.01(A) (" '[a]gency' means. . .the licensing functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses"); R.C. 119.06.

In conclusion, it is my opinion, and you are advised, that the Division of Licensing lacks authority to collect registration fees from a licensed private investigator who has employed unregistered personnel when those unregistered personnel are no longer employed by that investigator.