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SYLLABUS:

The State of Ohio may license an out-of-the state theatrical booking agency to do business in Ohio under Section 4143.02 of the Revised Code. No distinction is made, under this section of the code, between an out-of-the state and in-state agency. To the extent that Rule XV, 15.04 is inconsistent with Section 4143.02, Revised Code, it is invalid.

Columbus, Ohio, June 4, 1963

Hon. Warren H. Chase
Director, Department of Commerce
Ohio Departments Building
Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The Private Employment Agency Laws, Sections 4143.01 to 4143.30 and 4143.99, Revised Code of Ohio, provide that all agencies so defined be licensed to operate in Ohio. The law makes no distinction between domestic and foreign, or out of state, agencies.

“The Rules and Regulations, duly effected in accordance with Section 119.04, Revised Code of Ohio, provide that out of state theatrical booking agencies, or personal representatives of applicants, shall operate through an Ohio licensed theatrical booking agency on forms prescribed, or establish an office within Ohio and obtain a license to do so. Rule XV, 15.04.

“The Division of Private Employment Agencies, Department of Commerce, requests your opinion with respect to the following:

“1. May the State of Ohio, under Rule XV, 15.04, license an out of state theatrical booking agency to do business in Ohio, since the above rule does not state that such agency shall operate through an Ohio agency, licensed to do business here, but says that such agency shall operate through an Ohio licensed agency, making no distinction between an out of state agency and a local agency, and since nowhere in the laws or regulations is any distinction made between a local and foreign agency for purposes of definition, licensing or regulation?

“In order to assist you, we are enclosing a copy of the laws and regulations under discussion.”

Rules and regulations issued by the Division of Private Employment Agencies, Department of Commerce, pursuant to Section 119.04, Revised Code, must conform to, and be in accordance with, the Private Employment Agency laws, Sections 4143.01 to 4143.30, inclusive, and 4143.99, Revised Code. Inconsistent, conflicting, and vague language in a given rule or regulation is subject to, and must be construed in light of, the statutes to be administered by a particular agency. 1 Ohio Jurisprudence 2d, page 478-479, Administrative Law and Procedure, Section 78.

As you indicate, nowhere in the laws or regulations governing Private Employment Agencies is a distinction made between an out-of-the state and in-state agency, for purposes of definition, licensing, or regulation.

Rule XV, 15.04, issued by the Division of Private Employment Agencies, Department of Commerce, provides as follows:

“Out-of-the state theatrical booking agencies, or personal representatives of applicants, shall operate in Ohio through an Ohio licensed theatrical booking agency, on forms prescribed or establish an office within Ohio and obtain a license to do so.”

However, Section 4143.02, Revised Code, provides the following:

“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 division a bond as provided in section 4143.04 of the Revised Code.”

The pertinent language of the statute governs and controls the substance of the rule. Before one may engage in the business of an employment agency, for hire, within the state, a license must be obtained from the Department of Commerce. The language in the statute leads to the conclusion that the legislature was not concerned with *whether the office of the agency* was within or without the state, but whether the agency was engaged in the business of an employment agency, for hire, within this state. This is the ac-

tivity sought to be regulated, in order to protect the interests of those who might be exposed to misfortune, and for which the license is required.

Rule XV, 15.04, in so far as it attempts to impose additional burdens on out-of-the state agencies, beyond that required in Section 4143.02, Revised Code, is invalid. Said rule would seem to require, as one alternative, in order to legally engage in the business of a theatrical booking agency within this state, that an out-of-the state agency establish an office within this state and then obtain a license. Section 4103.02, Revised Code, does not require an out-of-the state agency to establish an office within this state.

I find difficulty in interpreting the further language in Rule XV, 15.04, "that out-of-the state theatrical booking agencies, * * * shall operate through an Ohio licensed theatrical booking agency * * *." If "Ohio licensed agency" is interpreted to mean an Ohio agency, licensed to do business in Ohio, such requirement is an invalid imposition on out-of-the state agencies in light of the absence of such requirement in Section 4103.02, Revised Code.

To construe Rule XV, 15.04, in any other manner would be to place additional burdens on out-of-the state theatrical booking agencies, apparently never intended by the legislature in light of the clear language of Section 4103.02, Revised Code.

A similar question of interpretation was before my predecessor in regard to out-of-state wholesalers. In Opinion No. 1025, Opinions of the Attorney General for 1959 at page 706, it was stated as follows:

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“The statutes mentioned above make no distinction between wholesale seed dealers located within the state and those located in other states. Neither do they make any distinction as to purchasers. The latter may be wholesalers, retailers or consumers. The line of demarcation under Section 901.06 (A) is the place where the sales are made. This section provides that no person *shall sell* any agricultural or vegetable seed *within this state* without first obtaining a license. Therefore, in answer to your second question, I must conclude that an out-of-state wholesaler must obtain an Ohio license before making any sales of seed within this state.

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The additional fact that a penalty is imposed by law on those who engage in the business of a theatrical booking agency within this state without a license, substantiates the conclusion I have reached. Section 4143.99 (A), Revised Code.

Therefore, it is my opinion and you are hereby advised that the State of Ohio may license an out-of-the state theatrical booking agency to do business in Ohio under Section 4143.02 of the Revised Code. No distinction is made, under this section of the code, between an out-of-the state and in-state agency. To the extent that Rule XV, 15.04 is inconsistent with Section 4143.02, Revised Code, it is invalid.

Respectfully,
WILLIAM B. SAXBE
Attorney General