

JUNE 9, 1949.

HARRY C. HARPER, *Commissioner,*  
*Department of Labor and Industry,*  
State House,  
Trenton, New Jersey.

## FORMAL OPINION—1949. No. 60.

DEAR MR. HARPER:

Your letter of May 24, 1949, requesting an opinion as to the authority of the Commissioner of Labor and Industry to issue or deny employment agency licenses under certain circumstances acknowledged, and opinion rendered as follows:

## STATEMENT OF FACTS.

None.

## QUESTIONS PRESENTED

The questions respectively embodied in your letter are: No 1. Does the Commissioner of Labor and Industry have the authority and the power to require an applicant for a private employment agency license to submit with his application a statement of the type and class of occupations in which he intends to furnish help or employment or information concerning help or employment?

## ANSWER.

The answer is yes.

## REASONS.

Under N. J. R. S. 34:8-3 and 34:8-4 a license to conduct an employment agency must be obtained by application to the Commissioner of Labor and Industry in writing. In making such application the applicant should state the type of business he is to engage in, the type and class of occupations in which he intends to furnish help or employment and, all information concerning help or employment sufficiently to give the commissioner enough facts to investigate and determine whether or not a license is necessary or should be denied; and, for other informational and regulatory purposes.

No. 2. Does the Commissioner of Labor and Industry have the authority and the power to refuse to issue a license to an applicant when it is shown to his satisfaction that such applicant does not have the fitness and qualifications to perform the functions for which he seeks a license?

## ANSWER.

The answer is yes.

## REASONS.

Under the N. J. R. S. 34:8-1 to 34:8-23, inclusively, the New Jersey Legislature enacted a statute providing for the licensing of private employment agencies and included therein statutory requirements to be performed by the applicant.

*N. J. R. S. 34:8-4. Application for License.*

Application for license to conduct an employment agency shall be made in writing to the commissioner of labor and shall state the name and number of the building and place where the agency is to be conducted.

The commissioner shall act on the application within thirty days after it has been filed but shall grant no license until the application shall have been on file for at least one week.

*N. J. R. S. 34:8-5. Qualifications of Licensee; Proof.*

Every applicant for an employment agency license shall furnish satisfactory proof of good moral character by the affidavits of at least two reputable citizens of the state and furnish proof of citizenship of the United States. Any person may object to the issuance or transfer of any license.

The commissioner or his representative shall investigate the character and responsibility of the applicant and shall examine the premises designated in the application as the place in which it is proposed to conduct the agency.

*N. J. R. S. 34:8-15. Enforcement; Revocation of License.*

The enforcement of this chapter shall be intrusted to the commissioner, who shall cause to be made at least bimonthly visits to every agency by such inspectors as he shall designate for that purpose. Each inspector shall have a suitable badge, which he shall exhibit on demand of any person with whom he may have official business. The commissioner may refuse to issue and may revoke any license for any good cause shown within the meaning and purpose of this chapter, and when it is shown to his satisfaction that any licensed person is guilty of any immoral or illegal conduct in connection with the conduct of said business, it shall be his duty to revoke the license of such person, but notice of the charge shall be presented and reasonable opportunity shall be given the licensed person to defend himself.

The right of the State to enact this legislation has been sustained by this State's highest courts and the United States Supreme Court.

*Ribnik vs. McBride*, 48 Sup. Ct. Rep. 543, 137 At. 437, 133 At. 870.

*Brazeo vs. Michigan*, 36 Sup. Ct. Rep. 561.

*McBride vs. Clark*, 101 N. J. L. 213.

In the *Ribnik vs. McBride* New Jersey Supreme Court opinion citing *Brazeo vs. Michigan*, United States Supreme Court opinion, the court said:

"It seems clearly that without violating the federal constitution, a state exercising its police powers may require licenses for employment agencies and prescribe reasonable regulations in respect of them to be enforced according to the legal discretion of a commissioner."

Also citing *Clark vs. McBride*, *supra*. In the *McBride vs. Clark*, *supra*, the court said:

"Under Section 10 of our own statute the commissioner of labor may refuse to issue any license for good cause shown within the meaning of the act."

The same provision of section 10 of the old act appears in our New Jersey Revised Statutes in 34:18-15.

Consequently, the Commissioner of Labor and Industry may deny the applicant a license where he (the applicant) has not proved to the satisfaction of the commissioner that he possesses the fitness and qualifications to conduct an agency as is provided by law.

No. 3. Does the Commissioner of Labor and Industry have the authority and the power to restrict a license to classes or types of help or employment concerning which the applicant has established his qualifications and fitness?

ANSWER.

The answer is no.

REASONS.

The right to regulate employment agencies is delegated to the Commissioner of Labor and Industry by the Legislature. The courts and statutes have sustained this legislative right in *Ribnik vs. McBride, supra*; *Brazee vs. Michigan, supra*, and *Clark vs. McBride, supra*.

Under N. J. R. S. 34:8-15 and in the reported cases, particularly *Ribnik vs. McBride*, the commissioner may refuse a license for any good cause shown (1) *within the meaning and purpose of the act* and the power of the Legislature to limit such right for the safety of the public morals and public health under the police power must rest (2) *on some reasonable basis and cannot be arbitrarily exercised*.

6 R. C. L., p. 273:

There is nothing within the meaning of this act, N. J. R. S. 34:8-1 to 34:8-23, inclusive, which invests the Commissioner of Labor and Industry with the right to restrict a license to classes or groups based upon his ability to specialize in a certain trade employment. May it be noted that it is the Legislature which prescribes the regulations and qualifications and not the Commissioner of Labor and Industry. The Legislature in the enactment of N. J. R. S. 34:8-4 and 34:8-5 has limited the commissioner in the exercise of his discretion as to the qualifications required. The commissioner himself cannot read into the statute something which does not exist. In doing so, he would be usurping legislative functions. The statute is purely regulatory under our police powers and must be applied as it appears.

To permit the commissioner to restrict as for example require an engineer to employ an engineer, a window cleaner to hire a window cleaner, or a domestic a domestic, etc., would not be within the meaning of the act and, in the writer's opinion an unreasonable basis upon which the State should regulate the general business of employment agencies.

It would in effect preclude the public from engaging in general employment agency business and confine it to experts in a special field. This would be creating a situation not intended under the police powers of a State Legislature to regulate a business for the safety of the public morals and public health.

I believe the foregoing opinion adequately answers the three questions proposed by you.

THEODORE D. PARSONS,  
Attorney General,

By: LOUIS S. COHEN,  
Deputy Attorney General.