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SPRINGFIELD

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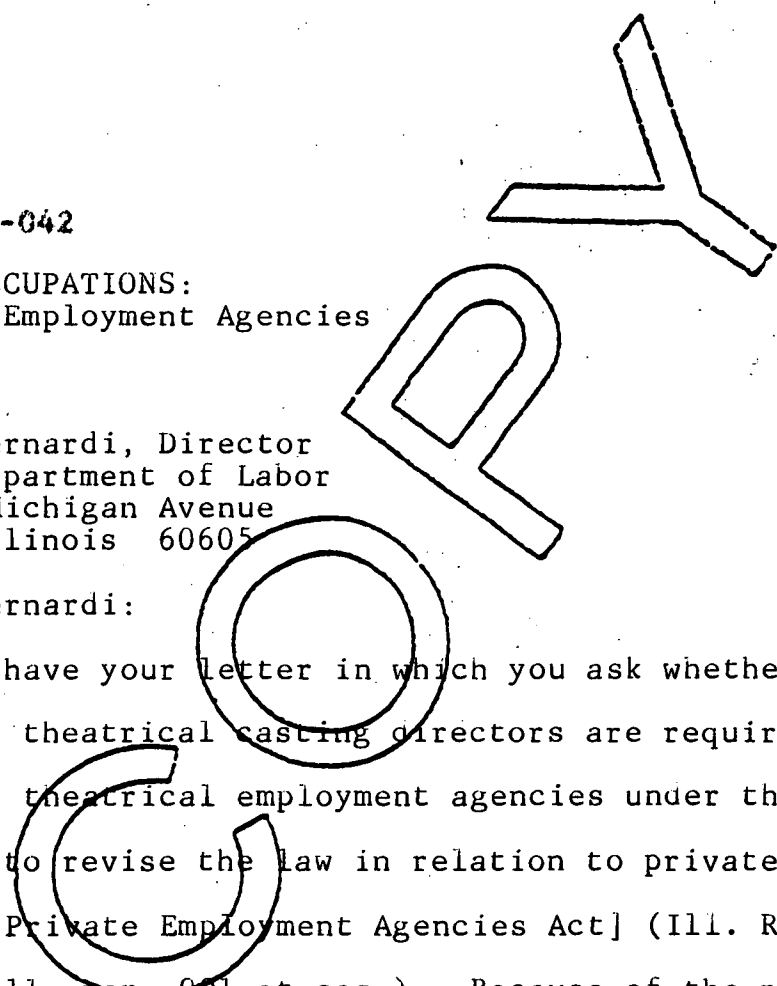
**FILE NO. 82-042**

LICENSED OCCUPATIONS:  
Theatrical Employment Agencies

E. Allen Bernardi, Director  
Illinois Department of Labor  
910 South Michigan Avenue  
Chicago, Illinois 60605

Dear Mr. Bernardi:

I have your letter in which you ask whether certain independent theatrical casting directors are required to be licensed as theatrical employment agencies under the provisions of "AN ACT to revise the law in relation to private employment agencies" [Private Employment Agencies Act] (Ill. Rev. Stat. 1981, ch. 111, par. 901 et seq.). Because of the nature of your question, it is helpful to describe the functions of an independent theatrical casting director in some detail before



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addressing the licensing requirements of the Private Employment Agencies Act.

You describe independent theatrical casting directors as persons hired by advertising agencies or film production companies to assist in the evaluation and selection of actors and actresses for employment in the making of commercial advertisements or other films. The casting director initially confers with the advertising agency, or the film studio producer or director, concerning the casting requirements for the specific project being undertaken. Upon determining the casting requirements for the project, the casting director contacts talent agencies and requests certain actors and actresses represented by those agencies to appear for auditions. You advise that all of the talent agencies utilized in such circumstances are registered and licensed as theatrical employment agencies under the Private Employment Agencies Act. Neither the person auditioning nor the talent agency representing him receives compensation for an audition.

If, on the basis of their auditions, actors or actresses are selected to appear in a film production, the appropriate talent agencies are notified of the selection. Contracts for the appearance of the actors or actresses are arranged between the talent agency which represents them, and the advertising agency or film company producing the commercial

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or film. The independent casting director is compensated for his services by the employing company, and receives no compensation from the actors, actresses, or talent agencies involved in the casting. Talent agencies, unlike independent casting directors, ordinarily receive a percentage of the compensation paid to the actors and actresses they represent.

Section 1 of the Private Employment Agencies Act (Ill. Rev. Stat. 1981, ch. 111, par. 901) provides, in pertinent part:

" \* \* \*

No person shall open, keep or carry on any employment agency in the State of Illinois, unless such person shall procure a license therefor from the Department of Labor. Any person who shall open up, or conduct any such agency without first procuring such license or without paying any fees required by this Act, shall be guilty of a Class B misdemeanor.

\* \* \*

"

Section 4 of the Private Employment Agencies Act (Ill. Rev. Stat. 1981, ch. 111, par. 904) provides in part:

"It shall be unlawful for any person to act as an employment counsellor, or to advertise, or assume to act as an employment counsellor, without first obtaining a license as such employment counsellor, from the Department of Labor. It shall be unlawful for any person to engage in, operate or carry on the business of an employment agency unless each employee of such agency, who furnishes information to any person as to where employees or employment may be obtained or found, is a licensed employment counsellor. \* \* \*

\* \* \*

"

Section 11 of the Private Employment Agencies Act (Ill. Rev. Stat. 1981, ch. 111, par. 914) provides:

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"When used in this Act, unless the context indicates otherwise:

The term 'employment agency' means any person engaged for gain or profit in the business of securing or attempting to secure employment for persons seeking employment or employees for employers. \* \* \*

\* \* \*

The term 'theatrical employment agency' means and includes the business of conducting an agency, bureau, office or any other place for the purpose of procuring or offering, promising or attempting to provide engagements for persons who want employment in the following occupations: circus, vaudeville, theatrical and other entertainment, or exhibitions, or performances, or of giving information as to where such engagements may be procured or provided, whether such business is conducted in a building, on the street, or elsewhere.

The term 'theatrical engagement' means and includes any engagement or employment of a person as an actor, performer, or entertainer, in a circus, vaudeville, theatrical or any other entertainment, exhibition or performance.

\* \* \*

"

Section 8 of the Private Employment Agencies Act (Ill. Rev. Stat. 1981, ch. 111, par. 908) sets forth certain record and contract requirements which apply only to theatrical employment agencies.

In National Talent Associates, Inc. v. Holland (1979), 76 Ill. App. 3d 556, the court addressed the issue of whether the plaintiff was a theatrical employment agency subject to licensing under the Private Employment Agencies Act. The business of the plaintiff was described therein as follows:

" \* \* \*

The nature of plaintiff's services in the instant case includes the screening and evaluation of children with potential for becoming models. If a child possesses what plaintiff considers to be the necessary qualifications, plaintiff then contracts with the child's parents, agreeing to have the child professionally photographed, then to submit these photographs to a licensed booking agency for its consideration in whether to accept the child as a client. \* \* \* It is defendants' argument that by assisting its customers to gain acceptance as a client of a booking agent, plaintiff is in effect attempting to secure employment for them. \* \* \*

\* \* \*

(76 Ill. App. 3d 556, 562.) "

The defendants, officials of the Illinois Department of Labor, contended that the statutory definition of "theatrical employment agency" was not limited to businesses which actually sent applicants on job interviews or rendered placement services, but included any business organized for the purpose of providing services designed to secure employment for individuals in the theatrical field. Plaintiff argued that a business that was designed merely to "assist" one in finding theatrical employment was not included within the "theatrical employment agency" definition, and therefore not subject to licensing.

The appellate court noted that statutes such as the Private Employment Agencies Act were enacted to correct various abuses incident to that business, the most frequent being misrepresentation of the terms and conditions of employment. The court further stated:

"

\* \* \*

The Act involved in the present case consists primarily of regulations to remedy such abuses. Section 3 of the Act (Ill. Rev. Stat. 1977, ch. 111, par. 903) requires all employment agencies to keep job order files. These are records of all requests by employers for employees which state the terms and conditions of employment. Job orders must be kept on file for the use of employees. A job may not be advertised as available or applicants sent out on job interviews unless a current bona fide order is on file. The agency must keep a complete record of each applicant to whom employment is offered or promised or is sent out on an interview.

More specifically, section 8 of the Act (Ill. Rev. Stat. 1977, ch. 111, par. 908) requires theatrical employment agencies before arranging a theatrical engagement to prepare a report on the prospective employer stating how long it has been in the theatrical business, whether it has ever failed to pay its employees their salaries or left them 'stranded,' and listing two references. Such report must be kept on file for the benefit of prospective employees. When the employment agency procures or offers an applicant employment, it must submit a written contract indicating the name of the employer, type of entertainment or services to be rendered, number of performances to be given, the specifics as to transportation and who must assume its cost, the salary, and the amount and the name of the person to whom commissions or fees are to be paid.

The abuses sought to be remedied and the provisions of the Act are clearly applicable to those agencies which actually arrange employment and deal with employers. However, we do not find that the provisions would apply to the type of business conducted by the plaintiff. Plaintiff does not receive job orders from employers or send its customers out on job interviews. Plaintiff does not deal with employers whose stability it could investigate, nor offer employment as would necessitate filling in specifics required in a theatrical employment contract so as to guard against the misrepresentation of the existence or terms and conditions of employment. The Talent Registry, the

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agency with which plaintiff deals, is licensed under the Act and is required to keep such records.

\* \* \*

To say that plaintiff's business is included within the terms of the definition would be to expand the ordinary meaning afforded such terms and as a result include a business which we do not find the legislature clearly intended to regulate under the Act.

\* \* \*

(76 Ill. App. 3d 556, 563-65.)

Analyzing the terms of the Private Employment Agency Act in light of the reasoning of the court expressed in National Talent Associates v. Holland, it is my opinion that independent theatrical casting directors performing the services described above are neither employment agencies nor theatrical employment agencies within the statutory definitions of those terms, and therefore are not subject to being licensed as such. Independent theatrical casting directors are apparently engaged by advertising agencies or film companies on the basis of the casting director's knowledge of the actors and actresses available in a particular area. The casting director's obligation to the advertising agency or film company is completed when auditions are held. The casting director is granted no authority to hire or engage any actor or actress for any part in a production.

Furthermore, the casting director has no personal contact with prospective employees. Rather, the casting

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director deals only with talent agencies which are registered and licensed as theatrical employment agencies, and which represent actors or actresses on a contractual basis. If an actor or actress is selected to appear in a production, it is his or her talent agency which conducts the contractual negotiations with the employing entity. The talent agency is required to keep the records and submit the written contracts described in section 8 of the Private Employment Agencies Act. Although an independent theatrical casting director may "assist" in the location and employment of actors and actresses for specific film productions, this function, under the reasoning of National Talent Associates v. Holland, is insufficient to bring independent casting directors, such as you have described, within the scope of the Private Employment Agencies Act.

Therefore, it is my opinion that independent theatrical casting directors who perform the services described above are not theatrical employment agencies subject to licensing by the Illinois Department of Labor.

Very truly yours,

  
ATTORNEY GENERAL