

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE LABOR)
STANDARDS DIVISION, DEPARTMENT)
OF LABOR AND INDUSTRY, GOVERN-)
ING EMPLOYMENT AGENCIES.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on September 12, 1977, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Labor and Industry on October 20, 1977; and

WHEREAS, the Department of Labor and Industry has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Labor and Industry has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Labor and Industry has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Labor and Industry has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 20th day
of December, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter Of The Proposed Adoption Of Rules Of The Labor Standards Division, Department of Labor and Industry, Governing Employment Agencies.

FINDINGS AND ORDER

A public hearing in the above-entitled matter having been held in Room 81, State Office Building, St. Paul, Minnesota on Monday, September 12, 1977, commencing at 9:00 a.m. and having continued until all persons did have an opportunity to be heard; and the record having been kept open for a period of time to allow all interested persons to file additional written statements:

NOW, THEREFORE, E. I. Malone, Commissioner, Minnesota Department of Labor and Industry, does make the following findings and order with respect to the above-entitled matter;

FINDINGS

The Report of the Hearing Examiner dated October 20, 1977 is hereby adopted and incorporated by reference herein as a part of these Findings and Order with the following exceptions:

1. Conclusion "3": FEA 3(e)

    a. Conclusion "3" contained on page 6 of the Report of the Hearing Examiner suggests alternative language to the department's proposed amendment to Rule FEA 3(e). The department's proposal intends to delete the

clause "has stated that he" from the definition of the term "fee negotiable" in order to avoid discriminatory language. The entire clause was deleted rather than reworded.

Based upon the claim that its deletion would open the door to referrals where the employer does not realize a negotiated fee arrangement is intended (Finding 8a, Report of Hearing Examiner), the Hearing Examiner recommended, in effect, that the phrase "has stated that" be retained.

By the terms of the statute, the employer in all instances must necessarily state to the agency the nature of the fee arrangement; Minn. Stat. § 184.38, subd. 6(a) prohibits an agency from referring an applicant for employment without first obtaining a job order from the employer; Subd. 18 of that section prohibits advertising an opening or attempting to place persons in a job without a completed job order; and, under rule FEA 35, each job order must indicate the "fee status" of the position. Thus, the Commissioner finds that the terms of the statute and applicable regulations require in all instances that the fee status be communicated to the agency by the employer and, therefore, the additional words in Rule 3(e), "has stated that", are unnecessary and serve no additional purpose.

b. The Commissioner also finds that the addition of the language "and the applicant is fully informed of this arrangement prior to being referred to the employer", is also unnecessary and duplicates protection already afforded under the statute. In all instances, the job order requisites under Minn. Stat. § 148.38 (1976) and rule FEA 35 imply that an applicant is informed of the fee status prior to referral.

The specific inclusion of this requirement for "fee negotiable" positions could raise the inference that in all instances where the fee is not "negotiable", the applicant need not be informed of its nature prior to referral. In addition, sufficient protection is afforded the applicant by the provisions of section 184.37 which require all contracts with applicants to specify the service charge to be made to the applicant and the time and method of payment and FEA 17 which requires all acceptance forms to specify the fee status.

Consequently, the addition of the clause as recommended by the Examiner is unnecessary and does not expand upon protection presently afforded the applicant in "fee negotiable" situations.

2. Conclusion "4": FEA 22(c)

The Hearing Examiner's finding that the department's proposed rule FEA 22(c) is reasonable is specifically adopted. The suggestion contained thereafter that the proposals submitted in Findings 8(a) and (c) are reasonable is specifically rejected since their provisions would defeat the original intent of FEA 22(c) which was to base the fee due for commissioned sales positions upon actual earnings in order to protect against the uncertainties involved in determining an applicant's earnings potential and to protect against overzealous employers who may oversell the potential earnings of various positions. (See Transcript of Public Hearing, dated September 12, 1974, In the Matter of the Department of Labor and Industry Governing Fee Employment Agencies, at pp. 20-21, 28, also Transcript herein, at 17.

3. Conclusion "5": FEA 29.

a. The Examiner recommends that the department's proposed FEA 29 be amended as set out in Finding 15(b) for the reasons stated therein. The reason for change, as contained in 15(b), is that the rule would ". . . also affect the applicant who was paying their fee in installments and would force the agency to collect in 90 days." Based upon that reason, new language totally prohibiting an agency from collecting from an applicant on a fee paid position was proposed and recommended by the Examiner.

Under the present rule (FEA 16(d)), nothing prohibits an agency from attempting to collect from an applicant monies refunded to the employer where the applicant voluntarily leaves the

position within 90 days or is terminated for misconduct. The proposed rule was not intended to change the status of fee liability in such instances but rather to clarify and avoid misunderstandings with respect thereto. Transcript, at 15. The proposed change protects the interests of the applicant through the requirement that such liability must be explained on the contract. Transcript, at 16.

The language proposed by the Examiner would effectively prevent an agency from recovering from an applicant in all instances regardless of what has been contractually agreed to between them. It, therefore, is a substantial change from the purpose and intent of the original FEA 16(d). In addition, the Commissioner finds that the facts upon which the justification for the recommended change rests do not relate at all to the proposal. The record does not contain any facts which would support the reasonableness of or the necessity to prohibit in all instances, fee liability on the part of applicants for fee paid positions.

b. Finding 15 of the Report of the Hearing Examiner substantiates the necessity for clarification of an applicant's obligations with respect to the 90 day time period. That clarification, however, can be provided through the addition of several words to the department's proposed rule without the necessity of adding new language as contained in Finding 15(b). The addition of the words "because of refunds to the employer" as contained in the regulations as adopted, provide that necessary clarification. This change is consistent with the Hearing Examiner's recommendation and does not change the thrust or effect of the existing rule but merely provides clarification thereto.

4. The reasonableness of the rules as proposed by the department are supported by the testimony of representatives of the Employment Agency Advisory Council, the Board of Directors of the Minnesota Employment Agencies Association and the Governmental Affairs Division of the Minnesota Employment Agencies Association. Transcript, at 22-23.

ORDER

IT IS HEREBY ORDERED, that the rules as originally proposed and as published in the State Register August 8, 1977, be adopted with the following amendments made thereto:

A. The proposed FEA 29 is amended to conform to the Findings adopted herein as follows:

> An agency may not demand any money from an applicant on a fee paid or split fee position after 90 calendar days of employment because of refunds to the employer. Fees may be charged (because of refunds to the employer) to applicants who voluntarily leave or are terminated due to misconduct within 90 calendar days of employment on a fee paid or split fee position, provided the applicant contract fully explains the nature of the liability.

This amendment to the proposed rule is based upon the concerns expressed in the record which are found in the Report of the Hearing Examiner at page 5, paragraph 15(a) and (b) and reflects the present status of applicant liability under existing rules and administrative interpretation thereof.

Dated: 12/16/77

E. I. MALONE, Commissioner

LI-78-001-PE

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OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules of the Labor Standards Division, Department of Labor and Industry, Governing Employment Agencies.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Monday, September 12, 1977 in Room 81, State Office Building, St. Paul, Minnesota.

Jon Murphy, Special Assistant Attorney General, Fifth Floor, Space Center Building, appeared as counsel on behalf of the Department of Labor and Industry. Kurt Pinke, Director of the Labor Standards Division, testified on behalf of the Department in support of the proposed rules. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department of Labor and Industry shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On July 13, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On August 8, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 187.

3. On August 11, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On August 16, 1977, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through September 22, 1977 for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 184.24, subd. 1 (1976), and 175.171, subd. 2 (1976).

7. The proposed amendments to FEA 1 are necessary to comply with a recent statutory amendment to Minn. Stat. §§ 184.38 (see Minn. Laws 1977, Ch. 220) which provides that the three-day withdrawal period applies to any applicant, regardless of who is to pay the fee.

8. The proposed amendment to FEA 3 is necessary to eliminate discriminatory pronouns.

a. Gordon L. Lee, President of Secretarial Placement, Inc., commented on FEA 3 as follows:

> The proposed change of FEA 3 would delete the words "has stated that he" which perhaps is attempting to eliminate sex bias in the language. However, by also eliminating the words "has stated", the side effect is to open the door to referrals where the employer may not realize, at the onset, that a negotiated fee arrangement is intended. Likewise, it can also confuse applicants who believe they will negotiate a 100 percent fee payment by the employer.
>
> Worst of all, it could possibly entice a Counselor to knowingly arrange a so-called "negotiated fee" referral where both parties simultaneously are led to believe the fee can be negotiated entirely in their favor.
>
> The proposed language of FEA 3 also uses the wording "will confer to settle the matter of fee responsibility prior to acceptance of a job." It would seem desirable, however, that both employer and applicant understand and accept a negotiated fee arrangement prior to any referral to an employer. This would eliminate the possibility of surprises by either party whether unintended or otherwise.
>
> In view of the above, better language for FEA 3 would seem to be as follows:
>
> > "FEE NEGOTIABLE" means that the employer has stated that they will confer with the applicant to settle the matter of fee responsibility and the applicant is fully informed of this arrangement prior to being referred to the employer."

Allan L. Tschida, President of Salesearch, Incorporated, submitted a comment which concurred with Mr. Lee's "prior to referral" suggestion.

9. The proposed amendment to FEA 7 is necessary to eliminate confusion on enforcement questions by adding the requirement of physical presence in the state.

10. The proposed amendment to FEA 8 strikes the word "Board" and replaces it with Council pursuant to recent statutory agency name changes. (See Minn. Laws 1975, Ch. 271)

11. The proposed amendment to FEA 13 is necessary to make the rule consistent with FEA 10 and 45 which regulate the use of agency names. It is also needed to assure that possible claimants against a bond will be satisfied and not thwarted because of an unknown name change.

12. The proposed amendments to FEA 16 are necessary to spell out the potential flexibility in applicant contracts as long as the language is less restrictive to the applicant. FEA 16(c) is changed to clarify the extent of an applicant's liability and the language regarding fee disputes. FEA 16(d) is being rewritten as FEA 29.

13. The proposed amendments to FEA 22(c) are necessary to clarify the intent of the present language so that agents will better understand the effect and enforcement of the rule.

a. Gordon Lee commented on FEA 22(c) as follows:

> The proposed change of FEA 22 states "If employment is changed for <u>any</u> reason prior to the end of the first <u>year</u>. . . etc." Presumably this would include <u>voluntary</u> terminations which are not under the control of the agency. In effect, it forces the agency to attempt to guarantee <u>tenure</u> of employment (which obviously cannot be done) rather than to guarantee <u>performance</u> (which can be evaluated in much less than a year).
>
> Better language for FEA 22 would be:
>
> > "For positions where income is based totally or partially on commissons or bonuses, the agent may assess a fee based on a reasonable estimate of the applicant's expected first year's earnings. If employment is involuntarily terminated prior to the end of 90 days, the fee shall be recomputed at the rate applicable to the actual gross earnings as listed on the agent's fee schedule."

b. Allan Teschida commented on FEA 22(c) as follows:

> Since the rules and regulations relating to fee employment agencies are designed as a vehicle for consumer protection, the proposed FEA 22(c) should specify its application to applicant paid fees <u>ONLY</u>. The proposed change is unclear and could infringe on the free enterprise rights of one Company doing business with another Company (100% Employer Paid Fees) which is not the intent of consumer protection.

c. Beverly S. St. John and Lois James, owners and managers of Snelling & Snelling Employment Service, submitted the following comment regarding FEA 22(c):

> On the proposed FEA 22(C) we would ask that you substitute the following:
>
> For positions where income is based totally or partially on commissions or bonuses, the agent may assess a fee based on a reasonable estimate of the applicant's expected first year's earnings. If employment is terminated for any reason prior to the end of the 90 days, the fee shall be recomputed at 1/90th of the regular fee for the position

accepted for each day of the employment period up to and including 89 days.

Our rationale is that 90 days is reasonable for a guarantee period and regarding fee - the words "regular fee" would govern as to the amount actually owed.

We also believe very strongly that the shortest contract is the most fair to the consumer. The longer the contract - the less understanding on the part of the consumer. We would appreciate certainly no further "necessary terms" on the face of the contract itself. Our applicants were happier when our contracts were shorter.

14. The proposed amendment to FEA 27 is necessary to eliminate discriminatory pronouns.

15. Proposed new FEA 29 is a rewritten version of present FEA 16(d). The intent and substance of the new version is the same; however, the change is necessary to clarify the implementation for both agencies and applicants.

a. Snelling and Snelling commented as follows on FEA 29:

Regarding the old FEA 16(d) that is being changed to FEA 29: Our agency staff feels that the proposed change is very misleading. Our interpretation of the first sentence (An agency may not demand any money from an applicant on a fee paid or split fee position after 90 days of employment.) is that an applicant could easily misconstrue this to mean that if the applicant has not paid their portion of a split fee before the 90 days are over, then he/she is no longer obligated to pay the balance. We would suggest that some wording such as the first sentence of the old 16(d) be used to clarify the intent of this rule.

b. Gerald H. Otten, owner and manager of Employment Service, commented on FEA 29 as follows:

The only comment I have relates to FEA 29. I assume your intent is to prevent an agency from charging a fee to an applicant where they have run into a problem collecting from the company. I agree with that concept, but it would also affect the applicant who was paying their fee in installments and would force the agency to collect in 90 days. The first sentence might be substituted with: <u>No agency may demand any money from an applicant on a fee paid position. On a split fee position, the applicants portion of the fee must be determined at the time of acceptance, after which the agency cannot demand additional money</u>.

I belive this resolves the point I mentioned and also tightens the language relative to both fee paid and split fee positions.

16. The proposed amendments to FEA 44 and 57 are necessary to eliminate discriminatory language.

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Labor and Industry. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonbleness of its proposed action with an affirmative presentation of facts."

3. Mr. Lee's concerns regarding FEA 3 (see Finding 8a) have merit and should be considered by the Department. The Examiner suggests the following "hybrid" language: "'FEE NEGOTIABLE'" means that the employer has stated that the matter of fee responsibility will be settled with the applicant prior to the acceptance of a job and the applicant is fully informed of this arrangement prior to being referred to the employer." The Examiner concludes that FEA 3 be amended as set forth above.

4. The Examiner concludes that proposed FEA 22(c) is reasonable; however, the Department should consider the proposals submitted in Findings 8a and c as the Examiner concludes that they are also reasonable alternatives. The Examiner does not have enough evidence on which to base a conclusion on the suggestion set out in Finding 8b.

5. The Examiner concludes that proposed FEA 29 be amended as set out in Finding 15b for the reasons stated therein.

6. The Examiner concludes that the Department has documented its statutory authority to promulgate the proposed rules and the the need for and reasonableness of the proposed rules have been demonstrated by an affirmative presentation of facts.

7. The Examiner concludes that the amendments he is suggesting to the proposed rules make the rules more reasonable and none constitute a substantial change.

Based upon the foregoing Conclusions, the Examiner makes the following:

RECOMMENDATION

That the Department of Labor and Industry adopt the proposed rules as recommended to be amended in this Report. See Conclusions 3 and 5.

Dated this 20th day of October, 1977.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules of the Labor Standards Division, Department of Labor and Industry, Governing Employment Agencies.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the State Office Building, Room 81, St. Paul, Minnesota 55155, on September 12, 1977, commencing at 9:00 a.m., and continuing until all representatives of associations or interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Peter C. Erickson, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104 (296-8118), either before the hearing or within five (5) working days after the close of the hearing unless the hearing examiner orders a longer period of time which may not exceed twenty (20) days.

The proposed rules, if adopted, would amend the existing rules and regulations relating to fee employment agencies. Present rules and regulations have not been changed or revised since December, 1974. The purpose of the proposed rules is to eliminate duplications and conflicts currently existing between Minn. Stat. § 184 (1977) and the current rules and regulations. In addition, their purpose

is to clarify the existing rules and to eliminate unnecessary and confusing language contained therein. The specific rules to which amendments or language changes are proposed are Fee Employment Agency Rules and Regulations, FEA 1, 3, 7, 8, 13, 16, 22, 27, 44, and 57. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Department of Labor and Industry, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies of the proposed rules will be available at the door on the day of the hearing.

These rules are proposed pursuant to the authority vested in the Department of Labor and Industry by the provisions of Minn. Stat. § 184.24, Subd. 1 (1976), and Minn. Stat. § 175.171, Subd. 2 (1976). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, Subd. 11 (1976) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Date: 7/12/77

E. I. Malone

E. I. MALONE, Commissioner
Department of Labor and Industry

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE LABOR STANDARDS DIVISION, DEPARTMENT OF LABOR AND INDUSTRY GOVERNING EMPLOYMENT AGENCIES.

STATEMENT OF NEED

The above-captioned rules are amendments to existing rules governing fee employment agencies and are proposed pursuant to the authority provided the department under Minn. Stat. § 184.24, subd. 1 (1976) which requires the department to make all rules and regulations, not inconsistent with law, needed in performing its duties. The last time rules were promulgated on this subject matter was in December, 1974. Since that time, amendments have been made to the statutory provisions and, the department has found that several existing rules cause confusion for both applicants and employment agencies and are in need of clarification. The amendments as proposed compliment the amended statutory provisions and are needed to clarify the present rules.

The experience of the Department of Labor and Industry in regulating and administrating the provisions of Minn. Stat. § 184.21, et seq. (1976) has apprised it of various situations which necessitate clarification and consistency. Working in harmony with the Employment Agency Advisory Board and through correspondence with individual agencies, the department finds that the proposed amendments are needed to provide clarification and consistency to the

operations of the individual agencies within the employment agency industry and in essence, facilitate the administration and regulation of that industry. In addition, Minn. Laws 1977, ch. 220 added an additional subdivision to Minn. Stat. § 184.38. The department finds it necessary to amend its rules in accordance with the provisions of that amendment.

In sum, the adoption of the proposed rules are necessary to fulfill the department's obligations and duties under Minn. Stat. § 184.24 (1976).

E. I. Malone

E. I. Malone, Commissioner

Dated: 7-12-77

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF LABOR AND INDUSTRY

In the matter of the Proposed Adoption of Rules of the Labor Standards Division, Department of Labor and Industry, Governing Employment Agencies.

AFFIDAVIT OF ACQUISITION OF MAILING LIST

Jacki K. Brueggeman, being duly sworn on oath deposes and says:

1. I am a representative for the Department of Labor and Industry, State of Minnesota.

2. On the 9th day of August, 1977, I went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. § 15.0412.

3. That on the 9th day of August, 1977, in response to the above request, the Secretary of State provided me with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Jacki K. Brueggeman

Subscribed and sworn to before me this 9th day of August, 1977.

Joy G. Bergh

Notary Public

JOY G. BERGH
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires May ,18 1983

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE)
LABOR STANDARDS DIVISION,)
DEPARTMENT OF LABOR AND)
INDUSTRY, GOVERNING EMPLOYMENT)
AGENCIES.)

CERTIFICATE OF DELIVERY:
SECRETARY OF STATE LIST

I hereby certify that the attached 499 labels and 9 pages constitute the complete list of persons, associations, and other interested groups who as of 8:45 o'clock A.M., this 9th day of August, 1977, have requested pursuant to M.S. 1976, Sec. 15.0412, that their names be plased on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe

SECRETARY OF STATE
JOAN ANDERSON GROWE

By Cheri L. Mattson

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

In the matter of the Proposed Adoption of Rules of the Labor Standards Division, Department of Labor and Industry, Governing Employment Agencies.

AFFIDAVIT OF MAILING

ROBERT D. FRY, being first duly sworn, deposes and says:

That on the 11th day of August, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, true and correct copies thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Robert D Fry

Subscribed and sworn to before me this 11th day of August, 1977.

JACALYN K. BRUEGGEMAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires May 18 1983

Jacalyn K. Brueggeman
Notary Public

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE LABOR STANDARDS DIVISION, DEPARTMENT OF LABOR AND INDUSTRY, GOVERNING EMPLOYMENT AGENCIES.

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, and in support of that statement, the Department of Labor and Industry will call one or more of the following witnesses to testify to the reasonableness and need of the proposed amendments:

1. Kurt Pinke, Director, Labor Standards Division Department of Labor and Industry
2. Paul Schrepfer, Fee Employment Supervisor, Labor Standards Division, Department of Labor and Industry

A summary of the evidence to be presented is contained on the attached Exhibit 1 which is incorporated herein by reference.

The department intends to cite the following laws:

1. Minn. Stat. § 184.21 et seq. (1976);
2. Fee Employment Agency Rules, FEA 1 through 54;
3. Minn. Laws 1977, ch. 220.

Dated: 7-15-77

E. I. Malone

E. I. Malone, Commissioner

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE LABOR STANDARDS DIVISION, DEPARTMENT OF LABOR AND INDUSTRY, GOVERNING EMPLOYMENT AGENCIES.

CERTIFICATE OF COMPLIANCE

I, Jon K. Murphy, Special Assistant Attorney General for the State of Minnesota, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated:

JON K. MURPHY
Special Assistant
Attorney General

DEPARTMENT OF LABOR AND INDUSTRY

Rules and Regulations as adopted

Labor Standards Division

(Fee Employment Agencies)

A. The following rules are adopted pursuant to the authority contained in MS 184.24-Subdivision 1.

FEA 1 Accept. Accept means that the applicant has agreed with the employer on a specific position, wages, hours, working conditions and a specific starting date and has signed an acceptance form in which the agency has designated the terms of the acceptance. Within three weekdays of signing the acceptance form, excluding Saturday, Sunday and legal holidays, the applicant may withdraw the acceptance by notifying the agency in writing, provided that the applicant did not actually start the job.

FEA 3 (e) "FEE NEGOTIABLE" means that the employer and the applicant will confer to settle the matter of fee responsibility prior to the acceptance of a job.

FEA 7 Persons to be Licensed. An employment agency license shall be obtained by any individual or entity whose agents physically operate in Minnesota as described in MS 184.21, Subdivision 2, irrespective of whether such operations are on a short-term or a transient basis.

FEA 8 Examination by Department. The department shall examine the recruitment, search, counseling, and/or placement activities of a business in order to determine whether an employment agent's license shall be obtained. After considering its findings and any recommendations of the Employment Agency Advisory Council, the department shall decide whether an employment agency

license shall be required.

FEA 13 License Endorsement. An employment agent shall return to the department within five calendar days the license of any manager or counselor who leaves the employ of that agent. An employment agent requesting consent to change the name or address provided on the license shall return the license to the department for endorsement no less than 10 calendar days prior to the requested date of change, along with a new bond or bond rider covering the change.

FEA 16 Fee Information on Contracts. Applicant contracts shall contain all of the following statements unless language less restrictive to the applicant is approved by the department.

FEA 16 (c) I understand that only one fee is payable for a position. If I am referred to the same position by two agencies, the fee shall be due the agent who first described the specific opening and gave the name of the employer, provided the interview with the employer is arranged by the agent within 10 calendar days and is subsequently consummated.

FEA 16 (d) Effective December 1974 is repealed.

FEA 16 (d) I understand that if the agency sends an employer my resume and I contact that employer on my own before being notified of the agency contact, I am not obligated to the agency for a fee unless I specifically request that the agency pursue this particular contact.

FEA 22 (c) For positions where income is based totally or partially on commissions or bonuses, the agent may assess a fee based on a reasonable estimate of the applicant's expected first years earnings. If employment is terminated

FEA 27 Two Referrals to Same Employer. When an applicant is referred to an employer for a position to which he or she is not employed, and another agent refers the same applicant to the same employer for another position to which he or she is employed, the fee is payable to the second agent.

FEA 29 An agency may not demand any money from an applicant on a fee paid or split fee position after 90 calendar days of employment. Fees may be charged, however, to applicants who voluntarily leave or are terminated due to misconduct within 90 calendar days of employment on a fee paid or split fee position, provided the applicant contract fully explains the nature of the potential liability.

FEA 44 Display of Licenses. ~~Each manager or counselor shall display his license in a conspicuous place on or near his desk.~~

FEA 44 Display of Licenses. Each manager or counselor license shall be displayed in a conspicuous place on or near the individual's desk.

FEA 57 Initiating the Contested Case

(a) Initiation by complaint

(1) Any person authorized by law to submit to the department a complaint that his or her individual rights or privileges are being denied or that duties owed ~~him~~ are being defaulted upon may initiate a contested case by filing a complaint.

(2)(iv) Signature of the complainant or the complainant's attorney.

APPROVED AS TO FORM AND LEGALITY

FEB 6 78 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Michael B Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 6 - 1978
Joan Anderson Growe
Secretary of State

3:00 PM

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EXHIBIT 1

RATIONALE

FOR THE PROPOSED CHANGES IN THE

RULES AND REGULATIONS

RELATING TO FEE EMPLOYMENT AGENCIES

FEA 1 — This change is necessary in order to coincide with the recent statutory addition - MS 184.38, Subd. 19.

FEA 3 (3))
)
27)
) Eliminate use of the words he and his
44)
)
57)

FEA 7 — This addition would eliminate confusion on enforcement questions. Many feel that we cover agencies located in other states who advertise or make telephone contacts within Minnesota.

FEA 8 — All "Boards" were previously changed to "Councils" by statute.

FEA 13 — We must also approve changes in agency names. This is not currently provided by the existing language.

FEA 16 — The current regulations provide that all agencies charging an applicant a fee must utilize the language provided verbatim. Many agencies, however, have been desirous of using language much less restrictive and much more favorable to the applicant. We have informally approved such requests in the past, but feel the regulations should spell out the potential flexibility.

FEA 16 (c) — The 1971 Regulations included a phrase which was inadvertently deleted from the 1974 Regulations: "Only one fee is payable for a position." This makes it easier for the applicant to understand the extent of his liability. The second addition is needed to help clarify the definition for fee disputes.

FEA 16 (d) Deleted and rephrased to be inserted as FEA 29. This change is being propcsed to eliminate misunderstandings for both agencies and applicants. Many feel that the inference is that they will be automatically charged a fee if they leave prior to 90 days. Since the department's stance is that all potential liabilities be fully spelled out on the contract, we feel that it is imperative that the regulation be completely revised and stricken as a piece of required language on the contract.

FEA 22 (c) The current language does not clearly demonstrate the additional protection being offered individuals accepting commissioned positions. Problems with entry level sales and management positions would be greatly reduced by adopting the proposed change.

FEA 29 See FEA 16 (d).

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules of the Labor Standards Division, Department of Labor and Industry, Governing Employment Agencies.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the State Office Building, Room 81, St. Paul, Minnesota 55155, on September 12, 1977, commencing at 9:00 a.m., and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Date: 7/12/77

E. I. Malone

E. I. MALONE, Commissioner
Department of Labor and Industry

DEPARTMENT OF LABOR AND INDUSTRY

Proposed Rules amending Department of Labor and Industry

Rules and Regulations Relating to

Labor Standards Division

(Fee Employment Agencies)

A. The following rules are amended pursuant to the authority contained in MS 184.24-Subdivision 1.

FEA 1 Accept. Accept means that the applicant has agreed with the employer on a specific position, wages, hours, working conditions and a specific starting date and has signed an acceptance form in which the agency has designated the terms of the acceptance. Within three weekdays of signing the acceptance form, excluding Saturday, Sunday and legal holidays, the applicant may withdraw the acceptance by notifying the agency in writing, provided that the applicant did not actually start the job. ~~The three day withdrawal period does not apply if the total fee is paid directly to the agency by the employer.~~

FEA 3 (e) "FEE NEGOTIABLE" means that the employer ~~has stated that he~~ and the applicant will confer to settle the matter of fee responsibility prior to the acceptance of a job.

FEA 7 Persons to be Licensed. An employment agency license shall be obtained by any individual or entity whose agents physically operate in Minnesota as described in MS 184.21, Subdivision 2, irrespective of whether such operations are on a short-term or a transient basis.

FEA 16 (d) ~~I understand that if I voluntarily leave a fee paid or split fee position after 90 calendar days of employment or am terminated at any time for any reason other than misconduct, the agency shall not demand any money from me because of refunds to the employer.~~

FEA 16 ~~(e)~~ (d) I understand that if the agency sends an employer my resume and I contact that employer on my own before being notified of the agency contact, I am not obligated to the agency for a fee unless I specifically request that the agency pursue this particular contact.

FEA 22 (c) ~~Gross income based totally or partially on commissions or bonuses is the average monthly income of the applicant during the twelve months of employment, or during the agreed period of employment. A fee shall be based upon actual gross earnings if employment is terminated before the end of the time fixed in the agreement.~~

FEA 22 (c) For positions where income is based totally or partially on commissions or bonuses, the agent may assess a fee based on a reasonable estimate of the applicant's expected first years earnings. If employment is terminated for any reason prior to the end of the first year, the fee shall be recomputed at the rate applicable to the actual gross earnings as listed on the agent's fee schedule.

FEA 8 Examination by Department. The department shall examine the recruitment, search, counseling, and/or placement activities of a business in order to determine whether an employment agent's license shall be obtained. After considering its findings and any recommendations of the Employment Agency Advisory ~~Board~~ Council, the department shall decide whether an employment agency license shall be required.

FEA 13 License Endorsement. An employment agent shall return to the department within five calendar days the license of any manager or counselor who leaves the employ of that agent. An employment agent requesting consent to change the name or address provided on the license shall return the license to the department for endorsement no less than 10 calendar days prior to the requested date of change, along with a new bond or bond rider covering the change.

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