

**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

December 2, 1969

Honorable Tommy V. Smith  
Commissioner  
Bureau of Labor Statistics  
Capitol Station  
Austin, Texas 78711

Opinion No. M-526

Re: Whether, pursuant to Article 5221a-6, Vernon's Civil Statutes, as amended, the Texas Private Employment Agency Regulatory Board may issue a private employment agency license to a corporation, and related question.

Dear Mr. Smith:

Your recent letter requesting the opinion of this office concerning the referenced matter states, in part, as follows:

"1. Under ... (the provisions of Article 5221a-6, Vernon's Civil Statutes, as amended), can (the Texas Private Employment Agency Regulatory Board) ... issue an employment agency license to a Corporation?"

"2. If a license can be issued to a Corporation, who would qualify for the Operator's License (provided for in Article 5221a-6, supra)?"

Article 5221a-6, supra (hereinafter referred to as "the Article"), formerly known as the Private Employment Agency Law, was amended by House Bill Number 169 (Acts 61st Leg. R.S. 1969, ch. 871, p. 2625).

Section 1(a) of the Article defines "person" as follows:

"The term 'person' means an individual,

partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver." (Emphasis added.)

Section 1(e) of the Article defines "private employment agency" as follows:

"...any person, place or establishment within this state who for a fee or without a fee offers or attempts, either directly or indirectly, to procure employment for employees or procures or attempts to procure employees for employers . . . ." (Emphasis added.)

Section 1(h) of the Article states that the term "operator" shall mean:

". . . the individual or individuals who have the responsibility for the day-to-day management, supervision and conduct of a private employment agency; . . . ." (Emphasis added.)

Section 4 of the Article sets forth the procedure for applying for a private employment agency license as follows:

"Applications for license to maintain and operate a private employment agency shall be made by a licensed operator and shall be accompanied by a fee of \$150 . . . ." (Emphasis added.)

The requirements for obtaining an operator's license are found in Section 5(a) of the Article, which provides:

"Application for a license as an operator may be made by and shall be issued to any person who (1) is a citizen of the United States, (2) has been a resident of the State of Texas for one year next preceding

the filing of said application, (3) is of good moral character, (4) has never been convicted of an offense involving moral turpitude, and (5) successfully passes the examination prescribed herein." (Emphasis added.)

A summary of the foregoing quoted provisions of the Article reveal that: (a) the definition of "person" includes corporations; (b) a "person" may not obtain a private employment agency license unless an operator's license has first been obtained; and (c) while an operator's license may be issued to a "person", that "person" must meet all of the requirements of Section 5(a), supra.

The general rule as to the right of a corporation to be licensed to engage in a profession or occupation is summarized in textual statement as follows:

"Whether, apart from charter limitations, if any, a corporation may be licensed to act in a trade or business, such as auctioneering, the brokerage business, embalming, selling liquors, etc., is largely, or wholly, a matter of the terms and construction of the licensing statutes. Statutes are frequently so drawn as to indicate that the draftsman had principally in mind the licensing of individuals, notwithstanding which they have often been construed as extending to corporations, even in some instances where important provisions were completely inapplicable to corporations." 19 Am.Jur.2d 508-09, Corporations, Sec. 1052.

For examples of cases where the statement in the last sentence of the preceding quoted paragraph has been applied by courts to various businesses, see 165 A.L.R. 1098 (1946).

Clearly, a corporation as such cannot qualify for an operator's license under the wording of Section 1(h), which limits the responsibility to the "individual".

We are of the opinion, however, that an individual who possesses an operator's license obtained pursuant to the provisions of Section 5(a), supra, and who is a duly authorized officer or agent of a corporation may apply, on behalf of that corporation, for a private employment agency license, and that such license may be granted to the corporation under those circumstances.

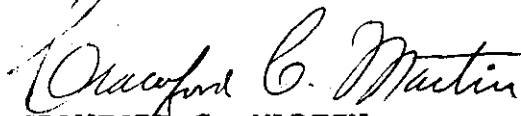
As for your second question, an individual meeting all of the requirements of Section 5(a) of the Article would qualify for an operator's license.

S U M M A R Y

(1) The Texas Private Employment Agency Regulatory Board, pursuant to Section 4 of Article 5221a-6, Vernon's Civil Statutes, as amended, may issue a private employment agency license to a corporation, providing the individual applying for said license on behalf of a corporation has obtained an operator's license pursuant to the provisions of Section 5(a) of Article 5221a-6, Vernon's Civil Statutes.

(2) An individual meeting all the requirements of Section 5(a) of Article 5221a-6, Vernon's Civil Statutes, is qualified for an operator's license.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Austin C. Bray, Jr.  
Assistant Attorney General

Honorable Tommy V. Smith, page 5 (M-526)

APPROVED:  
OPINION COMMITTEE

Kerns Taylor, Chairman  
George Kelton, Vice-Chairman  
Bill Allen  
Monroe Clayton  
Z. T. Fortescue  
A. J. Gallerano

MEADE F. GRIFFIN  
Staff Legal Assistant

NOLA WHITE  
First Assistant