



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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September 29, 1975

The Honorable Jackie W. St. Clair
Commissioner, Department of
Labor and Standards
P. O. Box 12157
Austin, Texas 78711

Opinion No. H- 699

Re: Whether executive search
firms are private employment
agencies for purposes of article
5221a-6.

Dear Commissioner St. Clair:

You have requested our opinion regarding whether executive search firms are private employment agencies for purposes of article 5221a-6, V. T. C. S. You state that executive search firms contract with employers to secure prospective employees to interview for executive positions. Generally, such firms do not advertise in the public media. A fee is usually charged to the prospective employer at an hourly rate or on some other basis which does not include the contingency factor that prospective employees actually be hired by the contracting company.

A "private employment agency" is defined in section 1(e) of article 5221a-6 as:

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, except as hereinafter exempted from the provisions hereof.

No exemption is specifically applicable to executive search firms.

On the basis of the facts which you have indicated, we cannot avoid the conclusion that executive search firms are private employment agencies within the meaning of section 1(e), since such firms "procure or attempt to procure employees for employers." So long as a significant portion of the activity of a particular firm involves the procuring of or the attempt to procure employees for employers, such firm must be deemed to fall within the regulatory ambit of the statute. In our opinion, however, a management consultant firm which merely occasionally matches an employee with an employer does not thereby qualify as an "executive search firm." As the Court of Appeals for the Eighth Circuit stated in Telex Corporation v. Balch, 382 F. 2d 211, 219 (8th Cir. 1967):

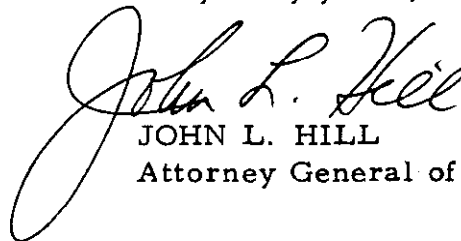
[w]hen a state enacts regulatory provisions governing a specified business, isolated or individual transactions are generally not prohibited.

On the other hand, a management consultant firm which performs a diversified group of functions is not, by sole reason of that diversification, excluded from coverage of the Act. The ultimate determination requires a resolution of factual questions.

SUMMARY

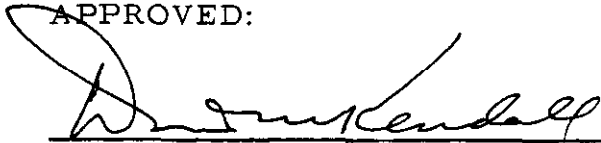
So long as a significant portion of its activity involves the procuring of or the attempt to procure employees for employers, an executive search firm is a private employment agency for purposes of article 5221a-6, V. T. C. S.

Very truly yours,

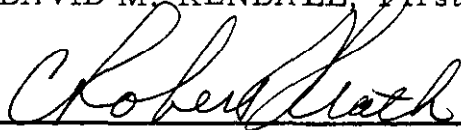


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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