



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 11, 1975

ATTORNEY GENERAL OPINION NO. 75- 288

Mr. J. A. McGlothlin
Acting Commissioner of Labor
Department of Labor
401 Topeka Avenue
Topeka, Kansas 66603

Re: Employment Agencies--Licensure

Synopsis: Lincoln National Career Development Corporation must, under the facts and circumstances set forth herein, be licensed under K.S.A. 44-401 *et seq.* to operate in the State of Kansas.

* * *

Dear Acting Commissioner McGlothlin:

You inquire concerning the application of K.S.A. 44-401 to -411 to Lincoln National Career Development Corporation, a wholly-owned Indiana corporate subsidiary of Lincoln National Corporation.

You enclose a letter dated June 25, 1975, addressed to your office from Lincoln National Life Insurance Company, signed by a vice-president thereof, advising that the Career Development Corporation will provide centralized personnel services to its affiliated companies, the principle of which is The Lincoln National Life Insurance Company. The staff of Career Development Corporation is to perform personnel functions analogous to those now performed by the Personnel Department of Lincoln Life. The former corporation will provide a wide range of personnel services, including employee recruitment under the supervision of a regional director located in Fort Wayne, Indiana. Its recruiting activity will be confined to the seeking of life insurance agents and management personnel, and neither the Corporation nor the recruiters will make final employment decisions.

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No fees or other charges will be paid by a candidate for a position. The Corporation will receive reimbursement from its affiliates for expenses incurred in seeking candidates who are finally accepted for employment.

K.S.A. 44-401 commences thus:

"No person, firm or corporation of this state shall open, operate and maintain an employment agency or office to furnish persons seeking to be engaged in manual labor, clerical, industrial, commercial or business pursuits, and to secure employment for such described persons or where a fee, commission or other consideration is charged to or exacted or received from applicants for employment, without first obtaining a license for the same from the state labor commissioner."

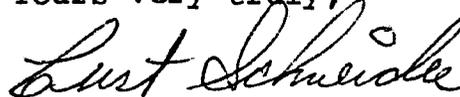
The office proposed to be operated by Lincoln National Career Development Corporation is not an "employment agency" as that term is conventionally used. It does propose, however, to operate an "office to furnish persons seeking to be engaged in . . . commercial or business pursuits," to a potential employer, to recruit and screen applicants, and to introduce potential employees to a potential employer, i.e., "to secure employment for such described persons" with other employers, principally Lincoln National Life Insurance Company, and other affiliated corporations. The fact that no fees are proposed to be paid by applicants is not legally determinative. The phrase "where a fee, commission or other consideration is charged . . . or received from applicants for employment" is stated in the disjunctive, as an alternative or supplemental condition upon which licensing is required. Often, conventional employment agencies receive fees not from applicants for employment, but from employers with whom such applicants are finally placed and employed. Nor is it legally determinative that neither Career Development Corporation nor its recruiters will make final employment decisions. Conventional employment agencies are not, of course, in the business of making employment decisions, but of bringing potential employees together with potential employers, the latter free to make employment decisions as they deem fit. Career Development Corporation is in that respect not at all unlike conventional employment agencies.

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The operations of Career Development, thus, appear to be precisely those defined by K.S.A. 44-401, for which a license is required. The remaining question is whether the purposes for which the licensing requirements were enacted are consistent with the application of those requirements to Career Development. K.S.A. 44-403 requires the filing of a rather modest bond conditioned upon compliance with the provisions of the act. K.S.A. 44-408 prohibits the making of any false or fraudulent notice or advertisement, or any false information or false promise concerning or relating to work or employment to any person who shall apply for employment. While we have no question or reservation concerning the integrity of Career Development and its affiliates, it is certainly consistent with the purposes of the licensing act that the protections which it extends to applicants for employment dealing with agencies and offices which bring such applicants together with potential employers for the purposes of securing employment also be extended to persons seeking employment who apply to or are recruited by Career Development for potential employment as life insurance agents and management personnel with other employers, notwithstanding such other employers are corporate affiliates of Career Development.

The proposed activities of Lincoln National Career Development Corporation fall within the letter of the act, and although it may not be the kind of undertaking to which drafters of the act envisioned its application, it is certainly within both the letter, and not clearly without the spirit of the act. In such circumstances, we have scant grounds for narrowly construing the act, clearly remedial in its purpose, so as to exclude activities and offices which fairly fall within its scope. Accordingly, we cannot but conclude that the corporation in question is required to be licensed under the act.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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