

# TEXAS DEPARTMENT OF LICENSING AND REGULATION



Executive Director's Office  
P.O. Box 12157 Austin, Texas 78711 (512)463-3173 FAX (512)475-2874

August 13, 1997

The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711

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Opinion Committee

via INTERAGENCY MAIL

FILE # ML-39723-9  
I.D.# 39723

Attn: OPINION COMMITTEE

Re: Personnel Employment Services (PES) Act, Article 5221a-7 V.T.C.S. interpretation of "Management Search Consultant" definition

Dear General Morales:

The Texas Department of Licensing and Regulation, under Article 5221a-7 V.T.C.S., regulates Personnel Employment Services.

Section 2(b) of Article 5221a-7 exempts Management Search Consultant firms from the bond and registration requirements under Section 7 of the Act. Your office has determined that Management Search Consultant firms are exempted from registration requirements, but not other regulatory aspects under Article 5221a-7. DM-36, 1991.

Management Search Consultant firm is defined as:

"a personnel service that is retained by, *acts solely on behalf of*, and is compensated only by an employer and that does not collect directly or indirectly any fee from an applicant on account of any service performed by the personnel service." Section 1 (11) emphasis added.

The "acts solely on behalf of the employer" appears to contradict the latter portion of the above definition. The "...on account of any service performed modifies "applicant," therefore contemplates that some type of service will be provided to the applicant.

Under situations where a personnel service is compensated solely by the employer, retained by the employer, but represents both the employer and applicant (provides services to an applicant), does that service fall under the definition of a Management Search Consultant entity?

A majority of the entities who claim licensure exemption under Section 2(b) solicit applicants (job seekers) through advertising and are compensated only by the employer when an applicant is matched with the employer. Since finding employment inures to the benefit of the applicant, are such firms exempt from licensure under the Personnel Employment Services Act?

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And, lastly, if the Management Search Consultant service negotiates a salary between the applicant and employer, must the service act solely on behalf of the employer in order to claim exemption under Section 2(b)?

Attached is the current version of Article 5221a-7 and accompanying administrative rules.

Sincerely,



Tommy V. Smith  
Executive Director/Commissioner

TVS/TL/dm

Enclosures: Article 5221a-7  
16 T.A.C. Chapter 63