The History of California Labor Legislation, 1910-1930.

Chapter X.

The Regulation of Private Employment Agencies

The regulation of private employment agencies began in California in 1903. In that year two acts were passed by the legislature. One of the laws made it illegal to imsrepresent conditions of employment,* and the other prescribed conditions under

*Cal Stats. 1903, pp. 267-270.

which agents might collect fees.* The latter law was amended in

*Cal. Stats. 1903, pp. 14-16

1905 and at that time both of the acts were incorporated into one statute.* The Commissioner of Labor in his report of 1908 com-

*Cal. Stats. 1905, pp. 143-44.
For a complete history of these acts up to 1909 see Eaves, Lucile, History of California Labor Legislation, pp. 346-350.

plained of very bad practices of the employment agencies and requested the legislature to do something by the way of correction. He declared that the law of 1905 was quite ineffective.*

*Report of the Bureau of Labor Statistics, 1908, pp. 148-150.

Acting upon the Commissioner's recommendation two changes were made in the employment agency law in 1909. One amendment provided

that all fines collected should be turned over to the Bureau of Labor Statistics for a contigent fund to aid in enforcement of the Law,* and the other amendment gave to the Commissioner and

*Cal. Stats. 1910, Ch. 89

his deputies all powers of sheriffs to make arrests for violations of the act.* An independent statute was passed the same year providing for the licensing of employment bureaus by the Commissioner of Labor.*

*Cal. Stats. 1909, Ch. 102.

*License fees were fixed as follows:
(1) In Cities of the first and second classes, $50
(2) In Cities of the third and fourth classes, $25
(3) In all other cities and towns, $10
The money collected was to be used by the Bureau of Labor Statistics to aid in enforcing the employment agency laws. (Cal. Stats. 1909, Ch. 120)

It had been contended that the license law would materially aid in regulating the agencies. This contention proved to be true as is shown by the report of the Commissioner two years later. Commissioner Mackenzie stated that "in spite of the obstacles met. ....the employment agencies have been brought well under control, and this is due very largely to the provisions of the license law, granting authority to the Commissioner to issue and revoke licenses"*

*Ibid., 1910, p. 37

The Law of 1913

Although conditions had been materially improved through the 1909 law, the new Labor Commissioner, Mr. John P. McLaughlin,* who was appointed by Governor Johnson in 1911, was far from satisfied. Mr. McLaughlin was convinced that far more stringent regulations were required.

In the report of 1912 he made several recommendations as to how the laws might be amended. He asked that the statutes be changed to provide for a uniform receipting system. The original of each receipt should be given to the person seeking employment and the duplicate be kept on file by the employment agent. On the receipt should be written the amount of the fee charged and the kind of employment furnished.

He also asked that provision be made for the keeping of uniform and complete regusters by employment agents.

Another suggestion was that the agents should be compelled to return all fees when the employees were discharged within one week from the time of employment unless it was stipulated that the employment unless it was stipulated that the employment was for a period of less than one week. "We are satisfied," said Mr. McLaughlin, "That collusion exists between some employment agents and contractors, or their superintendents or forement, but it is practically impossible to prove it."

He further recommended that special provision be made for the

*Mr. McLaughlin was the first real labor representative who had held this office. (See Chapter XIV.)

control of theatrical booking agencies, as these bureaus represented one of the worst forms of abuse in the employment business. "The booking agents should be required to investigate the financial ability of the theaters or managers to pay for the talent furnished. One of the most deplorable conditions that we have encountered in our work has been the stranding of road shows by irresponsible managers. Young girls are left penniless hundreds of miles from home. The moral aspect of such situation is too well known to require any description"*

*Report of Bureau of Labor Statistics, 1912 p. 38.

The Commissioner drafted a comprehensive bill to be presented in the 1913 session of the Legislature. The proposed measure embodied all of the Commissioner's recommendations and would, if enacted, supercede both the old employment agency laws. Organized labor in California endorsed the the proposed bill.* It was introduced in the Senate (S.B. 1413) on February 3, was passed in both branches of the legislature without any great opposition and was signed by Governor Johnson, June 3, 1913.*

*"Report on Labor Legislation", Proceedings of the 14th Annual Convention of the California State Federation of Labor, Oct. 6-11, 1913, p. 95

*Final Calendar of the Legislature, 1913, p. 396.

Although the law of 1913 has been amended several times, it is still (1930) the one important statute regulating private

employment agencies. The orginal act was divided into twenty sections having very detailed phrasing thoughout.* The essential

*Cal. Stats. 1913, Ch. 282.

features were as follows:

Section 1, defined the terms used in the act.

Section 2-8, regulated the licensing and bonding of the employment agencies.*

*The fees were to be the same as those provided for in the act of 1090, i.e. they ranged from $10 to $50 depending upon the size of the city in which the office was located.

Section 9-11 compelled the agents to keep uniform and complete records an issue receipts on forms prescribed by the Bureau of Labor Statistics.

Section 12 provided that a fee should not be accepted unless an actual placement was made, and that when the employment lasted less than seven days, by virtue of discharge, the fee should be returned by the employment agent. The splitting of fees was prohibited.

Section 13 prohibited agencies from publishing false or misleading information regarding employment. If a job were misrepresented, the fees and expenses were to be returned.

Section 14 provided that minors under eighteen years should not be sent to houses of ill-fame, places of amusement or to saloons, etc. for purposes of employment.

Sections 15-16 pertained to the regulation of theatrical agencies.

Sections 17-20 dealt with the penalties and enforcement of the act.

With a law of his own drafting, the Commissioner of Labor tried harder than ever to eliminate the evils of the employment situation. Numerous complaints were filed against the employment agencies. Investigations were made and often the agents were compelled to return fees and expenses to the workers.*

*Report of the Bureau of Labor Statistics, 1914, p.18.

Many people in the state were coming to the realization, however, that working men and women should not be compelled to pay for the chance to get jobs. 1913 and 1914 were years of slack employment in California and the cause of the unemployed was taken into careful consideration by public spirited people. The first step taken by way of correction was the establishment by the Legislature of state free employment bureaus. The same year the state license fee was doubled for agencies in cities of the fourth class and above.** These free bureaus were established in 1915.*

*See Chapter XI.
**Cal. Stats. 1915 Ch. 551. Other unemportant amendments were made in the same act.

The next move was initiated by organized labor and was a campaign to drive the private agencies entirely out of the state.

Organized Labor's Attacks on the Private Agencies.

Paul Scharrenberg, in an address before the California State Conference of Social Agencies on June 2, 1916, announced that,

"organized labor in California proposes to abolish all employment agencies operated for profit." He explained that those who could least afford it paid $500,000 annually to employment agents in California for work, and stated that these agencies would have to be driven out before the public bureaus could accomplish much good.*

*Labor Clarion, June 2, 1916, p.13.

A bill was supported by labor in the 1917 session of the legislature which, if passed would have accomplished the desired results.* Before the Assembly committee, labor leaders argued

*Ibid., February 16, 1917, p. 4.

that the men and women of California were robbed by private agencies to the tune of one-half million dollars per annum", that this was "blood money, pure and simple, and had been so regarded by Congress years before when it had been made unlawful to charge any seaman a fee for securing him employment".*

*"Report on Labor Legislation", Proceedings of the 18th Annual Convention of the California State Federation of Labor, October 1-6, 1917, p. 104.

As was to be expected the associated private employment agencies undertook to offset the efforts of the labor group by maintaining a powerful lobby at the Capital. The agencies claimed that labor's efforts to protect men and women seeking work were nothing but a disguised attack on property and legitimate business.

A majority of the Assemblymen voted against the bill and thus the measure was killed.*

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*Final Calendar of the Legislature; 1917, p. 64.

It had been the intention of labor leaders to submit the proposal to a vote of the people via the initiative, but in the latter part of 1917 the whole aspect of the matter was changed by a decision of the Supreme Court of the United States declaring such legislation unconstitutional. A Washington law, prohibiting the collection of fees from workers by an employment agent, had been contested in the courts. The Supreme Court in a 5 to 4 decision held the law unconstitutional as "arbitrary and oppressive", and an undue restriction on the liberty of the appellants, and, therefore, a violation of the fourteenth amendment.*

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*Adams vs. Tanner, 244 U.S. 590, 37 Sup. Ct. 662 (1917)

Instead of continuing the attempt to drive private agencies out of the state, organized labor concentrated all its efforts toward agitating for a law regulating the fees charged by the bureaus.

One of the clauses of the employment agency law of 1903 had prescribed a maximum fee of ten percent of the first month's wages. This clause was invalidated by the California Supreme Court, however the following year.*

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*Ex Parte Dickey, 144 Cal. 234 (1904)

Labor leaders contended that the Federal Supreme Court and many other courts had since that time extended the police powers of the state until it covered many fields which had been considered taboo two decades before. It was believed that the California Supreme Court would reverse the position which its members had taken fourteen years previously.*

*Proceedings of the 20th Annual Convention of the California State Federation of Labor, October 6-10, 1919, p. 121.

A bill sponsored by labor and presented by Assemblyman Goetting in the 1919 Legislature provided for a ten percent limitation of fees charged by private agencies. This measure passed the Assembly, by a vote of 50 against 15, despite bitter opposition. The bill finally failed of passage in the Senate.*

*Final Calendar of the Legislature, 1919, p. 137.

During the same session an attempt was made to eliminate the agencies by raising the state license to a prohibitive figure. A bill (A. B. 1038) having such a provision actually passed both the Assembly and Senate only to receive a pocket-veto by Governor W. D. Stephens.*

*Ibid., p. 295.

At the State Federation of Labor Convention of 1919 President Daniel C. Murphy urged the circulation of an initiative petition, providing for the limitation of fees which might be charged by the

agencies. Mr. Murphy said that the "business" which lived upon "fees" collected from men and women seeking employment should be suppressed.* Accordingly, an initiative measure was drawn up by

*"Report of President", Proceedings of the 20th Annual Convention of the California State Federation of Labor, October 6-10, 1919, p. 73.

the Executive Council of the State Federation of Labor which was duly approved by the convention.* The petition required the signatures of 55,094 registered citizens of California. Through a misunderstanding on the part of some of the affiliated unions in the state, who refused to endorse the proposal, it failed to be placed upon the ballot. The measure lacked the required number of signatures.

Another failure was experienced in 1921 when a bill, with the same provisions as the proposed initiative measure, was defeated in the legislature.*

*Final Calendar of the Legislature, 1921, p. 171.

But the work done by the Federation in calling attention to the rapacious methods of some employment "sharks" was not in vain for during the latter part of 192 1 a great agitation developed in San Francisco regarding the employment agency situation. A number of stenographers, becoming tired of paying "perpetual tribute" to the employment agencies, appealed to the Vigilant Committee of the city.* This committee of women investigated the report which had

*An organization of women brought together to encourage the enforcement of law and the establishment of justice.

been submitted to them by the stenographers. They recognized the injury that was being perpetrated upon the workers of the state and requested the Commonwealth Club of California to assist in the fight against the agencies. As a result, on May 10, 1922, a conference on the subject was called. Invitations to send delegates were forwarded to a large number of organizations within the state, and the conference was well attended by representatives from more than fortycivic, fraternal, social and labor societies.*

*Among the organizations responding were the State Federation of La bor, the San Francisco Labor Council, the Federation of Women's Clubs, the San Francisco Chamber of Commerce, the American Legion, the Industrial Relations Association and the Native Sons.

A plan of action was mapped out at the conference by which it was hoped a successful campaign against the private agencies could be initiate d. Committees were appointed to draft measures for presentation to the legislature, to plan a state-wide publicity campaign and to find ways of strengthening the free public employment service.*

*A good account of the agitation is found in the Labor Clarion, September 1, 1922, pp. 2-6.

After months of painstaking research three bills were prepared and copies printed and forwarded to affiliated organizations of the conference.* The measures were endorsed by organized labor

*Ibid., September 22, 1922, p.3.

throughout the state and a most wholehearted support was promised by the State Federation of Labor and the San Francisco Labor Council.*

*Proceedings of the 23rd Annual Convention of the California State Federation of Labor, Oct. 2-7, 1922, p. 71.

On the 17th of January Assemblyman Fellom introduced the bills (A.B. 84, 85, 86) in the Assembly. Immediately, the employment agencies flooded the Capital buildings with lobyists and likewise did the supporters of the bills send men and women agitators to Sacramento. At public hearings on the measures it was brought out that private employment agents sometimes charged 30, 40 and even 60 percent of the first month's wages of workers. It was claimed that teachers and clerical workers were charged the highest fees. Senator Lyon of Los Angeles was retained as attorney for the agencies. He argued in defense that the agencies performed a valuable service for the people of the state and that they merely made a minimum and legitimate profit from their business. It was also argued that the statute if passed would be declared unconstitutional as counter to the fourteenth amendment.*

*Labor Clarion, March 23, February 23, June 1, 1923.

The bills were passed in the legislature and signed by Governor Richardson on the 18th of June. Labor forces considered

That they had won a great victory.*

*In the Labor Clarion, June 22, 1923, p. 8, the following article appeared:

"A Great Victory"

.....It was a long, stubborn, hard, bitter and most provoking fight, filled with squalls and storms from the beginning, but as these laws will go far toward wiping out grievous abuses that have been crying for correction for many years, one can take a retrospective view of it with considerable satisfaction.

The victory is a most glorious one and big enough so that there is plenty of room for credit to go to every individual and institution that took part in the promotion and advancement of the legislation from the meager beginning to the triumphant end, and there were many of these individuals and organizations. To them is due the thanks of a justice-loving public.

The first of the measures amended sections 11 and 19 of the act regulating private employment agencies and provided, among other things, standard contracts for employment and authorized the Labor Commissioner to prescribe rules and regulations for the enforcement of the various provisions of the act.*

*Cal. Stats. 1923, Ch. 412.

The second measure provided for the establishment of a regular schedule of fees, each agency being at liberty to fix its own schedule, but was required to adhere to same and keep it posted in the rooms of the agency.*

*Cal. Stats. 1923, Ch. 413.

The third bill to become a law fixed a legal limitation on the fees. All occupations were divided into two classes. The first class included domestic and manual employments and the limit

on fees was fixed at 7 per cent of the first month's wages. The second class comprised all other employments, including clerical and professional, and the limit on fees was fixed at 10 per cent of the first month's wages.*

*Cal. Stats. 1923, Ch. 414. This was the amendment which the private employment agencies had objected to so strenuously.

The "Ten Per Cent" Law in the Courts.

The new amendment prescribing a seven-to-ten per cent maximum fee was to become effective August 17, 1923, but an injunction secured by the agencies prevented it from becoming operative, and subsequent litigation resulted in the nullification of the law by the state Supreme Court.

W.W. Payne, operating the Fisk Teachers Agency in Los Angeles, secured a temporary injunction on August 13, 1913, against the Commissioner of Labor, restraining him from enforcing the law pending the determination of the law's constitutionality. The case was tried in the superior court of Los Angeles, with the result that the permanent injunction applied for by the agencies was denied,*

*Judge Paul Burks rendered a "bench decision" on September 14, 1923 in which the legality of the amendment was upheld. Judge Burks decided, however, that "a nisi prius decision in this case will not satisfy the necessities of a situation which, in the interest of the parties and of the public, should be clarified and freed from doubt without unnecessary delay. The questions here involved should be authoritatively determined by our Supreme Court before the next legislature."

but the temporary injunction remained in effect, subject to the determination of the questions involved by the Supreme Court of the

state.

On November 7, 1923, the case was presented to the Supreme Court on a writ of habeas corpus, in an endeavor to get a speedy decision. In the hearings the defense attorneys for the employment agencies attacked the law on the grounds that it was an illegal attempt to interfer with the right of contract, that the proposed regulation of fees was confiscatory in nature and, that if enforced, it would render it impossible for the agencies to conduct their businesses. The Attorney General argued that the amendatory act in question was fully within the police power of the state.

The court, in rendering a decision, cited the Dickey* and the

*Ex Parte Dickey, 144 Cal. 234 (1904).

Children' Hospital* cases and declared that the act was unconstitut-

*Adkins ve. Children's Hospital, 261 U.S. 525, 43 Sup. Ct. 394 (1923).

ional, in contravening the fifth amendment to the United States constitution and sections one and thirteen of article I of the state constitution.*

*In re H.B. Smith, 193 Cal. 337, 223 Pac. 971 (1924).

Four years later the United States Supreme Court decided that a New Jersey fee-fixing law was counter to the fourteenth amendment of the constitution. Justice Sutherland, speaking for a majority of the court, disposed of the case with the following crucial

sentence:"While we do not undertake to say that there may not be a deeper concern on the part of the public in the Business of an employment agency, that business does not differ in substantial character from the business of a real estate broker, ship broker, merchandise broker, or ticket broker".*

*Ribnik vs. McBride, 48 Sup. Ct. 545 (1928).
See "Fee-Fixing Provisions of Private Employment Agency Law Held Unconstitutional" Monthly Labor Review, Vol. 8, pp. 68-72. (July 1928).

In view of both the California and the United States Supreme Courts' recent decisions, the matter seems to have been definitely decided that California cannot fix the fees to be charged by privat employment agencies.

Recent Amendments to the Law of 1913

The Commissioner of Labor has continually tried to improve the law regulating private employment bureaus by having its provisions made more drastic. Upon his recommendation* four amendments were

*Report of the Bureau of Labor Statistics, 1926, pp. 28-29.

enacted by the legislature in 1927.* The more important changes

*Cal. Stats. 1927, Chapters 263, 264, 333 and 334.

were as follows: Chapter 263 made the penalty provision of the act more certain and made the enforcement of the law easier and simpler. Chapter 334 made it maditory for an employment agency to return any fee or deposit immediately in all cases where the applicant did not obtain employment for which the fee or deposit had been

paid. This amendment provided that if the fee in such cases were not returned within forty-eight hours after being demanded, the applicant was entitled to receive double the amount of the fee or sum deposited. Chapters 264 and 333 made only minor changes in the law.

It was reported in 1928 that many labor contractors were in effect operating employment agencies without licenses and without any supervision. The contractors were securing a commission on each man placed in a position and the practice had led to a great many abuses which could not be rectified unless a change were made in the employment agency act.* Accordingly, the following year

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*Report of the Bureau of Labor Statistics, 1928, p. 29.

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the definition of the term "employment agency" was extended so that labor contractors were brought under the scope of the law.*

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*Cal. Stats. 1929, Ch. 89.

The Act Regulating Trade Schools.

A law was enacted in 1919 bringing trade schools under the provision of the employment agency act.*

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*Cal. Stats. 1919, Ch. 421.

Section 1 states, "Any person, firm, association, or corporation who conducts for gain any trade school or classes of instruction for the teaching in whole or in part of any trade, art, science, or occupation requiring special skill, and who, for gain or hire furnishes or agrees to furnish in connection therewith facilities or information to pupils and employers of labor whereby the labor or services of any such pupils are engaged to be employed in the trade, art, science or occupation thus taught at stipulated wages or other valuable consideration, shall be held to conduct a private

employment agency and be subject to all the laws and regulations governing such agencies."

Section 2 relates to exemptions. All public, charitiable, and private business schools are exempted from the provisions of the act.

This statute was made necessary because of the bad practices of certain fake trade schools that collected high tuition fees from students on the strength of promises to secure employment for them after short courses in the schools.

Are the Private Employment Agencies effectively Regulated?

According to Dr. Louis Bloch, Chief Statistician, California Department of Industrial Relations, "The private employment agency act gives the Labor Commissioner regulatory powers under which he has ample authority to prescribe the manner in which the employment agency business should be conducted".*

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*Bloch, Louis, "Employment Agencies in California" American Labor Legislation Review, Vol. 19, (December 1929)/.

The rules and regulations given out by the Labor Commissioner in 1929 pertaining to the private employment agencies of the state may be summarized as follows:*

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*Ibid., p. 365.

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1. All employment agents must be bonded beore they can be licensed by the Labor Commissioner.
2. Jobs sold to applicants must be fully and adequately described on approved uniform receipts or contracts.
3. Registration fees, direct or indirect, are absolutely forbidden.
4. If a deposit is made, or fee paid, for a prospective job which the applicant does not get, the employment agency must return

the deposit or fee, within forty-eight hours; otherwise, it is liable to the applicant for double the amount of the deposit or fee.

5. Splitting fees between employment agents and employers' representatives is strictly prohibited.

6. When an employment agency sends an applicant to a job out of town, and the applicant does not secure the job, the employment agency must repay to the applicant the traveling and other expenses incurred by him.

7. Applicants sent to positions where strike conditions exist must be fully and plainly informed of such conditions in writing.

8. Employment agents are prohibited from placing minors in violation of the state child labor law.

9. Employment agencies must not be operated in connection with lodging houses, restaurants, or pool rooms.

10. Assignments of applicants' unearned wages, to insure the payment of the fee to the agency, are prohibited.

11. Regular reports must be made to the Labor Commissioner regarding the employment agencies' business, such as jobs furnished and and fees collected.

12. All disputes regarding the terms of employment agency contracts must be submitted to the Labor Commissioner, for adjudication.

13. The Labor Commissioner may revoke or suspend a license for violating the employment agency act, and without a license no one may operate a fee-charging employment agency.

14. Schedules of fees for various kinds of jobs must be approved by the Labor Commissioner and then posted in conspicuous places on the agencies' premises. Fourteen days must elapse after the approval by the Labor Commissioner before new schedules may become effective.

All of these regulations are based upon the amended statute of 1913, and are thus ultimately enforceable by the courts.

In spite of the many restrictions placed upon the private employment agencies they are not being driven out of the state as is shown by the accompanying table. It can be seen that the number of agencies licensed in 1930 was not very different from the number licensed twenty years before in 1910. The decrease in the number of agencies in the years 1916 and 1917 is attributable to the inauguration of the state free employment offices in 1916.

Table X

Table showing the Number of Licenses issued to Private Employment Agencies in Cal. each Year, 1910 --- 1930.

Year	No. Licenses	Year	No. Licenses
1910	321	1920	204
1911	302	1921	238
1912	307	1922	240
1913	310	1923	248
1914	355	1924	295
1915	264	1925	315
1916	221	1926	326
1917	195	1927	317
1918	200	1928	328
1919	184	1929	341
		1930	398

Source: Reports of the Bureau of Labor Statistics, 1928, 1930.

During thecalendar year 1927 the private employment agencies furnished 440, 471 jobs to workers in California and collected $1,878,690.46 for the service. During the same year 2,160 complaints were received by the Labor Commissioner against licensed agencies. Most of the complaints were claims for refunds of fees and deposits which the applicants felt had been unjustly collected from them. In 1927 private agencies refunded $302,150 of fees and $35,050 of expenses to Calfirornia workers.*

*Report of the Bureau of Labor Statistics, 1928, pp.21, 44-45, and 93.

As long as the present high-standard of the personnel of the Division of Labor Statistics is maintained, the writer sees no reason to be over-anxious regarding any rumors of atrocious violations of the law by "labor sharks".

Note -

I had no final draft of the following chapters, but am sending on one of the earlier drafts.

E. C. Crockett.