

Attorney General

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Robert R. Corbin

January 15, 1988

Mr. Larry Etchechury, Director
The Industrial Commission of Arizona
800 West Washington
Phoenix, Arizona 85007-2922

Re: I88-010 (R87-081)

Dear Mr. Etchechury:

You have asked whether A.R.S. § 23-202 would subject an employer to criminal penalties for requiring applicants to pay a ten dollar non-refundable processing fee if the fee is no guarantee of employment but merely allows consideration of the applicant for employment.

A.R.S. § 23-202 provides:

It is unlawful for a person charged or entrusted by another with the employment or continuance in employment of any workman or laborers to demand or receive, either directly or indirectly, from a workman or laborer employed or continued in employment through his agency or under his direction or control, a fee, commission or gratuity of any kind as the price or condition of the employment of the workman or laborer, or as the price or condition of his continuance in such employment. Any person charged or entrusted with employment of laborers or workmen for his principal, or under whose direction or control the workmen and laborers are engaged in work and labor for the principal, who violates a provision of this section is guilty of a class 2 misdemeanor.

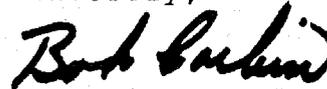
(Emphasis added.)

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Penal statutes must give adequate notice to ordinary people of what conduct may result in criminal prosecution. See Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983); Dunn v. United States, 442 U.S. 100, 112, 99 S.Ct. 2190, 2197, 60 L.Ed.2d 743, 754 (1979). Further, it is a cardinal principle of statutory construction that words and phrases in statutes are to be given their ordinary, common meaning unless the context of the statute and the entire act of which it is a part requires otherwise. Skyview Cooling Company v. Industrial Commission of Arizona, 142 Ariz. 554, 691 P.2d 320 (App. 1984); See Ring v. Taylor, 141 Ariz. 56, 685 P.2d 121 (App. 1984).

A.R.S. § 23-202, which was adopted by the first Arizona legislature in 1912 applies explicitly to agents of the employer exacting a fee rather than the employer itself. The apparent purpose of the statute was to prohibit job foremen and other supervisors from extorting kickbacks and job-related extortion from laborers working under their supervision. The fee about which you inquire is required by the principal to defray its administrative costs and not by a supervisor for his or her own gain. The statute does not apply in such a situation and therefore, the exaction of a minimal application fee is not subject to criminal sanctions under A.R.S. § 23-202.

Sincerely,



BOB CORBIN
Attorney General

BC:JDR:cag