

JULY 25, 1955.

HON. CARL HOLDERMAN,  
*Commissioner, Department of Labor and Industry,*  
1035 Parkway Avenue,  
Trenton, New Jersey.

## MEMORANDUM OPINION P-22.

DEAR MR. HOLDERMAN:

You have requested our opinion as to whether or not, prior to the enactment of Chapter 65 of the Laws of 1955, the Director of the Division of Employment Security had the right to abate penalty assessments against employers for failure to supply wage data or for failure to forward unemployment compensation contributions as required by law.

Prior to its amendment by P. L. 1955, C. 65, N. J. S. A. 43:21-14 (a), which provides for the collection of contributions from employers, read as follows:

"(a) In addition to such reports as the Director of the Division of Employment Security may require under the provisions of subsection (g) of section 43:21-11 of this chapter (R. S. 43:21-1 et seq.), every employer shall file with the division periodical contribution reports on such forms and at such times as the director shall prescribe, to disclose the employer's liability for contributions under the provisions of this chapter (R. S. 43:21-1 et seq.), and at the time of filing each contribution report shall pay the contributions required by this chapter (R. S. 43:21-1 et seq.) for the period covered by such report. The director may require that such reports shall be under oath of the employer. Any employer who shall fail to file any report, required by the director, on or before the last day for the filing thereof shall pay a penalty of one dollar (\$1.00) for each day of delinquency until and including the tenth day following such last day and, for any period of delinquency after such tenth day, a penalty of one dollar (\$1.00) a day or twenty per centum (20%) of the amount of the contributions due and payable by the employer for the period covered by the report, whichever is the lesser. If there be no liability for contributions for the period covered by any contribution report or in the case of any report other than a contribution report, the employer or employing unit shall pay a penalty of one dollar (\$1.00) a day for each day of delinquency in filing or fifteen dollars (\$15.00), whichever is the lesser. Any employer who shall fail to pay the contributions due for any period on or before the date they are required by the division to be paid, shall pay interest at the rate of one per centum (1%) a month on the amount thereof from such date until the date of payment thereof. Upon the written request of any employer or employing unit, filed with the division on or before the due date of any report or contribution payment, the director, for good cause shown, may grant, in writing, an extension of time for the filing of such report or the paying of such contribution with interest at the rate of one per centum (1%) a month on the amount thereof; provided, no such extension shall exceed thirty days and that no such extension shall postpone payment of any contribution for any period beyond the day preceding the last day for filing tax returns under Title IX of the Federal Social Security Act for the year in which such period occurs."

It will be noted that although the statute empowered the Director "for good cause shown and upon written request filed with the Division" to grant an extension

of time for the filing of a report or the paying of contribution with interest, it did not contain any provision authorizing the Director to waive the payment of a penalty, as does, for example, N. J. S. A. 43:21-16 (b) 2, which requires employers to furnish information for the making of an initial determination as to whether or not the employer is an employer covered by the Act. The last mentioned section provides, in part, as follows:

“ \* \* \* provided, that when such report or reports are not filed within the prescribed time but it is shown to the satisfaction of the director that the failure was due to a reasonable cause, no such penalty shall be imposed. \* \* \* ”

Although the Legislature is without constitutional power to authorize the remission of interest due the State (*Wilentz v. Hendrickson*, 135 N. J. E. 244, E. & A. 1944), it does have the constitutional power to remit penalties pursuant to a general law. (23 Am. Jur. 643, "Penalties," Sec. 53; *Wilentz v. Hendrickson*, supra; *Meilink v. Unemployment Reserve Commission*, 314 U. S. 564, 567).

A penalty is "a sum of money of which the law exacts payment by way of punishment for doing some act that is prohibited or omitting to do some act that is required to be done." (70 C. J. S. 387; see also *Wilentz v. Hendrickson*, supra).

It is clear that the Legislature may delegate the power to remit penalties to some administrative agency (See, for example, the delegation of such power contained in N. J. S. A. 43:21-16 (b) 2, referred to above, and delegation of such power to Director of Division of Taxation contained in N. J. S. A. 54:49-11).

But, in the absence of such an express delegation by the Legislature to the administrative agency, the agency is without power to waive the penalty. The agent of the State has no authority to contract to the detriment, disadvantage or injury of his principal without clear delegation of such authority (*State v. Erie Railroad Co.*, 23 N. J. Misc. 203, Sup. Ct. 1945).

It is, therefore, our opinion that, prior to the enactment of P. L. 1955, C. 65, the Director of Employment Security had no authority to abate penalty assessments against employers for failure to supply wage data or for failure to forward unemployment compensation contributions as required by law.

Yours very truly,

GROVER C. RICHMAN, JR.,  
*Attorney General.*

ROBERT E. FREDERICK,  
*Deputy Attorney General.*

July 29, 1955.

HONORABLE FREDERICK J. GASSERT, JR.,  
*Director, Division of Motor Vehicles,*

State House,  
Trenton, New Jersey.

MEMORANDUM OPINION P-23.

DEAR DIRECTOR GASSERT:

You have requested our opinion as to whether or not, as Director of the Division of Motor Vehicles, you have authority to sign a reciprocity arrangement between the Province of Alberta and the State of New Jersey, whereby each grants