

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

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to the other full reciprocity as to motor vehicles properly registered in one jurisdiction, operating in the other, while engaged in through or interstate commerce.

Although there is nothing in the New Jersey statutes that expressly gives to the Director the authority to enter into such a written agreement, a reciprocity status exists even without the formality of a written agreement. Therefore, the authority of the Director to so act may be necessarily implied.

R. S. 39:3-15 grants reciprocal touring privileges for any type motor car, omnibus, or motor vehicle used for the transportation of goods, wares and merchandise, motorcycle or motor drawn vehicle belonging to a non-resident, which is registered in accordance with the laws of the State, or Province of the Dominion of Canada, in which the non-resident resides.

R. S. 39:3-16 gives authority to the Commissioner (Director) to suspend the operating privilege of motor vehicles registered in another State or Province of the Dominion of Canada when, in his judgment, any such State or Province prohibits the free operation of any class of motor vehicle belonging to residents of this State and properly registered here.

R. S. 39:3-17 extends the touring privileges referred to in the above-mentioned sections to any non-resident chauffeur or driver who has complied with the laws of his resident State or country.

R. S. 39:4-9.1 provides for the reciprocal exchange of information under which the Commissioner (Director), upon receiving a certificate of conviction of a non-resident operator or chauffeur for certain violations of our law, shall transmit a certified copy of such record to the motor vehicle administrator of the State where the non-resident operator or chauffeur resides.

The Legislature, by enacting the above-mentioned provisions, has granted to non-residents reciprocity to the extent that the State or Province in which said non-resident resides grants touring and driving privileges to residents of New Jersey. This is, in effect, reciprocity by reason of the above-mentioned law. Reciprocity is recognized and is actually now in effect.

A reading of the proposed reciprocity arrangement between the Province of Alberta and the State of New Jersey does not reveal that such arrangement contemplates the granting of reciprocity with respect to any matters other than those already covered by the sections of the New Jersey law above referred to.

In view of the foregoing, we can see no objection to the Director entering into an agreement in writing in a matter that peculiarly affects the Motor Vehicle Division, especially since the matters referred to in the proposed reciprocity arrangement are already part of the law of this State. In view of the above, it is our opinion that the Director of Motor Vehicles has the authority to enter into the proposed arrangement with the Province of Alberta.

Yours very truly,

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

JAMES T. KIRK,  
*Deputy Attorney General.*