

or employment. Upon earning the total of \$1,200.00 in any calendar year, the public pensioner must forego double compensation and make the election, under R.S. 43:3-1, if he decides to continue in part time employment during the remainder of the calendar year. The plain intention of Chapter 145 is to grant public pensioners the right to engage in part time public employment at a compensation of not more than \$1,200.00 per year, without sacrifice of their retirement allowance. Any earnings in excess of \$1,200.00 per year may not be retained by them except upon waiver of their pension pursuant to R.S. 43:3-1. The waiver requirement of R.S. 43:3-1 does not apply, however, except "during the duration of the term of office of his [the pensioner's] public position or employment."

You raise the additional question as to whether the amendment of 1957 has a retroactive effect. Chapter 145 was effective on July 15, 1957. We advise you that its effect is prospective only in accordance with the established law in this State that legislative enactments are not retroactive unless so provided by clear, strong and imperative terms. See *Lascari v. Bd. of Education of Borough of Lodi*, 36 N.J. Super. 426 (App. Div. 1955).

Yours very truly,

HAROLD KOLOVSKY
Acting Attorney General

By: FRANK A. VERGA
Deputy Attorney General

APRIL 9, 1958

DANIEL BERGSMA, M.D., M.P.H.
State Commissioner of Health
Department of Health
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 5

DEAR DR. BERGSMA:

We have been asked whether sterilized whole milk in hermetically sealed containers "is permitted to be sold in New Jersey without permit therefor" from the Department of Health.

R.S. 24:10-2 forbids the distribution of "any milk" in New Jersey unless the person who collected or assembled the milk into plants has obtained a "permit from the * * * department to engage in such business in the manner * * * set forth [in the statutes]."

Sterilized milk in hermetically sealed containers, if intended for human consumption, may therefore not be imported into New Jersey unless the plants into which the milk is assembled hold permits.

Since the context of the request for an opinion presents an additional inquiry as to whether the department has an obligation to inspect the plants involved in States hundreds of miles from New Jersey, this matter will be discussed.

R.S. 24:10-6 makes it mandatory that the department be satisfied that the milk is of the standard and quality required by the statutes, see R.S. 24:10-15, 16, and by regulations of the department, before a permit is issued. This section does not demand inspection of any milk or plants.

R.S. 24:10-11 makes all milk imported into New Jersey "subject to inspection at its source of supply" and all plants handling it "likewise * * * subject to inspection to determine if * * * they meet the minimum requirements set forth in [R.S. 24:10-15, supra]." This section does not require that the department inspect, but is a grant of discretionary power to the department to inspect the milk and plants involved. If the department can fulfill its duty under R.S. 24:10-6 in some other manner, satisfying itself that the milk meets the prescribed standards, it need not inspect.

R.S. 24:10-9 authorizes the department to place reasonable reliance in fulfilling its duty under R.S. 24:10-6 on information supplied to it on reports of applicants. R.S. 24:10-9 permits the department to require reports which "may be necessary to ascertain * * * that * * * milk * * * is of the standard and quality required * * *."

The department may also take into consideration facts obtained from other sources including tests of random samples of the finished product.

R.S. 24:10-12 permits the State department to rely on inspections by health authorities in other States. *Cf. Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951).

In summary, sterilized whole milk in hermetically sealed containers may not be imported into New Jersey except where the plants into which the milk was assembled or collected hold permits issued by the department. The department has power to inspect such plants through its own personnel but need not if it can be satisfied by some other adequate method of inspection that the milk meets the prescribed standards.

Very truly yours,

DAVID D. FURMAN
Acting Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

APRIL 16, 1958

MR. FREDERICK J. GASSERT, JR.
Director, Division of Motor Vehicles
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 6

DEAR DIRECTOR:

We have been asked whether, consistent with the rule of *State v. Laird*, 25 N.J. 298 (1957), a magistrate may resentence a motor vehicle offender in a case where he has previously prescribed a fine that is less than a mandatory minimum. If the magistrate has such power, and the Directors of the Division of Motor Vehicles becomes aware of the need for its exercise, either as a result of N.J.S.A. 39:5-42 or otherwise, it would seem appropriate in cases involving the Director's function under