MAY 7, 1958

HONORABLE CARL HOLDERMAN
Commissioner of Labor and Industry
20 West Front Street
Trenton, New Jersey

FORMAL OPINION, 1958—No. 8

DEAR COMMISSIONER HOLDERMAN:

You request our opinion as to whether a corporation doing business in New Jersey may lawfully deduct and withhold from its employees who are residents of the City of Philadelphia a portion of their wages for the purpose of payment of the wage tax of that city (Ordinances of December 13, 1939). You state that the City of Philadelphia contends that since Radio Corporation of America now has three business locations in that city, the corporation is required to withhold the Philadelphia wage tax from the wages of all Philadelphia residents employed by it in New Jersey. This contention is apparently based upon the holding in *City of Philadelphia* v. *Westinghouse Electric & Manufacturing Company*, 55 D. & C. 343 (Common Pleas No. 2, Philadelphia County, 1945).

The defendant in that case operated a business in Philadelphia and in Lester, Delaware County, Pennsylvania. At the Lester plant the defendant employed residents of Philadelphia. The court held that section 4 of the ordinance, which provides that:

> "Each employer within the City of Philadelphia who employs one or more persons on a salary, wage, commission or other compensation basis, shall deduct * * * at the time of payment thereof, the tax * * * and pay to the Receiver of Taxes the amount of tax so deducted * * *",

requires an employer, present and subject to municipal legislation, to collect the wage tax at the source from residents of the city employed and paid by the employer outside the city. The court went on to hold that the fact that the employer keeps its payrolls and pays its employees outside the city does not alter the situation.

It should be noted at the outset that the withholding here questioned is for a tax upon wages paid in New Jersey for work done in this State, which is attempted to be assessed not by the federal government but by a city of a sister jurisdiction. Concepts of constitutional supremacy applicable in such areas as withholding of federal income tax (26 U.S.C.A. § 3402) and social security deductions (26 U.S.C.A. § 3102) are, therefore, not relevant. Nor, we may add, are we here concerned with the specific applications of the Philadelphia wage tax. Assuming the applicability to Philadelphia residents working in New Jersey, we concern ourselves only with the question presented above.

R.S. 34:11-4, as amended, provides:

> "Every person, firm, association or partnership doing business in this State, and every corporation organized under or acting by virtue of or governed by the provisions of Title 14, Corporations, General, or by the provisions of the act entitled 'An act concerning corporations' (Revision 1896), approved April twenty-first, one thousand eight hundred and ninety-six, in this State, shall pay at least every two weeks, in lawful money of the

United States, to each and every employee engaged in his, their or its business, or to the duly authorized representative of such employee, the full amount of wages earned and unpaid in lawful money to such employee, up to within twelve days of such payment.

"It shall not be lawful for any such person, firm, association, partnership or corporation to enter into or make any agreement with any employee for the payment of the wages of any such employee otherwise than as provided by this section, except to pay such wages at shorter intervals than every two weeks. Every agreement made in violation of this section shall be deemed to be null and void, and the penalties provided for in section 34:11-6 of this Title may be enforced notwithstanding such agreement; * * * ."

R.S. 34:11-6, as amended, provides:

"Every person, firm, association, partnership or corporation mentioned in section 34:11-4 of this Title and every officer or agent thereof who shall violate any of the provisions of said section 34:11-4 shall, for the first offense, be liable to a penalty of fifty dollars ($50.00), and for the second and each subsequent offense to a penalty of one hundred dollars ($100.00), to be recovered by and in the name of the Department of Labor of this State."

These statutory provisions, commonly referred to as the "Wage Payment Law", were discussed in *Department of Labor and Industry* v. *Rosen,* 44 N.J. Super. 42 (App. Div. 1957), where the court at pages 45 and 46 said:

"Historically, N.J.S.A. 34:11-4 is derived from *chapter* 179 of the *Laws* of 1896 and *chapter* 38 of the *Laws* of 1899, the latter entitled 'An act to provide for the payment of wages in lawful money of the United States every two weeks.' The motivating factor for the enactment of the legislation was the elimination of the practice prevalent among factory owners, particularly by owners of glass factories in southern New Jersey, of paying wages in the form of order books or scrip, redeemable only at company-owned stores. *Cumberland Glass Mfg. Co.* v. *State,* 58 N.J.L. 224 (Sup. Ct. 1895); see *Daily True American,* Trenton, N.J., March 14-17, 1896; February 28, March 10 and 17, 1899. The statutes, an exercise of the police power of the State, have decided economic benefits to the employee. The assurance of payment in cash at regular intervals of wages upon which an employee is dependent for the support of himself and his family is obviously an economic and social necessity. Indeed, such a view has biblical support: 'The wages of him that is hired shall not abide with thee all night until the morning,' *Leviticus,* 19, 13; 'At his day thou shalt give him his hire, neither shall the sun go down upon it; * * *' *Deuteronomy,* 24, 15.

"The unsavory practice proscribed by the Legislature had also been prevalent in other jurisdictions where employers in so-called company towns paid employees in scrip or specially marked coinlike pieces of metal redeemable only at company commissaries for food and clothing, or applicable to rent for company houses."

The statute is clear. "Every * * * firm * * * doing business in this State, * * * shall pay at least every two weeks, in lawful money of the United States, to each * * * employee * * * or to the duly authorized representative of such employee, the *full amount* of wages earned and unpaid in lawful money * * * ." (Emphasis supplied) Deduction from wages of an amount to be used as a deposit for security that the employees will not terminate their employment before a given date is prohibited by the "Wage Payment Law", Attorney General's Opinion to Commissioner Blunt, August 30, 1929; nor can there be a withholding of a bonus to insure service where the bonus is a part of the wage itself, Attorney General's Opinion to Commissioner Bryant, December 8, 1919; deficiencies in the payment of rent upon the lease of an employer-owned home cannot be withheld, any agreement between the employee and employer notwithstanding, Attorney General's Opinion to Commissioner Bryant, April 25, 1916.

Payroll deductions from compensation of officials and employees of the State of New Jersey have been authorized by the Legislature, with respect to the purchase of war bonds (R.S. 52:14-15.5), and group insurance premiums (R.S. 52:14-15.9a). Payroll deductions were, in these cases, the subject of legislative action despite the voluntary authorization by State employees and officials. Memorandum Opinion to Henry W. Peterson, April 7, 1955.

Since our Legislature has not authorized payroll deductions from the wages of non-public employees, and since the *full* amount of the wages earned and unpaid must be paid at least every two weeks to the employee or his authorized representative, it is our opinion, and you are accordingly advised, that a deduction or withholding of any portion of such wages of a New Jersey employee for the purpose of satisfaction of the wage tax of the City of Philadelphia would be contrary to the provisions of our "Wage Payment Act" and would constitute a violation thereof.

Very truly yours,

DAVID D. FURMAN
Acting Attorney General

By: MARTIN L. GREENBERG,
Deputy Attorney General

JULY 24, 1958

HONORABLE DWIGHT R. G. PALMER, *Commissioner*
State Highway Department
1035 Parkway Avenue
Trenton, New Jersey

FORMAL OPINION 1958—No. 9

DEAR COMMISSIONER:

We have been asked whether an agreement among the Highway Department, the Commonwealth of Pennsylvania, and certain political subdivisions of New Jersey and Pennsylvania providing for a joint "survey and study of transportation facts in the Philadelphia-Camden Metropolitan Area" can become effective without action by the Congress of the United States. This study, you have advised, is to be undertaken in conjunction with the federal interstate highway construction program.