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LIEN—ADMINISTRATOR—BUREAU, UNEMPLOYMENT COMPENSATION—AUTHORIZED TO RELEASE FROM COVERAGE OF LIEN SPECIFICALLY DESCRIBED PORTION OF PROPERTY COVERED BY LIEN—AS TO ALL OTHER PROPERTY SO COVERED—RELEASE WOULD MAKE POSSIBLE OVER-ALL INCREASE IN SOUND JUDGMENT OF ADMINISTRATOR—AMOUNT COLLECTIBLE FROM EMPLOYER FOR UNPAID CONTRIBUTIONS, INTEREST OR PENALTY—SECTION 1345-4 G.C.

SYLLABUS:

The Administrator of the Bureau of Unemployment Compensation is authorized to release from the coverage of the lien provided for by Section 1345-4, General Code, a specifically described portion of the property theretofore covered by such lien while retaining the lien as to all other property so covered when, in the sound judgment of the Administrator, such a release would make possible an over-all increase in the amount collectible from an employer for unpaid contributions, interest or penalty.

Columbus, Ohio, February 21, 1952

Hon. Ernest Cornell, Administrator, Bureau of  
Unemployment Compensation  
Columbus, Ohio

Dear Sir:

Section 1345-4 (a) (4), General Code, provides that upon failure of an employer to pay contributions, interest or penalty required to be paid under the Unemployment Compensation Act when due the same shall become a lien on the real and personal property of the employer and that the Administrator of the Bureau of Unemployment Compensation shall file notice of such lien in the office of the recorder of the county in which it is ascertained that such employer owns such property.

You have requested my opinion as to whether, as Administrator of the Bureau of Unemployment Compensation, you are authorized "to execute partial releases of the property covered by said lien" or whether you may "only execute a release when such contributions, interest and penalty have been paid in full." I assume that your question is whether, upon receipt of only a part of the total amount remaining due for unpaid contributions, interest or penalty, you would be authorized in wholly releasing from the coverage of the lien a specifically described portion of the property theretofore covered by the lien, while retaining the lien as to all other property so covered, or whether you must first receive *full* payment of such unpaid contributions, interest and penalty and then, by a single act, release *all* of the property covered by the lien.

Section 1345-4(a) (4), General Code, reads as follows:

"Any contributions, interest or penalty required to be paid under the unemployment compensation act by any employer shall, if not paid when due, become a lien upon the real and personal property of such employer.

"Upon failure of such employer to pay the contributions required to be paid under the unemployment compensation act, the administrator of the bureau of unemployment compensation of Ohio shall file notice of such lien, for which there shall be no charge, in the office of the recorder of the county in which it is ascertained that such employer owns real estate and personal property, or either, and such lien shall not be valid as against the claim of any mortgagee, pledgee, purchaser, judgment creditor or other lien holder of record at the time such notice is filed. Such notice shall be recorded in a book kept by the county re-

recorder called the unemployment compensation lien record and indexed therein in an alphabetical index under the name of such employer. When such unpaid contributions, interest or penalty have been paid, the employer may record with the recorder of the county in which such notice of lien has been filed and recorded, notice of such payment, for which recording of notice of payment the recorder shall charge and receive from the employer a fee of one (\$1.00) dollar. Assessment of contributions shall not be made after four years from the date on which such contributions became payable, and no action in court for the collection of contributions without assessment of such contributions shall be begun after the expiration of five years from the date such contributions became payable. In case of false or fraudulent report or of a willful attempt in any manner to evade contributions, such contributions may be assessed or a proceeding in court for the collection of such contributions may be begun without assessment at any time. When the assessment of contributions has been made within the four-year period herein provided, action in court to collect such contributions may be begun within but not later than six years after such assessment.

“In the event of a distribution of an employer’s assets, pursuant to an order of any court under the law of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, or similar proceedings, contributions then or thereafter due shall have the same priority as now provided by law for the payment of taxes due the state of Ohio and shall be paid out of the trust fund in the same manner as provided for other claims for unpaid taxes due the state.”

Here it will be noted that, although the language of the statute specifically provides that the Administrator shall file notice of such lien with the county recorder, there is no language specifically requiring or even authorizing him to file any release, either a partial release or a full release. The only reference to anything which might be considered in the nature of a release is contained in the provision “When such unpaid contributions, interest or penalty have been paid, the employer may record with the recorder of the county in which such notice of lien has been filed and recorded, notice of such payment, for which recording of notice of payment the recorder shall charge and receive from the employer a fee of one (\$1.00) dollar.” Here we find that the *employer* is authorized to file with the recorder “notice of such payment.” In practical operative effect, of course, a “notice of such payment” necessarily must first have been received by the employer from the Administrator so that by such language the Administrator is authorized, indirectly, to “release” such

lien by transmitting to the employer an acknowledgment of full payment which the employer then may record. Even, here, however, we do not find any requirement, by specific language, that the payment must be in *full*, although such may be implied. In any event, the above quoted language does not, in express terms, answer the question under consideration. Furthermore, I do not find your question answered by express language in any of the other statutes relative to the Unemployment Compensation Act, nor have I been able to find any court decisions pertaining to this question.

From an examination of the statutes, it would appear that the General Assembly vested rather broad discretionary powers in the Administrator, included in which are the powers "to adopt rules and regulations with respect to the collection, maintenance and disbursement of the unemployment and administrative funds," Section 1345-13(a) (1), General Code and "to provide for the levy and collection of the contributions from all employers subject to the act," Section 1345-13(a) (6), General Code. This broad discretion is further emphasized by Section 1345-33, General Code, which provides that the entire act "shall be liberally construed to accomplish the purposes thereof."

The policy of liberal construction of statutes granting administrative power is generally followed by all courts. See Sutherland Statutory Construction, Third Edition, Volume 3, Section 6605, at page 289. In effect, this policy is but another way of stating the rule that the power to act may be implied by statute, even though not specifically stated therein. I quote from Sutherland Statutory Construction, Third Edition, Volume 3, Section 5402, pages 19, 20 and 21 :

"Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. Thus it has been stated, 'An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty . . . That which is clearly implied is as much a part of the law as that which is expressed.' The reason behind the rule is to be found in the fact that legislation is enacted to establish broad or general standards. Matters of minor detail are frequently omitted from legislative enactments, and 'if these could not be supplied by implication the drafting of legislation would be an interminable process and the true intent of the legislature likely to be defeated.

“The rule whereby a statute is, by necessary implication, extended has been most frequently applied in the construction of laws delegating powers to public officers and administrative agencies. The powers thus granted involve a multitude of functions that are discoverable only through practical experience.

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As noted before, one of the principal duties of the Administrator is to provide for the *collection* of the contributions due. The lien provided by law is not an end in itself, but only another method to facilitate the *collection* of such contributions. It would seem that, in certain cases, the release of the lien as to a specified parcel of property might well effect an immediate collection of a substantial portion of the unpaid contributions which otherwise might be difficult, if not impossible, to collect. The debtor may have the opportunity for immediate sale at a good price of a parcel of property covered by the lien and to then apply his entire receipts therefrom to payment on his debt for unpaid contributions, which sale obviously could not be made except from a release of the lien of the Bureau of Unemployment as to such parcel. In such event, it could reasonably be said that the release of this property from the coverage of the lien would be a proper act on the part of the Administrator, necessarily incident to his power to collect the contributions due. In the last analysis, the determination of whether such a release would result in an increase in the collections then due is a matter which would have to be determined by the sound judgment of the Administrator, based upon all of the facts involved.

It, of course, is well established law that a collector of taxes is not *required* to accept a partial payment to be applied on the total amount due, but that he, in his sound discretion, may choose to do so in the absence of any legislation expressly forbidding such action. See 84 A.L.R., 774. I know of no such prohibition contained in the Unemployment Compensation Act. As a general proposition of law, it also is well settled that the person in whose favor a lien exists may waive such lien, or any part of such lien, by express agreement based on a valuable consideration. 53 Corpus Juris Secundum, 862.

Thus, it would appear that the general power and duty to collect the unpaid contributions, interest and penalty would imply the power to release a parcel of property from the coverage of the lien when, in the sound judgment of the Administrator, such a release would make possible

an over-all increase in the collections from the employer, unless the power to execute such a release is forbidden, either expressly or by necessary implication, by any of the provisions of the Unemployment Compensation Act. I already have pointed out that the Act contains no language expressly forbidding such action. The sole remaining question, therefore, is whether any of the provisions of the Act forbid such action by implication.

It might be urged that the provision of Section 1345-4(a) (4), supra, to the effect that when the unpaid contributions, interest or penalty have been paid the employer may record "notice of such payment," has such effect. While this question is not free from doubt, I am of the opinion that such legislative intent does not follow from such language. This conclusion is fortified by the fact that, as heretofore noted, this language does not provide for any release by the Administrator, either partial or in full, but only authorizes the employer to record what, in effect, is a receipt of payment from the Administrator.

Furthermore, it is my understanding that the Bureau of Unemployment Compensation has, over a long period of time, executed releases of the character in question. As stated in the case of *Industrial Commission v. Brown*, 92 Ohio St., 309, at page 311 :

"Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. \* \* \*"

Referring again to Sutherland Statutory Construction, Third Edition, I quote from Volume 3, Section 7211, at page 442 as follows :

"The unemployment compensation acts are administered by administrative agencies which must be given wide discretion and freedom in their activities. Likewise, administrative interpretations must be given weight. \* \* \*"

In conclusion, it is my opinion that the Administrator of the Bureau of Unemployment Compensation is authorized to release from the coverage of the lien provided for by Section 1345-4, General Code, a specifically described portion of the property theretofore covered by such lien while retaining the lien as to all other property so covered when, in the sound

judgment of the Administrator, such a release would make possible an over-all increase in the amount collectible from an employer for unpaid contributions, interest or penalty.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General