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UNEMPLOYMENT COMPENSATION ACT — REPORTS, CORPORATION — EMPLOYER, INDIVIDUAL — VIOLATION SECTION 1345-22 G. C. MAY BE PROSECUTED—ANY EMPLOYER, INCLUDING INDIVIDUAL, MAY BE PROSECUTED UNDER SECTION 1345-27 G. C. FOR VIOLATION OF ACT WHERE NO PENALTY SPECIFICALLY PROVIDED.

FINES OR PENALTIES, VIOLATION STATE PENAL LAWS, NOT DEBTS WITHIN PURVIEW ARTICLE I, SECTION 15, OHIO CONSTITUTION — IMPRISONMENT, FAILURE TO PAY FINE, NOT UNCONSTITUTIONAL IMPRISONMENT FOR DEBT.

SYLLABUS:

1. *An individual employer may be prosecuted under the provisions of Section 1345-22, General Code, for a violation of said section.*
2. *Any employer, including an individual, may be prosecuted under Section 1345-27, General Code, for a violation of any provision of the act for which no penalty has been specifically provided.*

3. *Fines or penalties arising from a violation of the penal laws of the state are not debts within the meaning of Section 15 of Article I of the Constitution of Ohio and imprisonment for failure to pay a fine is not an unconstitutional imprisonment for debt.*

Columbus, Ohio, June 18, 1940.

Hon. H. C. Atkinson, Administrator,  
Bureau of Unemployment Compensation,  
Columbus, Ohio.

Dear Sir:

Your request of May 22, 1940, for my opinion reads as follows:

“Section 1345-22 of the General Code of Ohio makes it a misdemeanor for certain persons to fail to comply with the provisions of the Ohio Unemployment Compensation Act.

Does this section apply to individual employers as well as members and officers of firms and corporations?

If your answer to this question is in the negative, may individual employers be prosecuted under General Code 1345-27?

Your further opinion is requested as to whether General Code 1345-22, the application of which may result in imprisonment, is a violation of Art. I, Sec. 15 of the Ohio Constitution which states that no person shall be imprisoned for debt?

For the guidance and information of your office, I am attaching a copy of a report from our compliance department which will throw some light upon the question at issue.”

Section 1345-22, General Code, provides:

“It shall be the duty of each member of a firm, and of the president, secretary, general manager and managing agent of every corporation subject to this act, to cause such firm or corporation to comply with the provisions of this act, and any person or any member of such firm or any such officer of such corporation who shall neglect or fail to comply with the provisions of this act relating to the making of reports or the payment of contributions to the fund shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars and the costs of prosecution. Such fine when collected shall be paid to the commission and placed in the unemployment fund. Each day's refusal on the part of any such person, member of such firm or such officer of such corporation, to comply with the pro-

visions of this act, after notice to said person, firm or corporation from the commission to comply with the same, shall be deemed a separate offense and be punished as herein provided."

Under the Ohio Unemployment Compensation Law, the term "employer" includes any individual, person, partnership, firm, association or corporation subject to the Act. Generally throughout the act they are referred to and named as "employer."

In Section 1345-22, General Code, the Legislature evidently wished to make it the duty of each member of a firm and the named officers of a corporation to cause such firm or corporation to comply with the provisions of the act and to make them individually liable for a violation. This duty was created by the first clause of the said section which reads as follows:

"It shall be the duty of each member of a firm, and of the president, secretary, general manager and managing agent of every corporation subject to this act, to cause such firm or corporation to comply with the provisions of this act. \* \* \*"

The section then proceeds to make it a misdemeanor to refuse to comply with the provisions of the act relating to making reports or payment of contributions to the fund, and prescribes the penalty therefor in the second clause of the section, which reads as follows:

"\* \* \* and *any person* or any member of such firm or any such officer of such corporation who shall neglect or fail to comply with the provisions of this act relating to the making of reports or the payment of contributions to the fund shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars and the costs of prosecution. \* \* \*"

(Emphasis ours.)

The members of a firm and the named officers of a corporation are specifically included therein, without any reference to or reliance on the term "any person." We must assume that the phrase "any person" was included for a purpose and should be given a meaning and an application in an interpretation of the statute, if consistent with the purpose of the statute. The object of the statute is to provide a penalty against employers who violate the statute, and certainly there is no intention to exempt an individual employer. It is my opinion that the term "any person" refers to and includes any individual employer under the act.

This construction of the act is further supported by the use of the term "such person" and "said person" in the last sentences of the section which reads as follows:

"Each day's refusal on the part of any *such person*, member of such firm or such officer of such corporation, to comply with the provisions of this act, after notice to *said person*, firm or corporation from the commission to comply with the same, shall be deemed a separate offense and be punished as herein provided."

(Emphasis ours.)

Section 1345-27, General Code, provides for a penalty for violation of an act for which no penalty has been specifically provided and under it any employer, including an individual may be prosecuted for such violation.

Your memorandum attached to your inquiry questions the right to proceed under this section because it does not designate the offense as a crime or misdemeanor. It is not necessary for a penal statute to definitely state that an act is a misdemeanor or a crime. 16 Corpus Juris, page 68, Section 29, states:

"The doctrine is well settled that, where the statute either makes an act unlawful or imposes a punishment for its commission, this is sufficient to make the act a crime without any express declaration to that effect."

Article I, Section 15 of the Ohio Constitution, reads as follows:

"No person shall be imprisoned for debt in any civil action, on mesne or final process unless, in cases of fraud."

A debt within the purview of the above constitutional provision has been defined as a money obligation arising upon contract, express or implied, or a judgment rendered thereon. See *Second National Bank of Sandusky v. Becker*, 62 O. S. 289.

Clearly, a fine arising from a violation of the penal laws of the state is not a debt in the sense of an obligation incurred by contract, express or implied.

Specifically answering your question, it is my opinion:

1. An individual employer may be prosecuted under the provisions of Section 1345-22, General Code, for a violation of said section.

2. Any employer, including an individual, may be prosecuted under Section 1345-27, General Code, for a violation of any provision of the act for which no penalty has been specifically provided.

3. Fines or penalties arising from a violation of the penal laws of the state are not debts within the meaning of Section 15 of Article I of the Constitution of Ohio and imprisonment for failure to pay a fine is not an unconstitutional imprisonment for debt.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.