

tion are properly payable out of the funds made available by the provisions of Section 3004, General Code.

However, this conclusion does not apply to expenses incurred in attending meetings of the State Bar Association. My Opinion No. 1966, issued February 23, 1938, which deals with the expense of membership in a private organization, is dispositive of this question. Membership in the State Bar Association is available to lawyers in general. The purpose of its functions is accordingly too general to be considered as a direct aid in the conduct of the official duties of the prosecuting attorney.

In conclusion, therefore, I am of the opinion that the expenses of a prosecuting attorney incurred in attending meetings of the Prosecutors' Association may be paid from funds provided by Section 3004, General Code. However, the funds provided by this section cannot be used for the payment of expenses incurred by a prosecuting attorney in attending State Bar Association meetings.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2960.

OHIO UNEMPLOYMENT COMPENSATION ACT--APPLICATION FOR REFUND--LIMITATIONS--NOT LATER THAN ONE YEAR--WHEN CONTRIBUTION BECOMES DUE.

SYLLABUS:

1. *An application for a refund under Section 1345-2 (e), General Code, must be made within the period described in the said section, to-wit: "not later than one year after the date on which any contribution or interest thereon becomes due."*

2. *In considering Section 1345-2 (e), General Code, a contribution becomes due when an employer is charged with the payment of same by the Unemployment Compensation Commission in accordance with Section 1345-4 (a) (1), General Code, or on the date when such contribution, any part thereof or interest thereon, would have been due under Section 1345-4 (a) (1), General Code, or any administrative rule adopted by the Unemployment Compensation Commission in connection with the payment of contributions, if any contribution or part thereof or interest thereon had been due (i. e., if the particular employer were amenable to*

the Unemployment Compensation Act, the particular "employment" were "employment" within the meaning of the Unemployment Compensation Act, and the particular contribution, part thereof or interest thereon were correctly computed).

COLUMBUS, OHIO, September 14, 1938.

The Unemployment Compensation Commission of Ohio, 33 N. Third Street, Columbus, Ohio.

GENTLEMEN: I am in receipt of your recent communication which reads as follows:

"Is an employer, not subject to the Ohio Unemployment Compensation Act, who has erroneously contributed to the fund, required to file an application for a refund in order to obtain the same, not later than one year after the date on which contribution was due as provided for in Section 1345-2 (e) G. C.?"

Section 1345-2 (e) G. C. provides:

'If not later than one year after the date on which any contribution or interest thereon becomes due, an employer who has paid such contribution or interest shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contribution or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the commission shall refund said amount, without interest, from the clearing account of the unemployment fund. For like cause, and within the same period, adjustment or refund may be so made on the commission's own initiative.'

You will observe that in the foregoing section the following language is used, namely: 'If not later than one year after the date on which any contribution or interest becomes due.' The point involved is that since the employer was not

subject to the Act no contribution was owing to the Fund. Likewise it may be argued that since the employer was not liable no contribution became due. The statute clearly states 'that if not later than one year after the date on which any contribution or interest thereon becomes due, an employer who has paid such contribution or interest shall make application for refund.' It appears that the limitation of one year as above set forth would not begin to run until after the date on which any contribution became due. Since no contribution was due from the employer not subject to the act the requirement of filing an application for refund not later than one year appears to have no application. In other words if this is the correct holding then an employer not subject to the Act who has erroneously paid into the fund could make application for refund at any time.

Is an employer, subject to the Ohio Unemployment Compensation Act, who has erroneously paid contribution on wages for services not deemed to be employment, entitled to a refund, if he does not file his application therefor within one year as provided by Section 1345-2 (e) G. C.?

Section 1345-4 (a) (1) provides:

'On and after December 21, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in Section 1345-1) occurring during such calendar year, except that for the period beginning December 21, 1936, such contributions shall accrue and become payable with respect to wages payable for employment during such period beginning December 21, 1936. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.'

The employer in the above question is subject to the Act. He has paid contribution on wages for services not deemed to be employment. Contributions under the above Section 1345-4 (a) (1) become payable by each employer subject to the Act, with respect to *wages payable for em-*

ployment (as defined in Section 1345-1) occurring during the calendar year. Since the employer was not liable to contribute on said wages in the first instance, no contribution was or became due. Since Section 1345-2 (e) G. C. provides that the one year limitation begins to run when the contribution becomes due, and since no contribution was ever due, it appears that the employer may file an application for refund at any time. The year limitation does not apply.

It is not clear whether the legislature intended that the application be filed not later than one year after the date any contribution became due or not later than one year after the date such contribution was paid. It is difficult to comprehend any case in which this statute could be applied if the year limitation begins to run at the time contribution becomes due. In every case where an employer pays erroneously into the fund no contribution was due in relation to the erroneous payment. Therefore it appears that Section 1345-2 (e) could never be applied.

Kindly let us have your opinion on the questions involved."

In my opinion, Section 1345-2 (e) of the General Code, takes the recovering of contributions paid under the Unemployment Compensation Act, Section 1345-1 to Section 1345-35, of the General Code, out of the provisions of the general statute pertaining to refunds, namely, Section 12075, which section provides as follows:

"Common Pleas and superior courts may enjoin the illegal levy or collection of taxes and assessments, and entertain actions to recover them back when collected, without regard to the amount thereof, but no recovery shall be had unless the action be brought within one year after the taxes or assessments are collected."

It appears that the sole requirement for the obtaining of a refund, if a refund is due, is the making of an application at the proper time. (The Commission may also make refunds on its own initiative.) The time set forth in the above quoted statutory provision is "not later than one year after the date on which any contribution or interest thereon becomes due." It is true that if a payment was made by an employer who was not amenable to the Act, theoretically no contribution was ever due. However, I believe that is the very situation,

which was anticipated by the Legislature for it is provided that a refund can be made if it is determined by the Commission "that such contribution or interest or any portion thereof was erroneously collected." The statute clearly authorizes the refund of the total amount of the contribution and this action could only be taken if the employer, for one reason or another, was not amenable to the Act.

Inasmuch as we are constrained when interpreting a statute to avoid any interpretation which would render the statute meaningless or inoperative, I am impelled to the conclusion that it was the intention of the Legislature, in the enactment of Section 1345-2 (e), to provide a procedure whereby contributions which had been paid to the Unemployment Compensation Commission of Ohio, although not due, for whatever reason, could be refunded. Applying this rule, it is obvious that the answer to both of your questions would be the same as the employer who pays, although not amenable to the Unemployment Compensation Act, is in the same position as the employer who, although amenable to the Act, pays a contribution on certain of his employes whose services do not constitute "employment" as that term is used in the Unemployment Compensation Act. In both cases the answer, in my opinion, is that the application for refund or a refund by the Commission on its own initiative must be made within the period set forth in Section 1345-2 (e), namely, "not later than one year after the date on which any contribution or interest thereon becomes due."

Section 1345-4 (a1), General Code, sets forth when contributions become due and if a party erroneously makes a payment believing same to be due under Section 1345-4 (a) (1) or the Commission accepts a payment and records the same to the credit of the payee as against the amount charged to said payee by the Commission under Section 1345-4 (a) (1), the application for refund must be made within the period contemplated by the statute. (If the Commission acts on its own initiative, the refund must be made within the same period.)

Respectfully,

HERBERT S. DUFFY,

Attorney General.