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August 24, 1979

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ATTORNEY GENERAL OPINION NO. 79- 190

H. Dean Cotton
Chief Counsel of Contributions
Kansas Department of Human Resources
Division of Employment
401 Topeka Avenue
Topeka, Kansas 66603

Re: Labor and Industries--Employment Security Law--
Date for Employer Contributions

Synopsis: The Secretary of Human Resources may consider employer contributions for the second quarter actually received subsequent to July 31, 1979, in calculating reserve fund ratios and future employer contributions pursuant to the Kansas Employment Security Law, K.S.A. 1978 Supp. 44-701 et seq.

* * *

Dear Mr. Cotton:

You request our opinion regarding K.S.A. 1978 Supp. 44-710a (a) (1) (B), which states:

"'Computation date' means: June 30 of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1. In arriving at contribution rates for each calendar year, contributions paid on or before July 31 following the computation date for employment occurring on or prior to the computation date shall be considered for each contributing employer who has been subject to this act for a sufficient period of time to have his or her rate computed under this subsection (a)."

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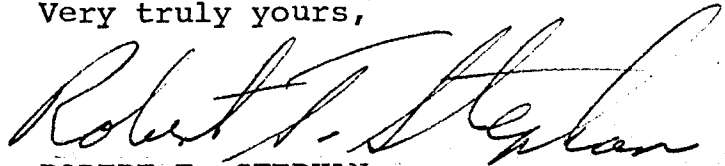
In the administration of the employment security law, actual contributions by employers and claims by former employees are utilized in calculating the reserve fund ratio and the contribution rate for each employer for the succeeding year. See K.S.A. 1978 Supp. 44-710a(2)(3). You advise that forms necessary for returning employers' contributions to the Secretary of Human Resources were not delivered by the supplier and therefore, the employers' contributions for the second quarter due on July 24, 1979, and delinquent on July 31, 1979, will not be received until September. Thus, the actual contributions in the reserve fund as of July 31, 1979, will not reflect the contributions which should have been received by that date. You ask if the Secretary may consider for purposes of future employers' contribution rates those contributions required for the period ending July 31, but not actually received until September. If the July 31 date for determining the amount of contributions is strictly adhered to, calculations for contributions in the future will be distorted to the disadvantage of the unemployment compensation fund as well as individual employers.

We believe that the Secretary may consider these contributions as having been received as of July 31 for the purposes of determining future contributions despite the literal wording of the statutes previously referenced. It is our opinion that the time limitations of the statute sections in question are directory rather than mandatory and should be construed to effectuate the statutory purpose of preserving an adequate revenue fund to provide unemployment benefits and likewise provide a fair administration of employer contributions. Kansas law recognizes that sometimes acts to be performed by a given date cannot be completed on time, yet the act should be performed even if delinquent. See City of Hutchinson v. Ryan, 154 Kan. 751 (1942); School District v. Clark County Commissioners, 155 Kan. 636 (1942); Spalding v. Rice, 210 Kan. 337 (1972); Paul v. City of Manhattan, 212 Kan. 381 (1973). See generally, Sutherland, Statutory Construction, §57.19 (4th ed. 1973). Rather than elaborate further, we call your attention to the sound reasoning of Attorney General Opinion No. 76-295 (Enclosed).

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Thus, it is our opinion that the Secretary of Human Resources may consider employer contributions for the second quarter actually received subsequent to July 31, 1979, in calculating reserve fund ratios and future employer contributions pursuant to the Kansas Employment Security Law, K.S.A. 1978 Supp. 44-701 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk

Enclosure - Attorney General Opinion No. 76-295