

## Opinion No. 47-5115

December 18, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Benjamin D. Luchini, Chairman-Executive Director, Employment Security Commission, Box 1301, Albuquerque, New Mexico.

{\*118} In your letter, dated December 17, 1947, you refer to Section 3, Chapter 209, Laws of 1947, in which Section 57-807 of the 1941 Compilation (pocket supp.) was amended, and particularly to Subsection 12 (d) of said act in which voluntary contributions made by employers is authorized, {\*119} pursuant to a general rule promulgated by the Commission as to the time and method of payment, notice to the employer of the amount of benefits charged to his account, and reasonable time thereafter in which an employer may make such payment.

On May 23, 1947 you state the Commission adopted General Rule No. 3, and under Subsection 13 thereof appears this language:

"(b) Any such employer may make voluntary contributions to the fund, which shall be credited to his account for computing his future rates, beginning with the next succeeding calendar year; provided, that no such voluntary contribution shall be accepted by the Commission and applied for said purpose unless, (1) it is received by the Commission on or before the 15th day of December \* \* \*"

You inquire whether the condition contained in Section (b) of said rule will permit the Commission to accept voluntary contributions from employers which are received through the mails after December 15th but which are postmarked on or before December 15th.

Since the Commission is authorized to promulgate a rule relative to this matter, such rule would have the same force and effect as a law and would be subject to the same construction as though it were a statute.

In Section 1-202 of the 1941 Compilation, relative to statutory construction, the Legislature has stated that words and phrases shall be construed according to the context and the approved usage of the language. In other words, that common ordinary words shall be given their ordinary and general meaning.

In the light of this language, it is my opinion that the condition, that a voluntary contribution from an employer shall not be accepted unless it is received by the Commission on or before the 15th day of December, means that the contribution must be actually delivered and received in the office of the Commission on or before said date; and that merely having a letter enclosing the contribution postmarked on or before

the 15th day of December does not satisfy the condition, unless the contribution is actually delivered to the Commission within the time specified.

As authority for this construction from other state courts, I refer you to the following cases:

Barr v. Geld Ziler, 156 Atl. 644, 108 NJL 397; Labar v. McRae, 97 P. 2d 251, 35 Cal. App. 2d 734; Hardware Mutual Gas Co. v. Butler, (a Mont. case) 148 P. 2d 563.