

Opinion No. 21-2970

May 24, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. W. C. Reid, General Counsel, AT&SF Railway Co., Albuquerque, New Mexico.

Leave of Absence of Railroad Employes to Vote and Right of Such Employes to Receive Pay for Time While Absent.

OPINION

{*56} Complying with telephonic request from your Mr. Downer, regarding the construction of section 2015, Code 1915, insofar as the same provides for a 2-hour leave to employes in order to cast their votes at elections, and as to the right of such employes to receive their regular wages or pay during such absences for the purpose mentioned, I would say,

Section 2105 provides,

"Any person entitled to vote at any election provided by law in this State may on the day of such election be entitled to absent himself from any service or employment in which he is then engaged, for a period of two hours between the time of opening and the time of closing of the polls, and such voter shall not because of thus absenting himself be liable to any penalty; Provided, however, the employer may specify the hours during which the employe may absent himself, as aforesaid."

Your inquiry involves the definition of the words "liable to any penalty," in the act.

I am of the opinion that the word "penalty" as used in this statute is to be broadly construed and that an employe absenting himself for the purpose of casting his vote shall not be subject to have his salary or wages reduced by reason of such act.

I find no authorities directly in point upon the subject, but in the case of *Herriman vs. Burlington, Cedar Rapids & Northern Railway* (Iowa) 9 N.W. 378, it was held that a statutory remedy against a railroad company for five times the amount paid as freight in case of an overcharge was an action for a statutory penalty.

In discussing the matter, the court said that the forfeiture under the statute was not to afford the aggrieved individual an adequate remedy, but to protect the public by deterring railroad companies from committing an act which the law prohibited.

{*57} It would appear as if the law permitting employes to vote without losing any part of their pay while absent from their labors in so doing was intended for a public purpose

and that in the exercise of the right of suffrage an employe should not be penalized by any loss of compensation which would otherwise be due from his employer.