

THEREFORE, IT IS MY OPINION:

A non-profit, charitable organization may not sell pulltab devices for distribution to bars and taverns wherein the bar or tavern retains a portion of the proceeds.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

VOLUME NO. 36

Opinion No. 17

LABOR LAW — Employers — Employees — Wages, Withholding of

HELD: An employer cannot withhold the wages or any portion thereof due and owing to an employee as wages earned, and apply such wages for damages caused by employee negligence during the course of his employment, for truck mileage which was not authorized by the employer, for both costs in retrieving property abandoned by the employee during the course of his employment and per diem fines therefor, for costs of avoidable cargo losses caused by employee poor judgment and for liability insurance deductible costs occasioned by employee negligence, which the employee has contracted to have deducted as a condition to the employment.

August 27, 1975

Mr. Tony Softich, Administrator
Labor Standards Division
Department of Labor and Industry
1331 Helena Avenue
Helena, Montana 59601

Dear Mr. Softich:

You have requested that I issue an official opinion in regard to the lawfulness of a certain contract for employment of teamsters. The contract specifically provides that deductions will be made from an employee's pay for damages caused by employee negligence during the course of his employment, for truck mileage which was not authorized by the employer, and both for costs in retrieving property abandoned by the employee during the course of his employment and for per diem fines therefor. In addition, costs of avoidable cargo losses caused by employee poor judgment, and liability insurance deductible charges occasioned by employee negligence are "charged back" to the employee. I will assume in my discussion that the costs "charged back" to employees means deducted from wages earned.

Section 41-1301, Revised Codes of Montana 1947, in part provides:

(2) Every employer of labor in the State of Montana shall pay to each of his employees the wages earned by such employees at least twice in each month in lawful money of the United States, or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed shall withhold from any employee any wages earned or unpaid for a longer period than five (5) days after the same became due and payable; provided, however, **reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law....** (Emphasis supplied)

A thorough search of the decisions of the Supreme Court of our state has failed to reveal a Montana decision in which this precise question has arisen. However, former Attorney General Olsen has held that it is unlawful for an employer to withhold wages earned and apply them against an account which existed between the employee and employer unless for board, room or other incidentals supplied by the employer. 25 Opinions of the Attorney General 18 (1953). Quoting from this opinion at page 20:

(T)he language of the statutes is clear and convincing. Section 41-1301, supra, is all inclusive and contains no exception for an employer who has a claim against an employee except that, "...reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment" ... (Emphasis supplied)

I concur with former Attorney General Olsen's opinion above referenced. In addition, I find it persuasive that our legislature has declared that it is contrary to the best interests of the people of this state to allow parties to circumvent by contract the prohibitions of section 41-1301, supra. Specifically, section 41-1305, supra, states:

Any contract or agreement made between any person, co-partnership, or corporation, and any parties in his, its, or their employ, whose provision shall be in violation, evasion, or circumvention of this Act, shall be unlawful and void; but such employee may sue to recover his wages earned, together with such five percent penalty, if the wages have been paid.

The effect of this provision is that the wages which a man has earned shall be paid to him on the due date without any deductions or withholdments of any nature unless:

made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law...

It is clear that damage caused by employee negligence, costs of unauthorized mileage, of retrieval of property abandoned, of avoidable cargo losses caused by employee's poor judgment and liability insurance deductibles are not in the

category of "board, room and other incidentals supplied by the employer." Nor do I find a provision in the laws of Montana for the deduction of these charges. It is my opinion, therefore, that an employer may not deduct from wages sums above specified.

This opinion should not be construed to mean that an employer has no remedy at law under which he may sue for loss occasioned by employee negligence or misconduct, or that he must file an action to collect amounts that may or may not be legally owing the employer. This opinion should be taken to mean only that an employer may not **withhold** wages, even pursuant to a contract, unless the deductions were made for board, room, and other incidentals supplied by the employer whenever they are a part of the conditions of employment, or are otherwise authorized by law.

The only deductions which may be made from employee wages earned, pursuant to section 41-1301(2), Revised Codes of Montana 1947, are reasonable deductions for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment or other deductions provided for by law.

THEREFORE, IT IS MY OPINION:

An employer cannot withhold the wages or any portion thereof due and owing to an employee as wages earned, and apply such wages for damages caused by employee negligence during the course of his employment, for truck mileage which was not authorized by the employer, for both costs in retrieving property abandoned by the employee during the course of his employment and per diem fines therefor, for costs of avoidable cargo losses caused by employee poor judgment and for liability insurance deductible costs occasioned by employee negligence, which the employee has contracted to have deducted as a condition to the employment.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

VOLUME NO. 36

Opinion No. 18

BOARD OF NURSES — Practice of nursing, paramedical specialists;
MEDICINE — Montana Medical Practice Act, paramedical specialists;
NURSES — Montana Nursing Practice Act, licensing provisions, paramedical specialists; Sections 66-505, 66-603, 66-905, 66-1012, 66-1221, 66-1222, 66-1227, 66-1228, 66-1231, 66-1232, 66-1243, 66-1305, 66-1403, 66-2502, R.C.M. 1947.

HELD: 1. A paramedical specialist may not engage in the practice of nursing without being licensed under the provisions of the Montana Nursing Practice Act.