The Attorney General

March 16, 1953.

Dear Mr. Sullivan:

"There is a broad distinction between an account and the mere balance of an account, resembling the distinction in logic between the premises of an argument and the conclusion drawn from them. A balance is but the conclusion, or result of the debit and credit sides of an account."

This distinction was further explained in the case of Jones v. Morris, 114 Tex. 62, 263 S.W. 750, where it was said:

"A 'balance' ... means the amount of cash in the fund at a given time, whether the system of bookkeeping denominates it as credit or debit." (Emphasis supplied.)

All ledger sheets ever made on a single account would constitute a record of the account, but only the sheet showing the amount owing by the bank at the conclusion of the last transaction in the account would be a record of the balance within the meaning of the decided cases.

It is therefore my opinion that the exception contained in Section 1, Chapter 77, Laws of 1951, refers only to those ledger sheets showing a balance remaining after the last completed transaction in the account, and not to all ledger sheets containing records of the account.

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Opinion No. 11.

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 to an account which the employee has with the employer unless the account existing between the employer and the employee is for board, room or other incidentals which the employee has agreed may be deducted as a condition to the employment.

March 20, 1953.

Mr. Oliver Sullivan, Commissioner
Department of Labor and Industry
Mitchell Building
Helena, Montana

Dear Mr. Sullivan:

Your predecessor requested that I issue an official opinion on the following question:

"Can an employer withhold pay due and owing to an employee for wages earned, and apply such wages to an account which the employee has with the employer, so that the employee receives no money for the period of employment?"

Section 41-1301, R. C. M., 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; provided further, that if at such time payment of wages any employee shall be absent from the regular place of labor, he shall be entitled to such payment at any time thereafter. Provisions of this section shall not apply to any professional, supervisory or technical employees, who by custom, receive their wages earned at least once monthly." (Emphasis supplied.)

Section 41-1302, R. C. M., 1947, provides:

"Whenever any employer, as such employer is defined in this Act, fails to pay any of his employees, as provided in the preceding section, he shall be guilty of a misdemeanor. A penalty shall also attach to such employer and become due such employee as an allowed amount to a penalty of five (5%) per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and not may be brought in any court of competent jurisdiction to recover the same and the wages due.

"It shall be the duty of the commissioner of labor to inquire diligently for any violations of this Act, and to institute the actions for penalties provided for herein, in such cases as he may deem proper, and to enforce generally the provisions of this Act. . . ."

Section 41-1303, R. C. M., 1947, applies to discharged employees, and states:

"Whenever any employee is discharged from the employ of any such employer, on leaving said employment, then all the unpaid wages of such employee shall immediately become due and payable, and if such employer fails to pay any such discharged employee, within seven (7) days after such discharge and demand, all the wages due and payable to him, then the same penalties as provided for in the preceding section shall attach, provided, however, that if the employer shall, within the period herein specified, tender in money to such discharged employee, the full amount of the wages lawfully due such employee, the penalties herein provided shall not attach."

A 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, the 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. . . ."

A similar Section 41-1301, supra, claims that payment must be made in "... lawful money of the United States, or checks on banks convertible into cash on demand at the full face value thereof." Again the phrase is not open to construction, and prevents