

March 16, 1953.

le
of Banks

a
e:

ked my opinion upon
pretation of Section 1,
ession Laws of 1951,

ll not be required to
eep their records for a
than eleven (11) years
e first day of January
following the time of
such records; provided,
the following records
destroyed, viz., ledger
g unpaid balances in fa-
ctors of any banks. No
accrue against any bank
y such records (except
estruction of which is
e by) after the expiration
rovided in this section."

and obvious intent of
hapter 77 of the Laws
ermit the destruction of
which were made more
ars before, and contain
t of current value. In
the legislature indicated
ss to permit destruction
ch show current labili-
nk. In effect, the legis-
t it would not sanction
n of a record which
t owing from the bank
r, no matter how old.
essary protection to the
may have lost his own
balance, and must rely
record to protect him
his money.

question hinges on the
unpaid balance." It has
usly held by the courts
considered the question
ance" of an account is
from the account itself.
alled "the difference be-
bits and credits of an
eb vs. Keyes, 156 N. Y.
. 285). In the case of
s. Allan, 45 Mo. 573, the

"There is a broad distinction be-
tween an account and the mere bal-
ance of an account, resembling the
distinction in logic between the pre-
mises of an argument and the con-
clusion drawn therefrom. A balance
is but the conclusion or result of the
debit and credit sides of an account."

This distinction was further ex-
plained in the case of Jones v. Marrs,
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 rec-
ord of the account, but only the sheet
showing the amount owing by the
bank at the conclusion of the last trans-
action 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, Chap-
ter 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.

Volume 25
Opinion No. 11.

**Labor Law—Employers—Employees
—Wages, Withholding of**

HELD: An employer cannot with-
hold 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 exist-
ing between the employer and the em-
ployee is for board, room or other in-
cidentals which the employee has
agreed may be deducted as a condi-
tion to the employment.

March 26, 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 follow-
ing 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 em-
ployee 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 de-
mand 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, rea-
sonable 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; pro-
vided further, that if at such time of
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. Pro-
visions 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, pro-
vides:

"Whenever any employer, as such
employer is defined in this Act, fails
to pay any of his employees, as pro-
vided in the preceding section, he
shall be guilty of a misdemeanor. A
penalty shall also attach to such em-
ployer and become due such employee
as follows: A sum equivalent 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 suit
may be brought in any court of com-
petent jurisdiction to recover the
same and the wages due.

"It shall be the duty of the com-
missioner of labor to inquire dili-
gently for any violations of this Act,
and to institute the actions for pen-
alties 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, ap-
plies to discharged employees, and
states:

"Whenever any employee is dis-
charged from the employ of any such
employer, on leaving said employ-
ment, then all the unpaid wages of
such employee shall immediately be-
come due and payable on demand,
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 pen-
alties as provided for in the preced-
ing 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 Su-
preme Court of our state has failed
to reveal a Montana decision in which
this precise question has arisen. How-
ever, 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 for board, room, and other
incidentals supplied by the employer,
whenever such deductions are a part
of the conditions of employment. . . ."

Also, Section 41-1301, supra, pro-
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