

## No. 222

**LABOR COMMISSIONER—WAGE PAYMENT—STATUTES, retroactivity of—RETROACTIVITY OF STATUTES**

**Held:** Chapter 169 of the Laws of 1941, amending Sections 3084, 3085 and 3086 of the Revised Codes of Montana, 1935, and relating to payment of wages, is applicable only to wages accruing or acts committed on and after July 1, 1941, the effective date of the act.

Mr. Albert H. Kruse  
Commissioner of Agriculture,  
Labor and Industry  
State Capitol Building  
Helena, Montana

August 26, 1941.

Attention: Messrs. E. C. Burris  
and Henry A. Yaeger

Dear Mr. Kruse:

Your department has requested the opinion of this office as to the operation of Chapter 169 of the Laws of 1941, which amends Sections 3084, 3085 and 3086 of the Revised Codes of Montana, 1935, relating to the payment of wages. Section 3085, as amended, makes it the duty of the commissioner of labor generally to enforce the provisions of the act and institute actions thereunder. As the act became effective July 1, 1941, you want to know if wages coming due prior to that date are affected by the act.

A statute which creates a new obligation, imposes a new duty, or attaches a new disability to transactions already past is deemed retroactive. (*Butte & Superior Mining Co. v. McIntyre*, 71 Mont. 254, 263, 229 Pac. 730.) Chapter 169 of the Laws of 1941, if made applicable to wages accruing prior to its effective date, would be retroactive. No statutes of Montana are retroactive unless expressly so declared. (Section 3, Revised Codes of Montana, 1935.) There is nothing in the act which indicates any intention Chapter 169 shall be retroactive. Every reasonable doubt is resolved against a retroactive operation of a statute. (*State ex rel, Mills v. Dixon*, 68 Mont. 526, 528, 219 Pac. 637.)

It should also be noted Section 2 of the act under consideration makes it a misdemeanor if an employer should fail to pay employees as provided in the preceding section. Such a failure was not a crime under the statute before amendment. Ex post facto laws are prohibited by Section 11 of Article III of the Montana Constitution. Accordingly, the legislature could not make a crime of an act or acts committed prior to the effective date of the legislation. (12 C. J. 1101.)

It is my opinion, therefore, your department or a county attorney could bring actions under Chapter 169 of the Laws of 1941 only with respect to wages accruing or acts committed on and after July 1, 1941.

Sincerely yours,

JOHN W. BONNER  
Attorney General