

VOLUME NO. 36

Opinion No. 21

BONDS — Restaurant, Bar and Tavern Wage Protection Act; LABOR — Restaurant, Bar or Tavern, bond requirement; RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT — Bond requirement; Sections 41-2001 et. seq., R.C.M. 1947

- HELD:**
- 1. A vendee under an installment contract is not a "lessee" under the Act and is therefore not required to file a bond.**
 - 2. A vendee under a trust deed or mortgage transaction is not a "lessee" under the Act and is therefore not required to file a bond. This is true regardless of the amount of secured notes, liens, judgments, or other interests which may be held against the value of the property.**
 - 3. Where a corporate officer's signature appears on a license issued to a corporation in his capacity as an officer of that corporation, that officer is not thereby required, under the Act, to file a bond.**

September 4, 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 my opinion on the following questions:

1. Whether the purchaser of a restaurant, bar or tavern business under an installment contract for deed is to be considered the owner of said establishment, and consequently exempt from the bond requirements of the Restaurant, Bar and Tavern Wage Protection Act?
2. Whether the purchaser of a restaurant, bar or tavern business by trust deed or mortgage is to be considered the owner of said establishment, even though said establishment is encumbered with secured notes, liens, or judgments and consequently exempt from the

bond requirements of the Restaurant, Bar and Tavern Wage Protection Act?

3. Whether a corporate officer is exempt from the bond requirement of the Restaurant, Bar and Tavern Wage Protection Act, when he is operating a bar or tavern, on behalf of the corporation, on premises that is owned by the corporation of which he is an officer?

The Restaurant, Bar and Tavern Wage Protection Act (hereafter referred to as Act), contained in Chapter 20 of Title 41 of the Revised Codes of Montana, 1947, as amended in 1974, provides that every person who **leases** a premise for the purpose of operating a restaurant, bar or tavern must file a bond equal to at least double the amount of the projected semimonthly employee payroll.

To begin I invite your attention to the fact that in all cases where the Act refers to those situations where a bond is required it uses the term "lease". Further, in all cases where the Act refers to the party to which the Act applies, it uses the term "lessee". This is true without exception.

The relevant inquiry as to your first two questions then is whether the purchasing arrangements you refer to can be considered a "lease" under the Act.

In the interpretation of any statute the intent of the legislature is controlling. In reading any statute the plain and obvious meaning is the safest interpretation and most clearly expresses legislative intent. **National Forest Preservation Group v. Volpe** 352 F. Supp. 123, 126 (1972). Where the intent of the legislature can be determined from the plain meaning of the words used, the courts may not go further and apply any other means of interpretation. **State ex rel. Huffman v. District Court of Eighteenth Judicial District**, 154 Mont. 201, 204; 461 P.2d 847 (1969).

The parties to an installment contract for deed are in a vendor-vendee relationship. As such, the property interests created are fundamentally different than those which exist in a lease arrangement. Under a contract for deed, equity regards the two contracting parties as having changed positions, and the original estate of each as having been converted, that of the vendee from personal into real property and that of the vendor from real into personal property. **Kern v. Robertson**, 92 Mont. 283, 289; 12 P.2d 565 (1932). "[T]he vendee acquires a 'real' right, a right of property in the land, which though lacking legal title, and therefore equitable only, is **nonetheless the real beneficial ownership...**" **Id** at 289 (emphasis added). In contrast to this, a leasehold, although containing many incidents of ownership, is a personal property right. Therefore, in the absence of a clear legislative intent, a contract for deed arrangement can not fall within the meaning of a "lease" so as to impose the requirements of the Act. There is no indication in the Act of any such intent.

Similarly, a trust deed or mortgage arrangement will not fall within the definition of a "lease" as used in its ordinary sense. As I stated before, there is no indication that the legislature intended for that term to be used in a manner other than according to its common usage. The fact that a trust deed or mortgage arrangement does not fall within the scope of the Act holds true regardless of the

amount of secured notes, liens, judgments, or other interests which may be held against the value of the property. It is the nature of the property right created, and not the value of that property right as security, that is determinative.

Now I turn to the last question which you pose. Under the facts given, a corporation holds title to a premises used for a bar or tavern and also holds the liquor license. An officer of that corporation, whose name appears on that license, is engaged in operating that bar or tavern on behalf of the corporation. You wish to know whether a bond may be required under the Act.

Section 41-2004(1) R.C.M. 1947, provides that a "person" includes a corporation within the scope of the Act. Clearly, the legislature has recognized that a corporation may lease or own property for purposes of applying the Act. Where a corporation owns the premises at which a bar or tavern is being operated, and the license is issued to that entity, an officer of the corporation who is operating that premise is acting as an agent for that corporation. Any liability for employees' wages falls upon the corporation and it is therefore the corporation's interest in the premises which determines whether a bond is required. Further, any bond which may be required is posted by the corporation since that corporation is the "person" referred to in section 41-2004(1) supra. Under the facts you propose no bond is required since the corporation does not lease the premises. An agent of the corporation is not required to post a bond merely because his signature appears on the license in his capacity as an officer of the corporation to which the license was issued.

THEREFORE, IT IS MY OPINION:

1. A vendee under an installment contract for deed is not a "lessee" under the Act and is therefore not required to file a bond.
2. A vendee under a trust deed or mortgage transaction is not a "lessee" under the Act and is therefore not required to file a bond. This is true regardless of the amount of secured notes, liens, judgments, or other interests which may be held against the value of the property.
3. Where a corporate officer's signature appears on a license issued to a corporation in his capacity as an officer of that corporation, that officer is not thereby required, under the Act to file a bond.

Very truly yours,

ROBERT L. WOODAHL
Attorney General