

DEPARTMENT OF LABOR AND INDUSTRY - Recovery of fraudulently obtained unemployment compensation benefits, no additional penalty permitted;
EMPLOYMENT SECURITY - Unemployment compensation benefits, recovery of amounts fraudulently obtained;
STATUTES - Construction of inconsistent statutes;
MONTANA CODE ANNOTATED - Title 39, chapter 51; sections 1-2-102, 17-8-231, 39-51-102, 39-51-3201.

- HELD: 1. When a claimant has received unemployment insurance benefits, parts of which may have been obtained fraudulently, the Department of Labor and Industry is limited to recovery of those amounts wrongfully received by the claimant. Additionally, the claimant may be disqualified from receipt of future benefits for up to 52 weeks.
2. The Department of Labor and Industry may not sue a claimant for the additional penalty provided in section 17-8-231, MCA, because section 39-51-3201, MCA, provides a specific remedy for the department in such cases.

7 September 1983

David L. Hunter, Commissioner
Department of Labor and Industry
Lockey and Roberts
Helena MT 59620

Dear Mr. Hunter:

You have requested my opinion on the following questions:

1. When a claimant has received unemployment insurance benefits, parts of which may have been obtained fraudulently, may the Department of Labor and Industry sue for return of the entire amount of benefits received, including those rightfully received, pursuant to section 17-8-231, MCA?
2. If the forfeiture provisions of section 17-8-231, MCA, are not applicable to unemployment insurance benefits, may the Department of Labor and Industry nevertheless sue a claimant for the additional penalty provided in the statute?

Section 17-8-231, MCA, provides:

(1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any state agency or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed \$2,000 plus double the damages sustained by the state as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be sued for in the same suit. [Emphasis added.]

The statute appears to be broad enough to apply to claims for unemployment insurance benefits submitted to the Department of Labor and Industry. However, Title 39, chapter 51, MCA, specifically deals with the payment and receipt of unemployment benefits.

Section 39-51-102, MCA, expresses the public policy of the State of Montana that persons unemployed through no fault of their own should receive unemployment benefits. The Montana Supreme Court has noted that this stated policy requires that the law should be liberally construed in favor of allowance of benefits. Scott v. Smith, 141 Mont. 230, 376 P.2d 733 (1962). Section 39-51-3201, MCA, provides for an administrative penalty to be imposed against any person who knowingly obtains benefits through misrepresentation, false statements, or failure to disclose a material fact. Such person will be "required to repay to the department, either directly or ... by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him." § 39-51-3201(2), MCA. Recovery is clearly limited to an amount equal to those benefits "wrongfully received" by the claimant. Additionally, the claimant may be disqualified from receipt of future benefits for up to 52 weeks. § 39-51-3201(1), MCA.

If section 17-8-231, MCA, were construed to permit recovery of all benefits paid to a claimant, it would to that extent be inconsistent with the remedy provided in section 39-51-3201, MCA. Section 17-8-231, MCA, is a general statute creating civil penalties for persons who knowingly submit false or fraudulent claims to State agencies. Section 39-51-3201, MCA, establishes specific penalties to be assessed against persons who knowingly file false or fraudulent claims for unemployment benefits. Where two statutes, one of which deals with a subject in general terms and another in more specific terms, are in apparent conflict, the special statute controls to the extent of any inconsistency. State v. Holt, 121 Mont. 459, 194 P.2d 651 (1948); § 1-2-102, MCA. Therefore, the broader remedy available to State agencies by means of section 17-8-231, MCA, is not available to the Department of Labor and Industry when a claimant knowingly files a false or fraudulent claim for unemployment benefits. Section 39-51-3201, MCA, establishes the sole penalties to be assessed in such cases. This construction of the statutes also answers your second question concerning the additional penalty provided in section 17-8-231, MCA. Under this provision, a State agency can recover an additional penalty of up to \$2,000, plus double the damages sustained by the State, including legal costs. To allow this additional penalty to be imposed against one who

wrongfully obtains unemployment benefits would be inconsistent with the specific remedy provided in section 39-51-3201, MCA. Again, the special statute must control.

THEREFORE, IT IS MY OPINION:

1. When a claimant has received unemployment insurance benefits, parts of which may have been obtained fraudulently, the Department of Labor and Industry is limited to recovery of those amounts wrongfully received by the claimant. Additionally, the claimant may be disqualified from receipt of future benefits for up to 52 weeks.
2. The Department of Labor and Industry may not sue a claimant for the additional penalty provided in section 17-8-231, MCA, because section 39-51-3201, MCA, provides a specific remedy for the department in such cases.

Very truly yours,

MIKE GREELY
Attorney General