

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-02

Date issued: February 4, 1991

Requested by: Craig Hagen, Commissioner of Labor

- QUESTION PRESENTED -

Whether, under N. D. C. C. ' 34-14-02, an employer may require its employees to participate in a direct deposit program at a financial institution for the receipt of wages.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that N. D. C. C. ' 34-14-02 does not authorize an employer to unilaterally require its employees to participate in a direct deposit program at a financial institution for the receipt of wages.

- ANALYSIS -

N. D. C. C. ' 34-14-02 provides:

34-14-02. Semimonthly or agreed payday. Every employer shall pay all wages due to his employees at least twice each calendar month, or on regular agreed paydays designated in advance by the employer, in lawful money of the United States or with checks on banks convenient to the place of employment.

This statute was enacted in 1965 and has not been amended. The legislative history concerning the statute is not expressive on the issue at hand, so the traditional rules of statutory interpretation are applicable. Words used in any statute are to be understood in their ordinary sense unless a contrary intent plainly appears. N. D. C. C. ' 1-02-02. In the process of interpreting statutes, when the wording is clear and free of ambiguity, the letter of the statute may not be disregarded in an effort to pursue its spirit. N. D. C. C. ' 1-02-05.

Although the statute in question permits an employer to designate agreed paydays different than the requirement for a twice monthly payment of wages, the statute does not contain authority to change the requirement that the wages be paid in "lawful money of the United States" or with "checks on banks convenient to the place of employment."

This statutory language is specific in requiring two modes of payment of wages. Lawful money of the United States means money that passes from hand to hand and circulates through the

community and is the currency usually and lawfully employed in buying and selling. State v. Quackenbush, 108 N. W. 953,

98 Minn. 515 (1906) and State v. Boomer, 72 N.W. 424, 426, 103 Iowa 106 (1897). The phrase lawful money of the United States includes federal reserve notes. Love v. Baldwin United Mortgage Company, et al, 308 S.E.2d 857 (Ga. App. 1983).

The term lawful money of the United States does not include a check. McDaniel v. Patterson, 157 S.E. 72, 73, 159 S.C. 378 (1931).

It is therefore my opinion that N.D.C.C. ' 34-14-02 requires employers to pay their employees with what we have become familiar with as "cash" or with a check drawn on the employer's checking account at a bank "convenient to the place of employment."

N.D.C.C. ' 34-14-02 contains responsibilities and rights for the employer and the employees. Except when specifically declared unlawful or if it would be contrary to public policy, persons may waive the benefits they have available under statutes. However, such a waiver must be voluntary and be an intentional relinquishment of a known right to be a valid waiver. N.D.C.C. ' 1-02-28. Gajewski v. Bratcher, 221 N.W.2d 614 (N.D. 1974) and J. R. Watkins Co. v. Vangen, 116 N.W.2d 641 (N.D. 1962). Therefore, if the employer and the employee enter into a specific written agreement authorizing a method of receiving wages at variance to N.D.C.C. ' 34-14-02, it would be enforceable. However, the agreement would have to show that the employee was voluntarily and intentionally relinquishing the employee's rights under the subject statute.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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