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BY *ed M. Antosh*
DEPUTY

MONTANA FIRST JUDICIAL DISTRICT COURT
COUNTY OF LEWIS AND CLARK

STATE OF MONTANA,

Plaintiff,

vs.

TERRY WEYER,

Defendant.

Cause No. CDC-2005-341

MEMORANDUM AND ORDER
ON DEFENDANT'S
MOTION TO DISMISS

Defendant Terry Weyer has moved to dismiss the information against him. The State and Weyer have agreed that the motion can be decided on the briefs without a hearing.

BACKGROUND

Weyer has been charged by information with violating Section 45-6-301(5)(b), MCA, which makes it a crime to purposely or knowingly obtain unauthorized control over worker's compensation benefits by deception or other fraudulent action.

Weyer is the owner and sole shareholder of

1 Weyer.Comm, a sub-chapter S corporation which Weyer
2 incorporated in 1998. He also is an employee of the
3 corporation and receives a monthly wage from it. Because
4 Weyer.Comm is a sub-chapter S corporation, Weyer is required
5 to claim any profit or income of the corporation as personal
6 income whether distributed or not. He also is required to
7 pay income taxes on those amounts whether actually distributed
8 to him or not.

9 Weyer.Comm obtained worker's compensation insurance
10 coverage for its employees, including Weyer, from the Montana
11 State Compensation Insurance Fund (State Fund). On May 22,
12 2002, Weyer sustained a work-related injury to his knee which
13 required surgery and left him unable to work. Following the
14 accident, Weyer applied for temporary total disability (TTD)
15 benefits from the State Fund. When he began receiving
16 benefits, the corporation terminated his monthly wage.
17 However, during the time he was receiving TTD benefits, Weyer
18 received draws from Weyer.Comm for such things as rent
19 payments, a hunting trip to Alaska, a land purchase, and credit
20 payments.

21 **DISCUSSION**

22 Section 39-71-123(1), MCA, defines "wages" as
23 all remuneration paid for services performed by an
24 employee for an employer, or income provided for in
25 subsection (1)(d). Wages include the case value
of all remuneration paid in any medium other than
cash. The term includes but is not limited to:

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3 (d) income or payment in the form of
4 a draw, wage, net profit, or substitute for
5 money received or taken by a sole proprietor
6 or partner, regardless of whether the sole
7 proprietor or partner has performed work or
8 provided services for that remuneration;

9 (e) board, lodging, rent, or housing
10 if it constitutes a part of the employee's
11 remuneration and is based on its actual value;
12 and

13 (f) payments made to an employee on
14 any basis other than time worked, including but
15 not limited to piecework, and incentive plan, or
16 profit-sharing arrangement.

17 Section 39-71-116(31), MCA, defines "sole proprietor"
18 as "the person who has the exclusive legal right or title to or
19 ownership of a business enterprise."

20 Weyer contends that the application of those
21 definitions to him violated his due process rights and equal
22 protection. He further argues that they are void for
23 vagueness.

24 The affidavit in support of the motion for leave to
25 file the information refers only to the definition of wages
found at Section 39-71-123(1)(d), MCA. Weyer's motion is
directed to that provision.

In its response to the motion, the State does not
respond to Weyer's constitutional arguments. Rather, it states
that subsection (1)(d) does not apply in this case because
Weyer is not a sole proprietor, and that subsections (1)(e) and
(f) are the subsections to be applied in this case.

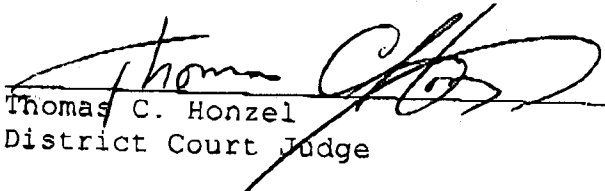
1 The definition of wages in Section 39-71-123(1) is in
2 the disjunctive. Because subsection (1)(d) is not applicable,
3 the term "wages" for purposes of this case means "all
4 remuneration paid for services performed by an employee for an
5 employer." Here, there is no allegation that Weyer performed
6 any service for the corporation while he was receiving TTD
7 benefits or that any money he received from the corporation was
8 the result of services he performed for the corporation.

9 Because there is nothing to show that Weyer was
10 receiving wages during the time he was receiving TTD benefits,
11 his motion to dismiss is well-taken.

12 For these reasons,

13 **IT IS ORDERED** that the Defendant's motion to dismiss
14 **IS GRANTED.**

15 DATED this 31st day of May, 2006.

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18 
19 Thomas C. Honzel
20 District Court Judge

21 pc: Chris P. Christensen
22 Vernon E. Woodward

23 Weyer-341#1-M&O on D's Mo to Dsms

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