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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 10, 1999

The Honorable J. Roland Smith
Member, House of Representatives
183 Edgar Street
Warrenville, South Carolina 29851

Dear Representative Smith:

In a letter to this office you requested an opinion on behalf of Mr. and Mrs. Allen Claxton. In an accompanying letter, Mr. and Mrs. Claxton indicated they had received checks totalling nearly \$49,000.00 from a Mr. Jack Burns. They indicated that they had initially filed the required paperwork with the magistrate. They also indicated that they had been informed that inasmuch as the checks were given in Lexington County, any prosecution would have to occur in that County.

S.C. Code Ann. § 34-11-60 (Supp. 1998) makes it an offense to issue or deliver a fraudulent check. If the checks were issued or delivered in Lexington County, that county would be the appropriate county for any possible prosecution. Pursuant to S.C. Code Ann. § 34-11-90 (Supp. 1998), if the amount of the check is five hundred dollars or less, it must be prosecuted in magistrate's court. If the amount is over five hundred dollars, it must be prosecuted in general sessions court. Therefore, as to the checks given to the Claxtons, it appears that they would be tried in general sessions court. Therefore, they are correctly contacting the Lexington County solicitor inasmuch as that office typically prosecutes cases in general sessions court in that County. Of course, as to any prosecution, that office would be the appropriate office to contact regarding any questions the Claxtons may have.

I would advise further that the Claxtons could consider civil action against the individual who gave the check. S.C. Code Ann. § 34-11-75 (Supp. 1998) states:

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In addition to criminal penalties, a person who knowingly or with fraudulent intent...draws, makes, utters, or issues and delivers to another a check drawn on a bank...that refuses to honor it because the maker or drawer does not have sufficient funds on deposit in or credit with the bank...with which to pay the check upon presentation and who fails to pay the same amount in cash to the payee, within thirty days following written demand, is liable to the payee for the amount owing on the check and for damages of the lesser of five hundred dollars or three times the amount owing on the check....

The Claxtons could discuss any possible civil action with a private attorney who could further advise them regarding such.

Therefore, as to the situation involving the check, in summary, the Claxtons could work with the Lexington County solicitor as to possible criminal action or contact a private attorney for possible civil relief.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

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