

The State of South Carolina



Office of the Attorney General

Demon No 87-37

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April 14, 1987

The Honorable C. Albert Johnson  
York County Magistrate  
P. O. Box 11166  
Rock Hill, South Carolina 29731-1166

Dear Magistrate Johnson:

In a letter to this Office you questioned whether the offense of breach of trust with fraudulent intent where the value of the property involved is more than fifty dollars but less than two hundred dollars is triable in a magistrate's court.

Section 16-13-230 of the Code states in part:

(a)ny person committing a breach of trust with a fraudulent intention shall be guilty of larceny....

In several cases the State Supreme Court has determined that the offenses of breach of trust with fraudulent intent and larceny are closely associated. In State v. Shirer, 20 S.C. 392 at 408 (1884) the Court held that the purpose of the breach of trust statute was "... simply to enlarge the field of larceny, removing what before might have been a defense for those who received property in trust and afterwards fraudulently appropriated it." In affirming a conviction for breach of trust with fraudulent intent, the Court in State v. Posey, 88 S.C. 313 at 317, 70 S.E. 612 (1911) stated "(t)he indictment in this case might well have been laid for larceny at common law." More recently, in Wray v. State of South Carolina, 288 S.C. 474, 343 S.E.2d 617 at 618 (1986) the Court determined that the offense of breach of trust with fraudulent intent "... may be

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compared to the crime of larceny." As explained by the Court in State v. McCann, 167 S.C. 393 at 397-398, 166 S.E. 411 (1932)

... breach of trust with fraudulent intention in this State is nothing more or less than larceny. It might well be termed "statutory larceny" as distinguished from larceny at common law. The main distinction between the two crimes is this: In common-law larceny, possession of the property stolen is obtained unlawfully, while in breach of trust, the possession is obtained lawfully.

Consistent with the above, the Court in State v. Butler, 21 S.C. 353 at 355 (1884) specifically determined that the offense of breach of trust with fraudulent intent "... must be governed in every respect by the laws applicable to the general crime of larceny, one of which is the division into grand and petit." Section 16-13-30 of the Code of Laws provides that the offense of petit larceny is committed if the value of the property stolen is less than two hundred (\$200.00) dollars. Also, pursuant to such provision, such offense is triable in the magistrate's court.

Referencing the above, in the opinion of this Office a court's jurisdiction of cases involving the offense of breach of trust with fraudulent intent is governed by statutory provisions applicable to the offense of larceny. Therefore, such cases are triable in a magistrate's court if the value of the property taken is less than two hundred dollars. If there is anything further, please advise.

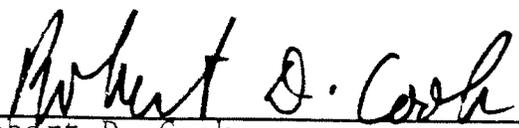
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:

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Robert D. Cook  
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