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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 4, 2002

The Honorable Kenneth H. Dover
Summary Court Judge
Inman Magistrate Court
P.O. Box 642
Inman, South Carolina 29349

Re: Your Letter of September 12, 2002
S.C. Code Ann. §34-11-60(e)

Dear Judge Dover:

In your above-referenced letter, you request an opinion from this Office concerning the application of S.C. Code Ann. §34-11-60(e). You indicate that your request involves a "... question of law as it pertains to the following scenario ...

> A local merchant is seeking a warrant for a fraudulent check under Section 34-11-60. The magistrate inspects the check that was uttered for goods received, confirms that the check was deposited within ten days of the date on the face of the check, returned for NSF, and falls within the window of the 180 day period. The documentation from the Post Office / certified letter sent is also verified. Copies are made of each item. The affiant is asked to swear under oath of all of the above for the affidavit of the warrant.
>
> The merchant seeks this warrant close to the end of the 180 day window. The actual typing of the warrant takes place after the 180 day window due to the office workload."

In light of the above scenario, you specifically ask "[i]s there a problem with serving this warrant if it was **obtained** during the 180 period, but **issued** after 180 days (emphasis yours)?"

Law/Analysis

Section 34-11-60 makes it unlawful for a person "... to draw, make, utter, issue, or deliver to another a check, draft, or other written order on a bank or depository for the payment of money

or its equivalent..." when the person lacks sufficient funds in his or her account to cover the check, etc. Section 34-11-60(e) provides that "[n]o warrant for a violation of this section may be obtained more than one hundred eighty days after the date the check was uttered." Section 34-11-60(e) establishes a statute of limitations for the prosecution of fraudulent or worthless check offenses. The answer to your question turns on whether there is a distinction between the date an arrest warrant is obtained and the date on which the arrest warrant is issued. Your question, therefore, is one of statutory construction.

When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983). Statutory language should be reviewed as a whole in light of its manifest purpose. Simmons v. City of Columbia, 280 S.C. 163, 311 S.E.2d 732 (1984). Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 438 S.E.2d 273 (Ct.App.1993).

Section 34-11-60 makes it unlawful to utter a worthless check. Section 34-11-60 and the related sections of the Code also provide legal recourse for the person who has received the check. The Sections set out procedural guidelines which, if followed, allow the aggrieved party to take advantage of certain evidentiary inferences and possibly facilitate the collection of money owed. The intent of the legislature in enacting these statutes, therefore, appears to be remedial in nature. The legislature has provided a remedy for the difficulties faced by those persons left holding worthless checks. This purpose must be kept in mind when interpreting the language of Section 34-11-60(e).

In detailing the guidelines for taking advantage of Sections 34-11-60 and 70, the statutes often speak in terms of a person's actions following the receipt and/or the return of the worthless check. For instance, Section 34-11-60(b)(1) states that the "party receiving the instrument" shall obtain the name, address, etc. of the person presenting the check and Section 34-11-60(b)(2) states that "... the party receiving the instrument shall witness the signature or endorsement of the party presenting the check and as evidence of such, the receiving party shall initial the check." Further, Section 34-11-70 places on "the person instituting prosecution" the obligation of notifying the person who made the check that it has been dishonored and the obligation of certifying to the court that notice has been given.

If Section 34-11-60(e) requiring that a warrant be obtained within one hundred and eighty days of utterance is also read in terms of an obligation placed on the person instituting prosecution or receiving the worthless check, it is logical to assume that the requirement is satisfied when that person has taken all steps within his or her power to procure the arrest warrant. That is, the warrant has been "obtained" when the person instituting prosecution has provided the necessary documentation and sworn testimony for a neutral and detached magistrate to find probable cause that a violation has occurred and an arrest warrant is called for. This interpretation of 34-11-60(e) is consistent with the overall language of Section 34-11-60 and related statutory provisions, and with

the apparent remedial purpose of the statutes. Moreover, it is commonly understood that an arrest warrant is "issued" when it is signed by a magistrate. In fact, the standard form arrest warrant provides that the magistrate (or other judge) sign as the "issuing judge." Had the Legislature intended that Section 34-11-60(e) apply to the date of issue, they certainly could have used the specific term.

While not directly on point, case law from South Carolina and other jurisdictions support the above interpretation. In deciding whether an indictment was necessary prior to the court entertaining a motion to change venue, the South Carolina Supreme Court in State v.Addison, 2 S.C. 356 (1870) noted that "[t]he complaint made to a Magistrate is a commencement of prosecution sufficient to arrest the Act of Limitation (Internal citations omitted)." In Commonwealth v. Teeter, 60 A.2d 416 (1948), the Superior Court of Pennsylvania considered the issue of whether a prosecution had been "brought" within the period of time required by that State's statute of limitations. In finding that the prosecution was timely, the court held:

> A prosecution is 'brought' in compliance with the act when an information under oath is filed ... It is unimportant that the warrant here did not actually issue ... after the expiration of the two-year period. After a prosecution is brought by information or affidavit, the warrant issues out of the court in which information is filed and is an official act over which a prosecutrix has no control. The limitation of the right of action in the statute has no reference to the date of the actual issue of the warrant. The date of filing of the complaint under oath, controls.

Id. At 417. Similarly, in State v. Hickman, 189 So.2d 254 (1966), a Florida appeals court considered a motion to quash an indictment based on a statute of limitations violation because of an alleged defect in the judge's signature on the original arrest warrant. The Hickman court found no statute of limitations violation and held that once the prosecutorial authority had done all possible within the limitation period to effectuate an intent to prosecute, the statute of limitations is tolled. Specifically, the court stated that "... it is abundantly clear that the State of Florida intended in good faith to commence the prosecution of defendant a few days after the alleged offense was committed and took positive steps to set the machinery in motion to effectuate and to evidence that intent ... [s]uch substantially should satisfy the Statute." Id. At 261,262.

There is, however, authority which could lead to the opposite conclusion than that reached above. In 1991, this Office was asked to opine on the retrospective effect of Section 34-11-60(e). In the opinion, we noted that the section prohibits the " ... issuance of a warrant more than 180 days after the date the check was given." See OP. ATTY. GEN. DATED OCTOBER 2, 1991. While appearing to be inconsistent with the conclusions of this opinion, the 1991 opinion was not written in response to the questions raised in your request and given the apparent purpose of the statutes in question and the cited authority, I feel that these opinions can be reconciled. That reconciliation is that Section 34-11-60(e) prohibits the issuance of an arrest warrant which is not obtained within 180 days after the date the check was given.

Conclusion

While not free from doubt, it seems likely that a reviewing court would find that the requirement of Section 34-11-60(e) to obtain a warrant within one hundred and eighty days of the date the check is uttered is satisfied when the party receiving the check or initiating prosecution has taken all necessary steps within his or her control to procure the warrant. To avoid future confusion, however, legislative clarification may be necessary.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

David K. Avant
Assistant Attorney General