

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

January 5, 1994

The Honorable Cam Crawford
Lexington County Magistrate
Lexington County Services Center
108 Harbison Boulevard
Columbia, South Carolina 29212

Dear Magistrate Crawford:

In a letter to this Office you raise several questions dealing with possible fraudulent check violations. You first asked whether in situations where a consumer is billed a month in advance for cable television services and payment is made by check, would such be construed to be exempt from being considered as a fraudulent check as defined by S.C. Code §34-11-60.

Pursuant to subsection (a) of such provision, it is unlawful to "... draw, make, utter, issue or deliver to any other a ... (fraudulent) ... check for the payment of money ... whether given to ... obtain money, services, credit ..." Subsection (d) of §34-11-60 defines "credit" as "... securing further advances of money, goods, or services by means of check ... given in whole or in part payment of a then existing account."

A prior opinion of this Office dated May 2, 1980, noted that while a check given in payment of a pre-existing debt is exempt from consideration as a fraudulent check, "when further services are expected and desired by the drawer, the check given in payment of a then existing account is not exempt from consideration as a fraudulent check." Additionally, pursuant to Section 34-11-60(a) it is an offense to give a fraudulent check to obtain services. Such would appear to include cable television services. Therefore, as to the situation you addressed, it appears that a check given in payment for a month in advance of cable services could be construed as a fraudulent check, assuming, of course, it meets all of the other necessary criteria.

Dearest Letter

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You next asked whether a Lexington County magistrate could issue a fraudulent check warrant when a check deposited in the mail is received at a cable company's office in Lexington County and the cable services were received in Richland County. Again, §34-11-60 subsection (a) provides that it is unlawful for an individual "to draw, make, utter, issue or deliver" a fraudulent check. A prior opinion of this Office dated July 22, 1983, a copy of which is enclosed, indicated that these terms should be read in the disjunctive with each term constituting a separate offense. Therefore, a violation of any one of the terms satisfy §34-11-60. In the referenced opinion the factual situation involved an individual who mailed a check out of this State along with an order for merchandise. The opinion determined that such a check could be considered to come within the definitions of "draw", "make", "utter" or "deliver" for purposes of the fraudulent check act.

As to your situation, I assume that the check, while received in the mail in Lexington County, was "drawn, made, or uttered" in the county where the cable services were received, i.e., Richland County. Therefore, consistent with the definitions of such terms as set forth in the enclosed opinion, jurisdiction would lie in Richland County. However it is also an offense to "deliver" a fraudulent check. The previously - issued opinion noted that

"Delivery" in the ordinary sense, implies some sort of receipt ... to constitute delivery, there must be a parting with the possession and with power and control over it by the maker for the benefit of the payee or endorser. An actual delivery is not essential, and a constructive delivery will be held sufficient if made with the intention of transferring.

The opinion, citing such definitions, concluded that in the situation cited there was "delivery" in the jurisdiction from which the check was mailed.

In your situation involving the question as to whether a magistrate would have jurisdiction in Lexington County, the place of receipt of the mailed check, reference may be made to authorities which define "delivery" in terms of receipt. In State v. Athans, 490 S.W.2d 25 at 26 (Mo. 1973), the Missouri Supreme Court stated

As a legal concept, the term "delivery" does have various connotations and "delivery" may be accomplished by various means for various

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purposes. However, in common understanding, an instrument deposited in the mail is not delivered until it is received by the addressee.

Therefore, in that case the court concluded that venue properly arose in the county where a check sent through the mail was received. Similarly, in Pierce v. Board of Appeals of Carver, 329 N.E.2d 774 (Mass. 1975) the court stated that for purposes of the provision it was construing, the term "deliver" "... ordinarily implies a requirement of actual receipt by the person to whom it is intended that delivery be made." 329 N.E.2d 774 at 777. Consistent with such cases, it appears that where a check was "delivered" in Lexington County, a Lexington County magistrate would have jurisdiction.

You also questioned whether a Lexington County magistrate could issue a fraudulent check warrant for cable services received in Lexington County where the cable bill is paid either in person or through the mail at the cable company's office in Lexington County with a check determined to be fraudulent. Consistent with the above response, it appears that a Lexington magistrate would have jurisdiction as to a check paid either in person or delivered through the mail at the cable company's office in Lexington County.

You also questioned whether a fraudulent check warrant could be issued by a Lexington County magistrate in circumstances where a cable company located in Lexington County attempts to draft funds from a cable customer's account through a company in Florida and the Florida company transmits the written order that is returned as non-sufficient funds or account closed. Referencing the above requirements of §34-11-60, it appears questionable whether any of the elements of the offense in such situation occur in Lexington County so as to provide a Lexington County magistrate with jurisdiction.

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If there are any questions concerning the above, please advise.

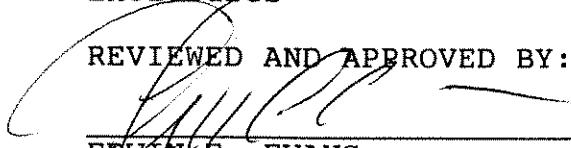
Sincerely,



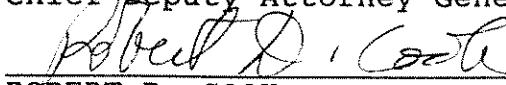
Charles H. Richardson
Assistant Attorney General

CHR:bvc
Enclosures

REVIEWED AND APPROVED BY:



EDWIN E. EVANS
Chief Deputy Attorney General



ROBERT D. COOK
Executive Assistant for Opinions