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The State of South Carolina



Office of the Attorney General

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May 19, 1994

Honorable Walter Jones
Chief Judge, Richland County Summary Courts
Richland County Law Enforcement Center
1328 Huger Street
Columbia, South Carolina 29201

Dear Judge Jones:

In a letter to this Office your referenced the operation of "check cashing" stores. You stated:

These businesses cash post dated checks for customers for a fee. The customer, for instance, needing to borrow \$150 writes one of these businesses a check for \$200 and dates it for several days in the future. The customer received \$150 in cash from the business and promises repayment by the issuance of the post dated check.

As is to be expected, quite a number of these checks are not honored by the banks when they are presented by the check cashing businesses, either there are no funds to cover the checks or the accounts have been closed.

You questioned whether a fraudulent check warrant can be issued in such circumstances.

S.C. Code Section 34-11-60(a) establishes the offense of issuing a fraudulent check. It states in part:

It is unlawful for a person, with intent to defraud...to draw...a check...for the payment of money or its equivalent, whether given to....obtain money, services, credit, or property of any kind or nature whatever...when at the time...the drawer does not have an

Re: most letters

May 19, 1994

account in the bank...or does not have sufficient funds on deposit...to pay the same on presentation....

Pursuant to subsection (d) of such provision,

This section does not apply...to the giving of any check,...where the payee knows, has been expressly notified, or has reason to believe that the drawer did not have an account or have on deposit with the drawee sufficient funds to insure payment of the check...It is also unlawful for any person to induce, solicit, or to aid and abet any other person to draw, make, utter, issue, or deliver to any person including himself any check, draft, or other written order on any bank or depository for the payment of money or its equivalent, being informed, knowing, or having reasonable cause for believing at the time of the inducing, soliciting, or the aiding and abetting that the maker or the drawer of the check, draft, or other written order has not sufficient funds on deposit in, or an account with, the bank or depository with which to pay the same upon presentation.

In light of the exemptions set forth in subsection (d), further review would be in order as to whether a fraudulent check warrant could be issued in the situation you addressed. As stated, the fraudulent check statute does not apply to situations where the payee knows, has been notified, or has reason to believe that sufficient funds are not on deposit to pay the check being issued or that the drawer does not have an account with the bank.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:jca

REVIEWED AND APPROVED BY:



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