

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 803-734-3970

October 12, 1987

Nancy E. Shealy, Staff Attorney
South Carolina Court Administration
P. O. Box 50447
Columbia, South Carolina 29250

Dear Ms. Shealy:

In a letter to this Office you referenced the provisions of Act No. 75 of 1987 which amended Section 34-11-70 of the Code by adding:

(d) For purposes of this chapter, subsequent persons receiving a check, draft, or other written order by endorsement from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument, if the maker of the instrument has the same defenses against subsequent persons as he may have had against the original payee. However, the remedies available under this chapter may be exercised only by one party in interest.

You have indicated that collection agencies are now accepting endorsements to themselves of checks that have already been dishonored. Relying on the amendment, these agencies are claiming the same rights as the original payee and, according to your information, are initiating prosecutions under the fraudulent check statutes in their own names as endorsees. You have questioned whether the referenced amendment authorizes collection agencies to collect checks which they accept as endorsees even though the agency knows the checks have been dishonored.

Ms. Shealy
Page 2
October 12, 1987

Section 34-11-60 (a) of the Code defines the offense of drawing and uttering fraudulent checks. Section 34-11-60 (d) of the Code sets forth the following defenses to the offense:

(t)his section shall not apply to any post-dated check or to any check given only in full or partial payment of a preexisting debt, or to the giving of any check, draft or other written order 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 thereof nor to any check which has not been deposited to an account of the payee within a period of ten days from the date such check was presented to the payee.

In the situation you addressed, the collection agency has been informed that a check has been dishonored. Assuming that such is within the scope of the defenses noted above, in the opinion of this Office, the referenced amendment to Section 34-11-70 would not authorize a collection agency to accept a check as an endorsee and then seek a warrant pursuant to Sections 34-11-60 et seq. of the Code as an endorsee. As noted, the fraudulent check provisions are not applicable when 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 thereof...."

If there is anything further, please advise.

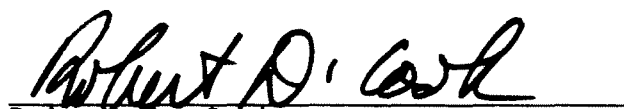
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions