

1979 WL 42756 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 15, 1979

*1 Honorable I. S. Leevy Johnson
Member
House of Representatives
Box 1431
Columbia, South Carolina 29202

Dear I.S.:

Thank you for your letter of January 4, 1979, requesting an opinion as to whether [Section 34-11-60 of the 1976 Code](#) is constitutional. This section constitutes the bad check law of the State.

The Supreme Court of this State has not specifically ruled on the constitutionality of the bad check law. In other jurisdictions, laws of this type have been generally upheld against a constitutional argument that such statutes penalize one for nonpayment of a debt. Further grounds claiming that such statutes were invalid have been presented to courts of various states, generally being rejected.

The authorities which have been relied upon in consideration of this problem are set forth below. After consideration of these, it is my opinion that [Section 34-11-60](#) is valid and constitutional, particularly in consideration of the fact that its force is directed against one who issues the check which is worthless 'with intent to defraud.' Additionally, I consider also the existence of Section 34-11-100, which provides that after prosecution is initiated, the payment of a dishonored check does not constitute a defense or grounds for dismissal of charges, but that such payment may be considered in mitigation of sentence.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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