

1980 WL 120882 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 18, 1980

*1 Honorable Wendell O. Adams
Magistrate
P. O. Box 1152
Walterboro, SC 29488

Dear Judge Adams:

In a letter to this Office, you asked whether there was any statute of limitations applicable to a fraudulent check charge. You indicated that you had been requested to issue a fraudulent check warrant for a check dated in 1974.

As you are aware, the Legislature in 1979 enacted changes in this State's fraudulent check statutes. Actually, two separate Acts were enacted. Act No. 56 of 1979 [61 STAT. 93 (1979)] was the more comprehensive Act, but the Legislature failed to enact a savings clause in that particular Act. However, by Act No. 93 of 1979 [61 STAT. 171 (1979)] such a savings clause was included. It was specifically provided in the latter Act that:

'All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Act takes effect are saved and may be consummated according to the law in force when they are commenced. This Act shall not be construed to affect any prosecution pending or begun before the effective date of this Act.'

Such savings clause may be construed to indicate that it was the intention of the Legislature that prosecutions be permitted for those offenses committed under the former fraudulent check statutes. (See: 22 C.J.S., Criminal Law, § 27(4), Pages 92-94).¹

Therefore, as to the check issued in 1974, an arrest warrant could be issued pursuant to the former fraudulent check statutes. There are no statute of limitations as such which would otherwise preclude a prosecution of the maker of such check. As you are aware, the former fraudulent check statutes are found in the main volume of Title 34 of the 1976 Code of Laws.

If there are any further questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

Footnotes

- 1 After the enactment of Act No. 93 of 1979, this Office was asked to issue an opinion on the effectiveness of the referenced savings clause in light of its being included in the second fraudulent check Act of 1979 which did not become effective until after the earlier fraudulent check Act became law. This Office determined that the effectiveness of such a savings clause was more properly a matter for a court to consider, but also suggested that prosecution of fraudulent check violators for those checks issued prior to June 1, 1979, the effective date of Act No. 56 of 1979, continue until a court determined such prosecutions were not permissible under such savings clause.

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