1979 WL 43629 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 1, 1979

***1** John C. Patrick, III, Esquire
Assistant Director
S. C. Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear John:
In a letter to this Office you referenced the fact that upon closing the Lexington County Check Clearing House a substantial number of arrest warrants that had been issued but have not been served were found. With reference to such you have asked several questions.

In your first question you asked whether there is a point of time in which an arrest warrant which has been issued but not served becomes stale and thereby justifies its withdrawal prior to service. This Office in a previous opinion to Mr. Forney with your office dated October 26, 1978, stated in part that '. . . once an arrest warrant is issued, such warrant does not 'grow stale' by virtue of any inability to immediately execute it.' Therefore, all reasonable attempts should be made to serve any arrest warrant previously issued. However, of course, if it appears that upon the face of the warrant that service is no longer justified or if any additional facts are brought to your attention which would indicate that service is no longer proper, service should not be made. This is a determination that would have to be made as to each individual arrest warrant.

In your second question you referenced that pursuant to the recently enacted fraudulent check statutes (R137) if the amount of a fraudulent check is two hundred ($200.00) dollars or less, the defendant issuing such a check shall be tried exclusively in a magistrate's court. Prior to such legislation, a magistrate's court had jurisdiction over instruments of one hundred ($100.00) dollars or less. You asked whether those defendants named in arrest warrants issued for fraudulent check offenses which were issued prior to the effective date of the recently enacted fraudulent check legislation where the instruments were between one hundred ($100.00) dollars and two hundred ($200.00) dollars should be tried in the magistrate's court or the Court of General Sessions.

It is generally held that:
'. . . jurisdiction of the subject matter of a particular case is vested in the court when the appropriate charge is filed . . ..' State v. Langford, 223 S.C. 20 at 26, 73 S.E.2d 854 (1953). See also State v. Douglas, 245 S.C. 83, 138 S.E.2d 845 (1964).

Therefore, with reference to such, inasmuch as it may be determined that at the time the arrest warrant was issued, the case was triable in the Court of General Sessions, in the opinion of this Office, the Court of General Sessions would be the proper court to try those defendants charged with issuing fraudulent checks in amounts between one hundred ($100.00) dollars and two hundred ($200.00) dollars who are named in arrest warrants issued prior to the effective date of the recently enacted fraudulent check statutes.

This determination is also made inasmuch as there was included in R137 a savings clause 'saving' prosecutions begun prior to the effective date of the new act. Such clause states:

***2** '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.' (Section 4A (R137).

Such may be construed to indicate that it was the intention of the Legislature to permit prosecutions for those offenses committed under the former fraudulent check statutes. (See 22 C.J.S., Cr.L., Section 27(4) pp. 92-94). (This opinion should not be construed as determining whether or not the referenced savings clause is valid. As you are aware, the question has been raised as to whether such clause is valid inasmuch as it was included in the second fraudulent check act of this year, which amended the earlier passed fraudulent check act, and which did not become effective until after the earlier statute had become effective. This Office has previously determined that such prosecutions should continue until a court has concluded that such prosecutions are not permissible inasmuch as the savings clause is ineffective.)

In your third question you asked as to those cases involving instruments between one hundred ($100.00) dollars and two hundred ($200.00) dollars for which an arrest warrant has not been issued but which were drawn prior to the effective date of the recently enacted fraudulent check statutes, should such cases be tried pursuant to the former fraudulent check statutes or the recently enacted fraudulent check statutes. The offense of issuing a fraudulent check was defined in the former fraudulent check statutes, and is identically defined in the recently enacted fraudulent check statute as:
'It shall be unlawful for any person, with intent to defraud, in his own name or in any other capacity, to draw, make, utter, issue or deliver to another, any check, draft or other written order on any bank or depository for the payment of money or its equivalent, whether given to obtain money, services, credit or property of any kind or nature whatever, or anything of value, when at the time of drawing, making, uttering, issuing or delivering such check or draft or other written order the maker or drawer thereof does not have an account in such bank or depository or does not have sufficient funds on deposit with such bank or depository to pay the same on presentation, or if such check, draft or other written order has an incorrect or insufficient signature thereon to be paid upon presentation. Section 34-11-60, Code of Laws of South Carolina, 1976.

Therefore, it may be determined that the offense of issuing a fraudulent check is committed at the time the check is 'drawn, made, uttered, issued or delivered to another.' With reference to such, in the opinion of this Office, as to cases involving instruments between one hundred ($100.00) dollars and two hundred ($200.00) dollars for which an arrest warrant has not been issued, but which were drawn prior to the effective date of the recently enacted fraudulent check statutes, such should be prosecuted pursuant to the former fraudulent check statutes and therefore such cases should be tried in the Court of General Sessions. Again, such determination is also based on the fact that there was included in the fraudulent check legislation enacted this year a savings clause, which is presumed valid as above stated.

***3** Hopefully the above is in complete response to your inquiry. If there are any further questions, please do not hesitate to contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

1979 WL 43629 (S.C.A.G.)

End of Document