

1979 WL 43550 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1979

*1 Mr. Neal Forney
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Neal:

In a letter to this Office you presented those questions raised during the recent school on fraudulent checks held in response to the passage of [Sections 34-11-60 et seq. of the 1976 Code](#) of Laws, as amended, and have asked for an opinion from this Office in response to such questions. Due to the number of questions raised and the fact that some require more study than others I will respond at this time to those questions the answers to which are apparent.

In questions (3) and (4) you asked if the office address or post office address of the drawer of a check can be used in lieu of the residence address to establish prima facie evidence pursuant to [Section 34-11-60](#). In the opinion of this Office, inasmuch as [Section 34-11-60\(b\)\(1\)](#) states in part:

‘To establish this prima facie evidence, the full name, residence address and home telephone number of the person presenting the check, draft or other written order shall be obtained by the party receiving such instrument’, (emphasis added).

the residence address of an individual issuing a check must in fact be obtained by the party receiving the instrument to establish prima facie evidence. This is not to say, however, that additional addresses, such as an office address or a post office box number could not be obtained in addition to the residence address for purposes of identification.

However, it appears that it was the clear intent of the Legislature that the residence address of an individual who issues a check be obtained by the person receiving a check. As to a check issued by a business, while such checks are not referenced specifically by the fraudulent check act, it is the recommendation of this Office that the street address of the business be obtained. Again additional addresses, such as a post office box, may be obtained for purposes of identification.

In question (5) you asked whether it is necessary that a check be deposited to an account of the payee within a period of ten (10) days rather than have a bank teller stamp the check as being dishonored upon presentation at the counter in order to comply with the provisions of [Section 34-11-60](#). It is stated in [Section 34-11-60\(d\)](#) that:

‘This section shall not apply . . . 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.’

Therefore, pursuant to such, in the opinion of this Office, it is necessary that a check be deposited to an account rather than have a bank teller merely stamp the check as being dishonored upon presentation at the counter in order to comply with the provisions of [Section 34-11-60](#).

In question (6) you asked whether a magistrate may require the prosecutor to put up a bond that will be forfeited as administrative costs in the event a fraudulent check case is dismissed for want of prosecution pursuant to [Section 34-11-70](#). Upon review, I am unaware of any statute specifically mandating such a bond. [Section 34-11-70\(b\)](#) does state:

*2 'When any prosecutions are initiated under this chapter, the party applying for the warrant shall be held liable for all reasonable administrative costs accruing not to exceed twenty dollars in the event the case is dismissed for want of prosecution.'

The requirement that such a bond be put up, however, is not specified by the Act nor does a reasonable interpretation of the Act mandate such a bond. It appears, therefore, that it would be inappropriate to require the prosecutor to put up a bond which could be forfeited as administrative costs in the event a fraudulent check case was dismissed for want of prosecution.

In question (8) you asked whether the service charge of five (\$5.00) dollars provided for by Section 34-11-70 can be required to be paid to the prosecutor in addition to the fine and court costs that are to be paid to the county pursuant to Section 34-11-90. Please be advised that in the opinion of this Office the service charge of five (\$5.00) dollars, which by Section 34-11-70 may be charged by the payee when the check is returned for any of those reasons provided by such section, is not included as one of the charges for which the defendant is responsible after a conviction or plea for drawing a fraudulent check. Specifically Section 34-11-90(d) states:

'After a conviction or plea for drawing and uttering a fraudulent check or other instrument in violation of [Section 34-11-60](#) and the defendant is charged or fined, he shall be required to pay in addition to such fine all reasonable court costs accruing, not to exceed twenty dollars.'

Therefore, pursuant to such section there is no provision which requires the further payment of a service charge to a payee in addition to a fine and court costs after a conviction or plea for drawing and uttering a fraudulent check.

In question (9) you ask whether a magistrate's constable is entitled to any part of the court or administrative costs charged pursuant to Section 34-11-70 or Section 34-11-90. A review of such sections fails to indicate any provision which provides that a magistrate's constable is entitled to any part of such costs. Furthermore, in keeping with the mandate of Sections 8-21-1030 and 8-21-1050 of the Judicial Adjustment Act (R238, S402 (1979)) where it is provided that compensation of magistrates' constables shall be fixed by the governing body of the county and where it is further provided that all fees received by constables shall be accounted for and paid into the general fund of the county, it would appear that the payment of such costs to a magistrate's constable would be improper.

In question (10) you asked whether a magistrate should accept money from a defendant which then would be transmitted to the prosecutor of a fraudulent check action. Presumably you have asked whether a magistrate should accept money paid as restitution once a warrant has been issued by a magistrate. Pursuant to Section 34-11-70(c), any court, including a magistrate's, may dismiss a prosecution for a fraudulent check on satisfactory proof of restitution and payment by the defendant of all administrative costs not to exceed twenty dollars. By Section 34-11-90(c), after a first offense conviction for drawing a fraudulent check, a court may at the time of sentence suspend the imposition of a sentence upon a showing of satisfactory proof of restitution and payment of the specified court costs. In the opinion of this Office, it is not the responsibility of the magistrate to accept the money paid as restitution and instead it is the responsibility of the defendant to provide such payment to the payee or merchant. Furthermore, the refusal of the magistrate to accept such money would avoid any problems that may develop in a system whereby a magistrate accepts money from the drawer of a fraudulent check which must be paid to another party.

*3 In question (12) you asked if a check sent through the mail is considered to be a payment on a pre-existing debt pursuant to [Section 34-11-60](#). Such section provides that it is unlawful for any person with intent to defraud to issue a check ' . . . to obtain money, services, credit or property of any kind or nature whatever, or anything of value . . . ' when at the time of issuance the check is improperly given by virtue of the reasons set forth by such section. 'Credit' is defined by subsection (d) of [Section 34-11-60](#) to mean ' . . . securing further advances of money, goods or services by

means of a check, draft or other written order, given in whole or in part payment of a then existing account.' It is further provided by subsection (d) that:

'This section shall not apply to any postdated check or to any check given only in full or partial payment of a preexisting debt . . .'

Therefore, in answer to your question, the mere fact that a check is sent through the mail does not in all instances result in a determination that it is a payment on a pre-existing debt. Such check must be examined in each circumstance in light of the provisions of [Section 34-11-60](#) set out above. As was stated by the South Carolina Supreme Court in [State v. McCord](#), 258 S.C. 163, 187 S.E.2d 654 (1972):

'Whether or not a check is a fraudulent one in violation of . . . (the code section defining the violation) . . . has to be determined in light of the facts existing at the time of drawing, making, uttering, issuing, or delivering such check.' 258 S.C. at 167.

In question (13) you asked if a company sends a truck out of the county and the driver accepts a check, where does criminal jurisdiction lie if the check is fraudulent, where the check is given or where the check is processed. [Section 34-11-60\(a\)](#) defines the offense of issuing a fraudulent check and states in part:

'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 . . . (deemed fraudulent by such section).'

With reference to such, in the opinion of this Office, inasmuch as the transaction was completed in the county where the check was accepted, i.e., the check was issued and delivered in that county, criminal jurisdiction would lie in the county where the check was given.

In question (14) you asked if the payee can insist on collecting a five (\$5.00) dollar service charge after a criminal warrant has been issued pursuant to Section 34-11-70. Section 34-11-70(c) states that:

'Any court, including magistrate's, may dismiss any prosecution initiated pursuant to the provisions of this chapter, on satisfactory proof of restitution and payment by the defendant of all administrative costs accruing not to exceed twenty dollars submitted prior to the date set for trial after the issuance of a warrant.'

There is no provision which mandates that the five (\$5.00) dollar service charge also be paid to the payee prior to a case being dismissed by a magistrate. If the case would go to trial, upon conviction or plea for drawing a fraudulent check, pursuant to Section 34-11-90(d), the defendant is charged or fined and is responsible in addition for 'all reasonable court costs accruing, not to exceed twenty dollars.' As stated above, there is no provision mandating the payment of a five (\$5.00) service charge after a conviction or plea by a defendant.

***4** I will be responding to your remaining questions in the near future.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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