

1974 WL 27190 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 19, 1974

**\*1 RE: Your Inquiry of February 27, 1974**

Mr. E. H. Carmichael, Jr.  
Box 545  
Conway, South Carolina

Dear Mr. Carmichael:

I am in receipt of your recent inquiry concerning the check laws of South Carolina.

Enclosed herewith is a letter from Assistant Attorney General Hutson S. Davis, Jr., on this area of the law. I believe this letter to be pertinent to your inquiry because the situation described in your letter is a typical bad check 'compromise' situation. As you can see from the letter, it is the opinion of this office that the use of criminal processes to settle bad checks is unlawful. Therefore, the so-called 'compromise' of such checks is invalid. The mere fact that the defendant paid the amount of the bad check before being served with the warrant does not excuse him from criminal liability thereon; nor does it excuse him from paying the charges as set by law.

I would further refer you to Section 8-176.1 of the 1962 Code of Laws of South Carolina as amended. This section is in conflict with the opinion of this office in that it provides for the compromise of bad checks. The section provides, in pertinent part, that:

No check may be compromised, after issuance of the warrant, between the parties unless sworn testimony shall have been presented to the magistrate in the presence of the accused, which testimony must show probable cause for the issuance of the warrant.

In the event of a compromise of such check, the cost of written notice shall be computed by the magistrate and added to the principal sum of the check; provided, that in the event of a compromise between the parties there shall be a two dollar cost for the magistrate and a three dollar cost for the service of the warrant, the sums to be paid by the defendant.

As you can see, this provision makes the defendant liable, in the event of a compromise, for magistrate's costs and the costs of serving the warrant in the amount set out above.

The Supreme Court of South Carolina has not yet made a ruling in this area. Should they follow the opinion of this office, compromises would be held invalid. The defendant, therefore, would be subject to a fine and/or imprisonment plus the amount of the charges. This would be true even though the defendant has paid the full amount of the check. If the Court were, on the other hand, to uphold the above statute, the defendant would still be liable for the charges as set out therein. It seems that, for the purposes of your inquiry, a final Court decision would be irrelevant. The defendant would be liable for the charges in either case.

As to your inquiry concerning charges for serving warrants for claim and delivery, and summons and complaint in Horry County, I respectfully refer you to your local authorities. This is a matter of public record.

If you should require further information, please feel free to contact me.

Very truly yours,

Joseph R. Barker  
Staff Attorney

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