

1973 WL 26912 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1973

\*1 Mr. Foster Lamb  
Route 1  
Box 4-A  
Lake City, SC 29560

Dear Mr. Lamb;

I am in receipt of your recent inquiry concerning the collection of checks in Lake City, South Carolina.

Please be advised that South Carolina Law does not permit the settlement or compromise of any criminal offense, including the offense of uttering bad checks. The recent Mississippi case of Richardson v. Edgeworth, Barlow, et. al., 214 So, 2nd 579, 588 points out the danger of using the criminal law to settle a civil debt.

A justice of the peace (magistrate) is a judicial officer. A justice of the peace court (magistrate's court) is a judicial body. This officer and this court have no constitutional right or power to serve as a collection agency for creditors. A creditor may properly file his claim for a civil debt against the debtor in a justice of the peace court (magistrate's court). But the justice of the peace (magistrate) serves only as a judicial officer to determine the validity of the claim. He is not a collection bureau. If he acts as a collection bureau or if he utilizes the criminal processes of the court to collect a civil debt, he is preventing the functions of this . . . court and bringing disrespect upon the entire judicial process.

Although this question has not been presented to the Supreme Court of South Carolina, it would seem that there is substantial doubt about the validity of the custom of settling bad check criminal cases upon payment of the face amount of the check plus statutory fees and mileage.

Based on the foregoing, it is the opinion of this office that the use of criminal processes to settle bad checks is unlawful. The proper course of action to obtain the money from a bad check is the civil remedy of summons for debt.

I realize that this opinion does not provide for the relief which you request in your letter. However, if you will carefully consider the ramifications of the above stated law on the matter, I am sure you will understand why this office can not advise any magistrate to pursue the collection of checks.

If you have any further questions regarding this matter, please feel free to contact me.

Very truly yours,

Hutson S. Davis, Jr.  
Assistant Attorney General

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