

1973 WL 26925 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 11, 1973

\*1 Hon. G. Werber Bryan  
County Attorney  
P. O. Box 2038  
Sumter, South Carolina 29150

Dear Mr. Bryan:

You have asked the opinion of this office as to whether a warrant under the bad check statute Section 8-176 of the South Carolina Code, as amended, should issue under the circumstances you describe. The circumstances so described are: landlord and tenant enter into a month to month partial agreement; they provide for payment of rent for each month to be said on the first of that month; the tenant tenders his personal check for one month; a rent on the first of the second month of tenancy; the check is returned on the sixth of the month because of insufficient funds; the landlord commences ejectment proceedings after the return of the check.

The statute reads (with deletions):

§ 8-176 (1971 Supp.)—Drawing and uttering fraudulent check, draft or other written order. It shall be unlawful for any person, with intent to defraud, . . . to draw, make, utter, issue or deliver to another, any check, . . . on any bank . . . for the payment of money or its equivalent, whether given to obtain money, services, credit or property of any kind or nature whatever . . . when at the time of drawing . . . 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 . . . . The word ‘credit’ as used in this section shall be construed to mean securing further advances of money, goods, or services by means of a check, . . . given in whole or in part payment of a then existing account. . . . This section shall not apply to any postdated check or to any check given only in full or partial payment of a pre-existing debt . . . . (Emphasis added.)

The circumstances so described would indicate that the check was gives to obtain property under the broad qualifications proscribed in the statute. The South Carolina Supreme Court in the case of [Lott v. Claussenls, Inc.](#), 251 S.C. 478, 163 S.E.2d 615 (1988) stated that the term ‘property’;

. . . is employed to signify any valuable right or interest protected by law, and the subject matter or things in which rights or interest exist. (page 617 of 163 S.E.2d.)

The broad language of the statute and this construction of the meaning of ‘property’ would apparently indicate that the check was gives for ‘property’ i.e. the interest of the tenant in the rented property. In any event, the rights of the landlord and owner to the use, enjoyment, and disposal of his premise, constitute ‘property,’ and the payment of rent is to obtain a ‘property’ within the meaning of the statute. It is our opinion that the check was given to obtain property and this element of the statute has been violated.

Sincerely,

C. Tolbert Goolsby, Jr.  
Deputy Attorney General

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