

1979 WL 43096 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 3, 1979

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

Dear John:

In a letter to this Office several questions were raised concerning the recent fraudulent check legislation. You asked specifically what is the criminal and civil recourse of the receiver of a two party check that is dishonored, as to a drawer of a fraudulent check and an endorser. A previous opinion of this Office, dated February 25, 1974, a copy of which is enclosed, stated that as to the question of whether or not an endorser could be criminally liable under the fraudulent check statute in effect at that time, there was no case law in this State relevant to such question. However, the opinion did reference the following:

‘(t)he worthless check acts are ordinarily not applicable to an endorser, unless it can be established that such person was a party to the scheme to defraud or that he had knowledge thereof.’ Anderson, Wharton's Criminal Law and Procedure, Vol. 2, Section 613 (1957)

The opinion also stated that those provisions relating to prima facie evidence of fraudulent intent as provided by Section 8-177, Code of Laws of South Carolina, 1962, as amended, applied only to the drawer or maker of a check.

With reference to such, it would appear that even pursuant to the recent fraudulent check legislation (R84, R137), such provisions are not applicable to an endorser of a fraudulent check unless the endorser was a knowledgeable party to the scheme to defraud. The law references for the most part actions of the drawer or maker of a check. Also those matters that go to the establishment of prima facie evidence of fraudulent intent apply for the most part to the maker or drawer. Furthermore, as to the definition of the offense of issuing a fraudulent check, it is unlawful for any person ‘with intent to defraud’ to issue a check when at the time of issuance:

‘. . . the maker or drawer thereof does not have an account in such bank . . . or does not have sufficient funds on deposit with such bank or depository to pay the same on presentation, or if such check . . . has an incorrect or insufficient signature thereon to be paid upon presentation.’ (Emphasis added.) ([Section 34-11-60\(1\)\(a\), Code of Laws of South Carolina](#), 1976, as amended.

Therefore, the original maker or drawer of the fraudulent check would be criminally liable if the above conditions were established.

As to the question of civil liability, such liability would attach to the endorser of the fraudulent check and therefore the receiver would have civil recourse against the endorser of the check.

You also asked whether in the prosecution of a case brought pursuant to the recent fraudulent check legislation is it necessary for the party who initialed the check to appear at the trial. Such question is in reference to that part of [Section 34-11-60\(b\)\(2\)](#) which states that to establish prima facie evidence of the identity of the individual issuing the check, the

party who receives the check is to witness the signature of the presenter and as evidence of his observation, shall initial the check.

\*2 It appears that it would be unnecessary for the individual witnessing the signature of the party presenting a check to appear at the trial. However, someone should be present who would be familiar with the individual initialing the check and therefore could authenticate the initials.

You also questioned the propriety of a payee charging more than five (\$5.00) dollars as a service fee for a dishonored check. As you are aware, by Section 34-11-70(a) a service charge of five (\$5.00) dollars is expressly provided for a check not paid by the drawee for those reasons provided in such section. Therefore, it would be improper for a payee to charge more than five (\$5.00) dollars.

If there are any further questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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