

CRIMINAL PROCEDURE: Approved form of information on
Section 4694 R. S. Missouri,
1939, in reference to "no funds"
check.

June 2, 1942

Hon. Arthur U. Goodman, Jr.
Prosecuting Attorney
Dunklin County
Kennett, Missouri



Dear Sir:

We are in receipt of your letter of May 25, 1942, in which you request an approved form of information, charging a defendant with obtaining property by means and use of a check drawn on a bank in which he has no funds.

Your request does not refer to the evidence which should be submitted on such a charge, but we are submitting parts of an opinion which was furnished James A. Finch, Jr., Assistant Prosecuting Attorney, at Cape Girardeau, Missouri, which is entitled "Criminal Law: Postdated check on bank in which there is no account; cannot be prosecuted under Section 4694, R. S. 1939, without other misrepresentations." This opinion was rendered January 24, 1942.

In that opinion we stated as follows:

"* * * It has been held in this State that the mere promise of the defendant that a check would be paid, is insufficient under the felony section. On the other hand, it has been held that a conviction may be had under the misdemeanor sections where the check is postdated, for the reason that the Legislature saw fit to enact a separate law with reference to evidence on a check drawn upon a bank and payment refused on account of insufficient funds. The sections under the misdemeanor sections are 4695, 4696 and 4697, R. S. Mo. 1939.

"The Supreme Court in construing the felony section (4694) in the case of State v. Mullins, 237 S. W. 502, 1. c. 504, said:

'So the only evidence offered which proved any of the alleged misrepresentations was the promissory statement of the defendant that his check would be paid. As seen above, that is not a false pretense within the meaning of the statute.

'It may be urged that presentation of a check drawn on the bank was prima facie a representation that the defendant had funds there. The Legislature of 1917 (Acts 1917, p. 244) passed an act incorporated in the statutes of 1919 as sections 3553 and 3554. Section 3553 relates to the offense of drawing a bogus check or checks upon a bank with insufficient funds to meet it. It will be noted that the defendant was not prosecuted under that section but under section 3343, a general statute relating to the obtaining of money by false pretenses.

'Section 3554 is as follows:

'"Sec. 3554. Notice--Five Days--How--Evidence. As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds

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in, or credit with, such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon (together with the drawee thereof the amount due thereon), together with all costs and protest fees, within five days after receiving notice that such check, draft or order has not been paid by the drawee."

'Under that section the drawing of a check upon a bank in which the drawer has no funds would be prima facie evidence of intent to defraud unless within five days after notice of dishonor the drawer should make the drawee whole.

'For the purpose of this case we will assume, without deciding, that this section is applicable to the present transaction. * * * '

"The Supreme Court of this State in construing the misdemeanor sections, that is, 4695, 4696 and 4697, in the case of State v. Taylor, 73 S. W. (2d) 378, l. c. 385, said:

'This court in the Shelby Case and in prior decisions upheld the power of the General Assembly to declare by statute the rule of prima facie evidence laid down in section 4116. The like power, asserted in section 4306, is not questioned. And since the latter section makes no distinction between predated, truly dated, postdated, or nondated checks, the

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facts which the statute makes prima facie evidence should be applicable to postdated checks as well as to predated, truly dated, or nondated checks.'

"Section 4306, mentioned in the above opinion, is now Section 4696, R. S. Mo. 1939."

Under the above quotation, which refers to the case of State v. Mullins, 237 S. W. 502, l. c. 504, the fact that a check is drawn on a bank in which the drawer had no account is not sufficient evidence for a conviction under Section 4694 R. S. Missouri, 1939, but there must be some other false representations with the intent to cheat and defraud.

Attached, you will find an information based upon Section 4694 R. S. Missouri, 1939, in reference to the obtaining of property by means and use of a check drawn on a bank in which the drawer of the check has no funds.

Respectfully submitted

APPROVED:

W. J. BURKE
Assistant Attorney General

ROY McKITTRICK
Attorney General of Missouri

WJB:RW

"Carl F. Wymore, Prosecuting Attorney within and for the body of the County of Cole and State of Missouri, under his official oath and according to his best information, knowledge and belief, informs the court that one _____, on the _____ day of _____, _____, at the City of _____, County of Cole, State of _____, did unlawfully, feloniously, knowingly and designedly with the intent then and there to cheat and defraud one _____, did falsely and fraudulently represent, pretend and state to the said _____, that he the said _____, had lawful money of the United States deposited to his credit in the 'Bank of _____', a banking corporation duly incorporated, organized and operating as such under the laws of the State of _____, and that said money was subject to be checked out of said bank, and that he had sufficient money deposited in said bank to purchase and pay for _____ of the value and purchase price of _____ Dollars, and the said _____ further falsely pretended and represented to the said _____ (herein set out other evidence, if any, of the nature of the trick or fraud committed by defendant described with certainty), that the said _____, believing the said false pretenses and representations so made by the said _____, and being deceived thereby, was by reason thereof then and there induced to sell and deliver to the said _____ the personal property of _____ for the purchase price of _____ Dollars and the said _____ gave the said _____ his _____ personal check for the above amount drawn on the 'Bank of _____', in payment for said _____ and the said _____ relying upon the statements so made by the said _____, and believing them and each of them to be true, then and there accepted said false and bogus check in payment of the purchase price of said _____ and delivered the said _____ to the said _____, and the said _____ presented said false and bogus check at the 'Bank of _____', a banking corporation duly incorporated, organized and operating as such under the laws of the State of Missouri for collection and payment at the 'Bank of _____', and the payment was refused by said 'Bank of _____', because the said _____ had no funds in said bank, and the said _____ by means of said false pretenses and representations so made to the said _____ as aforesaid, unlawfully, feloniously, knowingly and designedly did then and there obtain from the said _____ the possession of the said _____ of the value of _____ Dollars of the moneys and property of the said _____ with the intent then and there unlawfully and feloniously the said _____ to cheat and defraud of the same. Whereas, in truth and in fact the said _____ did not have any money in the 'Bank of _____', (herein set out other clauses, if any, negating the truth of the alleged statements and representations charged to have been made by the defendant) all of which he the said _____ then and there well knew the said false representations, statements and pretenses made as aforesaid to be false; against the peace and dignity of the state."