

May 9, 1972

OPINION LETTER NO. 31
Answer by Letter - Burns

Honorable Joe A. Johnson
Prosecuting Attorney
Jefferson County
Post Office Box 246
Hillsboro, Missouri 63050



Dear Mr. Johnson:

This is in answer to your inquiry asking whether a county treasurer would violate Section 561.460, RSMo, if he issues checks for the distribution of school funds to school districts when the check he has received from the state out of which the school districts are to be paid has not been credited to the treasurer's account by the depository bank. It is our understanding that the county depository involved does not credit the proceeds of a check for a period of four days unless it is notified in a shorter period that the check has cleared.

It is our view that the provisions of Section 561.460 are not violated by the treasurer's issuing such checks. We believe it to be clear that there is no intent to defraud when the officials of the school district have been informed of the fact that at the time checks are written for payment of funds to such school districts the proceeds of the state check have not been credited to the treasurer's account but will be credited to his account only on the expiration of four days after such deposit or when the bank is informed of the clearance of such state check in less than four days.

In the case of State v. Phillips, 430 S.W.2d 635, the St. Louis Court of Appeals specifically ruled on this point, stating l.c. 636, 637:

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"As defendant contended when he moved for acquittal, the State's evidence showed that when Phillips gave Rotskoff the check Phillips did not represent it to be good. Phillips' only representation was that the check would be good later--not a representation of an existing fact but of a future condition. That did not show the required intent to defraud. We reach this conclusion on the general principles of fraud law in Missouri and the specific application of the principle by other courts."

Since the school district officials are aware that there is no representation being made except as to future payment the requisite intent would be lacking and there is no violation of the statute.

The advisability of the treasurer's issuing checks when he is aware that there are no funds in his account at the time he issues such checks is not passed upon in this letter since we pass only on the question of whether or not the treasurer would be guilty of a violation of a criminal law if he did so.

Very truly yours,

JOHN C. DANFORTH
Attorney General