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In re: Cross examination of witness about prior conviction
even though appeal from said conviction was pending.

January 10, 1933



Mr. George B. Padget
Prosecuting Attorney
Daviness County
Gallatin, Missouri

Dear Sir:

Your letter of January 6th, 1933 has been referred to me and, which in part, is as follows:

"At this time, having inherited the case of State of Mo. vs Harold E. Taylor, charged with perjury, on change of venue from this county and now to be tried in DeKalb Co., their court convening coming January 16th.

"One of my first cases in this court in 1911 when I was prosecuting attorney here before, was to convict this same man for cutting harness, and now, strange to say, one of my first cases, is to prosecute him on this above charge.

"I am informed that he was convicted on an insufficient funds check in Caldwell County, about June 1931; that he started to appeal it, but am not informed as to whether he ever perfected his appeal, and if not your records may show, and if he has not, will it be possible to have it, the appeal, dismissed there, in time, so it will stand affirmed, so that I may use the record of such conviction by way of impeachment, in case he takes the stand, in this perjury case. Will you look it up and enlighten me so soon as possible, making such suggestions about it as may further the interests of the State in this prosecution pending against him in DeKalb County?"

The records of the Supreme Court show that the appeal from Caldwell County has been perfected and continued until the April term of court, together with an order extending the time of filing a Bill of Exceptions.

In State vs Shelton, 284 S.W. 433, 314 Mo. 333, the question of whether a witness could be asked, on cross-examination, about a conviction even though an appeal was pending was passed upon by the Supreme Court. I suggest you read this case in the Missouri Reports. You will notice that Blair, Walker, Atwood, White and Graves concurred in holding that the question was proper.

Yours very truly,

FRANKLIN E. REAGAN,
Asst. Attorney General

Approved:

ROY McKITTRICK
Attorney General

FER/mh