

CRIME AND PUNISHMENT: Obtaining a signature to promissory note by false pretenses.

8-13  
August 9, 1934.



Hon. F. M. Brady  
Prosecuting Attorney  
Benton County  
Warsaw, Missouri

Dear Mr. Brady:

This is to acknowledge your letter as follows:

"I have a complaint against a person for obtaining a promissory note from a man here by some trick or to state it in plain words without the man knowing that he signed the note at all. The man was an oil salesman and he talked the man here into signing a contract to buy some oil and while there were misrepresentations as to the contract and the man here did not know that he was to make any down payment on the contract at all, yet, after two or three months his note turned up at a local bank where it had been discounted by the salesman.

"However, when it is boiled down the man here tells me that he knew he was signing a contract and the man told him he would have to sign in three or four places on the contract and copies, but nothing was said about a note and that he did not see any note and that the note must have been folded in and covered by the other papers or he would have seen it, and that nothing was said about any note at any time during their conversation, and that if anything was to have been paid he had the money in his house at the time to pay.

"I would like to know what this party should be charged with. I had thought it might be

forgery, but do not find anything directly in point, or he might be charged with obtaining the note by trick, but don't know just how to charge it.

"I would like to know what you think of this and what this man should be charged with."

From the facts as stated in your letter, we are of the opinion that the man whom you seek to charge is not guilty of any crime.

Section 4095, R. S. Mo. 1929;  
State v. Zingher, 259 S. W.  
451;  
State v. Mullins, 237 S. W.  
502;  
State v. Glice, 252 S. W.  
465.

In the second paragraph of your letter you state that nothing was said about a note, that is, if a note was signed it was part of the contract or was concealed in such a manner therein so that the party who signed it did not read it. Nowhere do you state that there was any representation made concerning the note or any trick or device used to keep the party from seeing same. We gather that this was just a transaction in which a salesman induced a party to enter into a contract and same was signed in three or four places by the party who now says he was defrauded.

In a case such as this, as stated in State v. Zingher, supra, page 453,

"By the very terms of the statute the intent to cheat or defraud is an essential element and the very essence of the offense. Absent this element, there is no crime. \*\*\*"

And, in State v. Mullins, supra, page 504,

"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."\*\*\*\*\*

And in State v. Olice, supra, page 466, the Court said:

\*\*\*\*\* The criminal act of obtaining the draft was complete when by means of his false and fraudulent representations the defendant induced the insurance company to issue the draft and indorsed it to the mortgagee. \*\*\*\*

Deciding the question before us, solely upon the facts presented, it is our opinion as stated above that the person sought to be charged has not committed any offense or crime. However, you might not have stated the facts fully; and after reading the above authorities, if you have left out any material fact or facts in your letter, you may readily ascertain whether or not such fact or facts not stated, if any, is enough to change our conclusion herein. If you find that there are facts not stated in your letter that make out a case of obtaining a note by false pretenses then, of course, prosecution follows. However, we are leaving that up to your judgment as we may only pass upon the matter as submitted in your letter.

Yours very truly,

APPROVED:

JAMES L. HORNBUSTEL  
Assistant Attorney-General.

ROY McKITTRICK  
Attorney-General.

JLH/afj