

CRIMINAL LAW:
FALSE PRETENSES:

The statute applying to obtaining property, etc., by false pretenses is not violated by obtaining such property by promises.

July 22, 1938

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Mr. Douglas Mahnkey,
Prosecuting Attorney,
Taney County,
Forsyth, Missouri.

Dear Sir:

This is in reply to yours of July 13th, requesting an opinion from this department based upon the following letter:

"I have a problem and am seeking your advice. If it is not proper for me to ask you may say so and I will work it out the best I can.

Agent for a fake poultry remedy takes \$90.00 out of one community of farmers by representing to them that this is wonderful stuff and that he will buy all the eggs the hens lay and pay .12 cents over the market price for them and that he will send poultry man to cull the flock.

The 'Remedy' is nothing and he has not been seen since.

I am wondering if I might get a conviction under section 4304 R.S. Mo. 1929 or are promises alone insufficient?

He can be located by his license number. It is not so much a question of a conviction but whether or not an information can be drawn on this section with this set of facts."

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From the statement of facts set out in your letter it appears that the agent to whom you refer, if he had violated any statute it is that one which makes it a crime for obtaining money, property or any valuable thing by false pretense or deception. The section of the statutes which covers this class of offenses is Section 4304, R. S. Mo. 1929, which is as follows:

"Every person who, with the intent to cheat and defraud, shall obtain or attempt to obtain, from any other person, or persons, any money, property or valuable thing whatever by means or by use of any trick or deception, or false and fraudulent representation, or statement or pretense, or by any other means or instrument or device, commonly called 'the confidence game,' or by means, or by use, of any false or bogus check, or by means of a check drawn, with intent to cheat and defraud, on a bank in which the drawer of the check knows he has no funds, or by means, or by use, of any corporation stock or bonds, or by any other written or printed or engraved instrument, or spurious coin or metal, shall be deemed guilty of a felony, and upon conviction thereof be punished by imprisonment in the state penitentiary for a term not exceeding seven years."

Whether or not the crime has been committed would depend entirely upon the statement of facts made at the time the party received the money or property or valuable thing from the one to whom such statement is made.

If the agent, at the time of receiving the money from the farmers made a statement of fact, which statement was untrue, and the farmers relying on such statement, parted with their money, then the offense has been committed.

The agent's promise of what he would do in the future would not alone be sufficient to constitute the offense and upon which a charge could be based. Volume 25 Corpus Juris, page 594, section 15, lays down the rule

as it applies to promises and statement of fact which is as follows:

"While the crime is not committed by a mere false promise without a false statement of fact, a false statement of fact may become effective only by being coupled with a false promise. When this is the case the statement of fact and the promise may be considered as together constituting the false pretense and a conviction may follow, or, if the statement of fact and the promise can be separated and prosecutor relied in part on the former, the promise may be disregarded and accused be convicted on the statement of fact. The mere coupling of a promise with a false pretense does not relieve the false pretense of its false character, or remove from accused the consequences which the law attaches to false representations made with intent to deceive, and by which one is defrauded. Although the promise is coupled with a statement of an existing fact, yet if the property was obtained by relying on the promise as the inducement, the offense is not committed."

On the question of whether or not a promise alone is sufficient upon which to base a charge of obtaining property by false pretense, we find the rule stated in Volume 25 Corpus Juris, page 593, section 14:

"In general, a mere promise to do something, relating as it does to a future event, is not within the statute, however false or fraudulent the promise may be. And this is the rule although the defrauded party was induced by such promise to part with his property.* * * * *"

The above seems to be the rule that has been adopted by the Missouri courts. In the case of State v. Tull, 42 Mo. App. 324, l.c. 326, the principle is stated as follows:

"It is a familiar principle of criminal law that, to be guilty of what is known as a false pretense, the pretense must relate to an existing or past fact, and not to the future. 2 Bish. Crim. Law, sec. 415; State v. Evers, 49 Mo. 542. A promise to do something in the future has never been considered a false pretense. * * * * *

The portion of your request which states that the agent represented to the farmers that the poultry remedy "is wonderful stuff" seems to be the only statement of fact that was made in connection with the transaction. Just what he meant by that statement your letter does not reveal, and we are not sufficiently informed to state whether that is a sufficient statement of fact upon which to base a charge. We note from your letter that the agent stated that he "would buy all the eggs the hens lay and pay .12 cents over the market price for them and he would send a poultry man to cull the flock." This part of the statement is only a promise.

As stated by the above authorities the promises alone are not sufficient upon which to base a charge for the violation of said statute, but if the statement of fact made at the time the promises were made, and if such facts being relied upon by the farmers they paid their money to the agent, then the charge for obtaining money or property under false pretenses lies if such facts are untrue.

CONCLUSION

From the foregoing we are of the opinion that if the statement "wonderful remedy" constitutes a sufficient statement of fact and such statement as made by the agent about the poultry remedy is untrue, and that if the farmers, relying on such statement and the promises made at that time and in connection therewith, paid out their money, then the agent is liable to prosecution for obtaining money under false pretenses.

We are also of the opinion that if the farmers paid out their money to the agent only on his promise that

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he would buy their eggs and cull their flock, then an action for obtaining money, property or any valuable thing by false pretense would not lie.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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