

INFORMATION: Approved form of information under Section 4304
R. S. Mo. 1929.

March 15, 1939

Mr. Carl F. Wymore
Prosecuting Attorney
Cole County
Jefferson City, Missouri



Dear Mr. Wymore:

We are in receipt of your letter of recent date,
wherein you state as follows:

"Will you please render me an approved
information for the prosecution of a
false and bogus check under section
4303, Revised Statutes of Missouri,
1929."

On March 1st, you advised us orally that the defendant
obtained merchandise from the J. C. Penny Clothing Company
of Jefferson City, Missouri, and gave a personal check for
the merchandise he obtained on a bank at Salina, Kansas,
representing that he had funds there on deposit.

The check was deposited by the clothing company in a
local bank for collection and payment from the bank at
Salina, but was refused by reason of the fact the defendant
did not have any money in the Kansas bank.

Section 4304 R. S. Mo. 1929 provides as follows:

"Every person who, with the intent to
cheat and defraud, shall obtain or
attempt to obtain, from any other per-
son, 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."

In the case of State vs. Robinson 14 S. W. (2d) (Mo) 452 l.c. 453, the court in passing on an information based on Section 3552 R. S. 1919, now Section 4304, supra, said:

"(1) The essentials to a charge under the statute (section 3552, R. S. 1919), here alleged to have been violated, are set forth with particularity in State v. Loesch (Mo. Sup.) 180 S. W. 875, 878, and cases. Among others the allegation is required to be made that the party defrauded relied upon and believed in the truth of the pretenses made by the defendant and was thus induced to and did part with his property."

In the case of State vs. Loesch 180 S. W. (Mo) 867 l.c. 878, the court said:

"Allegations covering the essentials herein stated appear in the information: The name of the defendant; the venue of the crime (State v. Terry, 109 Mo. 601, 19 S. W. 206); the date of its commission; that it was committed feloniously with intent to cheat and defraud (State

v. Martin, 226 Mo. loc. cit. 548, 126 S. W. 442; State v. Woodward, 156 Mo. 143, 56 S. W. 880; State v. Scott, 48 Mo. 422); the names of the parties to whom the false pretenses were made (State v. Samuels, 144 Mo. 68, 45 S. W. 1088; State v. Chissell, 245 Mo. loc. cit. 557, 150 S. W. 1066); their ownership of the property, its description and value (State v. Myers, 82 Mo. 558, 52 Am. Rep. 389; State v. Vandenburg, 159 Mo. 230, 60 S. W. 79; Halley v. State, 43 Ind. 509; State v. Ladd, 32 N. H. 10); the nature of the trick or fraud committed by defendant described with certainty (State v. Porter, 75 Mo. 171; State v. Miller, 212 Mo. 73, 111 S. W. 18); that the pretenses made were false, and defendant's knowledge of their falsity when made (State v. Janson, 80 Mo. 97; State v. Bradley, 68 Mo. 140); that the parties defrauded relied upon and believed in the truth of the pretenses made by the defendant, and were thus induced to and did part with their property (State v. Kelly, 170 Mo. 151, 70 S. W. 477; State v. Hubbard, 170 Mo. 346, 70 S. W. 883; State v. Vorback, 66 Mo. 168; State v. Evers, 49 Mo. 542); that the pretenses were designedly (State v. Wilson, 143 Mo. 334, 44 S. W. 722) made by the defendant, and by the means thereof he did feloniously obtain and receive from the parties named the property described, with the intent to cheat and defraud them of same (State v. Barbee, 136 Mo. 440, 37 S. W. 1119). The foregoing allegations, which are formally pleaded, are sufficient to charge an offense under section 4765, R. S. 1909, and the defendant will not be heard to complain that he has not been informed as to the nature and cause of the accusation against him. State v. Foley, 247 Mo. loc. cit. 628, 153 S. W. 1010; State v. Lovan, 245 Mo. 516, 151 S. W. 141; State v. Donaldson, 243 Mo. 460, 148 S. W. 79."

The following information under Section 4304, supra, is based upon the suggestions in the above case of State vs. Loesch, supra:

"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."

Mr. Carl F. Wymore

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From the foregoing, we are of the opinion that the above information contains the essential elements to make a charge under Section 4304, R. S. Mo. 1929.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General
MW:RT