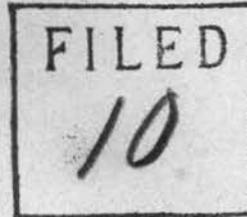


CRIMINAL LAW: Services included in term "valuable thing" used in Section 4694, R. S. Mo. 1939.

October 24, 1949

Honorable Ted A. Bollinger
Prosecuting Attorney
Shelby County
Shelbyville, Missouri



Dear Sir:

This is in reply to your recent request for an opinion which reads as follows:

"An opinion is requested of your office to determine whether a prosecution can be instituted under Section 4694, R. S. Mo. 1939, where a bogus check is given in payment for services rendered the check writer. The question being whether services come within the terms of the statute reading 'valuable thing'."

In disposing of your inquiry, we are called upon to construe Section 4694, R. S. Mo. 1939, which provides:

"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."

Our search covering the decisions of the Missouri courts does not reflect a case which rules this question. However, the statute above is not unlike that which was construed by the Supreme Court of Mississippi in the case of State vs. Ball, 75 So. 373, 374, 114 Miss. 505, L.R.A. 1917E, 1046. The Mississippi statute read in part as follows:

"Every person who, with intent to cheat and defraud, shall designedly, by color of any false token or writing, or by any other false pretense, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, or valuable thing, upon conviction there, * * * * ."

The Supreme Court of Mississippi held that the exact question raised in the above cited case was whether or not the professional services of a physician was a "valuable thing." In ruling the point, the Court spoke as follows:

" * * * We think the object of the statute is primarily to reach the mischief of fraud or deceit practiced by one person upon another in obtaining something of value by such deceit or false pretense. The thing obtained by the deceit or false pretense must be either money, personal property, or valuable thing. In the case before us the thing obtained by the false pretense and deceit was the services of a physician of the value or worth of \$15. The term 'valuable thing' is very broad and comprehensive, and the Legislature, no doubt, intended it as an enlargement, and not a restriction, to tangible personal property. The services of a competent physician is undoubtedly a valuable thing within the meaning of the statute. The services of the wage hand in the field or the employe in the factory or the professional services of the lawyer or doctor are valuable. The amount or value is either fixed or easily ascertainable. Therefore the services of the physician in this case is a 'valuable thing,' and when obtained by false pretenses and deceit the statute has been violated, and the guilty person is liable to prosecution thereunder. As

the goods, wares, and merchandise of the storekeeper are his stock in trade, so are the services of the doctor, lawyer, or mechanic their stock in trade, and the one should not be deprived of his property by false pretenses any more than the other, as the mischief intended to be cured is the obtaining of the 'valuable thing' by one person from another by means of deceit and false representations * * * ."

We consider the reasoning set forth in the case of State vs. Ball, supra, as particularly applicable to the question being determined, and adopt the same in support of the conclusion made herein.

CONCLUSION

It is the opinion of this department that "services" are to be considered within the term "valuable thing" as such term is used in Section 4694, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

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