

CRIMINAL CODE: Postdated checks fall within the provisions of the Criminal Code, Sec. 4695, R.S. Mo. 1939.
TREASURERS: County Treasurers may not serve as Deputy Sheriffs.

January 7, 1949



Mr. William Lee Dodd
Prosecuting Attorney
Ripley County
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Dear Sir:

We are in receipt of your letter of recent date wherein you request the official opinion of this department on questions set forth in your letter which reads as follows:

"Suppose a man gives a postdated check and then fails to deposit the money in the bank to meet it, or fails to take it up by date. Is this a crime? Is it a promisory note?

Suppose a man gives a postdated check and says he will pick the check up by due date, or that he will make payments on it, but never does either one. Is this a crime?

Does the law permit a County Treasurer to act as Deputy Sheriff?"

Our attention is first directed to your inquiry relative to postdated checks. Section 3028, R.S. Mo. 1939, provides as follows relative to postdated checks:

"The instrument is not invalid for the reason only that it is antedated, or postdated: Provided, this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery."

The reading of the above quoted statute discloses that the giving of a postdated check may cause the same to be invalid if the purpose for which it is given is fraudulent or illegal.

In the Criminal Code of Missouri, Section 4695 R.S. Mo. 1939, the drawing of checks or drafts with intent to defraud has been designated a misdemeanor. The question then arises whether the giving of a postdated check would fall within the scope of such statute. In passing on this point, the Supreme Court of Missouri, ruling in the case of State v. Taylor, 73, S.W. (2nd) 378, 1.c.

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382, 95 A.L.R. 476, 335 Mo. 460, spoke as follows:

"Nor is a postdated check outside the classes of instruments at which section 4305, R.S. Mo. 1929 * * * (Sec. 4695, R. S. Mo. 1939) is directed. Our Statute covers 'any check, draft or order, for the payment of money * * *."

(Words in parenthesis ours)

The ruling in State v. Taylor quoted above clearly brings the act of giving a postdated check within the misdemeanor statute, in those instances where intent to defraud can be established.

The second portion of this opinion is now addressed to your inquiry relative to the right of the County Treasurer of Ripley County, Missouri, to act as Deputy Sheriff under the duly elected and qualified Sheriff of such county.

Section 13799, R.S. Mo. 1939, provides as follows:

"No sheriff, marshal, clerk, or collector, or the deputy of any officer, shall be eligible to the office of treasurer of any county."

CONCLUSION

1. This department is of the opinion that the giving of a postdated check is to be considered a crime within the misdemeanor statute, Sec. 4695, R.S. Mo. 1939, in those instances where intent to defraud can be established.
2. This department is of the opinion that Section 13799, R.S. Mo. 1939 constitutes a positive prohibition against the Deputy Sheriff and Treasurer of Ripley County being one and the same office holder.

Respectfully submitted,

APPROVED:

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