

CRIMINAL LAW: Venue in a case of obtaining money under false pretenses lies in the County wherein the money is actually obtained.  
VENUE: When checks are involved the money is obtained when the check is charged to the account of the drawer of said check, except when the said check is transmitted through the mails, in which case venue would lie in the County wherein the letter was mailed.

January 27, 1950

1/31/50

Hon. Joe C. Welborn  
Prosecuting Attorney  
Stoddard County  
Bloomfield, Missouri



Dear Mr. Welborn:

We have your recent letter requesting an official opinion of this department. Your opinion request is as follows:

"I would like an official opinion of your department as to the venue in a case of a state employee defrauding the state by means of a "padded" expense account. The expense account is mailed to Jefferson City at regular intervals, from an outstate county. The account is approved, and the check is mailed from Jefferson City."

The sole question presented in your opinion request is:

Where does venue lie in a case of a state employee defrauding the State by "padding" his expense account, said expense account being mailed from an outstate county to Jefferson City, where it is approved and the check in payment of same is then mailed to said outstate county from Jefferson City?

Section 3767, Mo. R. S. A. provides:

"Offenses committed against the laws of this state shall be punished in the county in which the offense is committed, except as may be otherwise provided by law."

Hence in order to determine where the venue lies in the case here at hand it is necessary for us to first determine in which county the offense was committed. The expense account was made up in an outstate county and thence mailed to Jefferson City where the said expense account was approved and then in reliance upon the statements made and submitted in the said

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expense account a check was drawn by the State in favor of said employee and thence mailed to him in the outstate county.

There are two rules either of which may be applied to establish the venue of the case here at hand under the facts submitted in your opinion request.

The first of these two rules is stated in 22 C.J.S., Criminal Law, Section 185 (n) page 287, as follows:

"The general rule is that the crime of obtaining money or property by false pretenses is completed where the money or property is obtained, and that, if the pretenses are made within one jurisdiction and the money or property is obtained in another, the person making the representations must be indicted within the latter jurisdiction, \* \* \* \* \*"

The above quoted rule was applied by the Supreme Court of Missouri in the case of State v. Mandell, 183 S. W. 2d 59, wherein the court held that the prosecuting witness did not part with her money until the checks were charged to her account. The following quote appears therein on page 64:

"\* \* \* \* \* In the case before us Mrs. Springer parted with her money in the City of St. Louis when the checks were charged to her account. Until that occurred she had full dominion over it. A case in point is Raymond v. State, 116 Tex.Cr.R. 595, 33 S.W. 2d 192. It was there held in a prosecution for obtaining money under false pretenses that the venue was in Shackelford county. The check upon which the money was obtained was drawn on a bank in Shackelford county but cashed by the defendant in a bank in Tarrant county. The exact situation as that in the case before us. We rule that the venue of the crime was in the City of St. Louis. \* \* \* \* \*"

It follows therefore that the county wherein the drawee bank

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was located, and by which said bank the check was ultimately paid, would be the county where the State had parted with its money. Hence, venue in this instance would lie in that county.

The second rule which may be applied to the facts recited in your opinion request in order to ascertain wherein the venue of such case would lie is stated in 22 C.J.S., Criminal Law, Section 185 (n), page 287, as follows:

"Where, induced by false pretenses, one transmits by mail to accused money, drafts, or other writings, such mailing is a delivery to the postmaster as the agent of accused, to be forwarded to him, and the offense is complete where the letter is mailed, and is indictable at such place;  
\* \* \* \* \*"

No cases were found in this jurisdiction in which the above quoted rule was applied. However, the above quoted rule was applied in the case of *People v. Megladdery*, 105 P. (2d) 385 wherein the court said on page 390:

"The appellant urges that the court had no jurisdiction over the offense set forth in the fourth count because the check involved in that count was written in Sacramento and there mailed to the payee addressed to Oakland. Such was the testimony of the appellant but other witnesses gave conflicting testimony from which the jury could have found that the check was mailed in Alameda county. \* \* \* \*"

Applying the above quoted rule to the facts here at hand it is readily seen that the venue in this instant would lie in that county wherein the check was mailed, namely, Cole County.

#### CONCLUSION

It is, therefore, the opinion of this department that the venue of the charge of obtaining money by false pretenses

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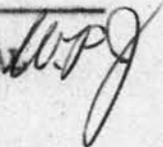
against a state employee, for a fraudulent expense account mailed to Jefferson City from an out-state county and a check for payment of the same being mailed to said state employee from Jefferson City, would be either in that county wherein the said drawee bank was located and by which said bank the check was ultimately paid; or in that county wherein the said check was mailed to the said state employee, which in this instance would be Cole County.

Respectfully submitted

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APPROVED:

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PMS:A