



July 26, 1961

Honorable Joe A. Jackson  
Member, Missouri House of Representatives  
Box 442  
Grant City, Missouri

Dear Mr. Jackson:

This letter of advice, in lieu of a formal opinion, is in answer to your letter of July 19, 1961. You have indicated that you hold a personal check from an individual, drawn eight months ago, against the maker's bank account which still has funds, and that the bank refuses to honor the check though the maker has not stopped payment on the same.

Section 362.370 RSMo 1959, cited in your letter of inquiry, appears on its face to merely relieve a bank of any liability to its depositor as drawer of a check if it chooses to not honor the same after one year from the date the check was drawn, and does not create any obligation between the bank and the drawee of the check.

The following language from *Kline & Aitken v. Cantley*, Mo. App., 34 S.W. 2d 526, l.c. 527, will suffice to answer your inquiry:

"\* \* \* in this state a suit by a holder of a check for less than the total deposit of the drawer will not lie against the bank on which it is drawn for refusal to pay it on presentment, even though the drawer of the check has, at the time, a sufficient sum to his credit in the bank to pay the check. A check for less than the whole amount on deposit is not an assignment pro tanto of the funds of the drawer on deposit in the bank, and confers no right of action upon the holder of the check against the bank."

Trusting that the above remarks will fully answer your inquiry, I remain

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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