

August 22, 1967

FILED
307

Hon. James R. Hall
Prosecuting Attorney
of Ripley County
106 Court House Square
Doniphan, Missouri 63935

Dear Mr. Hall:

You request an opinion in the following terms:

"A businessman wrote a check, either for goods sold, or on account, and the check proved to be drawn on an account which had not sufficient funds to pay the check. Thereafter, and prior to criminal prosecution, the businessman filed a federal bankruptcy petition, listing therein the debt owed to the payee on the check. The opinion sought is: 'Does the bankruptcy petition constitute an absolute defense against a present action for an insufficient funds check under 561.460?'"

The essence of the crime mentioned is the intent to defraud. If the intent is present, the man may be prosecuted regardless of subsequent events, see State vs. Euge, 349 S.W. 2d 502.

Very truly yours,

NORMAN H. ANDERSON
Attorney General