IN RE: Violation of Section 4097 R. S. Mo. 1929 by circulating script designed as use for currency.

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March 1, 1933

Hon. C. Arthur Anderson,
Prosecuting Attorney,
Clayton, Missouri.

Dear Sir:-

In your two letters to me you state the instrument (a copy of which you enclose) is designed to be used as a currency among the Members of the Chamber of Commerce.

The copy of the instrument you enclose is as follows:

> " There has been deposited with the Treasurer of the Overland Chamber of Commerce One Dollar ($1.00) for the redemption of this Certificate when twenty-five booster stamps have been affixed on the reverse side."
>
> (May use 3 or 4 booster stamps, instead of 25)

Section 4097, R. S. of Mo. of 1929 provides as follows:

> "Illegal Currency.--Any person not authorized by law who shall put in circulation as a circulating medium any note, bill, check, ticket, or other instrument of writing, purporting or evidencing that any money will be paid to the receiver, bearer or holder thereof, or to any person by any name or description whatsoever, or that it will be received in payment of debts, or be used as a currency or medium of trade, in lieu of money, or who shall vend, pass, receive or offer in payment any such note, bill, check, ticket, or other such currency, shall upon conviction be adjudged guilty of a misdemeanor."

I have been unable to find any statute repealing, modifying, or in any way altering the full force and legal effect of this enactment and if such a statute exists and modifies or alters Section 4097 of course this opinion would have to be changed so as to follow such modifying Legislative Act.

This statute is an old one appearing in the Laws of Missouri as early as the Statutes of 1825 and it is in substantially the same form that it was when it appeared in the 1825 code of Missouri. There have been some changes but such as do not effect the question

submitted by you. The object of this statute of course, is to prevent the circulation by any unauthorized person or corporation or company or association of something that shall take the place of currency.

The earliest decision I find on this statute is the case of Downing vs. State of Mo., 4 Mo. 336.

In the Downing case it was proved that Downing was secretary or cashier of a certain private banking establishment and resided in Wisconsin Territory, and signed the notes of said concern as such cashier; that the president whose signature was also attached to the note resided in St. Louis, and kept a broker's office; that the president had exchanged two of said notes for two notes on an Illinois Bank at the request of witness; that said notes were seen in circulation in the City of St. Louis and had been redeemed at the office of the president.

The charge was of circulating the notes and the currency. The indictment described the note as purporting to be payable to the holder, when on its face it purported to be payable to bearer. The defense made the point that an indictment describing the note as payable to holder when on its face it was payable to bearer was bad and the Court sustained this point and reversed the judgment of the Circuit Court.

In the course of the opinion, the Court said:

> "In the case before this court, the indictment charges that Downing put in circulation, etc., a certain note purporting that five dollars will be paid to the holder thereof and the note offered in evidence purported that five dollars would be paid to the bearer thereof. This is clearly a wrong description of the note, and for this reason, the judgment ought, in my opinion, to have been arrested."

And in another part of the opinion, 4 Mo. 575, the Court said:

> "The indictment charges that Downing did, etc., put in circulation as a circulating medium, a certain note, purporting that five dollars will be paid to the holder thereof. The note given in evidence purported to be payable to bearer. It is certain that the legal effect of the note as set out in the indictment, and as it is proved, is the same. But as it was attempted to describe the note, not according to its legal effect, but as it existed, it should have been so done. That such is the true meaning of the word "purport" is sufficiently established by authority * * *."

The indictment in this case was under the first part of Sec. 4097 which provides

> "Any person not authorized by law who shall put in circulation as a circulating medium any note, bill, check, ticket or other instrument of writing purporting or evidencing that any money will be paid to the receiver, bearer or holder thereof * *."

The only thing decided in the above case is that a description in the indictment did not conform to the facts proven because the indictment charged the note was payable to holder and the note offered in evidence showed on its face it was payable to bearer.

The next case that I find is that of State vs. Page and Bacon, 19 Mo. p. 213. Indictment in this case charged that the defendants

> "* *put in circulation, as a circulating medium, divers notes, bills, checks and tickets, purporting that money will be paid to the receiver, holder and bearer thereof, said notes, bills, checks and tickets to be then and there used as currency and as a medium of trade in lieu of money, and that said notes, bills, checks, and tickets will be received in payment of debts, * * *.

The defendants were tried and convicted and appealed. The instruments offered in evidence were in the following form.

> "(Vignette) (Vignette)
> St. Louis, January 1, 1852
> This certifies, that Thos. Brown has deposited in this office, five dollars, payable to bearer, at the (Vignette.) banking house of Flagg & Savage, Quincy Ill. "

Objection was made to the introduction in evidence of the above certificate and was overruled and certificate was admitted in evidence and defendants excepted.

It will be noticed that the indictment in this case charged that

> "money will be paid to the receiver, holder and bearer, thereof."

It will be noticed that the note offered in evidence is payable to bearer only.

In the course of the opinion, the court said,

"It is clear that, where an instrument is to be set forth, the description that it purports a particular fact, necessarily means that what is stated as a purport of the instrument, appears on the face of the instrument. * * * 'Old cases have given rise to much learning and argument on the words "purport" and "tenor" and the books are full of distinctions as to the meaning of these words, and the necessity of using the one or the other of them in indictments, where written instruments are to be stated: Purport means the substance of an instrument, as it appears on the face of it to every eye that reads it; tenor means an exact copy of it.' * * * The Court in the opinion delievered, remarked that it is certain that the legal effect of the note, as set out in the indictment, and as it is proved, is the same, but as it was attempted to describe the note, not according to its legal effect but to describe it as it existed it should have been so done; that such is the meaning of the word purport, is sufficiently established by authority."

Accordingly the Court reversed the case.

In this case, Judge Gamble, who concurred with Judge Ryland also delivered an opinion of the Court in which this section of the statute was further construed and in which it was held that the word purport did not apply to the last clause of the section and the Court said:

"It has been said that a person cannot be punished under this act for making and circulating any paper that on its face has not the purport mentioned in the statute, if the word "purport" is to have the signification usually given to it in the decisions of courts. This, as I apprehend, is a misconstruction of the section. The section prohibits the creation or putting in circulation of paper purporting that money will beppaid to the receiver or holder, or purporting that it will be received in payment of debts. This is as far as the word "purporting" applies to the acts prohibited. The next and last clause in the section, 'or to be used as currency, or medium of trade in lieu of money,' is entirely distinct from those to which the word "purporting" applies, and embraces all cases in which any person creates or puts in circulation, as a circulating medium, 'any note, bill, check or ticket to be used as a currency or medium of trade in lieu of money,' whatever may be its purport. It is evident

> that this last clause of the section would be made non-sensical by applying the word "purporting" to it so as to read, 'or purporting to be used as a currency or medium of trade in lieu of money.' The section then, prohibits,most distinctly, the issuing of paper designd to be used as a currency without regard to the form in which it may be made, and under this section, there is no necessity for stating that the purport of the paper issued,is, that money will be paid to the holder or that it will be received in paymant of debts, if it is created or issued to be used as a currency or medium of trade in lieu of money. The prohibition is effectual, when the intention of the party is to make an unauthorized currency whatever ingenuity may be employed in devising the form of paper to be issued."

In this view of the statute, Judge Ryland concurs.

We see, therefore that in this case the Supreme Court holds that the word purport does not apply to the latter clause of the statute and that the statute distinctly prohibits the issuing of paper designed to be used as currency without regard to the form in which it may be made and there is no necessity, in an indictment, for stating that the purport of the paper issued is that money will be paid to the holder or that it will be used in payment of debts, if it is created or issued to be used as a currency or medium of trade in lieu of money.

Applying this decision in the 19 Mo. Reports, p. 213 to the instrument, copy of which has been submitted,I beg to say that if the facts are as you state that the Overland Chamber of Commerce desires to and does use this instrument as a currency or medium of trade in lieu of money, the statute is being violated.

Yours very truly,

EDWARD C. CROW

ECC/mh