

CORPORATIONS--Officer liable criminally for violation of state law where officer participates in such violation or has prior knowledge thereof.

March 23, 1937

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Hon. Joseph L. Gutting
Prosecuting Attorney
Clark County
Hiller Building
Kahoka, Missouri

Dear Sir:

We have your request of February 3, 1937, for an opinion which is as follows:

"Following are the facts of a bad check upon which I would like to know your opinion as to whether a prosecution can be maintained thereon against Earl Hayden.

This draft is payment MID*WEST GRAIN CO.
in full for items GOAL GRAIN
listed below

No. 2023.

LABELLE, MO. April 23--36

Pay to the
order of----Harr Bennett \$52.20
Fifty two & 20/100 dollars

Mid-West Grain Co. (printed)
Earl Hayden (written)

Corn \$52.20 Mgr.
PRESENT THROUGH
Citizens Bank Edina Mo (Written)

Said check was sent to the above bank and returned by the bank unpaid on May 4th, 1936 because of insufficient funds. (not protested at that time).

A few days later Bennett saw Earl Hayden and Hayden said he would see that the check was paid, he said he was looking to Brightwell, his partner in the business, to pay it. The check was never paid and on January 19th, 1937, the check was duly protested. I as Prosecuting Attorney sending Hayden a registered letter that the check was unpaid and he was being given five days as set out by the statutes to pay the same and that the check was being sent to the bank for payment of regular protest.

My questions are: Will the fact that it was not duly protested until January 19th, 1937 affect the prosecution. Is not the maker liable altho he signed as Manager of a company.

Please send me approved form of insufficient fund and no funds bad check information."

I enclose herewith copy of opinion with reference to the applicability of Section 4305 R. S. Missouri 1929, wherein checks are drawn on banks in which there are insufficient funds to pay them.

This opinion points out that the question of five days notice is in itself equivalent to a protest, is merely a matter going to the intention with which the check was issued.

The principle question in this opinion is whether or not there is any liability on the drawer of this check to sign as "manager" of the company. On this proposition we find the general rule stated in 14a C. J. page 244 as follows:

"Also at least where the crime charged involves guilty knowledge or criminal intent, it is essential to the criminal liability of an officer or servant of a corporation that he actually and personally do the acts which constitute the offense or that they be done by his direction or permission."

This seems to be the universal law followed in this state in *State vs. Parsons and Harris*, 12 Mo. App. 205, *State vs. Yocum*, 206 S. W. 336.

The corporation may only act through its officers and agents. We quote from *State vs. Fairbanks (Ind.)* 115 N. E. 769, l. c. 771, as follows:

"Corporations act only by and through their officers and agents, and it seems that the Legislature intended to place the punishment where it would be effectual. It seems to be the settled law that:

'In the absence of a statute to the contrary, an officer of a corporation cannot be punished criminally for the corporation's unlawful act or default, unless he participates therein as an aider, or abettor, or accessory, even though the corporation's offense consists in the violation of a statute which imposes imprisonment as a penalty.' *Rex v. Hayes*, 14 Ont. Law Rep. 201, 8 Ann. Cas. 380.

This seems to be the holding in many jurisdictions. *People v. Clark*, 14 N.Y. Supp. 642; *State vs. Parsons*, 12 Mo. App. 205."

In *State vs. Burnam (Wash.)* 128 Pac. 218, l. c. 219, the Court said:

"I think that any person or persons participating in the violation of the statute by the corporation may, under our statutes, be indicted as principals, either because they have directly committed the act, or have aided and abetted in such commission."

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The same Court in State vs. Thomas, 212 Pac. 253, held that the managing officer of a corporation is individually liable criminally for misappropriating moneys of the corporation, and that acting as an officer in such transaction was no defense.

I enclose herewith copy of information with reference to insufficient fund checks taken from the case of State vs. Taylor, 73 S. W. (2) 378, which information we believe is in proper form.

It is therefore the opinion of this office that the protesting of a check, so far as the criminal law is concerned, goes only to the intent of the maker and the date of such protest is therefore immaterial; that the maker of the check which is returned for "insufficient funds" is liable criminally for such act even though he may have executed such check as an officer of a company or corporation.

Respectfully submitted,

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Assistant Attorney General

FER:MM
Enclosures-2

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.