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Bad Check Acts

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THE ORDER OF THE COIF

Election of three University senior law students having the highest academic average of the class of 1940, to membership in the North Dakota Chapter of the Order of the Coif was announced at the Chapter's annual meeting on April 21, 1940. Those honored were Leo Wikenheiser of Strasburg; Alex Skoropat of Wilton; and Lawrence Forest of Brinsmade. John Knauf, Esq., former president of the North Dakota State Bar Association, former member of the State Bar Board, and a prominent member of the Jamestown Bar, was elected to honorary membership.

BAD CHECK ACTS

Postdated Checks — White was convicted of the offense of issuing a no fund or insufficient funds check in violation of the bad check law of the state of Nebraska. He purchased livestock on June 12, 1937, and in payment gave his check bearing the date "7-12-37." In other words it was a postdated check; the check was protested, and the check and protest were turned over to the county attorney. The defendant contended that the check in question was a postdated check and not within the contemplation of the worthless check law, that at most, the postdated check was a promise to pay in the future and is analogous to a promissory note. Held, conviction affirmed. "There are some cases which hold that a post dated check is not within the purview of the statute, but we believe this is not conducive to a logical conception, in view of the provisions of our statute and the circumstances of the instant case." *White v. State*, 135 Neb. 154, 280 N. W. 433 (1938).

As indicated in a note in 4 Dak. L. Rev. 91 (1932) the courts were divided on the question of whether a postdated check came within the statute making it an offense to draw a check without having sufficient funds in the bank to meet it. At that time the majority of the courts were inclined to the view that such a check was not included thereunder. This is still the prevailing view although it is submitted that the trend is otherwise.

The negotiable Instruments Act defines a "check" as a bill of exchange drawn on a bank, payable on demand. A "postdated check" is defined as one containing a later date than that of delivery. The presumption is that the maker has an inadequate fund in the bank at the time of giving it, but that he will have enough at the date of presentation. A postdated check is, in effect, the same as a bill of exchange or bank draft payable on demand at or after the day of its date. A check is none the less a check because it is postdated. 10 C. J. S. 412.

The court in the principal case relied on the case of *People v. Bercovitz*, 163 Cal. 636, 126 Pac. 479, 43 L. R. A. (n.s.) 667 (1912) in which it is stated that there is nothing in the language used having the effect of excepting a case from the operation of the statute merely because the "check or draft" is postdated. See

also the case of *Patterson v. State* 194 Ark. 488, 107, S. W. 2d 545 (1937); *State v. Taylor* 335 Mo. 469, 73 S. W. 2d 378, 95 A. L. R. 476 (1934). Worthless checks, because postdated, are no less a burden on business, carrying all the evils of other checks, inflicting mischief on trade, commerce and banking. *State v. Avery*, 111 Kan. 588, 207 Pac. 838, 23 A. L. R. 453 (1922).

In practically all the cases an intent to defraud is held to be the principal ingredient of the offense and the burden of so proving is put upon the state. *Wright v. Commonwealth*, 280 Ky. 368, 133 S. W. (2d) 525 (1939); *State v. Doudna*, - Iowa -, 284 N. W. 113 (1939). The North Dakota law (1925 Supp. sec. 9971 al 9971 a3) was repealed and somewhat strengthened by the legislature in 1931 by omitting the following clause: "Whereas, an emergency exists in the fact that there is no adequate provision under the laws of North Dakota for protection against those who issue checks without having funds or without having a reasonable expectation of having funds in the bank when the check shall be presented for payment, this Act shall take effect and be in force from and after its passage and approval." In substance it now reads: "Any person . . . who makes or draws or delivers to any person any check or draft upon a bank . . . for the payment of money and at the time of such making, drawing, uttering or delivery, has not sufficient funds in or credit with such bank . . . to meet such check or draft in full upon its presentation shall be punishable by a fine . . ." N. D. Laws 1931, c. 128.

It differs from the law of other states in that the word "intent" is omitted. However the general rule is that in all statutory crimes involving moral turpitude criminal intent is implied as a necessary ingredient though the statute does not expressly so require. *Seaboard Oil v. Cunningham*, (C. C. A.) 51 F. (2d) 321 (1931). It is stated by the various authors on negotiable instruments law that a check otherwise negotiable in form is none the less negotiable because postdated. *Brannon's Law on Negotiable Instruments* (Sixth Edition) page 230.

Some of the courts which hold that a postdated check is not included under the bad check statutes draw a distinction between ordinary checks and those postdated by saying that the latter is more like a time instrument and a promissory note than it is a check; they refer to the definition of an ordinary check and say that it is payable on demand whereas a postdated check is not, until, of course, at or after the day of its date. Further, a postdated check is commonly acceptable in commercial transactions and is therefore put in a special bracket of the law which requires further legislative action to include the same under the bad check laws. Also the opinions are founded on the conception that if the law is enforced against those who issue a postdated check such person will be imprisoned for debt making it a debt collection law and therefore unconstitutional. *State v. Nelson*, 58 S. D. 562, 237 N. W. 766, 76 A. L. R. 1226 (1931).

A postdated check is not a representation, importing criminal liability if untrue, that the drawer had funds or credit in the bank

sufficient to pay the same upon presentation. *Cook v. State*, 170 Tenn. 253, 94 S. W. (2d) 386 (1936); *State v. Byrd*, 204 N. C. 162, 167 S. E. 626 (1933); *People v. Mazeloff*, 299 App. Div. 451, 242 N. Y. S. 623 (1930).

Those states which hold that a postdated check is included under the law take the view that it was the intention of the legislature to include all checks thereunder and that a postdated check is none the less a check although postdated; they also stated that the intention of the parties reveals that it is accepted as a check. It is also found upon actual survey that a postdated check is not actually "Negotiated." Bankers and other business people frown upon their usage. As above stated those states holding otherwise firmly contend that the postdated check itself negatives a representation that the drawer has funds sufficient to cover the same at the day it was issued but promises to make adequate arrangements to meet it on its due date.

A large number of States' Attorneys and members of the legal profession contend very strongly that anyone taking a check postdated or otherwise should be estopped in seeking a prosecution of the maker where the check was issued by one not having funds to cover it. In effect this premises is founded on the negligence of the payee in not ascertaining the credibility of the maker at the time of the transaction. It is maintained that if the law is construed as reaching postdated checks the office of State's Attorney will be used primarily as a collection bureau. To meet this argument the authorities on the other side of the question say, in substance, that if such should be the accepted doctrine there will be an unwarranted burden placed upon business to that end that the use of checks in commercial dealings will be seriously diminished. A final statement to this query centers upon the crux of the law itself, i. e., the criminal penalty is invoked only in cases wherein a fraudulent intent is prevalent. It is therefore submitted that the logical inference would be that postdated checks were intended to be included under the bad check law and that he who issues the same fraudulently without funds in or credit with the bank upon which it is drawn is guilty of a violation of that law.

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MEETING OF DISTRICT BAR ASSOCIATION

At a recent meeting of the Northwest Bar Association held at Minot a good attendance of attorneys of that district is reported; the session concluded with the election of Everett E. Palmer of Williston as president; and Nels G. Johnson of Towner as secretary.

Our President, Hon. Clyde Duffy, was present. and addressed the meeting upon Code Revision. More of these district meetings should be held for this is the best way to strengthen the State Association.