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Opinion No. 00-061

Worthless Checks, Tenn. Code Ann. § 39-14-121

QUESTIONS

1. Whether a check given for labor, materials, and services after the job is completed that was later returned to the vendor "account closed" would violate Tenn. Code Ann. § 39-14-121, the worthless check law.

2. Whether giving the worthless check before the job was finished would violate Tenn. Code Ann. § 39-14-121.

OPINIONS

1. No. A worthless check given for labor, materials, and services after the job is completed would not subject the drawer to criminal liability under Tenn. Code Ann. § 39-14-121 because the check would have been given for payment of a pre-existing debt, not offered as a fraudulent inducement to obtain anything of value.

2. A worthless check issued before completion of the work could subject the drawer to criminal liability under Tenn. Code Ann. § 39-14-121 if the drawer with fraudulent intent proffers the worthless check to induce the vendor to supply labor, materials, and services.

ANALYSIS

Tenn. Code Ann. § 39-14-121 provides, in relevant part:

> (A) A person commits an offense who, with fraudulent intent or knowingly:
>
> (1) Issues or passes a check or similar sight order for the payment of money . . . for the purpose of obtaining money, services, labor, credit or any article of value, knowing at the time there are not sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order . . .

The essential elements of the crime include (1) issuance of a check with fraudulent intent

to obtain money or credit and (2) issuance of the check with knowledge of insufficient funds on deposit to cover the check. *State v. White*, 649 S.W.2d 598, 600 (Tenn. Crim. App. 1982).

In *State v. Newsom*, 684 S.W.2d 647, 649 (Tenn. Crim. App. 1984), the court held that a worthless check given in payment of a pre-existing debt would not be an offense. The rationale for the holding is that the debt remains unpaid, so the maker of the check obtained nothing of value from the payee and did not give the check with intent to defraud. *See* Op. Atty. Gen. 90-28 (March 1, 1990). (Copy attached). *See also State v. Harris*, 997 S.W.2d 127 (Tenn. Crim. App. 1998)(affirming convictions for worthless checks issued to pay for future deliveries of gasoline).

Based on this rationale, the worthless check given for labor, materials, and services after the job was completed would not subject the drawer to criminal liability under Tenn. Code Ann. § 39-14-121 because the check would not have been offered as an inducement to obtain anything of value by fraud. In contrast, a worthless check issued before completion of the work could subject the drawer to criminal liability under Tenn. Code Ann. § 39-14-121 if the drawer with fraudulent intent proffers the worthless check to induce the vendor to supply labor, materials, and services. *See* Op. Atty. Gen. 91-69 (July 24, 1991)(copy attached)(worthless check issued to landowner who owned undelivered timber fraudulent, but worthless check issued to timber cutter who had delivered timber not fraudulent because maker had already received services).

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