

OPINION
57-83

August 30, 1957 (OPINION)

CRIMES

RE: Checks - No Funds - Notice

This is in reply to your request for an opinion in regard to the interpretation of Chapter 99 of the 1957 Session Laws.

The present statute provides in so far as here directly applicable:

* * * The issuance of a check, draft, or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in or credit with such drawee, unless within ten days from the receipt of written notice of dishonor, the issuer shall have deposited with the drawee, or paid or tendered to the payee sufficient money to pay such instrument in full.* * *

It is our opinion that this provision of the statute was intended to and does have the effect of providing a method for the proving of a prima facie case as to the intent of the drawer of the instrument, but does not necessarily add a new element to the crime. (See: State v. Puckett, 127 Miss. 415, 90 So. 113, McBride v. State, 141 Miss. 186, 104 So. 454, Coe v. Commonwealth, 178 Va. 251, 16 S.E.2d.635). The elements of the crime would appear under the present amendment of the statute to be those set out in the first sentence of the statute, as follows:

Every person, firm or corporation who shall issue any check draft or order upon any bank or other depository, for the payment of money, not having an account with such bank or other depository, or knowing at the time of such issuance that there are not sufficient funds in or credit with such bank or other depository for the payment in full upon presentation of such instrument shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.* * *

It is thus our conclusion that it is not essential that the notice of dishonor specified in the statute be sent prior to issuance of the warrant, assuming, of course, that existence of other evidence sufficient to prove the necessary intent and knowledge.

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