

**Checks, Passing of Worthless. Worthless Checks, Obtaining Money by the Use Of. Felony, Obtaining Money by the Use of Worthless Checks Is.**

Under the provisions of Sec. 8634, R. C., a person who obtains or attempts to obtain from another, money or property by a false or worthless check, knowing the same to be false or worthless is guilty of a felony.

March 14, 1911.

Mr. D. W. Doyle,  
County Attorney, Teton County,  
Choteau, Montana.

Dear Sir:

Your letter of March 9th has been received, requesting my opinion upon the following question:

"Is a person who passes on the same day a number of checks, drawn on existing banks in which he has no funds, where the aggregate amount of all the checks exceeds fifty dollars, but no one check amounts to fifty dollars, and no two checks having been passed to the same person, guilty of a felony and if so under what section of the code is he chargeable?"

In reply, I will say that Section 8684, Revised Codes, provides as follows:

"Every person who obtains or attempts to obtain from another any money or property, by means or use of brace faro, or any false or worthless checks, or by any other means, artifice, device, instrument or pretense, commonly called confidence games or bunco, is punishable by imprisonment in the state prison not exceeding ten years."

The checks mentioned in your statement above quoted are unquestionably worthless having been drawn upon a bank in which there was no funds to meet them and for the purpose of obtaining money thereon, knowing that they would not be honored. "Brace faro" and "false or worthless checks" are specific terms contained in the section and under my interpretation of it, every person who obtains or attempts to obtain money or property from another by means (1) of brace faro, or (2) false or worthless checks, or (3) by any means commonly called confidence games or bunco is guilty of a felony. The terms brace faro, and false or worthless checks, being specific terms could not be limited in their application by the phrase, "by any other means commonly called confidence game or bunco," and therefore, the giving of a worthless check for the purpose of obtaining money thereon, would not necessarily have to be a confidence or bunco game. The checks in the instance mentioned by you might not be "false" as they are presumably genuine, but if they are worthless and were used for the purpose of obtaining money knowing that they will not be honored, the person who drew them and obtained or attempted to obtain money thereon would come within the purview of this section.

The state of Illinois has a statute very similar to our own except their statute uses the words "false or bogus checks" while ours uses the words "false or worthless checks." Under our statute the checks may be genuine and yet worthless, while under the Illinois statute if the checks were genuine no matter how worthless they might be the person obtaining money by their use would not be prosecuted under their statute because they must be "bogus." Our statute was evidently taken from the Illinois statute, but the legislature saw fit to change the word "bogus" to "worthless" and under the reading of our statute, I am of the opinion that in view of the state of facts mentioned in your letter, the individual obtaining or attempting to obtain money by use of such worthless checks, no matter for what amount the check may have been drawn would be guilty of violating Section 8684 above quoted.

For the construction placed upon the Illinois statute by the Supreme Court of that State, see the following cases.

Maxwell v. People, 158 Ill. 248; 41 N. E. 995.

Pierce v. People, 81 Ill. 98.

Yours very truly,

ALBERT J. GALEN,

Attorney General.