

Criminal Law, Larceny. Larceny, by False Pretenses, What Is. Checks, Issuing Without Having Funds in Bank.

It is not larceny, under the definitions of that term by the laws of Montana, for a person to issue a check in payment of a past obligation, knowing at the time he issues it that he has no funds to meet it when presented.

January 24th, 1914.

Hon. Martin Flasted,
County Attorney
Ekalaka, Montana.

Dear Sir:

I am in receipt of your communication of the 19th instant, asking for my opinion as to whether a person may be held for larceny by false pretense for making and issuing a check upon a bank in which he has no funds, in payment for a past obligation arising by reason of services rendered by the payee of the check. I have examined the various sections of the code upon this subject, and find that all cases require the transfer of money or property to make the crime complete, and I find no provision of our statute which seems to cover the facts stated above. I note that you reach the same conclusion, and I am of the opinion that that conclusion is correct. Sec. 8329,

Revised Codes of Montana, 1907, to which you refer, has reference, I think, to negotiable paper or bills issued by banks of issuance, and is not applicable to the check of a private individual.

Yours very truly,

D. M. KELLY,
Attorney General.