

Checks, Issuance of Without Funds. Forgery, What Is.

A person drawing a check upon a bank in which he has no funds, in payment for labor performed, cannot be convicted of forgery under Sec. 8632, Revised Codes of Montana, 1907.

March 9th, 1914.

Hon. D. M. Durfee,
County Attorney,
Philipsburg, Montana.

Dear Sir:

I am in receipt of your communication under date of February 28th, 1914, submitting for my consideration the question

"Of whether a person issuing a check upon a bank in which he has no funds in payment of a month's work by a laboring man, is guilty of a felony, under the provisions of Sec. 8634, Revised Codes of 1907?"

An examination of this section shows it to be under the chapter of our penal code dealing with forgery and counterfeiting. The Standard Dictionary gives the definition of forgery as:

"Forgery is the act of falsely making or materially altering with intent to defraud in writing, which if genuine might be of legal efficacy, or the foundation of a legal liability."

It is given as a synonym of counterfeiting: the material alteration of a genuine writing; changing a signature; changing figures; attaching a genuine signature to an instrument for which it was not intended.

I think that the facts stated by you do not come within the definition of forgery. The signature is the signature of the man who makes the check. Everything upon the face of the check is exactly what it purports to be, and is genuine so far as being the signature of the man making it, and as to the existence of the bank. The falseness in the transaction is not in the signature or the matter contained on the face of the check, but in the representation of the drawer as to the presence of money in the bank. Upon the facts stated above, I am of the opinion that a person cannot be held for a felony under the provisions of Sec. 8634.

I have previously had a similar question for consideration submitted by Hon. Martin Flasted, county attorney at Ekalaka, Montana, a copy of which I am enclosing herewith.

Yours very truly,

D. M. KELLY,
Attorney General.