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CRIMINAL LAW:

BANKS AND BANKING:

An order by the drawer of a check on the depository to stop payment is no defense in a prosecution for deceptive practices under the provisions of Article 17-1(b) of the Criminal Code, provided the check was issued with knowledge that it would not be paid when presented, coupled with an intent to defraud.

Honorable Frank H. Walker
State's Attorney
Jefferson County
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Dear Mr. Walker:

I have your recent letter requesting an opinion on the following:

"Mr. Smith gives Mr. Jones a check in payment for something and then immediately stops payment on the check. We cannot always

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determine whether the maker of the check did this as a planned thing or as an after-thought. However, we are having several cases where people come to the office and want us to prosecute cases where a check has been given and then payment stopped. Our question: Does this constitute a crime under the Deceptive Practices Act, Chapter 38, Section 17-1, Illinois Revised Statutes, 1969?"

Section 17-1(d) of the Criminal Code of 1961

(Ill. Rev. Stat., 1971, ch. 38, par. 17-1(d) reads as follows:

"(d) With intent to obtain control over property or to pay for property, labor or services of another he issues or delivers a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository. Failure to have sufficient funds or credit with the depository when the check or other order is issued or delivered is prima facie evidence that the offender knows that it will not be paid by the depository; or

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There is no question but what the drawer of a check may stop payment before the bank's certification, acceptance or payment and the bank is bound by such revocation. Banks

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and Banking, C.J.S., p. 692; Banks, 5 I.L.P., 170; South Chicago Sav. Bank v. Drexel Nat. Bank, 24 Ill. App. 2d 179.

See also, Uniform Commercial Code, Ill. Rev. Stat. 1971, Par. 3-409(1).

Considerable research has disclosed but one case involving criminal sanctions relative to stopping payment of a check. I refer to the case of People v. Kahn, 41 Cal. App. 393, 82 P. 803. The case is not helpful, however, for the reason that the party charged had previously stopped payment on all checks of a class, including the check in question. The case is of interest, however, in that it did not prevent prosecution because a stop order had issued where the drawer was previously aware that the check would not be honored.

I am sure you can readily appreciate that it is not possible to give you an unequivocal answer.

What would constitute the offense of deceptive practice under section 17-1(d) of the Criminal Code of 1961 upon lodging a stop order with the depository would depend upon

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the factual circumstances involved. The gist of the offense is the issuance of a check with knowledge that it will not be paid, plus the essential element of "an intent to defraud." People v. Billingsley, 67 Ill. App. 2d 272; People v. Samples, 80 Ill. App. 2d 182, 186; People v. Greene, 92 Ill. App. 2d 201.

Knowledge that a check will not be paid when presented could arise from a stop order, lack of funds on deposit, or any one of a number of things involving a relationship between the drawer and the depository.

I conclude that the issuance of a check for the payment of money, labor, or services, knowing that the same will not be paid by the depository, and with intent to defraud, constitutes a crime under the provisions of section 17-1(d) of the Criminal Code of 1961. Under such circumstances it is of no consequence whether payment on the check has been stopped or it is dishonored for some other reason.

Very truly yours,

A T T O R N E Y G E N E R A L