



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 10, 1976

ATTORNEY GENERAL OPINION NO. 76- 173

Mr. Don Vsetecka
Finney County Attorney
118 West Pine Street
Garden City, Kansas 67846

RE: Criminal Code - Crimes Against Property - Giving
A Worthless Check

SYNOPSIS: A merchant cannot charge the maker of a worthless
check the cost incurred by the merchant to notify
the maker by a certified letter in addition to
the three dollar (\$3.00) service charge allowed by
K.S.A. 21-3707(2).

* * *

Dear Mr. Vsetecka:

You inquire whether a merchant can charge the maker of a worthless
check the cost of sending a certified letter giving notice of the
worthless check in addition to a three dollar (\$3.00) service
charge.

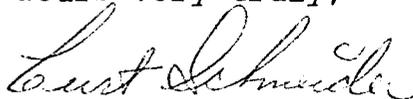
K.S.A. 21-3707(2) states thus:

"In any prosecution against the maker or
drawer of a check, order or draft payment of
which has been refused by the drawee on account
of insufficient funds, the making, drawing,
issuing or delivering of such check shall be
prima facie evidence of intent to defraud and
of knowledge of insufficient funds in, or on

deposit with, such bank or depository, providing such maker or drawer shall not have paid the holder thereof the amount due thereon and a service charge not exceeding three dollars (\$3) for each check, within seven (7) days after notice has been given to him that such check, draft, or order has not been paid by the drawee. The word "notice", as used herein, shall be construed to include notice to the person entitled thereto given orally as well as notice given to such person in writing. Notice in writing shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be charged with notice at his address as it appears on such check, draft or order. [Emphasis added.]

The statute above specifically limits the service charge to three dollars (\$3.00). The purpose of the service charge was to aid with the costs and expenses for collecting worthless checks. 41 J.B.A.K. 7, 53. The notice requirement, i.e., certified letter, must be complied with in order to have "prima facie" evidence of intent to defraud in a criminal prosecution pursuant to K.S.A. 21-3707. It is our opinion that the costs incurred in giving notice is within the ambit of the three dollar (\$3.00) service charge, the notice being an expense incurred for collecting worthless checks. An additional charge should not be required of the maker for the cost of the certified letter.

Yours very truly,



CURT T. SCHNEIDER
Attorney General