



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

September 30, 1977

ATTORNEY GENERAL OPINION NO. 77- 318

Mr. Robert G. Suelter
Barton County Attorney
P. O. Box 881
Great Bend, Kansas 67530

RE: Crimes and Punishment-Worthless Checks-Prosecution

Synopsis: As provided by K.S.A. 21-3104(1)(a), the Kansas Criminal Code is applicable to all persons who commit a crime wholly or partly within this state. Individuals living in foreign states who mail worthless checks to Kansas businesses are subject to prosecution and punishment under the law of this state.

* * *

Dear Mr. Suelter:

In your letter of September 15, 1977, you inquire whether the provisions of K.S.A. 21-3104(1)(a) are applicable to individuals who issue worthless checks and mail said checks to the Fuller Brush Company of Great Bend, Kansas, in payment for merchandise delivered by Fuller Brush to them. You note that the above referenced individuals are residents of foreign states and have never been in Kansas.

K.S.A. 21-3104(1)(a) states:

"A person is subject to prosecution and punishment under the law of this state

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if (a) He commits a crime wholly
or partly within this state;"

Subsection (2) of K.S.A. 21-3104 clarifies "partly within this state" as used in subsection (1)(a) above as follows:

"An offense is committed partly within this state if either an act which is a constituent and material element of the offense, or the proximate result of such act, occurs within the state."

K.S.A 21-3707 (1) defines the offense of giving a worthless check thus:

"Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivery of any check, order or draft on any bank or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft as aforesaid, that the maker or drawer has no deposit in or credits with such bank or depository or has not sufficient funds in, or credits with, such bank or depository for the payment of such check, order or draft in full upon its presentation."
(Emphasis supplied.)

If delivery of the instrument occurs in the State of Kansas, as in the instance of delivery of a worthless check to a business concern in Great Bend, Kansas, an act which is a constituent and material element of the offense has occurred in this state, and in my judgement, under K.S.A. 21-3104, the person responsible therefor is subject to prosecution and punishment under the laws of Kansas for such checks.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:DLW:jm