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Texas State Legislature
House of Representatives
Austin, Texas

EDDIE CAVAZOS
District 35, Nueces County
P.O. Box 7547
Corpus Christi, Texas 78467-7547
512-853-4953

Austin Office:
P.O. Box 2910
Austin, Texas 78768-2910
512-463-0484

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Opinion Committee

The Honorable Dan Morales
Attorney General of the State of Texas
Supreme Court Bldg., P.O.Box 12548
Austin, TX 78711-2548

Dear General Morales:

I would like to request your assistance in a matter concerning jurisdiction of the criminal offense of issuance of a bad check.

I am enclosing a copy of a memo from Chief Municipal Court Judge Rodolfo G. Tamez to Mary Rhodes, Mayor of the City of Corpus Christi, which outlines the judge's contention that a municipal court has jurisdiction to prosecute for issuance of a bad check only when the check is issued for payment of money and not for property or services.

I have been asked by interested members of our local police department to ask for clarification of jurisdictions of the criminal offense of issuance of a bad check.

If you or your staff should require further information in this matter, please contact Sandra Zuniga, my administrative aide, at 512/853-4953.

As always, thank you for your assistance.

Sincerely,

EDDIE CAVAZOS
State Representative
District 35

ATTYGEN.CNS

*5/11/91
 11/20/91
 11/20/91*

TO: Mayor Mary Rhodes
 FROM: Rodolfo G. Tamez, Chief Municipal Court Judge
 DATE: June 27, 1991
 SUBJECT: - Jurisdiction over "Bad Checks"-

Municipal Court has the same or concurrent jurisdiction with the Justice of the Peace Courts regarding the criminal offense of Issuance of a Bad Check as provided in Section 32.41 of the Texas Penal Code. In addition, Municipal Court has the same or concurrent jurisdiction with Justice of the Peace Courts regarding Theft of Property, Texas Penal Code Section 31.03, Theft of Services, Texas Penal Code Section 31.04 and Presumption for Theft by Check, Texas Penal Code Section 31.06.

Based on the above statutes, a person commits an offense of Issuance of a Bad Check if he/she issues a check for payment of MONEY knowing that there are insufficient funds to cover the check. It is important to understand that the bad check must be issued for the payment of money and not for property or services. Since the offense of issuance of a bad check is a Class C Misdemeanor, Municipal Court has jurisdiction to prosecute any bad check irregardless of the amount as long as the check was for payment of money. For example, if a grocer cashes a check for money or if a business accepts payment of a personal debt, then said grocer or business can seek prosecution of these offenders in Municipal Court.

With regards to theft, Municipal Court has jurisdiction to hear these theft cases involving a bad check if the value of the property or services stolen is under \$20.00. For example, if a merchant sells his/her goods such as clothes, televisions and other property or a business performs a service such as food service, plumbing or other service and a person pays with a bad check, then a merchant or business person can seek prosecution of these offenders in Municipal Court only if the value of the goods or services is less than \$20.00.

As to restitution, restitution can be granted by one of two procedures. First, if a defendant is granted deferred disposition, i.e., probation, the Court CAN order restitution to a victim as a reasonable condition of probation as provided by Texas Code of Criminal Procedures Article 45.54. Second, Texas Penal Code Section 32.41 (e) provides that:

"A person charged with an offense under this section MAY make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution MAY, with the approval of the Court in which the offense is filed, be made through the Court."

In the first alternative, the Court can order the restitution. In the second alternative, the Court may approve a defendant's desire to make restitution.

In conclusion, Municipal Court has the same or concurrent jurisdiction as Justice of the Peace Courts. First if a bad check was issued for payment of money, then the offense can be prosecuted in both Courts irregardless of dollar amounts. Second, if the bad check was issued to purchase property or services, then the offense can be prosecuted in both courts where the value of the property or service is \$19.99 or less. Finally, restitution can be Court ordered by the use of deferred disposition or Court approval of a defendant's desire to make restitution.


Rodolfo Tamez
Chief Judge

RT/eh

cc: Don Alex, Chief Prosecutor
Maria G. Tamez, Director of Court Administration