

Opinion No. 59-208

December 17, 1959

BY: OPINION OF HILTON A. DICKSON, JR., Attorney General

TO: Patrick F. Hanagan District Attorney Fifth Judicial District Roswell, New Mexico

QUESTION

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May a justice of the peace accept a personal check of the defendant or an attorney's check as bail?

CONCLUSION

Yes. See opinion as to liability of justice in the event the check is dishonored upon presentment.

OPINION

{*321} ANALYSIS

Section 41-4-10, N.M.S.A., 1953 Compilation, provides that a defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer, the sum of money mentioned in the order, and that upon delivering a certificate of deposit to the sheriff he must be discharged.

The definition of "money" often is construed as being broad enough to include checks. It was held in the case of **State v. Griswold**, 73 Conn. 95, 46 A. 829, that "the word 'money' is a very general term, and is often used to include checks or other like kinds of paper." Also in **Cook v. State**, 130 Ark. 90, 196 S. W. 922, it was said:

"While 'money' in its technical sense is coined metal, in its popular sense it is any currency, token, bank notes, or other circulating medium in general use as the representative of value and is a generic term."

It is the opinion of this office that the legislature intended to use the word in its popular sense in this statute and did not intend to limit the meaning to include only stamped metal coin.

In construing a similar statute, the court in the case of **State v. Hart et al.**, 209 Iowa 119, 327 N.W. 650, held that the court could accept a check, not only from the defendant, but from a third party on behalf of the defendant if the check was in the form of a certificate of deposit and endorsed over to the clerk of the court so that the clerk

could, at any time, draw out the actual cash from the bank of deposit. (Certification of a check would accomplish the same purpose.) In speaking of the deposit of the certificate by a third party on behalf of the defendant the court said:

". . . it is a deposit in compliance with the statute, and the money is thus devoted to the purpose of the statute and to the use of the defendant."

The justice of the peace, in accepting a check for bail should satisfy himself that the check can be presented for payment to the drawee bank at any time and legal tender be paid therefor. In the event no payment is made at the time of presentment and the check is thus dishonored, the justice could not offer the dishonored check to the state treasurer in the event the 'cash bail' was forfeited. The justice would be required to submit 'cash' in a form acceptable to the state treasurer to be credited to the current school fund.

Therefore, while the questions presented may be answered in the affirmative, the justice of the peace accepting a check as 'cash bail' would be liable in the event the check was dishonored and would have to remit the forfeited sum to the state treasurer to be {^{*322}} credited to the current school fund.

By: B. J. Baggett

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