



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

March 26, 1962

Honorable Edna Cisneros  
County Attorney  
Willacy County  
Raymondville, Texas

Opinion No. WW-1289

Re: Whether Section 1a of Article 567b, Vernon's Penal Code, pertaining to the giving of "hot checks" for payment of wages or salaries for personal services, is applicable when such a "hot check" is passed to an independent contractor or entrepreneur.

Dear Miss Cisneros:

In your letter requesting an opinion from this office you ask the following question:

"Does Section 1a of Article 567b, Penal Code, pertaining to the giving of hot checks for payment of wages or salaries for personal services, apply to a check given to an independent contractor or entrepreneur?"

With regard to this question, you submit two separate fact situations which are as follows:

"A, an independent contractor, contracts to build an addition to an existing building for a certain price; down the line he runs short of money to pay his employees and gets a check as an advance on the contract price from the owner of the building, defendant, to pay A's laborers and continues with completion of the work. The check bounces and is not made good.

"A, trucker, has his own truck and for a living, hauls 25 field hands around to work and back; as compensation, he receives 50¢ per 100 pounds of cotton picked by the hands, or a certain percentage of whatever produce they pick; he receives a check from defendant payable to

him, which includes his portion of the percentage on each field hand and the portion going to the 25 field workers. A takes D's check and cashes it with a 3rd party, believing it to be good, takes out his pay and distributes the rest among the 25 field workers, or else receives a check made payable to him from defendant covering his portion."

Section 1 was added to the "Hot Check Law", Article 567b, Vernon's Penal Code, by an amendment in 1957. This Section reads as follows:

"Sec. 1a It shall be unlawful for any person or persons to make, draw, utter or deliver, or to cause or direct the making, drawing, uttering, or delivering of any check, draft or order for the payment of money on any bank, person, firm or corporation, in payment of wages or salaries for personal services rendered, knowing that the maker, drawer or payor does not have sufficient funds in or on deposit with such bank, person, firm or corporation, for the payment in full of such check, draft or order, as well as all other than outstanding checks, drafts or orders upon such funds, and with no good reason to believe the check, draft, or order would be paid upon presentation to the person or bank upon which same was drawn."

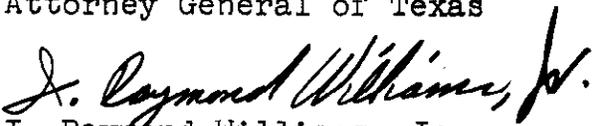
In each of the fact situations submitted, the person who was the recipient of the "hot check" in the first instance had the status of an independent contractor or entrepreneur. However, it is our opinion that this classification is not material to the applicability of Section 1a. No where in the provisions of this Section is there any requirement that a recipient of a "hot check" for wages or salary for personal services rendered have the status of an independent contractor or entrepreneur. Therefore, it is our opinion that the question of the applicability of Section 1a of Article 567b, Vernon's Penal Code, is resolved without regard to whether a recipient has the status of an independent contractor or entrepreneur.

S U M M A R Y

The question of the applicability of Section 1a of Article 567b, Vernon's Penal Code, is resolved without regard to whether a recipient of a "hot check" for wages or salaries for personal services has the status of an independent contractor or entrepreneur.

Very truly yours,

WILL WILSON  
Attorney General of Texas

  
By I. Raymond Williams, Jr.  
Assistant

IRW:mkh

APPROVED:  
OPINION COMMITTEE

W. V. Geppert, Chairman  
John Reeves  
Riley Eugene Fletcher  
Iola Wilcox

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Houghton Brownlee, Jr.