



Worthless Postdated Checks

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Categories : [Crimes and Elements](#), [Uncategorized](#)

Tagged as : [postdated checks](#), [worthless checks](#)

Date : March 29, 2011

Under G.S. 14-107, it's a Class 2 misdemeanor to write a check, "knowing at the time . . . that [the check-writer doesn't have] sufficient funds on deposit . . . with which to pay the check . . . upon presentation." The crime may be more serious if the check-writer is a recidivist or the amount of the check is very large.

Sometimes the question arises whether post-dated checks are covered by the statute. For example, suppose that I write a check today to my mechanic for \$500. I tell him that I need to date the check with next Monday's date, because my paycheck will be directly deposited into my bank account late on Friday, which will give me sufficient funds to cover the check. My mechanic dutifully waits until Monday to cash the check, but it still bounces. I stonewall him, so he calls the police. Can I be charged with writing a worthless check?

According to Jessica Smith, *North Carolina Crimes* 316 (6th ed. 2007), "[a] postdated check is not covered" by the statute. This statement is based on two cases.

- *State v. Crawford*, 198 N.C. 522 (1930). In *Crawford*, a man wrote a post-dated check to a company to which he owed money. The check bounced. The man was charged with writing a worthless check, but the trial court dismissed the charges and the state supreme court affirmed, stating that "[a] postdated check . . . is not a representation . . . that the drawer has funds or credit in the bank sufficient to pay the same upon presentation." Indeed, the writing of a post-dated check suggests that the check-writer "expects to have funds" to cover the check at a later date, so "it [can] hardly be said that the [check-writer] . . . kn[ew] at the time that [he didn't have] sufficient funds . . . with which to pay the [check] upon presentation."
- *State v. Byrd*, 204 N.C. 162 (1933). *Byrd* is an extremely brief opinion. The facts seem to be similar to those in *Crawford*, and the court simply cites *Crawford* and states that "if postdated[, the checks written by the defendant] did not import criminal liability."

There aren't any more recent cases than *Crawford* and *Byrd*. Nationally, there's a split of authority about whether post-dated checks fall within worthless check laws:

[Some courts hold that they do not,] because the delivery of such a check implies on its face a present insufficiency of funds Another line of reasoning taken by the courts supporting this view is that bad check statutes do not apply to postdated checks, because such checks do not conform to the definition of a check in the Negotiable Instruments Law, that is, "a bill of exchange drawn on a bank payable on demand." Other courts, though, have held that postdated checks are within bad check laws . . . [because] there is no language in the statutes which can be interpreted to exclude postdated checks, or [because] even though such instruments are not checks, they are drafts, and drafts are covered by the statutes.

John D. Perovich, *Application of "Bad Check" Statute with Respect to Postdated Checks*, 52 A.L.R.3d 464 (1973) (suggesting "that this division of authority . . . may be occasioned more by differences among the statutes involved, than by differences of opinion as to the legal principles applicable"). It's worth noting here that our statute does cover drafts as well as checks.

The sweeping language in *Byrd* fully supports the statement in *Crimes*. Looking at the facts of *Crawford* and *Byrd*, though, I wonder, whether a distinction could be made between a situation where the check-writer genuinely expects to have the money to cover the check on the date he assigns, and a situation where the check-writer knows full well that he will not have the money to cover the check on that date. *Crawford* and *Byrd* appear to have been the former type of case. There may be an argument that in the latter type of case, the check-writer does “know[] at the time of the making” that he doesn’t have, and won’t have, sufficient funds to cover the check. Of course, it may be difficult to prove that the check-writer knew that he wouldn’t have money to cover the check on the assigned date – and if the state were able to prove that, it likely could charge the check-writer with obtaining property by false pretenses. Nonetheless, perhaps there are circumstances under which a worthless check charge would make sense. Any thoughts from the trenches about that?

Finally, if my check to my mechanic had been dated today, it appears that I could be charged with writing a worthless check even if he and I agreed that he would not cash the check until Monday. *State v. Levy*, 220 N.C. 812 (1942) (“[T]he fact that [the writer] had an agreement with the [payee] not to deposit [certain checks immediately] would not exculpate him from having issued checks . . . knowing at the time he did not have sufficient funds.”). *But see State v. Tatum*, 205 N.C. 784 (1934) (suggesting that the *Byrd* and *Crawford* rule should apply on these facts, as “[t]here is no essential difference between a postdated check and one given with the understanding or agreement that the same shall be held and presented by the owner at a future date”).