1516.

CRIMINAL LAW—CHECK DRAWN IN ONE COUNTY WITHOUT SUFFICIENT FUNDS BEING IN BANK AND MAILED TO ADDRESSEE IN ANOTHER COUNTY—PROPER VENUE FOR CRIMINAL CHARGES.

SYLLABUS:

Where person draws or makes a check in violation of Section 710-176 of the General Code in Marion County, and mails it to Crawford County, the venue of of the offense is in Marion County, but the venue of the offense of uttering and delivering such check is in Crawford County where the latter is received.

COLUMBUS, OHIO, February 13, 1930.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

> "The following question confronts me and seems to elude a satisfactory determination in my own mind.
>
> A resident of Marion County writes a check in Marion County and mails it to an addressee in Crawford County. The drawer's bank in Marion County refuses to honor the same because of insufficient funds.
>
> What is the proper venue of a charge for drawing a check without sufficient funds?"

Section 710-176 of the General Code provides in part as follows:

> "Any person, who, with intent to defraud, shall make or draw or utter or deliver any check, draft or order for the payment of money upon any bank or other depository, who, at the time thereof, has insufficient funds or credit with such bank or depository, shall be guilty of a felony, and upon conviction thereof shall be fined not less than fifty dollars and not more than two hundred dollars, or imprisoned in the Ohio State Penitentiary for not less than one year nor more than three years, or both. * * * "

Section 13426-1 of the General Code provides that the venue of crimes and offenses against the laws of this state should be in the counties provided by law. There is no statute in Ohio making any special provision as to the venue for violation of Section 710-176 of the General Code, therefore the general rule of criminal procedure with reference to venue is applicable and one who commits a violation of a statute is answerable in the county in which the offense is committed.

The venue of a crime in which the United States mails are used depends upon where the crime is consummated. The doctrine of this subject is laid down in 8 R. C. L., p. 99, as follows:

> "The locality of a crime of which the United States mails were used depends upon where the crime was consummated. Sometimes the crime is complete as soon as the communication is put in the mails; sometimes when the communication reaches its destination. The depositing of a forged instrument, for instance, in the mail directed to another county makes not the county in which it was mailed, but the county where the instrument is received, the place of offense of uttering it, if such an offense is committed."

In the case of *Lindsey* vs. *State*, 38 O. S. p. 511, Judge Johnson in the course of the opinion said:

> "The crime of uttering and publishing is not complete until the paper comes to the hands of someone other than the accused, and if it be sent by mail for the purpose of being there used, the crime is not consummated until it is received by the person to whom it is to be delivered."

See also the case of *State* vs. *Douglas*, 114 O. S. 190.

Section 710-176 of the General Code creates one offense, but the guilt thereof might be incurred in any one of four ways, viz., by the making, drawing, uttering or delivering of an instrument contrary to the provisions of the section and an indictment may be drawn to include the four together or to charge any one as a violation. So that, the venue of an offense in violation of Section 710-176, where the instrument is mailed from one county to another, may be in either county, dependent upon the nature of the charge, that is, if a check is drawn or made in one county in violation of this section and is placed in the mails, the crime is complete in the county in which it is mailed, but the uttering and delivery of the check is consummated in the county in which the check is received.

Therefore, in specific answer to your inquiry, I am of the opinion that where a person draws or makes a check in violation of Section 710-176 of the General Code in Marion County, and mails it to Crawford County, the venue of the offense is in Marion County, but the venue of the offense of uttering and delivering such check is in Crawford County where the letter is received.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1517.

COUNTY RECORDER—FEE CHARGEABLE FOR FILING ASSIGNED CHATTEL MORTGAGE—OPINION NO. 3037, 1928, FOLLOWED.

SYLLABUS:

The amount of the fee to be charged by the county recorder for filing an assignment of a chattel mortgage is the amount provided for the filing of the original mortgage and in addition thereto, six cents for each party to the assignment.

COLUMBUS, OHIO, February 13, 1930.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following question:

> "What is the amount of the legal fee to be charged by the county recorder for the filing of an assigned chattel mortgage?"

In connection with your inquiry you are referred to an opinion of the Attorney General found in the Opinions of the Attorney General for 1928 at page 2863, wherein it was held as disclosed by the second branch of the syllabus: