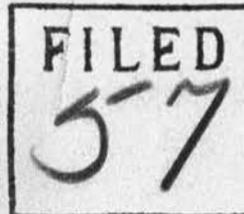


CRIMINAL LAW - INFORMATION: False pretenses not punishable  
when based on promise to do an  
FALSE PRETENSES: act in the future.

May 6, 1950

5/11/50

Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri



Dear Sir:

Your letter dated May 4, 1950, requesting an official opinion of this department has been received. The letter is quite lengthy so that we quote only parts of the same as follows:

"Herein is an amended information that was quashed by the local circuit court because it did not state enough facts to constitute a crime. \* \* \*"

\* \* \* \* \*

"The Court in its comment indicated that too many facts were pleading including future facts that would not make out the crime of false pretenses. He indicated that the facts that this woman alleged made love to this old man, was a far fetched possibility and was of such fragmentary guess work that the old man had no right or business to rely upon the same."

Attached to your request is a copy of an amended Information filed by you in the Circuit Court of Morgan County in your official capacity, in which one Viola Foster is named as defendant. It may be conducive to better understanding if the Information is discussed by sections.

1. It is first charged that defendant, by false and fraudulent pretense, obtained in cash from one Jess Crow \$935.00. Then it is alleged that by the same means defendant obtained from Crow \$100.00 and also \$160.00. While

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you do not state, we assume these two amounts were obtained at the same time and under the same circumstances. \$100.00 was advanced by Crow, as he understood, as an attorney fee through and by which defendant would obtain a divorce from her then husband. That proceeding, of course, would be consummated thereafter. \$160.00 of the amount was "to have the house locked up so Doc Foster could not get any of the furniture." Obviously this amount of money was procured from Crow with the knowledge that the act to be done was also to be performed in the future. It is not stated in the Information that the defendant had promised Crow, if and when she later on procured a divorce from her then husband, that she would marry him. If such an agreement had been made it would have been void under the law.

The conclusion reached by the court, as indicated in your letter, on the affair between these two people, is quite understandable. From this distance it looks like Crow was a more or less willing victim to the wiles of a designing adventuress, or that he gambled on a joint questionable venture and lost his money. In either circumstance the crime sought to be charged in the Information was not committed.

2. The Information further charges that "in a few days," which we assume was a few days later than the \$260.00 was obtained, defendant secured an additional \$675.00 from Crow on the alleged statement and pretext that her lawyer told her to get enough money from Crow to pay off a mortgage on a motor car. (Whose motor car is not stated.) And, further, to get from Crow sufficient money to pay defendant's expenses to Kansas City for the purpose of paying off the above mortgage, all of which acts were to be performed in the future. And, it is stated that defendant would have \$3500.00 in cash in a few days, but it is not stated that Crow was to have any part of this money. It is further alleged that defendant agreed to give Crow a good bankable note for the \$675.00. This also was to be done in the future. There was no representation by defendant of any past or present fact in which Crow had any interest. He furnished the money, according to the Information, because he was thereafter to receive a bankable note for the amount. Then it is alleged that the instrument given Crow as and for the bankable note was a worthless scrap of paper. The most that can be said about all this is that defendant deceived Crow, not as to a present or past existing fact, but as to something she would do in the future.

3. The allegation as to the check for \$200.00 given by Crow to defendant on which payment was stopped at the bank,

Honorable G. Logan Marr

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would not properly be a part of any Information, because the defendant received no money or property by reason of the check.

4. On the point involved in this case, in State v. Hollbrook, 289 S.W. 560, it is stated l.c. 561:

"The representation mentioned in said instruction and quoted above was a representation of something to be done by appellant and Steiner in the future. It was nothing more than a mere promise. It was not a representation of an existing fact, and in itself was not a sufficient false representation upon which to base a conviction of obtaining money under false pretenses. 25 C.J. 593; State v. Petty, 119 Mo. 425. 24 S.W. 1010; State v. Cameron, 117 Mo. loc. cit. 648, 23 S.W. 767; State v. Young, 266 Mo. loc. cit. 733, 183 S.W. 305; State v. Eudaly (Mo. Sup.) 188 S.W. 110."

To the same effect see State v. Houchins, 46 S.W. 2d 891, and State v. Wren, 62 S.W. 2d 853.

The cases cited by you in your letter, State v. Starr, 148 S.W. 862, 244 Mo. 161, and State v. Mandell, 183 S.W. 2d 59, 353 Mo. 502, do not support the Information because the facts in both cases show false pretense and representation as to facts existing at the time the representations were made.

#### CONCLUSION

It is the opinion of this department that on the facts as set out in the amended Information attached to your letter, an Information cannot be drawn that will charge the defendant with the offense of obtaining money by false and fraudulent pretenses.

Respectfully submitted,

Approved:

GILBERT LAMB  
Assistant Attorney General

J. E. TAYLOR  
Attorney General  
GL:lrt

