

## To City of Spooner Merchants Accepting Worthless Checks

The City of Spooner Police Department has recently been tasked with the responsibility of investigating the issuance of worthless checks to merchants in its jurisdiction, a responsibility formerly taken on by the district attorney's office. The City of Spooner maintains a municipal court which will process and prosecute worthless check complaints that have prosecutive merit. If proven, a person convicted in municipal court of issuing worthless checks may be made to pay a fine and, if the court determines that convicted person has the ability to pay, make restitution. This policy is subject to change since the Spooner Police Department has no statistics nor has it been given any guidance regarding the number of bad check formerly turned in to the district attorney.

The Spooner Municipal Court is not a criminal court unlike the circuit court. The municipal court has power to compel a person convicted of worthless checks to pay either the forfeiture amount and/or the restitution only with a limited contempt of court whereas a circuit court has many tools to collect worthless checks including probation, tax intercepts and suspension of licensures.

Many larger merchants now accept checks that are immediately verified much as debit cards are and the amount is deducted immediately from the payee's bank account. For those merchants who decide that such processing of payments is too cumbersome or expensive, they must bear in mind the following guidelines for an investigative referral to the Spooner Police Department:

- The offense of issuing a worthless applies only to a face-to-face transaction where a merchant sells merchandise to a customer who then pays with a check that is not postdated. Postdating a check takes a dishonored check out of the offense.
- Likewise, a check issued for a debt such as a loan payment or for rent payment is not a worthless check within the meaning of the law.
- What must be proved under the law is that at the time the person issues the check, that person must have *intended that the check be dishonored*. This state of mind requirement is satisfied when the issuer of the check is notified that the merchant has received a check back from his bank marked either INSUFFICIENT FUNDS or ACCOUNT CLOSED and not have received reimbursement within five days of such notice. In other words, the merchant must send out a letter and be prepared to swear in court that letter was sent out. The merchant need not, however, prove that the letter was received.
- The person who took the check must be prepared to testify under oath that he or she can identify the person in court by pointing that person out. This is not a problem if the person issuing the check is known to the person taking the check. In all cases where a cashier takes a check to pay for merchandise cannot identify the check writer at the point of transaction, the cashier **MUST** take picture identification, verify the person's identity and make that verification known by writing a "P" (for photo ID) on the face of the check and circling it. So when

asked in court if the witness can identify the defendant, the cashier may say No, but I did take photo ID from the person and verified that person's identity. How do you know? Because I noted that fact on the check itself.

- If the merchant is unwilling to ask for identification when taking the check of a person unknown to them because it is awkward or for the fear that the merchant will lose business, that is the merchant's BUSINESS DECISION.
- A decision has been made by the Washburn County district attorney that it will criminally prosecute worthless check cases in circuit court in amounts exceeding \$500.00. These same investigative rules, however, will be required for all checks submitted to the Spooner Police Department for investigation.
- Unlike the district attorney's office, there will not be a threshold amount for purposes of prosecuting a worthless check charge in municipal court. While the amount of the worthless check will certainly be a factor in such a decision, the primary investigative feature will focus on the residency of the issuer. Unlike a criminal charge of worthless check, where the complaint and summons for which may be mailed to the defendant, personal service is required to obtain jurisdiction over a defendant in municipal court. That means that if a worthless check defendant resides outside the city limits, the Spooner Police Department will have to pay another jurisdiction to serve the complaint. Additionally, as it stands now, all contempts for failure to pay a forfeiture are limited to what is called *adjacent county pick-up*, as opposed to state-wide pick-up. That means that if a defendant is personally served with a municipal court summons and complaint and that person fails to appear for court, that person is defaulted and judgment is taken against that defendant. In criminal court, a warrant is issued. Municipal court does not have that authority. Likewise, if the defendant does not pay, a commitment to the county jail may be issued. But the municipal court has to pay a fee to the Washburn County sheriff for transportation and warrant costs. Therefore, each case will be individually analyzed to determine the cost/benefit of a prosecution.
- The Spooner Municipal Court will not collect bank fees charged to the merchants. The district attorney's office may have a separate policy regarding such collections.

I have read and understand this policy:

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Merchant's signature

Dated: