

Chapter 165

Crimes Involving Fraud or Deception

165.007

NOTES OF DECISIONS

See also cases under ORS 165.013.

FURTHER CITATIONS: State v. Lee, (1889) 17 Or 488, 21 P 455; State v. Howard, (1902) 41 Or 49, 69 P 50; State v. McLennan, (1917) 82 Or 621, 162 P 838; State v. Moss, (1919) 95 Or 616, 182 P 149, 188 P 702; Swift & Co. v. Peterson, (1951) 192 Or 97, 233 P2d 216.

165.013

NOTES OF DECISIONS

1. Under former similar statute

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 - (a) In general
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- (2) Forging note, draft or check (ORS 165.110)
- (3) Uttering forged instrument (ORS 165.115)

1. Under former similar statute

(1) **Forgery and counterfeiting (ORS 165.105)**
(a) **In general.** The elements of the crime were (1) an instrument in writing apparently capable of effecting a fraud; (2) a false making or alteration of such an instrument; (3) a fraudulent intent. State v. Wheeler, (1890) 20 Or 192, 25 P 394, 23 Am St Rep 119, 10 LRA 779; State v. Kelliher, (1907) 49 Or 77, 88 P 867; State v. Ford, (1918) 89 Or 121, 172 P 802.

The execution of an instrument apparently capable of effecting a fraud in a fictitious or assumed name with intent to defraud was a forgery. State v. Wheeler, (1890) 20 Or 192, 25 P 394, 23 Am St Rep 119, 10 LRA 779; State v. Kelliher, (1907) 49 Or 77, 88 P 867; State v. Swank, (1921) 99 Or 571, 195 P 168.

The crime of forgery and the crime of uttering a forged instrument were separate and distinct crimes, the crime of forgery being complete without any uttering of the forged instrument. State v. Swank, (1921) 99 Or 571, 195 P 168.

(b) **What may be the subject of forgery.** Any instrument which could operate to defraud another or injuriously affect his rights could be the subject of forgery. State v. Dunn, (1893) 23 Or 562, 32 P 621, 37 Am St Rep 704; State v. Frasier, (1919) 94 Or 90, 180 P 520, 184 P 848. **A note which appeared to be barred by the statute of limitations,** State v. Dunn, (1893) 23 Or 562, 32 P 621, 37 Am St Rep 704; **a certificate of a road supervisor to the county court as to the claim of a road worker for compensation,** State v. Gee, (1895) 28 Or 100, 42 P 7; **an instrument assigning a certificate of sale of certain public lands,** State v. Kelliher, (1907) 49 Or 77, 88 P 867; **a canceled check indorsed and stamped "Paid",** State v. Frasier, (1919) 94 Or 90, 180 P 520, 184 P 848.

A certificate of nomination was not a public record until filed. State v. Brantley, (1954) 201 Or 637, 271 P2d 668.

(c) **Intent.** The false making had to be accompanied with an intent to defraud, but no injury or defrauding need in fact have been accomplished in order to complete the crime. State v. Lurch, (1885) 12 Or 99, 6 P 408.

If the forgery could not possibly have injured anyone there could be no intent to injure or defraud. Id.

(d) **False recital of fact.** Where defendant caused a woman to execute a deed in her name as his wife though another woman then living was his legal wife, he was not guilty of forgery since the woman who executed the deed was commonly known throughout the community as his wife and so it was merely a false recital of fact which was not a forgery. State v. Ford, (1918) 89 Or 121, 172 P 802.

(e) **Indictment.** The indictment did not need to state the name of the person defrauded. State v. Lurch, (1885) 12 Or 99, 6 P 408; State v. Frasier, (1919) 94 Or 90, 180 P 520, 184 P 848.

The tenor of the instrument alleged to be forged did not need to be set out. Id.

The indictment in an action for forgery of a receipt did not need to allege a prior indebtedness from the person to whom it purported to be given to the apparent maker of it. Id.

The indictment did not need to set out how the instrument was forged, the allegation that he did forge the instrument being sufficient. State v. Swank, (1921) 99 Or 571, 195 P 168.

Allegations of forging and uttering could be joined in an indictment under the section. State v. Rowen, (1922) 104 Or 1, 200 P 901.

(f) **Evidence.** The introduction of a receipt, purporting to extinguish a claim of \$65, as evidence in support of an allegation in an indictment for forging a receipt, extinguishing a claim for \$60, was a fatal variance. Shirley v. State, (1859) 1 Or 269.

Evidence of dealings and transactions with defendant prior to the alleged forgery was admissible to show defendant's motive, though they may have tended to show other crimes. State v. Swank, (1921) 99 Or 571, 195 P 168.

Where defendant was charged with forging a deed, a certified copy of the deed was admissible without notice to defendant to produce the original. State v. Rowen, (1922) 104 Or 1, 200 P 901.

(2) **Forging note, draft or check (ORS 165.110).** Where defendant forged a note in Multnomah County and mailed it to a person in Lincoln County, the venue for the crime of forgery is in Multnomah County. State v. Swank, (1921) 99 Or 571, 195 P 168.

Other checks similar to the one on which the charge was based were admissible to show evidence of an intent to defraud. State v. Holbert, (1965) 242 Or 228, 408 P2d 941.

Venue could be established by circumstantial evidence and inferred by the jury from all facts of the case. State v. Lindsey, (1970) 2 Or App 503, 468 P2d 897, Sup Ct review denied.

(3) **Uttering forged instrument (ORS 165.115).** Evidence was sufficient to support a conviction under the section.

State v. Davis, (1970) 1 Or App 537, 464 P2d 841; State v. White, (1970) 4 Or App 151, 477 P2d 917.

Where defendant forged a note in Multnomah County and mailed it to a person in Lincoln County, the venue for the crime of uttering the forged note was in Lincoln County. State v. Swank, (1921) 99 Or 571, 195 P 168.

Evidence of attempt to cash a similarly forged check was admissible to show intent and knowledge of forgery for which defendant was indicted. State v. McGowan, (1959) 218 Or 455, 345 P2d 831.

An intent to injure and defraud was an essential element of this crime. State v. McIntosh, (1970) 4 Or App 407, 477 P2d 228, 479 P2d 763.

It was prejudicial error to fail to instruct that an intent to injure or defraud was an essential element of the crime *Id.*

Where the indictment set forth the whole of the negotiable instrument alleged to have been forged, including as an integral part thereof the indorsement, it sufficiently charged a violation of the section, whether the proof be that the signature of the maker, the required endorser, or each, was a forgery. State v. Leaton, (1970) 3 Or App 475, 474 P2d 768.

FURTHER CITATIONS: State v. Lurch, (1885) 12 Or 99, 6 P 408; State v. Kelliher, (1907) 49 Or 77, 88 P 867; State v. Jones, (1965) 240 Or 546, 402 P2d 738; Benson v. Gladden, (1965) 242 Or 132, 407 P2d 634; State v. Goetjen, (1970) 1 Or App 533, 464 P2d 837; State v. Dumont, (1970) 3 Or App 189, 471 P2d 847.

ATTY. GEN. OPINIONS: Extradition of a person charged with forgery, 1930-1932, p 40; making of a false certificate as to the amount of funds available for W.P.A. project, 1938-40, p 9; construction of a depositor's forgery policy covering the facsimile signature of Secretary of State, 1944-46, p 46.

LAW REVIEW CITATIONS: 39 OLR 167.

165.032

NOTES OF DECISIONS

While authority to punish the crime of counterfeiting the coin of the United States rests exclusively in the federal courts, the offense defined by a former similar statute of making or possessing implements of counterfeiting was not included in the crime of counterfeiting coin. State v. Brown, (1867) 2 Or 221.

165.055

CASE CITATIONS: State v. Pearson, (1968) 250 Or 54, 440 P2d 229; State v. Dumont, (1970) 3 Or App 189, 471 P2d 847.

LAW REVIEW CITATIONS: 48 OLR 298.

165.065

NOTES OF DECISIONS

A former similar statute applied only where the accused had, prior to presenting the check, established an account in the bank upon which the check was drawn. Broome v. Gladden, (1962) 231 Or 502, 373 P2d 611; State v. Scott, (1964) 237 Or 390, 390 P2d 328. Broome v. Gladden, *supra*, distinguished in State v. MacMullen, (1971) 5 Or App 38, 482 P2d 544.

Giving a post-dated check under the prohibitions of a former similar statute was a crime. Gumm v. Heider, (1960) 220 Or 5, 348 P2d 455.

FURTHER CITATIONS: State v. Robinson, (1927) 120 Or 508, 252 P 951; State v. Mannix, (1930) 133 Or 329, 288 P 507, 290 P 745; State v. Pirkey, (1955) 203 Or 697, 281 P2d 698; Obrist v. Christensen, (1964) 337 F2d 221.

ATTY. GEN. OPINIONS: Applicability of this section to the drawer of a check given to pay a fine, 1950-52, p 40; construing "felony" in insurance licensing law, 1964-66, p 370.

LAW REVIEW CITATIONS: 36 OLR 179, 180; 45 OLR 81-84; 50 OLR 115.

165.095

NOTES OF DECISIONS

1. Under former similar statute

(1) Embezzlement by bank official or employe (ORS 165.035)

(a) **In general.** In a prosecution for aiding and abetting a cashier of a bank in misapplying bank funds, it was necessary to establish the guilt of the cashier and to prove criminal participation of the defendant in aiding the cashier in the commission of his offense. State v. Owen, (1926) 119 Or 15, 244 P 516.

Under indictment against a bank president for misapplying bank funds by cashing a fraudulent check, it was necessary that there be both wilful misapplication of bank funds and intent to defraud bank to sustain charge. State v. Burke, (1928) 126 Or 651, 269 P 869, 270 P 756.

The statute covered the acts of any employe of a bank, whether directly connected with the handling of bank funds or not. State v. Tollefson, (1933) 142 Or 192, 16 P2d 625.

(b) **Jurisdiction.** In a prosecution for aiding and abetting a bank cashier in misapplying the bank's funds where defendant drew a check on a bank in which he knew he had no funds, this state had jurisdiction though defendant drew the check and cashed it in California. State v. Owen, (1926) 119 Or 15, 244 P 516.

(c) **Evidence.** Where defendant was charged with aiding a bank officer in the misapplication of the bank's funds by drawing a check on the bank in which he knew he had no funds, evidence of unpaid chattel mortgages executed by defendant was admissible to show the inability of defendant to reimburse the bank which was relevant to determine the intent of the defendant and the bank officer. State v. Kubli, (1926) 118 Or 5, 244 P 512.

ATTY. GEN. OPINIONS: Prosecution of non-resident bank owner, 1922-24, p 476.

165.100

CASE CITATIONS: State v. Bosch, (1932) 139 Or 150, 7 P2d 554.

165.535 to 165.545

CASE CITATIONS: State v. Cartwright, (1966) 246 Or 120, 418 P2d 822.

LAW REVIEW CITATIONS: 46 OLR 359.

165.535

ATTY. GEN. OPINIONS: Reception of television signals by nonmembers of corporation operating translator system, 1958-60, p 92; application to federal law enforcement officers prior to 1961 amendment, 1960-62, p 136; legality of general public obtaining programs from private television antenna, 1964-66, p 379.

LAW REVIEW CITATIONS: 6 WLJ 380.

165.540

NOTES OF DECISIONS

This section was not unconstitutionally vague and did not violate the constitutional right against unreasonable searches and seizures. *State v. Young*, (1970) 1 Or App 562, 463 P2d 374, Sup Ct review denied.

FURTHER CITATIONS: In re William M. Langley, (1962) 230 Or 319, 370 P2d 228.

ATTY. GEN. OPINIONS: Reception of television signals by nonmembers of corporation operating translator system, 1958-60, p 92; necessity of notice to participants in administrative hearing that proceedings are being recorded, 1958-60, p 389; application to federal law enforcement officers prior to 1961 amendment, 1960-62, p 136; legality of general public obtaining programs from private television antenna, 1964-1966, p 379.

LAW REVIEW CITATIONS: 6 WLJ 380.

165.545

LAW REVIEW CITATIONS: 6 WLJ 380.