

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 11, 2019

Mr. Robert Lawrence, Esq.
Attorney, City of Crystal Springs
Post Office Box 473
Crystal Springs, MS 39059-0473

Re: Municipal Court Matters

Dear Mr. Lawrence:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Background

Your request states:

ITEM 1:

Facts:

Police Officers as an incident to an arrest are finding multiple persons in possession of counterfeit US currency but the persons have never attempted to pass the currency as genuine and there is no evidence of possession with intent to utter the same other than pure possession. The only crime I can find is Section 97-21-37 which requires proof of intent to utter as genuine.

Question:

For any future prosecutions, where there is no proof of intent to utter other than mere possession is the mere possession of counterfeit US Currency illegal under Mississippi law?

ITEM 2:

Facts:

The Municipal Court handles misdemeanor prosecutions of school teachers and personnel pursuant to Section 99-3-28. This section states

that prior to issuing an arrest warrant for such persons charged with a crime in the scope of their duties, there must be a probable cause petition filed in circuit court prior to the issuance of an arrest warrant. The recently adopted Mississippi Rules of Criminal Procedure Rule 3 authorizes the commencement of a criminal case either by summons or by arrest warrant after a determination of probable cause made under Rule 2.

Question:

For any future prosecutions of school teachers or personnel may the municipal court proceed with the use of a summons with no arrest warrant issued under Rule 3 or must a petition in the circuit court be filed pursuant to Section 99-3-28 before the municipal court can proceed?

Response

The answer to your first question is found in Section 97-21-37, which expressly requires the element of intent before a person may be charged under the statute.¹ Section 97-21-37 states:

OFFICIAL OPINION

Every person who shall have in his possession any forged, altered or counterfeited negotiable note, bill, draft, or other evidence of debt issued or purported to have been issued by any corporation or company duly authorized for that purpose by the laws of the United States or of this state, or of any other state, government, or country, or any other forged, altered, or counterfeit, instrument the forgery of which is declared by the provisions of this chapter to be punishable, knowing the same to be forged, altered, or counterfeited, with intention to utter the same as true or as false, or to cause the same to be uttered, with intent to injure or defraud, shall be guilty of forgery and shall be punished according to the schedule in Section 97-21-33.

(Emphasis added.) The statute prescribes that the person must intend to “utter the same as true or false. . . with intent to injure or defraud.” Mere possession would not rise to the level of intent.

Your second question asks about Rule 2.1 and Rule 3 of the Mississippi Rules of Criminal Procedure. Generally, Rule 2.1 allows for a criminal case to commence by either a charging affidavit, indictment, or bill of information. Rule 2.2 discusses the

¹ Possession under particular circumstances may provide enough evidence from which intent could be inferred. Justice Ethridge in *Coward v. State*, 223 Miss. 538, 549, 78 So. 2d 605, 610 (1955) stated the element of knowledge usually and necessarily is proved by circumstantial evidence. The Mississippi Supreme Court held that “it is well settled that either unexplained or unsatisfactorily explained possession of a forged instrument by the defendant is prima facie evidence that he either committed the forgery himself, or procured another to do so.” *Rowland v. State*, 531 So. 2d 627, 630 (Miss. 1988).

probable cause determination, authorizes the judge to examine witnesses, and requires that probable cause is to be based upon evidence. Rule 2.2 states that if there is probable cause, the judge "shall proceed under Rule 3.1." Rule 3.1 states that the judge can issue an arrest warrant by summons upon a finding of probable cause unless "otherwise prohibited by law."

It is the opinion of this office that Section 99-3-28 prohibits a municipal judge from entering a warrant until the circuit court judge's hearing requirement is met. Section 99-3-28 states that when issuing a warrant for a licensed public school employee, a certified jail officer, a counselor at an adolescent opportunity program, or a sworn law enforcement officer, a probable cause hearing in front of a circuit judge is required. It is our opinion that this method could apply equally to issuance of a summons in place of a warrant.

Section 99-3-28 states:

(1)(a) Except as provided in subsection (2) of this section, before an arrest warrant shall be issued against any teacher who is a licensed public school employee as defined in Section 37-9-1, a certified jail officer as defined in Section 45-4-9, a counselor at an adolescent opportunity program created under Section 43-27-201 et seq., or a sworn law enforcement officer within this state as defined in Section 45-6-3 for a criminal act, whether misdemeanor or felony, which is alleged to have occurred while the teacher, jail officer, counselor at an adolescent opportunity program or law enforcement officer was in the performance of official duties, a probable cause hearing shall be held before a circuit court judge. The purpose of the hearing shall be to determine if adequate probable cause exists for the issuance of a warrant. All parties testifying in these proceedings shall do so under oath. The accused shall have the right to enter an appearance at the hearing, represented by legal counsel at his own expense, to hear the accusations and evidence against him; he may present evidence or testify in his own behalf.

(b) The authority receiving any such charge or complaint against a teacher, jail officer, counselor at an adolescent offender program or law enforcement officer shall immediately present same to the county prosecuting attorney having jurisdiction who shall immediately present the charge or complaint to a circuit judge in the judicial district where the action arose for disposition pursuant to this section.

(2) Nothing in this section shall prohibit the issuance of an arrest warrant by a circuit court judge upon presentation of probable cause, without the holding of a probable cause hearing, if adequate evidence is presented to satisfy the court that there is a significant risk that the accused will flee the court's jurisdiction or that the accused poses a threat to the safety or well being of the public.

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(Emphasis added.)

The only exception in the statute is in subsection (2) which states that an arrest warrant can be issued by a circuit court judge if adequate evidence is presented to satisfy the court that there is a significant risk that the defendant will flee the court's jurisdiction or that the defendant poses a threat to the safety or well being of the public. The Mississippi Supreme Court judicially created another exception for grand jury indictments. *See State v. Delaney*, 52 So. 3d 348, 350 (Miss. 2011). (A probable cause hearing would not be necessary in the event a person subject to Section 99-3-28 is indicted by a grand jury.) Section 99-3-28 specifically requires that a circuit court judge is to determine probable cause. Additionally, we note that any evidence or knowledge of forged money should be reported to the United States Secret Service.

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

OFFICIAL By:

 OFFICIAL

Emiko Hemleben
Special Assistant Attorney General