

April 17, 2000

OPINION 00-107

Senator Mike Michot
District 23
Post Office Box 80372
Lafayette, Louisiana 70598-0372

Opinion No. 00-107
Louisiana Revised Statutes, Title 14:67
Louisiana Civil Code Articles 2681 & 2682
16 CRIMINAL LAW – Crimes & Offenses
A theft has occurred where: a non-owner of property represented that he owned leasing privileges on a certain tract of land; individuals (lessees) leased the land for \$5,000; the non-owner did not have any rights in the property and refused to honor the lease; and the non-owner refused to reimburse the lessees.

Dear Senator Michot:

This office is in receipt of your opinion request, which is quoted as follows:

Whether a theft has occurred under La. R.S. 14:67 and whether Civil Code Article 2681 would operate as a defense given the following facts:

A non-owner of property represented that he owned leasing privileges on a certain tract of land; individuals (lessees) leased the land for \$5,000; the true owner informed the lessees that the non-owner did not have any rights in the property and refused to honor the lease; and the non-owner refused to reimburse the lessees.

The relevant portion of La. R.S. 14:67 states:

A. Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.

The non-owner took the money from the lessees, satisfying the “taking of anything of value belonging to another” requirement. Clearly the non-owner intended to permanently deprive the lessees of their money because he kept the money and refused to return it. The only element at issue is whether the taking was by means of fraudulent conduct, practices, or representations.

The non-owner represented that he owned the right to lease the property when in fact he neither possessed the property nor did he have any legal connection to the property at all. This fraudulent representation is sufficient to satisfy the last requirement.

Addressing the second part of the question concerning possible defenses arising under the Civil Code, Article 2681 states:

He who possesses a thing belonging to another, may let it to a third person *but he can not let it for any other use than that to which it is usually applied.*

For C.C. Art. 2681 to apply, the non-owner would have to be in possession of the property, and under the given facts he was not. Additionally, even if the non-owner was in possession of the property, the last clause (italicized above) of C.C. Art. 2681 contemplates that the possessor is possessing under the right of the true owner (see 21 La.L.Rev. 606). Therefore, under the given facts the non-owner clearly was not in possession, and if he was, not the type of possession contemplated in C.C. Article 2681. Finally, in the event that C.C. Art. 2681 was found to apply to the non-owner, note that C.C. Art. 2682 provides a civil course of action for the lessees to recover their money.

Therefore, under the specific facts provided, and in light of the fact that opinions of this office are considered persuasive authority only, it is the opinion of this office that the actions of the non-owner are theft under La. R.S. 14:67.

Sincerely,

RICHARD P. IEYOUNG
Attorney General

BY: _____
PAUL LEBLANC
Assistant Attorney General

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Date Released: April 17, 2000

REVIEW SHEET

DATE: March 30, 2000

REPORT OF THE CRIMINAL DIVISION OPINION REVIEW COMMITTEE

We have reviewed the attached opinion number 00-52 on the _____ day of _____, 2000, and find that this opinion is acceptable and ready for release, with the following exceptions, comments and/or recommendations, to-wit:

JULIE CULLEN **DATE**
DIRECTOR, CRIMINAL DIVISION

MARY E. HUNLEY	DATE
SECTION CHIEF	

JIMMY D. WHITE DATE
ASSISTANT ATTORNEY GENERAL

FRED DUHY
ASSISTANT ATTORNEY GENERAL

PLEASE INITIAL IF APPROPRIATE FOR PUBLICATION
