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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 7, 2005

The Honorable Thomas E. Taylor
Summary Court Judge
8150 Augusta Road
Piedmont, South Carolina 29673

Dear Magistrate Taylor:

In a letter to this office you questioned whether a magistrate is authorized to dismiss a charge. I am assuming that you are questioning whether a magistrate may dismiss a case prior to prosecution and are not referring to a trial judge's authority to rule on a motion for a directed verdict of not guilty.

In your letter you referenced that as to fraudulent check cases, pursuant to S.C. Code Ann. Section 34-11-70 (c)

Any court, including magistrates, may dismiss any prosecution initiated pursuant to the provisions of this chapter on satisfactory proof of restitution and payment by the defendant of all administrative costs accruing not to exceed forty-one dollars submitted before the date set for trial after the issuance of a warrant.

In addition to that provision, subsection (b) provides that as to fraudulent check cases,

Any court, including magistrates, may dismiss a case under the provisions of this chapter for want of prosecution. When any prosecutions are initiated under this chapter, the party applying for the warrant is held liable for all reasonable administrative costs accruing not to exceed forty-one dollars if the case is dismissed for want of prosecution. Unless waived by the court, the party applying for the warrant shall notify, orally or otherwise, the court not less than twenty-four hours before the date and time set for trial that full restitution has been made in connection with the warrant, and the notification relieves that party of the responsibility of prosecution.

Such provisions are the only statutes with which I am familiar that specifically allow a judge, including a magistrate, to dismiss a case prior to prosecution.

REQUEST LETTER

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A prior opinion of this office dated January 11, 2001 referenced the decision of the State Supreme Court in State v. Brittian, 263 S.C. 363, 210 S.E.2d 600 (1974). The Court cited 21 Am. Jur.2d Criminal Law § 517 where it was stated that

A statute may authorize the court, either of its own motion or on the application of the prosecuting officer, to order an indictment or prosecution dismissed. But in the absence of such a statute, a court has no power...to dismiss a criminal prosecution except at the instance of the prosecutor....

263 S.C. at 366. The 2001 opinion noting Brittian concluded that a statutory enactment is necessary to empower a judge to dismiss a criminal case. In Brittian the court had concluded that "there is no provision" granting a family court the authority to dismiss a prosecution brought against a juvenile prior to a hearing. 263 S.C. at 366.

As to municipal court prosecutions this office has previously opined that we are "... unaware of any statutory authority which permits a municipal [judge] to nol pros or dismiss a particular case on his own motion. Therefore ... a case triable in the municipal court may only be nol prossed in the discretion of the individual acting as the prosecutor." See Atty. Gen. Op. dated April 12, 1979.

Consistent with the above authority, except for the limited statutory authority to dismiss a fraudulent check case, it is the opinion of this office that a magistrate is not authorized to dismiss a criminal case. Only that State has that authority.

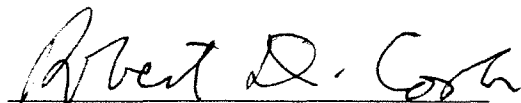
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General