

1980 WL 120904 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 1, 1980

*1 Honorable William E. McLeod
Magistrate
Florence County
City-County Complex
Florence, S. C. 29501

Dear Judge McLeod:

In a letter to this Office you referenced a situation where a check is returned for insufficient funds, the fifteen day notice letter is sent, and on the seventeenth day partial payment of the amount due on the check is made. You asked whether under such circumstances an arrest warrant charging a fraudulent check violation could be issued.

As you are aware, pursuant to [Section 34-11-70 of the 1976 Code](#) of Laws, as amended, failure to pay the amount due on a check alleged to be fraudulent within fifteen days after notice constitutes prima facie evidence of fraudulent intent against the maker. This Office in an earlier opinion dated March 18, 1971, a copy of which is enclosed, referenced that the Section now codified as [Section 34-11-100 of the 1976 Code](#) of Laws provides that acceptance of partial payment of the amount due on the check after issuance of the arrest warrant does not act to end the prosecution. However, the opinion also states that as to such section: '(t)his appears to be nothing more than a restatement of the law, however, since neither full payment nor part payment either before or after an arrest warrant is issued operates as a matter of law to prohibit or terminate prosecution of the criminal offense.' [Emphasis add]

Therefore, as to your situation, it appears that even though partial payment is made, an arrest warrant could still be issued.

I will be answering your remaining question later, but thought it best to reply to the above question now since you indicated you had such a case presently before you.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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