

1977 WL 36967 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 15, 1977

**\*1 RE: Nol Pros of DUI Case**

Herbert F. Payton  
Chief of Police  
Prosperity Police Department  
Post Office Box 36  
Prosperity, South Carolina 29127

Dear Chief Payton:

The additional facts you have supplied regarding the terminated officer and the proper disposition of his DUI cases place the matter in a different posture from that discussed in our previous correspondence.

The fact that a witness may be hostile is not sufficient justification for the entry of a nol pros even when the witness is the only witness. The procedure at trial is to make a motion to the court to have the witness declared hostile, either before trial if it is known that he will not cooperate based upon identifiable facts to support that conclusion or during the course of his testimony if it then appears that he will not testify fully to the facts in an attempt to impede the prosecution. Your city attorney should be able to assist you in preparing, and perhaps presenting, the case. However, a nol pros on this basis would not appear to be appropriate.

If I can be of any further assistance in this matter, please do not hesitate to contact me.

With best regards,  
Very truly yours,

Richard P. Wilson  
Assistant Attorney General

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