

1978 S.C. Op. Atty. Gen. 125 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-96, 1978 WL 22575

Office of the Attorney General

State of South Carolina

Opinion No. 78-96

May 18, 1978

***1 SUBJECT: Uniform Traffic Tickets, Arrest and Jail Logs, Destruction of**

Upon nonconviction disposition, Section 17-1-40 requires that the law enforcement copy of uniform traffic tickets be destroyed. All other copies are retained by non-law enforcement agencies and, therefore, are not affected by Section 17-1-40. Arrest and jail log entries relating to nonconviction dispositions should be obscured. The entry of a nolle prosequi is a dismissal within the meaning of Section 17-1-40.

To: Mr. O. Lee Sturkey
Town Attorney
McCormick, South Carolina

QUESTION PRESENTED:

Does Section 17-1-40 require the destruction of uniform traffic tickets and arrest and jail logs upon the dismissal of criminal proceedings and also where a case has been nol prossed?

AUTHORITIES INVOLVED:

[Section 17-1-40, 1976 South Carolina Code](#) of Laws, as amended.

[Section 56-7-20, 1976 South Carolina Code](#) of Laws, as amended.

[Section 56-5-2970, 1976 South Carolina Code](#) of Laws, as amended.

[Section 56-1-330, 1976 South Carolina Code](#) of Laws, as amended.

[Section 56-1-780, 1976 South Carolina Code](#) of Laws, as amended. [Section 23-15-20, 1976 South Carolina Code](#) of Laws, as amended. [State v. Charles](#), 183 S.C. 188, 190 S.E. 466 (1937).

DISCUSSION:

You have asked whether [Section 17-1-40 of the 1976 Code of Laws of South Carolina](#) requires the destruction of uniform traffic tickets and jail and arrest logs upon the dismissal of criminal proceedings and also whether [Section 17-1-40](#) applies where a criminal case has been nol prossed.

[Section 17-1-40](#) provides:

Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law-enforcement agency.

Regarding uniform traffic tickets, it must be recognized at the outset that the Highway Department is not a law enforcement agency and, therefore, is not covered by the plain terms of the aforementioned statute. Although the law enforcement copy of such tickets would have to be destroyed pursuant to the subject statute since it is retained by the issuing law enforcement agency, all other copies retained by non-law enforcement agencies must be maintained according to existing law. See [Section 56-7-20](#), [Section 56-5-2970](#), [Section 56-1-330](#), [Section 56-1-780](#) (see opinion of the Attorney General from Richard P. Wilson, dated January 9, 1978, a copy of which is enclosed for your convenience).

Regarding arrest and jail logs, such records are also required to be kept by law. [Section 23-15-20](#). Accordingly, such books should not be destroyed. However, those entries relating to nonconviction dispositions may be obscured by striking through the names and pertinent information so as to make the entry illegible, thereby accomplishing the obvious purpose of [Section 17-1-40](#). However, the municipal treasury records which note criminal bond receipts presumably are not records retained by a law enforcement agency and, therefore, are not covered by [Section 17-1-40](#).

*2 Finally, since a nol pros is an entry of record that the State will not prosecute further at this time, it is, in our opinion, clearly equivalent to a dismissal as contemplated in [Section 17-1-40](#). See [State v. Charles](#), 183 S.C. 188, 190 S.E. 466 (1937). Although it is not a bar to future prosecution under a new indictment, a nol pros is nonetheless a voluntary dismissal of the charge by the prosecution and, therefore, is within the meaning of [Section 17-1-40](#). Therefore, following the entry of a nolle prosequi, the provisions of [Section 17-1-40](#) should be complied with.

CONCLUSION:

Therefore, it is the opinion of this Office that upon the nonconviction disposition of criminal charges, [Section 17-1-40](#) requires that the law enforcement copy of a uniform traffic ticket, if any, be destroyed. Arrest and jail logs should have pertinent entries obscured.

It is our further opinion that the entry of a nolle prosequi is a dismissal within the meaning of [Section 17-1-40](#).

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