

1975 WL 29522 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 21, 1975

*1 Chief of Police
City of Forest Acres
4405 Bethel Church Road
Columbia, South Carolina 29206

Dear Chief McLean:

In our telephone conversation yesterday, I indicated that I thought the arresting officer could nol pros a warrant at the preliminary hearing just as well as the officer who signed the warrant, even when the arresting officer did not sign the warrant. I have since done some research on the matter, and while I could find little law on it, I now feel that only the prosecuting officer (the one who signed the warrant) or someone from the solicitor's office could nol pros the warrant. No matter what connection some other officer might have with the case, if he did not sign the warrant, he cannot have the prosecution of it dismissed.

Your reading of the Brittain case was correct; the court (magistrate or otherwise) cannot order a prosecution dismissed for the sole reason that the officer or other person representing the prosecution failed to show up at some stage of the proceedings.

You indicated that the preliminary hearings in question were held by a city recorder. If these were felony cases, which I assume they were, there is a serious question as to whether a city recorder may conduct such proceedings. I am enclosing an opinion by Mr. Goolsby dated June 26, 1974, and a letter by Mr. McLeod dated May 2, 1974; both take the view that a statute is necessary to give city records the power to hold preliminary hearings and that at present, no such statute exists. Thus, it might be safer to take the case to a magistrate instead of a city recorder.

I hope that this letter answers your question satisfactorily; if not, feel free to call again. I enjoyed talking to your yesterday.
Sincerely,

Kenneth P. Woodington
Staff Attorney

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