

1983 S.C. Op. Atty. Gen. 90 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-57, 1983 WL 142728

Office of the Attorney General

State of South Carolina

Opinion No. 83-57

August 9, 1983

\*1 The Honorable Donald V. Myers

Solicitor

Eleventh Judicial Circuit

Lexington County Courthouse

Lexington, SC 29072

Dear Solicitor Myers:

In a letter to this Office you referenced the situation where a victim receives partial restitution in fraudulent check cases. You particularly referenced situations where partial restitution is made both before a warrant is executed and after a warrant has been executed but prior to the case being tried.

Enclosed please find a copy of a previous opinion of this Office, a letter from Mr. Coleman to Magistrate Halloran dated March 18, 1971. In such letter, reference is made to a statute now codified as [Section 34-11-100, Code of Laws of South Carolina, 1976](#), which states that payment of dishonored check after prosecution is initiated is not a ground for dismissal of any fraudulent check charges but may be considered in mitigation of the sentence received by the drawer of such check. However, the opinion further states that:

'[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 added).

Such statement is consistent with the following:

'([s]ince the status of an act as a crime is fixed when it is once completed, and that status cannot be changed by the subsequent act of the criminal or of third persons . . . the fact that a person who was injured by the commission of a crime has condoned the offense or made a settlement with accused . . . does not relieve accused or bar a prosecution by the state, except where there is statutory authority therefor.' 22 C.J.S. [Criminal Law](#), § 41, pp. 132-133.

Therefore, partial restitution by the drawer of a fraudulent check, either before or after prosecution is initiated, is not a basis for preventing the prosecution of such drawer.

The above statements are also consistent with [Section 34-11-70\(c\), Code of Laws of South Carolina, 1976](#), as amended, which provides that:

'any court . . . 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.' (emphasis added).

Therefore, pursuant to such provision, complete restitution permits but does not automatically result in a prosecution initiated being terminated.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

1983 S.C. Op. Atty. Gen. 90 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-57, 1983 WL 142728

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.