

1980 WL 120926 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 14, 1980

\*1 Representative Paul Gelegotis  
1739 Maybank Highway  
Charleston, SC 29412

Dear Representative Gelegotis:

In a letter to this Office you raised several questions concerning the fraudulent check statutes in this State. As to your first question, you referenced the following situation:

A defendant named in a fraudulent check warrant makes restitution after the warrant has been issued but prior to its being executed. The merchant contacts the magistrate and informs him that restitution has been made. The court informs the merchant that court costs are due.

As to such situation, you have questioned whether the referenced court costs are proper and, if so, who must make payment.

Section 34-11-70(b) provides as to fraudulent check prosecution that:

‘ . . . (w)hen any prosecutions are initiated under this chapter, the party applying for the warrant shall be held liable for all reasonable administrative costs occurring not to exceed twenty dollars in the event the case is dismissed for want of prosecution. Unless waived by the court, the party applying for the warrant shall notify, orally or otherwise, the court not less than twenty-four hours prior to the date and time set for trial that full restitution has been made in connection with such warrant and such notification shall relieve that party of the responsibility of prosecution.’

Section 34-11-70(c) provides:

‘(a)any court, including magistrate's, 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 accruing not to exceed twenty dollars submitted prior to the date set for trial after the issuance of a warrant.’ [Emphasis added].

Referencing such provisions, in the opinion of this Office, a fraudulent check proceeding may be considered to have commenced upon the issuance of the fraudulent check warrant. This is in keeping with the general determination that a criminal proceeding is considered to be initiated upon the issuance of a criminal warrant. [State v. Addison, 2 S.C. 356, 360 \(1970\)](#); [State v. Howard, 15 Rich. 282 \(1868\)](#). As is apparent, court costs, which may not exceed twenty dollars, are to be paid where a case which has been initiated is dismissed. As to your particular situation, it appears that inasmuch as the merchant does inform the court that restitution has been made, it is therefore the obligation of the defendant to pay all accrued court costs. As is provided by Section 34-11-70(b), a merchant would not be liable for any court costs unless he fails to notify the court not less than twenty-four hours prior to the date and time set for trial that full restitution has been made in connection with such warrant.

In your second question, you referenced a situation where an individual makes only partial restitution of the amount due on a check he has previously written. As to such a situation, you asked whether a fraudulent check warrant can be issued. A previous opinion of this Office dated March 18, 1971, referenced that the Section now codified as [Section 34-11-100, Code of Laws of South Carolina, 1976](#), provides that acceptance of partial payment of the amount due on the check after issuance of an arrest warrant does not end the prosecution. However, the opinion also stated that as to such Section:

\*2 '(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].

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

In your third question, you referenced a situation where a merchant hires a collection agency to collect on a fraudulent check. You have asked whether the agency could charge additional collection costs over and above the five dollar service charge which is provided by Section 34-11-70, supra. In the opinion of this Office, inasmuch as there is no express authorization for any additional amount, it would be improper to charge an amount in excess of the five dollar service charge provided by statute. As provided by such section, to constitute prima facie evidence of fraudulent intent against the maker it must be shown that the maker of a check alleged to be fraudulent has failed to pay the amount due on the check together with the five dollar service charge within fifteen days after written notice has been sent by certified mail to the maker. Therefore, any attempts to collect any amount in excess of the five dollar service charge would appear to be fruitless inasmuch as the failure to pay such additional charges would not serve as any basis for making a showing of prima facie evidence of fraudulent intent.

If there are any questions concerning the above, do not hesitate to contact me.

With best wishes, I am

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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