

1973 WL 26736 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 9, 1973

***1 Re: No. 68—Criminal**

Honorable Wheeler M. Tillman
Member
House of Representatives
Post Office Box 4295
Charleston Heights, South Carolina 29405

Dear Sir:

In your letter dated May 3, 1973, you requested that we advise you as to whether or not we discern any constitutional invalidity in a proposal which, if enacted, would amend the worthless check law so as to prohibit one from being civilly prosecuted in a common law action for malicious prosecution where that person has given to a maker or drawer of a worthless check a ten-day notice of dishonor.

Inasmuch as a State has the constitutional and legislative power to change or modify the common law [1 Am. Jur. 2d Actions § 73 at 601], the General Assembly may constitutionally limit the scope of the common law cause of action for malicious prosecution in order to prohibit one who has instituted a criminal proceeding against another from being civilly prosecuted for malicious prosecution provided the modification operates prospectively, *i.e.* only as to causes of action accruing after the effective date of the act containing the amendment. We would suggest, therefore, that the proposal be revised to include a section that would expressly declare that the amendment is to-have prospective application only.

Sincerely,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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