



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 8, 2020

The Honorable James E. Jefferson, Jr.
Warren County Justice Court
800 Monroe Street
Vicksburg, Mississippi 39180

Re: County Prosecutor dismissing cases

Dear Judge Jefferson:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Questions Presented

1. Can a county prosecutor dismiss cases without the knowledge of the arresting officer, or knowledge of the judge assigned to the case?
2. Can a county prosecutor dismiss cases that have already been adjudicated by the court?

Brief Response

In response to your first question, only the judge has the authority to dismiss a case once it has been filed. However, the prosecuting attorney or officer issuing a ticket, or any other interested party, may seek dismissal of the offense by the judge by the filing of a motion or other means.

In response to your second question, we find no authority for a county prosecutor to dismiss a case that has been finally adjudicated by the court.

Applicable Law & Discussion

We preface our response by stating that, pursuant to Mississippi Code Annotated Section 7-5-25, opinions of the Attorney General are issued on questions of law prospectively for those officials entitled to receive them. An Attorney General's opinion can neither validate nor invalidate past actions of public officials. Therefore, the following comments are for your future guidance only and are not to be viewed as an opinion on actions already taken.

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We have previously opined that a county prosecuting attorney need not seek the consent of a law enforcement officer to dismiss a citation issued by that officer; however, the county prosecuting attorney must seek leave of court before the citation can be dismissed. MS AG Op., *Ready* at *1 (Sept. 28, 2001); MS AG Op., *Miller* at *1 (Oct. 23, 2015) (“Only the judge has the authority to dismiss a case once it has been filed. However, the prosecuting attorney or officer issuing a ticket, or any other interested party, may seek dismissal of the offense by the judge by the filing of a motion or other means.”); *see also* MS AG Op., *Mitchell* at *1 (Dec. 7, 2012) (finding that, pursuant to Section 99-15-53, a prosecutor could not enter a nolle prosequi without the consent of court).

Turning to your second question, we are aware of no authority for a county prosecutor to dismiss cases that have been finally adjudicated.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Phil Carter*

Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION