

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

December 15, 1980

The Judicial Inquiry Commission has considered your request for an opinion concerning whether the Canons of Judicial Ethics would prohibit a judge from assessing costs against a criminal defendant upon the dismissal of the case against the defendant.

Under Canon 2A of the Canons of Judicial Ethics, a judge is required to respect and comply with the law. Thus it is the opinion of the Commission that if the laws of Alabama prohibit the assessment of costs against a defendant in a criminal case when the case is dismissed, Canon 2A would require that a judge not assess costs in such cases.

The authority of this Commission to issue opinions extends only to opinions concerning the Canons of Judicial Ethics. The Commission may therefore not rule as to the legal issue of whether in this State costs may be assessed such cases. The Commission is however aware of Melton v. State, 30 Ala. App.136, 1 So.2d 90 (1941) in which the Court of Appeals held that costs could not be assessed in criminal cases in which a nolle prosequi or a dismissal is entered in favor of a defendant. The Commission is unaware of any subsequent Alabama statutes or Appellate cases on this point.

Sincerely,

JUDICIAL INQUIRY COMMISSION