In the above case and those similarly situated I am of opinion that the State is upon which the action is based is in Stalls a Nullity. I have therefore allowed the Solicitors fee in but one case, as a Nolle prosequi" was entered by him in all the others

Bob Mills
Atty Genl

I am of the opinion that when a prosecuting Officer of the Government enters a Nolle prosequi in a case, voluntarily and of his own accord, it is not such a prosecution of the case as legally entitles him to the fee allowed by law. But when the Nolle prosequi is entered in consequence of the decission of the Court in a previous case depending upon the same legal principles, shewing that a conviction cannot be had, the Officer is equitably if not legally entitled to his fee, because he has already conducted the prosecution as far as it could be done with any prospect of success. The entry of a Nolle prosequi after the principle upon which the success of the prosecution depends has been decided against it, is equivalent to a dismissal of the prosecution by the Court, & is not a voluntary act of the attorney.

James Webb Atty Genl