

Garrison Loses Chance To Avoid Federal Trial

Dist. Atty. Jim Garrison appeared today to have lost his chance to avoid federal prosecution on public bribery charges in the wake of a decision by a special prosecutor to push only a malfeasance count in the state courts.

Benjamin E. Smith, who was named to prosecute the district attorney, said he would not press the public bribery and gambling charges because the federal government has not made the necessary evidence available to his office.

Smith said he was going ahead with the malfeasance case because the district attorney had acted in bad faith in trying to evade federal prosecution.

A CHALLENGE of the right of Smith to file the malfeasance charge in the first place has already been

lodged with the courts and is scheduled to be heard at 10 a.m. Monday by Criminal District Court Judge Malcolm V. O'Hara.

Attorneys for Garrison contend that Smith exceeded his authority in filing the malfeasance charges since it exceeded the scope of the indictments he was appointed to prosecute.

Smith, who said he was also dropping public bribery and gambling charges against nine others, including two former high ranking police officers, was named to prosecute the case when Garrison asked for and got an Orleans Parish Grand Jury indictment on the same charges the 10 face in federal court in connection with pinball operations.

SMITH SAID he killed the indict-

ments in a nol prosee filed last night at the home of Clerk of Court Dan Haggerty.

He said he took the action because there was no evidence available to the state to corroborate the testimony of a federal agent on which the federal charges are based. Smith said he asked the U.S. Attorney's office for that evidence but was referred through bureaucratic channels.

Smith added that delay in time necessary to develop such corroboration would exceed the legal limits during which the defendants must be tried.

THE SPECIAL prosecutor emphasized that he could reinstate the public bribery and gambling charges at any time within the next six months by

simply filing a bill of information if this evidence becomes available.

This unlikely chain of events began last summer when federal agents accused Garrison and two policemen of taking kickbacks from seven men to protect illegal pinball operations. A federal grand jury investigating organized crime has been considering that case, along with others, for months.

The Garrison case lay dormant until he personally asked the parish grand jury to indict him Nov. 15, citing what he called a "prima facie case of violation of state law."

SMITH SAID he conferred with United States Atty. Gerald Gallinghouse but that Gallinghouse, who has respon-

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sibility for pressing the federal charges against Garrison, declined to make available federal evidence for use in state prosecution.

"I might reindict them if I can find some evidence," said Smith. "They gave me nothing at all. I think there is some substance to the charges, but I'm not going to prosecute somebody I don't have any evidence against."

In lodging the malfeasance charge against Garrison Monday, Smith claimed Garrison arranged his own in-

Smith, who added that his dealings with the U.S. attorney have been "cordial."

"WE ARE BOTH interested in enforcing the law," said Smith. "He has responsibility for enforcing the federal law and I have responsibility for enforcing state law. I would think that the enforcement of state law would not necessarily interfere with enforcement of federal law and vice versa."

In answer to a question, Smith said he did not believe his action in the