

1976 WL 30759 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 3, 1976

*1 Mrs. Patton G. Wheeler
Executive Director
Committee of the Office of Attorney General
3901 Barrett Drive
Raleigh, North Carolina 27609

Dear Pat:

In reply to your letter of May 25, 1976, I advise:

1. How often, and in what circumstances, has the Attorney General initiated prosecutions?

No precise number of instances is readily available but it can best be characterized as 'fairly frequent.' Usually, prosecutions are initiated in coordination with the solicitor (prosecuting officer) and involve, principally, misconduct in office, embezzlement, tax evasions, violation of statutes and, in some instances, rules and regulations of State boards, over which State agencies, such as the Health and Environmental Control Commission, Securities Commissioner, Insurance Commission, etc., have authority.

2. How often, and in what circumstances, has the Attorney General intervened in prosecutions initiated by a local prosecutor?

Intervention in the sense that I appeared in a case without the request of the solicitor has occurred in only one instance. That arose from the complaints by numerous citizens regarding the prosecution of cases in the circuit involved and, as a result, this Office appeared with the solicitor, directed that certain cases be removed to another court and prosecuted and remained in the circuit until the conclusion of the court. Recently, at the request of the grand jury, I investigated the conduct of prosecution in a circuit and directed a submission of the case which had been nol prossed by the solicitor to the grand jury, which returned a true bill and placed the case in line for subsequent prosecution.

3. How often, and in what circumstances, has the Attorney General superseded a local prosecutor?

During the last 18 years, I have intervened in only one instance and removed the solicitor from prosecution of the cases involved. This instance arose from the failure of the prosecuting officer to properly prosecute certain cases by releasing the defendants from jail.

4. How many of the actions have been taken on the Attorney General's own initiative and how many at the request or direction of another official?

Probably 50% on own initiative and 50% at the request of the solicitor, citizens, or public officials.

5. Have there been any amendments to the statutes defining this authority since 1973?

The constitutional provision relating to judicial reform was adopted in 1973 and designates the Attorney General as the chief prosecuting officer of the State.

6. Please cite and summarize any recent cases construing the Attorney General's powers in local prosecutions.

State ex rel. McLeod v. Snipes was decided by the Supreme Court of South Carolina March 30, 1976. This action was brought by me seeking a declaratory judgment as to the validity of Section 1-234 of the 1962 Code of Laws which directs the Attorney General to defend public officers and employees when prosecuted.

*2 The Court found no 'insurmountable conflict' between the statutory and constitutional provisions, the first of which directs me to defend and the second of which directs me to prosecute. While the Attorney General has authority to supervise the prosecution of all criminal cases, the Court noted that the duty to actually prosecute criminal cases is performed primarily and almost exclusively by the respective solicitors, except in unusual cases. The Court found no mandated conflict of interest in the role occupied by the Attorney General under the Constitution and the statute in that he may call upon members of his staff or the solicitors to represent a public official. The Court recognized that the Attorney General personally could not act as prosecutor and defendant's attorney, but that the appointive power vested in him serves to avoid any violation of ethical standards or conflict of interest. Should such a conflict of interest arise, it could be resolved by the trial judge by appointment of counsel, either for the State of defense, or both, from the group of attorneys named in the statute. It concluded that there was no ethical impropriety or legal impediment to the discharge by the Attorney General of the duties imposed upon him by statute to defend public officials when charged with crime.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

ATTACHMENT

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