

1972 S.C. Op. Atty. Gen. 130 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3312, 1972 WL 20452

Office of the Attorney General

State of South Carolina

Opinion No. 3312

May 11, 1972

*1 The Honorable Thomas W. Creene
Solicitor
Thirteenth Judicial Circuit
Post Office Box 10051
Greenville, South Carolina 29603

Dear Solicitor:

In reply to your recent inquiry concerning the authority of a solicitor to enter the grand jury room and to question witnesses for and on behalf of the grand jury, but withdrawing therefrom and not participating in the grand jury deliberations, I am enclosing herewith an opinion of this Office (1959–60 Ops. Atty. Gen. 267) which recites:

‘It is my view that the solicitor of a circuit may aid and assist the grand jury in its procedural matters but should not participate in its deliberations, nor be present when such deliberations are taking place. It is apparently within the proper sphere of the solicitor to assist in the investigation and examination of witnesses. 38 C.J.S. Grand Juries § 40(b); 24 Am. Jur. Grand Jury § 43.

To this may be added a subsequent annotation found in 4 A.L.R.2d 400, which recites:

‘The almost universal practice is for the prosecuting attorney to appear before the grand jury in his official capacity and assist them in their investigation, examining witnesses and advising the grand jury on questions of law; but he is not as a general rule permitted to be present during the deliberations and voting of the jury.’

To the same effect are the updated statements contained in 38 Am. Jur. 2d Grand Jury § 35. See also [State v. Addison](#), 2 S.C. 356, and [State v. McNinch](#), 12 S.C. 38, the former of which indicates clearly that the knowledge and consent of the presiding judge should first be obtained.

Very truly yours,

Daniel R. McLeod
Attorney General

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