



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 3, 1995

The Honorable Bill Coffey
Sheriff, Spartanburg County
P. O. Box 771
Spartanburg, South Carolina 29304

Re: Informal Opinion

Dear Sheriff Coffey:

Attorney General Condon has referred your letter to me for reply. You have asked the ramifications of the Double Jeopardy Clause (U.S. Const. Art. V; South Carolina Const. Art. I Sec. 12), where a defendant is tried in federal court for carjacking and acquitted, and the State desires to try the same defendant for kidnapping and murder. It is my opinion that the Double Jeopardy Clause, as a general matter, would not preclude such state prosecutions.

The following principle regarding Double Jeopardy is well-recognized:

... in the absence of statute, the rule against double jeopardy applies only to offenses against the same sovereignty. Unless otherwise provided by statute, where the same act constitutes an offense under two or more jurisdictions ... it is well settled that jeopardy under one jurisdiction is no bar to jeopardy under another, as each offense will be considered distinct. It follows then that when two sovereigns prosecute a person, and one sovereign foregoes its prosecution, the second sovereign is not compelled to forego its prosecution.

22 C.J.S., Criminal Law, § 254. Pursuant to this fundamental rule, numerous courts have held that both federal and state prosecutions concerning the same matter, do not

The Honorable Bill Coffey

Page 2

July 3, 1995

contravene the principles of Double Jeopardy. U.S. v. Ebens, 800 F.2d 1422 (6th Cir. 1986), on remand, 654 F.Supp. 144 (E. D. Mich. S. D. 1987); U.S. v. Aboumoussallem, 726 F.2d 906 (2d Cir. 1984); U.S. v. Bronk, 604 F.Supp. 743 (W. D. Wis. 1985); U.S. v. Bledsoe, 728 F.2d 1094 (8th Cir. 1984) cert. den. 469 U.S. 838, 105 S.Ct. 136, 83 L.Ed.2d 76 (1984).

Of course, I am not cognizant of the particular facts regarding the charges you reference. Thus, I cannot comment upon a specific prosecution. However, as a general matter, there is no constitutional prohibition against both federal and state prosecutions arising out of the same facts. The federal government and the State of South Carolina are separate sovereigns and thus, Double Jeopardy does not apply in these circumstances.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

RDC/an