

The State of South Carolina

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Office of the Attorney General

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June 12, 1985

The Honorable D. Malloy McEachin, Jr.  
Member, House of Representatives  
314-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative McEachin:

In a letter to Attorney General Medlock you referenced a recent traffic case which was prosecuted in Florence County magistrate's court. The father of the young man charged, who is not an attorney, accompanied his son to court and according to your letter attempted to represent his son during his trial but was prohibited from doing so by the trial judge. Reference was made to the fact that a State Trooper, who was not the arresting officer, prosecuted the case. It was noted that the Trooper is not an attorney. You raised the question as to why the Trooper could prosecute the case ("practice law") while the father was precluded from representing his son.

In 1978 the State Supreme Court issued an opinion in the case of State ex rel. McLeod v. Seaborn, 270 S.C. 696, 244 S.E.2d 317 (1978) which held that the prosecution of a misdemeanor traffic case in a magistrate's court by either the arresting officer or a supervisory officer assisting the arresting officer did not constitute the unlawful practice of law in violation of Section 40-5-310 of the 1976 Code of Laws, which basically prohibits the practice of law by persons who are not attorneys, or Rule IV of the Supreme Court Rules governing the State Bar. Therefore, pursuant to such, the prosecution of the young man by a State Trooper who was not the arresting officer was authorized.

As to the father's being prohibited from representing his son at his trial, Section 40-5-80 of the 1976 Code of Laws apparently would control. Such statute provides:

REQUEST LETTER

Continuation Sheet Number 2  
To: The Honorable D. Malloy McEachin, Jr.  
June 12, 1985

(t)his chapter shall not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires, or the cause of another, with leave of the court first had and obtained; provided, that he declare on oath, if required, that he neither has accepted nor will accept or take any fee, gratuity or reward on account of such prosecution or defense or for any other matter relating to the cause."

As stated, an individual can defend the cause of another if the trial court approves.

It is unclear from your letter whether the refusal of the father's participation was in keeping with such statute. All that is stated is that the father was prohibited from representing his son. While Section 40-5-80 has never been construed by the Supreme Court, the statute is clear in stating that whether or not an individual is permitted to defend the cause of another is a matter within the court's discretion.

If there are any questions, please advise.

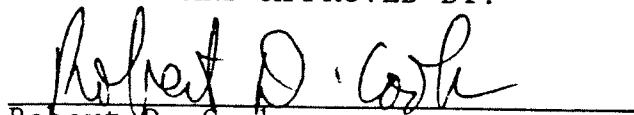
Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:

  
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