

1980 WL 121029 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 12, 1980

*1 Eve Moredock
Office of Court Administration
Suite 707
Bankers Trust Towers
1301 Gervais Street
Columbia, South Carolina 29211

Dear Eve

You inquired of this Office whether or not the State has a right to demand a trial by jury in a proceeding within the Magistrate's Court.

[Article I, Section 14 of the Constitution of South Carolina](#) provides 'that the right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial.' By such provision, all defendants have the right to a trial by jury. The Constitution does not specify a corresponding right on the part of the State.

Within the Magistrate's Court, the right of a Party to a proceeding to demand a trial by jury is embodied within the following statutory provisions: [Section 22-2-150 of the Code of Laws of South Carolina \(1976\)](#) as amended in (1979) which reads 'Every person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury which shall be selected as provided by this chapter.'

[Section 22-3-230, Code of Laws of South Carolina \(1976\)](#) states that 'either party to a suit before a magistrate shall be entitled to a trial by jury.'

Taking the two statutory provisions together, then, it is clear that a Party to a proceeding in the Magistrate's Court has a right to demand a trial by jury. It is noted that even though [Section 22-3-230](#) was a statute created for the purposes of the civil jurisdiction of the Magistrate's Court, the Supreme Court opinion rendered in [State v. Nash, 51 S. C. 319, 28 S. E. 946 \(1898\)](#) has rendered the statute applicable under the criminal jurisdiction of the magisterial system as well.

The issue now focuses upon whether or not the State is a Party within the meaning of the aforementioned statutory provisions. The Supreme Court of South Carolina disposed of the question within the opinion of [State v. Nash, 51 S. C. 319, 28 S. E. 946 \(1898\)](#). The Court held that the State was a party under [Section 22-3-230 of the Code of Laws](#), and stated that as such, the State could be represented by the Attorney General, the Solicitors of the State, other appropriate agencies of the State, or by a private party in the role of a prosecutor for the State.

It is thus the Opinion of this Office that the State of South Carolina is a Party within the language of [Section 22-3-230, Code of Laws of South Carolina \(1976\)](#), and as such may make a demand for a trial by jury in the appropriate case.

Very truly yours,

Wayne G. Carter, Jr.
Staff Attorney

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