

1979 WL 42999 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 17, 1979

*1 Joseph W. Hudgens, Esq.
Messrs. Pope and Schumpert
Attorneys at Law
Post Office Box 190
Newberry, South Carolina 29108

Dear Mr. Hudgens:

Thank you for your letter of May 14, 1979, requesting my views as to whether or not discretion is vested in a town attorney to retry cases which have previously resulted in mistrials.

The matter is entirely in the discretion of the prosecutor, who is in a better position to assess the desirability of trying a case again after a jury has previously been unable to agree. The normal practice in this Office has been to submit a case to a jury at least one additional time after a previous mistrial. This is not an inflexible rule and will depend upon consideration of the circumstances leading to the mistrial so far as these can be determined, the probability of success on a second trial and other pertinent factors. The essential thing is that the state (town) have a full and fair opportunity to present its version of the facts so that the jury will have a full and fair basis upon which it can judge the case, assuming that each side has had complete opportunity to submit its side to the jury. Once it has had an opportunity to reach a conclusion, the result can normally be considered as terminating the prosecution.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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