

1979 WL 43186 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 26, 1979

\*1 N. H. Hamilton, Esquire  
Attorney at Law  
Post Office Box 9  
Summerville, South Carolina 29483

Dear Mr. Hamilton:

In a letter to this Office you referenced that Magistrate Robert O'Neal had in a particular case where you represented the defendant presided over a jury trial where a five-man jury served. You indicated that the Magistrate stated that this Office had in a prior opinion held that a magistrate 'could force a trial before a five-person jury.'

Please be advised that I am unaware of any such opinion. I did locate a previous opinion dated February 16, 1978, a copy of which is enclosed, which stated that:

'... the number of jurors in a criminal case tried in a magistrate court may be less than six jurors if the reduced number is agreed to by the prosecutor and the defendant.'

Also enclosed are relevant portions of the recently enacted Judicial Adjustment Act, Act No. 164 of 1979, where it is specifically provided that a magistrate's court jury is to be composed of six individuals. Therefore, even though Section 22-3-780, Code of Laws of South Carolina, 1976, referenced in the cited opinion was declared unconstitutional in State v. Warren, Opinion No. 20962, filed May 21, 1979, the Legislature in Act No. 164 of 1979 again has provided for a six-person jury in magistrate's court. Such act makes provisions for selecting additional jurors when at the time of trial there are not a sufficient number of jurors to proceed.

Hopefully this is in full response to your inquiry. If there is anything further do not hesitate to contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

1979 WL 43186 (S.C.A.G.)

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.