

1978 WL 34723 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 27, 1978

*1 Senator William W. Doar, Jr.
Box 418
Georgetown, SC 29440

Dear Senator Doar:

Thank you for your letter to the Attorney General regarding the practice of a magistrate in instructing a sixth juror or 'tales-man' be summoned to complete the jury panel when only five have appeared.

Recently this Office issued an opinion which involved a similar question regarding magistrate court juries and their selection, which opinion also referenced the filing of any vacancy in accordance with the provisions of Section 22-3-780 of the 1976 Code of Laws of South Carolina. I am enclosing herewith a copy of that opinion for your convenience.

Although the constitution does not prescribe the particular manner in which juries are to be selected in magistrate courts, subsequent statutory provisions founded on the constitutional right to a trial by jury have been enacted. As you note, Section 22-3-780 is the general statute pertaining to that selection process and, therefore, in the absence of other provision of law, must be complied with in order to satisfy the requirements of law. Accordingly, a jury which was not selected in accordance with the provision of law, in our opinion, would be subject to being quashed at trial or its verdict set aside on appeal.

I trust the preceding discussion adequately answers your question, however, if any further explanation is needed or if I can be of any further assistance to you in this regard, please feel free to contact me.

With best personal regards, I am
Very truly yours,

Richard P. Wilson
Assistant Attorney General

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