1975 WL 28940 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 18, 1975

*1 W. B. Carter (Det.)
Narcotics Division
Columbia Police Department
1409 Lincoln Street
Columbia, S. C. 29201

Dear Officer Carter:

This is in reply to your inquiry concerning the propriety of joining the charges of possession of marijuana and possession of marijuana with intent to distribute in the same indictment.

It has been held that where the offenses are of the same character and spring from the same transaction they may be joined in the same indictment. City of Greenville v. Chapman, 210 S.C. 157, 41 S.E.2d 865 (1947); State v. Lee, 203 S.C. 536, 28 S.E.2d 402 (1944); cf. 11 West's South Carolina Digest, Indictment and Information § 125, et seq.

In 28 C.J.S. Drugs and Narcotics § 184 it is said:

'An indictment may properly charge in separate counts the possession and the sale of a drug where they constitute two distinct offenses.' Citing: Blair v. State, 127 Ga.App. 111, 192 S.E.2d 542.

The problem arises where the definition of one offense necessarily includes whatever is requisite to constitute another offense. In that situation the act constituting the lesser offense merges into the greater and conviction can be had for only one. State v. Taylor, 2 Bailey 49 (1830). Due to the fact that in order to constitute the crime of possession with intent to distribute the defendant must necessarily be in possession as that crime is defined, prosecution for a sole act could be had for one or the other but not both. This is not to say that the defendant could not be indicted for both offenses, such separate offenses being contained in district counts of the indictment.

In short, it is apparent that a defendant may be indicted for both the offense of simple possession and possession with intent to distribute.

I hope this will be of aid to you.
 Yours truly,

Cameron B. Littlejohn, Jr.
Law Clerk

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