

1974 WL 27882 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1974

*1 Reese I. Joye, Jr., Esquire
Attorney at Law
3956 Rivers Avenue
North Charleston, SC 29405

Dear Reese:

I regret very much the extended delay in answering your inquiry regarding the problem you encountered with Magistrate Smoak in Berkeley County.

As I understand the situation, the original jurisdiction of this case was vested in Magistrate Smoak who has informed me that he refused jurisdiction and changed venue on his own motion due to his friendship with the defendant. He proposed to change the case to Magistrate Grady in Moncks Corner also in Berkeley County. Upon your objection, the case was instead transferred to Magistrate Johnson in Huger (Berkeley County). Magistrate Johnson disqualified himself and sent the case to Magistrate Grady in Moncks Corner. I have not yet been able to reach Judge Johnson, but I feel that even if he disqualifies himself at Warden Murray's request, such an action would constitute one change of venue on the part of the prosecution. Section 43-131 provides for a change of venue when requested by the defense or prosecution.

In the above chain of circumstances, one request was made by yourself on behalf of the defense. The other changes were made by the judges involved. The Statute provides for only one change of venue per party.

In summary, based on the above facts, I find no statute provision forbidding magistrates from changing venue on their own motion. It would seem, therefore, that the jurisdiction in this case is presently properly vested in Judge Grady's court.

I believe this opinion sets forth the problem and the answer as succinctly as is possible. If you have any further questions or desire any further discussion of this matter, please feel free to contact me.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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