

1974 WL 27565 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 31, 1974

*1 W. W. Wilkins, Jr., Esquire
408 E. North Street
Greenville, South Carolina 29601

Dear Mr. Wilkins:

The fifth amendment to the United States Constitution provides that no person can be held to answer for a capital or other infamous crime unless by presentment or indictment of a grand jury except in certain military cases. This provision has never been held binding on the states; in fact, the Supreme Court has ruled that substitute methods of accusation, such as the information, comply with due process. [Gaines v. Washington](#), 277 U.S. 81 (1928); [Hurtado v. California](#), 110 U.S. 516 (1884).

The right to presentment by grand jury is guaranteed in this state by Article I § 17 of the South Carolina Constitution, in all cases where punishment exceeds two hundred dollars (\$200) or thirty (30) days imprisonment (i.e., in all cases beyond the jurisdiction of the magistrate-level courts). The constitutional provision requires the presentment of a grand jury as a condition precedent to trial except for the minor offenses, and without such presentment the court has no jurisdiction of the cause. [State v. Hann](#), 196 S.C. 211, 12 S.E.2d 720 (1940). According to the prevalent view in this state, the grand jury cannot be waived except in misdemeanor cases where the procedure is expressly authorized in Section 17-510-513, Code of Laws of South Carolina, 1962, as amended. It is, however, subject to question why a defendant cannot knowingly and voluntarily waive this constitutional right as he can any other.

Very truly yours,

Jospeh R. Barker
Assistant Attorney General

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