

1973 WL 26691 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 3, 1973

*1 Herman E. Cox, Esquire
McDonald, Cox & Stilwell
Attorneys at Law
115 Broadus Avenue
Greenville, South Carolina 29601

Dear Mr. Cox:

This office is in receipt of your letter of March 7, 1973, addressed to the Attorney General, and the same was referred to me for reply. May I apologize for the delay in responding to your letter, but my duties have taken me from the office for the better part of the last three weeks.

As indicated by you, this office did on May 6, 1970, issue to Magistrates and Law Enforcement Officers a memorandum of suggested procedure for the enforcement of obscenity laws, a copy of which is enclosed. Those instructions were as a result of a number of suits then being filed against Law Enforcement officials within the State and sought to chart the safest course pending a further study of the matter.

As you are no doubt aware, the issue of whether or not a judicial hearing adversary in nature must precede the seizure of any quantity of any type of material believed obscene, has not been decided by the United States Supreme Court, although many lesser Federal Courts have voiced opinions. Recognizing that any 'massive' seizure poses a potential threat to the public's right of access to protected materials, this office advises that any such massive seizure should be preceded by a judicial hearing, adversary in nature.

Because this is an unsettled area of the law, the Fourth Circuit to the contrary notwithstanding, no further blanket instructions have been issued by this office concerning the seizure of allegedly obscene materials. Advice, as requested by local Law Enforcement officials, is simply given on a case by case basis.

I trust the foregoing will provide the information and assistance desired.

With kindest regards,
Yours very truly,

John P. Wilson
Senior Assistant Attorney General

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