

1973 WL 27662 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 12, 1973

*1 Mr. Neal Forney
University of South Carolina
Columbia, South Carolina 29208

Dear Heal:

Thank you for your letter of July 6, 1973, inquiring as to the following:

Is it proper for jurors to be allowed to question witnesses in criminal and civil cases in the courts of magistrates?

There appears to be only one case which has touched upon the matter in this State and in that case it was held that there was no impropriety in the examination of the witness by the juror.

In my opinion, questions by jurors may be submitted to witnesses, but this lies within the discretion of the trial judge and this discretion should be exercised with caution and with care. The practice should not be encouraged, although some courts of other jurisdictions take a contrary view. In other courts the practice is not permitted, the reasoning being that laymen are not well qualified to conduct an examination and that a complaining counsel will be placed in the unreasonable tactical position of not being able to raise an objection for fear of alienating the questioning juror. The majority of courts appear to condone the practice in an effort to illicit the truth.

It is my opinion also that the practice may be approved to a greater extent in cases where the parties are not represented by counsel.

Questioning of witnesses by the trial judge has been approved in a number of cases by the Supreme Court of South Carolina. The court generally approves such practice on the ground that the judge has a right to question witnesses during a trial in order to illicit the truth. The court has repeatedly cautioned that this practice should be done only in such a manner that the judge does not unduly influence the jury with the importance of the testimony illicit or leave the jury to suppose that the judge is of the opinion that one party rather than the other is correct upon a particular issue of fact.

It is my opinion, moreover, that objection by counsel to questions by the court or to questions by a juror may be interposed, although counsel may generally be reluctant to do so.

I therefore advise that, in my opinion, jurors may question witnesses; that this should be done through the court and not be direct questioning of a witness by a juror; and that the matter rests in the discretion of the judge. I advise also that the trial judge may interpose questions of a witness but that this should be done in a manner which will not unduly influence the jury.

Both types of questions are subject to objection by the parties or their counsel.

The foregoing views apply to civil and criminal cases alike.

Very truly yours,

Daniel R. McLeod

Attorney General

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