

1973 WL 26926 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 15, 1973

**\*1 re: No. 57—Criminal**

Mr. Clark Ryder  
Identification Officer  
Orangeburg County Sheriff's Department  
P. O. Box 682  
Orangeburg, South Carolina 29115

Dear Mr. Ryder:

You have requested that we advise you as to whether or not one who has been convicted of the offense of Obtaining Drugs with a Forged Prescription may also be convicted of Forgery.

A defendant cannot be convicted more than once for the 'same offense.' [U. S. CONST. Amend. V](#); [Benton v. Maryland](#), 395 U.S. 784. In [State v. Steadman](#), 216 S.C. 579, 59 S.E.2d 168, our Supreme Court held:

The generally applied test of double jeopardy is whether [the] evidence necessary to support [the] second indictment would have been sufficient to procure [a] legal conviction upon [the] first indictment.

The provisions against double jeopardy apply only to a second prosecution for the same act and crime, both in law and in fact, for which the first prosecution was initiated. [State v. Hill](#), 254 S.C. 321, 175 S.E.2d 227.

Presumably, the prosecution to which you refer in your letter was for a violation of Section 31(a)(3) of Act No. 451 of 1971, which proscribes the obtaining of a controlled substance by forgery. Obviously, the elements of that offense and that embodied in Section 16-351 of the South Carolina Code of Laws are different offenses which would require different facts to sustain convictions thereupon. The offenses which those statutes prohibit do not constitute the 'same offense.' A defendant, therefore, who has been once convicted of violating Section 31(a)(3) of Act No. 451 may be convicted of violating Section 16-351 of the Code.

Sincerely,

C. Tolbert Goolsby, Jr.  
Deputy Attorney General

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