

The State of South Carolina



Office of the Attorney General

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July 5, 1990

The Honorable Max A. Meek, Sr.
Chief Summary Court Judge
420 Hampton Avenue, NE
Aiken, South Carolina 29801

Dear Judge Meek:

In a letter to this Office you questioned the practice of private attorneys prosecuting State cases in magistrate's court. You stated that the Solicitor has indicated that she does not have sufficient staff to prosecute in magistrate's court.

Pursuant to Section 17-1-10 of the Code, "(a) criminal action is prosecuted by the State, as a party, against a person charged with a public offense, for the punishment thereof." In State v. Addis, 257 S.C. 482 at 487, 186 S.E.2d 415 (1972) the State Supreme Court indicated

(i)n every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he must and does have full control of the State's case.

In your letter, you referenced the decision of the State Supreme Court in State v. Mattoon, 287 S.C. 493, 339 S.E.2d 867 (1986) which cited Section 1-7-405 of the Code as authorizing solicitors to appoint assistant solicitors and vest them with "such responsibility as he directs." The Court further stated

The statute does not permit a solicitor to relinquish prosecutorial control to a private attorney, but it removes any limitations upon his actual trial participation arguably imposed by our prior decisions. It was not error ... (for the private attorney appointed as special assistant solicitor) ... to try the case without the solicitor being present.

The Honorable Max A. Meek, Sr.
Page 2
July 5, 1990

339 S.E.2d at 868. Therefore, the solicitor may not relinquish control of a case but is not required to be in attendance when a case is being tried. The Court in Mattoon however further added

... we express our disapproval of the practice of appointing private counsel to prosecute criminal cases ... (W)e believe the practice should be discouraged.

339 S.E.2d at 869.

A prior opinion of this Office dated February 8, 1989 referenced the situation where the Solicitor had appointed a special assistant solicitor for a particular county. The opinion citing Mattoon stated that the Supreme Court "... has recognized the authority of the solicitor to designate assistants and special assistants to carry out his responsibilities."

Of course, only the Supreme Court can speak with finality on this question. However, upon review of the referenced cases, it is our understanding that where a solicitor has indicated that he or she or the solicitor's staff could not personally prosecute cases in a magistrate's court, a private attorney would be authorized to prosecute such a case if specifically appointed or authorized to handle such prosecution by the solicitor. In such circumstances, a solicitor would maintain prosecutorial control but would not be obligated to be in attendance during a trial. However, as referenced above, the Supreme Court disapproves generally of the practice and discourages appointments of private attorneys.

If there is anything further, please advise.

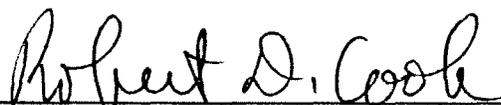
Sincerely,



Charles H. Richardson
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CHR/an

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