

1980 WL 121035 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 4, 1980

**\*1 Re: Request for Attorney General's Opinion**

Honorable Frank E. Barron, III  
Richland County Coroner  
Post Office Box 192  
Columbia, South Carolina 29202

Dear Coroner Barron:

I appreciate your referring your request for an opinion on several issues raised in your letter of September 25, 1980, to the Richland County Attorney for his opinion. Today I received a letter from Mr. Costa M. Pleicones, Richland County Attorney indicating that his office has no responsibility to do research in the criminal law and has asked that I respond to your request.

As I explained in my earlier letter to you, because of the action of the State Budget and Control Board, it would be impossible for me to do in-depth research and issue a formal opinion. However, so as not to leave you entirely without 'advice of counsel', I will furnish you the following information. Your first inquiry concerns a matter of discretion with the prosecuting attorney inasmuch as you inquire as to whether or not an individual can be charged as an accessory to a felony given certain circumstances. As you know, in South Carolina as well as in other states and in the Federal system, the prosecutor is allowed wide discretion in whether or not to bring charges against an individual and if he so decides he is again allowed wide discretion as to what charges to prefer. [State v. Simmons, 264 S.C. 417, 215 S.E. 2d 883 \(1975\)](#).

The American Bar Association in its standards relating to the administration of criminal justice sets forth suggested factors to be considered in the prosecutors charging decision. At standard 3.9, the ARA lists seven (7) considerations for the prosecuting attorney. They include such things as: 1) extent of harm caused by the offence, 2) the possible improper motives of the complainant; 3) reluctance of the victim to testify; 4) cooperation of the accused; etc. The National District Attorneys Association in its 1977 National Prosecution Standards also delineates factors which they consider important in the charging decision. In Standard 9.3 the NDAA suggests the prosecutor consider things such as: 1) the age of the offense; 2) traditional history of non-enforcement of the statutes; 3) possible deterrent value of the prosecution; 4) undue hardship to the accused; 5) probability of conviction; 6) recommendations of the involved law enforcement agencies; etc.

Your second inquiry concerns the power of the coroner to reverse the decision of his inquest jury in view of the fact that the coroner has the power to determine the cause of death if, in his judgment, there is no apparent or probable blame against any living person. It appears from Section 17-7-20, *et seq.*, that once the coroner's jury is impaneled and proceedings are commenced there is no authority for a coroner to overturn the verdict of an inquest jury.

Your third inquiry concerns whether or not all homicides are felonies. Please refer to [Section 16-1-10 and 16-1-20 of the South Carolina Code of Laws](#) (1976), as amended, for classification of crimes as felonies and misdemeanors.

**\*2** Again, this is not a formal opinion of this office, but I hope it will give you some guidance into finding the answers to your questions. Thank you very kindly for referring any future inquiries for opinions to the County Attorney.

Sincerely,

Buford S. Mabry, Jr.

Assistant Attorney General

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