

1978 S.C. Op. Atty. Gen. 221 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-195, 1978 WL 22663

Office of the Attorney General

State of South Carolina

Opinion No. 78-195

November 16, 1978

***1 SUBJECT: Magistrates, Attorneys**

The prosecution of traffic and nontraffic cases in magistrate's court constitutes the practice of law and such prosecutions by an investigator for a solicitor's office who is not an attorney would be unlawful. The presentation of the State's case in a preliminary examination by the investigator would be proper.

TO: Neal Forney
Assistant Director
South Carolina Court Administration

QUESTION:

Does the prosecution of traffic and nontraffic cases in magistrate's court and the presentation of the case for the State in preliminary examinations by an investigator for a solicitor's office who is not an attorney constitute the unlawful practice of law in violation of Section 40-5-310 and Rule IV?

AUTHORITIES:

[Section 40-5-310, Code of Laws of South Carolina](#), 1976; Rule IV, South Carolina Supreme Court Rules Concerning the South Carolina Bar; [State of South Carolina, ex rel. McLeod, as Attorney General v. Seaborn, et al.](#), Opinion No. 20684, filed May 11, 1978; [State v. Messervy](#), 258 S.C. 110, 187 S.E.2d 521 (1972); [State v. Wells](#), 191 S.C. 468, 5 S.E.2d 181 (1939).

DISCUSSION:

In reference to that part of the question as to whether the prosecution of traffic and nontraffic cases in a magistrate's court constitutes the unlawful practice of law, in the opinion of this Office, such prosecution by an investigator who is not an attorney would be unlawful.

[Section 40-5-310 of the 1976 Code](#) of Laws states:

No person shall practice or solicit the cause of any other person in any court of this State unless he has been admitted and sworn as an attorney, under a penalty of five hundred dollars for every cause he shall so solicit, one half to the State and the other half to him that will sue for it.

Similarly Supreme Court Rule IV as to the Bar states:

No person shall engage in the practice of law in the State of South Carolina who is not licensed by this Court and a member in good standing of the South Carolina Bar except as otherwise provided in the rules of this Court.

In reference to such, the South Carolina Supreme Court in State of South Carolina, ex rel. McLeod as Attorney General v. Seaborn, et al., Opinion No. 20684, filed May 11, 1978 was concerned with whether or not the practice of the South Carolina Highway Patrol of assigning supervisory officers to assist arresting officers in the prosecution of misdemeanor traffic violations in the magistrates' courts was unlawful and in violation of [Section 40-5-310](#) and Rule 4. The Court held such practice to be lawful. In State v. Messervy, 258 S.C. 110, 187 S.E.2d 524 (1972) the Supreme Court had previously approved the practice of the arresting patrolman presenting the State's case, testifying as a prosecuting witness, cross-examining defense witnesses, and making a jury argument in a misdemeanor traffic case tried in a magistrate's court.

*2 A review of the Seaborn decision indicates that it should be narrowly construed to be applicable only to the particular practice before the Court. The Court stated as to the patrolmen, When the officers of the Highway Patrol present misdemeanor traffic violations in the magistrates' courts, whether as the arresting officer or a supervisory officer assisting the arresting officer, they do so in their official capacities as law enforcement officers and employees of the State. These officers do not hold themselves out to the public as attorneys, and their activity in the magistrates' courts does not jeopardize the public by placing 'incompetent and unlearned individuals in the practice of law.' . . . To the contrary, this activity renders an important service to the public by promoting the prompt and efficient administration of justice.

The Court previously stated that the policy behind prohibiting laymen from practicing law . . . is not for the purpose of creating a monopoly in the legal profession, nor for its protection, but to assure the public adequate protection in the pursuit of justice, by preventing the intrusion of incompetent and unlearned persons in the practice of law. State v. Wells, 191 S.C. 468, 5 S.E.2d 181 (1939).

Therefore, in the opinion of this Office, the practice of investigators who are not attorneys prosecuting traffic and nontraffic cases in a magistrate's court is not totally in keeping with the above policy and therefore is prohibited by [Section 40-5-310](#) and Rule IV.

As to your second question concerning the propriety of an investigator presenting the case for the State at a preliminary examination, in the opinion of this Office such a practice would be proper. Due to the nature of a preliminary hearing, such a procedure would not appear to involve the practice of law and is readily distinguishable from what transpires at an actual trial

CONCLUSION:

The prosecution of traffic and nontraffic cases in magistrate's court constitutes the practice of law and such prosecution by an investigator for a solicitor's office who is not an attorney would be unlawful. The presentation of the State's case in a preliminary examination by the investigator would be proper.

Charles H. Richardson
Assistant Attorney General

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