

1978 WL 35254 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 4, 1978

*1 Cyrus T. Sloan, III, Esquire
P. O. Box 1096
Marion, S.C. 29571

Dear Mr. Sloan:

In your letter of November 8, 1978 you asked whether it would be permissible for an arresting officer, who is a city police officer, to act as a prosecuting officer or prosecuting attorney in cases tried in the city recorder's court.

As you indicated in your letter, the Supreme Court in [State v. Messervy, 258 S.C. 110, 187 S.E.2d 524 \(1972\)](#) approved the procedure whereby an arresting highway patrolman presents the State's case, testifies as a prosecuting witness, and makes a closing argument to the jury in a case brought in the magistrate's court. In the decision, the Court referenced a New Hampshire case, [State v. LaPalme, 104 N.H. 97, 179 A.2d 284 \(1962\)](#) which recognized the practice of police officers prosecuting misdemeanor cases to be a long-standing practice in New Hampshire 'still permissible under existing statutes.' The Court in [Messervy](#) stated that as in New Hampshire there are no statutes in South Carolina which prohibit a police officer from prosecuting a case. In its decision the Court stated:

While such practice is not without its faults, neither is it without its safeguards. The patrolman's conduct (same as an attorney) is subject to the scrutiny of the magistrate at all times, and if the patrolman's conduct of the case is not proper it is the duty of the magistrate to make appropriate rulings, and in an appropriate case, grant a new trial. If prejudice is shown, obviously a new trial must be held.

Therefore, based on the [Messervy](#) decision and the fact that there are no statutes which prohibit the practice, the arresting city police officer may act as the prosecuting officer for cases triable in the city court. However, it appears that it would be the better practice to continue the policy of the city attorney prosecuting such cases. As to your question of possible drawbacks in permitting such a practice, I am unaware of any specific problems that may arise other than those generated by the lack of experience in prosecution.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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