

1974 WL 27634 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 13, 1974

*1 Mr. Andrew Maidman
63 Fuller Drive
West Hartford, Connecticut 06117

Dear Mr. Maidman:

Your letter of January 23, 1974, concerning capital punishment in South Carolina has been referred to me for reply.

Following independence from British rule, South Carolina followed the common law penalty of death upon conviction for crimes such as murder and rape. In 1869, however, by act of the General Assembly, capital punishment was abolished except in the case of wilful murder. Gradually, during the post-reconstruction era, capital punishment was restored to certain other offenses such as rape and kidnapping.

In 1893 the statute which established death as the punishment for murder was amended to allow jury discretion in the imposition of a death sentence or, in the alternative, life imprisonment. Similar provisions exist in regard to other capital offenses.

Following the United States Supreme Court's decision in Furman v. Georgia, of which I am sure you are familiar, no executions have taken place in this state. Legislation to establish a death penalty that would not be in conflict with Furman v. Georgia is presently under consideration by the General Assembly.

In a recent murder case, State v. Speights, which is now on appeal to the South Carolina Supreme Court, the death penalty was imposed on the defendant. In that case, the State argued that the decision in Furman v. Georgia declared unconstitutional only the grant of discretion to a judge or jury to impose the death penalty upon conviction of a capital offense. Thus, by severing from the original statute the 1893 amendment which gave to the jury discretion to punish by death or life imprisonment upon conviction of murder, the original statute which set a mandatory death penalty upon conviction of murder remains valid law in South Carolina and is not inconsistent with Furman v. Georgia. In short, the State will be arguing before the South Carolina Supreme Court that the original statute mandating the death penalty upon conviction of murder is constitutional when stripped of the unconstitutional amendment of 1893 that had granted jury discretion in imposition of the death penalty.

As you can see, South Carolina law on capital punishment is not at all clear at the present. The future of the death penalty in this State will depend upon action by the General Assembly and the decision of the South Carolina Supreme Court in State v. Speights.

Sincerely,

Joseph Isaace
Law Clerk

1974 WL 27634 (S.C.A.G.)