

1983 WL 181951 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1983

***1 RE: Opinion Request—Clarification of State Statutes 56-6-2930 and 56-5-2950**

Chief J.P. Strom
State Law Enforcement Division

ATTN: Mr. James K. Wilson
P. O. Box 21398
Columbia, South Carolina 29221

Dear Chief Strom:

You have recently asked for an opinion from this office concerning clarification of the following portion of Section 56-5-2950 (Implied Consent Law—DUI):

‘No person shall be required to submit to more than one test for any one offense for which he has been charged . . .’

Specifically, you have asked for guidance as to the meaning and ramifications of the above-quoted language and concerning how this portion of Section 56-5-2950 affects other chemical analyses of blood, urine, or other biological fluids. In seeking additional clarification from you pertaining to this inquiry, I have been in contact with James Wilson and he has informed me that your primary concern is with the admissibility of ‘blood tests,’ etc., analyzed from samples of blood voluntarily obtained from an individual charged with driving under the influence, who has successfully completed a Breathalyzer test.

In addressing this initial inquiry, I would call to your attention a previous opinion issued by this Office which states in its pertinent parts the following:

Section (56-6-2950) sets certain standards for the testing of a person's breath to determine alcoholic content of the blood. The ‘test’ referred in in the section prohibiting more than one test restricts the law enforcement agency from requiring more than one Breathalyzer test, and does not refer to a chemical analysis of the defendant's blood. 1971-72 Opinions of the Attorney General No. 3268, p. 67.

I have enclosed a copy of this opinion for your review. In addition, I would point out two pertinent portions of Section 56-5-2950. First, the above-quoted language states that: ‘(n)o person shall be required to submit to more than one test . . .’. Therefore, this language appears to permit more than one test, if the same is conducted at the request of the individual, or if the individual voluntarily consents to a second test. Secondly, the following language contained in 56-5-2950 is also instructive:

The provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

Your last inquiry concerns the proper procedure to follow in order to obtain blood, urine, and/or other biological fluids from a subject. In response to this inquiry, let me begin by stating that authorization for obtaining blood samples, etc. from a subject is governed by State law and pursuant to normal search and seizure authority. If an individual requests a blood test, etc., or if he voluntarily consents to a similar request made by a law enforcement officer, few if any problems can be foreseen. However, if a law enforcement officer deems it necessary to obtain a blood sample, etc., from a non-consenting individual, I would call

to your attention this Office's response to question no. 2 in a 1973 Opinion which addresses this topic, (1972-73 Opinions of the Attorney General, No. 3502, p. 103) and to a more recent informal opinion authored by Donald J. Zelenka. I have also enclosed a copy of these opinions for your review. As with the other opinion that I have enclosed with this letter, I feel that these opinions adequately address your inquiry. If not, please feel free to contact me for further clarification. In addition, if this Office can be of any further assistance to you, or if I can personally provide you with any further information on this topic, please do not hesitate to contact me. I am

Sincerely,

*2 Larry L. Vanderbilt
Assistant Attorney General

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