

1979 WL 69600 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 14, 1979

**RE: Public Drunkenness Under Section 16-17-530**

\*1 Mr. Charles R. Hunter  
City Recorder  
City of Bennettsville  
Bennettsville, South Carolina 29512

Dear Mr. Hunter:

In a letter to Mr. Neal Forney with the South Carolina Court Administration Offices, you raised a question as to whether an arrest may be made without a warrant pursuant to [Section 16-17-530 of the 1976 Code](#) of Laws against an owner-passenger of a vehicle when the owner-passenger, who was highly intoxicated, was in a vehicle when it was on a public street, but was in fact on his own property at the time he was observed by the arresting officer prior to the arrest. You indicated that a city patrolman attempted to stop an automobile owned by the passenger in the car which was being operated by an unlicensed driver. You stated that even though the officer had his blue light on the operator of the vehicle drove on into the yard of the owner-passenger of the vehicle. At that time, the owner-passenger of the vehicle began using obscenities and informed the officer that he was on private property. The officer then arrested the owner-passenger due to his intoxication for disorderly conduct pursuant to [Section 16-17-530](#). The operator of the vehicle was charged with not having a drivers license in his possession and with failure to stop for the blue light.

In providing a response to your inquiry, reference is made to a previous opinion of this Office, 1974 Opinion No. 3828, p. 281, in which this Office indicated that ‘an individual may be charged with a misdemeanor if found to be in a grossly intoxicated condition on a highway or at any public place.’ That opinion referenced the section now codified as [Section 16-17-530](#) which states in part that ‘any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition . . . shall be deemed guilty of a misdemeanor.’

The opinion stressed that the crucial word was ‘grossly’. It indicated that mere drunkenness without more is insufficient to sustain a conviction pursuant to [Section 16-17-530](#). The opinion indicated that whether or not a person was ‘grossly drunk’ as opposed to simply being ‘drunk’ is a matter for a law enforcement officer's discretion. Therefore, any arrest for drunkenness pursuant to [Section 16-17-530](#) would have to meet that standard required by such section.

Inasmuch as disorderly conduct is not a common law crime, any criminality of conduct depends on such conduct coming within the statute defining disorderly conduct. As referenced above, the part of the statute at issue here states that ‘any person who shall (a) be found on any highway, or at any public place or public gathering in a grossly intoxicated condition’ may be determined to be engaging in public disorderly conduct. Therefore, not only is there a consideration of whether an individual is ‘grossly drunk’, but also the location of the incident is important in determining whether in fact such conduct is criminal. (I am assuming that the ‘private property’ may not also be considered to be a ‘public place’ which is generally considered to be a place where all persons have a right to go or be. 8 ALR 3d, Section 2, p. 933.) Another opinion of this Office, 1961 Opinion No. 1102, p. 178, indicated that ‘the gravamen of the offense is not the operation of a motor vehicle or the presence of the defendant in the motor vehicle while intoxicated, but is the act of being at any public place in a grossly intoxicated condition. . . . If a defendant then is grossly intoxicated while riding in an automobile on a public highway he is guilty of the violation of . . . (the Section now codified as Section 16-17-5300).’

\*2 There is an extensive discussion of public drunkenness in public places and on highways in 8 ALR, Sections 3 and 4, pp. 934-939. Reference is made to numerous cases in which it was held that various public highways, streets and roads constitute 'public places' within general statutory provisions which prohibit drunkenness or intoxication in public places. Furthermore, several decisions are cited where a defendant's conviction was upheld when the defendant was apprehended in a private automobile while intoxicated when the vehicle was on or next to a public highway or road. See specifically, [Pogue v. State, 6 S.E.2d 647 \(1951\)](#); [Tackett v. Commonwealth, 261 S.W.2d 298 \(1953\)](#); [Stateham v. State, 243 P.2d 743 \(1952\)](#); [Walker v. State, 350 S.E.2d 561 \(1961\)](#). However, in the situation prompting this opinion, the defendant was not observed until he was on private property and therefore the above cases differ from the situation here.

There are also cases in which convictions for violations of statutes making it an offense for any person to be intoxicated at any public place or on any highway were affirmed where an accused had been seen by an arresting officer in a state of intoxication on a public street, road, or highway, but was subsequently arrested on private property. See: [People v. Camp, 105 N.W. 155 \(1905\)](#); [People v. Lowerie, 128 N.W. 741 \(1910\)](#); [Milbank v. Cronlokken, 135 N.W. 711 \(1912\)](#). However, as is apparent, this is not the situation at hand inasmuch as the officer did not observe the defendant's intoxication until the defendant was in his own private yard. It has also been held that an accused could not be forcibly and involuntarily removed from a place not deemed a 'public place' to a public place, i.e., a public highway, and charged with having committed the offense of public drunkenness in a public place. [Finch v. State, 112 S.E.2d 824 \(1961\)](#).

As you are aware, a warrant is necessary for a misdemeanor arrest except where the misdemeanor is committed in the officer's presence. As indicated, in the situation prompting this opinion, the officer did not observe the defendant's intoxication which prompted the arrest until the defendant was in his own yard. Therefore, with reference to the above, in the opinion of this Office, an officer may not make an arrest without a warrant for disorderly conduct of an individual, highly intoxicated, on private property, where the officer did not observe the individual's condition while the individual was on a highway or in a public place. It would appear however that an arrest based upon such facts may be proper if an arrest warrant was subsequently obtained.

You also asked what implication [Section 14-25-90 of the 1976 Code of Laws](#) would have on the aforementioned factual situation. [Section 14-25-90](#) states in part:

'The mayor or attendant and any alderman, councilman or warden of any city or town in this State may, in person, arrest, or may authorize and require any marshal or constable especially appointed for that purpose to arrest, any person who, within the corporate limits of such city or town, may be engaged in a breach of the peace, any riotous or disorderly conduct, open obscenity, public drunkenness or any other conduct grossly indecent or dangerous to the citizens of such city or town or any of them.'

\*3 A previous opinion of this Office, 1964 Opinion No. 1649, p. 84, indicated that such section '... allows the mayor or attendant to make arrests for conduct that is obviously dangerous to the citizens of the town.' Another opinion, a letter to you dated November 13, 1978, stated that such section '... authorizes ... councilmen to arrest or 'authorize and require' a marshal or constable to arrest for those offenses referenced in the statute ... (but) ... may not be construed so as to permit such councilmen to issue arrest and search warrants.'

It would appear therefore that pursuant to [Section 14-25-90, supra.](#), a mayor or councilman could 'in person' arrest or could 'authorize and require any marshal or constable' to arrest any individual committing the referenced offenses within the corporate limits of the town. While the arrest in this instance was made pursuant to [Section 16-17-530, supra.](#), it appears that a more wide-ranging manner of conduct may prompt an arrest pursuant to [Section 14-25-90, supra.](#) As to the question of any 'implications' of [Section 14-25-90](#), I can only state that, as indicated, such section does provide authority to arrest an individual for a broader range of behavior than is provided by [Section 16-17-530, supra.](#) Furthermore, [Section 16-17-530, supra.](#), is more restrictive as to the place where an individual must be in order for conduct as defined

by such section to be illegal. You will note that [Section 14-25-90](#), supra., refers to engaging in the referenced conduct 'within the corporate limits of such city or town.'

Hopefully the above is in full response to your inquiry.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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