

1976 S.C. Op. Atty. Gen. 404 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4538, 1976 WL 23155

Office of the Attorney General

State of South Carolina

Opinion No. 4538

December 7, 1976

*1 Emergency vehicles may violate traffic regulations, as authorized by statute, but such violation must take into account the safety of the motoring public, and must be reasonable under the circumstances then and there existing.

TO: T.H. Rawl, Jr.
Lexington County Attorney

QUESTION PRESENTED:

What standards should be used to determine negligence or contributory negligence on the part of the driver of an emergency vehicle and the driver of a private vehicle if such vehicles collide during the emergency operation of the emergency vehicle?

STATUTES, CASES, ETC.:

Code of Laws of South Carolina, 1962, Section 46–290, 46–291, 46–292, 46–293, 46–304 and 46–425;

[Lineberger v. City of Greenville](#), 178 S.C. 47, 182 S.E. 101;

[Carter v. Beals](#), 248 S.C. 526, 151 S.E.2d 671;

[Gossett v. Burnnett](#), 251 S.C. 528, 164 S.E.2d 578;

[Nabors v. Spencer](#), 262 S.C. 630, 207 S.E.2d 79;

7 Am. Jur. 2d, [Automobiles and Highway Traffic](#), §§ 171 and 172;

60A C.J.S., [Motor Vehicles](#), §§ 371–377;

1966 Op. Atty. Gen. 98.

DISCUSSION OF ISSUES:

The question has been presented concerning what standards of care should be applied to determine fault when an emergency vehicle being operated under an emergency situation collides with a private vehicle.

The general rule in this area relating to the operation of an emergency vehicle is set out in C.J.S. and Am. Jur. as cited above. The rule can be summarized by saying that, while emergency vehicles operating under emergency circumstances are generally exempted from traffic regulations either expressly or by implication, this fact does not relieve the operator of the emergency vehicle from exercising reasonable care to prevent injury, under the circumstances then and there existing.

The cases of South Carolina appear to follow this general reasoning, in Lineberger v. City of Greenville, *supra*, the Court held:

Such privilege must be exercised with due care for the safety of others using the street, and what would constitute due care would depend upon the circumstances at the time. A police car would not be held to the same degree of care while in actual pursuit of a criminal as when merely cruising around . . .

In Gossett v. Burnett, *supra*, the Court further recognized this principal:

. . . Code Sections 46–291, *et seq.* . . . recognize the need for haste by the operator of an emergency vehicle and permit him to disregard certain traffic laws, but, at the same time, spell out the duties of the operator when he does proceed in disregard of the specific traffic regulations. Compliance with these several statutory provisions calls for the exercise of considerable judgment by the operator of an emergency vehicle in the interest of haste on the one hand and public safety on the other.

Code of Laws of South Carolina, 1962, Sections 46–290–293, and 46–425 govern the emergency operation of emergency vehicles on the public highways. In effect these sections allow emergency vehicles to violate the traffic regulations during an emergency situation, so long as due care is taken in regard to the safety of all persons on the highway, and as long as a siren or light is used. A copy of these statutes are attached for your reference.

***2** Based on the statutory and case law in South Carolina, the driver of an emergency vehicle involved in an accident should be held to a standard of care which a reasonable man would use under the emergency circumstances then and there existing. If the driver of such vehicle has violated any traffic law, the violation must be in conformance with the above-referenced code sections, and must be reasonable under the conditions then and there existing. In no event can reckless or wanton conduct be excused.

In determining the fault of the driver of the non-emergency vehicle, attention should first be directed to the traffic laws regulating motorists in the presence of an emergency vehicle. See especially Code Sections 46–304 and 46–425. If the non-emergency driver has not violated any traffic law, his standard of due care would be determined by the conduct to be expected by a reasonable man under similar circumstances.

CONCLUSION:

Unfortunately, every case involving an accident between an emergency vehicle and a civilian motorist must be evaluated under its own circumstances. Certain general guidelines can be applied, including the following:

- 1) Was there an emergency?
- 2) Was emergency vehicle displaying light and siren?
- 3) Was operation of emergency vehicle reasonable in view of circumstances then and there existing?
- 4) Was the civilian vehicle in compliance with all traffic laws relating to the presence of emergency vehicles?
- 5) Was the civilian vehicle operated in a reasonable manner in view of the circumstances then and there existing?

These general guidelines are not designed to decide every issue of negligence when an emergency vehicle is involved in an accident. However, the investigating patrolman can use these guidelines as a first step when he begins to investigate an accident between an emergency vehicle and a civilian vehicle.

George C. Beighley
Assistant Attorney General

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