

1974 S.C. Op. Atty. Gen. 248 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3839, 1974 WL 21343

Office of the Attorney General

State of South Carolina

Opinion No. 3839

August 8, 1974

*1 Reginald C. Brown, Jr., Esquire
City Prosecutor for Florence
Florence, South Carolina 29501

Dear Mr. Brown:

I am in receipt of a recent letter requesting that this office provide for you an opinion on the following question:

Is Section 46–344 of the 1962 Code of Laws of South Carolina applicable when an officer arrests a defendant with a warrant for driving under the influence, the offense not having been committed in the presence of the arresting officer?

As you know, driving under the influence of intoxicants is a misdemeanor under the law of the State of South Carolina. Therefore, an officer can make a lawful arrest in such cases only when the offense is committed in his presence or after obtaining a warrant for such offense which was not committed in his presence. Accepting the fact that a lawful arrest for DUI can be made pursuant to a warrant, the question is then, can the officer request that the subject submit to the breathalyzer test under the implied consent law in such cases.

The key phrase of Section 46–344 with regard to the above question is:

(T)he test shall be administered at the direction of a law enforcement officer who has apprehended a person while driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor. (emphasis added)

It would seem, therefore, that the above cited section is only applicable to persons arrested for DUI while driving on the public highways. It is, therefore, the opinion of this office that Section 46–344 does not apply to situations where the arresting officer has not observed the commission of the offense and arrests pursuant to a warrant.

I hope that this information will be helpful to you and your court. If I can be of further assistance to you. please feel free to contact me.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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