

1974 WL 27939 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 27, 1974

*1 Mr. B. S. Arant
Recorder of Town of Pageland
Pageland, South Carolina 29728

Dear Mr. Arant:

Mr. McLeod has referred to me your letter requesting an opinion as to whether or not the charge against a motorist stopped in the town of Pageland pursuant to radio information received from North Carolina law enforcement officers is valid. It is my understanding that the motorist was stopped within the city limits of Pageland and, following the administration of a breathalyzer test, was charged with driving under the influence of intoxicating liquor pursuant to § 46-343 Code of Laws of South Carolina (1962), as amended. It is the opinion of this office that the charge preferred against this motorist in South Carolina is valid.

An offense is considered to have been committed whenever all of the necessary elements of such offense have been concluded. The necessary elements of driving under the influence are (1) operating a vehicle, (2) on the public highways, (3) of this state, (4) while under the influence of intoxicating liquors or drugs. As the nature of this offense is such that it can be constantly committed through several jurisdictions, it is placed in the class of 'continuing offenses.' This class of offenses is considered to 'follow' the violator. [State v. Bailey, 253 S.C. 304, 170 S.E.2d 376](#); [United States v. Jackson, 94 F. Supp. 912](#); [Land v. United States, 177 F.2d 346](#). Since the offense 'follows' the violator, he commits it constantly so long as he persists in driving on the public highways while under the influence. 1970-71 Op. Atty. Gen. 59.

Since the offense of driving under the influence is capable of being committed throughout various districts and between states, the question remaining is whether or not the South Carolina court had jurisdiction in this matter. It is stated in 21 Am.Jur.2d, [Criminal Law](#), § 385 that:

In many cases the requisite elements of the completed crime may be committed in different jurisdictions, and in such cases any state in which an essential part of the crime is committed may take jurisdiction.

In this situation, the town of Pageland had jurisdiction over both the subject matter and the motorist. The South Carolina Supreme Court held in [State v. Langford, 223 S.C. 20, 73 S.E.2d 854](#) that jurisdiction of the subject matter of a particular criminal case is vested in the court when the appropriate charge is filed, and jurisdiction of the person is acquired when the party charged is arrested or voluntarily appears and submits himself to jurisdiction. Although jurisdiction of the offense may not be waived, jurisdiction as to the person may be waived, and is waived when the accused submits to the jurisdiction of the court by posting bail or entering recognizance without objection.

I am enclosing a copy of Opinion No. 3112, March 29, 1971 by Timothy G. Quinn, Assistant Attorney General. If I can be of any further assistance in this matter, please do not hesitate to call me.

Very truly yours,

*2 Joseph R. Barker
Staff Attorney

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