

1972 S.C. Op. Atty. Gen. 121 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3304, 1972 WL 20444

Office of the Attorney General

State of South Carolina

Opinion No. 3304

April 28, 1972

***1 The Court of General Sessions has jurisdiction to try a case involving drunk driving, second offense, while any action of a municipal or magistrate's court in purportedly trying a second offense case is null and void.**

Solicitor

Second Judicial Circuit

Aiken, South Carolina

Inquiry has been made as to whether or not the Court of General Sessions has jurisdiction to try a case involving drunk driving, second offense, when the case has been tried previously in municipal or magistrate's court as a first offense.

The penalty for second offense drunk driving is a maximum of one year or one thousand dollars (Section 46–345, 1962 Code of Laws of South Carolina). Municipal or magistrate's court, therefore, has no jurisdiction to try such an offense. When a court has no jurisdiction, its acts are null and void—not merely voidable. 21 C. J. S. *Courts*, § 116; Cf. [State v. McAbee](#), 220 S. C. 272.

In view of the foregoing, it is the opinion of this Office that the action of a municipal or magistrate's court in purportedly trying a second offense case amounts to nothing, and that General Sessions Court has jurisdiction to indict and try the case on the same facts.

Fridays. Exceptions are provided where a seven-day work week exists.

The remaining portion of your letter recites that, pursuant to Section 6 of Act R–1531, ‘rules and regulations will be issued that provide annual leave earning schedules for employees working in excess of five days per week, *i.e.*, five and one half days per week. For permanent part-time employees we propose to prescribe that only those permanent part-time employees who work no less than one half the agency's official work week shall be permitted to earn annual leave on a prorata basis and we propose to establish the formula for computing the prorata leave earnings.’

In my opinion, this regulation is reasonable and appropriate and within the scope of the authority granted by Section 6 of R–1531.

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