

1981 WL 158124 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1981

*1 W.B. Goudelock

Magistrate

Cherokee County Magistrate's Court

Cherokee County Courthouse

Gaffney, S.C. 29340

Dear Magistrate Goudelock:

In a letter to this office you questioned whether successive charges of public intoxication against an individual may be accumulated in order that upon conviction, consecutive thirty day jail sentences may be imposed. You also questioned your general sentencing authority as a magistrate.

When a defendant is found guilty, either by the magistrate or a jury, the magistrate must then sentence the defendant. The magistrate may use his discretion in sentencing as long as his decision conforms with the statutory requirements for the particular offense for which the defendant has been convicted. He may impose a fine or require imprisonment within the statutory limitations. In no case may the magistrate impose both a fine and imprisonment. The magistrate has the option of allowing the defendant to choose between a fine or a term of imprisonment, though he is not required to do so. [Section 22-3-550, Code of Laws of South Carolina](#), 1976, as amended. Of course, the magistrate may not exceed the statutory limits with any sentence. Where separate charges have been alleged and proven, the magistrate may impose sentences to run concurrently or consecutively. The sentences will be served concurrently unless the magistrate specifically orders them to be served consecutively. [Finley v. State](#) 219 S.C. 278, 64 S.E.2d 881 (1951); [State v. DeAngelis](#) 257 S.C. 44, 183 S.E.2d 906 (1971).

As to your particular question concerning the propriety of offenses being accumulated in order that a defendant may, upon conviction, receive consecutive sentences, it should be remembered that each individual case against a defendant rests on its own merits. To arbitrarily hold cases for prosecution so that an individual could, if convicted, receive consecutive sentences has the potential of infringing on specific constitutional guarantees, such as the right to a speedy trial. I would therefore advise against such.

In a separate question, you asked for the code section pertaining to the offense of 'public drunk'. Please be advised that there is no such specific state statutory offense. However, your attention is directed to [Section 16-17-530, Code of Laws of South Carolina](#), 1976, which defines public disorderly conduct. Such section states in part:

'(a) 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 . . .'

Also, you may wish to check to see if there is any particular relevant county ordinance prohibiting such conduct.

As to your question concerning whether an individual may be arrested for public intoxication and a 'violation of the ABC law' at the same time, I would only advise that without knowing which specific statutory offense you are referencing a definitive answer can not be provided. However, generally, an individual may be arrested for any conduct which is a criminal violation in this State. Therefore, in the proper circumstances, an individual could be arrested for more than one offense at the same time. The United States Supreme Court in [Blockburger v. U.S.](#), 284 U.S. 299, 76 L.Ed. 306 at 309(1932) stated:

*2 ‘ . . . where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or one, is whether each provision requires proof of an additional fact which the other does not.’ See also: [State v. Grueling](#), 257 S.C. 515, 186 S.E.2d 706 (1972).

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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