

1981 WL 157800 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 29, 1981

\*1 Paul E. Gault, Jr., Esquire  
Attorney at Law  
512 E. North Street  
Greenville, SC 29601

Dear Mr. Gault:

In a letter to this Office you asked the following question:

When a police officer arrests someone and charges that person with driving under the influence, does the police officer have to offer the breathalyzer test to the suspect or can the officer merely rely on other forms of evidence?

My research has not revealed any South Carolina cases specifically addressing the above matter. However, other state courts have ruled that there is no violation of any due process rights where the State fails to administer any sobriety tests, i.e. breathalyzer or blood tests, to an individual arrested for driving under the influence. See: [Moore v. State, 533 P.2d 997 \(1976\)](#) (Oklahoma); [Major v. State, 358 A.2d 609 \(1976\)](#) (Maryland); [State v. Urrego, 322 N.E.2d 688 \(1974\)](#) (Ohio). In [Moore](#), the court stated that such tests do not serve as a condition precedent to prosecution but instead go to the sufficiency of the evidence.

Based upon the above and a review of [Sections 56-5-2930, et seq., Code of Laws of South Carolina, 1976](#), in the opinion of this office, there is no obligation on the State to offer an individual, arrested for driving under the influence, a breathalyzer test. The State may instead base its case on any other relevant evidence available.

With best wishes.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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