

1980 WL 121123 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 25, 1980

***1 Re: State's Jurisdiction over Myrtle Beach Air Force Base**

John L. Breeden, Jr., Esquire
Assistant Solicitor
Fifteenth Judicial Circuit
Horry County Courthouse
Conway, South Carolina 29526

Dear John:

You have asked this Office whether the State would have jurisdiction to arrest an individual for driving under the influence of intoxicants while within the confines of the Myrtle Beach Air Force Base, a federal reservation. It appears that the State would have jurisdiction to arrest and prosecute for driving under the influence on that military reservation.

The State has consented to the acquisition by the United States Government of property within South Carolina for military purposes. [Section 3-1-110, South Carolina Code of Laws](#) (1976). If the United States Government has accepted exclusive jurisdiction over the property in question, then the State's criminal jurisdiction would not extend to this property. See [State v. Zeigler](#), Opinion No. 21083 (filed November 13, 1979).

Exclusive jurisdiction over land within this State required for use by the Federal Government is ceded by virtue of the authority of Section 3-1-120. Exclusive jurisdiction must be accepted by the Federal Government before the State is relieved of its jurisdiction. [Title 40, U.S.C. 255](#). That section provides that unless the Federal Government accepts exclusive jurisdiction over lands acquired, it should be conclusively presumed that no such jurisdiction has been accepted. Such acceptance is to be filed with the Governor of this State or in such other manner as prescribed by the law of this State. If the Federal Government has accepted exclusive jurisdiction over the property in question, then the State would have no jurisdiction to arrest or prosecute a motorist for driving under the influence on the Air Force Base property. See [State v. Zeigler](#).

Records of such acceptance are filed by the Secretary of State and are maintained in the South Carolina Archives. An archives employee has searched the records dating from 1905 through 1965 and can find no such acceptance on the part of the Federal Government. Discussions with the Office of the Staff Judge Advocate at the Myrtle Beach Air Force Base reveal that the Federal Government has not, in this instance, accepted exclusive jurisdiction over the base in question. It would appear then, that the Federal Government has not accepted exclusive jurisdiction over the base in question and that, therefore, the State's jurisdiction would extend to these lands.

Section 56-5-2930 makes it unlawful for any person to drive any vehicle within the State while under the influence of intoxicants. Section 56-5-2950 provides that any person who operates a motor vehicle upon the public highways of this State is deemed to have consented to a breath analysis. [emphasis added] Note that there is no provision prohibiting driving a motor vehicle on the public highways of this State but rather the prescribed conduct is simply the driving of a vehicle while under the influence. Therefore, it is the opinion of this Office that the State would have jurisdiction to arrest and prosecute a defendant for driving under the influence while on this military reservation.

*2 Nevertheless, a motorist in South Carolina impliedly consents to a breath analysis only if stopped on a public highway in South Carolina. While there is no case law defining the term 'public highway' for the purposes of 56-5-2950, it would appear that such a highway would be a public highway for the purposes of that Section.

You have expressed some concern that since some of the roads on the base are open only to military personnel they would not be 'public highways' within the terms of the statute. Since the property in question is subject to the State's criminal jurisdiction, it would seem that the State's laws would also protect the users of those highways. There can be little doubt that Federal employees and military personnel are to be considered members of the public Section 56-5-2950 was intended to protect. To construe the statute any other way would work an injustice to this segment of the public. Therefore, it must be said that a highway closed to use of all non-military personnel, open only for military use, would, nevertheless, be a public highway within the terms of Section 56-5-2950 and, therefore, consent to a breath analysis would be implied by that statute.

It appears that motorists could be arrested and prosecuted for driving under the influence while driving a vehicle within the confines of the Myrtle Beach Air Force Base. Further, such a driver, by implication, would have consented to a breath analysis. Sincerely,

Scott Elliott
State Attorney

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