

1980 WL 121224 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 14, 1980

*1 Mr. W. H. Kay
Chief
Motor Vehicle Inspection
S. C. Dept. of Highways and Public Transportation
Columbia, South Carolina 29202

Dear Mr. Kay:

You have recently asked the opinion of this Office regarding the applicability of Miranda rights pursuant to an investigation by a Motor Vehicle Inspection Agent into a possible violation of the vehicle safety inspection laws, [Code of Laws of South Carolina § 56-5-5310 \(1976\)](#), et seq.

The threshold issue as to the applicability of Miranda rights pursuant to [Miranda v. Arizona](#), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) is whether the person questioned was in custody or significantly deprived of his freedom of action at the time verbal statements were given. Miranda 'applies only where there has been such a restriction on a person's freedom as to render him 'in custody.'" [Oregon v. Mathiason](#), 429 U.S. 492, 97 S.Ct. 711, 50 LEd2d 714 (1977), quoted in [State v. Neely](#), 271 S.C. 33, 244 S.E.2d 522 (1978), and [State v. Doby](#), 273 S.C. 704, 258 S.E.2d 896 (1979).

Your question addresses an investigation by a Highway Department employee who has the duty to administer and enforce the vehicle safety inspection laws pursuant to [Code of Laws of South Carolina § 56-5-5410 \(1976\)](#). Such employee does not have the authority of a sheriff or deputy sheriff by [Code of Laws of South Carolina § 17-13-30 \(1976\)](#) to arrest without a warrant. He would then not be able to make an arrest during the course of an investigation even for a violation within his view. Since he would have to conduct an investigation and obtain a warrant prior to making a charge for any violation of the vehicle safety inspection laws, his investigation would be of a non-custodial nature and would not deprive a person of his freedom of action at the time of any verbal statements during the investigation. Miranda rights would then not be required.

Even if a defendant is in custody there is specific authority that Miranda rights are not required for traffic offenses and additional authority for the rejection of the application of Miranda to traffic offenses based on the broader holding that it does not apply to misdemeanor charges. See, [Clay v. Riddle](#), 541 F.2d 456 (4th. Cir. 1976) and cases cited therein. While other courts have declined to exclude Miranda from traffic offenses or other misdemeanors, these courts still limit the applicability of Miranda to statements obtained as a result of custodial interrogation. See, [State v. Perry](#), 298 N.C. 502, 259 S.E.2d 496 (1979); [State v. Sykes](#), 285 N.C. 202, 203 S.E.2d 849 (1974); [Lewin v. State of New Jersey](#), 81 N.J. 58, 404 A.2d 1157, cert. denied, — U.S. —, 100 S.Ct. 218, 68 L.Ed.2d 142 (1979).

Therefore, it is the opinion of this Office that a Motor Vehicle Inspection Agent would not have to give Miranda rights prior to a non-custodial investigation.

Sincerely,

Harold M. Coombs
*2 Staff Attorney

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