

1979 WL 42969 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 2, 1979

\*1 Honorable Edwin A. Manos  
Chief Judge for Administrative Purposes of Magistrate's Court  
Abbeville County Courthouse  
Abbeville, South Carolina 29620

Dear Judge Manos:

In a letter to this Office, you asked whether the results of a blood test may be accepted over the results of a breathalyzer test. In our telephone conversation, you explained that you were referencing a situation wherein an individual arrested for driving under the influence had been given a breathalyzer test and requested and was given a subsequent blood test. However, you indicated that the individual performing the blood test refused to provide the State with a sample of the blood for separate testing by the State at its own laboratory.

Please be advised that a review of [Section 56-5-2950 of the Code of Laws of South Carolina](#), 1976, governing such tests does not indicate that it is required that the State be provided an additional sample of such blood for additional testing. [Section 56-5-2950\(g\)](#) does provide that:

The person conducting the chemical test for the law enforcement officer shall record in writing the time of arrest, the time of the test, and the results of the test, a copy of which shall be furnished to the person tested or his attorney prior to trial or other proceedings in which the results of the test are used as evidence, and any person administering any additional test or tests, shall record in writing the time, type and results of the test or tests and promptly furnish a copy thereof to the arresting officer.

However, there is no provision allowing for separate evaluation by the State of any blood test given a defendant subsequent to his having been administered a breathalyzer test. Furthermore, to do so may involve a conflict with that portion of Section 59-5-2950 which states that 'no person shall be required to submit to more than one test for any one offense for which he has been charged . . .'

If there is a discrepancy in the results of the blood test and the breathalyzer test, such would be matter for the jury to consider in evaluating whether the State or the defendant has the more reliable test. Of course, as in all instances involving the admission of evidence, such results must be properly admitted and would be subject to attack.

Hopefully the above is in complete response to your inquiry. If there is anything further, don't hesitate to contact this Office.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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