

1976 S.C. Op. Atty. Gen. 368 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4507, 1976 WL 23124

Office of the Attorney General

State of South Carolina

Opinion No. 4507

October 29, 1976

**\*1** An overtaking motorist does not have a lawful right to exceed the maximum speed limit in passing a slower vehicle.

TO: Magistrate  
Florence County

QUESTION PRESENTED:

Does an overtaking motorist have the lawful right to exceed the maximum speed limit in order to pass a slower vehicle?

STATUTES INVOLVED:

Section 46-360 of the 1962 Code of Laws of South Carolina, as amended, establishes a statewide speed limit of 55 m.p.h., notwithstanding any other provision of law to the contrary.

Section 46-361 of the 1962 Code of Laws of South Carolina, as amended, states the general rule regarding speed of vehicles and further establishing maximum speed limits.

Sections 46-384 and 385 of the 1962 Code of Laws of South Carolina concern road situations in which passing slower vehicles is permitted.

Sections 46-386 through 389 declare limitations on passing in certain situations.

DISCUSSION OF ISSUE:

You have asked whether a motorist may exceed the maximum speed limit in overtaking and passing a slower vehicle, in particular whether in so doing he may exceed the statewide maximum speed limit of 55 m.p.h., as provided in Section 46-360.

The general rules governing the speed of vehicles on highways in this state are contained in Section 46-361 which states, in pertinent part:

‘No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.’ (Emphasis added.)

Accordingly, the right to pass slower vehicles is not unrestricted. See Sections 46-386 through 389 for specific limitations and Sections 46-384 and 385 regarding the particular road situations in which passing is expressly permitted.

The general rule of the road embodied in the statutes mentioned above, and particularly regarding speed in passing, has been summarized as follows:

‘While the overtaking car must necessarily travel faster than the overtaken car in order to pass it, the desire to pass does not warrant excessive speed, but the speed of the overtaking car must be kept within the limit of what is reasonable and safe under the circumstances; and, of course, the overtaking car must not exceed the statutory maximum speed.’ 60A C.J.S. Motor Vehicles, Section 326(6), pps. 353–354.

Section 46–360 absolutely prohibits the operation of a motor vehicle on the streets and highways of the state in excess of 55 m.p.h., notwithstanding any other provision of law to the contrary. Construing the aforementioned rule in light of the statewide maximum speed limit, it must be concluded that overtaking motorists have no lawful right to pass slower vehicles in excess of the prevailing speed limit, in any event not to exceed 55 m.p.h.

CONCLUSION:

\*2 Therefore, it is the conclusion of this Office that an overtaking motorist does not have a lawful right to exceed the posted speed limit in passing a slower vehicle.

Richard P. Wilson  
Assistant Attorney General

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