

1975 WL 29364 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 6, 1975

***1 Re: Constitutionality of the Alcohol Safety Action Project**

Ernest A. Finney, Jr., Esquire
Finney and Gray
Attorneys at Law
P. O. Box 836
Sumter, SC 29150

Dear Mr. Finney:

You have inquired whether or not a man who is arrested for driving under the influence of intoxicants while in Sumter County is deprived of equal protection of the law by virtue of his not being able to participate in that program known as the Alcohol Safety Action Project (ASAP), such as he might if the arrest had occurred in Richland County.

As presently established, ASAP operates only in certain selected counties in South Carolina, including Richland County but excluding Sumter County. It is totally funded by the U. S. Department of Transportation and is administered by the South Carolina Commission on Alcoholism. In participating counties, those law enforcement agencies cooperating will agree to a magistrate's deferral of action pending the DUI violator's participation in the ASAP program. After the offender has completed the program, the magistrate may either proceed with the criminal prosecution, or he may allow the offense to be nolle prossed if he feels that the violator has been rehabilitated.

The Equal Protection Clauses of the U. S. and State constitutions require that persons similarly situated be treated equally. See [Reynolds v. Sims](#), 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); [Long v. Robinson](#), 436 F.2d 1116 (4th Cir. 1971); [Harrison v. Caudle](#), 141 S.C. 407, 139 S.E. 842 (1927). In most cases, the equal protection clause is invoked in instances where the treatment received by the complainant is more harsh than that received by other persons similarly situated. In this case, however, the equal protection question arises in circumstances where the complainant is being treated as is normal under the pertinent statutes for persons arrested for DUI, but where he wishes to be able to be treated more leniently.

A similar set of facts was involved in the case of [McLamore v. State](#), 257 S.C. 413, 186 S.E.2d 250 (1972). In that case the allegation was made that to place a prisoner on a county chain gang rather than in the State Penitentiary deprived him of equal protection of the law because he was thereby deprived of the educational and rehabilitation training and influences available to inmates in the State Penitentiary. The Court held, however, that there is no constitutional duty imposed on any government entity to educate or rehabilitate a prisoner. The Court reasoned, *inter alia*, that to require every prisoner to be treated exactly alike might well discourage such efforts at rehabilitation and education.

ASAP is in substantial degree an effort to educate and rehabilitate persons who drive vehicles while intoxicated. In the opinion of this office, [McLamore v. State](#) is both factually analogous and legally dispositive of the question of equal protection of the law as it regards ASAP.

Very truly yours,

***2** John B. Grimball
Law Clerk

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