

1975 WL 29701 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 13, 1975

*1 The Honorable S. Russell Floyd
Florence County Magistrate
Post Office Box 367
Lake City, SC 29560

Dear Judge Floyd:

This is in reply to your letter concerning change of venue in the cases of State v. Thomas Kinard, Jr. (DUI) and State v. Dan Jones (public drunk). You stated in your letter that the officer pursued the defendants from a point some one mile within Florence County to a point two miles into Williamsburg County.

The general rule was stated in the case of [State v. Gasque, 241 S.C. 316, 128 S.E.2d 154, 155 \(1962\)](#):

Some crimes are of such a nature that they may be committed partly in one county and partly in another. When an offense is committed partly in one county and partly in another, that is, where some acts material and essential to the offense and requisite to its consummation occur in one county and some in the other, the accused may be tried in either.

As to the driving under the influence charge, it would seem that this offense, being a continuing and indivisible one, was committed in both Florence and Williamsburg Counties. This being the case, venue would lie in either county but of course not in both. See, 22 C.J.S. Criminal Law § 177, 7 West's South Carolina Digest, Criminal Law § 112.

As for the public drunkenness charge, our research has indicated no cases applying the proscriptions of Section 16-558(a) (1962 Code of Laws) to this particular situation. There seems to be a diversity of holdings on the subject as evidenced by the cases collected in [8 ALR 3d 930](#) §§3, 4; 35 Words and Phrases, [Public Places](#).

For venue to exist in Florence County, the Court must find that the offense was committed in Florence County pursuant to the [Gasque](#) rule state [supra](#). For this state of events to exist, it is incumbent to find that the violation of 'public drunkenness' was a continuing offense, i.e. the defendant was committing the offense while riding in the automobile in Florence County.

I appreciate your inquiry very much and trust this answer is sufficient to meet your needs. If I can be of further assistance, please feel free to contact me.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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