

1974 S.C. Op. Atty. Gen. 103 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3738, 1974 WL 21255

Office of the Attorney General

State of South Carolina

Opinion No. 3738

March 21, 1974

**\*1 In Re: Release of Drunk Drivers**

Honorable A. J. O'Tuel  
Sheriff  
Darlington County  
Darlington, South Carolina

Dear Sheriff O'Tuel:

You have inquired as to the validity of the practice of keeping drunk drivers in jail for a period of four hours before releasing them on bond or bail.

This Office has heretofore advised that arresting officers and custodial officials are justified in following the practice of refusing to release an arrested drunk driver on bond or bail until such person has sobered to the extent that he is able to take care of himself. I think what throws most people off in this area is the assumption that everyone who is jailed is entitled as a matter of constitutional right to immediate release upon bond or bail. This has never been the law. A person who has been lawfully arrested is entitled to reasonable bond within a reasonable time. Normally, a person who is placed in jail at night, for example, would not be entitled as a matter of right to be released on bond or bail until normal office hours the next morning. The setting of bond or bail is a judicial function, and not an administrative function.

This letter is not intended to say that the custom that has grown up under which police officers and custodial personnel are permitted to accept bail or bond and release prisoners before the opening of court the next morning is not lawful. The South Carolina Supreme Court has held that such a system may be lawfully maintained.

In conclusion, it is the advice of this Office that the arresting officer and custodial personnel are justified in refusing to release a drunk driver on bond until he is in such physical condition sobriety-wise that he can take care of himself. No particular amount of time such as four hours is contemplated.

Yours very truly,

Joseph C. Coleman  
Deputy Attorney General

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