

1974 WL 27487 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 15, 1974

***1 In Re: Breathalyzer Test, When Administration Lawful**

Colonel P. F. Thompson
Director of Law Enforcement
State Highway Patrol
Post Office Box 191
Columbia, South Carolina 29202

Dear Colonel Thompson:

You have inquired whether or not a uniform traffic ticket charging DUI must have been completed before the defendant can be required to submit to a breathalyzer test, with suspension of his driver license being the penalty for refusal.

Section 46-344, 1962 Code of Laws of South Carolina, as amended, [1973 Cum. Supp.] reads in part:

‘(a) Any person who operates a motor vehicle upon the public highways of this State shall be deemed to have given consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of intoxicating liquor.’ [Emphasis Added].

It appears that some confusion has arisen because of language in a previous opinion to you from this Office stating that the defendant must be ‘charged’ with drunk driving before the test can be given. The word ‘charged’ in such previous opinion was used in the broad, generic sense, rather than in the technical sense that there must be a formal written charge of DUI [uniform traffic ticket or arrest warrant] before such test could lawfully be required.

It is the opinion of this Office that a defendant who has been arrested for DUI may be required by the arresting officer to submit to a breathalyzer test under provisions of Section 46-344, even though no uniform traffic ticket or arrest warrant has yet been issued.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

1974 WL 27487 (S.C.A.G.)

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.