

1974 WL 27542 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 13, 1974

*1 Mr. Wiley G. Ouzts
P. O. Box 11068
Capitol Station
Columbia, South Carolina 29211

Dear Mr. Ouzts:

Thank you for your letter to the Attorney General which has been referred to me for consideration. The facts, as I understand them from your letter, are that you were arrested for driving under the influence of intoxicating liquor (DUI) in Horry County and given a breathalyzer test which read .14%. The traffic ticket informed you of the time and place at which your case would be prosecuted. However, you did not attend, and consequently, you were convicted in your absence.

Private counsel was retained sometime thereafter. He advised you that nothing could then be done and that you had just failed to meet court. It is my opinion that your attorney's assessment was entirely correct.

South Carolina law prescribes that following notice of a disposition in a magistrate's court the Defendant has five days within which to request a new trial from the magistrate (Section 43-143) or ten days in which to serve upon the magistrate notice of intention to appeal to a higher court (Section 7-103). Failing in this, the case is ended as a matter of law. [State v. Dickert, 260 S.C. 490, 197 S.E.2d 89 \(1973\)](#).

In order to discourage persons from driving under the influence, the Legislature has provided that upon receiving a report from a magistrate of a conviction for DUI, the South Carolina Highway Department must suspend the subject driver's license for a period of six months. (Section 46-348) This suspension of driving privileges follows as a consequence of the conviction and is applied in all instances where the conviction is reported to the South Carolina Highway Department. As you noted, however, some counties have instituted a procedure and program (ASAP) whereby a person convicted of DUI may, upon the satisfactory completion of certain conditions imposed by the courts, avoid having his DUI conviction reported to the Highway Department.

As evidenced by a recent opinion dated October 15, 1974, this office is well aware of the problems surrounding this program. However, your letter indicates that your arrest and prosecution were made by the State Highway Patrol, which does not and cannot lawfully participate in the various county ASAP programs, so that alternative apparently was never available to you, despite your attorney's advice to look into it.

Therefore, it is my opinion that your arrest was lawful, your conviction valid, and your case ended.

Very truly yours,

Richard P. Wilson
Staff Attorney

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