

1973 S.C. Op. Atty. Gen. 11 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3441, 1973 WL 20906

Office of the Attorney General

State of South Carolina

Opinion No. 3441

January 5, 1973

***1 In Re: Taking of Blood Sample for Alcohol Content Test; Admissibility of Evidence.**

Honorable Tom Lydon
City Attorney
1206 Bull Street
Columbia, South Carolina

Dear Mr. Lydon:

You have inquired as to the admissibility of evidence of blood-alcohol content derived from a test of the defendant's blood sample taken without his consent.

When there is some clear indication that the suspect might be under the influence of alcohol or drugs, a blood sample may lawfully be taken and tested, and the evidence thereby obtained is admissible at trial. The consent of the defendant is not necessary. Limitations, as follows, are placed upon such lawful procedure:

(1) Body intrusions on the mere chance that the desired evidence might be obtained are forbidden. Fundamental human interests require that there be a clear indication that the desired evidence will be found.

(2) The procedure used must not entail appreciable danger to the accused and must be done according to accepted medical practices.

See [Schmerber v. California](#), 384 U.S. 757, 16 L.Ed.2d 908, holding that the 5th Amendment privilege against self-incrimination applies to testimony or communications, and not to compulsion that makes the accused the source of physical evidence.

Whether or not the City of Los Angeles or the State of California ([Schmerber](#)) had a statute permitting the withdrawal of blood specimens is not revealed in the opinion; the ruling was made without regard to whether or not such a statute existed, and the principle announced by [Schmerber](#) is not contingent upon the existence of such a statute.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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