

1973 S.C. Op. Atty. Gen. 101 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3500, 1973 WL 20961

Office of the Attorney General

State of South Carolina

Opinion No. 3500

March 29, 1973

***1 In Re: Breathalyzer Tests; Right to Presence of Counsel.**

Honorable Andrew Shealy
Chief of Police
City Hall
Post Office Drawer 538
Newberry, South Carolina 29108

Dear Chief Shealy:

You have inquired as to whether or not a defendant in a DUI case has the right to the presence of his lawyer at the giving of a breathalyzer test, and, if so, whether or not the lawyer must be permitted to photograph the proceedings.

The statute (Section 46–344 Cumulative Supplement) does not give such right to a defendant, and, in the opinion of this Office, neither do any of the so-called due process cases, such as Miranda, Gideon, et al. The case that, arguendo, comes closest to such a holding is the line-up case, which held that a defendant has the right to the presence of his lawyer at a line-up proceeding. There are factual differences in the giving of an alcohol test and a line-up procedure, however, that makes an extension of the line-up theory to breath-alcohol tests doubtful.

It is the opinion of this Office that a DUI defendant does not have the right to the presence of a lawyer at the giving of a breathalyzer test, but that an attorney may be permitted to be present if he arrives on the scene in such time as not to delay the test, and if he does not interfere with its administration. In no event does the attorney have the right to photograph the proceedings.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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