

1973 S.C. Op. Atty. Gen. 143 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3523, 1973 WL 20983

Office of the Attorney General

State of South Carolina

Opinion No. 3523

May 11, 1973

*1 Officer Robert C. Land
P. O. Box 44
West Columbia, South Carolina

Dear Officer Land:

You have requested that this office answer the following question with regard to the breathalyzer test:

May a person charged with driving under the influence of intoxicants, who refuses to take the breathalyzer test, later change his mind and demand the test?

Our research did not reveal any South Carolina cases on this question. However, there are several cases from states which have implied consent laws which address this question. In Ohio, where the above described situation occurred and the police officer refused to administer the test after the first refusal, the court said:

‘ . . . (I)T would be inconsistent with the purposes of the statute to hold that either the arresting officer or the officers on duty at the police station were required to turn aside from their other responsibilities and arrange for administration of a belated test when once appellant had refused to submit . . . ’ [In re Brooks](#), 27 Ohio St. 2d 66, 271 N.E. 2d 810, 812 (1971).

This holding is followed in a number of cases. These cases hold that the officer should in no way consider the refusal to take the breathalyzer test as a conditional refusal subject to withdrawal. Once the accused has refused to submit to the test, he cannot later defeat revocation of his driving privilege by showing that he changed his mind. [Kruger v. Fulton](#) 169 N.W. 2d 875, 878–79 (Iowa-1969), [Neet v. Hult](#), 26 A.D. 2d 970, 274 N.Y.S. 2d 913, 915 (1966).

Based on the above stated cases, it is the opinion of this office that once an accused has been requested to take the breathalyzer test and has been advised of his rights and the consequences of his refusal, he may not refuse to take the test and later change his mind and request such a test. Such a case would allow the accused to wait until the alcohol content of his blood had substantially dissipated and then take the breathalyzer. It would seem that this result would greatly inhibit the application of the implied consent law.

I hope this adequately answers your question. If you have any further questions in this regard, please feel free to contact me.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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