1972 S.C. Op. Atty. Gen. 21 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3240, 1972 WL 20388

Office of the Attorney General

State of South Carolina
Opinion No. 3240
January 5, 1972

***1** Lt. William E. Wells
S. C. Law Enforcement Division
P. O. Box 1166
Columbia, S. C. 29202

Dear Lt. Wells:
You have posed the following question for the opinion of this office: Is the refusal to submit to the breathalyzer test admissible evidence in a trial for driving under the influence?

Prior to the implementation of the Implied Consent Law in South Carolina, the Supreme Court of this State in the case of State v. Smith, 230 S. C. 167, 94 S.E.2d 886, held that the admission of and comment on evidence of refusal to submit to a chemical test is permissible within the laws of this State. The South Carolina Supreme Court recently in the case of State v. Eddie Dois Miller, Opinion No. 19322, filed November 29, 1971, held that the law as set forth in the Smith case (supra.) was still the law in this State and was in accord with the great weight of authority on the point.

Accordingly, it is the opinion of this office that the refusal to submit to a breathalyzer test is admissible evidence in the trial for driving under the influence.

I trust that this has been sufficient to answer the question which you posed. If we may be of any further assistance, please do not hesitate to call.
Very truly yours,

Timothy G. Quinn
Assistant Attorney General

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