1972 S.C. Op. Atty. Gen. 29 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3245, 1972 WL 20392

Office of the Attorney General

State of South Carolina
Opinion No. 3245
January 12, 1972

***1** The one test provision as set forth in Section 46–344, 1962 Code of Laws of South Carolina as amended refers to one complete test, which allows an analysis to be made of the subject's breath for the purpose of determining the alcoholic content of his blood.

TO: Major W. J. Seaborn
South Carolina State Highway Patrol

You have requested that an opinion be rendered by this office as to the meaning of the provision of the South Carolina Implied Consent Law which states, 'No person shall be required to submit to more than one test for any one offense for which he has been charged . . .'

There have apparently been instances in which persons charged and arrested for driving under the influence have agreed to take the 'breathalyzer test' and by their actions or nonaction have prevented an analysis from beings made of the alcoholic content of their blood. The method most frequently used to prevent such an analysis is for the subject to breathe an inadequate amount into the 'breathalyzer machine. The question then raised is whether the subject can be required to breathe into the machine again in order to obtain a breath sample adequate for the purpose of analysis.

The Supreme Court of South Carolina has yet to rule on this precise question, however, other jurisdictions have held that the 'breathalyzer test' is complete when the subject has expelled a sufficient amount of breath to run the test and permit an analysis to be made. RE: Spencer (Mo. App.) 439 S.W.2d 8. It would seem to follow that South Carolina would accede to this view. The apparent logic behind the law requiring no more than one test is to prevent over zealous testing officers from administering a second test if the first indicates a low blood-alcohol ratio.

The Implied Consent Law is not served and is, in fact, thwarted if an attempt, which is not completed, serves to preclude the administration of a complete test resulting in an analysis of the subject's breath indicating the alcoholic content of his blood.

It is established in the majority of the jurisdictions that an incomplete test, not justified by the physical inability of the subject and his refusal to successfully complete the test, constitutes a refusal under statutes providing for suspension of drivers' licenses. Jansen v. Fulton (Iowa) 162 N.W.2d 438; Walton v. Roanoke, 204 Va. 678, 133 S.E.2d 315. It is, therefore, the opinion of this office, based upon the applicable law as stated above, that the 'one test' referred to in Section 46–344 of the 1962 Code of Laws of South Carolina as amended means a complete test, which allows an analysis to be made of the subject's breath for purposes of determining its alcoholic content.

Timothy G. Quinn
Assistant Attorney General

1972 S.C. Op. Atty. Gen. 29 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3245, 1972 WL 20392