

1972 S.C. Op. Atty. Gen. 67 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3268, 1972 WL 20414

Office of the Attorney General

State of South Carolina

Opinion No. 3268

March 1, 1972

***1 Re: Driving Under Influence, Chemical Tests**

The Honorable B. B. Oswald
Magistrate for Lexington County
Lexington County Courthouse
Lexington, South Carolina

Dear Judge Oswald:

You have inquired of this office whether or not a blood test requested by a defendant following a Breathalyzer test constitutes a second test by the State in derogation of 46–344(a) of the 1962 South Carolina Code of Laws Annotated where the blood test results were analyzed by a chemist from the South Carolina Law Enforcement Division.

Section 46–344(a) clearly provides that no person shall be required to submit to more than one test for which he has been charged. The section also provides that the person shall be allowed to have a qualified person conduct an additional test and that the law enforcement officer conducting the test or the arresting officer, shall assist that person in contacting a qualified person to conduct the additional test.

You have described a case where the defendant requested a blood test, called his doctor who refused to come or to assist, and who then requested to be taken to the Columbia Hospital for the test. It is our understanding that the sample was drawn at Columbia Hospital, and when the laboratory refused to analyze it, the same sample was taken to a SLED chemist for analysis.

It is the opinion of this office that the question of whether the defendant was ‘required to submit’ to a second test within the meaning of the statute merely runs to the admissibility of the blood test results into evidence and would not be grounds for dismissal of the charges.

Section 46–344 sets certain standards for the testing of a person's breath to determine alcoholic content of the blood. The ‘test’ referred to in the section prohibiting more than one test restricts the law enforcement agency from requiring more than one Breathalyzer test, and does not refer to a chemical analysis of the defendant's blood.

It should be borne in mind that Section 46–344 also provides that where, even after the officer has assisted him, the defendant is unable to obtain an additional test, such failure shall not preclude the admission of the Breathalyzer test into evidence.

It is hoped that the foregoing will be of assistance to you.

With kindest regards and best wishes, I am
Very truly yours,

G. W. Thomason
Assistant Attorney General
Administrator for Magistrate Court

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