

Crimes Committed With Koozies¹:
Open Container Laws
Legal Question of the Week
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Special notice: We've gone appendix crazy down here in the legal office – if you are growing weary of my limited sense of humor, do the following:

1. Skip to the end.
2. Read the last paragraph about checkpoints.
3. Clip and save the appendix on open container laws.
4. Go back to your regularly scheduled program.

For the rest of you, let's look at the surprisingly complicated world of open containers and automobiles.

Let's overlook for a moment that this is my seventh legal update and two of those seven have now dealt with alcohol related issues. Let's put aside the fact that your legal advisor apparently spends much of the day thinking about, reading about, and writing about alcohol. Let's ignore what conclusions might be drawn from that and let's instead look at several statutes concerning open containers.

Generally, it is illegal to have an open container of an alcoholic beverage in the passenger compartment of a vehicle depending on the circumstances. There are four specific statutes that you must know to completely enforce the open container laws in North Carolina.

STATUTE #1: N.C.G.S. 20-138.7 makes it a misdemeanor to:

1. Drive a motor vehicle on a highway or public vehicular area
2. While there is an alcoholic beverage other than in the unopened manufacturer's original container
3. In the passenger area AND
4. While the driver is consuming alcohol or while alcohol remains in the driver's body.

¹ Koozie: the insulating devices most commonly used for beer bottles or cans. They are made of neoprene, which has such good insulation that it is used to make wetsuits as well. Bet you didn't know what they were called. That's why God created Google, my friend.

Just like in DWI cases, a person “drives” a car when he is in actual physical control of a vehicle with the motor running, whether the car is moving or not. This covers all alcoholic beverages and only requires that the seal on the bottle or can be broken.

Interesting fact pattern: Driver goes into a bar, has one beer, comes back out and turns the car engine on. His buddy sits next to him with an open beer. The driver is guilty of violating 20-138.7. Obviously, there are varied and easier ways to break this law.

STATUTE #2: N.C.G.S. 18B-401 makes it a misdemeanor to:

1. Transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the unopened manufacturer’s original container.
2. It is a separate crime for the driver to consume a malt beverage or unfortified wine while driving the motor vehicle on a highway or public vehicular area.

Here’s where I really amaze you: fortified wine is wine with an alcoholic content of not more than 24% by volume. Unfortified wine is wine with an alcoholic content produced only by natural fermentation (and the alcoholic content is thus less than fortified wine but more than malt beverage). Malt beverage is a beer, malt liquor, etc., which contains between 0.5% to 6% alcohol by volume. If you need more info than this, you’re going to have to catch Tony Staley on his way back and forth from Hendrix Street. He’ll answer all your alcohol related questions.

If they park their motor vehicle on a public street with the motor running and there is a bottle of rum lying on the back seat and the seal on the bottle has been broken, they are guilty. Again, there are a multitude of fact situations that would violate this statute.

And Now, A Fable² From The Peanut Gallery:

Once upon a time (last week), detectives were investigating a serious case. A witness came forward with some information in that case, but was very fearful of retaliation from the suspects. This witness was unwilling to talk to anyone except for our very own Officer Petula Sellers. It seems that Officer Sellers had previously had an occasion to come into contact with this witness in carrying out her duties as a police officer. Because Officer Sellars had taken the time to do her job properly and form a relationship with this witness, the witness agreed to speak with detectives and there was a major break in the investigation.

The moral of the story (because fables have morals, see above) is that you should always conduct yourself with professionalism when dealing with the citizens of our great

² Fable: A short allegorical narrative making a moral point. Google, people, google!

city. You never know when a little courtesy shown to someone might later pay off in a big way. I could also extend this moral to life outside of the police department, but I'm your legal adviser and not the Dalai Lama. But a hearty pat on the back for Officer Sellers. Now back to our legal update.

STATUTE #3: N.C.G.S. 20-138.2C makes it a misdemeanor to:

Possess an unopened alcoholic beverage in the passenger area of a commercial vehicle.

Commercial vehicles are defined in N.C.G.S. 20-4.01(3d). I won't bore you with the details, but it deals with tractors and trailers and commercial passenger vehicles. I'd rather talk about spirituous liquor and fortified wine.

One fact pattern would be if they drive a big tractor/trailer meeting the Gross Vehicle Weight Ratio (GVWR) set out in 20-4.01(3d) on a highway or public vehicular area with an unopened beer on the passenger seat – that would be a violation of this statute.

STATUTE #4: N.C.G.S. 20-138.7(a1) makes it an infraction:

1. For ANY person to possess
2. An alcoholic beverage
3. Other than in the unopened manufacturer's original container
4. In the passenger area of a motor vehicle
5. While the motor vehicle is on the highway or highway right-of-way.

This statute also makes it an infraction to:

1. Consume
2. An alcoholic beverage
3. In the passenger area of a motor vehicle
4. While the motor vehicle is on the highway or highway right-of-way.

The motor vehicle need not be in operation, it is simply an infraction to possess or consume if parked on the highway or right-of-way. This law applies to highways, streets, and highway rights-of-way, but does NOT apply to public vehicular areas. It applies to both the driver or passenger, whoever is in possession or is the consumer.

This law does not apply to the following vehicles: buses, taxicabs, etc.; the living areas of a mobile home; or a house trailer.

These two offenses are infractions and are not a moving violation. They are waivable offenses, so they can be paid off without a court appearance.

A Note On Checkpoint Avoidance

Here's a pretty common fact pattern. You and your buddies have set up a driver's license checkpoint, or you are running a DWI checkpoint pursuant to a departmental plan and supervisor approval. Your checkpoint is set up in such a way that a vehicle wanting to avoid your checkpoint may make a legal turn prior to being stopped. Dan Drunk makes the legal turn and is followed and stopped by an officer working at the checkpoint. Is the stop legal?

In court, the defense lawyer will argue that you observed no bad driving and the defendant did nothing to give rise to reasonable suspicion. Many District Court Judges will be very suspicious of this stop. Here's what the North Carolina Supreme Court said in State v. Foreman, 351 N.C. 627 (2000):

"Although a legal turn, by itself, is *not* sufficient to establish a reasonable, articulable suspicion, a legal turn in conjunction with other circumstances, such as the time, place and manner in which it is made, *may* constitute a reasonable, articulable suspicion which could justify an investigatory stop. As the United States Supreme Court recently stated in *Illinois v. Wardlow*, 'flight--wherever it occurs--is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.'"

This is good for us, but we still have to convince a judge that the time, place, and manner circumstances were enough to stop the car. But there is another way that is much easier: make it a part of your systematic plan to stop every vehicle that turns on the street before the checkpoint.

This tip comes courtesy of then-Chief Justice Frye in a concurring opinion in Foreman: "I would add that if a systematic plan for an impaired driving checkpoint pursuant to *N.C.G.S. § 20-16.3A* provides for stopping every car that turns off the highway within the perimeters of the checkpoint, then it is unnecessary to justify such a stop on the basis of reasonable and articulable suspicion. In such case, the stop is based on the systematic plan rather than the discretion of the officer or an articulable suspicion of criminal activity."

If it is part of your DWI checkpoint plan to stop every vehicle that turns before the checkpoint (in addition to whatever pattern you are stopping at the checkpoint itself), you no longer have to justify the stop by reasonable suspicion. You have taken discretion out of the decision to stop, which is clearly legal under case law. You would just include this in your DWI plan or make it clearly understood if it is a driver's license or seatbelt checkpoint. Obviously, this plan would require the manpower necessary to stop all of those cars or a particular pattern of those cars. And officers should be prepared to testify in court as to this part of the checkpoint plan.

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APPENDIX
OPEN CONTAINER QUICK REFERENCE GUIDE

- **NORTH CAROLINA GENERAL STATUTE 20-138.7** makes it a misdemeanor to:
 1. Drive a motor vehicle on a highway or public vehicular area
 2. While there is an alcoholic beverage other than in the unopened manufacturer's original container
 3. In the passenger area AND
 4. While the driver is consuming alcohol or while alcohol remains in the driver's body.

- **N.C.G.S. Chapter 18B-401** makes it a misdemeanor to:
 1. Transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the unopened manufacturer's original container.
 2. It is a separate crime for the driver to consume a malt beverage or unfortified wine while driving the motor vehicle on a highway or public vehicular area.

- **N.C.G.S. Chapter 20-138.2C** makes it a misdemeanor to:

Possess an unopened alcoholic beverage in the passenger area of a commercial vehicle.

- **N.C.G.S. Chapter 20-138.7(a1)** makes the following behavior only an infraction:
 1. For ANY person to possess
 2. An alcoholic beverage
 3. Other than in the unopened manufacturer's original container
 4. In the passenger area of a motor vehicle
 5. While the motor vehicle is on the highway or highway right-of-way.

This statute also makes it an infraction to:

1. Consume
2. An alcoholic beverage
3. In the passenger area of a motor vehicle
4. While the motor vehicle is on the highway or highway right-of-way.