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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 10, 2004

Mary C. Ammons, LPN
Detention Center Nurse
Marion County Detention Center
2715 East Hwy 76, Suite D
Mullins, South Carolina 29574

W. T. Johnson, Major
Director of Detention
Marion County Detention Center
2715 East Hwy 76, Suite D
Mullins, South Carolina 29574

Dear Ms. Ammons and Major Johnson:

In a letter to this office you questioned whether individuals who have been evaluated and determined to be mentally ill or mentally retarded and ordered committed to a state mental health facility for in patient care or treatment may be placed in jail for safekeeping. You indicated that these individuals have not been determined to have committed any crime. You particularly referenced the provisions of S.C. Code Ann. Section 44-23-220 (2002) which provides that

No person who is mentally ill or mentally retarded shall be confined for safekeeping in any jail. If it appears to the officer in charge of the jail that such a person is in prison, he shall immediately cause the person to be examined by two examiners designated by the Department of Mental Health or the Department of Disabilities and Special Needs or both, and if in their opinion admission to a mental health or retardation facility is warranted, the officer in charge of the jail shall commence proceedings pursuant to Sections 44-17-510 through 44-17-610, or Section 44-21-90. If hospitalization is ordered the person shall be discharged from custody of the officer in charge

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of the jail and shall be admitted to an appropriate mental health or retardation facility.

You also asked whether it is within the scope of authority of the probate court to order that Section 44-23-220 be disregarded and that you hold a mentally ill person for safekeeping.

As set forth, Section 44-23-220 prohibits an individual who is mentally ill or mentally retarded from being incarcerated in any jail. However, in reviewing your question, other statutory provisions need to be addressed. S.C. Code Ann. Section 44-13-10 (2002) provides that

Pending his removal to a State mental health facility an individual taken into custody or ordered to be admitted may be temporarily detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the county governing body, supervisor or manager may fix, but he shall not, except because of and during an extreme emergency, be detained in a nonmedical establishment used for the detention of individuals charged with or convicted of penal offenses. The county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained under this section. (emphasis added).

An opinion of this office dated March 29, 1995 determined that

while we have concluded that “absent extreme emergency”, a mentally ill person should not be detained in a jail...this statutory provision, nevertheless, authorizes the temporary detention of a mentally ill person “pending his removal to a state mental health facility....”

Another opinion of this office dated May 3, 1979 stated that, referencing Section 44-13-10, “...absent extreme emergency, an individual awaiting transportation to the South Carolina State Hospital should not be detained in a jail.”

Consistent with Section 44-13-10, in cases of “extreme emergency”, pending transportation of an individual to a State mental health facility, an individual may be detained in a correctional facility and the facility would be responsible for that individual’s

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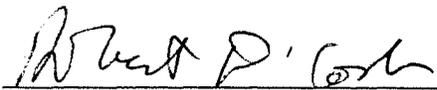
safekeeping. However, as further provided by such statute, "(t)he county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual" confined in such circumstances. As to your question regarding whether such action disregards Section 44-23-220, the confining of an individual pursuant to Section 44-13-10 does not disregard Section 44-23-220 but is additional authorization for detaining individuals in cases of "extreme emergency" pending their being transported to a State mental health facility. However, inasmuch as such detention is limited to situations of "extreme emergency" I would assume that such detentions are rare and not routinely done.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General