



HENRY McMASTER  
ATTORNEY GENERAL

November 3, 2006

Sam W. White, Chief  
Union Public Safety Department  
215 Thompson Boulevard  
Union, South Carolina 29379

Dear Chief White:

In a letter to this office you referenced that recently a City of Union public safety officer arrested a defendant for trespassing after notice and possession of drug paraphernalia. I assume for purposes of this opinion that these offenses are within the jurisdiction of the municipal court. When the officer took the defendant to the Union County jail, she was not accepted since the Union County sheriff has a standing order that the particular defendant not be jailed. The sheriff indicated that he was not going to accept the defendant "because she was mentally challenged." You indicated that you knew that the subject had a history of mental problems and had been in several treatment facilities but she has been released to the community on each occasion. You also indicated that the defendant has a long history of drug abuse.

The sheriff indicated that the defendant should be taken to the Union County Mental Health Center. The defendant was taken there and examined. According to the report of the Center forwarded with your letter, the individual who conducted the examination noted that the defendant was "disoriented" and did "not appear to know the date, time of day, or place. She seems confused about what we are doing and why." Reference was made to a long and extensive history of substance abuse. The individual concluded that "I cannot see any particular reason from a mental health standpoint that she should not be safe to be in jail."

According to your letter, following the examination, the defendant was transported back to the Union County jail along with the documentation from the mental health center. The sheriff continued to refuse to admit the prisoner. Subsequently, you made arrangements to turn the defendant over to her family on a uniform traffic ticket following consultations with the Union municipal judge.

Referencing such, you have raised the following questions:

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1. Does the sheriff have the authority to refuse the admission of a prisoner that does not have a life threatening condition?
2. Was the sheriff required to accept the defendant after the evaluation by the mental health center?
3. Under what conditions may a sheriff refuse admission of a prisoner?
4. If the sheriff is required to accept a prisoner and refuses to do so, what is the proper response?

You also forwarded a copy of a contract between the City of Union and Union County regarding the housing of city prisoners in the county jail.

Because a contract has been entered into between the City and the County, any response to the particular situation you addressed would be dependent at least in part upon the interpretation of such contract. Therefore, the ultimate resolution of your questions is dependent upon the particular facts involved and the terms of the contract. However, as noted in a prior opinion of this office dated November 15, 1985, "...this office does not have the authority of a court or other fact-finding body...(and, therefore,)...we are not able, in a legal opinion, to adjudicate or investigate factual questions." As a result, this office cannot in an opinion determine how the referenced contract involved between the City and the County should be interpreted as to the particular facts you presented. Only a court or other fact-finding body can adjudicate or investigate factual questions. However, to be of assistance, I will outline the general law applicable to the situation as addressed by you.

Before examining your question regarding responsibility for incarceration of inmates, it should be noted that as to a person believed to be mentally ill, state statutes establish the procedure for handling such situations. S.C. Code Ann. § 44-13-05 et seq. provide for the taking into custody of such individuals for evaluation by proper authorities. Section 44-13-05 states that

[e]xcept as provided for in Sections 56-5-2930 and 56-5-2950, if a law enforcement officer observes a person conducting himself in a manner that causes the law enforcement officer to reasonably believe that the person is mentally ill or is suffering from chemical dependency and because of that condition poses a likelihood of serious harm to himself or others or if a criminal offense that carries a penalty of less than one year and that does not involve a victim who could seek a warrant for the person's arrest has occurred, the law enforcement officer may take the person into protective custody and transport the person to the local mental health center or a crisis stabilization program, if available in their jurisdictions, for examination and

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pre-admission screening and evaluation of psychiatric and chemical dependency emergencies.

Such procedures and any others similarly applicable must be followed if the relevant circumstances arise in a particular situation.

In reviewing the questions outlined in your letter, certain State statutory provisions are relevant. S.C. Code Ann. § 24-5-10 states that generally,

[t]he sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law. (emphasis added).

I am unaware of any statutes directly commenting on a county jail's responsibility to house defendants arrested for offenses within the jurisdiction of a municipal court. However, an opinion of this office dated June 5, 1991 dealt with the issue regarding whether when county jails are overcrowded, may they refuse prisoners from cities, weekenders or family court litigants. The opinion referencing Section 24-5-10 stated that

I am unaware of any State statutory provisions authorizing county jails to refuse admission of prisoners. As referenced, the county jail is given the responsibility pursuant to Section 24-5-10 to receive persons delivered to the jail.

As to individuals convicted of offenses, S. Code Ann. § 24-3-30 states that

(A) Notwithstanding any other provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections, and the department shall designate the place of confinement where the sentence must be served...If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. (emphasis added).

As to the question of financial responsibility regarding prisoners incarcerated, prior opinions of this office have dealt with the subject of municipal prisoners housed in county jails. An opinion of this office dated January 6, 2004 referencing other prior opinions of this office stated that

...a municipality is responsible for the care and maintenance of prisoners arrested and/or convicted of state or municipal violations within the jurisdiction of a municipal court if these prisoners are lodged in a county jail. However,...a county is responsible for the care and maintenance of prisoners charged with state law violations within the jurisdiction of the court of general sessions....(The opinion further noted that )...[w]ithin these guidelines, this office has, however, stressed the importance of resolving the question of fees for housing prisoners by means of a contract between the city and county...

The opinion particularly noted that “[i]n most jurisdictions, the matter of a county jail’s responsibility to accept prisoners from a municipality and which entity is financially responsible for their care has been resolved by contract.” An opinion of this office dated August 22, 2001 indicated that as to the question of whether a county or municipality would be responsible for the non-emergency care of persons charged with a municipal court offense who are housed in a county detention facility, “...there is authority which would indicate that the municipality would be responsible for the costs of incarceration of a person charged with a municipal court offense.”

While a municipality may be ultimately responsible for the costs of care of a prisoner in a county facility, as explained in the January 6, 2004 opinion referenced previously:

...we have been careful to distinguish between financial responsibility for the housing of prisoners on the one hand and a jailer’s obligation to the court and under statute to accept prisoners pursuant to judicial order on the other. In an opinion of this office dated January 9, 1992, while we advised that “matters relating to financial responsibility be resolved by contract...”, we also recognized therein that there is apparently “an obligation on the part of the county to accept a prisoner pursuant to Section 24-5-10...” Thus, the issue of financial responsibility for housing municipal prisoners in a county jail must not be confused with the jail’s general obligation to accept a prisoner ordered to a county facility by a municipal court.

An opinion of this office dated July 8, 1998 dealt with the question of a county prison’s right to refuse to accept prisoners sentenced by the municipal court it deems inappropriate for confinement at the facility. Reference was made to prisoners who had a disability. Reference was made to Section 24-5-10 in stating that “...we advised that we were ‘unaware of any State statutory provision authorizing county jails to refuse admission of prisoners.’” That opinion further noted that

...[t]he custodian of a prison on receiving a commitment can only do what the commitment orders him to do, that is, receive and safely keep the prisoner...[I]t is helpful to note that Section 24-5-10 requires a sheriff or jailer to “receive and safely

keep in prison any person delivered or committed.”...A jailer owes a duty to the public at large.

That opinion concluded that “...in the absence of a judicial order or some other authority requiring a prisoner’s release, a prison custodian would not be authorized to release an individual prior to the service of the full term ordered by the committing judge.” That opinion further stated that the order of a judge sentencing an individual “...must be carried out by the jailer or custodian regardless of any disagreement he might have with it or any belief he might hold that it is invalid. Unless it is reversed or modified in the courts, it will be deemed to be binding upon the custodian.” That opinion commented further that “...if a municipal court sentences a defendant to the county stockade ...based upon the court’s determination that a prisoner is ‘able-bodied’, it is not for the jailer to ‘second guess’ the judge. If the judge has erred or incorrectly applied the law in a given instance, such must be modified by a court, not by corrections officials or the county.”

That opinion further commented on a jail’s responsibility as to a prisoner who is injured. Particular reference was made to a prisoner arrested by a probation agent noting an opinion dated January 28, 1992 which had noted with approval statements that

...if a person is arrested with a violation arrest warrant by a probation agent and then taken to a state, county or municipal jail..., then the jail is required by law to accept the prisoner for detention, upon delivery of the prisoner and a copy of the violation arrest warrant. And the jailer has no discretion to refuse to accept the prisoner for detention...[I]f a prisoner is delivered or committed to jail and has some injury requiring medical attention, the sheriff or jailer is required by law to accept delivery or commitment and then see to the prisoner’s medical needs....

As to convicted prisoners sentenced to incarceration, the referenced July 8, 1998 opinion further commented that:

...while we have often concluded that the financial obligations between city and county should be resolved contractually, we have been careful to distinguish between financial responsibility for the housing of prisoners on the one hand, and a jailer’s obligation to the court and under statute to accept prisoners pursuant to judicial order, on the other.

It was noted in the opinion that mandamus or other legal actions have been brought against jail administrators in other states for refusing to receive prisoners at their facilities. The opinion concluded that

...county jail officials do not possess the discretion to refuse to accept prisoners sentenced to the county stockade by the municipal court on the basis that such prisoners are physically unable to work or for any other reason. The order of the municipal court must be obeyed unless set aside or modified by a court.

It was further stated that

...it is true that this office has consistently advised that matters of financial responsibility concerning the housing of prisoners committed to a county detention facility by municipal authorities should be resolved by contract. However, by no means does that remove the duty of the county jailer or detention officers to obey the order of a municipal court sentencing an individual to a county facility. Absent some superseding or modifying order, county officials possess no authority to release such prisoner so committed by the municipal court and may not refuse to accept the prisoner. In short, a jailer may not "second guess" the order of a judge. Failure to comply with a court order could result in contempt, a writ of mandamus or other remedy against the jail officials.

Therefore, the issue of financial responsibility for housing municipal prisoners in a county jail must not be confused with the jail's general obligation to accept a prisoner ordered to a county facility by the municipal court.

As to your specific question regarding the authority of a sheriff to refuse the admission of a prisoner that does not have life threatening conditions, as set forth, pursuant to Section 24-5-10, a sheriff "shall have custody of the jail in his county...and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them...." Consistent with such and with the prior opinions noted above, in the opinion of this office a sheriff does not have the authority to refuse the admission of a prisoner properly presented by the arresting authority when that prisoner does not have any life threatening condition or some other disability, such as that addressed by provisions such as Sections 44-13-05 et seq. regarding mental illness or chemical dependency, which may necessitate other proceedings for handling the prisoner. Similarly, in the absence of any other indication of nonsuitability for incarceration, in the opinion of this office, the sheriff in the situation you addressed was required to accept the defendant after the evaluation by the mental health center. Of course, any contracts between a municipality and a county must also be taken into consideration in a particular set of circumstances.

You also raised a question as to under what conditions may a sheriff refuse admission of a prisoner? Generally, in the absence of extenuating circumstances, such as those addressed by Sections 44-13-05 et seq. or other statutes specifically providing for the manner of handling particular defendants in certain circumstances, a sheriff or jailer is not typically authorized to refuse

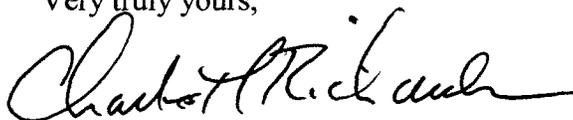
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the admission of a prisoner. Again, contractual arrangements between a municipality and a county may impact any requirement of incarceration.

As to your question of what is the proper response if a sheriff is required to accept a prisoner and refuses to do so, a writ of mandamus or other type court order could be sought ordering the incarceration of a particular inmate could be sought. Of course, any contractual obligations would also have to be considered in evaluating a manner of proceeding in such instance.

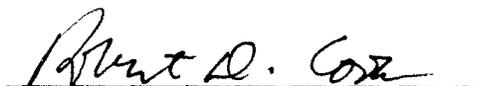
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General