



HENRY McMASTER
ATTORNEY GENERAL

August 25, 2009

Philip A. Foot, Director
Detention Center, Beaufort County
P. O. Drawer 1228
Beaufort, South Carolina 29901-1228

Dear Mr. Foot:

In a letter to this office you referenced the provisions of S.C. Code Ann. §23-3-1100 which state as follows:

(A) If a person is charged with a criminal offense and is confined for any period in a jail of the State, county, or municipality, or a jail operated by a regional jail authority, a reasonable effort shall be made to determine whether the confined person is an alien unlawfully present in the United States.

(B) If the prisoner is an alien, the keeper of the jail or other officer must make a reasonable effort to verify whether the prisoner has been lawfully admitted to the United States or if the prisoner is unlawfully present in the United States. Verification must be made within seventy-two hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined to be an alien unlawfully present in the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(C) Upon notification to the United States Department of Homeland Security pursuant to subsection (B), the keeper of the jail must account for daily expenses incurred for the housing, maintenance, and care of the prisoner who is an alien unlawfully present in the United States and must forward an invoice to the Department of Homeland Security for these expenses.

Mr. Foot
Page 2
August 25, 2009

(D) Nothing in this section shall be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release. However, pursuant to the provisions of Section 17-15-30, a court setting bond shall consider whether the person charged is an alien unlawfully present in the United States.

(E) The State Law Enforcement Division shall promulgate regulations to comply with the provisions of this section in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

(F) In enforcing the terms of this section, no state officer shall attempt to make an independent judgment of an alien's immigration status. State officials must verify an alien's status with the federal government in accordance with 8 USC Section 1373(c).

You indicated that pursuant to such provision, you have sent three invoices for reimbursement for housing illegal aliens to the Department of Homeland Security. You state that you received a telephone call from an immigration agent after your third invoice which indicated that the federal government would not pay these invoices.

As a result of such, you have questioned whether you should continue to invoice the Department of Homeland Security as the referenced statute provides or discontinue such practice. You stated that state law instructs your department to notify Immigration upon "booking" a suspected illegal inmate and it has been your practice to comply. You have questioned whether you should discontinue to notify Immigration since the federal government refuses to provide reimbursement for housing illegal aliens as required by the above provision.

While subsection (E) of such provision states that SLED "...shall promulgate regulations to comply with the provisions of this section...", apparently there have been no regulations promulgated. As a result, we are limited by the provisions of the statute itself as to its mandate. Again, subsection (B) requires a jailer to notify the federal Department of Homeland Security if the prisoner is an alien unlawfully in this country and subsection (C) requires the jailer to invoice the Department for expenses incurred in housing and maintaining the prisoner. Inasmuch as state law requires such, I can only conclude that you should continue to comply with such provisions. As to the failure of the federal government to reimburse your agency for the expenses incurred, I would suggest that you contact the Department of Homeland Security itself as to the reasons for their refusal to reimburse. As we stated in a prior opinion, "the question of the applicability of federal law to a particular situation is a factual matter which is beyond the scope of an opinion of this Office." Op. S.C. Atty. Gen., May 8, 1989. See also, Op. S.C. Atty. Gen., March 6, 2008.

Mr. Foot
Page 3
August 25, 2009

Inasmuch as this office does not interpret federal law, it would be a matter for that agency to advise you as to its policies.

With kind regards, I am,

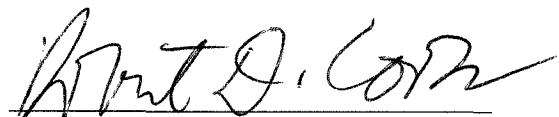
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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