



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 18, 1995

Informal Opinion

Chief Broadus E. Albertson
Walhalla Police Department
P. O. Box 1099
Walhalla, South Carolina 29691

Dear Chief Albertson:

You have asked for our opinion regarding the processing and service of warrants at the Oconee County Detention Center. You have stated the following:

[a]s its name implies, this is the only detention center in the county and is located within the city limits of Walhalla. All the municipalities, the sheriff's department and the state agencies utilize this facility. Regardless of whether a warrant is issued by the Seneca, Westminster, or the Sheriffs Department, this police department is called to serve all warrants at the Detention Center.

The stock answer when questioned is that the Detention Center is within the Walhalla City limits. I am requesting a ruling determining whether the other agencies can serve their own warrants at this county detention facility; especially in view of the fact that officers from those agencies have driven to the facility with the warrants in hand.

I am enclosing copies of previous opinions of this Office which address various aspects of your question. The first opinion, dated October 18, 1994, responds to the question of the authority of detention officers to serve warrants pursuant to S. C. Code Ann. Sec. 23-1-145 and may be helpful to you in solving your problem.

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Also enclosed is an opinion, dated May 12, 1983, regarding the exact same question which you pose. There, we addressed the specific question of whether a Seneca police officer could serve a warrant for an offense committed in Seneca upon an inmate in the County Detention Facility of Walhalla. We recognized that Seneca police officers would have no jurisdiction to serve warrants at that facility because it was beyond their jurisdiction. However, we referenced Section 22-5-190 which provides for the procedure when an arrest warrant is issued by a municipal judge and the defendant is not within the municipality but is within the state. That section provides as follows:

...the officer issuing such warrant may send it to the magistrate having jurisdiction over the area in which such person may be found, which magistrate may endorse the warrant which shall then be executed by the magistrate's constable or the sheriff of the county of the endorsing magistrate.

The 1983 opinion thus concludes that

...it would appear that from the facts you presented, since the jail is located outside of the territorial jurisdiction of the city of Seneca, a deputy sheriff or magistrate's constable would have to serve the warrant.

See also, Op. Atty. Gen., May 14, 1980 (copy enclosed).

Of course, aside from the procedure authorized by Section 22-5-190, Walhalla police officers would be empowered to serve the warrants, as would sheriff's deputies, and as noted above, arguably, county detention officers. Therefore, I can only suggest some form of cooperative arrangement between your agency and those officers empowered by law to serve warrants in the town of Walhalla.

You have also asked whether municipal police officers are included within the term "local law enforcement official" as employed in S. C. Code Ann. Secs. 44-17-430 and 44-17-440. Section 44-17-430 provides in pertinent part:

[i]f a person believed to be mentally ill and because of this condition likely to cause serious harm if not immediately hospitalized cannot be examined by at least one licensed physician pursuant to Section 44-17-410 because the person's whereabouts are unknown or for any other reason, the petitioner seeking commitment pursuant to Section 44-17-410

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shall execute an affidavit stating a belief that the individual is mentally ill and because of this condition likely to cause serious harm if not hospitalized, the ground for this belief and that the usual procedure for examination cannot be followed and the reason why. Upon presentation of an affidavit, the judge of probate for the county in which the individual is present may require a state or local law enforcement officer to take the individual into custody for a period not exceeding twenty-four hours during which detention the person must be examined by at least one licensed physician as provided for in Section 44-17-410(2).

Section 44-17-440 states:

[t]he certificate required by Section 44-17-410 must authorize and require a state or local law enforcement officer, preferably in civilian clothes, to take into custody and transport the person to the hospital designated by the certificate.

Enclosed is a copy of an opinion, dated October 13, 1978, which interprets the predecessor to Section 44-17-430. Prior to amendment in 1992, the statute (as well as Section 44-17-440) required service by any "officer of the peace". In that regard, we addressed the question whether such language included municipal police officers and we concluded that it did. We stated:

...it is the opinion of this Office that it is the duty of any officer of [the] peace, including a municipal police officer to execute such orders issued by the probate judge when directed to do so by the probate judge. However, as you are aware, the general law with respect to sheriffs imposes on the sheriff the ultimate responsibility to "serve, execute and return every process, rule, order or notice issued by any court of record in this State..." (Section 23-15-40 of the 1976 Code of Law). Also, by Section 14-23-440 of the 1976 Code of Laws it is provided that any sheriff or constable shall execute the orders of a probate court. (emphasis added).

While the language of Sections 44-17-430 and -440 has been altered slightly to its present "state or local law enforcement officer", I do not believe this is a change which alters our earlier opinion. It is thus my opinion that the 1978 opinion still governs and a municipal

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police officer is required to serve and execute the orders referenced in Section 44-17-430 and the certificate referenced in Section 44-17-440.

You have also asked "which powers may be used by law enforcement officers to take these individuals into custody." Clearly, when acting pursuant to Section 44-17-430, a law enforcement officer is acting under court order or pursuant to process. As was stated by the Court of Appeals of South Carolina in Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312 (1987),

[t]he actual taking into custody of appellant was performed by a peace officer by order of the probate judge in accordance with the provisions of Section 44-17-430, Code of Laws of South Carolina, 1976. We therefore hold that an action for false imprisonment cannot be maintained against the respondent.

353 S.E.2d at 314-315. See also Section 44-17-440 (providing immunity from civil liability for an officer acting in accord with this article). And, as we noted in Op. Atty. Gen., March 19, 1981, "[b]oth Sec. 44-17-430 and 44-17-440 place certain duties upon officers of the peace regarding hospitalization under this article." We stated in that opinion that the duties thereunder were mandatory even though the patient might be a resident of another county.

Moreover, it is well-recognized that

[t]he duty of an officer in executing the mandate of a judicial order in the nature of a commitment is purely ministerial and his power with respect thereto is limited and restricted to compliance with its terms.

Op. Atty. Gen., March 27, 1995, citing 60 Am.Jur.2d Penal and Correctional Institutions, Sec. 22: See also, Rogers v Marlboro Co., 32 S.C. 555, 558, 11 S.E. 383 (1890) [when process is placed in hands of officer by proper authority, his duty is to execute it, not question it]. Failure to properly execute orders of court or to serve process is punishable by contempt. As our Supreme Court recognized in State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983),

[t]he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments,

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order and writs of the courts; and consequently to the due administration of justice.

279 S.C. at 217. In Brantley, the Court held a sheriff in contempt for failure to carry out an order of the court to which the sheriff had verbal notice even though the sheriff was sheriff of a county other than the one where court was being held. Said the Court,

[t]he court's order was valid, was directed to appellant in his official capacity as an officer of the court, and his wilful failure to comply constituted a constructive contempt of court

....

Id. Thus, if the order or process is placed in the hands of a municipal police officer, pursuant to Sections 44-17-430 and -440, it is that officer's ministerial duty to carry out the order to the best of his ability.

In that regard, I am enclosing a copy of an opinion dated March 24, 1976, which discusses the officer's specific duties in carrying out an order pursuant to Section 44-17-430. Therein, we noted that officers into whose custody a mentally ill person is taken have "a duty implied by their office to insure that such individuals do not indeed cause serious harm to themselves or others." Thus, the officer is authorized to use such force as is reasonably necessary to carry out this duty. This, of course, is a matter within the discretion of the officer so long as the force used is reasonable under the circumstances. See, 6A C.J.S. Arrest, § 49. I am enclosing an informal opinion recently issued by me regarding a police officer's authority to use force to enter a dwelling in order to seize a person suspected of being mentally ill, where that officer is acting by virtue of an order issued pursuant to Section 44-17-430.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph
Enclosures