



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 21, 1995

Harold D. Sims, Chief of Police
Blackville Police Department
213 N. Lartigue
Blackville, South Carolina 29817

Re: Informal Opinion

Dear Chief Sims:

You note that as Chief of Police of the town of Blackville you are having difficulties regarding the transportation of mental patients. The Polly Best Mental Health Facility is located in Barnwell, South Carolina, and is approximately 10 miles from Blackville. Further, you state as follows:

[a]nytime a patient voluntarily refers ... [himself] to the Polly Best Facility for mental assistance and they have a Blackville address, we are notified to come to that location for transportation of that subject to Columbia. I feel that my police department has no jurisdiction in the Barnwell area and cannot take that subject into custody for the purpose of transportation from the Polly Best Facility to a Mental Health Facility in Columbia, S.C. I feel that this falls within the purview of the Sheriff of Barnwell County.

If a County Deputy Sheriff takes a subject into custody while that subject is violating the law outside the Blackville City Limits and he is deemed a mentally ill person, does that mean that my Department is responsible for his transportation just because that subject is from the Town of Blackville? In that case, how about if he is in another County of this State? Do

we still go outside our jurisdiction to take that person into custody for transportation purposes? I feel that this is not proper.

It is first helpful to review the various provisions contained in the South Carolina Code regarding the transportation of mental patients. S.C. Code Ann. Sec. 44-17-430 provides that

[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 because the persons whereabouts are unknown or for any other reason, the petitioner seeking commitment pursuant to Section 44-17-410 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). (emphasis added)

Section 44-17-440 further provides:

The certificate required in 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 certification. A friend or relative may transport the individual to the mental health facility designated on the application, if the friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation for the patient and that the friend or relative freely chooses to assume that responsibility. (emphasis added).

In addition, Section 44-17-530 states:

[w]ithin three days after the petition for judicial commitment set forth in Section 44-17-510 is filed, exclusive of Saturdays, Sundays and legal holidays, the court shall appoint counsel to represent the person if counsel has not been retained and the court shall appoint two designated examiners, one of whom must be a licensed physician, to examine the person and report to the court their findings as to the person's mental condition and need for treatment. The examination must be made at a suitable place not likely to have a harmful effect upon the person's health. On a report of the designated examiners of refusal to submit to examination, the court shall order the person to submit to examination. If the person refuses to obey the court's order the court may require a state or local law enforcement officer to take the person into custody for a period not exceeding twenty-four hours during which time the person must be examined by the two designated examiners, (emphasis added).

And Section 44-17-870 provides:

[i]f a patient involuntarily committed to a facility under the jurisdiction of the State Department of Mental Health is absent without proper authorization, a state or local law enforcement officer or employee of the department appointed pursuant to Section 44-11-70, upon the request of the facility superintendent or director or a designee and without the necessity of a warrant or a court order, may take the patient into custody and return the patient to a facility designated by the department. (emphasis added).

See also, § 44-52-50. (Court may require any law enforcement officer to take a person into custody for examination for chemical dependency. Written certificate authorizes any law enforcement officer to transport to a facility).

The foregoing provisions have one thing in common. In each, the General Assembly has designated that "a state or local law enforcement officer" is empowered to exercise authority with respect to a mental patient. By statute, the General Assembly has vested jurisdiction upon any "local law enforcement officer" with respect to the

referenced situations notwithstanding the limits upon that officer's territorial jurisdiction generally. Other such exceptions to the restrictions upon a law enforcement officer's jurisdiction are evidenced elsewhere in the Code. See, e.g. Sections 5-7-120 (authorizes law enforcement officers to respond in cases of emergency to another municipality upon request); § 23-1-210 (intra-state transfer of municipal law enforcement officers on a temporary basis); § 17-13-40 (municipal police officers may make arrests of all offenders within a radius of three miles of the corporate limits). Thus, in a situation where such foregoing statutes are applicable, the officer is provided with specific authority beyond his normal territorial jurisdictions.

Prior opinions of this Office recognize the mandatory duty of officers with respect to the detention and custody of mental patients where the statutes specifically impose such a duty, notwithstanding the limits of the territorial jurisdiction of the officer, generally.

In an opinion, dated October 13, 1978, the question was raised as to whether or not municipal police officers were required to serve an "Order of Detention" issued by a probate judge pursuant to Section 44-17-430. In response, it was stated that

... 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 Laws ...). 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.

Likewise, in an opinion, dated March 19, 1981, we addressed the issue of the duty of peace officers to transport emergency patients hospitalized in one county but residents of another. There, we said

[c]onstruing the statutes, it appears that the duty of peace officers extends to the transportation of emergency patients who are hospitalized under the provisions of § 44-17-410 et seq. even though the patients may be residents of another county.

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See also, Op. Atty. Gen., No. 4310 (March 24, 1976) (the language of the emergency commitment provision implies that officer who takes patient into custody pursuant to "Detention Order" has the duty to maintain that custody until the individual is either committed to the hospital or released); Op. Atty. Gen., April 8, 1983 (with respect to § 44-17-870, any peace officer notified by the Department of Mental Health, upon the request of a superintendent, director or his designee, must take into custody a patient absent from a Department of Mental Health facility without authorization); Op. Atty. Gen., No. 4085, August 19, 1975 (Order of Probate Judge requires any law enforcement officer to take the patient into custody).

At the same time, it is well-recognized that a law enforcement officer possesses no authority beyond his jurisdiction unless such is expressly authorized by statute. As was concluded in an opinion, dated October 10, 1978, a municipal police officer possesses no authority outside his jurisdiction merely upon the call of the sheriff. The opinion concluded:

[b]ecause of the express limitations of Section 17-13-40 (which authorizes police officers to make an arrest when in pursuit within three miles of the corporate limits of his municipality) ... the jurisdiction of the municipal police officer could not be extended simply by virtue of a call from another officer outside the municipality. Unless some other express authority exists which would allow such a practice ... the municipal police officer would be beyond his authority.

And we recognized in Op. No., 87-67 (June 22, 1987), that in

... an opinion dated August 28, 1961 former Attorney General McLeod concluded that a sheriff was not authorized to deputize a municipal police officer so as to vest him with the authority of a deputy sheriff to make arrests and perform other duties of a deputy. As to the precise question of whether a municipal police officer was authorized to assist a deputy sheriff on a call outside the municipal limits, reference was made to the fact that the authority of a municipal police officer is generally restricted to the limits of his municipality except when in "hot pursuit".

Thus, based on the foregoing, it is my advice that where a specific statute expressly authorizes a police officer to act outside his jurisdiction, he may do so. This includes the

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various commitment statutes, cited above, related to the emergency commitment of mental patients, etc. It also includes taking into custody a patient who has left a facility without authorization upon proper notification and request to the officer by the Department of Mental Health officials. Generally speaking, these statutes authorize the police officer to act beyond his jurisdiction upon the Order of the Probate Judge or upon the request of Department of Mental Health officials.

Absent a specific statute, however, a municipal police officer has no authority beyond his jurisdiction. Therefore, I advise that, where there is no specific statute or order of court applicable to extend a municipal police officer's jurisdiction beyond the municipality, that officer is without authority as a police officer to maintain or detain a mental patient in his custody beyond the jurisdiction of the municipality.¹

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.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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¹ Of course, cooperation between law enforcement agencies is always advisable and we have consistently urged such cooperation. Thus, where a municipal police officer is acting within his jurisdiction, such cooperation with other law enforcement agencies is advisable.