

6576 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 15, 1998

David E. Rushton, Immediate Past President
S.C. Jail Administrators' Association
Newberry County Detention Center
3239 Louis Rich Road
Newberry, South Carolina 29108

Re: Informal Opinion

Dear Mr. Rushton:

You have sought an Opinion of this Office regarding the following:

[a]s you are aware, many County Jails in S.C. are suffering overcrowding. At the same time, the S.C. Department of Corrections is making S.C. Counties wait approximately two weeks to send inmates sentence[d] to more than 90 days to the Reception and Evaluation Center.

Please advise me of any state law which requires Counties to wait until bed space is available at SCDC before transferring them there. It is within S.C. State Law to transfer inmates, sentenced to more than 90 days immediately? The only reference I have seen made to this is Atty. Gen. Op. 2832 1969-70.

This would be a tremendous help in helping alleviate overcrowding in the County Facilities. Please respond ASAP as this is a pressing matter.

Request

Mr. Rushton
Page 2
October 15, 1998

Law / Analysis

Your question is addressed in several prior opinions of this Office. In an Opinion, dated April 30, 1991, we referenced S.C. Code Ann. Sec. 24-3-20 which provides in pertinent part as follows:

- (A) [a] person convicted of an offense against this State and sentenced to imprisonment for more than three months is in the custody of the South Carolina Department of Corrections, and the department shall designate the place of confinement where the sentence must be served. Nothing in this section prevents a court from ordering a sentence to run concurrently with a sentence being served in another state or an active federal sentence. The department may designate as a place of confinement any available, suitable, and appropriate institution or facility, including a county jail or prison camp, whether maintained by the department, or otherwise. If the facility is not maintained by the department, the consent of the sheriff of the county where the facility is located must first be obtained

The April 30, 1991 Opinion, relying upon the foregoing statute, and in response to the question whether the Department of Corrections is authorized by law to refuse to accept prisoners committed by the several counties, thus stated:

[t]here is no indication that the Department of Corrections is granted any discretion to refuse to accept prisoners; indeed, it would appear that in using the word "shall," the General Assembly intended that the Department should be required to accept all prisoners duly sentenced. It is my understanding that this is the interpretation which these statutes have long been given by the Department of Corrections and that your [Legal Advisor's] advice as well.

For the foregoing reasons, it is the opinion of this Office that the Department of Corrections has no authority to refuse to accept prisoners whose sentences are in the categories which

Mr. Rushton
Page 3
October 15, 1998

require that they be committed to the Department of Corrections.

In another Opinion of June 5, 1991, we addressed the issue of whether "the South Carolina Department of Corrections were able to block admissions from counties during periods of non-compliance, then could county jails refuse admission after they have reached their operating capacity, if the purpose of the refusal were to prevent endangerment and constitutional violations that are multiplied by overcrowding?" We responded, reiterating the April 30, 1991 Opinion, that the Department could not refuse admission of prisoners sentenced "in the categories which require that they be committed to the Department of Corrections." Likewise, we emphasized that the county could not refuse prisoners, either, concluding that we were

... 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 and safely keep in prison any person delivered or committed" to the jail. Therefore I am unaware of any statutory basis for a county to refuse prisoners typically considered within their responsibility to keep. ...

Finally, in an Informal Opinion, dated January 2, 1996, we reaffirmed earlier opinions, including the April 30, 1991 Opinion. Specifically, we addressed the issues of whether the Department of Corrections could refuse at any time an inmate who is duly sentenced by the courts to a period of more than 91 days as well as the question of whether if an inmate is sentenced to the Department of Corrections for more than 91 days, when the inmate becomes a "State" inmate. We referenced Op. No. 3860 of 1974 which cited § 24-3-60 of the Code. Section 24-3-60 states:

[t]he clerks of the courts of general sessions and common pleas of the several counties in this State shall immediately after the adjournment of the court of general sessions, in their respective counties, notify the Department of Corrections of the number of convicts sentenced by the court to imprisonment in the penitentiary. The department, as soon as it receives such notice, shall send a suitable number of guards to convey such convicts to the penitentiary.

Mr. Rushton
Page 4
October 15, 1998

In the 1996 Informal Opinion, we interpreted the foregoing statute in the following way:

[a]s stated, Op. No. 3860 of 1974 emphasizes that the effect of Section 24-3-60 is to "place all persons convicted of an offense against the State of South Carolina in the custody of the Department of Corrections when the sentence exceeds three (3) months" Beyond that, the statutes are somewhat ambiguous as to any question of exact and precise timing. As noted, Section 24-3-60 requires the Department to pick up prisoners sentenced to the Penitentiary (greater than 90 days) "as soon as" the notice is received from the Clerk of Court who is to provide such notice "immediately" upon the adjournment of the term of General Sessions. The term "immediately" has been construed by our courts to mean with reasonable promptness under the circumstances. Walker v. New Am. Cas. Co., 157 S.C. 381, 154 S.E. 221, 224 (1937); Edgefield Mfg. Co. v. Md. Cas. Co., 78 S.C. 73, 58 S.E. 969 (1907). The phrase "as soon as" has been described as follows:

[i]t has been said that the phrase is not to be taken in all cases in its absolute sense, and that it generally means "with reasonable promptness;" and often denotes merely a reasonable time.

The phrase also means "immediately." 6A C.J.S. "As".

Further, as noted above, we have emphasized that Section 24-3-30 intended that "authority for determining the facility for confining individuals convicted of State offenses whose sentences exceed three months be placed with the State Board of Corrections." While a particular local facility must approve its being a designated facility, I am advised that such is done pursuant to contract on a routine basis.

Thus, upon sentencing for greater than 90 days, a prisoner becomes the custody of the Department of Corrections. The Department is required by Section 24-3-60 to pick up such

Mr. Rushton
Page 5
October 15, 1998

prisoners as soon as it is notified by the Clerk of Court unless, of course, the prisoner is designated by the Department to remain in the local facility to serve his sentence upon approval of the local authorities. If the prisoner is to be transferred to a Department facility, such pick-up is required to be done by the Department with due diligence or reasonable promptness. Until such transfer is accomplished, of course, the local facility is required to "safely keep" such prisoners.

Again, we reiterated that the Department of Corrections possesses no authority to refuse at any time an inmate who is duly sentenced by the courts to a period of greater than 90 days.

These various opinions remain in effect and unaltered by this Office. If there is anything further, please advise.

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

RDC/an