

The State of South Carolina

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May 25, 1990

The Honorable James R. Metts
Sheriff, Lexington County
Lexington County Sheriff's Department
Post Office Box 639
Lexington, South Carolina 29072

Dear Jimmy:

In a letter to this Office you questioned whether a law enforcement officer is responsible for returning an individual taken into custody for examination by a physician in an emergency situation to the place the individual was picked up if the person is released. Such individuals are taken into custody pursuant to Sections 44-17-430 and 44-52-50 of the Code. The former statute provides that as to an individual believed to be mentally ill, upon execution and presentation of an affidavit

...the judge or probate for the county in which the individual is present may require any officer of the peace to take the individual into custody for a period not exceeding twenty-four hours during which detention he shall be examined by at least one licensed physician... If within twenty-four hours the person in custody is not examined by a licensed physician or, if upon examination, the physician does not execute the certification... the proceedings shall be terminated and the individual in custody shall be immediately released. (emphasis added.)

Pursuant to Section 44-52-50

...the person seeking emergency admission shall execute a written affidavit stating that he believes the person to be chemically dependent, and

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because of this condition, poses a substantial risk of harm to himself or others if not immediately hospitalized... Upon presentation of the affidavit, the court may require any law enforcement officer to take a person into custody for a period not exceeding twenty-four hours. During the detention he must be examined by a licensed physician. If within the twenty-four hours, the person in custody is not examined by a licensed physician or, if upon examination, the physician does not execute the certificate required, the proceedings must be terminated and the individual in custody must be immediately released. (emphasis added.)

Other provisions specifically authorize a law enforcement officer to further transport an individual to a hospital or treatment facility if such is deemed necessary. See: Section 44-52-50 ("The written certificate and affidavit shall authorize and require any law enforcement officer to transport the person to a treatment facility if confirmation has been obtained from the treatment facility that a bed is available); Section 44-17-440 ("The certificate ...shall authorize and require any officer of the peace preferably in civilian clothes, to take the individual into custody and transport him to the hospital designated by the certification.") Such provisions also provide the officer immunity from civil liability in association with providing such transportation.

A prior opinion of this Office dated March 24, 1976 dealt with the question of whether a law enforcement officer must stay with an individual taken into custody pursuant to a detention order issued by a probate judge. The opinion stated

Peace officers into whose custody these persons come have a duty implied by their office to insure that such individuals do not indeed cause serious harm to themselves or others. Furthermore, the language in ...(present Code Section 44-17-430)... is clear that the legislature intended that such persons remain in the physical custody of peace officers until some disposition is made.

Statutes are silent as to any specific obligation of law enforcement to return any individual released to the place from where he was originally taken.

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Legislative clarification should be sought as to a law enforcement officer's obligation to return an individual in the circumstances described above to the place from where he was originally taken. Also, such legislation could provide for immunity from liability in these circumstances. Any ambiguity as to an officer's obligation in such regard could also be resolved by further order of the probate court. However, pending such legislative clarification or further order of the court, I cannot refer you to specific authority as to your obligation to return such individuals.

With best wishes, I am

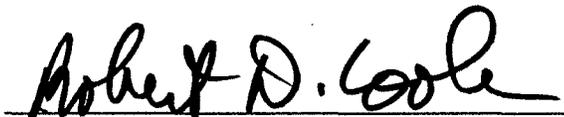
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/nw

REVIEWED AND APPROVED BY:



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