

4741 Lebray

# The State of South Carolina



## Office of the Attorney General

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January 9, 1992

Henry B. Richardson, Jr., Esquire  
Sumter County Attorney  
P. O. Box 1716  
Sumter, South Carolina 29151

Dear Mr. Richardson:

In a letter to this Office you questioned whether Sumter County is required to be financially responsible for prisoners of the City of Sumter charged with general sessions offenses who are housed in the Sumter County Correctional Center prior to the prisoners being formally charged with an offense by a warrant or indictment whichever occurs first. You noted that in a prior opinion of this Office dated September 6, 1979 it was stated that

... the county jail must accept the transfer of prisoners from the municipal jail when such prisoners are charged with offenses which are in the jurisdiction of the Court of General Sessions and that upon such a transfer, the financial responsibility of the municipality ends.

You stated that it is the position of the County that its responsibility only begins when a prisoner is formally charged by warrant or indictment with a general sessions offense. I assume you are referring to arrests made without a warrant. You stated further that

There is often a considerable lag between the time a prisoner is arrested and formally charged by City officials and, in the past, the County has billed the City for the cost of maintaining these prisoners until they have been formally charged. It is the contention

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of the City officials that an arrest constitutes a "charge" and, therefore, the County is financially responsible for the maintenance of the City prisoners as soon as they are placed in the County Correctional Center even though they have not been formally charged.

I am enclosing copies of three prior opinions dated July 22, 1986, March 6, 1990 and June 5, 1991 which you may wish to review. In particular, the March, 1990 opinion commented

... a municipality is responsible for the care and maintenance of prisoners arrested and/or convicted of state or municipal violations within the jurisdiction of the municipal court if these prisoners are lodged in a county jail. However, ... a county is responsible for the care and maintenance of prisoners charged with State law violations within the jurisdiction of the court of general sessions.

The opinion further noted that we were unaware of any statutes directly responsive to the question of whether a county can charge a municipality for housing municipal prisoners and whether a county can refuse to take a municipal prisoner. The opinion further stated:

... in most jurisdictions the matter of a county jail's responsibility to accept prisoners from a municipality and which entity is financially responsible for their care has been resolved by contract. Therefore, in the absence of legislation expressly responsive to such issue, consideration should be given to resolving this matter contractually.

As referenced by the June 5, 1991 opinion, Section 24-5-10 of the Code states

The sheriff shall have custody of the jail in his county and, if he appoints a jailer to keep it, ... the sheriff or

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jailer shall receive and safely keep in prison any person delivered or committed to either of them ....

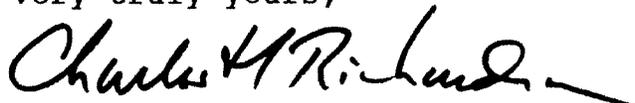
Consistent with the earlier opinions, this Office is not able in an opinion to resolve the question as to the precise time a county becomes financially responsible for a prisoner of a municipality that is housed in the county facility. While there apparently is an obligation on the part of the county to accept a prisoner pursuant to Section 24-5-10, as stated, we have recommended that matters relating to financial responsibility be resolved by contract. Of course, legislation could also be sought which would address this issue. As to the matter of the lag in time between when a prisoner is arrested and is formally charged the South Carolina Bench Book for Magistrates and Municipal Court Judges states

If an arrest is made without a warrant, the arresting officer should take the person to a magistrate or municipal court judge without unreasonable delay so that the judge may investigate the circumstances of the arrest and if proper, issue an arrest warrant.

Therefore, as to situations where an arrest is made without a warrant, there should not be any considerable lag between the time of arrest and the time a warrant is issued.

With kind regards, I am

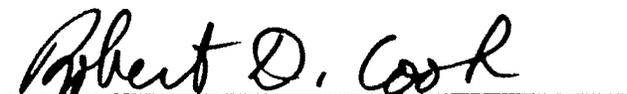
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosures

REVIEWED AND APPROVED BY:



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Robert D. Cook  
Executive Assistant for Opinions