

# The State of South Carolina



## Office of the Attorney General

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August 17, 1989

Honorable Michael J. Cavanaugh  
South Carolina Department of Probation,  
Parole and Pardon Services  
Post Office Box 50666  
Columbia, South Carolina 29250

Dear Mr. Cavanaugh:

I am in receipt of your request for an opinion of this agency involving the transportation of probation and parole violators from other states to South Carolina, pursuant to South Carolina warrants charging a violation of probation or parole. Particularly, the question that you seek the opinion on is as follows:

Is the transportation of a South Carolina prisoner pursuant to an arrest warrant charging a violation of probation or parole, a transportation incidental to an arrest where the prisoner is detained out-of-state pursuant to a fugitive arrest warrant based upon the warrant charging the probation or parole violation and where that warrant is not executed by a South Carolina probation and parole agent until all the extradition matters are resolved within the other state?

Under South Carolina law, a probation and parole agent has arrest powers limited by the statute. Particularly, Section 24-21-280 sets forth the general duties and powers of probation officers including "a probation officer shall have, in the execution of his duties, the powers of arrest

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and to the extent necessary the same right to execute process given by law to sheriffs." In an opinion in 1966, this office recognized that probation and parole agents are authorized by virtue of their power of arrest to transport prisoners as an incident to the arrest.

A close examination of the language of this statute [Section 24-21-280 of the South Carolina Code of Laws 1976] reflects no authority has been vested in probation and parole officers to take custody of and transport state prisoners. The only instance in which a probation and parole officer would be permitted to transport a prisoner under the language of this statute would be incidental to an arrest of the prisoner by said officer when the prisoner has violated the terms of his probation or parole.

1966 ATTY.GEN.OP. 2090, p. 196. In that opinion, our office opined that probation officers were not authorized to transport individuals to parole consideration hearings, that matter resting with the present custodial officials who are either the state or county prison guards. In the situation that you present in your opinion request, the transportation is of an individual who, under probation or parole, is already in a limited custodial nature with your agency pursuant to the terms of that release. There, a probation and parole agent has properly issued a warrant charging the named individual with a probation or parole violation. You have advised me that until the warrant is executed, it serves as a prison detainer, a notification triggering an internal administrative procedure as a result of which the jail or prison authorities will not release the prisoner in question until the department's personnel can be notified. Under your scenario, then a probation agent goes to the detaining state, places the prisoner under arrest pursuant to the South Carolina warrant, and then transports him directly to South Carolina to the county having jurisdiction over the alleged violation. See State v. Carter, Op. No. 23021, filed May 30, 1989. Under that circumstance, the scope of the transportation incidental to the lawful arrest is limited to taking the prisoner (parole or probation violator) from the out of state place of arrest to the place where the designated custodial authority is situated.

Honorable Michael J. Cavanaugh

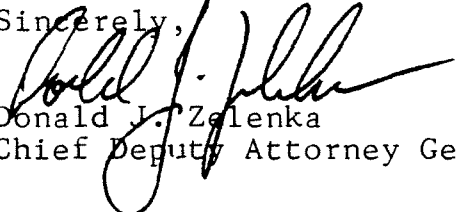
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In my opinion, since South Carolina probation and parole agents are authorized to make arrests for violation of probation or parole by statute, it necessarily follows that they can arrest on behalf of South Carolina a person properly detained in a sister state pursuant to a fugitive arrest warrant based upon the South Carolina warrant charging a violation of probation or parole and then transport that person to the proper custodial authority inside South Carolina. Of course, that transportation can occur only when extradition matters are resolved and particularly the identity of the arrested individual is clarified.

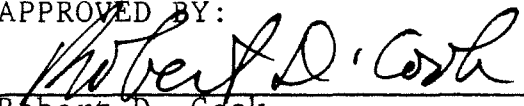
If you have any questions about this matter, please feel free to contact me.

Sincerely,

  
Donald J. Zelenka  
Chief Deputy Attorney General

bbb

APPROVED BY:

  
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