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The State of South Carolina



Office of the Attorney General

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October 15, 1986

Mr. Jerry A. Hyatt, Director
Sumter County Correctional Center
Route 8 Box 23
Sumter, South Carolina 29150

Re: Opinion Request No. 2418

1. Status of § 24-13-235, CODE OF LAWS (1976)
Voluntary Work Programs
2. Responsibility for Transporting Pre-Trial
Detainees from Local Jail to South
Carolina Department of Mental Health
Unit

Dear Mr. Hyatt:

I am in receipt of your opinion request to this office. In your request, you ask for responses to the following two questions:

1. Did the Omnibus Criminal Justice Improvements Act of 1986 affect voluntary work programs for county correctional facilities established pursuant to § 24-13-235, CODE OF LAWS (1976).
 2. Who is responsible for the transportation of unsentenced prisoners from a county correctional facility operated by county council to the South Carolina Department of Mental Health when ordered by the circuit court?
1. Concerning your first inquiry, I have reviewed the Omnibus Criminal Justice Improvements Act of 1986. The Act creates a new program--"work/punishment of inmates confined in local correctional facilities" in Article II. In that pertinent article, the only reference to the voluntary work program inquired about appears as follows:

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Section 24-13-950. The Department of Corrections shall, by January 1, 1987, develop standards for the operation of local inmate work programs. These standards must be included in the minimum standards for local detention facilities in South Carolina, established pursuant to Section 24-9-20, and the Department of Corrections shall monitor and enforce the standards established. The standards must be established to govern three types of local programs:

- (1) Voluntary work programs established pursuant to § 24-13-235; and
- (2) Local work/punishment programs ... ; and
- (3) Local public work programs"

Other than the establishment of these minimum standards and their enforcement by the Department of Corrections by January 1, 1987, it does not appear that the Omnibus Bill changed the voluntary work programs.

2. Concerning your second inquiry, you have advised me that the focus of this inquiry is on unsentenced pretrial detainees. According to the Department of Corrections, a Type IV facility is a local detention facility that can house long-term incarceratees, as well as state prisoners. This can be contrasted with a Type I institution which would be an overnight lockup unit where confinement may not exceed 48 hours.

Under your inquiry, you are concerned with the responsibility for transporting inmates within your custody and control to the Department of Mental Health for court ordered evaluations. There is no specific state statute that resolves this inquiry. Compare: S.C. CODE ANN. § 20-7-2175 (1976) (sheriff or his appointee shall convey juveniles to the Department of Youth Services, unless otherwise ordered by the court). Pursuant to § 24-5-10, the jailer "shall receive and safely keep in prison any person delivered or committed to either of them, according to the law." It further appears that employees of county correctional facilities have the status of peace officers "while performing their officially assigned duties relating

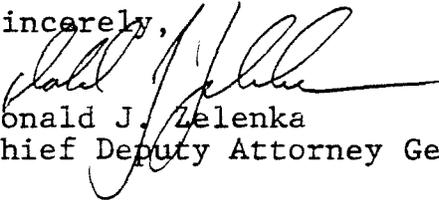
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to custody, control, transportation, or recapture of any inmate or prisoner in this state" S.C. CODE ANN. § 23-1-145 (1985 Supp.). As stated previously, the Code is silent on the issue of transportation of prisoners to the Department of Mental Health for court-ordered evaluation.

It is clear, however, that the employees have the statutory authority as peace officers concerning the "transportation ... of any ... prisoner ... anywhere in the state in any matter relating to the ... transportation ... of such prisoner." § 23-1-145. Once placed properly in their custody, we submit that the legal responsibility for transportation (a form of custody) rests solely upon the custodian, unless the law speaks otherwise. While agreements may be entered into to delegate the actual responsibility for delivery to the arresting agency or county sheriff, the legal responsibility will still rest upon the lawful custodian of the prisoner--the county correctional center--to ensure safe transportation to the Department of Mental Health, where custody will be temporarily transferred under court order according to law. See: § 44-23-410, § 44-11-20.

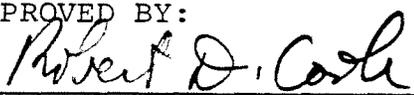
If you have any questions on this matter, please advise me.

Sincerely,


Donald J. Zelenka
Chief Deputy Attorney General

bbb

APPROVED BY:


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