

1981 S.C. Op. Atty. Gen. 104 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-82, 1981 WL 96608

Office of the Attorney General

State of South Carolina

Opinion No. 81-82

September 30, 1981

***1 SUBJECT: §§ 15–1–20 and 44–17–410 of South Carolina Code Ann. (1976).**

Section 15–1–20 is inapplicable to civil commitment proceedings and, therefore, does not extend the maximum twenty (20) day emergency detention period provided by § 44–17–410, where the twentieth day falls on Saturday, Sunday or a legal holiday.

TO: Larry W. Propes
General Counsel
South Carolina Department of Mental
Health

QUESTION:

1. Does South Carolina Code Ann. § 15–1–20 (1976), extend the maximum twenty day period of emergency detention provided by § 44–17–410, if the twentieth day falls on Saturday, Sunday, or a legal holiday?

AUTHORITIES CITED:

South Carolina Code Ann. (1976) §§ 15–1–20, 15–1–110, 15–9–10, 44–17–410; South Carolina Code Ann. (1976), Chapter 17, Articles 5 and 7; Act No. 99 of 1977; Act No. 300 of 1870; Act No. 311 of 1980; Independence Ins. Co. v. Independent Life & Ace. Ins. Co., 218 S.C. 22, 61 S.E.2d 399 (1950); Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970); Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.W.2d 374 (1972); South Carolina Electric & Gas Co. v. Public Service Commission, 272 S.C. 316, 251 S.C.2d 753 (1979); State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980); 17 South Carolina Digest 'Statutes' Key. No. 181(1) (West, 1952); 41 Am.Jur.2d Incompetent Persons, § 8; 2A Sutherland Statutory Construction § 45.05 (4th Ed. 1970).

DISCUSSION:

Section 44–17–410 provides the procedure for the emergency admission to a mental health facility of alleged mentally ill persons likely to cause serious harm. Within this statutory provision is the requirement that the Probate Court ‘. . . fix a date for a full hearing to be held . . . within twenty (20) days from the date’ of the admission of the alleged mentally ill person.

Section 15–1–20 provides:

The time within which an act is to be done shall be computed by excluding the first day and including the last; provided, however, that if the last day of the period so computed is a Saturday, a Sunday, or a legal holiday, such day shall be excluded and the time period shall run until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

The inquiry presented concerns whether § 15–1–20 extends the twenty (20) day period of emergency detention of a patient if the twentieth day falls on a Saturday, a Sunday, or a legal holiday. It is the opinion of this office that it does not.

It is axiomatic that the cardinal rule of statutory construction and interpretation is to ascertain and effectuate the legislative intent wherever possible. 17 South Carolina Digest 'Statutes', Key. No. 181(1) (West, 1952); 2A Sutherland Statutory Construction § 45.05 (4th Ed. 1970). As stated in Lewis v. Gaddy, 254 S.C. 66, 173 S.W.2d 376 (1970), 'all rules of statutory construction are subservient to the one that legislative intent must prevail.'

*2 A court may properly consider the title or caption of an act in aid of construction to show intent of the legislature. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.W.2d 374 (1972). The title to Act No. 311 of 1980, which last amended § 15-1-20, provides:

An Act To Amend Section 15-1-20, Code Of Laws Of South Carolina, 1976, Relating To The Computation Of Time In Civil Actions And Procedures, So As To Further Provide For The Computation Of Time When The Last Day Of The Period Is A Saturday, Sunday or Legal Holiday. [Emphasis added].

A lunacy proceeding * * * is a special proceeding, as distinguished from a criminal prosecution or a civil action under code practice. 41 Am. Jur.2d, Incompetent Persons, § 8. It is the position of this office that the involuntary civil commitment procedure established under the Code is a special proceeding. See, § 15-1-100, infra. Section 15-1-70 divides remedies into action and special proceedings. Section 15-1-80 states:

There shall be in this State but one form of action for the enforcement or protection of private rights and the redress of private wrongs which shall be denominated a civil action.

Section 15-1-90 defines 'action' as follows:

An 'action' is an ordinary proceeding in a court of justice by which a party prosecutes another party for the enforcement or protection of a right, the redress or preventing of a wrong or the punishment of a public offense.

Section 15-1-100 provides that '[e]very other remedy is a 'special proceeding'.' Finally, § 15-1-110 states that actions are of two kinds: civil and criminal. It is our opinion that civil commitment does not meet this definition of 'action', and must, therefore, under § 15-1-100, be a special proceeding to which § 15-1-20 is inapplicable.

It should also be noted that § 15-9-10 provides that civil actions shall be commenced by the service of a summons. Such is not the case in respect to the involuntary admission of an alleged mentally ill person. An emergency involuntary admission proceeding does not require the service of a summons but only the filing of a written application. All of the foregoing is pointed out in support of the position that the last amendment to § 15-1-20 was intended to apply only to computation of time in civil actions and procedures, and not to special proceedings.

Pursuant to §§ 44-17-410, an individual detained by the process of an emergency application may be confined for up to twenty (20) days in a mental health facility prior to the conduct of a hearing in the Probate Court. Upon analysis it seems clear, that the legislature did not intend to extend this prehearing confinement period, which severely curtails the patient's freedom, by enactment of a procedural statute such as § 15-1-20. The General Assembly with the enactment of § 44-17-410, balanced the necessity of protecting both the public and the individual patient by providing an expedited commitment process if circumstances of immediate harm so warrant, with the need to ensure that the mentally ill person is afforded due process protections.

*3 In addition, the civil commitment acts [Chapter 17, Articles 5 and 7, Title 44] are self-contained statutes that completely provide both procedural and substantive requirements for commitment of the alleged mentally ill. Although it has been held that conflicting statutes must be construed together as to render both operative, Lewis v. Gaddy, supra, this rule has no application '... in construing an act intended to be complete in itself.' Section 44-17-410 initiates the emergency commitment process preliminary to the hearing within twenty (20) days in the Probate Court. Within this provision are various time requirements which must be followed in an emergency commitment. Interestingly, when § 44-17-410 was amended by Act No. 99 of 1977, certain of these time schedules were altered to exclude Saturdays, Sundays and legal holidays in their computation. The twenty

(20) day period of detention, however, remained absolute without qualification by the exclusion of Saturdays, Sundays and legal holidays. Thus, a further indication that the legislature intended the period of emergency detention not to extend beyond twenty (20) days.

Further, as here, where there exists a conflict between a general statute and a specific statute, the specific statute prevails. See, [State v. Cutler](#), 274 S.C. 376, 264 S.E.2d 420 (1980). Section 44-17-410 is a specific statute pertaining to emergency commitment of mentally ill persons and summary detention of such persons prior to a hearing, as compared to § 15-1-20 which is more or less a general time statute for civil action and procedures.

The analysis leading to the conclusion that § 15-1-20 is inapplicable to the twenty (20) day period of detention set forth in § 44-17-410 is not without doubt, however. In [South Carolina Electric & Gas v. Public Service Com'n.](#), 272 S.C. 316, 251 S.E.2d 753 (1979), the Court discussed the extent of application of § 15-1-20 and concluded therein that it is applicable to all acts and proceedings originally found in Act No. 300 of 1870. Included within Act No. 300 was the then extent procedure for the commitment of the mentally ill. It must be recognized, however, that commitment procedures have subsequently been substantially changed and consolidated in a separate and complete act.

CONCLUSION

It is the opinion of this office that § 15-1-20 is inapplicable to the summary detention period authorized by § 44-17-410 and, therefore, cannot be construed to extend the twenty (20) day maximum.

Edwin E. Evans
Assistant Attorney General
Raymond G. Halford
Deputy Attorney General

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