



ALAN WILSON
ATTORNEY GENERAL

March 28, 2017

Ms. Elizabeth A. McLean, Esq.
Deputy Richland County Attorney
P.O. Box 192
Columbia, South Carolina 29202

Dear Ms. McLean,

Attorney General Alan Wilson has referred your letter to the Opinions section regarding whether Richland County is required to provide ambulance transportation to mentally ill persons pursuant to South Carolina Code of Laws § 44-17-440. Your letter states as follows:

The Richland County Sheriff's Department, as the local law enforcement agency of Richland County, currently provides transport for mentally ill person who have been certified and involuntarily admitted to a mental health or healthcare facility. In 2016, the South Carolina General Assembly passed Act 225..., which amended, among other sections, S.C. Code Ann. § 44-17-440, to add language related to emergency medical technicians.

...

The new language clearly allows transport of the mentally ill patient by an emergency medical technician when such services are engaged by a friend or when transporting between facilities. The Richland County Sheriff's Department asserts that the new language regarding emergency medical technicians requires Richland County, through its emergency services department, to provide ambulance transport for mentally ill person certified for admission. Given that the only mandatory language of the statute requires law enforcement to act, and also that Richland County, as a governmental entity, cannot take any person into custody, Richland County respectfully disagrees.

Thus, the question for your office's consideration is this:

Is Richland County, pursuant to S.C. Code Ann. § 44-17-440, mandated to provide ambulance transport for mentally ill persons under any circumstance?

Law/Analysis

It is this Office's opinion that S.C. Code Ann. § 44-17-440 does not mandate Richland County to provide ambulance transport for mentally ill persons.¹ In researching this opinion request, we have been

¹ Please note that this opinion is limited to the application of S.C. Code Ann. § 44-17-440 and expresses no opinion on a county's obligation to otherwise provide emergency services.

unable to locate an opinion issued by our state courts interpreting or applying Section 44-17-440 since it was amended by 2016 Act No. 225 on June 3, 2016. As a matter of first impression, we turn to the principles of statutory interpretation to guide our analysis. The primary rule of statutory construction requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where the statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). With these principles in mind, we turn to the text of the statute, related statutes, and legislative history.

As printed in the 1976 South Carolina Code of Laws, the text of Section 44-17-440 read as follows:

The certificate required by § 44-17-410(2) 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 said certification; *provided*, no person shall be taken into custody after the expiration of three days from the date of the certification. Any officer acting in accordance with the provisions of this article shall be immune from civil liability.

S.C. Code Ann. § 44-17-440 (1976 Code).

The General Assembly amended S.C. Code Ann. § 44-17-440 in 1982 which was titled in relevant part as "AN ACT TO AMEND SECTION 44-17-440... SO AS TO AUTHORIZE FRIENDS AND RELATIVES TO TRANSPORT INDIVIDUALS ALLEGED TO BE MENTALLY ILL TO THE APPROPRIATE HEALTH TREATMENT FACILITY." 1982 Act No. 389. Although the act authorized a friend or relative to transport the individual to the facility designated in the certificate required by Section 44-17-410, such authorization required the friend or relative to "read and sign[] a statement on the certificate which clearly states that it is the responsibility of an officer of the peace to provide timely transportation for the patient and that the friend or relative freely chooses to assume such responsibility." Id. While the General Assembly provided for a friend or relative to provide transportation in compliance with the practices described above, absent such an assumption of responsibility, Section 44-17-440 clearly maintained the requirement that an officer of the peace must take the individual into custody and to transport such individual as directed by the Section 44-17-410 certificate.²

In 1994, Section 44-17-440 was further amended by Act 290 which was titled as follows:

AN ACT TO AMEND SECTION 44-17-440, ... SO AS TO AUTHORIZE LOCAL LAW ENFORCEMENT AGENCIES, LOCAL GOVERNING BODIES, AND DIRECTORS OF COMMUNITY MENTAL HEALTH CENTERS TO ARRANGE AN ALTERNATIVE TRANSPORTATION PROGRAM FOR NONVIOLENT PERSONS REQUIRING MENTAL HEALTH TREATMENT.

² 1992 Act No. 296, § 3 again amended S.C. Code Ann. § 44-17-440 "to change references from 'officer of the peace' to 'state or local law enforcement officer.'"

1994 Act No. 290, § 1. Act 290 added the following language to Section 44-17-440:

Upon entering a written agreement between the local law enforcement agency, the governing body of the local government, and the directors of the community mental health centers, an alternative transportation program utilizing peer supporters and case managers may be arranged for nonviolent persons requiring mental health treatment. The agreement clearly must define the responsibilities of each party and the requirements for program participation.

Id. As amended, the statute's plain and unambiguous language makes clear that the alternative transportation program was provided an option for the named parties contingent on entering a written agreement. However, Section 44-17-440 maintained the default position which required that a state or local law enforcement officer take the individual into custody and to transport such individual as directed by the Section 44-17-410 certificate. White v. Stacher, No. CA.6:05 1737 GRA WMC, 2006 WL 1207857, at *5 (D.S.C. May 1, 2006), *aff'd*, 201 F. App'x 960 (4th Cir. 2006) ("Section 44-17-440 provides for the transportation of the patient for treatment, requiring local law enforcement officers to transport those committed to the appropriate mental health center."). This Office's February 9, 2004 opinion described such a law enforcement officer's duty to transport persons pursuant to Section 44-17-440 as follows:

In circumstances where the standard practice of a hospital is to transfer patients to a new facility by ambulance, you question whether Section 44-17-440 requires law enforcement to transport a person who is being transferred to a State mental health facility. You also asked whether in such circumstances where the treating hospital elects not to transfer a mental health patient by ambulance, must law enforcement be involved when the hospital has a full time security staff certified by SLED. As referenced above, pursuant to Section 44-17-440 the certificate required by Section 44-17-410 "must authorize and require a state or local law enforcement officer...to take into custody and transport the person to the hospital designated by the certification." As specified in an opinion of this office dated January 17, 1996, once the certificate authorized by Section 44-17-410 is placed in the hands of the law enforcement officer pursuant to Section 44-17-440, if the certification appears to be valid on its face, it is the responsibility of the officer to execute it as soon as possible.

Options are provided for a friend or relative to transport the individual to the mental health facility where that friend or relative assumes the responsibility and signs a statement "which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation." Another option is provided for an alternative transportation program utilizing peer supporters and case managers for nonviolent persons requiring mental health treatment. Aside from these two options, it is clearly the responsibility of law enforcement to transport an individual to a mental health facility.

Op. S.C. Atty. Gen., 2004 WL 323945, at *7 (February 9, 2004)³.

³ See also Op. S.C. Atty. Gen., 2007 WL 4686610, at *12 (December 20, 2007) ("While previously referenced Section 44-17-440 requires any state or local law enforcement officer to transport the patient to a hospital, and this office has concluded that the limits of the territorial jurisdiction of those officers is not relevant in such

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As your letter indicates, Section 44-17-440 was most recently amended by 2016 Act No. 225, § 3. In relevant part, Act 225 is titled:

AN ACT TO AMEND... SECTION 44-17-440, RELATING TO THE CUSTODY AND TRANSPORT OF A PERSON REQUIRING IMMEDIATE CARE, SO AS TO REQUIRE A STATE OR LOCAL LAW ENFORCEMENT OFFICER PREFERABLY WITH CRISIS INTERVENTION TRAINING TO TAKE INTO CUSTODY AND TRANSPORT THE PERSON TO THE HOSPITAL, AND TO PROVIDE FOR WHO SHALL TRANSPORT THE INDIVIDUAL FROM ONE FACILITY TO ANOTHER.

2016 Act No. 225, § 3 (emphasis added). As amended, Section 44-17-410 reads as follows:

(A) The certificate required by Section 44-17-410, emergency admission, must authorize and require a state or local law enforcement officer, preferably in civilian clothes and preferably with crisis intervention training, to take into custody and transport the person to the hospital designated by the certification. No person may be taken into custody after the expiration of three days from the date of certification. A friend or relative may transport the individual to the mental health facility designated in the application or engage the services of an emergency medical technician as defined by Section 44-61-310, if the friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation for the patient and that the friend or relative freely chooses to assume that responsibility and liability. A friend or relative who chooses to transport the patient is not entitled to reimbursement from the State for the cost of the transportation. An officer or an emergency medical technician acting in accordance with this article is immune from civil liability. Upon entering a written agreement between the local law enforcement agency, the governing body of the local government, the emergency medical service providers, and the directors of the community mental health centers, an alternative transportation program utilizing peer supporters and case managers may be arranged for nonviolent persons requiring mental health treatment. The agreement clearly must define the responsibilities of each party and the requirements for program participation.

(B) An individual who has been certified for an involuntary emergency admission but not yet admitted to a facility and needs to be transported from a mental health center or an emergency department of a hospital to another facility for admission may be transported by an emergency medical technician.

transportation, it appears that upon transportation, the jurisdiction to maintain security would fall to either the hospital security force or the law enforcement agency with the jurisdiction over the facility where the patient is held.”)

S.C. Code Ann. § 44-17-440 (Supp. 2016) (emphasis added). The above underlined language emphasizes the new elements added to Section 44-17-440 by 2016 Act No. 225, § 3.

As amended, Section 44-17-440(A) states a preference for law enforcement officers with crisis intervention training, allows friends or relatives to engage an emergency medical technician (“EMT”)⁴ to transport the individual according to the certificate, grants such an EMT civil immunity when acting in accordance with the article, and names “emergency medical service providers” as one of the parties to the optional alternative transportation program contingent on entering a written agreement. The plain language of Section 44-17-440 continues to provide that state or local law enforcement officers are “authorize[d] and require[d] ... to take into custody and transport the person to the hospital designated by the certification” required by Section 44-17-410. While adding a preference that officers with crisis intervention training are utilized for this duty, the statute maintains, absent a friend or relative assuming responsibility and liability or an alternative transportation plan, state and local law enforcement officers have a mandatory duty to take such an individual into custody and transport the person as directed by the certification. If such friend or relative assumes the responsibility and liability, he is given the option to “engage the services” of an EMT rather than transporting the individual himself. We find no plain statement of legislative intent within the text of the Section 44-17-440(A) mandating “the governing body of the local government” to provide such EMT services or otherwise take any action. The only reference to “the governing body of the local government” is in relation to an optional alternative transportation program. *Id.* Therefore, the present version of Section 44-17-440(A) does not require Richland County to provide ambulance transport.

2016 Act No. 225, § 3 also added Section 44-17-440(B) which governs transportation of an individual from one facility to another prior to admission by an EMT. The statute’s use of the word “may” indicates that this method of transportation is optional. *Id.* The plain language of Section 44-17-440(B) does not include express language indicative of a mandatory duty, nor does it make reference to “the governing body of the local government.” While the title to 2016 Act No. 225 states it was intended “TO PROVIDE FOR WHO SHALL TRANSPORT THE INDIVIDUAL FROM ONE FACILITY TO ANOTHER,” the language of the statute is permissive. Under the rules of statutory construction, the use of “may” within the plain and unambiguous text of the statute is considered evidence of the legislative intent that transport by an EMT is permissive rather than mandatory. *Hodges v. Rainey*, 341 S.C. at 85, 533 S.E.2d at 581. Therefore, it is this Office’s opinion that a court is likely to find a local governing body has no duty pursuant Section 44-17-440 to provide ambulance transport or EMT service. Further, it is this Office’s opinion, that absent a friend or relative assuming responsibility and liability for transporting the individual or the establishment of an alternative transportation program by written agreement, it remains the responsibility of state or local law enforcement officers to transport an individual to a mental health facility pursuant to S.C. Code Ann. § 44-17-440.

Conclusion

We agree with Richland County’s assessment that S.C. Code Ann. § 44-17-440, as amended by 2016 Act No. 225, § 3, does not mandate a “governing body of the local government” to provide EMT or ambulance transport. For decades, the General Assembly has assigned state and local law enforcement officers with the responsibility for taking into custody and transporting persons as designated by a

⁴ “Emergency medical technician” or “EMT” is statutorily defined to mean “an individual possessing a valid, emergency medical technician (EMT), advanced emergency medical technician (AEMT), or paramedic certificate issued by the State pursuant to the provisions of this article.” S.C. Code Ann. § 44-61-310(8).

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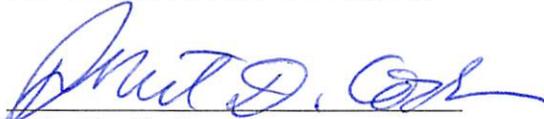
certificate issued under S.C. Code Ann. § 44-17-410. It is this Office's opinion that, absent a friend or relative assuming responsibility and liability for transporting the individual or the establishment of an alternative transportation program by written agreement, it remains the responsibility of state or local law enforcement officers to transport such individuals to a mental health facility pursuant to S.C. Code Ann. § 44-17-440. We hope that the guidance provided above will assist you, the Richland County Council, and the Richland County Sheriff's Department in determining each body's duties pursuant to S.C. Code Ann. § 44-17-440 (Supp. 2016). This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General