



ALAN WILSON
ATTORNEY GENERAL

February 26, 2017

Sheriff Bryan "Jay" Koon
PO Box 639
Lexington, SC 29071

Dear Sheriff Koon:

We received your request seeking an opinion on the allocation of per diem expenses for juveniles in the custody of the Department of Juvenile Justice. The following opinion sets out our understanding of your question and our response.

Issue (as quoted from your letter, edited slightly):

In the past few months, a Trooper of the South Carolina Highway Patrol has had occasion to arrest juveniles in Lexington County and, thereafter, after being adjudicated delinquent, has delivered them into the custody of the South Carolina Department of Juvenile Justice. Upon the release of each juvenile, we have received an invoice from DJJ charging us with a portion of the cost of the inmate's incarceration. When questioned as to the reason why we were billed, DJJ has advised us that we are to be billed under Paragraph (4) in Section 63-19-360 of the Code of Laws of South Carolina, 1976, as amended. . . .

Our question to you is: what agency is the governing body of the law enforcement agency having original jurisdiction in instances such as those described above [for the purposes of cost allocation under S.C. Code Ann. § 63-19-360]?

Law/Analysis:

It is the opinion of this Office that a court most likely would conclude that where a member of the South Carolina Highway Patrol arrests a juvenile and takes them into custody in the circumstances described in your letter, the State of South Carolina is "the governing body of the law enforcement agency having original jurisdiction where the offense occurred" for the purposes of S.C. Code Ann. § 63-19-360 (2010). Section 63-19-360(4) states in relevant part:

In Department of Juvenile Justice operated facilities, the department shall determine an amount of per diem for each child detained in a center, which must be paid by the governing body of the law enforcement agency having original

jurisdiction where the offense occurred. . . . The Department of Juvenile Justice must assume one-third of the per diem cost and the governing body of the law enforcement agency having original jurisdiction where the offense occurred must assume two-thirds of the cost.

S.C. Code Ann. § 63-19-360(4) (2010) (emphasis added).

The author of this opinion has not located any South Carolina precedent which appears to be directly dispositive of the question presented in your letter. Therefore, a court faced with this question most likely would rely upon the applicable rules of statutory construction to answer this question. As this Office has opined previously:

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." *Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). Like a court, this Office "generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulations." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). However, a court will reject an agency's interpretation that is contrary to the plain language of the statute, erroneous, or controlled by an error of law. *See State v. Sweat*, 379 S.C. 367, 384, 665 S.E.2d 645, 655 (Ct. App. 2008) ("where the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation") (citations and quotations omitted); *Savannah Riverkeeper v. S.C. Dep't of Health & Envtl. Control*, 400 S.C. 196, 206, 733 S.E.2d 903, 908 (2012) ("An agency's interpretation of a statute or regulation that is erroneous or controlled by an error of law presents a compelling reason not to defer to the agency's interpretation").

Op. S.C. Att'y Gen., 2013 WL 3133640 (June 7, 2013). The South Carolina Supreme Court also has opined that "in construing a statute, it will be presumed that the General Assembly did not intend to do a futile thing." *Gaffney v. Mallory*, 186 S.C. 337, 195 S.E. 840 (1938).

By way of background, we observe first that Section 63-19-360(4) is a recodification of a two older code sections and it is the product of several amendments which are relevant to your question here. *See discussion, infra*. The predecessor legislation to Section 63-19-360 was enacted in 1981 and codified at S.C. Code Ann. § 20-7-3230 (Supp. 1982). *See Act No. 124*, 1981 S.C. Acts 446. That version of Section 20-7-3230 was titled "Institutional services to be provided by Department; Reception and Evaluation Center; scope of evaluation," and required

the Department to "[provide] correctional institutional services for juveniles," manage certain specific juvenile facilities, and establish and maintain the William J. Goldsmith Reception and Evaluation Center. S.C. Code Ann. § 20-7-3230 (Supp. 1982). There was no reference whatsoever to any per diem or other cost reallocation in the 1981 version of Section 20-7-3230. *See id.* The first reference to a per diem was added by the General Assembly in 1990, where the Legislature re-lettered Section 20-7-3230 and added paragraph 4, which contains numerous provisions which are analogous to those in Section 63-19-360(4), including this relevant language:

The department shall determine an amount of per diem for each child detained in this center, which must be paid by the committing county. The per diem paid by the county may not exceed the daily average cost of a juvenile committed to the department and must be placed in a separate account by the department for operation of this facility.

Act No. 571, 1990 S.C. Acts 2446 (codified at S.C. Code Ann. § 20-7-3230 (Supp. 1991)) (emphasis added). Thus, following this amendment the plain language of Section 20-7-3230 contemplated that some costs would be borne by the counties, which otherwise would be responsible to house the incarcerated minors appropriately. *Id.*

The next relevant¹ revision of Section 20-7-3230 occurred in South Carolina's Omnibus Crime Bill of 1994 which became law on January 12, 1995 and where the General Assembly first adopted the "governing body" language used in the current version of Section 63-19-360(4). Act No. 7, 1995 S.C. Acts 43. In that Act, Section 20-7-3230 was amended to read in relevant part:

In Department of Juvenile Justice operated facilities, the department shall determine an amount of per diem for each child detained in a center, which must be paid by the governing body of the law enforcement agency having original jurisdiction where the offense occurred. . . . The Department of Juvenile Justice must assume one-third of the per diem cost and the governing body of the law enforcement agency having original jurisdiction where the offense occurred must assume two-thirds of the cost.

Id. This language is identical to the language now contained in Section 63-19-360(4) relating to per diem charges. *See id.*; cf S.C. Code Ann. § 63-19-360(4) (2015). Following this 1995 amendment, Section 20-7-3230 was repealed and replaced by Section 20-7-6840 as a component

¹ The General Assembly also amended Section 20-7-3230 in Act No. 173, 1993 S.C. Acts 1353 in ways which are not relevant here.

of a larger "subarticle" dealing with the Department of Juvenile Justice more comprehensively. Section 20-7-6840(4) was substantially identical to the repealed Section 20-7-3230(4) for the purpose of this opinion, with certain additions and minor changes not relevant to the question presented here. Thereafter, Section 20-7-3230 was recodified to its current location at Section 63-19-360. Act No. 361, 2008 S.C. Acts 3623.

In summary, we see three approaches to the question of costs in the legislative iterations leading to the current statutory scheme: (1) from the creation in 1981 to 1990, there was no provision for the reallocation of the costs of juvenile incarceration whatsoever; (2) from 1990 to 1995, Section 20-7-3230 reallocated a portion of the costs to the county committing the child to custody; and (3) from 1995 through today, Section 63-19-360 and its predecessor Sections 20-7-3230 and 20-7-6840 reallocated a portion of the cost to "the governing body of the law enforcement agency having original jurisdiction where the offense occurred."

While our Office has not opined previously on the specific question presented here, in 1995 a prior opinion did consider the closely-related question of whether the allocation of costs under Section 20-7-3230 applied retroactively. *Op. S.C. Att'y Gen.*, 1995 WL 803365 (April 10, 1995). There the questions presented included:

[W]hether Section 70 of the 1994 Crime Act permits recoupment of costs paid prior to January 12, 1995, where the county incurred all the costs associated with a juvenile's detention, rather than "the governing body of the law enforcement agency having original jurisdiction where the arrest occurred." Further, the question as to whether the costs of a particular juvenile housed by the Department of Juvenile Justice prior to January 12, 1995, now shift to the governing body of the law enforcement agency having original jurisdiction.

Id. While that opinion did not directly consider the question presented here, our 1995 opinion unambiguously understood Section 20-7-3230(4) to reflect a legislative intent to alter the prior scheme of all costs being allocated to the county to a scheme where other governing bodies would bear a portion of the costs. *Id.*

A court faced with the question presented in your letter would consider, of course, that several law enforcement agencies may have concurrent jurisdiction where an offense occurred. *See Op. S.C. Att'y Gen.*, 2000 WL 1803612 (September 28, 2000) (discussing concurrent jurisdiction of South Carolina law enforcement agencies). For example, a crime committed within city limits generally would be subject to the jurisdiction of municipal police, the county sheriff, and any law enforcement agency with statewide authority, such as the SLED or the South Carolina Highway Patrol. *See id.* A court might also consider an argument for allocating costs to the counties framed in terms of the special place that the county sheriff holds both in our

common law and in our state's constitution. *See, e.g., Heath v. Aiken County*, 295 S.C. 416, 369 S.E.2d 904 (2001) (holding that S.C. Code Ann. § 4-9-30(7), which empowers counties to develop grievance policies for county employees, did not apply to the relationship between a county sheriff and the sheriff's deputies). But it is apparent from the history of Section 63-19-360(4) that the General Assembly intended to allocate costs such that some governmental body other than only an individual county would bear responsibility when that body exercises its sovereign power to arrest juveniles. *Cf.* Act No. 571, 1990 S.C. Acts 2446 (costs paid by "the committing county") *and* Act No. 7, 1995 S.C. Acts 43 (costs paid by "the governing body of the law enforcement agency having original jurisdiction where the offense occurred").

For this reason, we believe that a court would conclude that as between the State or the political subdivisions thereof with jurisdiction arrest a juvenile, the General Assembly intended Section 63-19-360(4) to allocate a portion of the costs resulting from such an arrest to the governmental body which exercises its sovereign power to make arrest and bring the juvenile into the justice system. *See* S.C. Code Ann. § 63-19-360(4) (2010) *and discussion, supra*. For example, we believe a court would interpret Section 63-19-360(4) such that if a municipal police officer, which has concurrent jurisdiction with the county sheriff within city limits, arrests a juvenile for a crime and the city charges and prosecutes the case, then Section 63-19-360(4) would allocate a portion of the costs of incarceration to the city as opposed to the county, because the city was "the governmental body of the law enforcement agency having original jurisdiction where the offense occurred." *See id.* While no reported judicial decision has considered this question, we believe that this reading is the most reasonable construction of the text and is the construction which gives effect to the apparent legislative intent. *See id.*

We note also that construing Section 63-19-360(4) as described above also harmonizes well with other sections of the Code which allocate responsibility for incarcerated juveniles. *Cf., e.g.,* S.C. Code Ann. § 63-19-1610 (2010) & S.C. Code Ann. § 63-19-850 (2010). For example, Section 63-19-850 provides that:

When a child is to be transported to or from a juvenile detention facility following a detention screening review conducted by the Department of Juvenile Justice or after a detention order has been issued by the court, the local law enforcement agency which originally took the child into custody shall transport this child to or from the juvenile detention facility.

S.C. Code Ann. § 63-19-850 (2010) (emphasis added); *cf.* S.C. Code Ann. § 63-19-1460 (2010) (providing for transportation in certain cases by "the sheriff . . . of the county in which the child resides"). Similarly, Section 63-19-1610 provides that:

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From the time of lawful reception of a child by the Department of Juvenile Justice . . . [a]ll expenses must be borne by the State except local governments utilizing the juvenile detention services provided by the Department of Juvenile Justice must pay the department a per diem of fifty dollars a day per child."

S.C. Code Ann. § 63-19-1610 (2010) (emphasis added). Taken together, it appears that the General Assembly has gone to great lengths to apportion the burden of caring for and transporting incarcerated minors between the state and its political subdivisions. *See id.*; *see also* S.C. Code Ann. § 63-19-410(A) (2010) (empowering the Department to collect fees from a "parent or guardian or to the public or private agency responsible for the temporary commitment or referral"). We believe that a court considering the question would interpret Section 63-19-360(4) as one such apportionment statute and apply it accordingly. *See discussion, supra.*

Applying this statutory construction to the scenario presented in your letter where the South Carolina Highway Patrol arrests a juvenile and takes them into custody, it is the opinion of this Office that a court most likely would conclude that the South Carolina Highway Patrol is the "law enforcement agency having original jurisdiction where the offense occurred" for purposes of Section 63-19-360(4). We believe that this conclusion is most consistent with the legislative intent of the current iteration of Section 63-19-360(4), which our Office previously has understood as intending to effect a change from the prior allocation of costs solely to the county. *See Op. S.C. Att'y Gen.*, 1995 WL 803365 (April 10, 1995); *see also Op. S.C. Att'y Gen.*, 1996 WL 755774 (November 7, 1996) ("In construing a statute, it will be presumed that the General Assembly did not intend to do a futile thing.") (quoting *Gaffney v. Mallory*, 186 S.C. 337, 195 S.E. 840 (1938)). While not dispositive of the question presented here, we also note that allocating costs to the governing body giving the officer authority to make the arrest also is consistent with the general principle that "the common law places the primary duty for disposition of a prisoner upon the arresting officer and county," in the sense that Section 63-19-360 allocates part of the cost of incarcerating a juvenile to the government whose agent (the arresting officer) brought that juvenile into the justice system. *See Op. S.C. Att'y Gen.*, 1997 WL 419920 (June 23, 1997) (internal citations omitted).

With this conclusion in mind, we turn to the question of what is "the governmental body" of the South Carolina Highway Patrol as the "law enforcement agency having original jurisdiction where the offense occurred." *See* S.C. Code Ann. § 63-19-360. S.C. Code Ann. § 23-6-20(A) established the Department of Public Safety "as an administrative agency of state government which is comprised of a South Carolina Highway Patrol Division, a South Carolina State Police Division, and a Division of Training and Continuing Education." S.C. Code Ann. § 23-6-20(A) (2007); *see also* S.C. Code Ann. § 23-6-100 (2007) (describing more fully the relationship between the Highway Patrol and the Department of Public Safety). Because the

Highway Patrol is a division of a South Carolina state agency, a court most likely would conclude that the government of the State of South Carolina is "the governing body" of the South Carolina Highway Patrol for purposes of Section 63-19-360. *See id.; cf. State v. Boswell*, 391 S.C.592 (2011) (discussing the requirement that agreements temporarily transferring officers between jurisdictions be ratified by "the governing body of each jurisdiction").

Finally, please note that this opinion is intended as a general discussion of the law, and its specific application will vary according to the facts of each particular scenario. For instance, if a Highway Patrol officer were to pull over a juvenile driver and county sheriff deputies also arrived on the scene as backup, any number of differing factual scenarios might lead to the juvenile being incarcerated after being prosecuted either by the state or by the county, or conceivably by both governments for different crimes. We offer no opinion on the specific point at which responsibility for the costs of incarceration shift in those myriad possible factual scenarios. Additionally, this opinion should not be read as an attempt to comment on any pending litigation or criminal proceeding.

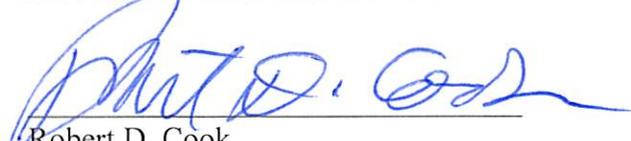
Conclusion:

In conclusion, for the reasons set out above, it is the opinion of this Office that a court most likely would conclude that where a member of the South Carolina Highway Patrol arrests and takes a juvenile into custody in the circumstances described in your letter, the government of the State of South Carolina is "the governing body of the law enforcement agency having original jurisdiction where the offense occurred" for purposes of Section 63-19-360(4).

Sincerely,


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REVIEWED AND APPROVED BY:


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