



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 10, 1996

The Honorable Johnny Mack Brown
Sheriff, Greenville County
4 McGee Street
Greenville, South Carolina 29601

Re: Informal Opinion

Dear Sheriff Brown:

You seek an opinion regarding the Sheriff Department's receipt of several orders to transport from Family and Circuit Court Judges in other counties. You state the following:

[o]f course, these orders are relayed to this Office for actual transportation of prisoners to and from court hearings in those counties. My Deputies assigned to courts have been providing this service. As you can imagine, this has created a hardship in providing adequate personnel for security and proceedings at courts in Greenville.

In light of this, I would respectfully request your counsel concerning these Orders to Transport. Is this an appropriate means to effect transportation of prisoners to courts in other counties? Am I obligated to render this service?

I have every intention of fulfilling our responsibilities. However, limited resources will not allow this Office the

Sheriff Brown
Page 2
July 10, 1996

luxury of performing the proper duties of other agencies in different jurisdictions.

You enclosed two previous Orders for transportation, which are reflective of your concern. These orders are directed to the Greenville Detention Center ordering that a prisoner be transported to another county.

Your question was touched upon in an earlier Opinion this Office, dated November 16, 1976. There, the question presented was whether a Family Court Judge of one county could legally order a law enforcement officer of another county to apprehend a person and transport him to that Judge's Court.

The Opinion referenced what is now Section 20-7-420 (28) which authorizes the Family Court

[t]o send processes or any other mandates in any matter in which it has jurisdiction into any county of the State for service or execution in like manner and with the same force and effect as similar processes or mandates of the circuit courts, as provided by law.

Moreover, the Opinion further concluded:

[t]he second part of the question presented, whether or not a Family Court Judge in one county can order law enforcement officers of another county to transport a person arrested under that Judge's warrant to that Judge's Court, is not dealt with in the South Carolina Code, nor is there any case law directly on point. At common law, however, an arresting officer is obligated to carry out the mandates of the process which he is executing. 'Where arrest in a civil action is authorized, it is the duty of the arresting officer to make such lawful disposition of the person arrested as the process may direct.' 6A C.J.S. 'Arrest' Sec. 103 at 201. This would indicate that the arresting officer must deliver his prisoner to whatever place the court issuing the warrant chooses to indicate.

Code Sec. 15-1095.41 [now, Section 20-7-1450] states that '[i]t is made the duty of every county, town or municipal

Sheriff Brown

Page 3

July 10, 1996

official or department to render such assistance and cooperation within his or its jurisdictional power to further the objects of the Family Court Act. Law enforcement officers' 'jurisdictional power' includes both the arrest and transportation of prisoners. The policy enunciated in this section indicates the intention of the legislature that all public officials and departments cooperate fully with the Family Courts, and this applies to the officers of the County in which the Family Court is sitting as well as to the officers of any county to which an arrest warrant might be sent for execution. Thus, although the common law places the primary duty for disposition of a prisoner on the arresting officer and county, the policy of the legislature as expressed in the above quoted code section indicates that the various county officials should cooperate not only with the Family Court, but with each other in carrying out its orders. It would seem that the county benefiting from the arrest should bear the expense and inconvenience of transporting the prisoner from the county of the arrest to the county ordering the arrest, as is now the custom among county law enforcement departments of this state.

Also instructive with regard to your question is our Supreme Court's decision in State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983). In Brantley, the trial judge was presiding over a guilty plea proceeding in Hampton County. Learning that the Sheriff of Jasper County was in possession of certain records, the judge asked the Solicitor's office to notify the Jasper County Sheriff to appear in court with the records at a designated time. The Sheriff refused to appear, choosing to send the records via a deputy. Upon the Sheriff's failure to appear, the trial judge had word sent back to the Sheriff to appear in court the next morning "without fail". However, the Sheriff again refused.

The trial court found the Sheriff in contempt of court. On appeal, the Sheriff argued that the lower court erred in holding him in contempt because he had received no subpoena or subpoena duces tecum and "because he was sheriff in an adjoining county rather than the county where court was being held."

The Supreme Court found the Sheriff's arguments to be without foundation, however. Reasoning that the order directed to the Sheriff was binding, the Court stated:

Sheriff Brown
Page 4
July 10, 1996

[t]he court's order was valid, was directed to appellant in his official capacity as an officer of the court, and his wilful failure to comply constituted a constructive contempt of court, which tended to "obstruct and embarrass or prevent the due administration of justice." Long v. McMillan, et al., 226 S.C. 598, 609, 86 S.E.2d 477 (1955).

279 S.C. at 217.

Section 24-5-10 provides that the "sheriff shall have custody of the jail in his county, and if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law." Thus, you now deem the orders even though directed normally to the Greenville Detention Center as being an order issued to your Department. Therefore, your principal concern is that your Department is having to perform "the proper duties of other agencies in different jurisdictions."

It is true that our Supreme Court has previously emphasized in Durant v. Brown Motor Co., 147 S.C. 88, 92, 144 S.E. 705 (1928), quoting Whitworth v. Wing, 125 S.C. 146, 118 S.E. 177 that "[a]t common law a sheriff has no jurisdiction beyond the borders of his own county, the rule being that the acts of an officer outside of his county or bailiwick are unofficial and necessarily, unless expressly or impliedly authorized by some statute." However, Section 23-15-40 expressly provides that

[t]he sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority. If the sheriff shall make default herein he shall be subject to rule and attachment as for a contempt and he shall also be liable to the party injured in a civil suit. (emphasis added).

Moreover, Section 23-1-145, in pertinent part, expressly bestows broad authority upon employees of county jails in the transportation of prisoners.

[e]mployees of any county or municipal jail, prison, work camp or overnight lockup facility, while performing their officially assigned duties relating to the custody, control,

Sheriff Brown
Page 5
July 10, 1996

transportation or recapture of any inmate or prisoner in this State, shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of such inmate or prisoner. (emphasis added).

The Sheriff is the chief law enforcement officer of the county. Op. Atty. Gen., May 8, 1989. As noted above, the Sheriff typically functions as county jailer. Statutes require the Sheriff to execute process and orders of all the State's courts, including the Family Courts and Circuits Courts, and our Supreme Court has repeatedly emphasized the Sheriff's role as an officer of the court, notwithstanding that he may be required to perform duties as such beyond his territorial jurisdiction. Finally, Section 23-1-145 expressly designates employees of a county jail as peace officers with authority to exercise custody and control over and to transport prisoners "anywhere in the State".

In In Re Irvin, 171 Ga.App. 794, 321 S.E.2d 119 (Ga.App. 1984), the Superior Court of Georgia directed that certain prisoners be moved from one county to other counties for security reasons. He directed the Sheriff of Baker County, where the prisoners were incarcerated, to carry out the transfer of one prisoner from his county to the jail in Decatur County in the same judicial circuit. The Baker County Sheriff refused, in part, contending that the order was unenforceable and thus the Sheriff's citation for contempt was invalid. The Georgia Court of Appeals disagreed and responded:

[s]heriffs are certainly officers of the superior court Several of the duties of the Sheriff involve custody and supervision of persons in custody awaiting trial. It seems clear that the conduct of a sheriff in connection with a lawful order to transfer a defendant from the jail in his county to another jail is within the realm of official transactions engaged in by that sheriff. It would appear that failure of a sheriff to obey a lawful direction by the trial court to transfer a defendant to jail in another county is misbehavior on the part of the sheriff.

321 S.E.2d at 121.

And in Benedict v. Benedict, 280 S.C. 508, 313 S.E.2d 56 (1984), the Family Court Judge found the defendant in contempt for failure to appear as ordered and directed all

Sheriff Brown
Page 6
July 10, 1996

Sheriffs, particularly the Lexington County Sheriff and SLED to bring the defendant before the Family Court of the First Judicial Circuit for sentencing. Of course, Lexington County, as well as most of the other counties specified in the order, is not located in the First Circuit. Necessarily, any Sheriff (but one) who complied with the order would be operating outside his county in complying therewith. While the issue of the validity of ordering the Sheriffs to pick up the defendant was not before the Court, the Court of Appeals implied the validity thereof and noted that the sentences for contempt "are appropriate under the circumstances and we so hold." Id.

In Rogers v. Marlboro Co., 32 S.C. 555, 558, 11 S.E. 383 (1890), our Supreme Court recognized that the Sheriff "being an officer of court, ministerial in character, he cannot impugn its authority nor inquire into the regularity of its proceedings. His duty is to obey. This principle applies alike to him, whether the execution issues from a court of general or limited jurisdiction." Likewise, in James v. Smith, 2 S.C. 183, 185 (1870), the Court opined:

[t]he Sheriff is the ministerial officer of the Circuit Court, bound to enforce all its orders, mandates and judgments in matters properly cognizable by it as a superior Court. If it has general jurisdiction over the subject, its conclusion, even if erroneous, is binding until reversed by appellate authority.

See also, State v. Bevilacqua, 447 S.E. 213, 216 (1994). ["If the Department (of Mental Health) believed there was a problem with the instant order, wise counsel would have dictated it should, through appropriate intervention, sought relief from the family or appellate court."]

Accordingly, I would advise that, upon receipt of any order which appears valid on its face, the Sheriff, whether as Sheriff or as jailer, is required to execute the order. Our courts, as have courts elsewhere, have deemed the Sheriff on numerous occasions as an officer of the court and, notwithstanding the fact that the order requires the Sheriff to perform some action outside his particular county, have held that the Sheriff, when acting pursuant to an order of Court, is carrying out the order in an official capacity. Absent the order being set aside on appeal or clarified or revoked by the Court which issued it, I would advise that such order is binding and must be implemented.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney

Sheriff Brown
Page 7
July 10, 1996

as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph