

1977 WL 190817 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 19, 1977

RE: Interpretation of Proposed Legislation

*1 The Honorable W. Brantley Harvey, Jr.

MEMORANDUM

You have requested the opinion of this Office as to the effect of Senate Bill S. 108. This bill would amend Section 55-321.1:1 of the 1962 Code as amended. The proposed legislation would add the following paragraph at the end of the statute as it now reads: Each county supervisor, or his equivalent, may use any of the prisoners sentenced from his county to the Department of Corrections, without charge, for the purpose of working the roads of his county and for such other purposes as he deems proper. Any such prisoners shall be under the absolute custody and control of the supervisor or his equivalent.

This statute has already been the subject of an Opinion from this Office, Opinion No. 3860, 1973-74 Ops. Atty. Gen., page 274, a copy of which is attached. Prior to the enactment of that statute we had in this State a dual prison system. The effect of that enactment in 1974 was to unify the correction system and make the Board of Corrections the responsible agency for the incarceration of all persons convicted of crimes against the State and sentenced to a term in excess of three months. As the matter now stands, it is my understanding that the Department of Corrections has contractual agreements with most of the county prison systems designating those facilities wherein prisoners in the custody of the Board are confined. In many of these counties such prisoners are utilized for work on the public roads. It is my understanding that no charge is made to the county by the Board for the services of these prisoners. In the previous Opinion of this Office we stated that the language of the statute placed all of these prisoners in the custody of the Board; and by terms of the agreement between the Board and the county authority, the Board placed the prisoners under the immediate supervision and control of the county authorities so designated.

In my opinion the proposed amendment to this statute would in effect return to a dual prison system. The county authority would be able to choose any prisoner sentenced from that county at his discretion and would be able to use the prisoner in those pursuits that he felt proper. The language of this statute places the prisoner under the absolute custody and control of the county authority. The language “notwithstanding any other provision of law” clearly indicates the legislative intent. To the extent that they result in a direct conflict which cannot be resolved, the most recent enactment takes preference. [State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778](#). Where, however, the statutes are in pari materia they should be construed together and reconciled, if possible so as to render both operative. [Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376](#).

From the above it can be seen that if this amendment is enacted, the most recent expression of the legislative will would control and in my opinion would present irreconcilable conflict with the statute as it presently exists. The only possible way this language could be construed would be to place the prisoners chosen by the county authority in his custody and they would remain the complete and total responsibility of the county authority. The use of the word ‘absolute’ to modify custody and control would indicate the intention of the legislature to take these prisoners out from the custody of the Board and place them in the custody of the local authority. The Board would have no responsibility whatsoever for such prisoners and no authority over them.

*2 Prisoners would be sentenced by the Court to the custody of the Department and the Department would have the initial responsibility to receive and evaluate them. Upon demand by the county authority, however, the Department would have to release them into county custody and would have no further responsibility for them. The effect of the amendment would be to hinder the development of any sort of overall statewide corrections policy.

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