

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

April 2, 1991

The Honorable Dave C. Waldrop, Jr.
Member, House of Representatives
425 Blatt Building
Columbia, South Carolina 29211

Dear Representative Waldrop:

In a letter to this Office you requested an opinion regarding a provision of proposed legislation, H.3425, which authorizes the release of an inmate of a county prison or jail to a prisoner rehabilitation program. You specifically referenced subsection 6 which states:

A prisoner rehabilitation program authorized under the provisions of this act to receive and rehabilitate persons incarcerated in a county prison or jail shall bear full responsibility and liability for the actions of a person released to it while the person is in the program's custody and care.

You have questioned who would be liable or responsible for the inmate if he was in such a rehabilitation program. You also questioned whether the county, the program or the person himself would be liable for his actions or be responsible for his medical treatment, etc., if such a need arises.

Prior opinions of this Office, copies of which are enclosed, have commented on the general liability of the State or its political subdivisions for actions of a prisoner and for the care and maintenance of prisoners. See. Opins. dated September 29, 1983

The Honorable Dave C. Waldrop
Page 2
April 2, 1991

(issued before abolition of sovereign immunity by McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985)); October 27, 1982; May 23, 1977; January 20, 1985. The October, 1982 opinion referenced that

... a county is generally liable for the care and maintenance of its own prisoners confined therein for offenses committed within the county.

Moreover, as to medical care, these opinions comment on the specific responsibility of a county or the State for the medical welfare of prisoners within their custody and care. The referenced 1982 opinion states

... it is the county which is ultimately responsible for payment of medical care of all... (county)... prisoners.

Responsibility for the care and maintenance of prisoners is also referenced by constitutional provisions. See Article XII, Section 9 of the State Constitution; Eighth Amendment of the U. S. Constitution.

However, it appears that pursuant to subsection 6, it would be the intent of the General Assembly that the prisoner rehabilitation program would be liable for tort actions as to third parties which result from actions of a prisoner. Of course, the prisoner may also remain liable for his actions. Support for such conclusion is the statement in subsection 2, that in making application to the program, "... the prisoner must release the county from all liability for any tort occurring while he is in the custody of the program" Of course, as referenced in the 1983 opinion noted above, any response by this Office must be caveated with the understanding that each potential liability situation is unique and no opinion can be exhaustive of the multitude of theories of liability that may arise or defenses thereto. Moreover, typically the legal liability of a political subdivision may vary significantly depending on the circumstances.

Aside from third party tort liability, it appears that a county may ultimately retain its responsibilities as referenced above as to any other matter regarding a county prisoner. While the legislation in subsection 1 refers to a county prisoner being "released to the custody and care of a prisoner rehabilitation program" by contract,

The Honorable Dave C. Waldrop
Page 3
April 2, 1991

and inasmuch as no potential contractual agreements have been presented for review by this Office, a basis may still exist for the county still retaining its ultimate responsibilities as to its prisoners. Moreover, this conclusion would be consistent with another prior opinion of this Office dated August 8, 1985, a copy of which is also enclosed, which indicated "...prison officials are permitted to place prisoners in the immediate custody of other entities so long as the State maintains ultimate control over them." Therefore, generally the State may not delegate its ultimate control over its prisoners.

In responding to your questions, this Office does not condone the referenced legislation, its policy considerations or any releases that may result therefrom. This response is strictly confined to a review of the legal issues raised.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:gmb
Enclosures

REVIEWED AND APPROVED BY:



ROBERT D. COOK
Executive Assistant for Opinions