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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

January 6, 2004

William D. Traber, Chief of Police
Easley Police Department
Post Office Box 466
Easley, South Carolina 29641

Dear Chief Traber:

In a letter to this office you raised several questions regarding the county jail housing municipal prisoners. Specifically, you asked the following questions:

> 1. Can the sheriff or his jails arbitrarily refuse to take prisoners accompanied with a valid custody order signed by a municipal judge to their facility? This question is asked for prisoners with municipal charges, prisoners with state charges within the jurisdiction of the municipal court, and prisoners with state charges within the jurisdiction of the general sessions court.
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> 2. Does the municipal court judge have the authority to hold the sheriff or his jailer in contempt of court for refusing to accept these prisoners?
>
> 3. Would the city be just in charging the county for the care and maintenance of a prisoner charged with general sessions violations during the three day holding period at the Easley municipal jail required by the sheriff even though there is a valid custody order signed by a municipal judge committing that person to the Pickens County jail?

In examining your question, reference must be made to the general duties of county facilities to receive municipal prisoners. A July 8, 1998 opinion of this office quoting an earlier opinion stated:

> ... a municipality is responsible for the care and maintenance of prisoners arrested and/or convicted of state or municipal violations within the jurisdiction of a municipal court if these prisoners are lodged in a county jail. However, ... a county is responsible for the care and maintenance of prisoners charged with State law violations within the jurisdiction of the court of general sessions.

In an opinion of this office dated September 6, 1979, it was concluded that "the county jail must accept the transfer of prisoners from the municipal jail when such prisoners are charged with offenses which are in the jurisdiction of the Court of General Sessions ... ." One basis for an opinion of this office dated July 23, 1980 which reached a similar conclusion was the fact that revenues generated by general sessions court offenses and municipal offenses are treated differently.

Within these guidelines, this office has, however, stressed the importance of resolving the question of fees for housing prisoners by means of a contract between the city and county. Ops. Atty. Gen. dated January 9, 1992, March 6, 1990, July 22, 1986, and March 21, 1983. In the March 6, 1990 opinion we noted that one former Code provision, Section 14-25-100, which has since been repealed, stated that if a defendant arrested by a municipal law enforcement officer was committed to jail " ... it shall be done at the expense of the city or town." This language was previously interpreted by the State Supreme Court in Greenville v. Pridmore, 162 S.C. 52, 160 S.E. 144 (1931) as requiring a county jailer to receive defendants accused of violating municipal ordinances into a county jail but requiring municipal authorities to pay any expenses for their care and confinement. The 1990 opinion noted that an opinion of this office dated December 18, 1979 had commented that, in accordance with such ruling, a county must accept prisoners who were sentenced for violating municipal ordinances, but the municipality must pay the costs of incarceration. The 1990 opinion stated:

> ... in most jurisdictions the matter of a county jail's responsibility to accept prisoners from a municipality and which entity is financially responsible for their care has been resolved by contract. Therefore, in the absence of legislation expressly responsive to such issue, consideration should be given to resolving this matter contractually. In determining any responsibilities, consideration could be given to the manner in which income generated by fines is handled depending upon whether an offense is triable in a municipal court or court of general sessions. Also, in reviewing such responsibilities attention may be given to other provisions, such as Sections 24-3-20 and 24-3-30 of the Code which provide for the designation of certain prisoners as being in the custody of the State Board of Corrections.

You have asked whether a sheriff or his jail can refuse to take prisoners accompanied by a valid custody order signed by a municipal judge. You also asked whether a municipal court judge has the authority to hold a sheriff or his jailer in contempt for refusing to accept these prisoners.

While this office has often concluded that the financial obligations between city and county should be resolved contractually, we have been careful to distinguish between financial responsibility for the housing of prisoners on the one hand and a jailer's obligation to the court and under statute to accept prisoners pursuant to judicial order on the other. In an opinion of this office dated January 9, 1992, while we advised that "matters relating to financial responsibility be resolved by contract ...", we also recognized therein that there is apparently "an obligation on the part of the county to accept a prisoner pursuant to Section 24-5-10 ... ." Thus, the issue of financial responsibility for

housing municipal prisoners in a county jail must not be confused with the jail's general obligation to accept a prisoner ordered to a county facility by the municipal court.

As set forth in an opinion of this office dated July 8, 1998, with respect to the remedies available to a court for refusal to comply with a court's order, the most obvious remedy is a court's contempt power. There is authority which concludes that a jailer serves as an officer of the court. See McCall v. Swain, 510 F.2d 1767, 178 (D.C. Cir.1995) [and cases referenced therein]. See also, State v. Brantley, 279 S.C. 215, 308 S.E.2d 234 (1983) [Sheriff is officer of court and subject to courts orders upon penalty of contempt for failure to obey.]. The State Supreme Court indicated in Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982) that

> [t]he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts and consequently to the due administration of justice.

227 S.C. at 382. This Office has construed the referenced language in Curlee as "not being limited to any particular jurisdictional level, and therefore, should apply equally to all courts of this State's unified judicial system, including the magistrates' and municipal courts." Op. Atty. Gen., Op. No. 85-97 (September 4, 1985). Moreover, Section 14-25-45 expressly provides that the municipal court "shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts." Of course, the referenced opinion makes no conclusion about whether contempt of court is appropriate or inappropriate in a given instance. Such is a matter for the court whose order may have been disobeyed, based upon the facts and circumstances before the court.

Additionally, an Opinion, dated May 8, 1995, addressed the question of the contempt power of the courts to remedy the situation where a jail official refuses to accept a prisoner which is judicially ordered into his custody. That opinion stated that

> ... one who disobeys any court order does so at his peril. An Order of the Family Court sentencing an individual for contempt for failure to pay child support -- be that sentence one for work release or otherwise -- must be obeyed, unless and until it is set aside on appeal. This legal principle is particularly applicable to jailers and custodians of prisoners, whose principle duty is to hold a prisoner committed to his custody until either completion of the sentence or a subsequent superseding order is presented. Only recently, we set forth in considerable detail the duty of jailers and corrections officials with respect to orders sentencing individuals to their facilities [referencing Op.Atty.Gen., March 27, 1995].

As stated in the previously referenced July 8, 1998 opinion, the order of a court sentencing an individual must be carried out by the jailer or custodian regardless of any disagreement he might

have with it or any belief he might hold that it is invalid. Unless it is reversed or modified in the Courts, it will be deemed to be binding upon the custodian. As to a particular order sentencing an individual, the law takes the view that as to the order, until altered by a higher court, compliance is required. A jailer must do everything possible to carry out the court's order unless and until that order is reversed or modified. The legal consequences of contempt can be severe. Cf. State v. Bevilacqua, 316 S.C. 122, 447 S.E.2d 213 (Ct. App. 1994) [state sought criminal contempt against officials of Department of Mental Health "for failure to comply with a family court order requiring the admission of a minor for physiatric treatment to a hospital operated by the South Carolina Department of Mental Health (the Department)"].

Referencing the above, while this Office has consistently advised that matters of financial responsibility concerning the housing of persons committed to a county detention facility by municipal authorities should be resolved by contract, by no means does that remove the duty of the county jailer or detention officers to obey the order of a municipal court sentencing an individual to a county facility. Absent some superseding or modifying order, county officials may not refuse to accept the prisoner. In short, a jailer may not "second guess" the order of a judge. Failure to comply with a court order could result in contempt or other remedy against the jail officials.

In your final question you asked whether a city would be correct in charging the county for the care and maintenance of a prisoner charged with general sessions violations during a three day holding period at the Easley municipal jail in the circumstances described by you. In keeping with the prior opinions previously cited, it appears that an argument could be made that inasmuch as a general sessions offense is involved, it would be the responsibility of the county to pay for the care and maintenance of the prisoner. However, again, this is a matter that should be resolved by contract between the city and the county.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General