ALAN WILSON
ATTORNEY GENERAL

February 8, 2011

Captain Waddell Coe
Darlington County Detention Center
2349 Rogers Road
Darlington, SC 29532

Dear Captain Coe:

You have requested an opinion of this Office concerning the applicability of S.C. Code Ann. §24-13-40 (Supp. 2010). By way of background, you indicate that a defendant was sentenced to thirty (30) days confinement with no credit for time served, and that the sentence was ordered to run consecutive to any other sentence. The defendant was booked and detained in your facility for twenty (20) days until he posted bond. Pursuant to a telephone conversation with you on February 4, 2011, you further indicated the defendant was not serving a sentence for a different offense at the time of his incarceration.

Section 24-13-40 states:

> The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. . . . In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense.

The South Carolina Court of Appeals recently affirmed that §24-13-40 "mandates prisoners receive full credit for the time they served prior to trial," unless one of the two exceptions exist, either (1) the prisoner was an escapee or (2) the prisoner was already

serving a sentence on a different offense. State v. Boggs, 388 S.C. 314, 696 S.E.2d 597, 598 (Ct. App. 2010)[emphasis added]. "Because the language of [the Section] is mandatory, a judge cannot deny a defendant credit for time served prior to trial unless one of the two exceptions applies." Id. [citing State v. McCord, 349 S.C. 477, 562 S.E.2d 689, 694 (Ct. App. 2002)].

The Boggs decision is consistent with previously issued opinions of this Office dated March 27, 1974, and June 8, 1999, related to your question. I have attached copies of those opinions for your review.

Based on the foregoing, it is my opinion that, given the facts outlined in your request, a defendant who was detained twenty (20) days in your facility must be given credit for time served, in the absence of any of the exceptions set forth in §24-13-40.

Of course, this Office is not authorized to instruct any detention facility to release a prisoner without a court order. We have previously opined that the duty of a jail administrator or officer is ministerial in nature and is strictly limited to compliance with the court's commitment orders. Op. Atty. Gen. May 8, 1995; Op. Atty. Gen. March 27, 1995. Law enforcement officers would have no discretion to determine the disposition of prisoners in their custody. Therefore, in circumstances in which a prisoner alleges he is being held beyond the statutory maximum, the appropriate course of action would be for the defendant to seek judicial remedy in the courts. The defendant could either seek a reduction in the bond set (such as asking for a personal recognizance bond), or he could seek release upon expiration of the maximum prescribed sentence by virtue of a writ requiring the prisoner's release.

With kind regards, I am

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General