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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 28, 1997

Barry D. Mallek, Chief of Police
Town of Duncan
Post Office Drawer 188
Duncan, South Carolina 29334

Re: Informal Opinion

Dear Chief Mallek:

You have requested an opinion on behalf of the Duncan Police Department regarding Spartanburg County's proposed charge to house prisoners in Spartanburg County Jail. You amplify upon your request as follows:

> The County of Spartanburg is proposing to charge fees to the Town of Duncan and other municipalities in Spartanburg County to house prisoners. This would be all prisoners charged with municipal AND State charges (such as DUI, DUS, Etc.) that are heard and adjudicated in MUNICIPAL COURT. Persons arrested, charged with crimes tried in Circuit Court would not fall under the proposed charge. I have several concerns; first, the issue of double taxation comes to play. Inside municipal limits property owners are charged the same amount of property tax as those owning property outside the municipality. Under the county's plan, the Sheriff's Office, Highway Patrol and all other law enforcement agencies except for the municipalities would not have to pay to house their prisoners. Second, is the municipality responsible for any fees for bringing State charges (DUI, DUS, Etc.) even though heard in Municipal Court. South Carolina Code of Laws Section 17-1-10 seems to make it clear who is responsible and on who's behalf the charges are being brought. There have also been several cases including, City of

> Lake City v. Daniels, 268 S.C. 396, 234 S.E.2d 222, that strengthen the case that the State, not a municipality is the prosecuting authority. Third, if the County did impose this charge and the Town of Duncan did not pay, could the County Jail refuse to accept lawfully arrested persons, arrested for State (described above) charges. In 1992 Op.Atty.Gen. 92-04, the opinion states that a jail may not refuse to accept a prisoner. Would that apply to this matter? Fourth, would the State of South Carolina be responsible for any charges incurred, except for violations of Municipal Ordinances as distinguished in AG Opinion 1993 Op.Atty.Gen. 93-51. Fifth, do South Carolina Code of Laws Sections 24-5-10 apply and are valid, 16-9-250 and 4-9-40 as well. I have also heard of a case possibly named Pridmore v. Greenville that may also address this issue.

LAW / ANALYSIS

Your questions are resolved by prior opinions of this Office. I am enclosing copies of opinions issued January 9, 1992, March 6, 1990, July 22, 1986, March 21, 1983 and September 6, 1979. The January 9, 1992 Opinion, quoting the March, 1990 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.

And in the March 6, 1990 Opinion we stated:

> As to your questions concerning the authority of a county to charge a municipality for housing municipal prisoners and whether a county can refuse to take a municipal prisoner, I am unaware of any statutes directly responsive to such questions. Prior opinions of this Office have noted that pursuant to Section 24-5-10 of the Code, a sheriff, as custodian of the county jail "'...shall receive and safely keep in prison any

> person delivered or committed to...(the jail)... ."' One former code provision, Section 14-25-100, which has been repealed, commented 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.2d 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 case and confinement. An opinion of this Office dated December 18, 1979 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. However, again, the opinion cited a statute which has now been repealed.

The 1990 Opinion also referenced an opinion of March 21, 1983. It was noted that this Opinion

> ... commented that generally 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, the opinion further provided that 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. See also: Op.Atty.Gen. dated September 6, 1979.

In the 1990 Opinion, we concluded that questions relative to financial responsibility for the housing of prisoners should be resolved by contract in the absence of a controlling statutory provision. The author of the 1990 Opinion stated:

> I have been informed that 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 contrac-

> tually. 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.

Similarly, in the January 9, 1992 Opinion, we concluded that "[w]hile there apparently is an obligation on the part of the county to accept a prisoner pursuant to Section 24-5-10, as stated, we have recommended that matters relating to financial responsibility be resolved by contract. Of course, legislation could also be sought which would address this issue."

These opinions remain in effect and the opinions of this Office. Again, while legislation resolving this issue one way or the other could be enacted, I am aware of no statute so doing with the exception of § 24-3-30, which provides in pertinent part that "[a] county or municipality through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners." As can be seen, this statute is consistent with the foregoing prior opinions. Accordingly, the question of fees for housing municipal prisoners in a county facility should be resolved by specific contract between the city and the county typically within the general guidelines set forth above.

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 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
Enclosures