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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 5, 1999

W. Jerry Floyd, Director
Pickens County Prison
186 Prison Camp Road
Pickens, South Carolina 29671

Dear Mr. Floyd,

Thank you for your letter of August 9, 1999, to Attorney General Condon which has been referred to me for a response. You ask for an opinion concerning a possible work program for inmates sentenced for civil contempt.

By way of background you provide the following information: The county council has passed resolutions implementing work release programs in which incarcerated inmates may continue to work on private jobs. You would like to begin a work program for civil contempt inmates in which the court determines eligibility and the paychecks are sent directly from the employers to the Clerk of Court. The Clerk would then apply the monies to arrearages, fines, per diem expenses, and necessary medical expenses.

It is well-settled that the imposition of a sentence for contempt is a matter generally within the discretion of the trial judge. Mosley v. Mosier, 279 S.C. 348, 306 S.E.2d. 624 (1983) (Lewis, C.J., dissenting). As is also commonly recognized,

> [i]n the absence of legal restrictions, the nature or character of the punishment for contempt is within the discretion of the court, and the court may imprison or fine, or do both, or impose some other penalty, or may discharge the offender absolutely or conditionally.

17 C.J.S., Contempt, § 92. Furthermore, criminal contempt and civil contempt serve separate functions. The principal purpose of criminal contempt is punishment. In civil contempt, however, the contemnors "carry the keys of prison in their own pockets" as the contempt serves to secure "compliance with judicial decrees." Curlee v. Howle, 277 S.C. 377, 384, 287 S.E.2d 915, 919 (1982). Only the judge who issues the civil contempt order, which is designed to ensure a specific goal, has the discretion to control the sanctions imposed on the inmate.

Request Letter

This Office has 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. Because the jailer can only carry out the mandate of the court order, the jail administrator does not have the authority to design or implement a program for civil contempt inmates. Instead, it is the judge's contempt order that not only should determine the eligibility of a contemnor for a work release program, but should also provide for the disposition of monies earned to any arrearages, fines, or expenses the judge deems appropriate.

Given the specific remunerative nature of the civil contempt order and the limited ministerial authority of a jail administrator, the sanctions imposed on the contemnor are solely within the discretion of the sentencing judge. It is the opinion of this Office, therefore, that your proposal to implement a work program for civil contempt inmates would encroach upon the authority of the courts. Of course, the court itself could institute such a program as part of its order should it so desire. Accordingly, you may wish to contact the Family Court judges in the area concerning this matter.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General