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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 2, 1996

Mr. Jerry A. Hyatt
Regional Administrator/Executive Director
Santee-Lynches Regional Jail System
1281 North Main Street
Sumter, South Carolina 29153

In Re: Informal Opinion

Dear Mr. Hyatt:

You have asked a number of questions concerning the disposition of prisoners after being sentenced by the court of General Sessions. You note that

> [a] local facility might accumulate thirty-six prisoners during a local term of court, but it may take several weeks to dispense the prisoners to the Department of Corrections. These restrictions and delays require extra trips to Columbia, increase the cost of transportation, increase man hours away from local jails which reduces security, add to unwarranted overcrowding problems, and increase liability due to excessive road travel.

Specifically, you ask the following questions:

1. If an inmate from a local jail is sentenced to the Department of Corrections for more than 91 days, when does the inmate become a "State" inmate?

2. What authority would allow the Department of Corrections to refuse, at any time, an inmate who is duly

sentenced by the courts to a period of more than 91 days?

3. By what authority may the Department of Corrections require appointments for duly sentenced inmates to the Department of Corrections?

4. May the Department of Corrections delay appointments and restrict numbers of inmates who have been scheduled?

5. Previously, the Attorney General has offered opinions wherein local jails must commit any prisoner who is lawfully arrested. Why would this opinion not apply to the Department of Corrections when the prisoner has been duly sentenced in the courts of General Sessions for the appropriate amount of time?

6. May the county bill the South Carolina Department of Corrections a fair daily rate for the maintenance of the state prisoner for the days the inmate was backed up in the local facility?

7. When prisoners are sentenced by General Sessions Court to more than 90 days (some have been years) to be served on weekends, where should these inmates serve their sentences?

LAW/ANALYSIS

Relevant Statutes and Principles of Statutory Construction

A number of statutes are relevant to your various questions. S.C. Code Ann. Sec. 24-3-30 in pertinent part provides:

> [n]otwithstanding the provisions of Sec. 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections of the State, and the department shall designate the place of confinement where the sentence must be served. The depart-

> ment may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correction facility for the detention of its prisoners. The Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

Moreover, Section 24-3-60 states:

> [t]he clerks of the courts of general sessions and common pleas of the several counties in this State shall immediately after the adjournment of the court of general sessions, in their respective counties, notify the Department of Corrections of the number of convicts sentenced by the court to imprisonment in the penitentiary. The department, as soon as it receives such notice, shall send a suitable number of guards to convey such convicts to the penitentiary.

Furthermore, Section 24-5-10 reads as follows:

> [t]he sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law.

Several principles of statutory construction are also pertinent here. The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980), appeal after remand, 283 S.C. 408, 323 S.E.2d 523 (1984). The statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of lawmakers. Browning v. Hartvigsen, 307 S.C. 122, 414 S.E.2d 115 (1992). Statutes which are part of the same statutory scheme must be read together, in pari materia. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E.2d 426 (1934). In addition, the construction of a statute by the agency charged with its administration is entitled to most respectful consideration and should not be overruled absent compelling reasons. Jasper Co. Tax Assessor v. Westvaco, 305 S.C. 346, 409 S.E.2d 333 (1991); Wm. C. Logan and Associates v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986).

PREVIOUS OPINIONS

A number of previous opinions of this Office are also relevant to your questions. In Opinion No. 3860 (September 18, 1974), issued shortly after enactment of Section 24-3-30, we stated:

> [t]he general rule is that the most recent enactment of the legislature prevails over a former enactment on the same subject unless the intention of the legislature is clearly shown to be otherwise. It therefore follows that the numerous older statutes dealing with the place of incarceration for prisoners sentenced for crimes committed against the State and the statutes governing the operation of county jails and work camps must be read in the light of the new enactment. The effect of this statute is to place all persons convicted of an offense against the State of South Carolina in the custody of the Department of Corrections when their sentence exceeds three (3) months . . . .
>
> The Board of the Department of Corrections is authorized and required to designate the facility where the sentence is to be served and expressly may designate any facility in the State whether maintained by the Department or not. When using facilities other than those of the Department, however, consent of those in charge of local institutions must be obtained; and I assume this would be the subject of contractual negotiations.

Then, on October 6, 1975, former Attorney General McLeod wrote:

> [Pursuant to Section 24-3-60], [t]he clerks of the courts of general sessions and common pleas of the several counties in this State shall immediately after the adjournment of the court of general sessions, in their respective counties, notify the Board of Corrections of the number of convicts sentenced by the court to imprisonment in the Penitentiary. The Board, as soon as it receives such notice, shall send a suitable number of guards to convey such convicts to the Penitentiary. As the language of Sec. [24-3-60] indicates, the duty of the clerks of court are limited to notification to the Board of Corrections of the number of those persons sentenced to the penitentiary and therefore falling within the jurisdiction of the Board. Subsequent legislation has clarified the scope of this section as it relates to the contemporary penal structure in South Carolina .... Therefore, penitentiary, as used in Sec. [24-3-60], is not limited in definition or scope to a particular institution. Rather, it embraces the entire Department and all institutions thereof. Second, Sec. [24-3-30] greatly expands the jurisdiction and responsibilities of the Board of Corrections by the grant of custody over all persons receiving sentences in excess of three months. Therefore, any sentence in excess of three months can be equated with a sentence to the penitentiary.

In Op. No. 80-67 (June 10, 1980), we reiterated:

> [t]herefore, it is apparent that based upon the clear language of Section 24-3-30, supra, it was intended that authority for determining the facility for confining individuals convicted of State offenses whose sentences exceed three months be placed with the State Board of Corrections. Moreover, it is plain that it was the legislative intent that as to individuals sentenced to terms of imprisonment of three months or less that such individuals be in the custody of officials of the county where the sentence was pronounced.

This Office further noted in an opinion dated April 30, 1991 that

> [t]here is no indication that the Department of Corrections is granted any discretion to refuse to accept prisoners; indeed, it would appear that in using the word "shall," the General Assembly intended that the Department should be required to accept all prisoners duly sentenced. It is my understanding that this is the interpretation which these statutes have long been given by the Department of Corrections and that it is your advice as well.

That same year, on June 5, 1991, we commented upon the authority of local jails to refuse to accept prisoners. We observed that we were

> . . . unaware of any State statutory provisions authorizing county jails to refuse admission of prisoners. As referenced, the county jail is given the responsibility pursuant to Section 24-5-10 to "receive and safely keep in prison any person delivered or committed" to the jail. Therefore, I am unaware of any statutory basis for a county to refuse prisoners typically considered within their responsibility to keep.

With these statutes and opinions in mind, I turn now to the specific questions you have raised.

1. <u>If an inmate from a local jail is sentenced to the Department of Corrections for more than 91 days, when does the inmate become a "State" inmate</u>?

As stated, Op. No. 3860 of 1974 emphasizes that the effect of Section 24-3-60 is to "place all persons convicted of an offense against the State of South Carolina in the custody of the Department of Corrections when the sentence exceeds three (3) months . . . ." Beyond that, the statutes are somewhat ambiguous as to any question of exact and precise timing. As noted, Section 24-3-60 requires the Department to pick up prisoners sentenced to the Penitentiary (greater than 90 days) "as soon as" the notice is received from the Clerk of Court who is to provide such notice "immediately" upon adjournment of the term of General Sessions. The term "immediately" has been construed by our courts to mean with reasonable promptness under the circumstances. <u>Walker v. New Am. Cas. Co.</u>, 157 S.C. 381, 154 S.E. 221, 224 (1937); <u>Edgefield Mfg. Co. v. Md. Cas. Co.</u>, 78 S.C. 73, 58 S.E. 969 (1907). The phrase "as soon as" has been described as follows:

> [i]t has been said that the phrase is not to be taken in all cases in its absolute sense, and that it generally means "with

> reasonable promptness;" and often denotes merely a reasonable time.

The phrase also means "immediately." 6A C.J.S. "As".

Further, as noted above, we have emphasized that Section 24-3-30 intended that "authority for determining the facility for confining individuals convicted of State offenses whose sentences exceed three months be placed with the State Board of Corrections." While a particular local facility must approve its being a designated facility, I am advised that such is done pursuant to contract on a routine basis.

Thus, upon sentencing for greater than 90 days, a prisoner becomes the custody of the Department of Corrections. The Department is required by Section 24-3-60 to pick up such prisoners as soon as it is notified by the Clerk of Court, unless, of course, the prisoner is designated by the Department to remain in the local facility to serve his sentence upon approval of the local authorities. If the prisoner is to be transferred to a Department facility, such pick-up is required to be done by the Department with due diligence or reasonable promptness. Until such transfer is accomplished, of course, the local facility is required to "safely keep" such prisoners.

2. <u>What authority would allow the Department of Corrections to refuse, at any time an inmate who is duly sentenced by the courts to a period of more than 91 days</u>?

As referenced above, this is answered by our previous opinion of April 30, 1991 which finds no such authority.

3. <u>By what authority may the Department of Corrections require appointments for duly sentenced inmates to the Department of Corrections</u>?

4. <u>May the Department of Corrections delay appointments and restrict numbers of inmates who have been scheduled</u>?

5. <u>Previously, the Attorney General has offered opinions wherein local jails must commit any prisoner who is lawfully arrested. Why would this opinion not apply to the Department of Corrections when the prisoner has been duly sentenced in the courts of General Sessions for the appropriate amount of time</u>?

These questions have been generally answered above. I would only add that the interplay of the statutes heretofore referenced (Secs. 24-3-30, 24-3-60) must be viewed

with common sense and a deference to the agency required to implement them, namely the Department of Corrections. Courts will generally not interfere in agency decisions when there has been no abuse of discretion nor purely arbitrary abuse of an agency's functions. Delaware Valley Scrap Co. v. Dept. of Environmental Resources, 165 Pa.Cmwlth. 675, 645 A.2d 947 (1994). As the United States Supreme Court has recognized, courts view the judicial processes as ill-equipped to deal with the problems of prison administrators. Procunier v. Martinez, 416 U.S. 396, 405, 94 S.Ct. 1800, 1807, 40 L.Ed.2d 224 (1974).

Accordingly, it is my opinion that a Court would not require the Department of Corrections to pick up prisoners with sentences greater than ninety days from a local facility the very instant that the Department receives notice thereof. Such would be unreasonable. In other words, by definition there will have to be a reasonable degree of leeway given to the Department where it is processing a large number of prisoners into its system as best as it can. Thus, I interpret Section 24-3-60 as providing authority to the Department to pick up prisoners from the local facility upon notice from the Clerk of Court following sine die adjournment of the Court of General Sessions. Such pick-up must be accomplished with due diligence and reasonable promptness.

6. May the county bill the South Carolina Department of Corrections a fair daily rate for the maintenance of the state prisoner for the days the inmate was backed up in the local facility?

I am unaware of any such authority. Generally, the authority for an agency to charge a fee must come from an enabling statute. Op. No. 2271 (May 4, 1967). We have consistently stressed that absent a statutory enactment,

> . . . 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.

Op. Atty. Gen., January 9, 1992. Thus, absent a statute authorizing such charge, this would be a matter to be worked out mutually between the Department of Corrections and the local facility.

7. <u>When prisoners are sentenced by General Sessions Court to more than 90 days (some have been years) to be served on weekends, where should these inmates serve their sentences</u>?

Again, this question has been answered. Section 24-3-30 provides the Department with broad discretion to place prisoners in a particular facility. If that facility is local, of course, such designation must be approved by the local authorities. I understand that this approval is typically procured by contractual arrangement. Assuming that such approval has been given, however, it would be within the discretion of the Department to determine where that individual is housed to serve his sentence on the weekends. Typically, I would assume that such would occur in a local facility, but that is a matter for the Department of Corrections to determine.

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