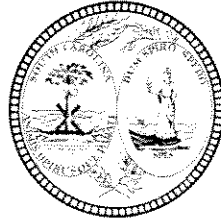


05-5865.  
Library



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

March 21, 1996

Gene Ervin, Chief Jail Administrator  
York County Detention Center  
Moss Judicial Center  
1675 - 3A York Highway  
York, South Carolina 29745-7431

Re: Informal Opinion

Dear Mr. Ervin:

You reference S.C. Code Ann. Section 24-13-80 which provides for the recoupment of certain costs for the incarceration of inmates. You specify the following hypothetical situation and the applicability of the referenced statute thereto.

[a]n inmate is in custody and receives elective medical treatment requested by the inmate and the inmate does not have the funds in his/her account to pay for such treatment. The inmate is released from custody (out on bond, time served, etc.) and the facility is unable to recover any of the cost for medical treatment.

At a later date the same inmate is incarcerated on additional charges, bench warrant or other lawful reasons and the inmate has money in his possession.

Based on the underlined portion of paragraph D [of Section 24-13-80], can the detention facility initiate an action for the recovery of costs of previously administered treatment during a prior period of incarceration by deducting from the inmate's account at a later date?

Section 24-13-80 provides in pertinent part as follows:

- (B) [t]he administrator or director, whichever is appropriate, may establish, by rules, criteria for a reasonable deduction from money credited to the account of an inmate to ...
- (2) defray the costs paid by a municipality or county for elective medical treatment for an inmate, which has been requested by him, if the deduction does not exceed five dollars for each occurrence of treatment received by the inmate at the inmate's request. If the balance in an inmate's account is five dollars or less, the fee must not be charged. This item does not apply to medical costs incurred as a result of injuries sustained by an inmate or other medically necessary treatment for which that inmate is determined not to be responsible.
- (C) All sums collected for medical treatment must be reimbursed to the inmate if the inmate is acquitted or otherwise exonerated of all charges for which the inmate was being held.
- (D) The detention facility may initiate an action for collection or recovery of medical costs incurred pursuant to this section against an inmate upon his release or his estate if the inmate was executed or died while in the custody of the detention facility.

An "inmate" is defined as "a person who is detained in a detention facility by reason of being charged with or convicted of a felony, a misdemeanor, a municipal offense, or violation of a court order." Section 24-13-80(A)(2).

Several principles of statutory construction are relevant here. The primary function of courts in interpreting statutes is to ascertain and give effect to the intention of the Legislature. Adams v. Clarendon Co. Sch. Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). A statutory provision should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). The words used in the act should be given their

Mr. Ervin  
Page 3  
March 21, 1996

ordinary and popular significance. Id. A remedial statute should be liberally construed in order to effectuate its purpose. S.C. Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

Here, the clear purpose of the statute is to insure that the detention facility is reimbursed for "elective medical treatment for an inmate, which has been requested by him ...." Subsection (D) expressly authorizes the detention facility to initiate an action for collection of recovery of medical costs incurred pursuant to Section 24-13-80 against an inmate "upon his release".

The "release" of an inmate typically means to set the inmate free from restraint, confinement or servitude. See, State Dept. of Env. Prof. v. J. T. Baker Co., 560 A.2d 739 (N.J. 1989). Courts have concluded that an inmate has been "released" even when the inmate is free on an eight hour unescorted pass. Walton v. State, 733 P.2d 724 (Ida. 1987). Thus, once an inmate has been "released", the statute clearly provides authority to the detention facility to initiate an action against him for the recovery of costs incurred for his elective medical treatment while incarcerated. The obvious intent of the General Assembly is to provide a mechanism for the deduction from the inmate's account for medical costs when the inmate is incarcerated (and his account is available) and a separate procedure upon his "release", i.e. the initiation of an "action".

However, nothing in the Act suggests that these procedures are necessarily tied to a particular period of incarceration at the detention facility. I see no limitation in the statute requiring that a deduction must be had only while the inmate is incarcerated on a particular charge, or not at all. The intent of the General Assembly is to provide the mechanism for reimbursement to the State. While there are limitations contained in the statute -- that all sums collected must be reimbursed to the inmate if acquitted or otherwise exonerated on all charges for which the inmate was being held -- there is no requirement in the law that a debt to the facility does not continue until otherwise paid or the facility is compensated. That the debt continues is amply demonstrated by the fact that a detention facility can bring an action for collection upon the inmate's release or against his estate if he was executed or died while in the facility. Subsection (D).

Courts have held almost in every case that inmate reimbursement statutes pass constitutional muster. As has been stated recently,

[c]hallenges to the validity of state prison reimbursement acts have been made on varied constitutional grounds. It has been held, for example, that such statutes do not create an unreasonable classification in violation of the Fourteenth

Mr. Ervin  
Page 4  
March 21, 1996

Amendment to the Federal Constitution merely because the obligation of reimbursement is imposed on those prisoners who own property .... Moreover, a double jeopardy challenge to a reimbursement provision has failed since the statutory obligation of reimbursement is considered civil, rather than criminal in nature ... .

Prison reimbursement statutes have also survived inmate challenges based upon the following theories: deprivation of property without due process ... unconstitutional delegation of legislative authority, or improper court discretion ...; and vagueness ... . Inmate challenges based on ex post facto ... and bill of attainder ... theories have been unsuccessfully forward, as well .... .

"Prison Reimbursement Acts", 13 A.L.R. 5th 876, 879. Moreover, it has also been stated that "[s]tates have been successful in attaching various inmate assets. Finally, courts generally may "take a liberal view toward the application of its jurisdiction's prison reimbursement act to ensure its application to as many state penal inmates as possible." Id.

In summary, while the specific provisions of Section 24-13-80 must clearly be followed, there is no limitation contained in the terms thereof that would indicate or suggest that inmate assets may not be attached in subsequent incarcerations at the facility for the previous debt owed.

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/an