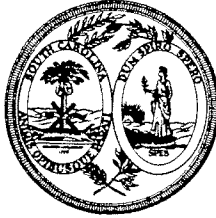


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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 23, 1997

L. B. Floyd, Assistant Chief  
Mullins Police Department  
Post Office Drawer 408  
Mullins, South Carolina 29574

Re: Informal Opinion

Dear Assistant Chief Floyd:

You advise that the insurance carrier for the Mullins Police Department has indicated that it is reluctant to insure officers who transport juveniles not charged with an offense by your Department. You further note that this creates two problems:

- (1) Other law enforcement agencies in the area often request that the Mullins Police Department transport a juvenile if Mullins has a car going to or coming from the same facility. An example would be that Mullins P.D. is already transporting a juvenile to Columbia. Another law enforcement agency will ask as a courtesy that Mullins P.D. also transport a juvenile in its custody as well. Is Mullins P.D. required by law to do this? Who is liable if the non-Mullins offender escapes or injures someone?
- (2) The Marion County D.J.J. Office requests that Mullins Police Department transport juveniles which D.J.J. has called in for an interview and revoked their "contract" which allowed the juvenile to remain free prior to a court hearing. The juveniles have not been charged by Mullins P.D. so the carrier is reluctant to cover the transport. Does Mullins P.D. have an obligation to honor D.J.J.'s request?

*Request Letter*

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### LAW / ANALYSIS

I am aware of several statutes relating to the transportation of juveniles; however, none of these enactments expressly mention officers of a city police department as possessing a duty to transport.

S.C. Code Ann. Sec. 20-7-2175 provides as follows:

[a]ny child committed under the terms of this article shall be conveyed by the sheriff, deputy sheriff or persons appointed by the sheriff of the county in which such child resides, to the custody of the department, and the expense of such conveyance and delivery shall be borne by such county. The committing judge may, in his discretion, order that such child be transferred to the custody of the department without the attendance of an officer or in such manner as may be advisable.

In addition, Section 20-7-600 (E) specifically states that

[w]hen a child is to be transported to a juvenile detention facility following a detention screening review conducted by the Department of Juvenile Justice or after a detention order has been issued by the court, the local law enforcement agency which originally took the child into custody shall transport this child to the juvenile detention facility. (emphasis added).

And, pursuant to Section 20-7-6845, it is stated that

[t]ransportation of the juvenile to and from a facility is the responsibility of the law enforcement agency having jurisdiction where the offense was committed. Transportation of juveniles between department facilities, if necessary, is the responsibility of the department [of Juvenile Justice].

These statutes appear to be consistent with the general principle that "... the common law places the primary duty for disposition of a prisoner upon the arresting officer and county ...." Op. Atty. Gen., November 16, 1976. As we advised in Op. Atty. Gen., Op. No. 86-106 (October 15, 1986), "[w]hile agreements may be entered into to delegate the

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actual responsibility for delivery [of a prisoner] to the arresting agency or county sheriff, the legal responsibility will still rest upon the lawful custodian of the prisoner -- the county correctional center -- to ensure safe transportation to the Department of Mental Health ...."

I would note one other statute which has some relevance. Section 20-7-1450 provides in pertinent part that "[e]very state, county, town, or municipal official or department shall assist and cooperate within his or its jurisdictional power to further the objects of this chapter." (emphasis added). Clearly, this statute requires a municipal police department, such as Mullins P.D. to cooperate to effectuate the Children's Code (Chapter 7) of which the laws relating to DJJ are a part "within his or its jurisdictional power ...." However, where a police department is merely acting out of courtesy to another law enforcement agency in the transportation of a juvenile as opposed to pursuant to a specific statute or order of court, it would not appear that such department would be "within ... its jurisdictional power ... ."

We addressed a similar situation to yours regarding the transportation of mental patients. In an opinion dated June 21, 1995, the question presented was whether a municipal police department could be required to transport a mental patient outside of his jurisdiction absent a specific statute or order of court so mandating. We stated that

... it is well-recognized that a law enforcement officer possesses no authority beyond his jurisdiction unless such is expressly authorized by statute. As was concluded in an opinion, dated October 10, 1978, a municipal police officer possesses no authority merely upon the call of the Sheriff ... .

Thus, based on the foregoing, it is my advice that where a specific statute expressly authorizes a police officer to act outside his jurisdiction, he may do so ... Absent a specific statute, however, a municipal police officer has no authority beyond his jurisdiction. Therefore, I advise that, where there is no specific statute or order of court applicable to extend a municipal police officer's jurisdiction beyond the municipality, that officer is without authority as a police officer to maintain or detain a mental patient in his custody beyond the jurisdiction of the municipality.

The statutes which I have referenced above, require a law enforcement agency to transport a juvenile only in specific situations such as where the agency was the

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department which originally took the child into custody or having jurisdiction where the offense was committed. In addition, Section 20-7-2175 authorizes "persons appointed by the sheriff" to transport in certain situations. Absent the applicability of these statutes or a court order, however, a municipal police officer is not given authority to transport a juvenile beyond his jurisdiction.

It is generally recognized that a law enforcement officer having custody of an arrestee or prisoner stands in a special relation to that person toward whom he owes a duty of reasonable care and protection. Clemets v. Heston, 485 N.E.2d 287 (Ohio 1985). The Second Restatement of Torts, §§ 315-320 discusses the duty to control the conduct of third persons and the liability of an individual who is under such a duty. Such Sections state as follows:

§ 315 General Principle

"There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless

(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or

(b) a special relation exists between the actor and the other which gives to the other a right to protection."

§ 319 Duty of Those in Charge of Person Having Dangerous Propensities

"One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to control the third person to prevent him from doing such harm."

§ 320 Duty of Person Having Custody of Another to Control Conduct of Third Persons

"One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject

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him to association with persons likely to harm him, is under a duty to exercise reasonable care so to control the conduct of third persons as to prevent them from intentionally harming the other or so conducting themselves as to create an unreasonable risk of harm to him, if the actor

(a) knows or has reason to know that he has the ability to control the conduct of the third persons, and

(b) knows or should know of the necessity and opportunity for exercising such control."

Certainly, this Office, without exception, encourages cooperation between various law enforcement agencies and between state and local government agencies. However, I cannot advise you that the Legislature has absolutely required a municipal police department to transport a juvenile outside his jurisdiction other than pursuant to the various statutes I have referenced or pursuant to a court order. Moreover, as mentioned, there is potential liability for a police officer to voluntarily assume custody and control over a prisoner or juvenile offender without express authority enabling him to do so.

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