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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

July 8, 1998

The Honorable Larry A. Martin
Senator, District No. 2
P. O. Box 247
Pickens, South Carolina 29671

Re: Informal Opinion

Dear Senator Martin:

You have sought advice on behalf of the Chairman of the Pickens County Council, noting that an issue has arisen between the Pickens County Department of Public Works and the City of Easley concerning the city's right to send inmates to the Pickens County Stockade. You indicate that a written agreement does not presently exist between the county and municipality for this purpose. By way of background, you provide the following additional information:

> [s]pecifically, the County Stockade contends it has the right to refuse to accept prisoners sentenced by the municipal court it deems inappropriate for confinement at this facility. For example, prisoners who have a disability, prisoners who cannot be expected to perform work at an acceptable level and/or prisoners who may be in need of certain types of medical treatment are not acceptable. The municipality has transported prisoners sentenced by the municipal judge to the stockade on occasion when the stockade personnel simply immediately released the prisoners who was deemed unacceptable for confinement.
>
> Therefore, can a prisoner who has been properly sentenced by the Easley Municipal Court for a period of confinement within the parameters of a municipal court's

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Request Letter

> statutory limits on such confinement be prematurely released by the county stockade if it deems the prisoner unacceptable for its facility? Does the recent United States Supreme Court decision involving a Pennsylvania inmate who was denied admittance into a bootcamp program because of a disability affect the basis on which the county stockade accepts prisoners? What if any recourse is available to the Municipal Court to enforce its sentence of confinement to the county stockade? Lastly, is a written agreement required in order for the county to cooperate with the municipality in this matter?

Law / Analysis

The short answer to your question -- whether a prisoner who has been properly sentenced by the municipal court may be prematurely released by the County Stockade if it deems the prisoner unacceptable for its facility -- is, no. This Office has consistently concluded that a jailer or a corrections official is a ministerial officer and, as such, possesses no authority whatsoever to release a prisoner committed to his custody by order of court unless and until a subsequent order commands such release or until the sentence is fully served. A brief review of these opinions demonstrate this conclusion.

For example, in an Opinion dated June 5, 1991, we addressed the issue concerning the overcrowding of county jails (without beds and space to separate felons, misdemeanants, etc.) and whether jail officials could lawfully refuse to accept additional prisoners ordered there by the county. We noted therein that S.C. Code Ann. Sec. 24-5-10 mandates that

> [t]he sheriff should have custody of the jail in his county, and if he appoints a jailer to keep it ... the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them ... .

We also referenced in that Opinion Section 24-3-30 of the Code which states that

> ... any person convicted of an offense against the State shall be in the custody of the Board of Corrections of the State, and the Board shall designate as a place of confinement where the sentence shall be served. The Board may designate as a place of confinement any available, suitable and appropriate institution or facility, including but not limited to a county jail or work camp whether maintained by the State Department of

> Corrections or otherwise, but the consent of the official in charge of the county institutions so designated shall be first obtained. **Provided, that if imprisonment for three months or less is ordered by the court as punishment, all persons so convicted shall be placed in the custody, supervision and control of the appropriate officials of the county wherein the sentence was pronounced, if such county has facilities suitable for confinement**. (emphasis added).

Based upon the foregoing statutory provisions, we advised that we were "unaware of any State statutory provision authorizing county jails to refuse admission of prisoners." This Opinion was reaffirmed in an Opinion of January 2, 1996.

In another Opinion, dated August 16, 1973 (Op.Atty.Gen., Op. No. 3600), we likewise opined as follows:

> [t]here is no provision in the statutory law of this State which would permit prisoners confined in a county prison pursuant to a lawful sentence to be released from that custody ... .
>
> It appears that at common law it was a misdemeanor for a sheriff having lawful charge of a prisoner to voluntarily or negligently permit him to depart from this custody however short the departure might be. Ex Parte Shores, 195 F.627. It has also been held that custody consists in keeping a prisoner either in actual confinement or surrounded by such physical force which would restrain him from going [at] large or obtaining more liberty than allowed by law. N.S. v. Person 223 F.Supp. 982. The general rule is that where a prisoner is allowed any liberty or authority incompatible with the notion of custody it is deemed escape on which liability may be based since the whole doctrine of escape rests on a notion that there should be an incarceration of the prisoner within the proper limits and the fact that a person is at liberty to go where he pleases without any restraint acting or ready to act on him either physically or morally excludes the notion of imprisonment, 72 C.J.S. Prisons § 23 (h).

> It is therefore my opinion that prisoners committed to the lawful custody of the Florence County Detention Center should not be allowed to leave the confines of that institution unless accompanied by an armed guard.

And in another Opinion, dated September 6, 1979, it was concluded that "the county jail must accept the transfer of prisoners from the municipal jail when such prisoners are charged with offenses which are in the jurisdiction of the Court of General Sessions ... ."

Moreover, in an Opinion of March 27, 1995, this Office recognized the ministerial duty of a jailer to retain in custody a prisoner in compliance with a judicial order, concluding as follows:

> [t]he law recognizes as a fundamental tenet the idea that
>
> > [t]he duty of an officer in executing the mandate of a judicial order in the nature of a commitment is purely ministerial and his power with request thereto is limited and restricted to compliance with its terms.
>
> Firmly established, also, is the following principle:
>
> > [t]he custodian of a prison on receiving a commitment can do only what the commitment orders him to do, that is, receive and safely keep the prisoner so that the prison may than be discharged in due course of law.
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> 60 Am.Jur.2d, Penal and Correctional Institutions, § 22. Similarly, it is helpful to note that Section 24-5-10 requires a sheriff or jailer to "receive and safely keep in prison any person delivered or committed." ... A jailer owes a duty to the public at large. See, Rayfield v. S.C. Dept. of Corrections, 297 S.C. 95, 374 S.E.2d. 910 (Ct. App. 1988); Section 24-5-130 [leaving jails unattended]. See also 72 C.J.S., Prisons § 15; Mu'Min v. Commonwealth, 239 Va. 433, 389 S.E.2d 886 (1990), affd., 500 U.S. __, 111 S.Ct. 1899, 114 L.Ed.2d 493 (1991); People v. Lockhart, 699 P.2d 1332 (Colo.1985);

Op.Atty.Gen., April 8, 1980 [jail administrator may not release a prisoner where arresting officer has obtained no warrant, but should take the prisoner before a magistrate]; Op.Atty.Gen., Nov. 16, 1972 [jailer may not release a prisoner who is still intoxicated without a court order]. As was stated by the Court in Whalen v. Christell, 161 Kan. 747, 173 P.2d 252 (1946),

> ... in carrying out the mandate of commitment on judicial order the duty of an officer is purely ministerial ... . Upon receiving such commitment he can only comply with its terms ... . He cannot release a prisoner from jail before the date fixed for his discharge by the magistrate ....
>
> .

A federal decision, in Zuranski v. Anderson, 582 F.Supp. 101, 108-9 (N.D. Ind. 1984) concluded that a sheriff and jailer could not act on their own behalf with respect to the disposition of prisoners within their custody.:

> The defendant sheriff and warden have no choice under Indiana law but to carry out the order of a judge when that judge is acting in this judicial capacity in a matter over which he has jurisdiction. To require the sheriff or warden to investigate each order of commitment by a judge and to independently determine if the sentence was legally imposed would be absurd. Here when carrying out a direct order of a court, the sheriff and warden enjoy the immunity afforded the committing judge.

See also, Op.Atty.Gen., March 7, 1991 [order of court valid on its face sufficient to protect employee disclosing records pursuant to such order].

Referencing the foregoing, in the absence of a judicial order or some other authority requiring a prisoner's release, a prison custodian would not be authorized to release an

> individual prior to the service of the full term ordered by the committing judge. If a mistake or error of law has been made in sentencing an individual, redress would lie with the courts.

Additionally, an Opinion, dated May 8, 1995, addressed the question of the contempt power of the courts to remedy the situation where a jail official refuses to accept a prisoner which is judicially ordered into his custody. There, we stated that

> ... one who disobeys any court order does so at his peril. An Order of the Family Court sentencing an individual for contempt for failure to pay child support -- be that sentence one for work release or otherwise -- must be obeyed, unless and until it is set aside on appeal. This legal principle is particularly applicable to jailers and custodians of prisoners, whose principle duty is to hold a prisoner committed to his custody until either completion of the sentence or a subsequent superseding order is presented. Only recently, we set forth in considerable detail the duty of jailers and corrections officials with respect to orders sentencing individuals to their facilities [referencing Op.Atty.Gen., March 27, 1995].
>
> Thus, the order of the Family Court sentencing an individual must be carried out by the jailer or custodian regardless of any disagreement he might have with it or any belief he might hold that it is invalid. Unless it is reversed or modified in the Courts, it will be deemed to be binding upon the custodian. Regardless of whether a particular order sentencing an individual is within the Court's discretion, the law takes the view that it is, until altered by a higher court. In short, I advise that you must do everything possible to carry out the Court's order unless and until that Order is reversed or modified ... . [T]he legal consequences of contempt can be severe.

Cf. State v. Bevilacqua, ___ S.C. ___, 447 S.E.2d 213 (Ct. App. 1994) [state sought criminal contempt against officials of Department of Mental Health "for failure to comply with a family court order requiring the admission of a minor for physiatric treatment to a hospital operated by the South Carolina Department of Mental Health (the Department)"].

We have also applied this same body of law in addressing the situation where a jailer refuses to accept a prisoner because of that prisoner's physical condition. In Op.Atty.Gen. Op. No. 92-04 (January 28, 1992), we commented upon the question of whether there is any exception to the rule requiring a jailer to accept a prisoner ordered into his custody by the court if the prisoner is injured. There, we quoted with approval a memorandum provided to this Office by attorneys for the Department of Probation, Pardon and Parole wherein it was concluded:

> ... if a person is arrested with a violation arrest warrant by a probation agent and then taken to a state, county or municipal jail in South Carolina, the jail is required by law to accept the prisoner for detention, upon delivery of the prisoner and a copy of the violation arrest warrant. And the jailer has no discretion to refuse to accept the prisoner for detention ... if a prisoner is delivered or committed to jail and has some injury requiring medical attention, the sheriff or jailer is required by law to accept delivery or commitment and then see to the prisoner's medical needs ...

Other Attorneys General have reached the same conclusion as the foregoing. For example, in 1980-81 Ky.Op.Atty.Gen. 2-726 (May 1, 1981), the Kentucky Attorney General commented that "regardless of the prisoner's physical and mental conditions the Campbell County jailer, or deputy is required to accept [the prisoner], if ordered by the court ... . And in Ark.Op.Atty.Gen., Op.No. 86-573 (December 17, 1986), the Arkansas Attorney General addressed the issue of a county jailer's duty to accept a prisoner sentenced by the municipal court where the prisoner had or potentially had a health or mental problem. The Attorney General of Arkansas opined that "the Sheriff has no discretion in accepting or not accepting a person ordered by the court to be held in the County Jail." And in Op.N.M. Atty. Gen., Op.No. 94-08 (Nov. 29, 1994), the New Mexico Attorney General enumerated the remedies available where the jailer refused to accept a prisoner:

> [t]he Sheriff should consult with either the attorney representing the county or the appropriate District Attorney's office to determine what measures he or she should take to compel a jail administrator to accept prisoners. We note, however, that mandamus and other legal actions have been brought against jail administrators in other states for refusing to receive prisoners at their facilities. Maricopa County v. State, 616 P.2d 37 (Ariz. 1980) (county sheriffs successfully petitioned

> for mandamus to compel the director of the state corrections department to comply with his statutory duty to take and hold in custody persons sentenced to the state prison); Henderson v. Dudley, 574 S.W.2d 658 (Ark. 1978) (sheriff who disobeys or disregards a court order of commitment or confinement is subject to attachment for contempt); Campbell County v. Kentucky Corrections Cabinet, 762 S.W.2d 6 (Ky. 1989) (upholding impositions of civil contempt remedy upon state corrections department for refusing to accept delivery of convicted felons as required by state constitution and statute).

Of course, pursuant to Section 14-25-45 of the Code, a municipal court possesses "... all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." Section 14-25-75 also enables a municipal judge to impose conditions upon any suspended sentence including placement upon work details and community service. See, Op. Atty. Gen., Op. No. 90-24. Section 17-25-70 provides that "[n]otwithstanding another provision of law, **a local governing body** may authorize the sheriff or other official in charge of a local correctional facility to require any able-bodied convicted person **committed to the facility to perform labor in the public interest.** (emphasis added). On its face, this statute is ambiguous. The issue of who determines whether a prisoner is "able-bodied" and whether such determination is made at the stage of "commitment" to the facility or thereafter is unclear. However, if a municipal court sentences a defendant to the County Stockade pursuant to this statute based upon the court's determination that a prisoner is "able-bodied," it is not for the jailer to "second guess" the judge. If the judge has erred or incorrectly applied the law in a given instance, such must be modified by a court, not by corrections officials or the county.

It is true that this Office has consistently concluded that the issue of fees for the housing of municipal prisoners in county jail facilities is one which should be resolved by contract. Opinions of this Office dated January 9, 1992, March 6, 1990, July 22, 1986, March 21, 1983 and September 6, 1979 address this question. 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:

> [a]nother opinion of this Office dated March 21, 1983 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 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. One basis for an Opinion dated July 23, 1980 which reached a similar conclusion was the fact that revenues generated by general sessions court offenses and municipal offenses are treated differently.

Within these guidelines, we have also stressed the importance of resolving the question of fees for housing prisoners by means of a contract between the city and county. In the March 6, 1990 opinion, for example, we noted that one former Code provision, Section 14-25-100, which has been repealed, stated 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. 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 care and confinement. The 1990 Opinion noted that an Opinion of December 18, 1979 had 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. In addition, the 1990 Opinion emphasized that the 1979 Opinion had referenced a statute which had been subsequently repealed. Thus, the 1990 Opinion stated:

> ... 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 contractually. 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.

See also, § 24-3-30 ["(a) county or municipality through mutual agreements or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners."]; § 17-25-70 ["A local governing body may enter into a contractual agreement with another governmental entity for use of inmate labor in the performance of work for a public purpose."]

However, while we have often concluded that the financial obligations between city and county should be resolved contractually, we have been careful to distinguish between financial responsibility for the housing of prisoners on the one hand, and a jailer's obligation to the court and under statute to **accept** prisoners pursuant to judicial order, on the other. In Op.Atty.Gen., January 9, 1992, while we advised that "matters relating to financial responsibility be resolved by contract ...", we also recognized therein that there is apparently "an obligation on the part of the county to accept a prisoner pursuant to Section 24-5-10 ... ." Thus, the issue of financial responsibility for housing municipal prisoners in a county jail must not be confused with the Court's obligation to accept a prisoner ordered to a county facility by the municipal court.

It has been urged that § 24-3-30 requires that in order for the State to designate a county work camp as the facility for the housing of particular prisoners, the Department of Corrections must obtain approval from county officials unless the sentence is for three months or less, in which case "all persons so convicted shall be placed in the custody, supervision and control of the appropriate officials of the county ...". Thus, it is argued the county maintains control over its local prison facilities. Moreover, it is contended that, because § 17-25-70 formerly allowed a municipality which did not maintain its own chain gang to sentence its convicts to the county chain gang, and since the chain gang statutes have now been repealed, municipalities no longer possess **a statutory right** to have prisoners sentenced to county work facilities. I would note that § 17-25-70 has been now drastically revised and speaks only of "able-bodied persons committed to the facility to perform labor in the public interest." Our courts have not yet construed this new provision, nor addressed the question of a municipal judge's authority to "commit" a prisoner to the county work facility pursuant to this provision or any other. The bottom line, however, is that where a municipal judge orders commitment of a prisoner to the county work camp, the jailer and county officials must obey the order until it is modified or set aside.

In summary, based upon the foregoing authorities, county jail officials do not possess the discretion to refuse to accept prisoners sentenced to the County Stockade by the Municipal Court on the basis that such prisoners are physically unable to work or for any other reason. The order of the Municipal Court must be obeyed unless set aside or modified by a court. As we have previously opined, "in the absence of a judicial order or some other authority requiring a prisoner's release, a prison custodian would not be authorized to release an individual prior to the service of the full term ordered by the committing judge." If there has been a mistake or error of law by the committing judge, only the courts, not the custodian of the prisoner, may set the sentence aside by release of the prisoner. In other words, the jailer or custodian must obey the judge's order unless and until a court modifies such order.

With respect to the remedies available to the Court, the most obvious is the Court's contempt power. There is authority which concludes that a jailer serves as an officer of the court. See McCall v. Swain, 510 F.2d 1767, 178 (D.C. Cir.1995) [and cases referenced therein]. See also, State v. Brantley, 279 S.C. 215, 308 S.E.2d 234 (1983) [Sheriff is officer of court and subject to courts orders upon penalty of contempt for failure to obey.]. Our Supreme Court has stated in Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982) that

> [t]he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts and consequently to the due administration of justice.

227 S.C. at 382. This Office has construed the foregoing language in Curlee as not being "limited to any particular jurisdictional level, and therefore, should apply equally to all courts of this State's unified judicial system, including the magistrates' and municipal courts." Op. Atty. Gen., Op. No. 85-97 (September 4, 1985). Moreover, Section 14-25-45 expressly provides that the municipal court "shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts." Of course, I make no conclusion about whether contempt of court is appropriate or inappropriate in a given instance. Such is a matter for the court whose order may have been disobeyed, based upon the facts and circumstances before the court. As also noted above, other remedies available may include the issuance of a writ of mandamus by a court having general jurisdiction for compliance with § 14-5-10 and, of course, where an individual is harmed by a person who is released, it is often the case that persons

representing that individual may seek civil remedies for any injuries or damage inflicted.[1] Furthermore, § 24-5-130 makes it a criminal offense to leave jails unattended.

Again, it is true that this Office has consistently advised that matters of financial responsibility concerning the housing of persons committed to a county detention facility by municipal authorities should be resolved by contract.[2] However, by no means does that remove the duty of the county jailer or detention officers to obey the order of a municipal court sentencing an individual to a county facility. Absent some superseding or modifying order, county officials possess no authority to release such prisoner so committed by the municipal court and may not refuse to accept the prisoner.[3] In short, a jailer may not "second guess" the order of a judge.[4] Failure to comply with a court

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[1] See e.g. Buchler v. State, 316 Or. 499, 853 P.2d 798 (1991) [estate of victim killed in shooting by escaped state prisoner and surviving victim brought negligence action against state]; Nelson v. Parish of Wash., 805 F.2d 1236 (5th Cir.1986) [parents of nine-year old daughter who was raped by escapee from parish jail brought suit against sheriff's department and insurer]; Robinson v. Estate of Williams, 721 F.Supp. 806 (S.D. Miss. E.D.) [surviving spouse brought action against sheriff for wrongful death of victim who was killed by jail escapees]. Of course, I make no comment as to the validity of any such action brought for civil liability in any individual case, but simply note that such actions are not uncommon.

[2] I would also note that an Opinion of this Office dated January 29, 1976 did conclude that a county chain gang was not required to receive prisoners sentenced by municipal authorities within the county when such prisoners are physically unable to perform the usual labor required of county work camps. The basis for such opinion was interpretation of the term "able bodied man" in the old chain gang statutes. Of course, the county chain gang statutes have now been repealed. See § 24-7-10 et seq. repeal by 1995 Act No. 7, Part II, § 61. More importantly, however this 1976 Opinion did not address the duty of a jailer to obey a court order presented to him, irrespective of whether such order is or is not erroneous.

[3] Recently, in Pa. Dept. of Corrections, et al v. Yeskey, No. 97-634 (June 15, 1998), the United States Supreme Court concluded that state prison inmates are included in Title II of the Americans With Disabilities Act of 1990 (ADA), 104 Stat. 337, 42 U.S.C. §12131 et seq. Obviously, in accord with this case, physical disability may not be used to discriminate against prisoners. Such a ruling certainly reinforces the conclusion herein.

[4] One available option for the county would be to seek a declaratory judgment for clarification of these issues.

order could result in contempt, a writ of mandamus or other remedy against the jail officials.

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