

The State of South Carolina



Office of the Attorney General

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May 29, 1990

Larry W. Powers, Director
Spartanburg County Detention Facility
County Courthouse
Spartanburg, South Carolina 29301

Dear Mr. Powers:

In a letter to this Office you referenced that the Spartanburg County Sheriff and you had entered into a mutual agreement dealing with the return of State Department of Corrections inmates to Spartanburg County for attendance at preliminary hearings and scheduled court appearances. The agreement provides that the detention facility will provide transportation from the SCDC location to the detention center. You indicated that the detention center had met with some resistance because personnel at certain State Correctional facilities indicated that it was the responsibility of the Sheriff to pick up any individuals for transportation back to Spartanburg County. You have requested advice as to your authority as Director of the detention facility to transport individuals to and from State Department of Corrections facilities.

Section 23-1-145 of the Code provides

Employees of any county or municipal jail, prison, work camp or overnight lockup facility, while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate or prisoner of this State, shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of such inmate or prisoner. 1/ (emphasis added)

1/ An opinion of this Office issued March 19, 1986 referenced that by having the status of peace officers, "...jail employees have the authority to make arrests without warrant of individuals reasonably suspected of having committed a felony or when the facts and circumstances which are observed by such employees provide probable cause to believe that a crime has been freshly committed."

Larry W. Powers, Director
Page 2
May 29, 1990

As set forth, jail employees have law enforcement authority as peace officers in any area of the State as to any matter dealing with the transportation of inmates or prisoners.

It is my understanding that pursuant to Section 24-5-12 of the Code, the sheriff has in fact relinquished all control of the jail. Such statute states

Notwithstanding the provisions of Section 24-5-10 or any other provision of law, the sheriff of any county may, upon approval of the governing body of the county, devolve all of his powers and duties relating to the custody of the county jail and the appointment of a jailer on the governing body of the county... .

The contractual agreement between the Sheriff and the Detention Facility as to transportation of inmates is consistent with the provisions of Section 20-7-2175 of the Code which states "(a)ny child committed...shall be conveyed by the sheriff, deputy sheriff or person appointed by the sheriff...to the custody of the...(Department of Youth Services)... ." (emphasis added)

I discussed your concerns with Ms. Lynn Turbeville at the Department of Corrections and she indicated that the Department had no objection to Detention Center personnel transporting inmates from their facilities. She indicated that for post-conviction hearings such transportation could be arranged by contacting the Department; transportation for other matters may be dependent on court orders requesting such transportation. You may wish to contact her directly regarding any particular situation. However, it is clear that detention center personnel would have law enforcement authority while transporting inmates in this State. Also, support for the Detention Center handling such transportation in place of the Sheriff is expressed by the agreement entered into with the Sheriff and by the fact that the Sheriff has relinquished control of the jail.

You also indicated that in some instances officers of the Spartanburg County Detention Facility who transport inmates to local hospitals have been required to surrender all firearms before an inmate is treated. You further stated that in one instance EMS personnel had made a similar demand indicating that no officer could ride in an ambulance while transporting an inmate unless he surrendered his weapon.

As referenced previously, employees of a detention facility have the status of peace officer as to any matter dealing with the custody, control or transportation of an inmate. Also, pursuant to Section 16-23-20(11) of the Code "any prison guard while engaged in his official duties" is authorized to carry a pistol. Referencing

Larry W. Powers, Director
Page 3
May 29, 1990

these provisions, I am unaware of any basis for any individual, including medical personnel, to demand that detention center personnel relinquish their firearms. A further basis for such restriction on individuals interfering with these officers may be that pursuant to Section 16-5-50 of the Code it is a criminal offense to "...aid, abet or assist any person so arrested...directly or indirectly, to escape from the custody of the officer or person or persons assisting him... ."

A prior opinion of this Office dated January 16, 1984 indicated that the determination of whether a violation of Section 16-5-50 has occurred


...would depend upon the facts of each case. Factors to be considered would include the degree of hinderance, the seriousness of the crime involved and the possibility of escape.

Also the opinion referenced the common law offense of obstruction of justice which was defined in the opinion as "...resisting or obstructing an officer in the performance of an official duty, including, but not limited to the execution of an arrest warrant."

Of course whether there has been a violation of Section 16-5-50, obstruction of justice or any other criminal provision would depend upon a variety of circumstances. No inference should be drawn that in all instances would such offenses have been committed in the circumstances you reference.

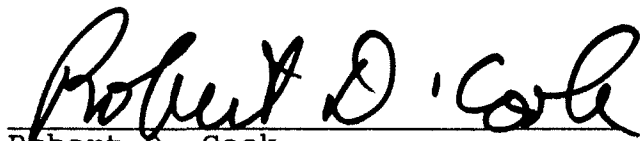
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

cc: Ms. Lynn Turbeville
S.C. Department of Corrections