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May 4, 1992

Mr. Kenneth D'Vant Long
Director, State Reorganization Commission
Post Office Box 11949
Columbia, South Carolina 29211

Dear Mr. Long:

In a letter to this Office you raised questions regarding the Shock Incarceration Program Act, Sections 24-13-1310 et seq. of the Code. You stated that two practices involved in the operation of the program were in your opinion of questionable legality. As to your first question you stated:

> The first involves "extension procedures" for an inmate in the program who may have medical or disciplinary problems, is required to be present in court, or who has difficulty in providing paroling authorities with an address of where he or she will be living when he or she is released from prison. In these situations, the Department of Corrections has "extended" an inmate's stay in the program by as much as 30 days. This means that an inmate may be in the program for up to 120 days. However, Section 24-13-1310(2) states, "Shock incarceration program' means a program pursuant to which eligible inmates are selected directly at reception centers to participate in the program and serve ninety days in an incarceration facility, which provides rigorous physical activity, intensive regimentation, and discipline and rehabilitation therapy and programming." (Emphasis added.) The question, therefore, is, "Is it legal for the Department of Corrections to extend an inmate's length of stay in the program beyond the ninety days?"

The Shock Incarceration Program is an alternative sentencing program for eligible inmates which as previously described provides a program of rigorous physical activity, intensive regimentation, discipline, rehabilitation therapy and programming. Section 24-13-1320(A) provides for the promulgation of regulations by the Department of Corrections for the shock incarceration program. The provision states that such regulations must consider the safety of the community along with the welfare of the inmate. It is further stated:

> The regulations must reflect the purpose of the program and include, but are not limited to, selection criteria, inmate discipline, programming and supervision, and program structure and administration.

Additionally, Section 24-13-1330(C) provides that

> An applicant may not participate in a program unless he agrees to be bound by all its terms and conditions...

I am informed that the Department of Corrections is promulgating regulations which specifically provide for an extension period beyond the initial ninety days for inmates in the shock incarceration program. The extension will be applicable to inmates where additional time is necessary to provide acceptable addresses as to where the inmates will be living after release from the program and to inmates who fail to satisfactorily adjust to the program. The latter would include inmates who commit minor infractions which are not of such a nature as would warrant complete removal from the referenced program.

Based upon my review, it appears that such regulations are consistent with a program designed as an alternative sentencing mechanism. A procedure allowing for extended stays would also be consistent with the expressed intent of the General Assembly that any regulations consider the safety of the community along with the welfare of the inmate involved in the program.

As to your second question you stated:

> The second practice concerns the conditions of release that have been imposed on program participants by the Department of Corrections (SCDC) and/or the Department of Probation, Parole, and

Pardon Services (SCDPPPS). Section 24-13-1330(D) states, "An inmate who has completed a shock incarceration program successfully is eligible to receive a certificate of earned eligibility and must be granted parole release. (Emphasis added.) Entry into the program is voluntary on the part of the inmate and he or she must fill out an application form. As part of the application form, the inmate is asked to sign a statement that states, in part, "I also agree to be bound by the conditions and regulations pertaining to parole release and supervision." If the inmate does not agree to this condition, then he or she will not be accepted into the program. Before the Department of Corrections will release an inmate from the program, the inmate must be issued a parole certificate by the Board of Probation, Parole, and Pardon Services. The Board of Probation, Parole, and Pardon Services will not issue a certificate of parole to an inmate unless that inmate has provided paroling authorities with an address, that has been approved by SCDPPPS, of where he or she will be living when released from prison. In some instances, an inmate in the program, although he or she may have successfully completed all of the requirements of the program, has been unable to provide paroling authorities with an address, and, consequently, has been removed from the program and placed in the general inmate population to complete the remainder of his or her original sentence. The question, therefore, is, "Can these conditions, or any conditions, of release be imposed on an inmate who successfully completes the shock incarceration program by the Department of Corrections and/or the Board of Probation, Parole, and Pardon Services?"

As referenced above, Section 24-13-1330(C) provides that an individual may not participate in the shock incarceration program unless he agrees to all terms and conditions of the program. Such is evidenced by the agreement which you indicated the inmate is required to sign as a condition of acceptance into the program. According to the application form for the program which was forwarded to me the agreement includes the statement

> I accept the Shock Incarceration Program and agree to be bound by its terms and conditions. I also agree to be bound by the conditions and regulations pertaining to parole release and supervision. I understand that my participation in the program is a privilege that may be revoked at the sole discretion of the Commissioner. I understand that I shall complete the entire program successfully to obtain a certificate of earned eligibility upon the completion of the program, and if I do not complete the program successfully, for any reason, I will be transferred to a nonshock incarceration correctional facility to continue service of my sentence.

The form also includes a residence plan for approval by the Department of Probation, Parole and Pardon Services (DPPPS).

It is generally recognized that parole is

> ... the conditional release of a convict before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole.

67A C.J.S. Pardon and Parole, Section 39 p. 53. See also: Sanders v. MacDougall, 244 S.C. 160, 135 S.E.2d 836 (1964). Certainly the need for a proper address indicating where the inmate will be living after release may be necessary to any program of supervision of the inmate after he is released from confinement.

Included in the regulations being promulgated by the Department of Corrections are requirements that inmates considered for the Shock Incarceration Program submit a residence plan for approval by DPPPS. Such regulations appear to be consistent with Section 24-13-1320(A) which provide for the promulgation of regulations dealing with but not limited to "programming and supervision, and program structure and administration." Such are also consistent with the intent of the General Assembly that regulations consider the safety of the community and the welfare of the inmate involved.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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