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September 7, 1989

Stan M. McKinney, Director
State of South Carolina
Office of the Governor
Division of Public Safety Programs
Edgar A. Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. McKinney:

In a letter to this Office you requested an opinion as to whether Section 20-7-600(d) of the Code which prohibits secure confinement of juvenile status offenders also applies to law enforcement lockups or holding cells.1/ Such question is raised in response to the mandate of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended which states in part:

> ...juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities... .

42 U.S.C. §5633(a)(12)(A). The term "secure detention facility" means

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1/ The term "status offense" is defined by Section 20-7-30(6) of the Code as "... any offense which would not be a misdemeanor or felony if committed by an adult, such as, but not limited to, incorrigibility (beyond the control of parents), truancy, running away, playing or loitering in a billiard room, playing a pinball machine or gaining admission to a theatre by false identification."

> ...any public or private residential facility which --- (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (B) is used for the temporary placement of any juvenile who is accused of having committed an offense, of any nonoffender, or of any other individual accused of having committed a criminal offense.

42 U.S.C. §5603(12). The term "secure correctional facility" means

> ...any public or private residential facility which --- (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense;...

42 U.S.C. §5603(13).

Section 20-7-600(d) states in part:

> (a)fter January 1, 1982, a child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed in a detention facility...

However, another provision contained in the same statute as subsection (c) states as follows:

> (c) (n)o child may be transported in any police vehicle which also contains adults under arrest. No child at any time may be placed in a jail or other place of detention for adults <u>but must be</u> placed in a room or ward entirely separate from adults. (emphasis added)

All provisions of a statute must be read <u>in pari materia</u> with one another and harmonized together. <u>First Presbyterian Church of York v. York Depository</u>, 203 S.C. 410, 275 E.2d 573 (1943) When subsections (c) and (d) are indeed read together, it is evident that the intent of the General Assembly was to insure that juvenile offenders not be integrated with the adult prison population; there is, on the other hand, no evidenced intent by the Legislature that juvenile offenders could not be physically secured by temporary placement in a holding cell.

It should first be noted that subsection (c) emphasized that no child may be "placed" in a "jail or other place of detention", but instead must be "placed" in a "room or ward" entirely separate from adults. Subsection (d) provides that status offenders must not be "placed" in a "detention facility". Interestingly, both provisions use the word "place" or "placed" throughout; subsection (c) uses that word in the context of securing juveniles in a jail or other "place of detention". Thus, the term "detention facility" as used in subsection (d) appears to be defined by subsection (c), i.e. as a "jail or other place of detention". By comparison the "placement" of juveniles in a "room or ward" is expressly permitted by subsection (c). In short, reading subsections (c) and (d) together, it appears that the General Assembly forbade placement of juveniles in a "jail or other detention facility" typically used to incarcerate adults, but did not prohibit, and expressly permitted, the temporary securing of status offenders in a "room or ward", so long as such confinement does not house them together with adults.

Our reading of these provisions is supported by an opinion of the Kentucky Attorney General, dated February 10, 1981. This opinion dealt with the question of compliance with an order of a judge for the placement of a juvenile taken into custody into a "detention facility". The juvenile had merely been placed in a holding cell at police headquarters. The opinion concluded that such action did not constitute compliance with the judge's order because the holding cell was not a "detention facility" in the ordinary sense of the word. The Kentucky Attorney General stated:

> ...an order of the court directing that the child be placed in detention may be properly executed only by delivering the child to the detention facility. Simply taking the child to the station and placing him or her in a holding cell does not constitute proper execution of the order.

This reasoning fully supports our reading of subsections (c) and (d) together to the effect that placing a child in a holding cell or secure "room or ward" is not at all inconsistent with the prohibition in subsection (d) that a status offender may not be placed in a "detention facility".

CONCLUSION

In conclusion, in light of the provisions of Section 20-7-600(c) and (d), we are unable to conclude that the General Assembly intended to prohibit the confinement in a law enforcement lockup or holding cell of juveniles taken into custody for a status offense. Of course, legislation could be introduced to prohibit such confinement if such is desired. Moreover, any decision as to where a juvenile is placed in any circumstances is a matter within the sound discretion and good judgment of law enforcement officers.

We would add, however, that we do not believe our interpretation is inconsistent with 42 U.S.C. Section 5633. The original intent of this provision was clearly aimed at "reducing commitments of juveniles to correctional facilities" as well as not detaining or confining them in "any institution in which they have regular contact with alleged or adjudicated adult criminals." Congressional and Administrative News, 1974, p. 5325. Moreover, Section 5633 (c)(2) states that eligibility for funding by a state is based in part on removing a percentage of juveniles from "jails and lockups for adults." (Emphasis added). Subsection (c)(4) explicitly states that a state has demonstrated substantial compliance with the Act by showing that it has:

> (A) removed all juvenile status offenders and nonoffenders from jails and lockups for adults;
> (B) made meaningful progress in removing other juveniles from jails and lockups for adults -----(emphasis added)

Implicit in this language is that a lockup for juveniles is permitted. Finally, we would note that the terms "secure detention facility" and "secure correctional facility" are both defined as "any public or private residential facility...." A "residential facility", of course, is designed as a place of abode for someone over a period of time of some duration. See, Penn Central Co. v. Johnson, 300 N.Y.S. 2d 202. A temporary lockup for a juvenile does not appear to constitute a "residential facility" as that term is used in the federal law.

Again, all of these federal provisions appear to be consistent with South Carolina's law as contained in Section 20-7-600(c) and (d). Juvenile status offenders cannot be incarcerated with adults in jails or lockups which have adults, but that is not to say, however, that status offenders may not be detained in rooms or wards or lockups where no adult prisoners are present.

South Carolina's law has been on the books since at least 1981 and, to our knowledge, has never been deemed inconsistent with federal law. We believe our interpretation, that juvenile status offenders may be detained at a police station in a lockup facility, so long as not together with adults, is consistent with federal law.

With best wishes, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:

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