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The State of South Carolina



DAVID 85-17 #23

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February 25, 1985

The Honorable Harry W. Davis, Jr.
Commissioner, South Carolina Department
of Youth Services
Post Office Box 7367
Columbia, South Carolina 29202

Re: Escape from Department of Youth Services
Institutions. #1396.

Dear Mr. Davis:

You have asked an opinion of this office as to whether §24-13-410, Code of Laws (1976), concerning the crime of escape is applicable to a child committed to the custody of the Department of Youth Services. We are advised that an older opinion of this office (1957 Opinions of the Attorney General, p.320) noted that §55-6, Code of Laws (1952), did not apply to trainees in South Carolina Industrial School for Boys since they are not always convicted or sentenced. It is suggested that the statute does apply to juvenile inmates of the Department of Youth Services because children, unlike in 1957, can no longer be committed or referred to a Department of Youth Services correctional institution without first being adjudicated delinquent for committing a criminal offense. See: §20-7-3230, Code of Laws (1976), as amended (1982). It should be noted that the only direct references to a crime of escape in the Children's Code can be found at §20-7-2200(2) making it a crime for "any person...to harbor any child who has escaped from such authorities [Board of Youth Services] or who is running away from their supervision" and §20-7-3260 making the failure of a child under its domiciliary custody to return from a furlough an "escape".

REQUEST LETTER

The Honorable Harry W. Davis, Jr.
February 25, 1985
Page Two

The South Carolina Code establishes a statutory crime of escape in §24-13-410, Code of Laws (1976). In its pertinent part, the crime established is as follows:

It shall be unlawful for any person, being lawfully confined in any prison or upon the public works of any county or while in the custody of any superintendent, guard or officer, to escape, to attempt to escape, or to have in his possession tools or weapons which may be used to facilitate an escape, and any person so doing or so possessing such tools or weapons shall be guilty of a misdemeanor and punished by a sentence of not less than six months or more than two years, such sentence to be consecutive to the original sentence and to any other sentences theretofore imposed upon such escape by any court of the State.

In addition to the escape, the key elements are whether the person was lawfully confined or whether he was "in the custody of any superintendent, guard, or officer." This statute has been interpreted by the State Supreme Court to include escapes from lawful pre-trial detention in Bing v. Harvey, 274 S.C.216, 262 S.E.2d. 42 (1980), and escape from detention pending resentencing in Copeland v. Manning, 234 S.C. 510, 109 S.E.2d 361 (1959). In the adult setting §24-3-210, Code of Laws (1976) provides that failure to return from a particular statutory furlough from the Department of Corrections is to be "deemed an escape" under this section. Accord: State v. Murray, 273 S.C. 374, 256 S.E.2d 543 (1979); Compare; §20-7-3260, Code of Laws (failure by child in Department of Youth Services domiciliary custody to return from Department of Youth Services 30-day furlough as directed shall be deemed an escape).


When a child is committed by the family court to the Department of Youth Services after determining the child to be a delinquent by reason of criminal activities, the Board of Youth Services has the lawful care, custody, and control of the child. §20-7-1330(b), 20-7-2180, Code of Laws (1976). The Board of Department of Youth Services provides the institutional services for juveniles committed to it. §20-7-3230, as amended (1984). The inclusion of the furlough legislation that deemed failure to abide by its terms as an "escape" in §20-7-3270 which parallels its adult situation in §24-3-210 clearly reflects a clear legislative

The Honorable Harry W. Davis, Jr.
February 25, 1985
Page Three

intent, not expressed in 1957, that the provisions of §24-13-410 establishes a substantive crime of escape that includes children under the custody of the Department of Youth Services. These children are both "lawfully confined" in a "correctional institution" [a modernized term for prison or penitentiary in South Carolina legislation, §24-1-10, Code of Laws (1976)], or "under the custody of any superintendent, guard, or officer".

In conclusion, it is my opinion that when a child is in the domiciliary custody of the Department of Youth Services pursuant to court order, a child's voluntary departure or attempted departure from confinement or the custody of any superintendent or office of the Department of Youth Services, including the failure to return from a furlough, encompasses the crime of escape set out in §24-13-410, Code of Laws (1976). This opinion supersedes the 1957-1958 Opinion of the Attorney General, p.320, as it relates to the Department of Youth Services. Finally, in light of the substantive opinion expressed above, specific legislation dealing with juveniles who escape from lawful confinement is not needed.

Sincerely,

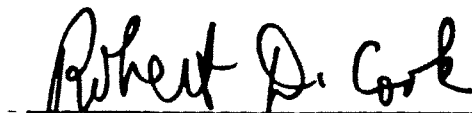


Donald J. Zelenka
Chief Deputy Attorney General

DJZ/lh

cc: Larry L. Vanderbilt, Esq.
Legal Advisor, S.C. Department of Youth Services

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

COPHS AG OPINIONS 7-19-51 pg 320