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The State of South Carolina

Opinion No 86-505
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Office of the Attorney General

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June 10, 1986

Jerry M. Stewart, Assistant Director
for Records Management
South Carolina Department of
Archives and History
P. O. Box 11,669, Capitol Station
Columbia, South Carolina 29211-1669

Dear Mr. Stewart:

In a letter to this Office you indicated that the State Department of Archives and History has received a request for assistance from the Richland County Pretrial Intervention Program to determine whether the inactive case files of persons participating in its program can be destroyed pursuant to Section 30-1-90 of the Code. Such provision was included in legislation enacted in 1973 which generally provides for the retention and disposal of public records of this State and its political subdivisions. Such provision states in part:

> ... (w)hen requested by the Archives, agencies and subdivisions shall assist the Archives to prepare an inclusive inventory of records in their custody and a schedule establishing a time period for the retention of each series of records. This schedule shall be approved by the governing body of the subdivision or the head of the agency having custody of the records, the Director of the Archives, and in the case of records of state or regional agencies, the State Budget and Control Board. This schedule shall serve as authorization for the destruction of records retained for the stated time period or for the preservation of records through other means, such as transfer to the Archives.

This statute is part of a comprehensive scheme relating to the custody, care, maintenance and preservation of records of State agencies and political subdivisions of the State. Op. Atty. Gen., June 6, 1984.

The Richland County Pretrial Intervention Program is established pursuant to the "Pretrial Intervention Act," codified as Sections 17-22-10 et seq. of the Code. The standards of eligibility in the program limit it to offenders seventeen years of age or older who have no significant history of prior criminal activity and who are considered to be responsive to rehabilitative treatment outside the traditional criminal justice process. Several provisions comment on the confidentiality aspects of the program which are designed to protect the participating offenders. See: Sections 17-22-70, 17-22-90(5) and 17-22-130. When an offender successfully completes the program, a noncriminal disposition of the charges against the offender is made. Section 17-22-150(a) specifically provides a method for the destruction of the records relating to the offender. This statute provides that

> ... (u)pon such disposition, the offender may apply to the court for an order to destroy all official records relating to his arrest and no evidence of such records pertaining to such charge shall be retained by any municipal, county, or state agency, except as otherwise provided.... (Section 17-22-130 provides that files relating to an offender's participation are retained by the solicitor's office, SLED, and the State Pretrial Intervention Coordinator's Office.)

As to your specific question concerning whether inactive case files maintained by the Richland County Pretrial Intervention Program can be destroyed pursuant to Section 30-1-90, it appears that such statute would be inapplicable to such files. Instead, the better construction appears to be that Section 17-22-150 is the exclusive statutory means of destroying any records relating to an offender who has participated in a pretrial intervention program.

A review of the legislative history of Section 17-22-150 indicates that in 1982 the General Assembly amended the former section to specifically authorize the application by an offender to have certain records relating to his arrest destroyed. As referenced above, Section 30-1-90 was enacted in 1973. It has been stated that general and specific statutes should be read

together and harmonized if possible. However, to the extent any conflict exists, the special statute must prevail. Criterion Insurance Co. v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). The specific statute is deemed to be an exception to the general law. Wilder v. State Highway Dept., 228 S.C. 448, 90 S.E.2d 635 (1956). Such a conclusion is particularly reached when the specific statute is the most recent expression of the General Assembly, inasmuch as it is generally held that the most recent provision will prevail as it is the later expression of the Legislature. 2A Sutherland Statutory Construction, Sections 51.02 and 51.05 (4th Ed.); City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 360 (1953). Therefore, it appears that the provisions of Section 17-22-150 should be held to be the exclusive means by which the records of an offender admitted to the Pretrial Intervention Program can be destroyed. Section 17-22-150, as compared to Section 30-1-90, is the most recent expression of the General Assembly. Therefore, while § 30-1-90 is generally construed broadly, Op. Atty. Gen., June 6, 1984, we believe that in this particular instance, § 17-22-150 would prevail over § 30-1-90. In short, while the Archives possesses general authority with respect to the destruction of records, in this instance, the General Assembly chose the court as the single expressly authorized entity to destroy the records of an offender.

Furthermore, it is generally held that authority for the destruction of public records is dependent on express statutory authority and destruction of such can only be accomplished in the manner designated by law. 66 Am.Jur.2d Records and Recording Laws, Section 10, p. 347, 76 C.J.S. Records, Section 29, p. 129. Moreover, inasmuch as the destruction of records is an irreversible process, we are hesitant to construe Section 30-1-90 so broadly as to make it applicable to records of offenders in the Pretrial Intervention Program where a specific statutory provision appears controlling. See: Opinion of the Attorney General dated June 6, 1984. If such statute is to be made applicable to such records, express legislative action would probably be necessary. Also, provisions of Sections 17-22-10 et seq. could be amended to specifically authorize the destruction of records in addition to the records already authorized to be destroyed upon the application of an offender. Express statutory authorization could be sought which would authorize the destruction of any records pertaining to offenders which are retained by a local pretrial intervention program or solicitor's office.

I would additionally note that while Section 30-1-90 may not be construed to authorize the destruction of records of an offender in a pretrial intervention program, it appears that the

Department of Archives possesses the authority to provide storage of such records. Section 30-1-100 of the Code states in part:

> ... (a)ny public official having records in his custody may turn over to the Archives any public records no longer in current official use, and the Archives may in its discretion receive such records and provide for their proper administration, preservation, reproduction, or disposition; provided, that any record placed in the custody of the Archives under special terms or conditions restricting their use shall be made accessible only in accordance with such terms and conditions....

As to any assertions that by turning over records of offenders, confidentiality of such records may be breached, as indicated above, pursuant to Section 30-1-100 accessibility to records may be strictly controlled. Of course, § 30-1-100 leaves the ultimate decision as to whether to store such records and their manner of storage within the discretion of the Archives.

Therefore, in conclusion, while we do not construe Section 30-1-90 to be applicable to records maintained by the Richland County Pretrial Intervention Program so as to authorize the destruction of such records pursuant to such provision, the Department of Archives possesses express statutory authority to store such records. Such storage by the Department may be helpful in solving current storage problems at the pretrial intervention program offices pending legislative action expressly authorizing the destruction of such records.

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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