1977 S.C. Op. Atty. Gen. 39 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-37, 1977 WL 24380

Office of the Attorney General

State of South Carolina
Opinion No. 77-37
January 29, 1977

***1** County Chain Gangs are not required to receive prisoners sentenced by municipal authorities within the county when such prisoners are physically unable to perform the usual labor required of county work camps.

TO: Mr. Neal Kirby
Supervisor
Union County

QUESTION PRESENTED

Is the Union County Chain Gang required to receive prisoners sentenced by municipal authorities in Union County even though those prisoners are physically unable to labor upon the county roads?

STATUTES, CASES, ETC. INVOLVED

City of Greenville, et al., v. Pridmore, County Supervisor, et al., 162 S.C. 52, 160 S.E. 144

Sherrick v. Town of Houston, 29 Ill. App. 381

Darling v. Bowen, 10 Vt. 148

Starksboro v. Town of Hinesburg, 15 Vt. 200

Section 55–466, Code of Laws of South Carolina, 1962

DISCUSSION OF THE ISSUES

It is my understanding that certain municipalities in Union County are sentencing Defendants to confinement at hard labor on the Union County Public Works. You advise that many of these prisoners are ill and otherwise physically unable to perform labor on the Union County Public Works. The Union County Chain Gang is, as are all chain gangs, organized for the purpose of performing labor on the county roads and public works of Union County. Section 55–466, Code of Laws of South Carolina, 1962, provides that municipal authorities 'may place such convicts on the county chain gang for the time so sentenced.' This code section has been in existence since prior to the turn of the century. This Section, along with other sections dealing with the same point, was interpreted by the State Supreme Court in City of Greenville, et al., v. Pridmore, County Supervisor, et al., 162 S.C. 52, 160 S.E. 144. In that case all of the various statutes were reviewed by the State Supreme Court and these statutes, as far as they are applicable to the question presented here, remain the same today. In that decision, it is stated by the Court that 'municipal authorities have the power to sentence able bodied male convicts to hard labor upon the county chain gang of the county in which that person shall have been convicted, and it is the duty of the county authorities in charge of the respective chain gangs to accept the prisoners so sentenced.' (emphasis added)

It has been held that the term 'able bodied man' refers to one who is ordinarily physically able to perform the labor usually performed by able bodied men on the public roads. Sherrick v. Town of Houston, 29 Ill. App. 381. Able bodied does not imply absolute freedom from all physical ailment but merely the absence of those palpable and visible defects which incapacitate a person from performing the ordinary duties required; and it does not require that the person should invariably continue in good health throughout the term, but that the person should be in ordinary health and strength in his usual and habitual condition. Darling v. Bowen, 10 Vt. 148; Starksboro v. Town of Heinsburg, 15 Vt. 200.

CONCLUSION

***2** In my opinion the county authorities are not required to receive prisoners sentenced by municipal authorities who are not able bodied, in the sense that they are unable to perform the usual labor on the public roads and works as required of the county chain gang. If prisoners are sent by the municipal authorities and a physician certifies that they are not able to perform the normal and usual duties required of the county chain gang, then these prisoners should be returned to the municipal authorities. Pursuant to the statutes and the Supreme Court decision previously mentioned the municipal authorities may, of course, confine these persons in the municipal jail or the county jail.

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