

1977 S.C. Op. Atty. Gen. 130 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-157, 1977 WL 24499

Office of the Attorney General

State of South Carolina

Opinion No. 77-157

May 17, 1977

*1 John Henry Williams, Esquire
Aiken County Attorney
P. O. Box 463
Aiken, South Carolina 29801

Dear Mr. Williams:

You have requested an opinion from this Office as to whether or not the Aiken County Council can turn over to a private, eleemosynary corporation the operation of a juvenile detention center for the placement, care and detention of juveniles, including status offenders, and thereby divest itself of responsibility and liability for the operation thereof. In my opinion, it cannot.

The provisions of Act No. 283 of 1975, the 'home rule' legislation, authorize a county council:

(6) To establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions hereof, and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions . . .

While the above-quoted language authorizes a county governing body to delegate to its agents the performance of functions and the provision of services which the council itself is authorized to perform and provide, neither that provision nor any other general law of which I am aware provides authority for a county council to delegate to a private agency the performance of its functions and the provision of its services without, of necessity, making such an organization an agent of the county for the purposes of the public duties which it is to carry out. *Cf.*, § 21-295.14, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). Indeed, the general rule is:

The right of a county board to delegate its authority depends upon the nature of the duty to be performed. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated to a committee or agent. Duties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated by the board to a committee or to an agent, an employee, or a servant. 20 C.J.S. *Counties* § 89 at 862. [Emphasis added.]

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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