

1978 S.C. Op. Atty. Gen. 185 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-152, 1978 WL 22620

Office of the Attorney General

State of South Carolina

Opinion No. 78-152

August 11, 1978

***1 SUBJECT: Health, Correctional Facilities.**

The Department of Health and Environmental Control is not responsible for enforcing prison sanitation standards.

TO: Jacquelyn S. Dickman
Staff Attorney
S. C. Department of Health & Environmental Control

QUESTION:

Is the Department of Health and Environmental Control responsible for enforcing prison sanitation standards?

STATUTES, CASES, ETC.

[Sections 24-1-130, 24-9-10](#), [et seq.](#), 24-15-40, and [44-1-140 of the 1976 Code of Laws of South Carolina](#); Act No. 419 of the Acts and Joint Resolutions of the 1912 General Assembly; Act No. 808 of the Acts and Joint Resolutions of the 1960 General Assembly; [Regulation 61-55](#), Volume 25, Code of Laws of South Carolina, 1976; 1969-1970 Ops. A.G., No. 2980; 2A Sutherland on Statutory Construction, Section 51.05, p. 315 (4th Ed.); 17 S. C. Digest, [Statutes](#), Key No. 223.4.

DISCUSSION:

You have inquired as to the legal responsibility of the Department of Health and Environmental Control regarding enforcement of departmental sanitation standards in facilities under the exclusive control of the Department of Corrections and the Department of Youth Services. You advise that DHEC personnel presently conduct periodic inspections of such facilities with the cooperation of the Corrections and Youth Services personnel. DHEC inspection reports, with any violations noted thereon, are thereafter forwarded to the responsible division of each respective department for appropriate action. Correction of violations is left to the particular agency. Your question focuses on whether DHEC should be involved in enforcing prison sanitation standards when violations have been noted. It is our opinion that it should not.

[Section 44-1-140 of the 1976 Code of Laws of South Carolina](#) provides, in pertinent part:

The Department of Health and Environmental Control may make, adopt, promulgate and enforce reasonable rules and regulations from time to time requiring and providing:

(1) For the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats and other vehicles of transportation in this State and all convict camps, penitentiaries, jails, hotels, schools and other places used by or open to the public; [Emphasis added]

The above-quoted provision of law was created by Act No. 419 of 1912, p. 744, and in pertinent part survives in its original form today. Pursuant thereto, the Department has promulgated rules and regulations regarding the sanitation of jails. (R 61–55)

Until 1960, the penal facilities in this State were managed and controlled by the various local governing bodies. In 1960, the legislature created the State Board of Corrections and vested it, together with the Commissioner, ‘with the exclusive management and control of the prison system, and all properties belonging thereto, . . .,’ and made it responsible ‘for the management of the affairs of the prison system and for the proper care, treatment, feeding, clothing, and management of the prisoners confined therein.’ (Act No. 808 of 1960, p. 1917, codified as [Section 24–1–130](#)) Accordingly, it is our opinion that the Board of Corrections, together with the Commissioner whom they select, is vested with the exclusive management and control of the prison system in this State. A similar conference of exclusive supervisory authority upon the Board of Youth Services is found in Section 24–15–40, *supra.*; therefore, a similar conclusion also appears to be in order.

*2 Additionally, the Legislature has also authorized the creation of the Jail and Prison Inspection Division within the Department of Corrections. [Section 24–9–10](#), *et seq.* Section 24–9–20 specifically provides:

The [Jail and Prison Inspection] Division shall be responsible for inspecting at least annually every penal facility in this State operated by a State agency, county, municipality or any other political subdivision and such inspections shall include all phases of operation of the respective facilities. The inspections shall be based on standards adopted by the Board of Corrections. A report on the conditions of a facility shall be prepared following the inspection thereof. A copy of the report shall be filed with the governing body of the political subdivision having jurisdiction of the facility inspected, the governing body of the county and the county legislative delegation in which such facility is located. All reports shall be filed through the Commissioner of the Department of Corrections.

Enforcement is also specifically addressed, said authority being expressly vested in the Commissioner of the Department of Corrections. Section 24–9–30. As noted in a previous opinion of this Office, the aforementioned provisions bestow upon the Commissioner alone the enforcement sanctions for noncompliance. 1969–1970 Ops. A.G., No. 2980, p. 251. It appears nonetheless certain that some areas of regulation may not be harmonized. Accordingly, resort must be made to the rules of statutory construction.

The South Carolina Supreme Court has stated the rule in this State to be that general and special statutes should be read together, if possible; but to the extent of any conflict between the two, the special statute must prevail. *See* cases generally collected at 17 S.C. Digest, *Statutes*, Key No. 223.4; and 2A Sutherland on Statutory Construction (4th Ed.), Section 51.05, p. 315.

Therefore, to the extent of any irreconcilable conflict between the statutory responsibilities delegated to the Department of Health and Environmental Control and the Department of Corrections as discussed above, the specific authority of the Department of Corrections to enforce prison sanitation standards in this State must prevail.

CONCLUSION:

Therefore, it is the conclusion of this Office that the Department of Health and Environmental Control is not responsible for enforcing prison sanitation standards.

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