

1975 WL 28877 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 2, 1975

\*1 The Honorable Eugene N. Zeigler  
Member  
Board of Corrections  
South Carolina Department of Corrections  
Post Office Box 766  
Columbia, South Carolina 29202

Dear Mr. Zeigler:

You have requested the opinion of this office concerning the effect of the recent legislation found in Section 14 of Part II, the permanent provisions of the 1974-75 General Appropriations Act (Act No. 1136, Acts and Joint Resolutions of the General Assembly of the State of South Carolina, 1974, page 2618), on §§ 55-3.1 and 55-335.1 of the Code. This office previously issued an opinion concerning this new legislation under date of September 18, 1974, stating in effect that all pre-existing statutes should be read in light of the new enactment.

Section 55-335.1 permits the transfer of an inmate from the Department of Corrections to a county prison camp in the county where he was convicted upon the request of the appropriate county official with the consent and approval of the State Board of Corrections. Section 55-3.1 permits the transfer of a Department inmate to a county other than the county in which he was sentenced under similar circumstances.

The new legislation enacted on June 28, 1974, is clear and all encompassing. The statute states that any person convicted of an offense against the State of South Carolina shall be in the custody of the Board of Corrections, the only exception provided is when the individual is sentenced to imprisonment for three (3) months or less. This office stated that the statute should not be given retroactive effect. The rules of statutory construction prohibited such retroactive effect. Since it was prospective in effect, this left a group of inmates who had been convicted prior to the effective date of the Act and who had remained at the county prison and/or work camps. These prisoners would not be in the custody of the Board, even though their sentences were in excess of three (3) months.

Occasions arise when prisoners who were sentenced prior to the effective date of the Act and remained in the County are subsequently transferred to the Department of Corrections. As I understand the question posed in your letter, you ask whether or not these prisoners become Department prisoners subject to the new legislation or whether they remain county prisoners.

The 1974 enactment is not ambiguous and the legislative intention is even more clear. Were it not for the prohibition against retroactive construction, these individuals would be in the custody of the Board. It is the opinion of this office that once a prisoner comes into the custody of the Board of Corrections, he remains in the custody of the Board until the expiration of his sentence.

If a particular county desires to have a prisoner serve his sentence in that county, the Board, if it chooses, may designate that county facility as the place of confinement for that prisoner. Pursuant to the previous opinion of this office, the prisoner would remain in the custody of the Board and the Board would maintain responsibility.

\*2 I hope this provides sufficient information in answer to your question. If there is anything further, please do not hesitate to ask.

Yours very truly,

Emmet H. Clair  
Assistant Attorney General

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