

1975 WL 29127 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 6, 1975

\*1 Honorable Francis B. Nicholson  
Judge  
Eighth Judicial Circuit  
P. O. Box 3087  
Station A  
Greenwood, South Carolina 29646

Dear Judge Nicholson:

You have requested an opinion from this Office as to what official has the duty to see that defendants sentenced in circuit court are committed to the proper institution of confinement. This question has arisen as a result of the establishment of a Law Enforcement Center in Newberry County and the divestment of the Sheriff of his duties regarding the jail. These duties were transferred by the Newberry County Council to a jail administrator.

Under provisions of § 55-401 of the CODE OF LAWS OF SOUTH CAROLINA the sheriff is granted custody of the jail in his county and the power to appoint a jailer. This section further provides that the sheriff, or his jailer if he chooses to appoint one, must receive and safely keep in prison any person delivered or committed to either of them, according to law. There has been no legislation to alter the duties and responsibilities of the Sheriff of Newberry County as set forth in § 55-401 and I can find no statutory basis or authority whereby, the County Council could transfer any of his duties or responsibilities to a jail administrator. In fact, Act No. 925 (Acts and Joint Resolutions—1970), which created the Newberry County Council and sets forth its powers, plainly denies the Council any power to alter or infringe upon the duties and functions of the sheriff by the following limitation on its authority:

In addition to the foregoing duties and powers, the county council is hereby empowered to legislate in reference to such matters of local concern within Newberry County as herein provided, and shall have the following powers:

12. To supervise and regulate the various departments of the county, except that the duties and functions now provided by law for the offices of the auditor, treasurer, sheriff, clerk of court, probate judge, county service officer, coroner, board of assessment control, county board of education and library board shall not be altered or infringed. The power of these offices and the county supervisor to designate the personnel made available to them shall not be infringed upon. [Emphasis Added]

As you are aware, counties have power to discharge governmental functions only to the extent provided by constitutional or statutory provisions. [Williams v. Wylie](#), 60 S.E.2d 568, 217 S.C. 247 (1950); [Park v. Greenwood County](#), 176 S.E. 870, 174 S.C. 35 (1935). A local governmental body cannot in the absence of constitutional or statutory authority, repeal, abrogate or modify the functions of a county officer when such functions have been set forth in a general statute. Thus, the duties and responsibilities held by the Sheriff of Newberry County prior to March 13, 1970, the date Act No. 925 became effective, remain unchanged and unaffected by any actions of the County Council. The Sheriff is not only responsible for control of the county jail and appointment of a jailer but is also liable for the actions of the jailer taken within the scope of his employment. § 55-401.

\*2 While it is plainly the duty of the Sheriff of Newberry County, or his appointed jailer, to control the jail and to receive and safely keep any person delivered or committed to his custody, his responsibility after sentencing of such

persons is less clearly defined. In fact, there are no statutory provisions explicitly setting forth the duties of the sheriff while a prisoner is still in his custody following conviction and a sentence of imprisonment. The following procedures, however, are provided by § 55-322 of the CODE:

The clerks of the courts of general sessions and common pleas of the several counties in this State shall immediately after the adjournment of the court of general sessions, in their respective counties, notify the Board of Corrections of the number of convicts sentenced by the court to imprisonment in the Penitentiary. The Board, as soon as it receives such notice, shall send a suitable number of guards to convey such convicts to the Penitentiary.

As the language of § 55-322 indicates, the duty of the clerks of court are limited to notification to the Board of Corrections of the number of those persons sentenced to the penitentiary and therefore falling within the jurisdiction of the Board. Subsequent legislation has clarified the scope of this section as it relates to the contemporary penal structure in South Carolina. First, Act No. 72 (Acts and Joint Resolutions—1975) provides that any reference to penitentiary in the CODE OF LAWS OF SOUTH CAROLINA, 1962, shall mean the Department of Corrections or an institution of the Department of Corrections. Therefore, penitentiary, as used in § 55-322, is not limited in definition or scope to a particular institution. Rather, it embraces the entire Department and all institutions thereof. Second, § 55-321.1:1 greatly expands the jurisdiction and responsibilities of the Board of Corrections by the grant of custody over all persons receiving sentences in excess of three months. Therefore, any sentence in excess of three months can be equated with a sentence to the penitentiary. Accordingly, I am of the opinion that the duty of the clerks of court to report to the Board of Corrections the conviction of persons sentenced to the penitentiary has expanded by legislative act to include reports of all persons, including youthful offenders, sentenced to imprisonment in excess of three months.

Upon receiving the report from the clerks of court, it is the responsibility of officers from the Board of Corrections to escort prisoners from the county jail to the institution designated by the Board as the place of confinement. Such officers have the status of peace officers while transporting from any county facility inmates within the jurisdiction of the Board. See § 55-359.

To summarize my response to your inquiry, I submit the following:

(1) The Sheriff of Newberry County is charged by law with responsibility for all prisoners in the county jail both before and after they are sentenced. While he is responsible for their safekeeping so long as they remain in his custody after sentencing, he is not responsible for the delivery of prisoners to state penal facilities.

\*3 (2) The clerk of court is responsible for reporting to the Board of Corrections the number of persons sentenced to imprisonment in excess of three months. Such persons, including youthful offenders, fall within the jurisdiction of the Board.

(3) Upon receipt of a report from the clerk of court, a suitable number of guards must be dispatched by the Board to convey prisoners to the designated place of confinement.

While this opinion concerns the present situation in Newberry County and the responsibilities and duties of certain officials therein, it is applicable in varying degrees to other counties of the state. This is particularly true with respect to the duties and responsibilities of the clerks of court and the Board of Corrections. However, I must point out that the General Assembly has approved local exceptions to the responsibilities and duties of sheriffs in regard to county jails in some counties (e.g. § 55-410). In addition, considerable variation exists in the powers of local governing bodies to alter the functions of certain county officers. While I trust a greater degree of uniformity will be achieved upon implementation of the Home Rule Act, I am limiting that part of my opinion regarding the powers and responsibilities of the county sheriff over the county jail to Newberry County and other counties operating under similar statutes.

I am not unaware that some of the statutes I have cited may be archaic and in need of revision. Nor am I unaware of the efficiency and sound administrative practices and procedures instituted by some local jail administrators. Changes in the duties and responsibilities of local officials, such as the sheriff, however, must be made in a manner countenanced by the law. I am of the opinion that no such change has been made in Newberry County and that control of the jail continues in the hands of the sheriff.

With warm regards,  
Cordially,

Daniel R. McLeod  
Attorney General

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