1974 WL 27965 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 18, 1974

***1** Mr. William D. Leeke
Director
South Carolina Department of Corrections
P. O. Box 766
Columbia, South Carolina 29202

Dear Mr. Leeke:
You have requested the opinion of this Office concerning the interpretation of Section 14 of Part II, the permanent provisions of the 1974-75 General Appropriations Act (Act No. 1130, Acts and Joint Resolutions of the General Assembly of the State of South Carolina, 1974, page 2618) which states as follows:
Notwithstanding the provisions of Section 55-321 of the 1962 Code, or any other provision of law, any person convicted of an offense against the State of South Carolina shall be in the custody of the Board of Corrections of the State of South Carolina, and the Board shall designate the place of confinement where the sentence shall be served. The Board may designate as a place of confinement any available, suitable and appropriate institution or facility, including a county jail or work camp whether maintained by the State Department of Corrections or otherwise, but the consent of the officiels in charge of the county institutions so designated shall be first obtained. Provided, that if imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted shall be placed in the custody, supervision and control of the appropriate officials of the county wherein the sentence was pronounced, if such county has facilities suitable for confinement.

This is, in effect, an amendments of the present Section 55-321.1(a). The statute is very clear and is not ambiguous. It speaks in mandatory terms. The phrase 'and committed to the State Penitentiary at Columbia' found in the old statute is excluded in the recent enactment. You have requested generally some guidance concerning how the Act's application will affect the Department of Corrections in view of existing laws. Where the terms of the statute are clear and not ambiguous, the statute's terms must be applied according to their literal meaning. Home Building and Loan Association v. City of Spartanburg, 185 S.C. 312, 194 S.E. 139. the general rule is that the most recent enactment of the legislature prevails over a former enactment on the same subject unless the intention of the legislature is clearly shown to be otherwise. It therefore follows that the numerous older statutes dealing with the place of incarceration for prisoners sentenced for crimes committed against the State and the statutes governing the operation of county jails and work camps must be read in the light of the new enactment. The effect of this statute is to place all persons convicted of an offense against the State of South Carolina in the custody of the Department of Corrections when their sentence exceeds three (3) months. It would also include juveniles who are 'convicted' of a crime as opposed to adjudicated a delinquent. Pursuant to the provisions of 55-50.30, however, those under the age of seventeen (17) must serve their sentence in an institution of the Department of Youth Services until reaching seventeen (17).

***2** The Board of the Department of Corrections is authorized and required to designate the facility where the sentence is to be served and expressly may desagnate any facility in the State whether maintained by the Department or not. When using facilities other than those of the Department, however, consent of those in charge of local institutions must be obtained; and I assume this would be the subject of contractual negotiations.

The ultimate result of this statute makes the Director of the Department of Corrections the responsible authority for the incarceration of all persons convicted of an offense against the State whose sentence exceeds three (3) months. He is responsible in every respect including the maintenance of records concerning the prisoner. When the board designates, as the place of confinement, a county facility which is not maintained by the Department, the Director may delegate to those in charge of the facility authority to act as his agents, however, the ultimate responsibility remains with the Director.

You have inquired concerning the effect of this Act on a number of existing statutes. The language 'notwithstanding any other provision of law' clearly indicates the legislative intent. To the extent that they result in a direct conflict which cannot be resolved, the most recent enactment takes preference. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778. Where, however, the statutes are in pari materia they should be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376.

In reading a number of existing statutes which you have called to our attention and generally seeking our opinion, I am going to generally reflect my opinion as to how the new enactment affects them. With regard to Code Sections 55-323, 55-336, 55-338 and 55-13 there would be no change. Code Sections 55-468 and 44-472 require that the county governing bodies supply such things as clothing, food, guards and in general all necessities for the operation of chain gang campes and that the cost should be borne by the county. For those prisoners with sentences under three (3) months this would remain the same. It would appear that pursuant to the new law prisoners with sentences in excess of three months are sentenced to the Department and the counties would not be required to finance them. Pursuant to the previous opinion of this Office, the Department's responsibility commences when the prisoner is delivered to your custody. 1969-70 Opps. Atty. Gen., No. 2940, page 195. The word custody implies actual confinement and responsibility for the prisoner. The use of the word custody when referring to the Department of Corrections as opposed to the phrase 'custody, supervision and control' when referring to the county authorities would indicate the legislature's intention in the proviso to carry into effect the terms of the body of the statute whereby prisoners in the custody of the Department may be placed under the immediate supervision and control of authorities at designated county institutions.

***3** Generally speaking there would be no change in Chapters 9 and 12 of Title 55 of the Code. Where facilities are maintained by the county, they would be used to house prisoners with sentences of three (3) months or less. By contract or other arrangement, the Board could designate a county facility and, as previously stated, Department prisoners lodged there would be under the control and supervision of the local facility but the Department would be responsible. The Department would, I assume, require the facility to maintain minimum standards as a prerequisite to designation. Certain statutes in these chapters are quite obviously affected, for instance Section 55-711 dealing with Charleston County.

The statute does not give the Department any authority over existing county institutions. It merely gives the Department authority regarding prisoners. The statute does not deal in any way with city institutions.

The major point remaining is whether or not the statute is to be given a prospective or retrospective application. It has been repeatedly stated one of the cardinal rules of statutory construction is that an act will not be given retrospective effect in the absence of a very clear provision. Independence Ins. Co. v. Independent Life and Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399. None of the reasons which are generally ascribed for making an exception to this rule are present in this statute and in fact many of the bases for the rules are present. Prisoners already committed to county institutions are there as a result of lawful order of the courts and very likely the counties have entered into contractual obligations based on the prison maintenance. It is therefore the opinion of this Office that the provisions of the Act are effective for all prisoners sentenced since the effective date of the statute which was June 28, 1974.

Due to the generality of the question posed and breadth of the subject involved, this has been a rather rambling opinion. There is no way that every possible question or situation which might arise as a result of this new statute could be covered in one opinion. In sum, however, the statute is clear and speaks in mandatory terms. The existing statutes must be read in light of the new enactment. The statute places all prisoners convicted of an offense against the State in the custody of the

Department when their sentence exceeds three (3) months. The responsibility for these prisoners is with the Department in every respect. The Board may designate the facility where the sentence is to be served, whether maintained by the Department or not, but, the consent of the local authorities must be obtained. The statute is prospective in effect.

I hope this provides sufficient guidance and information to assist you. If there is anything further, please let me know.
Yours very truly,

Emmet H. Clair
Assistant Attorney General

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