

1973 S.C. Op. Atty. Gen. 269 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3600, 1973 WL 21055

Office of the Attorney General

State of South Carolina

Opinion No. 3600

August 16, 1973

**\*1 Prisoners committed to the lawful custody of the Florence County Detention Center should not be allowed to leave the confines of that institution unless accompanied by an armed guard.**

Solicitor

Twelfth Circuit

By letter dated June 19, 1973, you requested an opinion of this office as to when and under what conditions prisoners of the Florence County Detention Center may be allowed to leave the confines of that Center. The Florence County Chain Gang has, by recent legislation, been abolished.

There is no provision in the statutory law of this State which would permit prisoners confined in a county prison pursuant to a lawful sentence to be released from that custody. There is no statutory provision which applies to county prisons such as legislation which has been promulgated for the Department of Corrections allowing the Director to extend the limits of confinement for certain prisoners under certain conditions. See Sections 55–303.1 and 55–321.1, Code of Laws of South Carolina, 1962, as amended.

It appears that at common law it was a misdemeanor for a sheriff having lawful charge of a prisoner to voluntarily or negligently permit him to depart from his custody however short the departure might be. *Ex Parte Shores*, 195 F. 627. It has also been held that custody consists in keeping a prisoner either in actual confinement or surrounded by such physical force which would restrain him from going a large or obtaining more liberty than allowed by law. *N.S. v. Person*, 223 F.Supp. 982. The general rule is that where a prisoner is allowed any liberty or authority incompatible with the notion of custody it is deemed escape on which liability may be based since the whole doctrine of escape rests on a notion that there should be an incarceration of the prisoner within the proper limits and the fact that a person is at liberty to go where he pleases without any restraint acting or ready to act on him either physically or morally excludes the notion of imprisonment. 72 C.J.S. Prisons § 23(h).

It is therefore my opinion that prisoners committed to the lawful custody of the Florence County Detention Center should not be allowed to leave the confines of that institution unless accompanied by an armed guard.

Emmet H. Clair

Assistant Attorney General

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