1972 WL 26137 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 28, 1972

***1** While the South Carolina Department of Corrections is prohibited by law from receiving for service of sentence any person under the age of seventeen years, that Department may lawfully accept and detain such persons upon appropriate orders as safekeepers awaiting trial.

Director
South Carolina Department of Corrections

You have inquired: (1) whether persons under the age of seventeen years (juveniles) may be lawfully committed to and received by the South Carolina Department of Corrections for service of sentence, and (2) whether that Department is authorized to accept as safekeepers, such juveniles who are awaiting trial.

Prior to 1969, the commitment and sentencing of juvenile offenders under the age of seventeen years was left to the discretion of the trial judge and permissible places of incarceration included the State penitentiary. See §§ 55-103.1, 55-202, and 17-554, Code of Laws of South Carolina (1962). See also 1966-67 OPS. ATTY. GEN. No. 2369, p. 216.

In 1969, the State Legislature enacted the Correction of Juveniles Act which provisions are now contained in §§ 55-50., et. seq., Code of Laws of South Carolina (1962), as amended. The commitment provisions of that Act appear in § 55-50.30 and prescribe the conditions under which children below the age of seventeen may be committed to the custody of the Board of Juvenile Corrections or the Board of Juvenile Placement and Aftercare. That section in pertinent part reads:
'No child under the age of seventeen years shall be committed or sentenced to any other penal or correctional institutional of this State for a period exceeding thirty days.'

The compelling mandate of this section and its prohibition against the commitment or sentence of juveniles to the South Carolina Department of Corrections was recently recognized by the South Carolina Supreme Court in Ex Partee Leeke, In Re. State v. McKinley, —— S.C. ——, —— S.E.2d. —— (1971), wherein that court noted:
'The circuit court has no inherent authority to sentence those convicted of crime to the State penitentiary and may not do so without statutory authorization. (Citation omitted) Applicable statutory provisions with respect to the place of confinement are obligatory upon the sentencing court, . . . [thus], [t]he commitment of the sixteen year old defendant to the Department of Corrections was contrary to law.'

It, thus, is now established beyond question that no person under the age of seventeen years may be lawfully sentenced to the Department of Corrections and that Department would be acting without authority in accepting the same.

Your additional inquiry, however, was with regard to the Department's legal authority to accept persons under the age of seventeen as 'safekeepers' awaiting trial. A safekeeper provision is contained in § 55-325, Code of Laws of South Carolina (1962), which states:
'The Director of the Prison System shall admit and detain in the State Penitentiary for safekeeping any prisoner tendered by any law enforcement officer in this State by commitment duly authorized by the Governor, ...' (Emphasis supplied)

***2** This broad statutory direction is not deemed to have been in any way restricted by the reenactment of the Correction of Juveniles Act, discussed above. The purpose and intent of that Act was to make special provision for the care, custody and correction of children under the age of seventeen who have been convicted of crimes or declared delinquents. The phrase contained in § 55-50.30 that 'No child under the age of seventeen years shall be committed or sentenced to any other penal or correctional institution of this State' was obviously intended to relate to post-conviction detention and custody only. Clearly, the State Legislature did not contemplate that the Department of Juvenile Corrections would become the pre-trial detention center for all persons under the age of seventeen who had been charged with crimes in this State to the exclusion of all others.

Despite its use in the safekeeper provision, the word 'commitment' is defined as 'an authority for holding in prison one convicted of crime . . . a process directed to a ministerial officer by which a person is to be confined in prison, usually issued by a court or magistrate, but 'a warrant which does not direct an officer to commit a party to prison but only to receive him into custody and safely keep him for further examination is not a commitment'. Black's Law Dictionary, Fourth Edition. Thus, the Governor's power set forth in § 55-325 is simply to direct the Department of Corrections to receive certain persons into custody and safely keep them. Such action is not a commitment within the meaning of the Correction of Juveniles Act, and that Act, has in no way, limited the Governor's power of detaining persons as safekeepers.

In summary, it is the opinion of this office that while a person under the age of seventeen cannot, upon conviction, be committed or sentenced to the South Carolina Department of Corrections, such persons may be legally detained under appropriate order as safekeepers awaiting trial.

John P. Wilson
Assistant Attorney General

1972 WL 26137 (S.C.A.G.)

End of Document