ALAN WILSON
ATTORNEY GENERAL

August 20, 2012

Rosalyn W. Frierson, Director
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

Dear Director Frierson:

The Legislature recently enacted H.4798 (effective June 18, 2012), which amended S.C. Code Ann. §5-7-90 to read as follows:

> [t]he ~~mayor or~~ municipal judge or judges of ~~any~~ a municipality shall speedily try all persons ~~charged~~ arrested and incarcerated with violations of the ordinances of the municipality or the laws of the State within their jurisdiction in a summary manner without a jury unless jury trial is demanded by the accused. Trial ~~shall~~ must be held within ~~seven~~ ten days after ~~such~~ the arrest or at ~~such~~ a time ~~as may be agreed upon~~ scheduled by the court, in which event the trial is deferred. The ~~mayor or~~ municipal judge shall have the same power as a magistrate to compel the attendance of witnesses and require them to give evidence upon the trial before them of any person for the violation of ordinances of the municipality or the laws of this State subject to Section 5-7-30. [Strikethrough indicates deleted language. Underlining indicates new language].

In a letter to this Office, you state that §5-7-90 appears to conflict with §56-5-6220, which provides that defendants in cases involving traffic law violations cannot be required to plead guilty prior to the elapse of 10 days following the date of arrest. Section 56-5-6220 states that:

> [n]otwithstanding any other provision of law, the entry of any plea of guilty, the forfeiture of any bail posted or the entry of plea of *nolo contendere* for a violation of the traffic laws of this State or any political subdivision thereof shall have the same effect as a conviction after trial under the provisions of such traffic laws. Provided, however, that in any such case where bail is posted by the defendant, no forfeiture of such bail shall become effective until ten days following the date of arrest nor shall the defendant be required to plead prior to the elapse of such ten-day period. Provided, further that the provisions of this section shall not be construed to prohibit a defendant from voluntarily entering a plea or forfeiting bail within the ten-day period. [Emphasis added]

Based on the foregoing, you ask whether a case written on a Uniform Traffic Ticket ("UTT") may be scheduled for trial within 10 days of the arrest (§5-7-90), or no sooner than 10 days after the arrest (§56-5-6220)? You also ask whether §5-7-90 applies to all persons charged, or to those persons unable to make bail and remain incarcerated?

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent if at all possible to do so. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the Legislature in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts will apply the clear and unambiguous terms of a statute according to their literal meaning. Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). Construction will not be given a statute which would make its application unreasonable, absurd, or unjust. Stephens v. Hendricks, 226 S.C. 79, 83 S.E.2d 634 (1954). A construction which best secures the rights of all the parties affected is the proper construction, in case of conflicting statutes. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). If conflicting statutes cannot be harmonized, the last in point of time or order of arrangement prevails, under the principle that the last expression of the legislative will is the law. Id.

In an opinion of this Office dated May 31, 1976, we discussed the then-recent enactment of the law codified in §56-5-6220 [1976 S.C. Acts No. 482]. In the opinion, we acknowledged the apparent conflict with former §47-38, 1962 S.C. Code of Laws (now §5-7-90), which requires that all cases tried by a municipal judge for a violation of a municipal ordinance or State law must be heard within seven days (now 10 days) after the date of arrest. We concluded that:

> Act 482 of 1976 does not expressly repeal or amend Section 47-38, but to the extent that the two provisions stand in irreconcilable conflict, the most recent expression of the Legislature will operate so as to amend the earlier provision by implication.
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> > In terms of legislative intent, it is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together. Statutes *in pari materia*, although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other. But if there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the new provision will control as it is the later expression

> of the legislature. Vol. 2A, Sutherland Statutory Construction, §51.02. (Footnotes omitted).
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> Act 482 of 1976 operates to the exclusion of all other laws (the first sentence of the act declares: 'Notwithstanding any other provision of law') and prohibits a court from requiring a defendant to plead prior to the elapse of a ten-day period in any traffic case. Reading this prohibition into the provisions of Section 47-38, a mayor, municipal judge or judges of any municipality must speedily try all cases within their jurisdiction within seven days after the time of the arrest, except for cases involving a violation of the traffic laws, in which instance the court cannot require the defendant to plead until ten days after the arrest.
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> Therefore, the opinion of this Office is that Act 482 of 1976 operates on Section 47-38 to prohibit a municipal judge from requiring a defendant to plead in a traffic case until the elapse of a ten-day period following the date of arrest.

After further review of §§5-7-90 and 56-5-6220, this opinion remains the opinion of this Office. Giving deference to the longstanding principle that "this Office does not withdraw or overrule a prior opinion unless it is clearly erroneous or unless intervening circumstances warrant such," we find no reason to depart from the conclusions made in our 1976 opinion. See Ops. S.C. Atty. Gen., March 20, 2006; May 22, 2001. We find the changes made to §5-7-90 inconsequential for purposes of this opinion. The change made to the portion of this statute relied upon in our 1976 opinion consisted of changing from seven to 10 days when cases tried by a municipal judge for a violation of a municipal ordinance or State law must be heard after the time of arrest. Furthermore, the Legislature did not amend or change §56-5-6220, which we also relied on in rendering the 1976 opinion, since the issuance of the opinion. In fact, §56-5-6220 has remained unchanged since that opinion was issued. We find it relevant that the Legislature, which is presumably aware of the 1976 opinion, made no effort to clarify our opinion to the contrary or otherwise. Ops. S.C. Atty. Gen., February 11, 2000; April 22, 1998; see also Op. S.C. Atty. Gen., April 5, 2005 [stating "it is well established that the General Assembly is presumptively aware of opinions of the Attorney General and, absent changes in the law following the issuance thereof, the legislature is deemed to have acquiesced in the Attorney General's interpretation"]. Accordingly, we find no significant change in the law underlying our May 31, 1976, opinion, that would necessitate a departure from the conclusions made in that opinion.

It thus remains the opinion of this Office that §56-5-6220 operates on §5-7-90 to prohibit a municipal judge from requiring a defendant to plead in all traffic cases until the elapse of a ten-day period following the date of arrest.[1] By using the language "notwithstanding any other provision of law" in §56-5-6220, the Legislature clearly intended this statute be exclusive of other provisions of law, including §5-7-90. See Ops. S.C. Atty. Gen., June 27, 2011; February 9, 1996; September 18, 1974. As the South Carolina Supreme Court stated in Mosteller v. County of Lexington, 336 S.C. 360, 520 S.E.2d 620, 622 (1999), the Legislature's use of the phrase "[n]otwithstanding any other provision of law" in a statute

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[1]Because we reaffirm our 1976 opinion, it is unnecessary to address your second question.

indicates a clear intention to exclude other provisions of law so that the section employing such language trumps the requirements of other applicable sections.

However, we note §56-5-6220 provides that a defendant may voluntarily enter a plea or forfeit bail within such period. Op. S.C. Atty. Gen., September 3, 1982. In any such situation, care should be taken to assure the defendant's action is completely voluntary and that the defendant intelligently enters a plea or forfeits bail. We would further advise that the defendant's voluntary action be clearly apparent on the record of any proceeding. See, *e.g.*, Ops. S.C. Atty. Gen., January 15, 1980 [advising that "this Office cannot provide any absolute system of making such assurances, it is recommended that some type of written statement indicating a voluntary and knowledgeable waiver of the above time period be signed by the defendant and kept in case the matter is later questioned"]; November 3, 1977 [same].

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General