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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 24, 2001

H.W. Funderburk, Jr., General Counsel
Employment Security Commission
Post Office Box 995
Columbia, South Carolina 29202

**Re: Prosecutions of Criminal Offenses under Title 41, Chapters 27 through 41, as
Provided in S.C. Code Ann. §41-27-590**

Dear Mr. Funderburk:

In a letter to this Office, you indicate that the Employment Security Commission [hereinafter the "Commission"] "is requesting an opinion clarifying its authority to prosecute cases on its own behalf or, in the alternative, authorization from the Attorney General allowing it to do so." The criminal offenses you refer to are found in Title 41 of the South Carolina Code and relate generally to labor and employment.

S.C. Code Ann. §41-27-590 is found in Article 5, Chapter 27 of Title 41 and is entitled "prosecution of criminal actions." Section 41-27-590 provides as follows:

All criminal actions for violation of any provision of Chapters 27 through 41 of this Title or of any rules or regulations issued pursuant thereto shall be prosecuted by the Attorney General of the State or at his request and under his direction by the solicitor of any circuit or any prosecuting attorney in any court of competent jurisdiction in the county in which the employer has a place of business or the violator resides

You indicate that it "is unclear if the language 'at his request and under his direction' applies to 'the solicitor of any circuit' and 'any prosecuting attorney' or just to the solicitor." By way of background, you also indicate that "[n]ormally, [the cases] are handled by the [Commission's] field deputies; sometimes we assign an attorney to assist."

The primary goal of statutory interpretation is to ascertain the intent of the general assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In determining the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). Further, the fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and

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of the people who adopted it. Ansel v. Means, Supervision, 171 S.C. 432, 172 S.E. 434 (1933). See also OPS. ATTY. GEN. (Dated April 26, 1971 & March 9, 1965).

South Carolina's Constitution provides that the "Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." In State ex rel. McLeod v. Snipes, 266 S.C. 415, 223 S.E.2d 853 (1976) the State Supreme Court noted that while the Attorney General "... has the authority to supervise the prosecution of all criminal cases, it is a fact of common knowledge that the duty to actually prosecute criminal cases is performed primarily and almost exclusively by the solicitors in their respective circuits..." Further, this Office has previously opined that the solicitor also has "control of any criminal case brought in magistrate's court." See OP. ATTY. GEN. (Dated November 7, 1990). It seems doubtful that it would be the intent of the Legislature in Section 41-27-590 to subject the solicitor to the "request" and "direction" of the Attorney General and not subject any other prosecuting attorney to such.

Moreover, when the General Assembly has chosen to allow criminal prosecution by a State entity other than the solicitor or Attorney General, language specifically designating such has been used. For example, the Pesticide Control Act gives the Director of the Division of Regulatory and Public Service Programs, College of Agricultural Sciences, Clemson University authority to prosecute certain criminal cases. Within the Pesticide Control Act, Section 46-13-185 provides that:

The director may prosecute criminal violators of this chapter and may use his own counsel in inferior courts but only when the defendant chooses to be represented by counsel. Counsel employed by the director may assist the solicitor, when requested, in general sessions court, the Court of Appeals, and the Supreme Court.

Had the General Assembly intended that employees/attorneys of the Commission be granted authority to prosecute without direction from the chief prosecuting officer, it seems that such would have been expressed in much more specific language. In fact, in the same article and chapter of Title 41 as §41-27-590, §41-27-580 provides:

In any civil action to enforce the provisions of Chapters 27 through 41 of this Title the Commission and the State may be represented by any qualified attorney who is employed by the Commission and is designated by it for this purpose or, at the Commission's request, by the Attorney General

Again, had the General Assembly intended to provide the Commission with similar authority in criminal cases, specific language such as that used in §41-27-480 would have been used. Further, it appears as though the framers of our Constitution intended that the Attorney General have broad powers to "supervise the prosecution of all criminal cases ..." Accordingly, §41-27-590 must be construed in such a way as to carry out this intent.

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Given the provisions of the State's Constitution, statutes and case law, as well as, the tenets of constitutional and statutory interpretation which must be employed, it is my opinion that the language "at his request and under his direction" used in §41-27-590 applies to "the solicitor of any circuit" and "any prosecuting attorney," not just the solicitor. Additionally, authorization for the Commission to prosecute cases on its own behalf cannot be addressed in this opinion. Any such authorization must come from the Attorney General by separate correspondence.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Avant". The signature is fluid and cursive, with a large initial "D" and "A".

David K. Avant
Assistant Attorney General

DKA/an