ALAN WILSON
ATTORNEY GENERAL

June 17, 2024

The Honorable B. Lee Miller
Municipal Judge
City of Greenwood
Post Office Box 40
Greenwood, South Carolina 29648-0040

Dear Judge Miller:

We received your request for an opinion from this Office concerning the recently adopted bond reform legislation. You state the Greenwood Clerk of Court sent out information to all the judges concerning bonding procedures under this new legislation. Specifically, the Clerk of Court stated, "the new bond law requires the defendant to post the entire ten percent (10%) with the bond company and then may make a payment plan for anything over ten percent, up until the maximum amount is reached which is fifteen (15%) percent." You informed us that you were under the impression that

> the defendant had to pay $100.00, then a payment plan could be implemented for the remainder of the balance. The balance must be paid off within eighteen months of the signing of the original bond contract. If the balance is not paid in full then other measures would be triggered concerning the bond.

Thus, you ask us to resolve the conflict between these interpretations.

Law/Analysis

As you mentioned in your letter, in 2023 the Legislature enacted bond reform legislation that included changes to section 38-53-170(e) pertaining to payments to bondsmen. 2023 S.C. Acts 83. Section 38-53-170(e) prohibits bondsmen from accepting anything of value except the premium. Prior to the 2023 legislation, section 38-53-170(e) mandated that the premium "may not exceed fifteen percent of the face amount of the bond, with a minimum fee of twenty-five dollars." S.C. Code Ann. § 38-53-170(e) (2015). Thus, this provision gave bondsmen a lot of flexibility as to the premium charged and how it was collected, only requiring a minimum fee of twenty-five dollars and a maximum fee of fifteen percent of the bond.

Act 83 amended section 38-53-170(e), which now provides for "a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond." S.C. Code Ann. § 38-53-170(e) (Supp. 2023). But the revisions to subsection 38-53-170(e) also include the following language:

> However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed. If the payment has not been made for two consecutive months, the bondsman must send a certified notice to the last known address of the principal and indemnitor demanding payment be made within ten days to bring the agreement current. If no payment is received by the end of the notice period, the bondsman must surrender the principal to the proper detention facility for holding and file a motion to be relieved as provided in Section 38-53-50(A) or (B), at which time the agreement must be accelerated, and the balance paid in full, before or at the motion hearing for the principal to be rereleased on bond. The bondsman may accept collateral security or other indemnity from the principal which must be returned within ten days after final termination of liability on the bond unless a bench warrant has been issued. The bondsman shall identify who is paying the premium and shall represent that the collateral security or other indemnity has not been obtained from any person who has a greater interest in the principal's disappearance than appearance for trial. The collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond. If the bond is forfeited, a bondsman may not convert collateral described in the collateral receipt to cash until he has provided a ten-day notice of this pending conversion to the depositor. This notice must be sent by certified mail to the last known address of the depositor. After the conversion, the bondsman must disclose the actual amount received to the depositor and must return any amount received that exceeds the final judgement or consent amount, less any reasonable expenses. These reasonable expenses include apprehension and legal costs incurred as a result of the violation of the bond. The bondsman must provide the depositor copies of all receipts and, if applicable, the overage money within three days after settlement . . . .

Id. (emphasis added).

When interpreting a statute, as we are asked to do here, we start with the cardinal rule of statutory construction, which is to "to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.'" Id. at 85, 533 S.E.2d at 581 (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)). "Further, statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction."

Hudson ex rel. Hudson v. Lancaster Convalescent Ctr., 407 S.C. 112, 124-25, 754 S.E.2d 486, 492-93 (2014).

Initially, section 38-53-170(e) requires the charge and collection of ten percent of the bond or at a minimum one hundred dollars. Based on the plain language used in this portion of section 38-53-170(e), we are led to believe the Legislature intended for ten percent of the bond, or at a minimum one hundred dollars, to be collected prior to the execution of the bond. But, the Legislature appears to have modified this requirement by also including the language allowing a bondsman to enter into a payment agreement with the principal starting with the use of the term "However"- a term of contradiction. Thus, while the Legislature clearly intends for bondsmen to charge premiums of a minimum of ten percent of the bond, we are of the opinion that they also intended to give bondsmen the option to accept a minimum payment of one hundred dollars and allow the principal to make payments on the remaining minimum premium as long as the payment agreement is attached to the bond proceeding form and the agreement meets the requirements set forth in section 38-53-170(e).

We understand your clerk of court interprets the language allowing a bondsman to enter into a payment agreement as applying only to the premium charge that exceeds the required ten percent minimum, but reading that statute in this way could lead to an absurd result. In construing statutes courts "will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature." Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def., 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008). First, we are at a loss as to why the Legislature would find it necessary to give permission for a payment agreement for an amount that the bondman is not required to charge in the first place. Second, this reading would require the principal to pay not only the ten percent bond up front, but also an additional one hundred dollars for the opportunity to finance the premium in excess of the ten percent. We do not believe such an interpretation is in line with the intent of the Legislature.

Moreover, the legislative history of the amendments to section 38-53-170(e) supports our interpretation. As our court of appeals explained, "The construing court may additionally look to the legislative history when determining the legislative intent." Ex parte Cannon, 385 S.C. 643, 655, 685 S.E.2d 814, 821 (Ct. App. 2009). In our review of the legislative history, the amendments to section 38-53-170(e) were first proposed to the Senate's version of the act. 2023 Senate Journal April 11, 2023, p. 26. While this version also required the payment and collection of a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, the language allowing for a payment agreement required a down payment of one hundred dollars or five percent of the bond. Id. If the ability to enter into a payment agreement only applies to the premium charged above the ten percent minimum, by requiring an additional five percent of the bond as the minimum down payment would leave nothing left to finance as the maximum premium is fifteen percent. Thus, we believe the legislative history supports our conclusion that the Legislature intended to allow bondmen to enter into payment agreements for the ten percent minimum premium rather than for the excess premium they are allowed to charge.

Lastly, we must keep in mind that the South Carolina Constitution affords defendants the right to bail. S.C. Const. Art. I § 15 (2009). As our Supreme Court stated, "'all statutes are presumed constitutional and, if possible, will be construed to render them valid.'" State v. Neuman, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009) (quoting Curtis v. State, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001)). While the revisions to section 38-53-170(e) indicate the intent of the Legislature to increase the premium charged and paid by defendants, we believe by giving defendants the ability to enter into a payment agreement with the bondsman, the Legislature is balancing its desire to increase and standardize premiums with defendants' ability to pay those premiums and ensuring compliance with defendants' constitutional rights. Accordingly, we believe our interpretation of section 38-53-170(e) lends itself to a constitutional reading of the statute.

Conclusion

As you mentioned in your letter, in 2023 the Legislature enacted bond reform legislation including amendments to section 38-53-170, which prohibits certain acts by bondsmen and runners. Specifically, section 38-53-170(e) governs the premiums bondsmen and runners charge. The amendments to this provision now require all bondsmen and runners to charge and collect a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater. This change indicates the Legislature's intent to increase and standardize the premiums charged and collected by bondsmen. Nonetheless, reading section 38-53-170(e) as a whole, we agree with your interpretation that it allows a bondsman to accept a minimum downpayment of one hundred dollars along with a payment agreement for the remaining amount of the minimum premium as long as the bondsman attaches the agreement to the bond processing form and complies with the other requirements for the agreement contained in section 38-53-170(e). We believe this interpretation comports not only with the intent of the Legislature based on the plain language of statute and its legislative history, but also balances the desire of the Legislature to provide more oversight over bond premiums with defendants' constitutional rights to bail.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General