



HENRY McMASTER  
ATTORNEY GENERAL

June 14, 2006

The Honorable Donald V. Myers  
Solicitor, Eleventh Judicial Circuit  
Lexington County Judicial Center  
205 E. Main Street, Third Floor  
Lexington, South Carolina 29072

Dear Solicitor Myers:

We received your letter requesting an opinion of this Office concerning section 20-7-90 of the South Carolina Code. You informed us that you "received an arrest warrant where the defendant was charged with a violation of that Code section. It appears the warrant was obtained in lieu of this matter being handled in Family Court" You enclosed a copy of an arrest warrant you received for the Court of General Sessions and requested an opinion of this Office as to whether this warrant is valid "when the matter was not presented to a Family Court Judge for disposition, and a Rule to Show Cause was not sought or issued."?

#### Law/Analysis

Article V, section 11 of the South Carolina Constitution (Supp. 2005) provides: "The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law." Our Supreme Court describes section 20-7-90 of the South Carolina Code (1985) as the statute criminalizing the non-support of a child. Whitner v. State, 328 S.C. 1, 21, 492 S.E.2d 777, 787 (1997). Thus, unless the Legislature vests jurisdiction in another court, the circuit court is charged with hearing cases in which an individual is criminally charged with failure to support a child.

In our reading of section 20-7-90, not only do we find no evidence that the Legislature intended to afford jurisdiction to another court, we find further evidence that such jurisdiction rests with the circuit court. This section provides as follows:

(A) Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide

*Request Letter*

reasonable support to his or her spouse or to his or her minor unmarried legitimate or illegitimate child dependent upon him or her shall be deemed guilty of a misdemeanor and upon conviction shall be imprisoned for a term of not exceeding one year or be fined not less than three hundred dollars nor more than one thousand five hundred dollars, or both, in the discretion of the circuit court. A husband or wife abandoned by his or her spouse is not liable for the support of the abandoning spouse until such spouse offers to return unless the misconduct of the husband or wife justified the abandonment. If a fine be imposed the circuit court may, in its discretion, order that a portion of the fine be paid to a proper and suitable person or agency for the maintenance and support of the defendant's spouse or minor unmarried legitimate or illegitimate child. As used in this section "reasonable support" means an amount of financial assistance which, when combined with the support the member is reasonably capable of providing for himself or herself, will provide a living standard for the member substantially equal to that of the person owing the duty to support. It includes both usual and unusual necessities.

(B) Any person who fails to receive the support required by this section may petition to a circuit court of competent jurisdiction for a rule to show cause why the obligated person should not be required to provide such support and after proper service and hearing the circuit court shall in all appropriate cases order such support to be paid. Any such petition shall specify the amount of support required. Compliance with the circuit court order shall bar prosecution under the provisions of subsection (A) of this section.

S.C. Code Ann. § 20-7-90 (emphasis added).

Initially, we note the intent of the Legislature to vest jurisdiction in the circuit court to hear cases in which an individual is charged with violating section 20-7-90 of the South Carolina Code can be gleaned for the plain wording of the statute. As our Supreme Court recently stated in Buist v. Huggins, 367 S.C. 268, \_\_\_, 625 S.E.2d 636, 640 (2006):

If a statute's language is plain, unambiguous, and conveys a clear meaning the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the

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statute's operation. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.

(citations and quotations omitted). Section 20-7-90 references "circuit court" several times in referenced to the disposition of a charge brought under this section. Thus, given the clear language contained in section 20-7-90, we presume the Legislature intended a criminal charge for failure to pay child support to be brought before a circuit court.

Our review of the legislative history solidifies our understanding with respect to the Legislature's intent to retain jurisdiction in the circuit court for violations of section 20-7-90. In 1981, the Legislature enacted section 20-7-90. 1981 S.C. Acts 121. As worded in its 1981 enactment, this section simply referenced "the court" in each instance which now reads "the circuit court." *Id.* at 125. The Legislature amended this section in 1982, adding the word "circuit" in front of each reference to "court." 1982 S.C. Acts 2391.

You mentioned in your letter a concern that sole jurisdiction over all issues involving child support rests with the family. "The Family Court is a statutory court created by the Legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute." South Carolina Dep't of Mental Health v. State, 301 S.C. 75, 78, 390 S.E.2d 185, 186 (1990). Chapter 7 of title 9 of the South Carolina Code, known as "The South Carolina Children's Code" (the "Children's Code"), grants jurisdiction to the family court for certain enumerated cases. In particular, section 20-7-420 of the South Carolina Code (1985 & Supp. 2005) grants exclusive jurisdiction to the family court to order the support of a child. In addition, sections 20-7-420 and 20-7-933 of the South Carolina Code (1985 & Supp. 2005) specifically provide the family court with the authority to enforce its decrees, judgments, or orders regarding child support. However, we do not find any indication that the Legislature intended to vest jurisdiction in the family court to hear criminal violations pursuant to section 20-7-90.

Furthermore, in section 20-7-400 of the South Carolina Code (1985 & Supp. 2005), the Legislature specifically gives jurisdiction in the family court to hear cases involving criminal violations of children under the age of seventeen. Our courts recognize the maxim of "expressio unius est exclusio alterius" in their interpretation of statutes. Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002). "[T]o express or include one thing implies the exclusion of another, or of the alternative." *Id.* (citing Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)). Given the policy established in article V, section 11 of the South Carolina Constitution vesting jurisdiction over criminal cases in the circuit court unless otherwise provided by law and the Legislature's express authorization to the family court to hear juvenile criminal cases, we infer the Legislature did not intend the family court to have jurisdiction over criminal cases of failure to support.

Based on our findings above, the family court's jurisdiction does not include jurisdiction over criminal offenses of failure to support pursuant to section 20-7-90 of the South Carolina Code.

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Nonetheless, accompanying the family court's authority to enforce child support decrees and orders, the Legislature vested the family court with the authority to issue arrest warrants and to hold those failing to comply with its orders in contempt. Section 20-7-420(13) of the South Carolina Code (1985) states the family court has exclusive jurisdiction "[i]n all cases or proceedings within the county against persons charged with failure to obey an order of the court made pursuant to authority conferred by law." Furthermore, section 20-7-1350 of the South Carolina Code (Supp. 2005) allows the family court to hold anyone who "wilfully violates, neglects, or refuses to obey or perform a lawful order of the court, or who violates any provision of this chapter" in contempt of court. This statute also states the individual can be "punished by a fine, a public work sentence, or by imprisonment in a local correctional facility, or any combination of them, in the discretion of the court, but not to exceed imprisonment in a local correctional facility for one year, a fine of fifteen hundred dollars, or public work sentence of more than three hundred hours, or any combination of them." *Id.* Specifically with respect to the failure to pay child support, section 20-7-870 of the South Carolina Code (1985) provides: "Where a respondent shall neglect or refuse to obey an order for support or upon agreement signed by the respondent and approved by the court, and the court is satisfied thereof by competent proof, it may, with or without notice, issue a warrant to commit the respondent to jail until the order is obeyed or until the respondent is discharged by law." Other statutes also allow the family court to hold an individual in contempt related to child support. See S.C. Code Ann. §§ 20-7-420(22) (1985) (failure to give security for child support); 20-7-1045 (Supp. 2005) (enforcement of orders under the Uniform Interstate Family Support Act). Thus, while the family court may not have the jurisdiction to prosecute an individual for failure to support a child pursuant to section 20-7-90, it may enforce payment of child support according to a prior court order, and may do so by exercising its contempt powers.

In your letter, you also noted your concern that section 20-7-90 of the South Carolina Code "was an oversight by the General Assembly." By this statement, we gather you are referring to the possibility that the Legislature's enactment of provisions of the Children's Code granting the family court jurisdiction to order and enforce child support obligations implicitly repealed section 20-7-90.

Our Supreme Court recently addressed an issue involving repeal by implication in Capco of Summerville, Inc. v. J.H. Gayle Construction Co., Inc., 368 S.C. 137, 628 S.E.2d 38 (2006). "Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation. Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them." *Id.* at 141-42, 628 S.E.2d at 41. Furthermore, the Court previously held: "It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." Hodges v. Rainey, 341 S.C. 79, 88-89, 533 S.E.2d 578, 583 (2000) (quotations omitted).

As stated above, section 20-7-90 imposes criminal liability on a person having a duty to support a child, but who fails to do so. Other provisions in the Children's Code, as mentioned

above, give the family court authority to order the support of a child. S.C. Code Ann. §§ 20-7-420; 20-7-933. However, a person subject to the court's order may be exposed to a fine or jail time, not for the act of failing to support the child, but for failing to follow the court's order. Thus, given our reading of the various provisions in the Children's Code in comparison with section 20-7-90, we find section 20-7-90, unlike the other provisions, serves the purpose of criminalizing failure to support. Therefore, based on the Supreme Court's decisions cited above, its general disfavor for findings of repeal by implication, and the fact that we read these provisions as compatible with one another, we are of the opinion that the Legislature did not intend to repeal section 20-7-90.

Our opinion is further supported the legislative history surrounding section 20-7-90 and section 20-7-420. From our research, the Legislature enacted a statute similar to section 20-7-90 in the early 1900s. See S.C. Code § 697 (1912). Apparently, the Legislature amended and recodified this statute numerous times over the years. See, eg., S.C. Code § 1123 (1942); § 20-303 (1952). We also found the Legislature enacted the statute now codified as section 20-7-420 in 1968. See 1968 S.C. Acts 2718. As we pointed out above, in gaining an understanding of the Legislature's intent, South Carolina courts recognize the "presumption that the legislature has knowledge of previous legislation . . . when later statutes are enacted concerning related subjects." State v. McKnight, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003). Thus, we presume the Legislature knew of the statute giving the circuit court jurisdiction to hear cases involving failure to support when it gave jurisdiction to the family court to order the payment of child support and to enforce such orders.

Furthermore, the Legislature amended section 20-7-90 in 1981 and in 1982 via acts 71 and 398, respectively. The Legislature also amended section 20-7-420 pursuant to these same acts. As mentioned above, in its 1982 amendments to section 20-7-90, the Legislature made the decision to clarify the circuit court's jurisdiction for criminal failure to support. The Legislature at the same time addressed family court jurisdictional issues. Thus, if the Legislature desired to repeal section 20-7-90 in favor of other provisions of the Children's Code granting the family court jurisdiction, we believe it would have done so when enacting amendment in 1981 and 1982. To the contrary, the Legislature specifically addressed jurisdictional issues with respect to both the family court and the circuit court, reinforcing which matters are under the jurisdiction of each.

### **Conclusion**

Based on the law cited above, we believe the circuit court has jurisdiction over cases in which an individual is charged with a criminal violation for failure to pay child support pursuant to section 20-7-90. However, we reiterate the Legislature vested the family court with jurisdiction to enforce child support orders, which it may do through its power of contempt. Although, as noted in Marital Litigation in South Carolina, "[p]rosecutions have been rare because the family court's contempt powers can also produce a fine and a jail term, and it is easier to have someone held in contempt by the family court than it is to obtain a conviction for criminal nonsupport," the circuit court nevertheless retains jurisdiction to prosecute for failure to support. Roy T. Stuckey, Marital Litigation in South Carolina \_\_ (South Carolina Bar 3rd ed. 2001). Furthermore, we find no

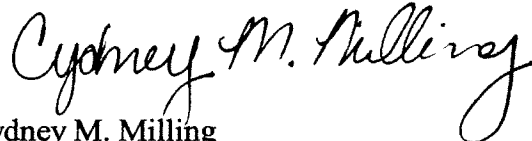
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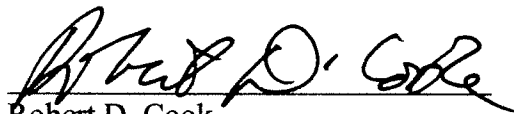
evidence of the Legislature's intent to implicitly repeal section 20-7-90 in favor of vesting sole jurisdiction with the family court to hear all issues related to the support of a child.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
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