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HENRY MCMASTER
ATTORNEY GENERAL

September 25, 2006

The Honorable Michael A. Pitts
Member, House of Representatives
372 Bucks Point Road
Laurens, South Carolina 29360

Dear Representative Pitts:

In a letter to this office you questioned whether a local government is authorized to "structure home detention and utilize it for prisoners that are incarcerated in local jails under ninety days or less."

S.C. Code Ann. §§ 24-13-1510 et seq. constitute this State's "Home Detention Act". Pursuant to Section 24-13-1530,

> (A) Notwithstanding another provision of law which requires mandatory incarceration, electronic and nonelectronic home detention programs may be used as an alternative to incarceration for low risk, nonviolent adult and juvenile offenders as selected by the court if there is a home detention program available in the jurisdiction. Applications by offenders for home detention may be made to the court as an alternative to the following correctional programs:
>
> (1) pretrial or preadjudicatory detention;
> (2) probation (intensive supervision);
> (3) community corrections (diversion);
> (4) parole (early release);
> (5) work release;
> (6) institutional furlough;
> (7) jail diversion; or
> (8) shock incarceration.

Subsection (B) of such provision specifically provides that

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> (l)ocal governments also may establish by ordinance the same alternative to incarceration for persons who are awaiting trial and for offenders whose sentences do not place them in the custody of the Department of Corrections. Counties and municipalities may develop home detention programs according to the Minimum Standards for Local Detention Facilities in South Carolina which are established pursuant to Section 24-9-20 and enforced pursuant to Section 24-9-30. (emphasis added)

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. 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 General Assembly 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 must apply the clear and unambiguous terms of a statute according to their literal meaning and 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).

Consistent with subsection (B) referenced above, a local government is authorized to establish by ordinance home detention as an "alternative to incarceration". The alternative program established by such provision are electronic and nonelectronic home detention programs for low risk, nonviolent adult and juvenile offenders as selected by a court. As further specified, counties and municipalities may develop home detention programs according to the Minimum Standards for Local Detention Facilities in South Carolina which are established pursuant to Section 24-9-20 and enforced pursuant to Section 24-9-30.

A prior opinion of this office dated April 19, 1993 dealt with the question of whether this State's Home Detention Act was applicable to local governments. Reference was made to Section 24-13-1540 which states that "[i]f a department desires to implement a home detention program it must promulgate regulations that prescribe reasonable guidelines under which a home detention program may operate." Section 24-13-1520 (1) states that the term "department" for purposes of such provision is defined to include "any other local law enforcement agency created by law." The referenced opinion indicated that the term "any other local law enforcement agency created by law" would include a local detention facility. The opinion concluded, therefore, that Sections 24-13-1510 et seq. would be applicable to local governments.

The "same alternative to incarceration" programs are authorized "...for persons who are awaiting trial and for offenders whose sentences do not place them in the custody of the Department of Corrections." S.C. Code Ann. § 24-3-20 states that

> [a] person convicted of an offense against this State and sentenced to imprisonment for more than three months is in the custody of the South Carolina Department of Corrections, and the department shall designate the place of confinement where the sentence must be served....(emphasis added).

S.C. Code Ann. § 24-3-30 states that

> [n]otwithstanding any other provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections, and the department shall designate the place of confinement where the sentence must be served...If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. (emphasis added).

Therefore, defendants sentenced to terms of imprisonment of more than three months are in the custody of the Department of Corrections whereas defendants sentenced to terms of imprisonment of three months or less are "in the custody, supervision and control of the appropriate officials of the county in which the sentence was pronounced...." Consistent with such, local governments may establish home detention as an alternative to incarceration for offenders sentenced to terms of imprisonment of less than three months.[1]

While local governments are authorized to establish by ordinance home detention as an alternative to incarceration, placement in such a program must be ordered by a court. As specified by Section 24-13-1530(A)

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[1]As set forth in Section 24-13-1590,

> Nothing in this article:
> (1) applies to a person, regardless of age, who violates, or is awaiting trial on charges of violating, the illicit narcotic drugs and controlled substances laws of this State which are classified as Class A, B, or C felonies or which are classified as an exempt offense by Section 16-1-10(D) and provide for a maximum term of imprisonment of twenty years or more; or
> (2) diminishes the lawful authority of the courts of this State, the Department of Juvenile Justice, or the Department of Probation, Parole, and Pardon Services to regulate or impose conditions for probation, parole, or community supervision.

> Notwithstanding another provision of law which requires mandatory incarceration, electronic and nonelectronic home detention programs may be used as an alternative to incarceration for low risk, nonviolent adult and juvenile offenders as selected by the court if there is a home detention program available in the jurisdiction. (emphasis added).

The term "court" is defined by Section 24-13-1520(2) as "...a circuit, family, magistrate's, or municipal court having criminal or juvenile jurisdiction to sentence an individual to incarceration for a violation of law, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Corrections." Reference to the obligation of a court to order such is also set forth by Section 24-13-1580 which provides that "[b]efore entering an order for commitment for electronic home detention, the court shall inform the participant and other persons residing in the home of the nature and extent of the approved electronic monitoring devices...." (emphasis added).

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General