ALAN WILSON
ATTORNEY GENERAL

April 26, 2011

The Honorable J. Lawrence Duffy, Jr.
Municipal Judge, Town of Mount Pleasant
P.O. Box 457
Mount Pleasant, SC 29465

Dear Judge Duffy:

In a letter you request an opinion of this office as to whether a trial judge may suspend a fine imposed pursuant to S.C. Code Ann. §56-1-460 (A) (1) (c). You state that:

> [i]n reviewing [§56-1-460 (A) (1) (c)], I read what the fine was, what the time of confinement range was and the fact that Home Detention was an option. It specifically states that no portion of the term of imprisonment or confinement under home detention may be suspended by the trial judge. It is mute on the ability to suspend the fine.

Law/Analysis

In 2010 Acts No. 273, §18.A (effective January 2, 2011), the Legislature amended§56-1-460, which provides, in pertinent part:

> (A)(1) Except as provided in item (2), a person who drives a motor vehicle on any public highway of this State when his license to drive is canceled, suspended, or revoked must, upon conviction, be punished as follows:
>
> (c) for a third and subsequent offense, fined one thousand dollars and imprisoned for up to ninety days or confined to a person's place of residence pursuant to the Home Detention Act for not less than ninety days nor more than six months. No portion of a term of imprisonment or confinement under home detention may be suspended by the trial judge. For purposes of this item, a person sentenced to confinement pursuant to the Home Detention Act is required to pay for the cost of such confinement. . . . [Emphasis added].

In addressing your question, a number of fundamental principles of statutory construction must be considered. The cardinal rule of statutory construction is to ascertain and effectuate the legislature's intent. State v. Smith, 330 S.C. 237, 498 S.E.2d 648, 649-50 (Ct. App. 1998). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation. Id. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and this court

has no right to look for or impose another meaning. Id. Where a statute is complete and unambiguous, legislative intent must be determined from the plain language of the statute. Id. Penal statutes are to be construed strictly against the State and in favor of the defendant. State v. Burton, 301 S.C. 305, 391 S.E.2d 583, 584 (1990).

We have previously advised that pursuant to §14-25-45, municipal court judges ". . . shall . . . have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." Under §22-3-800, a magistrate, "may suspend the imposition or execution of a sentence upon terms and conditions the magistrate considers appropriate. . . ." Such authority can also be found in §14-25-75, which allows a municipal judge to "suspend sentences imposed by him upon such terms and conditions as he deems proper. . . ." Ops. S.C. Atty. Gen., February 15, 2008; June 5, 2001; September 29, 1988; February 13, 1980. These statutes allow municipal judges a great degree of discretion to impose appropriate punishment and to suspend sentences. See City of North Charleston v. Harper, 306 S.C. 153, 410 S.E.2d 569, 571 (1991).

The South Carolina appellate courts have considered the general power of trial courts to suspend sentences where the Legislature has specifically mandated that no part of a sentence may be suspended. In State v. Johnson, 343 S.C. 693, 541 S.E.2d 855, 856-57 (Ct. App. 2001), the court found the specific mandate of §44-53-375(D) governing cocaine offenses that, except for a first offense, sentences had to be served in their entirety, precluded the trial court from relying on its general authority to suspend sentences and impose probation, and thus, trial court lacked authority to impose split sentence for defendants second cocaine offense by suspending defendant's 10-year sentence upon service of eight years and imposing five years' probation. In State v. Taub, 336 S.C. 310, 519 S.E.2d 797, 801 (Ct. App. 1999), the court held the specific mandate of the trafficking statute that the three-year minimum sentence for first offense of trafficking in cocaine in an amount less than 28 grams could not be suspended nor could probation be granted prevailed over general statutory authority of a trial court to suspend a portion of a criminal sentence and grant probation as part of sentencing. In State v. Tisdale, 321 S.C. 153, 467 S.E.2d 270, 272 (Ct. App. 1996), the court held the trial court had no authority to suspend a mandatory minimum sentence for a third-offense of driving under the influence (DUI); by using language "the service of the minimum sentence is mandatory, the "legislature intended for someone convicted third-offense DUI to serve actual imprisonment of at least 60 days."

The court in Taub further addressed whether a trial court had authority to deviate below the twenty-five thousand dollars fine as prescribed by §44-53-370(e)(2) for a first offense trafficking in cocaine conviction. The statute provided a conviction for trafficking in a quantity of cocaine less than 28 grams "must be punished . . . for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars . . ." The court concluded the fine was not mandatory, because the phrase "no part of which may be suspended nor probation granted" preceded the stated fine, and therefore modified only the phrase "a term of imprisonment of not less than three years nor more than ten years. Taub, 519 S.E.2d at 802. In State v. Thomas, 372 S.C. 466, 642 S.E.2d 724 (2007), the South Carolina Supreme Court held the trial court abused its discretion by refusing to reconsider the defendant's sentence for distribution of crack cocaine within proximity of a school on the grounds that it had no authority to suspend a minimum sentence under §44-53-445 (B)(2), which provided a person found guilty "must be fined not less than ten thousand dollars and imprisoned not less than ten nor more than fifteen years." Noting numerous penal statutes where the Legislature has included specific provisions to prohibit suspension, in whole or in part,

of sentences to fines and/or imprisonment, including §56-1-460 (A)(1)(c) before the 2010 amendments,[1] the court concluded the express omission of any such provision in §44-53-445 indicated the Legislature did not intend to limit the general authority to suspend sentences. Thomas, 642 S.E.2d at 725-26 & n. 2.

Conclusion

Employing the rules of statutory construction and considering the above authority, it is the opinion of this office the one thousand dollars fine prescribed in §56-1-460 (A)(1)(c) may be suspended at the discretion of the trial court. The authority of the trial court to suspend the fine is not limited by the restrictive wording "no portion of a term of imprisonment or confinement under home detention may be suspended by the trial judge." We refer to Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 582 (2000), where the court discussed the canon "*expressio unius est exclusio alterius*," or "to express or include one thing implies the exclusion of another," and held that the enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. We conclude that, pursuant to the 2010 amendments to §56-1-460 (A)(1)(c), the Legislature restructured the penalties and expressly chose to limit only the authority of the trial court to suspend "a term of imprisonment or confinement under home detention" but not its authority to suspend the issued fine at its discretion.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

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[1]Prior to the 2010 amendments, §56-1-460 read in part as follows:

> (A) (1) Except as provided in subitem (2), a person who drives a motor vehicle on any public highway of this State when his license to drive is canceled, suspended, or revoked must, upon conviction, be punished as follows:
>
> (c) for a third and subsequent offense, fined one thousand dollars and imprisoned for not less than ninety days nor more than six months, no portion of which may be suspended by the trial judge. [Emphasis added].