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OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

May 21, 2001

M. Joyce Marshall, Staff Attorney
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Re: Your Letter of March 13, 2001
S.C. Code Ann. §22-3-1000

Dear Ms. Marshall:

In the above referenced letter, you request an opinion from this Office concerning the effect of "Section 3 of 1999 Act No. 78, effective June 11, 1999" on existing laws contained in S.C. Code Ann. §§18-3-30 and 14-25-95. Section 3 of Act No. 78 amended S.C. Code Ann. §22-3-1000, which is contained in Article 9, Chapter 3 of Title 22 (Provisions Applicable to both Civil and Criminal Cases - Magistrates Courts), to read as follows:

> No motion for a new trial may be heard unless made within five days from the rendering of the judgment. The right of appeal from the judgment exists for thirty days after the rendering of the judgment. A magistrate's order of restitution may be appealed within thirty days. The order of restitution may be appealed separately from an appeal, if any, relating to the conviction.

Specifically, you ask "whether or not [§22-3-1000 as amended] repealed by implication Sections 18-3-30 and 14-25-95." Section 18-3-30 provides, in pertinent part, as follows:

> The appellant shall, within ten days after sentence, serve notice of appeal upon the magistrate who tried the case, stating the grounds upon which the appeal is founded.

Section 14-25-95 provides, in pertinent part, as follows:

> Any party shall have the right to appeal from the sentence or judgment of the municipal court to the Court of Common Pleas of the county in which the trial is held. Notice of intention to appeal, setting forth the grounds for appeal, must be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after sentence is passed or judgment rendered, or the appeal is considered waived.

Pearsall Letter

You provided information from Senator Bradley Hutto, a member of the conference committee which considered the amendment, indicating that the committee's intent was to clarify the time for appeal in civil cases and from restitution orders, not to repeal Sections 18-3-30 & 14-25-95. Senator Hutto also indicated, however, that, due to the confusion, a new bill would be drafted to "'clean up' the provisions of Section 22-3-1000." Further, you indicated that "[b]ecause Section 22-3-100 is included in the provisions which apply to both civil and criminal cases, [S.C. Court Administration] believe[s] that the right to appeal in both civil and criminal cases was changed to 30 days by the 1999 law."

A number of principles of statutory construction must be consulted in resolving this question. First and foremost, the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of SC v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The implied repeal of a law is disfavored. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). The presumption is always against implied repeal when express terms of repeal are not used. E.M. Matthews Co. v. Atlantic Coast Line Ry. Co., 102 S.C. 494, 86 S.E. 1069 (1915). Such is to be resorted to only in event of irreconcilable conflict between provisions of two statutes; and if the statutes can be construed so that both can stand, the Supreme Court will so construe them. In Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980). Furthermore, "... (i)t is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute will be considered as not intended to effect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both." 1989 Op. Atty. Gen., No. 89-82 (August 17, 1989).

Title 18 of the Code deals with appeals. Chapter 3 of Title 18, of which §18-3-30 is a part, deals specifically with "Appeals from Magistrates in Criminal Cases." Article 1, Chapter 25 of Title 14, of which §14-25-95 is a part, sets forth the provisions applying to the creation and operation of municipal courts. While the criminal jurisdiction of a municipal court is equated with that of magistrates, the specific rules of operation and procedure are set forth in the aforementioned Article and Chapter of Title 14. It seems doubtful that a court interpreting the more general provisions §22-3-1000, as amended, would hold that, without specific language accomplishing such, the Section repeals by implication the provisions of Sections 18-3-30 or 14-25-95.[1]

Further, with an eye towards reconciling the statutes, the language of §22-3-1000 allows for an interpretation that continues the provisions of each in effect. Section 22-3-1000 sets the time for appeal from the entry of a judgment as thirty days. As the time for appeal from a criminal matter

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[1] The placement of the provision in question in "Provisions Applicable to both Civil and Criminal Cases" (Magistrates Courts) also works against repeal of §14-25-95 as Municipal Courts "have no jurisdiction in civil matters." See S.C. Code Ann. §14-25-45.

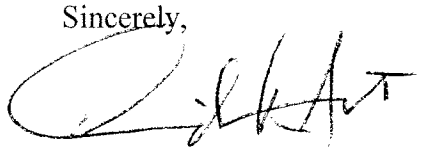
does not begin to run until the sentence is imposed, See State v. Clifford, 335 S.C. 129, 515 S.E.2d 550 (Ct.App. 1999), statutes and/or rules setting the time within which a criminal appeal must be made, such as §§18-3-30 & 14-25-95, generally use or at least reference the word "sentence" as a point of reckoning. See Rule 203(b)(2) SCACR ("...[a]fter a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed ..." [emphasis added]). Those setting the time within which an appeal from a civil matter must be made usually reference the term "judgment." See Rule 203(b)(1) SCACR ("Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment); See also §18-7-20 (When and how appeal shall be taken- "[t]he appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate ... shall serve a notice of appeal, stating the grounds upon which the appeal is founded").

Moreover, the General Assembly's inclusion of the provision in §22-3-1000 allowing "[t]he order of restitution [to] be appealed separately from an appeal, if any, relating to the conviction" seems to express an intent that the provisions of §§18-3-30 & 14-25-95 remain in tact. Had the General Assembly intended to make the time for appeal thirty days in all cases, their separating the appeal from the conviction and from the restitution order would have been unnecessary. It is presumed that the General Assembly intended by its action to accomplish something and not to do a futile thing. See State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

Given the language of the statutes in question and the basic tenets of statutory construction set out above, an interpretation of §22-3-1000 confining its application to appeals from civil judgments and restitution orders and leaving §§18-3-30 & 14-25-95 applicable to criminal appeals from magistrates and municipal courts is not unreasonable. It is my opinion that a reviewing court, based on the presumption against repeal by implication and the general law that statutes in apparent conflict which address similar subject matter must be read together and reconciled if possible, would reach a similar conclusion. However, given the obvious confusion and the opinion of Court Administration to the contrary, perhaps legislative clarification as suggested by Senator Hutto would be the best course.

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,



David K. Avant
Assistant Attorney General

DKA/an