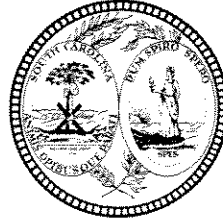


5987 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 9, 1996

William A. Collins, Jr., Deputy General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221-1787

Re: Informal Opinion

Dear Mr. Collins:

You have asked for an interpretation of the 1996 amendments to the Youthful Offender Act. Your concern is the General Assembly's amendment of Section 24-19-10(d) which defines the term "youthful offender".

By R-497 of 1996, as part of the revision of the Youthful Offender Act, Section 24-19-10(d) was amended as follows:

- (d) "youthful offender" means an offender who is:
 - (i) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 20-7-430 for allegedly committing an offense that is not a violent crime, as defined in Section 16-1-60, and that is a *misdemeanor, a Class E or F felony, as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of less than fifteen years, or*

Mr. Collins
Page 3
August 9, 1996

excluded from consideration as YOA offenses. Accordingly, any offense which is not deemed "violent" pursuant to Section 16-1-60 and which is a misdemeanor or a Class E or F felony or which has a maximum punishment of "fifteen years or less" is included within the definition.

The last phrase of the statutory language is the troubling one. The statute speaks both of a felony which provides for a "maximum term of imprisonment of less than fifteen years" and "fifteen years or less." Admittedly, a Class D felony is defined, pursuant to Section 16-1-20(4) as an offense for which imprisonment cannot consist of "more than fifteen years". While, at first blush, it would, therefore, be appealing to include Class D felonies in this final phrase, I do not think this is consistent with legislative intent. It would have been illogical, and thus unlikely, to have explicitly named Class E and F felonies specifically and then intended to include Class D felonies by the more general references "felony which provides a maximum term of imprisonment of less than fifteen years ..." or "fifteen years or less."

More likely is the possibility that this final phrase was merely catchall verbiage. Section 16-1-110 provides that "[a] felony or misdemeanor provided by statute or in common law which is not assigned a classification pursuant to Section 16-1-90 or 16-1-100 must be punished as provided before enactment of the classification system." Moreover, it is well recognized that "general words in a statute must be construed in context, and under the doctrine of ejusdem generis, the meaning of such words may be restricted by words of restriction which precede them." Ryder Truck Lines, Inc. v. S.C. Tax Comm., 248 S.C. 148, 151, 149 S.E.2d 435 (1966). While this principle of law may not be precisely applicable, nevertheless, it would appear much more likely that the latter phrase was a general catchall rather than impliedly including all Class D felonies.¹

This reading is consistent with the title of the Act. The title provides in pertinent part as follows:

TO AMEND SECTION 24-19-10, AS AMENDED,
RELATING TO DEFINITIONS UNDER THE YOUTHFUL

¹ While it is my reading that this phrase is a catchall provision, I am frankly at a loss to name the specific offenses which fall within its scope. Section 17-25-20, however, provides that when no punishment is provided for a felony, imprisonment shall not be for more than 10 years. Of course, these common law felonies (such as ABHAN) could be deemed literally to come within the phrase "less than fifteen years."

Mr. Collins
Page 4
August 9, 1996

OFFENDER ACT, SO AS TO REVISE THE DEFINITION OF "YOUTHFUL OFFENDER" TO EXCLUDE PERSONS COMMITTING VIOLENT CRIMES AND CLASS A, B, C, AND D FELONIES; ... (emphasis added).

A leading authority on statutory construction has stated with respect to the importance of the title in interpreting a statute that

[i]n short, in ascertaining the intention of the legislature nothing is to be rejected which will assist in the clarification of ambiguous phrases. Where the title throws light on the meaning of the statute itself, it is an available tool for the resolution of doubt. Since the title of an act is essentially a part of the act and is itself a legislative expression of the general scope of the bill, it is proper to consider it in arriving at the intent of the legislature.

Sutherland, Statutory Construction, § 47.03 (5th ed.).

While the provision is ambiguous, and the courts construe a penal statute against the State, this rule is not inflexible. Such a rule of construction will not defeat the intent of the General Assembly. State v. Johnson, 16 S.C. 187 (1881). The proper construction is one which finds and puts into effect the intention of the Legislature as gathered from a reasonable interpretation of the words of a statute. Moreover, our Court has consistently held that the title to an Act is a part of the statute. Johnson v. Paraplane Corp., 460 S.E.2d 398 (1995). Thus, I am persuaded, based upon the title, as well as the other reasons specified herein that the better reading to be given the statute as amended is that Class D felonies were to be excluded from treatment under the Youthful Offender Act. I do not believe that the Legislature intended to include Class D felonies in the general phrase "felony which provides a maximum term of less than fifteen years" and this intent is confirmed in the Act's title. In light of the statute's ambiguity, legislative or judicial clarification may be advisable to make this reading absolutely clear.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Mr. Collins
Page 5
August 9, 1996

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an