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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 8, 1997

The Honorable James S. Klauber
Member, House of Representatives
406 E. Henrietta Avenue
Greenwood, South Carolina 29649

Dear Representative Klauber:

You have sought an opinion regarding the proper interpretation of S.C. Code Ann. Sec. 17-15-260. Your question is whether such Section includes the Attorney General's Office where a case has been initiated and is being prosecuted by the Attorney General as a State Grand Jury case.

Law / Analysis

Section 17-15-260 provides as follows:

> [t]he funds collected pursuant to this chapter must be remitted in the following manner: twenty-five percent to the general fund of the State, twenty-five percent to the solicitor's office in the county in which the forfeiture is ordered, and fifty percent to the county general fund of the county in which the forfeiture is ordered.
>
> However, if the case in which forfeiture is ordered is originated by a municipality, the funds collected pursuant to this chapter must be remitted in the following manner: twenty-five percent to the general fund of the State, twenty-five percent to the solicitor's office in the county in which the forfeiture is ordered, and twenty-five percent to the county

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> general fund of the county in which the forfeiture is ordered and twenty-five percent to the municipality.
>
> All funds to be deposited in the state general fund shall be transmitted to the State Treasurer.

Thus, the issue here is whether the General Assembly intended to exclude the Attorney General's Office if it initiates a State Grand Jury prosecution. It is my opinion that it did not.

Several principles of statutory construction are pertinent here. First and foremost, is the time-honored tenet of construction that the intent of the General Assembly must prevail in the interpretation of any statute. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical interpretation which is consistent with the purpose and policy expressed therein. Jones v. S.C. Hwy. Dept., 282 S.C. 140, 318 S.E.2d 8 (1984). Words unintentionally omitted from a statute may be supplied by the court in order to give effect to the Legislature's purpose. City of Sptg. v. Leonard, 180 S.C. 491, 186 S.E. 395 (1936). Statutes in pari materia should be construed together in order to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

The Attorney General is the chief prosecutor for South Carolina pursuant to Article V, § 24 of the South Carolina Constitution. As such, he is, of course, legally charged with a broad panoply of duties related to the supervision of criminal cases in this State. See, e.g., Anders v. S.C. Parole and Community Corrections Bd., 279 S.C. 206, 210 (1983). There, the Court noted that the "Solicitor is a quasi-judicial officer and serves under the Attorney General, who has the duty of supervising the prosecution of all criminal cases and the work of the Solicitors and their assistants in general." See also, Ex Parte McLeod 272 S.C. 373, 238 S.E.2d 161 (1971); Langford v. McLeod, 29 S.C. 466, 238 S.E.2d 161 (1977); State of S.C. v. Snipes, 266 S.C. 415, 223 S.E.2d 853 (1976). In Langford, the Court noted that the "Office of the Attorney General exists to properly insure the administration of the laws of this State." (citing State ex rel. Wolf v. Sanders, 118 S.C. 498, 110 S.E. 808 (1920). And in Ex Parte McLeod, the Court concluded that

> [t]hese duties as chief prosecuting officer of the State are performed by the Attorney General, not only through his immediate staff, but through his constitutional authority to supervise and direct the activities of the solicitors or

> prosecuting attorneys located in each judicial circuit of the State. (emphasis added).

Id. at 377. Moreover, it is recognized that the Attorney General possesses broad common law authority in South Carolina. The Attorney General noted the Court in State ex rel. Daniel v. Broad River Power Co., 157 S.C. 1, 153 S.E. 538 (1929) is the "chief law officer of the State" who is empowered to "institute, conduct and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order and the protection of public rights."

The close correlation between the Attorney General and the Circuit Solicitors of the State and the supervisory authority of the Attorney General with respect to the Circuit solicitors is further recognized by various statutory provisions. Section 1-7-40 of the Code provides that the Attorney General "shall appear for the State in the Supreme Court in the trial and argument in such Court of all causes, criminal and civil, in which the State is a party or interested, and in such causes in any other court when required by the Governor or either branch of the General Assembly."

Section 1-7-100, in addition, provides that

> [t]he Attorney General shall consult with and advise the solicitors in matters relating to the duties of their offices. When, in his judgment, the interest of the State requires it he shall:
>
> > (1) Assist the solicitors by attending the grand jury in the examination of any case in which the party accused is charged with a capital offense; and
> >
> > (2) Be present at the trial of any cause in which the State is a party or interested and, when so present, shall have the direction and management of such prosecution or suit.

Section 1-7-320, moreover, states that

> [s]olicitors shall perform the duty of the Attorney General and give their counsel and advice to the Governor and other State officers, in matters of public concern, whenever they shall be,

> by them, required to do so; and they shall assist the Attorney General, or each other, in all suits of prosecution in behalf of this State when directed so to do by the Governor or called upon by the Attorney General. (emphasis added).

And, Section 1-7-350 reads as follows:

> [t]he several solicitors of the State shall, within their respective circuits, in cooperation with, and as assigned by the Attorney General, represent in all matters, both civil and criminal, all institutions, departments, and agencies of the State. Likewise in criminal matters outside their circuits, and in extradition proceedings in other states, they shall be subject to the call of the Attorney General, who shall have the exclusive right, in his discretion, to so assign them in case of the incapacity of the local solicitor or otherwise.

In short, the Attorney General as chief prosecutor of the State is the State's preeminent "Solicitor" in the prosecution of criminal cases. The Supreme Court of South Carolina has recognized this fundamental principle time and again and the statutes referenced above further confirm this.

The statutory provisions relating to the operation of the State Grand Jury, enacted well after Section 17-15-260, likewise strongly recognize the pivotal role of the Attorney General in the prosecution of such cases. Section 14-7-1650 provides that

> (A) The Attorney General or his designee shall attend sessions of a state grand jury and shall serve as its legal advisor. The Attorney General or his designee shall examine witnesses, present evidence, and draft indictments and reports under the direction of a state grand jury.
>
> (B) In all investigations of the crimes specified in Section 14-7-1630, except in matters where the solicitor(s) or his staff are the subject(s) of such investigation, the Attorney General shall consult with the appropriate solicitor(s) of the jurisdiction(s) where the crime or crimes occurred. After consultation, the Attorney General shall determine whether the investigation should be presented to a county grand jury or

> whether to petition, under Section 14-7-1630 (B), for a state grand jury investigation.

Section 14-7-1750 also recognizes that prosecution of State Grand Jury cases is to be carried out by the Attorney General or his designee. Such Section states that

> [i]n order to return a "true bill" of indictment, twelve or more state grand jurors must find that probable cause exists for the indictment and vote in favor of it. Upon indictment by a state grand jury, the indictment must be returned to the presiding judge. If the presiding judge considers the indictment to be within the authority of the state grand jury and otherwise in accordance with the provisions of this article, he shall return the indictment by order to the county where venue is appropriate under South Carolina law for prosecution by the Attorney General or his designee. (emphasis added).

Section 14-7-1730 gives the presiding judge of the State Grand Jury jurisdiction in "the matter of bail for persons indicted by a state grand jury."

Section 17-15-260 is part of the Chapter of the Code relating to criminal bond and bail generally. Of importance particularly is Section 17-15-170, which provides for proceedings in case of forfeiture of recognizances. Such Section provides that

> [w]henever the recognizance is forfeited by noncompliance with its condition, the Attorney General, solicitor, magistrate, or other person acting for him immediately shall issue a notice to summon every party bound in the forfeited recognizance to appear at the next ensuing court to show cause, if he has any, why judgment should not be confirmed against him. If any person so bound fails to appear or, upon appearing, does not give a reason for not performing the condition of the recognizance as the court considers sufficient then the judgment on the recognizance is confirmed.

While bail forfeiture is generally considered to be a civil proceeding, it clearly originates as part of the original criminal prosecution. 8 Am.Jur.2d, Bail and Recognizance, § 145. The whole purpose of bail in the first place is to secure the defendant's presence at the criminal trial. 8 Am.Jur.2d, Bail and Recognizance, § 4.

With that background in mind, it is clear that the purpose of § 17-15-260 is to insure the equitable distribution of the proceeds upon forfeiture and estreatment of the

bond. The General Assembly thus specified that 25% of the proceeds would go to the "general fund of the State", 50% to the county's general fund in the county "in which the forfeiture is ordered" and 25% "to the solicitors office in the county in which the forfeiture is ordered." It is evident that the General Assembly failed, probably due to oversight, to specify how such monies are to be distributed in those instances where the local circuit solicitor is not prosecuting a particular case -- either due to a conflict of interest or because the Attorney General himself as the State's Chief prosecutor has initiated a criminal prosecution either through the State Grand Jury or otherwise. In such instances, it is apparent that the General Assembly 's overriding intent -- as opposed to the words actually used -- is to distribute 25% of the proceeds of the bond forfeiture to the prosecuting agency. Conversely, I do not believe it was the Legislature's intent to distribute such funds to the local Solicitor's office even when the Solicitor is not prosecuting the case.

In construing a statute, absurd results are to be avoided and a construction of the statute must be rejected when to accept it would lead to a result so plainly absurd that it possibly could not have been intended. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Thus, to read the statute as literally written would distribute 25% of the proceeds to the Solicitor's office for the bond forfeiture even if the Solicitor were disqualified from the case due to a conflict of interest. The Legislature, in my judgment, referenced the Solicitor's office here simply because his office is the typical prosecutor, but I do not believe the General Assembly intended this method of distribution to be exclusive where the local Solicitor is not prosecuting the case. Thus, a reasonable construction is to substitute the phrase "prosecuting agency" to accommodate those instances where the local circuit solicitor is not the prosecuting officer, for example, State Grand Jury cases in which the Attorney General is acting as the sole prosecutor. This construction would provide meaning and symmetry with respect to the various statutes referenced above concerning the authority of the Attorney General, and would read them as a whole.

When necessary to effectuate legislative intent, courts have not been reluctant to construe all relevant statutes together to include the Attorney General even where the statute in question failed to specify that particular office. For example, in People v. Gibson, 125 P. 531 (Colo. 1912), the Supreme Court of Colorado interpreted a statute which used the words "district attorney" to be synonymous with "public prosecutor" and thus concluded that the Attorney General possessed the authority pursuant to the relevant statute to charge by information in the name of the people the commission of a felony and to prosecute such proceedings in district court. The Colorado Supreme Court reasoned as follows:

> [s]o under the law of this state, district attorneys are specifically authorized, inter alia, to appear in all indictments, criminal cases, and proceedings which may be pending in the district court of their respective counties. Nevertheless, general authority is imposed upon the Attorney General to appear and prosecute in all cases wherein the state is a party or interested when required so to do by the Governor or General Assembly. The two provisions are not inconsistent. They may stand together. The specific duty imposed upon the district attorneys in no wise limits or excludes the general authority of the Attorney General upon the same subject.
>
> However, as under the Constitution no power existed in district attorneys or in the Attorney General to prosecute felonies by information, it is argued that such power was conferred by the act of 1891 exclusively upon the district attorneys or their representatives, and can be exercised by no one else. If the words "district attorney," as used in the act, cannot be construed to include "public prosecutor," the contention is doubtless correct. As a general rule, where, by statute, authority is given to a particular officer, its exercise by any other officer is forbidden by implication. However, when we apply the well-known rules of construction to the constitutional and statutory provisions constituting the system by which criminal offenses are to be prosecuted in this state, we have no doubt the words "district attorney," found in the information act, must be construed to mean "public prosecutor" authorized to prosecute in any particular case.

Id. at 535.

Likewise, in my opinion Section 17-15-260 must be so construed. As explained above, it makes no sense to have 25% of the proceeds distributed to the solicitor's office if the local solicitor is not prosecuting the case. To read the statute absolutely literally here would distribute 25% of the bond proceeds to the Solicitor's Office even if the Solicitor were disqualified because of a conflict of interest. Moreover, such a reading does not accommodate the Attorney General's role as Chief Prosecutor -- the "Chief Solicitor" if you will -- or his role with respect to State Grand Jury cases. Surely even if the term "Solicitor" is taken literally, room must be made for the Attorney General as this State's Chief Solicitor. Thus, consistent with the foregoing authorities and the same

reasoning of the Court as used in People v. Gibson, supra, a Court would, in my judgment, construe § 17-15-260 to interpret the term "solicitors office in the county in which the forfeiture is ordered" to mean the Attorney General's Office where that agency prosecuted the case.[1]

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph

REVIEWED AND APPROVED BY:

Zeb C. Williams, III
Deputy Attorney General

[1] It should be noted that § 17-15-260 also specifies that if a case is "originated by a municipality", then 25% goes to the originating municipality; in that instance, instead of the county general fund receiving 50% of the proceeds, the county would only get 25%. This would make no difference, however, where the Attorney General is prosecuting the case rather than the Solicitor. In such instance, the 25% allocated to the Solicitor should still be given to the Attorney General's Office as the prosecuting agency.