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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 2, 1997

The Honorable Catherine H. Kennedy
Probate Judge, Richland County
P. O. Box 192
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Judge Kennedy:

You have referenced new S.C. Code Section 20-1-100 which took effect on June 11, 1997. As you state, this provision prohibits males under the age of 16 or females under the age of 14 from marrying. You further state that Section 20-1-300 allows marriages under certain circumstances when the female is pregnant or has borne a child. Your question is whether Section 20-1-100 now restricts the effect of Section 20-1-300 despite the latter's language which permits a marriage license to issue "[w]ithout regard to the age of the female and male?"

Law / Analysis

Act No. 95 of 1997 creates Section 20-1-100 of the Code, which provides as follows:

> SECTION 1. The 1976 Code is amended by adding:
>
> "Section 20-1-100. A male under the age of sixteen or a female under the age of fourteen is not capable of entering into a valid marriage, and all marriages hereinafter entered into by such persons are void ab initio. A common-law marriage hereinafter entered into by a male under the age of

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> sixteen or a female under the age of fourteen is void ab initio."
>
> ... SECTION 2. Section 16-3-615 of the 1976 Code, as last amended by Act 295 of 1994, is further amended by adding:
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> (D) "This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen."
>
> ... SECTION 3. Section 16-3-658 of the 1976 Code, as last amended by Act 139 of 1991, is further amended by adding at the end:
>
> "This section is not applicable to a purported marriage entered into by a male under the age of sixteen or female under the age of fourteen."

Section 20-1-300, which had long been in existence when Act No. 95 was enacted, further provides that

> [n]otwithstanding the provisions of §§ 20-1-250 to 20-1-290, a marriage license may be issued to an unmarried female and male under the age of eighteen years who could otherwise enter into a marital contract, if such female be pregnant or has borne a child, under the following conditions:
>
> (a) The fact of pregnancy or birth is established by the report or certificate of at least one duly licensed physician;
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> (b) She and the putative father agree to marry;
>
> (c) Written consent to the marriage is given by one of the parents of the female, or by a person standing in loco parentis, such as her guardian or the person with whom she resides, or, in the event of no such qualified person, with the consent of the superintendent of the department of social services of the county in which either party resides;

> (d) Without regard to the age of the female and male; and
>
> (e) Without any requirement for any further consent to the marriage of the male.

In addition, Section 20-1-250 sets forth the usual prescribed method under South Carolina law for the issuance of a marriage license to a minor. Such Section states that

> [n]o such license shall be issued when the woman or child woman is under the age of fourteen and when the male is under the age of sixteen, provided that when the female applicant is between the ages of fourteen to eighteen and when the male applicant is between the ages of sixteen to eighteen and when the applicant resides with the father or mother, or other relative or guardian, the probate judge or other officer authorized to issue marriage licenses shall not issue a license for the marriage until furnished with a sworn affidavit signed by such father, mother, other relative or guardian giving his or her consent to the marriage.

State v. Ward, 204 S.C. 210, 28 S.E.2d 785 (1944) is also pertinent to the question you have raised. In Ward, the Supreme Court of South Carolina considered the issue of the validity of a conviction for statutory rape of a girl who was at the time of the offense between thirteen and fourteen years old. The defendant's defense was based upon an alleged common-law marriage between himself and the prosecutrix. The Court reversed the conviction on the grounds that the marriage was legal under the common law and thus no rape could have legally occurred. The Court's analysis consisted of the following:

> [t]he common law establishes the age of consent to the marriage contract at fourteen years for males and twelve years for females, and this rule of the common law is still in force in this State, State v. Sellers, 140 S.C. 66, 134 S.E. 873; Ex parte Blizzard, 185 S.C. 131, 193 S.E. 633. Our statute (Section 8558) provides that "... No such license shall be issued when the woman or child-woman is under the age of fourteen, or when the man or male is under the age of eighteen ..."

> It will be observed that the statute does not declare that if a marriage is entered into when one or both of the parents are under the age limit prescribed the marriage shall be void. It does, however, impose restrictions and penalties upon public officers and ministers of the gospel for the purpose of preventing, so far as possible, the solemnization of such marriages; but the statute has, for wise reasons, stopped short of declaring such marriages to be void. Section 8563 [now, § 20-1-360] provides: "Nothing herein contained shall render any marriage illegal without the issuance of a license."
>
> It is now generally held by the great weight of authority, that statutes prescribing the procurement of a license and other formalities to be observed in the solemnization of marriage, do not render invalid a marriage entered into according to the common law, but not in conformity with the statutory formalities; unless the statutes themselves expressly declare such marriage invalid; and this although the statutes prescribe penalties for ignoring their provisions. Such statutes have uniformly been held directory merely. Such being the case, we hold upon principle and authority, that the marriage of a person who has not reached the age of competency as established by our statute, but is competent by the common law, is valid, provided such marriage is entered into in accordance with the rules of the common law. See State v. Sellers, supra, and notes inn Ann. Cas., 1912D, 598, 79 Am. St. Rep., 361 and 124 Am. St. Rep., 107; also 133 A.L.R. 759.

204 S.C. at 214-215.[1]

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[1] In State v. Sellers, supra, the Court quoted with approval the rule that at common law "'a marriage under the age of seven years was a nullity, but over that age and under the age of consent (12), the marriage was not absolutely void, but only voidable.'" Thus, the Court refused to declare void a marriage by an eleven year old girl. In addition, the Court held that Art. III, § 33 of the State Constitution which declares that no unmarried woman shall legally consent to sexual intercourse who shall not have attained the age of 14, had no effect on the common law age of marriage.

The Court, applying the ancient doctrine that "[a] man cannot be guilty of an actual rape upon his wife," because of the "matrimonial consent which she gives when she assumes the marriage relation," thus held that the conviction could not stand. Under South Carolina law, the marriage could be considered valid even though the female was less than fourteen years old. Reiterated the Court:

> [a] common-law marriage is valid in this State as already pointed out; the age of consent to such a contract being fixed at fourteen years for males and twelve years for females. And such marriage is not void because the formalities prescribed by statute concerning the procurement of a license and solemnization, have not been observed.

Id. at 216

Thus, the law in South Carolina remained in accord with the Court's enunciation in the Ward case until this past session of the General Assembly when the Legislature enacted Act No. 95 of 1997. In response to reports regarding the use of "common law marriages" of under-age girls (less than fourteen) to escape this State's marriage license requirements, the General Assembly sought to modify and reform existing state law in this area. Therefore, the Legislature, in direct response to this situation, and to the Court's holding in Ward (albeit some fifty-three years later), mandated that males under the age of sixteen and females under the age of fourteen are "not capable of entering into a valid marriage, and all marriages hereinafter entered into by such persons are void ab initio." Expressly reacting to Ward, the General Assembly added that "[a] common-law marriage hereinafter entered into by a male under the age of sixteen or a female under the age of fourteen is void ab initio." Accordingly, the issue here is whether this Act is controlling vis à vis Section 20-1-300 which authorizes the issuance of a marriage license to an unmarried female under the age of eighteen provided the conditions therein are met.

We start with the following fundamental principle relating to the authority of the General Assembly to alter the common law age of consent to marry:

> [s]ubject to constitutional limitations and restrictions, it is within the legislative power to determine the age at which persons can marry. While the rule at common law, and the general rule in American jurisdictions before the enactment of statutes covering the subject, was that males had capacity to contract marriage at the age of 14 years and females at 12

> years, the matter is now regulated by statute, which in most jurisdictions has materially increased the age requirement.

52 Am.Jur.2d, Marriage, § 14. Such statutes must "show an unequivocal intention to abrogate the common law rule, [or] they will be construed as directory merely, and as rendering a marriage contrary to their provisions not void, but voidable." 55 C.J.S., Marriage, § 11.

A number of principles of statutory construction are also important in resolving your inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used therein should be given their plain and ordinary meaning. First South Sav. Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Moreover, the full effect must be given to each part of the statute, and in the absence of ambiguity, words must not be added or taken from the statute. Home Building & Loan Assn. v. City of Sptg., 185 S.C. 313, 194 S.E. 139 (1938). Statutes in apparent conflict with each other must first be read together and reconciled if possible so as to give meaning to each and to avoid an absurd result. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984).

Finally, the rule of "last legislative expression" must be deemed to be ultimately controlling where reconciliation of two statutes is not possible. While implied repeals of a statute are certainly not favored and will not be indulged if any other reasonable construction exists, Strickland v. State, 276 S.C. 17, 274 S.E.2d 430 (1981), the last act of the Legislature is the law and has the effect of repealing all prior inconsistent laws. Garey v. City of Myrtle Beach, 263 S.C. 247, 209 S.E.2d 8993 (1974). If two statutes are in conflict, the latest statute passed should prevail so as to repeal the earlier statute to the extent of the repugnancy. Yahnis Coastal, Inc. v. Stroh Brewery Co., 295 S.C. 243, 368 S.E.2d 64 (1988); Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991). This same rule was enunciated in Southeastern Freight Lines v. City of Hartsville, 313 S.C. 466, 443 S.E.2d 395 (1994) with the Court's statement that "[w]hen two statutes are incapable of reasonable reconcilement, the latest statute passed repeals any earlier statute to the extent of repugnancy between the two statutes." 313 S.C. at 468. Thus, the courts require, first, that the two statutes be reasonably reconciled, where possible, but where such reconciliation is impossible or unreasonable, then the last expression by the General

Assembly on the subject must prevail. Thus, we turn to an analysis of Act No. 95 (Section 20-1-100), as compared to Section 20-1-300.

The two statutes are capable of reconciliation. Section 20-1-300 expressly states that it is an exception to the marriage license provisions (§§ 20-1-250 to 20-1-290) and is applicable only to "an unmarried female and male under the age of eighteen years who could otherwise enter into a marital contract ...." (emphasis added). In Op. Atty. Gen., Op. No. 3175 (September 14, 1971), this Office concluded that the phrase "... who could otherwise enter into a marital contract ..." could only be logically construed as relating "to the minimum age required for a common law marriage in the State of South Carolina." Although Section 20-1-300(d) states that the statute applies "[w]ithout regard to the age of the female and male," thereby rendering Section 20-1-300 "patently ambiguous," we reasoned that Subsection (D) "is modified by the provision requiring the parties be persons '... who could otherwise enter into a marital contract ...'" As noted above, State v. Ward, supra clearly states that "[t]he common law establishes the age of consent to the marriage contract at fourteen years for males and twelve years for females, and this rule of common law is still of force in this State ...." Thus, even before the enactment of Section 20-1-100 in 1997, it is doubtful whether a license could have been issued pursuant to Section 20-1-300 to a pregnant female below the age of twelve. Enactment of Section 20-1-100 alters the common law age of consent to marry and thus, reading the two statutes together, the age of consent for a female being raised to fourteen and a male to sixteen, a license cannot be issued pursuant to Section 20-1-300 unless the female is at least fourteen and the male, sixteen.

Nor does a reconciliation render Section 20-1-300 superfluous in light of the usual marriage license provisions contained in Section 20-1-210 through Section 20-1-260. Even with the enactment of Section 20-1-100 and its resultant narrowing of the scope of Section 20-1-300, the latter statute still encompasses persons not entitled to a license under the usual license procedure. Section 20-1-250 requires that a female between fourteen and eighteen and a male between sixteen and eighteen can be licensed to marry "when the applicant resides with the father or mother, or other relative or guardian" who gives written consent by affidavit. On the other hand, Section 20-1-300 authorizes the issuance of a license to an unmarried male and female below the age of eighteen where the female is pregnant or has borne a child and, among other conditions, written consent (no mention of affidavit) is given by "one of the parents of the female, or by a person standing in loco parentis, such as her guardian or the person with whom she resides, or, in the event of no such qualified person, with the consent of the superintendent of the department of social services of the county in which either party resides." Thus, for example, an unmarried female between the ages of 14 and 18 who is pregnant or has borne a child could be licensed pursuant to Section 20-1-300 if she has the written permission of either parent

whereas she would be required to obtain an affidavit giving such permission from the parent with whom she resided pursuant to Section 20-1-250. Section 20-1-300, in other words, remains in place today; the only difference since the enactment of Section 20-1-100 is that the phrase "who could otherwise enter into a marital contract" now excludes females below the age of fourteen and males below the age of sixteen from receipt of a marriage license pursuant to either Section 20-1-300 or Section 20-1-210 et seq.

Notwithstanding efforts to reconcile the two statutes, however, Section 20-1-100 must be deemed controlling. As the Legislature's last word on the subject, females below the age of fourteen and males below the age of sixteen are "not capable of entering into a valid marriage" and "all marriages hereinafter entered into by such persons are void ab initio." Moreover, State v. Ward and earlier cases are expressly addressed by virtue of the language in the statute that "[a] common-law marriage hereinafter entered into by a male under the age of sixteen or a female under the age of fourteen if void ab initio." Finally, Sections 16-3-615 and 16-3-658 (spousal sexual battery and criminal sexual conduct) are amended to make it clear that any purported marriage entered into by a female under fourteen or a male under sixteen is inapplicable thereto. In other words, the defense that a person is the legal spouse of an individual who commits criminal sexual conduct upon that person is no longer applicable if the victim is a female below the age of fourteen or a male below the age of sixteen. Such persons are now incapable of entering into marriage. In short, there is absolutely no intent whatever suggested in the enactment of Act No. 95 of 1997 that the Legislature intended any exception to the declaration that all marriages by a male under the age of sixteen or a female under the age of fourteen are "void ab initio."

In conclusion, it is my opinion that new Section 20-1-100 is controlling with regard to the capacity of males under the age of sixteen and females under fourteen to marry. Such purported marriages occurring after the effective date of the statute are now void ab initio and are without legal effect whatsoever. The intent of the General Assembly and the language contained in the statute are clear and unambiguous. While Section 20-1-100 does not refer to or attempt to repeal Section 20-1-300, it is the last expression of legislative will on the subject, and thus must be deemed to prevail. Moreover, such Section refers to "all marriages hereinafter enter into ....". The word "all" is synonymous with "any," Pursley v. Inman, 215 S.C. 243, 54 S.E.2d 800 (1949) and typically, "all" does not mean "some of" or even "the great majority of," but "every." Id.; see also, Coastal Seafood Inc. v. Alcoa South Carolina, Inc., 298 S.C. 466, 381 S.E.2d 502 (1989). Thus, Section 20-1-300, relating to the issuance of a marriage license, now has no impact with respect to males under sixteen and females under fourteen. No marriage license should thus issue with respect to these persons.

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.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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