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ATTORNEY GENERAL

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Kela E. Thomas, Director
Department of Probation, Parole and Pardon Services
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Dear Director Thomas:

We are in receipt of your opinion request asking whether Section 24-21-715 of the South Carolina Code allows "for medical parole of any inmate, including those sentenced for 'no parole' offenses?" Our response follows.

I. Background

According to a 2011 law review article, 36 states have laws governing the medical parole of incarcerated inmates. See Bertschy, Kendra, Chapter 405: The Time no Longer Needs to Fit the Crime for Dying Inmates, 42 McGeorge L. Rev. 641, 644 (2011) ("California is now among thirty-six other states to have implemented some form of medical release to assist with the financial burden of inmate health care."). The purpose of medical parole statutes is, according to one legislature, to "alleviate exorbitant medical expenses associated with inmates whose chronic and incurable illness render their incarceration non-punitive and non-rehabilitative." R.I. Gen. Laws Ann. § 13-8.1-2 (2011). Indeed, the Court of Appeal for California's Fourth District, interpreting California's medical parole statute, Section 3550, reiterated this understanding explaining "the Legislature drafted section 3550 primarily to alleviate some of the financial burden facing the [California Department of Corrections] in caring for inmates suffering from certain medical conditions." In re Martinez, 210 Cal. App. 4th 800, 811 (2012). Thus, as suggested by one commentator, medical parole statutes are characterized as a means of reducing "strain on state correction budgets" stemming from an aging inmate population. Murphy, Neil, Dying to be Free: An Analysis of Wisconsin's Restructured Compassionate Release Statute, 95 Marq. L. Rev. 1679, 1681-82 (2012).

II. Law

South Carolina's medical parole statute, codified in Section 24-21-715 of the South Carolina Code, was passed as part of the "Crime Reduction and Sentencing Reform Act of 2010," and was enacted via Act 273 of the 2010 Legislative Session. 2010, S.C. Acts No. 273. In pertinent part, Section 24-21-715, entitled "[p]arole for terminally ill, geriatric, or permanently

disabled inmates" states, in subsection (B), that, "[n]otwithstanding another provision of law, only the full parole board, upon a petition filed by the Director of the Department of Corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or any combination of these conditions." S.C. Code Ann. § 24-21-715(B) (2014 Supp.).

In addition to subsection (B)'s medical parole provisions, Section 24-21-715(A)(1)-(3) provides parameters to the program by defining the phrases "[t]erminally ill," "[g]eriatric," and "[p]ermanently incapacitated;" subsection (C) explains the legal requirements a parole order issued by the board must contain in the event medical parole is granted; and subsection (D) adds that an inmate granted medical parole is subject to the supervision of the Department of Probation, Parole and Pardon Services ("DPPPS"). See S.C. Code Ann. § 24-21-715(A)(1)-(3) (defining each phrase); S.C. Code Ann. § 24-21-715(C) (2014 Supp.) (detailing that the parole board's order must include findings of fact "that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions, and does not pose a threat to society of himself."); S.C. Code Ann. § 24-21-715(D) (2014 Supp.) (stating an inmate granted medical parole is subject to the supervision of the Department of Probation, Parole and Pardon Services ("DPPPS") and must "abide by all conditions ordered by the parole board."). Finally, Section 24-21-715(E) adds that DPPPS will retain jurisdiction for all matters relating to medical parole, must conduct a review of the inmate's status, and, in the event the inmate is no longer eligible for medical parole, issue a warrant or citation for violation of the statute's provisions. S.C. Code Ann. § 24-21-715(E) (2014 Supp.). Understanding this, we now return to your question, whether the medical parole statute applies to all inmates "including those sentenced for 'no parole' offenses?" Because the statute, both when read as a whole and when construed in light of other statutes within the chapter indicate Section 24-21-715 only applies to parole eligible offenses, we believe it does not.[1]

[1] We assume for purposes of your question that a "no parole offense" refers to offenses punishable by a natural life or death sentence rather than a "no parole offense" as defined by Section 24-13-100 of the Code, which is actually a parole eligible offense upon service of "eighty-five percent of the actual term of imprisonment imposed." See S.C. Code Ann. § 24-13-150 (2014 Supp.) ("Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed."); State v. Miller, 404 S.C. 29, 35 n.5, 744 S.E.2d 532, 536 n.5 (2013) ("A 'no parole offense' is one in which a prisoner must serve at least 85% of the actual term of imprisonment imposed.") (citing State v. Dawkins, 352 S.C. 162, 164 n.1, 573 S.E.2d 783, 783 n.1 (2002)). However, in the event your request does focus on a "no parole" offense as defined in Section 24-13-100, we believe Section 24-21-610 regarding "[e]ligibility for parole" to be instructive. See S.C. Code Ann. § 24-21-610 ("Notwithstanding the provisions of this section, the Board may parole any prisoner not sooner than one year prior to the prescribed date of parole eligibility when, based on medical information furnished to it, the Board determines that the physical condition of the prisoner concerned is so serious that he would not be reasonably expected to live for more than one year.").

III. Analysis

In order to determine whether medical parole granted pursuant to Section 24-21-715 applies to all inmates or only parole eligible inmates, we must first look to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible."). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002).

When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). Nevertheless, courts do not focus on isolated portions of the language contained within a statute, but instead consider the statute's language as a whole. See Mid-State Auto Action of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) ("In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole."). This is because "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent." 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction, § 46.5 (7th ed. 2007).

Moreover, in addition to being read as a whole, the language contained within a statute must also be viewed in the proper context. Op. S.C. Att'y Gen., 2015 WL 4140804 (July 1, 2015). This is necessary because, in the words of the United States Supreme Court, the "meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132 (2000). Thus, where appropriate, statutes which relate to the same subject matter or to the same legislative scheme should be construed together. Fidelity & Casualty Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 335, 295 S.E.2d 783, 785 (1982). After all, "[i]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single harmonious result." Joiner ex rel Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

With these concepts in mind we now return to your question—whether Section 24-21-715 applies to all inmates or only those who are otherwise parole eligible. As mentioned above, Section 24-21-715 was passed as part of the "Crime Reduction and Sentencing Reform Act of 2010," and was enacted via Act 273 of the 2010 Legislative Session. 2010, S.C. Acts No. 273. It is contained within Article 7 of Chapter 21 of Title 24 dealing with "parole" and, in the words of the Legislature, provides "the terminally ill, geriatric, or permanently disabled" with "procedures for parole on these grounds." 2010, S.C. Acts No. 273, Legis. Summary. As it relates to the question of who is eligible for medical parole, Section 24-21-715(B) states, in

relevant part, that "*[n]otwithstanding another provision of law, only the full parole board, upon a petition filed by the Director of the Department of Corrections, may order the release of an inmate* who is terminally ill, geriatric, permanently incapacitated, or any combination of these conditions." S.C. Code Ann. § 24-21-715(B).

Analyzing Section 24-21-715(B) and applying the concepts of statutory interpretation mentioned above, we believe Section 24-21-715(B)'s "notwithstanding another provision of law" language, when construed in light of the entirety of the statute and placed within the context of "parole" under Article 7 of Chapter 21, show that Section 24-21-715's medical parole provisions do not apply to inmates who are ineligible for parole. Specifically, we believe the phrase "notwithstanding another provision of law" does not relate to other provisions of law concerning inmate parole eligibility, but is instead intended to reference other provisions of law concerning the number of parole board members who must vote and agree in order to grant parole. See e.g., S.C. Code Ann. § 24-21-30(A) (permitting the parole board to meet in three member panels and, upon a unanimous vote, grant parole); id., (explaining that where a three member panel does not result in an unanimous vote on a parole decision, parole may be granted by the majority vote of the full parole board); S.C. Code Ann. § 24-21-30(B) (requiring two-thirds majority vote of the full parole board to grant parole to offenders committing a statutorily defined "violent" crime that is not designated as a no parole offense); id., (permitting unanimous vote of three member panel to grant parole to an offender convicted of an offense that is not a statutorily defined "violent" crime and is not considered a "no parole offense"); id., (stating that where three member panel does not unanimously agree on a parole decision regarding an offender convicted of an offense that is not a statutorily defined "violent" crime and is not considered a "no parole offense," a majority vote of the full board is required to grant parole). In other words, the use of the phrase "notwithstanding another provision of law" was never intended to allow all inmates to seek medical parole, but was instead, as noted in the statute's legislative summary in Act 273, intended to provide specific procedures to be used by the parole board in determining whether inmates should be granted medical parole—specifically, that medical parole may only be granted where the full parole board unanimously approves the Director's medical parole petition.

A review of the entirety of Section 24-21-715 supports this conclusion. Indeed, there is no other provision of Section 24-21-715 addressing the number of parole board members who must vote on a medical parole decision, nor is there another provision addressing the number of votes required in order to grant medical parole. Similarly, the entirety of Section 24-21-715 reflects that medical parole is intended to be extremely limited in scope,[2] a scope which would inevitably be vastly expanded if inmates serving life sentences, or death sentences, were permitted to seek medical parole despite the fact they are not parole eligible.

[2] See e.g., S.C. Code Ann. § 24-21-715(A)(1)-(3) (narrowly defining the phrases "terminally ill," "geriatric" and permanently incapacitated); S.C. Code Ann. § 242-21-715(E) (explaining that if an inmate is no longer eligible to participate in the medical parole program, a probation agent may institute proceedings to take the paroled individual back into custody).

The general parole eligibility statute supports this conclusion as well. Specifically, Section 24-21-610, which is also contained within Article 7 of Chapter 21, explains that the parole board may not parole a prisoner "sooner than one year prior to the prescribed date of parole eligibility when, based on medical information furnished to it, the [parole board] determines that the physical condition of the prisoner concerned is so serious that he would not be reasonably expected to live for more than one year." Thus, Section 24-21-610 confirms that an inmate must be parole eligible to receive medical parole, and even then, the individual's parole eligibility date may not be accelerated by more than a year. See 26 S.C. Jur. Probation, Parole & Pardon § 13 (2015) (explaining that in cases of medical parole, the parole board may not parole a prisoner sooner than one year before the projected date of his parole eligibility).

Likewise, construing Section 24-21-715 so as to extend medical parole to all inmates would be directly at odds with the deterrent effects tied to sentences that are not parole eligible, particularly in capital murder cases where the only sentencing options for a jury to consider are life without parole or death. Indeed, Section 16-3-20(A) is very specific about the meaning of a sentence of life without parole stating:

> "[i]f the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. *For purposes of this section, "life" or "life imprisonment" means until death of the offender without the possibility of parole*[.]

S.C. Code Ann. § 16-3-20(A) (2014 Supp.) (emphasis added). Further, because a capital jury is in fact instructed that "life" means "life without parole" prior to its sentencing deliberations, construing Section 24-21-715 as extending medical parole to all inmates would both mislead capital juries as to the meaning of a life sentence, as well as usurp their statutory role in fashioning a sentence by permitting the parole board to revisit the jury's sentencing determination. We decline to construe Section 24-21-715 in such a manner and do not believe the Legislature intended such a result.

Similarly, interpreting Section 24-21-715 as applying medical parole to all inmates would undermine the intent of the Legislature in punishing non-capital murder cases as well. Notably, Section 16-3-20 explains that individuals who plead guilty or are convicted of murder in a non-capital trial are punishable "by a mandatory minimum term of imprisonment for thirty years to life." S.C. Code Ann. § 16-3-20(A) (2014 Supp.). Continuing, the statute explains with respect to a sentence for a term of years, or a sentence of life imprisonment, that such an individual is not "*eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of thirty years to life imprisonment required by this section.*" Id. (emphasis added). Thus, if such individuals were subsequently released despite

being ineligible for parole, the deterrent effect of punishing an individual for committing murder is greatly reduced. Again, we do not believe Section 24-21-715 was intended to serve this purpose.

Furthermore, this determination is also consistent with that of other jurisdictions. For instance, the Arkansas Attorney General's Office, construing Arkansas's medical parole statute, concluded that although the only statutory exception for medical parole related to certain sex offenders, the statute could not be construed as extending medical parole to inmates sentenced to death or life without parole. Op. Ark. Att'y Gen., 2012 WL 1573880 (May 2, 2012). In so concluding, the opinion advised that the Arkansas statute, similar to our statute, should only be understood as accelerating a parole eligible inmate's parole eligibility date, and, as a result, the statute's medical parole provisions do not apply to inmates who are ineligible for parole. See Op. Ark. Att'y Gen., 2012 WL 1573880 (May 2, 2012) ("In my opinion, [the Arkansas medical parole statute] can be interpreted as creating an exception to the minimum time an inmate must otherwise serve to be eligible for parole or transfer. . . [s]uch an exception plainly would not apply to inmates under sentence of death of life without parole, who are unambiguously identified as ineligible for parole . . ."). We believe the same logic applies to our medical parole statute. Specifically, since Section 24-21-610 limits the amount of time an individual's parole date may be accelerated for medical reasons, it stands to reason that only inmates who are parole eligible are subject to Section 24-21-715's medical parole provisions. Therefore, it is the opinion of this Office that Section 24-21-715(B)'s "notwithstanding another provision of law" language should not be understood as an exception to other statutes discussing parole eligibility.

IV. Conclusion

In conclusion, we believe Section 24-21-715, both when construed as a whole and when construed in light of other parole statutes, cannot be understood as extending medical parole provisions to inmates who are serving sentences of death or life without parole. Specifically, Section 24-21-715(B)'s use of the phrase "notwithstanding another provision of law" does not relate to other provisions of law concerning inmate parole eligibility, but is instead intended to reference other provisions of law concerning the number of parole board members who must vote and agree in order to grant parole. This reading of Section 24-21-715(B) is consistent with the understanding that medical parole under Section 24-21-715 is limited in scope as is reflected by other portions of the medical parole statute as well as other provisions of Title 24, Chapter 21, Article 7, namely Section 24-21-610. Likewise, our reading of Section 24-21-715, unlike the alternative understanding, does not undermine the deterrent aspects of a death sentence or a sentence of life without parole, but instead supports these goals by ensuring that inmates subject to such sentences cannot seek release though South Carolina's medical parole statute. Accordingly, and consistent with other jurisdictions that have addressed this question, it is the opinion of this Office that Section 24-21-715's medical parole provisions do not apply to inmates who are otherwise ineligible for parole.

Sincerely,

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REVIEWED AND APPROVED BY:

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