ALAN WILSON
ATTORNEY GENERAL

March 1, 2013

The Honorable Ernest M. O'Brien
Magistrate
Greenville County Bond Court
20 McGee Street
Greenville, S.C. 29601

Dear Judge O'Brien:

We received your request for an opinion of this Office regarding a magistrate's general contempt authority. By way of background, you describe a situation where, as a condition of bond, a defendant is ordered to have no contact with the victim. After the defendant is released, he subsequently violates the bond. You ask whether the defendant may be cited for contempt by the magistrate.

Law/Analysis

In your letter, you reference an opinion of this Office dated December 6, 2004 (2004 WL 3058232), where we considered whether a municipal judge may cite a defendant for contempt under similar circumstances. Because municipal courts "also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates . . . [and have] . . . the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts," S.C. Code Ann. §14-25-45, we discussed a magistrate's statutory contempt authority pursuant to §22-3-950. This statute provides that:

> [e]very magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550. [Emphasis added].

We explained that:

> [i]n State v. Harper, 297 S.C. 257, 258, 376 S.E.2d 272 (1989), the State Supreme Court determined that "(c)ontempt is an extreme measure and the

> power to adjudge in contempt is not to be lightly asserted." The Court cited Section 22-3-950 as a magistrate's authority to punish for contempt. See also: Dean v. Shirer, 547 F.2d 227, 230 (4th Cir. 1976) (The Court cited Section 22-3-950 as the contempt authority for magistrate's courts and stated that "(t)he contempt power under the South Carolina statute is thus limited to instances where the contempt is committed in the presence of the court, or where the party is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially"). Additionally, in State v. Applegate, 13 S.C.L. 110 (1822), the Constitutional Court of Appeals of South Carolina explained as to justices of the peace, a forerunner of the magistrates courts:
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> > Although justices of the peace have judicial power, yet they possess a very inferior jurisdiction...To commit for a contempt done in the face of a court is essential to preserve the order necessary for the convenient discharge of business. Such a power is incident to all judicial tribunals...But to commit for a contempt done out of court, is in no respect necessary for the discharge of the Justices' duties. Such a power is perhaps the greatest prerogative allowed to courts of the highest jurisdiction, and how inconsistent would the practice of this prerogative be in the hands of a justice, when we consider that even after a regular judgment given, a justice of the peace cannot take the body of a defendant, nor levy upon his lands, and can issue execution against his goods and chattels only....

We thus advised: "an argument exists as to whether a municipal court judge may cite an offender for contempt for violation of the condition of a bond."[1] This conclusion must not be read in isolation, however. Significantly, we noted in the opinion that the South Carolina Supreme Court in Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982) indicated that:

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[1]With respect to the remedies available to a court for a defendant's refusal to comply with the court's order, we further advised that:

> [w]here a defendant is brought back before the court for violation of the condition of a bond, the bond may be revoked or new, additional conditions may be imposed. As stated at 8 C.J.S. Bail Section 83, p. 105, "(a)ccused's violation of a condition of release is a legitimate reason to impose additional or more restrictive conditions, to increase the amount of bail, or to revoke release on bail or recognizance...Whether to revoke bail or to impose more restrictive conditions is discretionary with the judicial officer." Of course, in order for bail to be revoked, the defendant must be provided notice and an opportunity to be heard. Ibid. As stated at S.C. Code Ann. §17-15-50 (2003), "(t)he court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release."

> [t]he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts and consequently to the due administration of justice.

Id., 287 S.E.2d at 917 [citing State *ex rel.* McLeod v. Hite, 272 S.C. 303, 251 S.E.2d 746, 748 (1979)]; see also In re Brown, 333 S.C. 414, 511 S.E.2d 351, 355 (1998) ["The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings"]. In addition, the Court held in State v. Kennerly, 237 S.C. 619, 524 S.E.2d 837, 838 (1999) that:

> South Carolina courts have always taken a liberal and expansive view of the 'presence' and 'court' requirements. This State's courts have held the 'presence of the court' extends beyond the mere physical presence of the judge or the courtroom to encompass all elements of the system.

This Office has construed the referenced language in Curlee as "not being limited to any particular jurisdictional level, and therefore, should apply equally to all courts of this State's unified judicial system, including the magistrates' and municipal courts." See Ops. S.C. Atty. Gen., January 6, 2004 (2004 WL 113642) [municipal court has authority to hold sheriff or his jailer in contempt for refusing court order to accept prisoners]; May 19, 2004 (2004 WL 1182084) [a defendant may be held in contempt where he refuses to pay an assessment properly imposed by a magistrate or municipal court judge]; April 21, 1995 (1995 WL 803377) [same]; September 4, 1985 (1985 WL 166067) [same]. This remains our opinion. Contempt results from the willful disobedience of an order of the court. Cf. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611, 617 (1994) ["Constructive contempt is contempt that occurs 'outside the presence of the court'"]. Although contempt "is an extreme measure and the power to adjudge a person in contempt is not to be lightly asserted," Harper, 376 S.E.2d at 273, in our opinion, magistrates and municipal court judges also possess inherent authority to punish offenses calculated to obstruct, degrade, and undermine the administration of justice. To allow a defendant to avoid compliance with an order of the court only serves to undermine its authority. Our December 6, 2004, opinion should not otherwise be interpreted to limit the inherent authority of magistrates and municipal court judges in this regard.

Of course, we make no conclusion about whether contempt of court is appropriate or inappropriate in a given instance. Such is a matter for the court whose order may have been disobeyed, based upon the facts and circumstances before the court. Ops. S.C. Atty. Gen., January 6, 2004; July 8, 1998 (1998 WL 746090); cf. State v. Bevilacqua, 316 S.C. 122, 447 S.E.2d 213, 217 (Ct. App. 1994) [intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the acts, words, and circumstances surrounding the occurrence].

As referenced by you, §§17-15-10 *et seq.* allows a court to impose conditions upon a defendant's release on bail. Pursuant to §17-15-10(A), a court may impose a condition of release to include, but is not limited to, requiring an appearance bond, placing the person in the custody of another, restrictions on a defendant's "travel, association, or place of abode of the person during the period of release," or any other

conditions deemed "reasonably necessary to assure appearance as required." Specifically, you note §17-15-30 provides that:

> (A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, a court may, on the basis of available information, consider the nature and circumstances of an offense charged and an accused's:
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> (1) family ties;
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> (2) employment;
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> (3) financial resources;
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> (4) character and mental condition;
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> (5) length of residence in the community;
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> (6) record of convictions; and
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> (7) record of flight to avoid prosecution or failure to appear at other court proceedings.
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> (B) A court shall consider, if available:
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> (1) an accused's criminal record;
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> (2) any charges pending against an accused at the time release is requested;
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> (3) all incident reports generated as a result of an offense charged; and
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> (4) whether an accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status.
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> (C)(1) Prior to or at the time of a hearing, the arresting law enforcement agency shall provide the court with the following information, if available:
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> (a) the accused's criminal record;
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> (b) any charges pending against the accused at the time release is requested;

> (c) all incident reports generated as a result of the offense charged; and
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> (d) any other information that will assist the court in determining conditions of release.
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> (2) The arresting law enforcement agency shall inform the court if any of the information is not available at the time of the hearing and the reason the information is not available. Failure on the part of the law enforcement agency to provide the court with the information does not constitute grounds for the postponement or delay of the person's hearing.
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> (D) A court hearing these matters has contempt powers to enforce the provisions of this section. [Emphasis added].

See also §17-15-100 ["Nothing contained in §§17-15-10 through 17-15-60 shall affect the power of any court of the State to punish for contempt"].

In construing the above provisions, a number of rules of statutory construction are applicable. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000). Courts "will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423, 425 (2009). What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Hodges, 533 S.E.2d at 581. The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843, 846 (1992). A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law. Peake v. South Carolina Dept. of Motor Vehicles, 375 S.C. 589, 654 S.E.2d 284, 290 (Ct. App. 2007). Statutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable. State v. Thomas, 372 S.C. 466, 642 S.E.2d 724, 725 (2007). In the construction of statutes, the dominant factor is the intent, not the language of the Legislature. A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258, 262 (1984). "[W]ords ought to be subservient to the intent, and not the intent to the words." Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942). In construing a statute, the presumption is that the Legislature did not intend to do a futile thing. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938).

Notwithstanding the inherent authority of courts to punish for contempt, as previously discussed, a literal reading of the entire statutory scheme convinces us that it was the intent of the Legislature to expressly provide for courts to use contempt powers to enforce the conditions of release on bail, and gives

them the authority to punish defendants for disobedience of court orders. In our opinion, the above-referenced provisions are indicative of legislative intent.[2]

Conclusion

With respect to the remedies available to a court for refusal to comply with a court's order, the most obvious remedy is a court's contempt power. "The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts and consequently to the due administration of justice." Curlee, 287 S.E.2d at 917. Importantly, this Office has construed the referenced language as not being limited to any particular jurisdictional level. Therefore, this language applies equally to all courts of this State's unified judicial system, including the magistrates' and municipal courts. It is our opinion that §22-3-950 would not limit the power of magistrates and municipal judges in this regard. Our conclusion is further supported by the provisions of §§17-15-10 *et seq.*, which expressly provide for courts to enforce conditions of release on bail. Of course, any determination about whether contempt of court is appropriate or inappropriate in a given instance is a matter for the court whose order may have been disobeyed. This Office is not a fact-finding entity and such a determination is beyond the scope of an opinion of this Office.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

[2]We further note that subsection (D) was added by the Legislature in 2010 S.C. Acts No. 273, §9. Cf. Op. S.C. Atty. Gen., April 5, 2005 (2005 WL 1024604) [stating the absence of any amendment to a statute following an Attorney General's formal opinion strongly suggests that the views expressed therein were consistent with legislative intent].