1976 S.C. Op. Atty. Gen. 394 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4531, 1976 WL 23148

Office of the Attorney General

State of South Carolina
Opinion No. 4531
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***1 The eligibility for parole consideration of a prisoner convicted of armed robbery is determined by construing the parole statutes in conjunction with the amendment to the armed robbery statute.**

Deputy Director
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The recent amendment to the armed robbery statute sets the punishment for conviction at imprisonment for a term of not less than ten (10) years nor more than twenty-five (25) years in the discretion of the judge, no part of which may be suspended. The amendment further states:
no person convicted under the provision of this subsection shall be eligible for parole until he has served at least seven years of his sentence.

The basic statute setting out the jurisdiction of the Board states that the Board may parole a prisoner convicted of a felony 'who, if sentenced for not more than thirty-years, shall have served at least one-third of the term' Section 55–611, Code of Laws of South Carolina, 1962, as amended.

You inquire as to which of these provisions control in different factual situations which might arise:
(1) If a defendant is sentenced to a term of twenty-five (25) years, does the recent amendment make him eligible for parole after seven (7) years, or does Section 55–611 control making him eligible for parole after eight and one-third (8 #) years;

(2) If a defendant is sentenced to a term of fifteen years, does the recent amendment require him to serve a minimum of seven (7) years or will he be eligible for parole after serving one-third of his sentence [five (5) years] pursuant to Section 55–611.

The relevant sections of the basic statutes setting out the jurisdiction of the Parole Board (Section 55–611) and the recent amendment to Section 16–333 are *in pari materia* and should be construed together. This is true even though only a part of the amendment to Section 16–333 relates to the same subject matter as Section 55–611.
Statutes may be deemed to be in pari materia whether independent or amendatory in form; whether in the form of a complete enactment dealing with a single limited subject matter or of sections in a code or revision; or any combination of these. Sutherland, Statutory Construction, Vol. 2A, § 51.03, page 299.

There is basically no inconsistency between the two Code provisions. If a defendant is sentenced to a term of twenty-five years, the recent enactment states that he will not be eligible for parole until he has served *at least* seven (7) years. Thus, if he is not eligible under Section 55–611 (1) until he has served eight and one-third (8 #) years, he has obviously served at least seven (7) years. Further the amendment does not, of course, make it mandatory that the inmate be paroled or considered for parole after service of seven (7) years, it only states that he is not eligible to be considered until he has served at least seven (7) years. It is natural and reasonable to assume that the legislature considered the basic parole statutes when enacting this most recent provision and that those statutes influenced their understanding of the act. When construing the acts we should also allow our understanding to be influenced by the impressions derived from the

other statutes. Sutherland, supra. Where statutes are *in pari materia* they should be construed together and reconciled, if possible, so as to render both operative. *Lewis v. Gaddy*, 254 S. C. 66, 173 S. E. 2d 376. It is clear, therefore, that in the case where a defendant is sentenced to a term of twenty-one (21) years or more the statutes may be construed to be in harmony with each other and no conflict results.

***2** The opposite result occurs when considering a defendant who is sentenced to a term less than twenty-one (21) years, for example fifteen (15) years. The more recent enactment indicates that he must serve at least seven (7) years before he is eligible for parole while the basic statute indicates that he is eligible after the service of five (5) years. In this situation, we have an inescapable conflict. To the extent that the older statute and the new enactment result in a direct conflict which cannot be resolved, the most recent enactment takes preference. *State ex rel. McLeod v. Montgomery*, 244 S. C. 308, 136 S. E. 2d 778. Sutherland, supra, page 290. The amendment to Section 16–333 is the latter expression of the legislative intent so it must control.

In conclusion, the recent enactment amending Section 16–333, setting out the punishment after conviction of armed robbery must be considered when construing Section 55–611. It is in fact an amendment of the basic statute insofar as defendants convicted of armed robbery are concerned. A defendant convicted of armed robbery who is sentenced to a term of twenty-one (21) years or more specifically a term of twenty-five (25) years, is eligible to be considered for parole after service of one-third (#) of twenty-five (25) or eight and one-third (8 #) years. The statutes are in harmony and both can be carried out without conflict. A defendant convicted of armed robbery and sentenced to a term of fifteen (15) years is eligible to be considered for parole after service of seven (7) years. The statutes are in direct conflict and the most recent enactment of the legislature takes precedence.

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