



ALAN WILSON
ATTORNEY GENERAL

June 25, 2019

Deputy Director Robert L. McCurdy
South Carolina Court Administration
1220 Senate St., Ste. 200
Columbia, SC 29201

Dear Deputy Director McCurdy:

We received your request dated June 14, 2019 seeking an opinion on the jurisdiction of summary courts over seventeen-year-old persons charged with certain offenses described in Section 63-3-520. This opinion sets out our Office's understanding of your question and our response. Our Office expedited this opinion in response to your question in light of the July 1, 2019 effective date of Act 268 of 2016.

Issue (as quoted from your letter):

A question has arisen regarding summary court and family court jurisdiction as a result of Act No. 268 of 2016, which takes effect on July 1, 2019. The Act amends the definitions in the Juvenile Justice Code so as to provide that a "child" or "juvenile" is a person under the age of eighteen years, with exceptions. However, the legislation does not amend § 63-3-520 to change the age from not less than seventeen years to not less than eighteen years. Based on the legislature's intent to raise the age of an adult to eighteen years old, would the summary court by implication have concurrent jurisdiction with the family court for the trial of person under eighteen years of age for traffic offenses and violation of provisions of Title 50 offenses charged on or after July 1, 2019?

Law/Analysis:

We believe that a court faced with the question presented here would hold that summary courts have concurrent jurisdiction over persons less than eighteen years of age charged on or after July 1, 2019 with traffic offenses and violation of provisions of Title 50 as described in S.C. Code Ann. § 63-3-520 (2010). This expressly includes children aged seventeen years, notwithstanding the failure to update Section 63-3-520 in Act 268 of 2016. While this conclusion is not free from doubt, we are confident that concurrent summary court jurisdiction is the result

intended by the General Assembly in Act 268. *See Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813 (1942).

Current Summary Court Jurisdiction Over Minors

We begin this opinion by discussing the current statutory scheme before turning to the effect of the amendments in Act 268 of 2016. The Juvenile Justice Code defines a “child” or “juvenile” as “a person less than seventeen years of age,” subject to certain exceptions related to felonies which not relevant here. S.C. Code Ann. § 63-19-20(1) (2010) (effective to July 1, 2019). Generally, the family court has exclusive jurisdiction over any child charged with a crime pursuant to Section 63-3-510, which reads in relevant part:

(A) Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction:

...

(d) who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 63-3-520

(3) Concerning any child seventeen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any State or local law or municipal ordinance prior to having become seventeen years of age and such person shall be dealt with under the provisions of this title relating to children.

S.C. Code Ann. § 63-3-510 (2010) (effective to July 1, 2019) (emphasis added). As stated in this quoted text, Section 63-3-520 is one express exception to the exclusive jurisdiction of the family court. § 63-3-510(A)(3). That Section establishes concurrent jurisdiction of summary courts over children charged with certain crimes and reads in full:

(A) The magistrate courts and municipal courts of this State have concurrent jurisdiction with the family courts for the trial of persons under seventeen years of age charged with traffic violations or violations of the provisions of Title 50 relating to fish, game, and watercraft when these courts would have jurisdiction of the offense charged if committed by an adult.

(B) The family court shall report to the Department of Motor Vehicles all adjudications of a juvenile for moving traffic violations and other violations that affect the juvenile's privilege to operate a motor vehicle including, but not limited to, controlled substance and alcohol violations as required by other courts of this State pursuant to Section 56-1-330 and shall report to the Department of Natural Resources adjudications of the provisions of Title 50.

S.C. Code Ann. § 63-3-520 (2010) (emphasis added).

Thus, in summary:

1. Section 63-19-20(1) defines a “child” or “juvenile” as “a person less than seventeen years of age” with certain exceptions not relevant here;
2. Section 63-3-510 establishes the exclusive jurisdiction of the family court over a “child” charged with a crime; and
3. Section 63-3-520 establishes the concurrent jurisdiction of the summary court over “persons under seventeen years of age,” i.e. a child as defined by the Juvenile Justice Code, when that person is “charged with traffic violations or violations of the provisions of Title 50 relating to fish, game, and watercraft.”

In practice, this means that if a child under the age of seventeen is charged with a crime, the appropriate jurisdiction is determined by the nature of the offense. Generally the family court would have exclusive jurisdiction, except that if the charge is for a traffic violations or a fish, game, or watercraft offense, that charge may also be heard in summary court. Once that person turns seventeen, any new charges generally would be heard either in summary court or General Sessions just as any other adult.

We emphasize that although Section 63-3-520 uses the language “persons under seventeen years of age” rather than simply saying “child,” the practical result is the same under the current legislative scheme. *Cf.* S.C. Code Ann. §§ 63-3-520 & 63-19-20(1) (2010) (effective through June 30, 2019). Moreover, Section 63-3-510 expressly references Section 63-3-520 as the lone exception to the otherwise-exclusive jurisdiction of the family court over a charged “child.” S.C. Code Ann. § 63-3-510 (A)(1)(d) (2010). These statutes are in harmony with each other and work in tandem to achieve a clear result.

Concurrent summary court jurisdiction over children charged with traffic violations and fish, game, and watercraft offenses is a longstanding statutory exception to the general exclusive jurisdiction of the family court. For instance, in 1997 the South Carolina Court of Appeals heard

and decided the case of *City of Camden v. Brassell*, 326 S.C. 556, 486 S.E.2d 492 (1997). The Court of Appeals in *Brassell* set out this summary of the facts:

Brassell was charged with driving under the influence, first offense, in the City of Camden on August 27, 1995. At the time of his arrest, Brassell was sixteen years old. Brassell was convicted of driving under the influence, first offense, in the Camden Municipal Court. He appealed his conviction to the circuit court. On appeal, Brassell contended the municipal court lacked subject matter jurisdiction to hear a driving under the influence charge against a juvenile. The circuit court reversed Brassell's conviction and held driving under the influence was not a "traffic violation" within the meaning of S.C. Code Ann. § 20-7-410 (Supp.1996) [later recodified as S.C. Code Ann. § 63-3-520]. The court further held the family court had exclusive jurisdiction over the charge against the juvenile.

326 S.C. at 559, 486 S.E.2d at 494. The Court of Appeals in *Brassell* also quoted and discussed similar statutes in other states which established summary court jurisdiction concurrent with juvenile courts over minors charged with traffic offenses or fish and game offenses. 326 S.C. at 563-65, 486 S.E.2d at 496-97. The Court of Appeals then reversed the circuit court, holding that driving under the influence, first offense was a "traffic violation" and that "the municipal court had concurrent jurisdiction with the family court to try the minor in this case." 326 S.C. at 566, 486 S.E.2d at 497.

Finally, we observe without opining that concurrent jurisdiction of the summary court as established in Section 16-3-520 probably reflects a policy judgment that the family court docket need not be filled with, e.g., routine traffic tickets issued to teenage drivers when the summary courts are capable of handling these offenses and the stakes in the typical traffic case are relatively low compared to other possible charges. We emphasize here that we are describing the apparent policy judgement in the abstract and not as a commentary on any specific case.

Effects of Act 268 on Summary Court Jurisdiction Over Minors

Act 268 of 2016 (referred to here as "Act 268") amended several statutes relating to juvenile justice and the family court in order to raise the age of a "child" for purposes of the Juvenile Justice Code from seventeen to eighteen, subject to certain exceptions not relevant here. The Act is titled in part:

AN ACT TO AMEND SECTION 63-3-510, CODE OF LAWS OF
SOUTH CAROLINA, 1976, RELATING TO THE JURISDICTION OF THE

FAMILY COURT, SO AS TO RAISE THE AGE THAT A PERSON IS CONSIDERED A CHILD FOR PURPOSES OF DELINQUENCY MATTERS BEFORE THE FAMILY COURT; TO AMEND SECTION 63-19-20, RELATING TO THE DEFINITION OF "CHILD" OR "JUVENILE", SO AS TO MEAN A PERSON UNDER THE AGE OF EIGHTEEN YEARS, WITH EXCEPTIONS

Act No. 268, 2016 S.C. Acts 1765. Act 268 amends Section 63-19-20(1) so as to define a “child” or “juvenile” as “a person less than eighteen years of age,” subject to certain exceptions related to felonies which not relevant here. Act No. 268, 2016 S.C. Acts 1751, 1752. The Act also amends Section 63-3-510 so as to increase the stated age limits but otherwise preserves the section as currently written, including the express reference to Section 63-3-520. Act No. 268, 2016 S.C. Acts 1751-52. Three years have elapsed since the passage of this Act, but these amendments are to take effect on July 1, 2019.

Thus, effective July 1 the portion of Section 63-3-510 quoted above will read:

(A) Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction:

. . .

(d) who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 63-3-520

(3) Concerning any person eighteen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any State or local law or municipal ordinance prior to having become eighteen years of age and such person shall be dealt with under the provisions of this title relating to children.

S.C. Code Ann. § 63-3-510 (2010) (effective July 1, 2019) (emphasis added). The sole change is the amendment of the age limit from seventeen to eighteen years of age in Subsection 63-3-510(A)(3). Otherwise, the language is identical, including the reference to “child.” The practical result of the amendment of Section 63-19-20(1) in this instance is that, as of July 1, the

jurisdiction of the family court now extends to persons seventeen years of age or younger who are charged with certain crimes instead of only sixteen years of age or younger. *Id.*

Act 268 did not, however, amend Section 63-3-520. *See* Act No. 268, 2016 S.C. Acts 1751. Accordingly, without further action by the General Assembly the language of Section 63-3-520 will remain thus:

(A) The magistrate courts and municipal courts of this State have concurrent jurisdiction with the family courts for the trial of persons under seventeen years of age charged with traffic violations or violations of the provisions of Title 50 relating to fish, game, and watercraft when these courts would have jurisdiction of the offense charged if committed by an adult.

(B) The family court shall report to the Department of Motor Vehicles all adjudications of a juvenile for moving traffic violations and other violations that affect the juvenile's privilege to operate a motor vehicle including, but not limited to, controlled substance and alcohol violations as required by other courts of this State pursuant to Section 56-1-330 and shall report to the Department of Natural Resources adjudications of the provisions of Title 50.

S.C. Code Ann. § 63-3-520 (2010) (emphasis added). As described above, prior to Act 268 this language in Section 63-3-520 encompassed all children charged with the named offenses as defined by the Code. However, after July 1, 2019 a “child” charged with such an offense will mean “a person less than eighteen years of age,” which is inconsistent with the “under seventeen” language which remains in Section 63-3-520. S.C. Code Ann. § 63-19-20(1) (effective July 1, 2019).

We understand that this inconsistency is the crux of your question. One possible reading of the three statutes together would be thus:

1. Section 63-19-20(1) defines a “child” or “juvenile” as “a person less than eighteen years of age” with certain exceptions not relevant here;
2. Section 63-3-510 establishes the exclusive jurisdiction of the family court over a “child” charged with a crime;
3. Section 63-3-520 establishes the concurrent jurisdiction of the summary court only over “persons under seventeen years of age” when that person is charged with certain offenses;

4. Therefore only the family court has jurisdiction over a child aged seventeen who is “charged with traffic violations or violations of the provisions of Title 50 relating to fish, game, and watercraft.”

In practice, this reading would conclude that a hypothetical child aged sixteen who is charged with a traffic violation would be subject to the concurrent jurisdiction of the family court and summary court. However, one year later the same child aged seventeen would be subject to the exclusive jurisdiction of the family court for an identical traffic violation, because Section 63-3-520 only establishes jurisdiction of the summary courts over a person under seventeen. Upon turning eighteen, a new traffic violation by this person would be within the jurisdiction of the summary court and not the family court.

This proposed construction of bouncing between court jurisdictions would represent a marked deviation of the existing statutory scheme where, currently, the family court and summary court hold concurrent jurisdiction over, e.g., traffic violations until a person becomes an adult. Your letter indicates that you also believe that the General Assembly did not intend this proposed construction. Your question to us is whether such a construction nevertheless is mandated by the language of the statutes as effective July 1, 2019.

This author's research has not identified any reported South Carolina case or prior opinion of this Office which addresses your question directly. It appears that a court faced with this question would rely upon the rules of statutory construction to give effect to the intention of the Legislature in codifying the various statutes set out above. As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” *Hodges v. Rainey*, 341 S.C.79, 85, 533 S.E.2d 578, 581 (2000). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att’y Gen., 2005 WL 1983358 (July 14, 2005). The South Carolina Supreme Court also has held that:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or

would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (quoting *Stackhouse v. County Board*, 86 S.C. 419, 68 S.E. 561 (1910)).

When we consider the proposed construction in the abstract, we agree with your assessment that the Legislature never intended for the summary courts to retain jurisdiction over a sixteen-year-old charged with a traffic violation or certain Title 50 offenses, and yet to deprive the same summary court of jurisdiction over a seventeen-year-old charged with an identical offense. The goal of the Legislature in Act 268 was simply to raise the age at which the family court would retain jurisdiction to hear criminal charges. Act No. 268, 2016 S.C. Acts 1765. It appears to us that the General Assembly intended to preserve the preexisting statutory scheme of concurrent jurisdiction over a child followed by an orderly end to family court jurisdiction when that person was no longer a child. For this reason, the newly-amended Section 63-3-510 preserved the express exception in subsection (A)(1)(d) for jurisdiction pursuant to Section 63-3-520, which establishes concurrent summary court jurisdiction. By contrast, clogging the family court dockets with routine traffic tickets issued to seventeen-year-olds but not sixteen-year-olds seems patently absurd. *See State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964).

Turning to the text of the statutes as amended, we observe first that the plain language of the statutes at issue does not compel the convoluted construction of bouncing between court jurisdictions. Subsection 63-3-510(A)(3) was amended to read:

Concerning any person eighteen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become eighteen years of age and such person shall be dealt with under the provisions of this title relating to children.

S.C. Code Ann. § 63-3-510(A)(3) (Supp. 2019) (effective July 1, 2019). Section 63-3-520 is and always has been a provision of Title 63 “relating to children.” S.C. Code Ann. § 63-3-520(A) (2010). Additionally, Section 63-3-520 itself establishes concurrent summary court jurisdiction “when these courts would have jurisdiction of the offense charged if committed by an adult.” *Id.* These references to children and adults contemplate that Section 63-3-520 is intended to establish concurrent summary court jurisdiction in certain cases over children, however the term “child” is defined.

However, even accepting for the sake of argument that a strict reading text of the statutes described above supports the proposed construction of bouncing between court jurisdictions, the South Carolina Supreme Court has held that such a reading will not prevail if that reading is contrary to “the real purpose and intent of the lawmakers.” *Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813 (1942). Here the opinion of the South Carolina Supreme Court in *Greenville Baseball v. Bearden* is instructive:

It often happens that the true intention of the Legislature, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which is the prime and sole object of all rules of construction, can be accomplished only by departure from the literal interpretation of the language used. Hence, Courts are not always confined to the literal meaning of a statute; the real purpose and intent of the lawmakers will prevail over the literal import of the words. . . .

It is a familiar canon of construction that a thing which is in the intention of the makers of a statute is as much within the statute as if it were within the letter. It is also an old and well-established rule that words ought to be subservient to the intent, and not the intent to the words.

200 S.C. 363, 20 S.E.2d at 813.

The true intention of the Legislature in Act 268 is obvious: to raise the age of a “child” for purposes of the Juvenile Justice Code from seventeen to eighteen, subject to certain exceptions not relevant here. *See* Act No. 268, 2016 S.C. Acts 1765. The Legislature did not undertake to reconstruct the juvenile justice system; instead, the apparent goal was simply to increase the age limits on family court jurisdiction by one year. *See id.* In other words, the purpose of Act 268 was to get certain charged seventeen-year-olds into family court, and was never about getting them out of the summary courts entirely. Therefore, consistent with the opinion of the South Carolina Supreme Court in *Greenville Baseball Club*, we believe that the better construction of Sections 63-3-510 and -520 following these amendments is that the summary courts have concurrent jurisdiction over persons under eighteen years of age charged on or after July 1, 2019 with traffic offenses and violation of provisions of Title 50 offenses.

Conclusion:

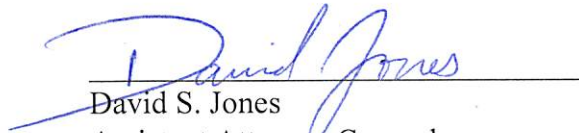
For all of these reasons, it is the opinion of this Office that a court faced with the question presented here would hold that summary courts have concurrent jurisdiction over persons less than eighteen years of age charged on or after July 1, 2019 with traffic offenses and violation of

Deputy Director Robert L. McCurdy
Page 10
June 25, 2019

provisions of Title 50 offenses as described in Section 63-3-520. *See* Act No. 268, 2016 S.C. Acts 1765, *cf.* S.C. Code Ann. § 63-3-520 (2010). This expressly includes seventeen-year-olds charged with those offenses, notwithstanding the failure to update Section 63-3-520 in Act 268 of 2016. *See discussion, supra.*

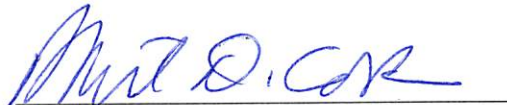
By contrast, clogging the family court dockets with routine traffic tickets issued to seventeen-year-olds but not sixteen-year-olds is patently absurd. *See State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). Instead, we believe a court would conclude that the General Assembly intended to preserve the preexisting statutory scheme of concurrent jurisdiction over a child for certain offenses, followed by an orderly end to family court jurisdiction when that person was no longer a “child” as defined by the Code. *See* Act No. 268, 2016 S.C. Acts 1765. While this conclusion is not free from doubt, we are confident that concurrent summary court jurisdiction is the result intended by the General Assembly. *See Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813 (1942).

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General