ALAN WILSON
ATTORNEY GENERAL

June 28, 2019

Mr. Bryan P. Stirling, Director
South Carolina Department of Corrections
P.O. Box 21787
Columbia, SC 29221-1787

Dear Director Stirling:

You seek our opinion "regarding whether certain high-level drug trafficking offenses should be treated as 'day-for-day' offenses" or instead are subject to the "eighty-five percent" rule. You specify numerous such statutes at issue, including §§ 44-53-370(e)(l)(d), -370(e)(2)(a)(3), -370(e)(2)(b)(3), -370(e)(2)(e), - 370(e)(3)(a)(2), -370(e)(4)(d), -370(e)(5)(a)(3). -370(e)(5)(b)(3). -370(e)(6)(d), -370(e)(8)(a)(iii), -370(e)(8)(b)(iii), and § 44-53-375(C)(l)(c), -375(C)(2)(c), -375(C)(5), - 375(E)(l)(a)(iii), -375(E)(l)(b)(iii), -375(E)(1)(e). By way of background, you note:

> [a]ll of these statutory subsections refer to a "mandatory minimum term of imprisonment" of twenty five years or "at least" twenty-five years. The Department of Corrections has long interpreted this language to mean a "day-for-day" term of imprisonment, meaning an inmate sentenced under these provisions serves every single day of the sentence with no good time, work, or education credits to reduce the service time. Notably, the Department has advanced this position in both the Administrative Law Court and in the South Carolina Court of Appeals, and its interpretation has been affirmed in unpublished decisions on every occasion.
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> However, it has come to our attention that this issue arose in a recent post-conviction relief case (Charlie Ellis Cutshaw. Jr. v. State) and an argument contrary to the Department's position was made. Therefore, the Department of Corrections respectfully requests that your Office issue an opinion regarding how these drug trafficking sentences should be treated under the law.

It is our opinion that a court would likely conclude that the enactment of § 24-13-150(A) – requiring an inmate convicted of a "no parole offense" to serve at least eighty-five percent of his sentence before being eligible for community service – is controlling with respect to the mandatory minimum twenty-five year drug trafficking statutes enumerated in your letter.

Law/Analysis

Your question is basically this: is the literal language of the mandatory minimum twenty-five year drug statutes controlling, thereby requiring "a day for day" term of imprisonment; or, on the other hand, is an inmate who has served "at least eighty-five percent of the term of imprisonment imposed" for the "no parole" offense of trafficking, carrying the mandatory minimum sentence of twenty-five years, eligible for early release, discharge or community supervision pursuant to § 24-13-150(A)? In other words, the language of the drug statutes which you have enumerated requires the offender to serve "a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted...." Moreover, these offenses are "no parole" offenses, meaning the offender is ineligible for parole, extended work release or supervised furlough. See State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991) ["The sentence of trafficking in cocaine in the amount in question here is a mandatory one of at least twenty-five years without parole."]; State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (Ct. App. 1999) [pointing out that such trafficking offenders are not eligible for parole, extended work release or supervised furlough].

However, in 1995, with the enactment of Act No. 83, (codified at § 24-13-150(A)), the General Assembly provided that:

> (A) 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.

(emphasis added). As we concluded in Op. S.C. Att'y Gen., 2006 WL 28049804 (September 15, 2006), if an offense is a "no parole offense," a "defendant convicted of such and sentenced to the custody of the Department of Corrections . . . is not eligible for early release, discharge or community supervision until the prisoner has served at least eight-five percent of the actual term of imprisonment imposed." See also State v. Dawkins, 352 S.C. 162, 164, n. 1, 573 S.E.2d 783, n. 1, (2002). As the Administrative Law Court stated in Blihar v. S.C. Dept. of Corrections, 2003 WL 34004577 (S.C. Admin. Law Judge Div. 2003), the eighty-five percent is "calculated without the application of earned work credits, education credits, or good conduct credits." Id. at * 2.

As we understand your letter, the Department of Corrections has, notwithstanding passage of § 24-13-150(A), consistently construed these drug trafficking statutes, requiring a "mandatory minimum" sentence of at least twenty-five years, as a "day for day term of imprisonment, meaning an inmate sentenced under these provisions serves every single day of the sentence with no good time, work, or education credits to reduce the service time." (emphasis

added). In light of the claim made in Cutshaw, you now seek our opinion as to whether we believe this is the correct interpretation; or instead whether the "at least eighty-five percent of the actual term of imprisonment" statute is controlling with respect to these drug trafficking statutes.

As noted above, § 24-13-150(A) references the definition of "no parole offense" contained in § 24-13-100. Section 24-13-100 defines a "no parole offense" as "a Class A, B or C felony or an offense exempt from classification as enumerated in Section 16-1-10(D), which is punishable by a maximum term of imprisonment for twenty years or more." The drug trafficking offenses cited in your letter are clearly deemed "no parole offenses" pursuant to § 16-1-10(D).

It is important at the outset to discuss the decision in Kerr v. State, 345 S.C. 183, 547 S.E.2d 494 (2001). There, the Supreme Court distinguished a "mandatory minimum term of imprisonment," found in the various statutes you reference, from the phrase "mandatory term." In Kerr, the defendant had been convicted of trafficking in cocaine. The Court affirmed in result a granting of post-conviction relief. Kerr had been sentenced under a statute providing for a "mandatory term of imprisonment of twenty-five years, no part of which may be suspended...." An unenumerated paragraph at the end of the statute stated, however, that an offender sentenced to a "mandatory minimum term of imprisonment of twenty-five years is not eligible for parole. . . ." This unenumerated paragraph was subsequently amended to provide that neither a "mandatory minimum term of imprisonment" nor a "mandatory term of twenty-five years or more" is eligible for parole. In concluding that Kerr was eligible for parole under the "mandatory term" statute under which he was sentenced, the Court explained:

> [c]onstruing this penal statute strictly against the State as we must, we find that a "mandatory term" of imprisonment is not the equivalent to a "mandatory minimum term" of imprisonment. Indeed, when the precise subsection under which Kerr was convicted was challenged on constitutional grounds, this Court indicated that a "mandatory term" is distinguishable from a "mandatory minimum term" of imprisonment. See State v. De La Cruz, 302 S.C. 13, 16 n. 4, 393 S.E.2d 184, 186 n. 4 (1990). . .
>
> Furthermore, we note the Legislature's subsequent amendments which added material terms to this unenumerated paragraph signal that a "departure from the original law was intended." See North River Ins. Co. v. Gibson, 244 S.C. 393, 398, 137 S.E.2d 264, 266 (1964) (where the Court recognized "the rule of construction that the adoption of an amendment which materially changes the terminology of a statute ... raises a presumption that a departure from the original law was intended."). We specifically find that the 1988 amendment which added "mandatory term" of imprisonment of 25 years to the parole ineligibility portion of section 44–53–370(e) effected a substantive change to the law.
>
> Thus, Kerr was, in fact, parole eligible under S.C. Code Ann. § 44–53–370(e)(2)(c) (1985), and the Parole Board erroneously determined in 1995 that it had made a mistake by paroling Kerr in 1993. Kerr has established his parole was unlawfully terminated, and clearly, he is entitled to PCR. See S.C. Code Ann. § 17–27–20(a)(5)

> (1985). Accordingly, we affirm, in result, the PCR court's decision to grant Kerr relief and reinstate his parole.

345 S.C. 183, 345 S.C. 183, 547 S.E.2d 494 (2001). Thus, in Kerr, the Court applied the rule of lenity and construed any ambiguity in the sentencing statutes against the State, finding that Kerr was indeed parole eligible.

The Kerr case is also important because of the significance the Court placed upon the term "mandatory minimum term of imprisonment." In the Court's view, "a 'mandatory term' is distinguishable from a 'mandatory minimum term' of imprisonment." (citing State v. De La Cruz, 302 S.C. 13, 16, n. 4, 393 S.E.2d 184, 186, n. 4 (1990)). Since Kerr was sentenced under the provision that then provided for a "mandatory term," rather than the provision requiring "mandatory minimum term," he was eligible for parole.

Courts facing the question appear consistent with Kerr's recognition that the term "mandatory minimum term of imprisonment" possesses a special meaning. As the Court noted in Abrakata v. State, 168 So.2d 251, 252 (Fla. 2015), a "mandatory minimum term . . . will require Appellant to serve his 25 year sentence day-for-day. . . ." See also Quintanal v. State, 972 So.2d 980, 981 (Fla. 2007) [a "mandatory minimum" sentence is a "day-for-day sentence"]; Moorer v. U.S., 868 A.2d 137, 144 (D.C. Ct. of App. 2005) ["The language of the statute is clear: a person convicted of carjacking must receive a term of at least seven years imprisonment, and must serve each and every day of these seven years in prison."]; State v. Hinojos, 393 S.C. 517, 520, n. 1, 713 S.E.2d 351, 352, n. 1 (Ct. App. 2011) [the trafficking charges "to which Hinojos pled guilty carried mandatory minimum sentences of seven years incarceration."]. And, in Nelson v. Ozmint, 390 S.C. 432, 436-437, 702 S.E.2d 369, 371 (2010), our Supreme Court further commented as to the meaning of a "mandatory minimum" sentence:

> Petitioner argues inmates convicted of CDV 3rd should be permitted to earn good time credits and earned work credits such that they could reduce their terms of actual imprisonment below the mandatory minimum of one year. We disagree.
>
> "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). However, all rules of statutory construction are subservient to the one that the 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. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).
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> We find the legislature intended § 16–25–20(B)(3) to require inmates convicted of CDV 3rd to actually be imprisoned for the mandatory one-year minimum. The legislature expressly provided that an inmate convicted of CDV, second offense, who is sentenced to the mandatory minimum term of imprisonment is eligible for early release based on credits he is able to earn during the service of his sentence. We find

> that, by omitting such language from the provision at issue, the legislature intended to make an inmate convicted of CDV 3rd ineligible to receive good time and earned work credits to reduce the time they are required to serve below the mandatory minimum of one year. See Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (the canon of construction "expressio unius est exclusio alterius" or "inclusio unius est exclusio alterius" holds that "to express or include one thing implies the exclusion of another, or of the alternative").

(emphasis added). Thus, Nelson clearly reinforces the conclusion that the application of a "mandatory minimum" statute requires an inmate to serve the sentence "day for day."

Here, the question is the applicability of the "eighty five percent rule" to the "mandatory minimum" trafficking statutes which clearly create "no parole offenses." We must look to the rules of statutory interpretation for guidance. Numerous principles of statutory construction are applicable. First and foremost, is the fundamental canon that legislative intent is controlling. As our Supreme Court explained in SCANA Corp. v. South Carolina Dept. of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009) regarding the governing rules of interpretation,

> [t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2008). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, as that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Electric, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). The Court should give the words their plain and ordinary meaning, without resort to subtle or forced construction to limit to expand the statute's operation. Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598 (2006).

"It is the established law in this State that all statutes relating to the same subject must be construed together and harmonized if possible and each are given effect, if this can be done by any reasonable construction." Spartanburg Co. v. Mitchell, 214 S.C. 283, 289, 52 S.E.2d 266, 269 (1949). In addition, "courts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat legislative intent." State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct. App. 2011). Where the language of a statute is ambiguous or "lends itself to equally logical interpretations," a court may look beyond the borders of the act itself to determine legislative intent. Kennedy v. S.C. Ret. Systems, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001). The true aim and intention of the legislature will be deemed controlling over the literal words which may be used in the statute. Greenville Baseball Club v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942).

Moreover, a construction which best secures the rights of all the parties affected is the proper construction in case of conflicting statutes. Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). "If conflicting statutes cannot be harmonized, the last in point of time or order of arrangement prevails, under the principle that the last expression of the legislative

will is the law." Id. However, as we stated in Op. S.C. Att'y Gen., 1989 WL 406172 (No. 89-82) (August 17, 1989),

> [i]t is a canon of statutory construction that a later statute general in its terms and not repealing a prior special or specific will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to affect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both.

(quoting 73 Am. Jur.2d Statutes, § 417, pp. 521-22). And, as the Court noted in Kerr, any ambiguity in a penal statute must be construed against the State and in favor of the defendant.

An additional rule of interpretation must be referenced. As we explained in Op. S.C. Att'y Gen., 2010 WL 5578965 (Dec. 7, 2010),

> [i]n Nelson v. Ozmint, Op. No. 26894, filed November 22, 2010, the State Supreme Court construed a statute that made an express provision for one set of circumstances but, according to the Court's reasoning, by omitting such language for another set of circumstances in the provision at issue, the General Assembly intended by such exclusion to make a distinction between the situations addressed by the statute. The Court cited the rule of statutory construction set forth in Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) of ". . . 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' which holds that 'to express or include one thing implies the exclusion of another or the alternative."

While all these canons of construction are undoubtedly enlightening, the principal issue here is what did the General Assembly intend in enacting 24-13-150(A), clearly a statute passed subsequently to the various trafficking statutes requiring a mandatory minimum sentence of twenty-five years with no parole ("day to day"). Certainly, we respect the Department's longstanding interpretation of a "day for day" sentence over the years. Such an interpretation is in accord with the express "mandatory minimum" language employed in these statutes and with the purpose of these statutes when enacted. State v. Brown, supra. See also State v. De La Cruz, 302 S.C. 13, 393 S.E.2d 184 (1990) [twenty-five year mandatory minimum sentence for trafficking in cocaine held not to violate separation of powers, due process, equal protection or cruel and unusual punishment].

Indeed, as you note in your letter, the Department's interpretation – that the twenty-five year "mandatory minimum" trafficking statutes require a "day for day" service of the sentence – has been upheld by the Administrative Law Court and in an unpublished Court of Appeals decision. In Battle v. S.C. Dept. of Corrections, ALC Case No. 16-ALJ-04-0003-AP (November 15, 2016), the Administrative Law Court concluded that "a person sentenced to a mandatory minimum twenty-five year sentence, like Appellant, must serve each day of the sentence." (emphasis added). On appeal, the Court of Appeals affirmed the ALC in an unpublished

decision. While the unpublished decision lacks precedential value, nevertheless, the Court's analysis is instructive:

> [t]he ALC did not err in finding the Department properly determined Battle was required to serve one hundred percent of his sentence. . . . State v. Taub, 336 S.C. 310, 317, 519 S.E.2d 797, 801 (Ct. App. 1999) ("The general rule of statutory construction is that a specific statute prevails over a more general one."); S.C. Code Ann. § 44-53-370(e)(2)(b)(3) (2018) (providing a person who is convicted of a "third or subsequent offense" of "trafficking in cocaine" in the amount of "twenty-eight grams or more, but less than one hundred grams" must serve "a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and [pay] a fine of fifty thousand dollars"); S.C. Code Ann. § 24-13-100 (2007) (providing that "a 'no[-]parole offense' means a class A, B, or C felony or an offense exempt from classification as enumerated in [s]ection 16-1-10([D]), which is punishable by a maximum term of imprisonment for twenty years or more"), repealed in part by Bolin v. S.C. Dep't of Corr., 415 S.C. 276, 286, 781 S.E.2d 914, 919 (Ct. App. 2016); S.C. Code Ann. § 16-1-10(D) (Supp. 2018) (including section 44-53-370(e)(2)(b)(3) in its list of exempt offenses); S.C. Code Ann. § 24-13-150(A) (Supp. 2018) (providing that no-parole offenses are "not eligible for early release, discharge, or community supervision ..., until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed"); id. ("Nothing in this section may be construed to allow ... an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision."); S.C. Code Ann. § 44-53-370(e) (2018) ("A person convicted and sentenced under this subsection to ... a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release.").

Notwithstanding these factors, however –pointing to a "day for day" interpretation – we believe that a court would likely conclude, based upon legislative intent, that the better construction, and one more in accord with legislative intent, is that the Legislature intended § 24-13-150(A) to control with respect to the aforementioned drug trafficking statutes. There are a number of reasons we believe that a court may, after full briefing and argument, determine that § 24-13-150(A) is dispositive. First and foremost, the eighty-five percent requirement was adopted subsequently to the mandatory minimum twenty-five year statutes. Moreover, § 24-13-150(A) purports to include all "no parole" offenses as defined in § 24-13-100. In Bolin v. S.C. Dept. of Corrections, supra, our Court of Appeals interpreted § 24-13-100 in a way which is instructive with respect to the situation here. Bolin involved the question of whether § 24-13-100, defining 'no parole offenses," had been modified by a subsequent statute, the Omnibus Crime and Sentencing Reform Act of 2010. Certain offenses under consideration in Bolin, such as conspiracy to manufacture methamphetamine, second offense – offenses not applicable here – were considered "no parole offenses" pursuant to § 24-13-100. However, based upon the language of the subsequently passed 2010 Act, the Court concluded that the drug offenses under

consideration there had been removed from the list of "no parole offenses" under § 24-13-100 by the 2010 Sentencing Reform Act.

While Bolin is not directly controlling as to the situation here, the Court's reasoning is nevertheless helpful. First of all, Bolin indicates that § 24-13-150 includes all "no parole offenses." The Court's language is as follows:

> [a]s previously stated, Section 24-13-150 requires an inmate who has been convicted of a no-parole offense to serve eighty-five percent of his sentence before he is eligible for "early release, discharge, or community supervision." . . .

415 S.C. at 280-81, 781 S.E.2d at 916 (emphasis added). Such a broad statement by the Court certainly suggests that § 24-13-150(A) is all encompassing with respect to "no parole" offenses such as the mandatory minimum drug offenses about which you inquire.

Further, Bolin analyzed the effect which the language of the subsequent 2010 Omnibus Crime Reduction Sentencing Reform Act of 2010 had upon the "no parole offense" statute. The Court's analysis is instructive here as well:

> [t]he legislature's use of the phrase "Notwithstanding any other provision of law" in the amendments to Sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 to the extent it conflicts with amended sections 44-53-375 and -370. See Stone v. State, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994) (holding that when two statutes "are in conflict, the more recent and specific statute should prevail so as to repeal the earlier general statute."); Hair v. State, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) ("the law clearly provides that 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."); Strickland v. State, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981) ("[s]tatutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is expressly implied therein. (emphasis added). Even if the language of Section 24-13-100 could be considered more specific than the amendment to Section 44-53-375(B), the intent to repeal Section 24-13-100 to the extent it conflicts with the amendments to Section 44-53-370 and -375 is "explicitly implied" in the language of the amendment stating "Notwithstanding any other provision of law." See Strickland, 276 S.C. at 19, 274 S.E.2d at 432. . . . Without this implicit repeal, the amendments themselves would be meaningless. See State v. Long, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005) ("the legislature is presumed to intend that its statutes accomplish something.")

415 S.C. at 282-83, 781 S.E.2d at 917.

Here, the General Assembly enacted § 24-13-150 following passage of the trafficking statutes. Most importantly, § 24-13-150(A) also uses the phrase "[n]otwithstanding any other provision of law," indicating the Legislature's intent that there should be an "explicitly implied"

repeal of the mandatory minimum twenty-five year "day for day sentence," required by the drug trafficking statutes enumerated in your letter, to the extent that such sentence conflicted with the eighty-five year requirement prior to participation in a community supervision program. When coupled with the fact that § 24-13-150 exempts from its reach only a sentence of the death penalty or a term of life imprisonment, when the Legislature was aware of the existence of the mandatory minimum twenty five year trafficking statutes and could have easily also exempted these trafficking statutes if it had wished – but did not do so – strongly indicates the Legislature's intent to include trafficking within the "eighty five percent" rule.

Finally, nowhere in the trafficking statutes is community supervision mentioned as being excluded. While these statutes bar suspended sentences, probation, parole, and extended work release and supervised furlough, they make no mention of ineligibility for community supervision. Community supervision is authorized by § 24-21-560. Like § 24-21-150(A), § 24-21-560(A) makes an exception only for sentences carrying the death penalty or life imprisonment. Section 24-21-560(A) cross-references § 24-21-150(A), requiring that "[n]o prisoner who is serving a sentence for a 'no parole offense' is eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24-13-150." [eighty-five percent]. As our Supreme Court noted, "[a]ll persons serving 'no parole' sentences, except those under a death sentence or a life sentence, participate in the [Community Supervision] Program following their term of incarceration [85% of the "actual term of imprisonment imposed"] S.C. Code Ann. § 24-21-560(A). . . ." Jackson v. State, 349 S.C. 62, 63, 562 S.E.2d 475 (2002). (emphasis added). Thus, the General Assembly recognized a distinction between community supervision and parole, extended work release and supervised furlough. The "'enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.'" Hodges v. Rainey, 313 S.C. at 86, 533 S.E.2d at 582. Again, trafficking offenses carrying a mandatory minimum sentence of twenty-five years were not excluded when they could have been. Such is another indication of legislative intent.

A closely analogous case resolving a statutory conflict in the same way as we do here is State v. Burton, 301 S.C. 305, 391 S.E.2d 583 (1990). There a person eligible under the Youthful Offender Act (YOA) was charged with distribution of crack cocaine, first offense, carrying a mandatory minimum sentence. He was convicted and sentenced under the YOA. The State appealed, contending,

> . . . that because the YOA permits the trial judge to suspend a sentence and grant probation, it is in conflict with the crack statute which prohibits suspension and probation. Therefore, it argues that the specific mandatory minimum sentence provided by the crack statute prevails over the general provisions of the YOA.

301 S.C. at 307, 391 S.E.2d at 583. The Supreme Court disagreed. According to the Court,

> The legislature has specifically prohibited the imposition of a YOA sentence for a conviction which carries a sentence of less than one year or which carries a

> maximum sentence of death or life imprisonment. S.C. Code Ann. § 24–19–10(f) (1989). Additionally, a person who is between the ages of twenty-one and twenty-five when convicted of armed robbery is ineligible for a YOA sentence. S.C. Code Ann. § 16–11–330(1) (1985); State v. Cutler, supra.
>
> Because the legislature has specifically excluded YOA sentences for certain offenses, we infer that the legislature intended the YOA to apply to youthful offenders guilty of all other offenses. Although the legislature has provided for a mandatory minimum sentence for possession with intent to distribute crack cocaine, we find no conflict between the crack statute and the YOA since a YOA sentence is not specifically excluded by the crack statute.
>
> We hold that a youthful offender convicted of possession with intent to distribute crack cocaine is not precluded from receiving a sentence under the YOA. Accordingly, the sentence imposed by the trial judge is

For all these reasons, we believe a court will conclude that § 24-13-150 is controlling.

Conclusion

Based upon the foregoing, it is our opinion that a court would likely interpret § 24-13-150(A) to be controlling with respect to those drug trafficking offenses which carry a mandatory minimum of twenty-five years imprisonment without parole. We recognize that the Department of Corrections has long construed the mandatory minimum twenty-five year statutes (which you enumerate in your letter) as so-called "day for day" sentences – meaning each day of the mandatory minimum sentence must be served. We also recognize that there is an unpublished Court of Appeals decision supporting the Department's interpretation. And, we certainly respect such an interpretation by the Department which is in keeping with the literal language of these statutes, as well as their purpose when enacted.

However, § 24-13-150(A) was enacted after those mandatory minimum statutes carrying a sentence of twenty-five years. Moreover, § 24-13-150(A) appears all encompassing as to "no parole" offenses. The only exceptions provided therein or in the community supervision statute are for sentences of the death penalty or life imprisonment. If the Legislature had intended other exceptions to be applicable, such as for a drug trafficking offense in which the mandatory minimum sentence of twenty-five years is applicable, it could have easily done so when it enacted § 24-13-150 or § 24-13-560(A). But it did not. Again, the expression of certain exceptions by the Legislature is a strong indicator that other exceptions were not intended. Further, the Legislature's use of the phrase 'notwithstanding any other provision of law" in § 24-13-150(A) and § 24-13-560(A) indicates an intent that § 24-13-150(A) should apply to and be controlling as to these trafficking offenses, thereby making the inmate eligible for community supervision upon service of at least eighty-give percent of the sentence for these offenses. The Supreme Court resolved a similar question the same way as we do here in State v. Burton, supra.

As the Supreme Court stated in Jackson v. State, supra, the Community Supervision Program "serves essentially the same function for persons convicted of 'no parole offenses' as parole does for other inmates." Thus, in our view, the effect of the Legislature's passage of § 24-13-150(A) (effective January 1, 1996), when read in harmony with the mandatory minimum twenty-five year trafficking statutes, was to reduce the sentence for those trafficking offenses from a mandatory minimum "day for day" sentence of twenty-five years to a mandatory minimum sentence of imprisonment of at least eighty-five percent of the sentence of imprisonment which these trafficking statutes originally provided. See State of Iowa v. Iowa Dist. Ct for Black Hawk County, 616 N.W.2d 575 (Iowa 2000). Accordingly, we believe a court is likely to so hold.

Still, we believe the Legislature or a court should address this issue directly with all arguments and points of view present and on the table. However, in the meantime, it is our opinion that a court would likely conclude that the enactment of § 24-13-150(A) – requiring an inmate convicted of a "no parole offense" to serve at least eighty-five percent of his sentence before being eligible for community service – is controlling with respect to the mandatory minimum twenty-five year drug trafficking statutes enumerated in your letter.

Sincerely,

Robert D. Cook
Solicitor General