ALAN WILSON
ATTORNEY GENERAL

October 22, 2020

Bryan P. Stirling, Director
South Carolina Department of Corrections
PO Box 21787
Columbia, SC 21221

Dear Director Stirling:

We received your request seeking an opinion on whether an attempt to furnish contraband to a prisoner in violation of section 24-3-950 includes presence on SCDC property as an element of the offense. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

> I write to you to request an opinion regarding the interpretation of S.C. Code § 24-3-950, entitled "Contraband." Specifically, with regard to an offense charged under this statute as an attempt crime, is an element of the offense that the violation must physically occur on SCDC property? [Your letter quotes section 24-3-950, set out in full later in this opinion.]
>
> S.C. Code § 24-3-950 does not state any requirement that an offense occur on SCDC property. The statute does, however, criminalize an "attempt to furnish" contraband to prisoners. Therefore, I am respectfully requesting your opinion regarding whether an attempt crime under the contraband statute must occur on SCDC property. This is a significant issue for SCDC due to the increasing number of methods individuals use to introduce contraband into our prisons.

Law/Analysis:

It is the opinion of this Office that S.C. Code § 24-3-950 does not require that an attempt crime under that section must physically occur on SCDC property as an element of the offense.

Your letter quotes section 24-3-950, which reads in full:

> It shall be unlawful for any person to furnish or attempt to furnish any prisoner under the jurisdiction of the Department of Corrections with any matter

> declared by the director to be contraband. It shall also be unlawful for any prisoner under the jurisdiction of the Department of Corrections to possess any matter declared to be contraband. Matters considered contraband within the meaning of this section shall be those which are determined to be such by the director and published by him in a conspicuous place available to visitors and inmates at each correctional institution. Any person violating the provisions of this section shall be deemed guilty of a felony and, upon conviction, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both.

S.C. Code Ann. § 24-3-950 (2007).

Several reported South Carolina appellate decisions address section 24-3-950 in various ways. These decisions often have addressed the sufficiency of the indictment, or fact-related matters such as the sufficiency of the posted notice or whether the prisoner was actually in possession of the contraband. *See, e.g., State v. Tabory*, 262 S.C. 136, 202 S.E.2d 852 (1974); *State v. Grier*, 427 SC. 107, 28 S.E.2d 782 (Ct. App. 2019); *State v. Williams*, 346 S.C. 424, 552 S.E.2d 54 (Ct. App. 2001). However, our Office has not identified a reported South Carolina case where the court was called upon to determine whether a violation must physically occur on SCDC property as an element of the offense.

One prior opinion of this Office, issued in 1985, discussed section 24-3-950 in the context of a prosecution for a conspiracy to import marijuana into a SCDC facility. *Op. S.C. Att'y Gen.*, 1985 WL 166027 (June 7, 1985). After discussing the misdemeanor conspiracy charge, our Office suggested to the requesting solicitor that he consider whether to prosecute the felonious attempt, "depending on the facts of [the] case." *Id.* It is not apparent from the opinion where the contraband at issue was seized. Our 1985 opinion referenced the moonshining cases *State v. Quick*, 199 S.C. 256, 19 S.E.2d 101 (1942) and *State v. Reaves*, 203 S.C. 501, 28 S.E.2d 91 (1943) as relevant decisions on the law of attempt. *Id.* However, neither this opinion nor any other prior opinion of this Office gave an express conclusion as to whether a violation must physically occur on SCDC property as an element of the offense.

Therefore, 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 section 24-3-950. In the words of the South Carolina Supreme Court,

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the court's place to

> change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

Hodges v. Rainey, 341 S.C.79, 85, 533 S.E.2d 578, 581 (2000) (internal citations and quotations omitted).

Additionally, "[t]he rules of statutory construction developed by our Supreme Court establish that a criminal statute must be strictly construed against the state and any ambiguity or doubt or uncertainty must be resolved in favor of the defendant." *Op. S.C. Att'y Gen.*, 1983 WL 182044 (November 2, 1983) (citing *State v. Germany*, 216 S.C. 182, 57 S.E.2d 165 (1950); *State v. Lewis*, 141 S.C. 483, 86 S.E. 1057 (1927).). We also have observed, however, that

> [T]he rule of strict construction of criminal statutes cannot provide a substitute for common sense, precedent, and legislative history. The construction of a penal statute should not be unduly technical, arbitrary, severe, artificial or narrow. In this regard, while penal statutes are to be strictly construed, they need not be given unnecessarily narrow meaning in disregard of the obvious legislative purpose and intent . . . . In short, although criminal statutes are to be strictly construed in favor of the defendant, the courts are not authorized to interpret them so as to emasculate the statutes.

Op. S.C. Att'y Gen., 2006 WL 2382448 (July 14, 2006) (quoting 72 Am.Jur.2d, Statutes, § 196 (2001)).

We turn now to the text of section 24-3-950. This statute criminalizes an "attempt to furnish" contraband to "any prisoner under the jurisdiction of the Department of Corrections." S.C. Code Ann. § 24-3-950 (2007). As you observe in your letter, the statute is directed at a prisoner under the jurisdiction of the Department, and not necessarily at the premises under the jurisdiction of the Department. *See id.* The only reference to SCDC physical premises is found in the notice requirement that a list of items deemed contraband must be published in "a conspicuous place available to visitors and inmates at each correctional institution." *Id.* Therefore the plain text of the statute does not require that the offense occur on SCDC property. *See id.*

The obvious legislative intent of the section 24-3-950 is to prevent contraband from reaching prisoners, and this rationale applies wherever those prisoners are found. For instance,

this author personally has observed prisoners under SCDC jurisdiction working on the grounds of the South Carolina Statehouse, which are premises generally open to the public. Furthermore, South Carolina law requires that SCDC transport prisoners off of their premises in certain instances, such as to attend court hearings. *See, e.g., Kocaya v. Kocaya*, 347 S.C. 26, 552 S.E.2d 765 (2001) (holding that SCDC has a "duty to transport a prisoner to court, whether criminal or civil, when directed to do so by court order."). If section 24-3-950 were construed to apply only on SCDC property, the result would be to artificially narrow the statute such that it would not apply when prisoners are off SCDC property but nevertheless remain under SCDC jurisdiction.

This construction is consistent with reported decisions in other jurisdictions. For example, in the 1959 West Virginia Federal district court decision *United States v. Ruckman*, 169 F.Supp. 160 (D.W.Va. 1959), the defendants were indicted for attempting to introduce contraband into a federal prison camp in violation of 18 U.S.C. § 1791. The district court summarized the facts of the case:

> The indictment charges in effect that 3 1/4 hours after his discharge from the Federal Prison Camp, Mill Point, West Virginia, defendant Ruckman delivered, pursuant to a prearranged plan, to defendants Patterson and Branam, who were inmates and prisoners of the prison, certain contraband articles of food and drink, and that the delivery took place on a public highway about one-half mile outside the prison entrance.

Id. at 161-62. The Federal district court went on to hold that these facts sufficiently alleged an attempt to violate 18 U.S.C. § 1791 as it was enacted at that time. *Ruckman*, 169 F.Supp. at 162.

It also is useful to compare *People v. Carillo*, 751 N.E.2d 1243 (Ill. App. Ct. 2001), where the Appellate Court of Illinois overturned the conviction, under the Illinois prison contraband statute, of a defendant who was visiting a prison and left beer in the trunk of his locked car on prison grounds, where prisoners worked. The decision in *Carillo* relied in part on the reasoning that supervised prisoners would not reasonably have access to the trunk of a locked car while they were working. *Id.* at 1249-50.

We note that the statutes at issue in *Ruckman* and *Carillo* differed materially from the language of section 24-3-950. Yet these decisions still are instructive in that they support construing the legislative intent of a prison contraband statute such that contraband simply not reach prisoners, wherever they are located.

Conclusion:

For these reasons, it is the opinion of this Office that S.C. Code § 24-3-950 does not require that an attempt crime under that statute must physically occur on SCDC property as an element of the offense. We believe a court would conclude that there is no basis in the text of section 24-3-950 to require such an element. Furthermore, such a construction is contrary to the obvious legislative intent of section 24-3-950. That intent is simply to prevent contraband from reaching prisoners, and this rationale applies wherever those prisoners are found. *Cf. United States v. Ruckman*, 169 F.Supp. 160 (D.W.Va. 1959) *& People v. Carillo*, 751 N.E.2d 1243 (Ill. App. Ct. 2001).

One prior opinion of this Office addressed a possible prosecution for a violation of section 24-3-950, and referred the requesting solicitor to the moonshining cases of *State v. Quick*, 199 S.C. 256, 19 S.E.2d 101 (1942) and *State v. Reaves*, 203 S.C. 501, 28 S.E.2d 91 (1943) as relevant decisions on the law of attempt. We reiterate that general South Carolina law on attempt crimes will govern such a prosecution. Presence on or distance from SCDC property may be a relevant fact. This opinion solely addresses whether presence is a necessary element.

This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Our discussion of the law here is simply intended to aid you in your discussions with your circuit solicitor.

Sincerely,

Robert D. Cook
Solicitor General

David S. Jones
Assistant Attorney General