

1983 WL 182093 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1983

***1 Re: Applicability of Section 24-21-610, CODE OF LAWS (1976), as amended (1981), to inmates presently surviving sentences in South Carolina.**

Mr. J. P. Pratt, II
Executive Director
South Carolina Department of
Parole and Community Corrections
Post Office Box 50666
Columbia, South Carolina 29250

Dear Mr. Pratt:

You have requested an opinion of this Office as to whether or not the 1981 amendment to the parole eligibility statute, [Section 24-21-610, CODE OF LAWS \(1976\)](#), which provides a reduction in eligibility time for certain classes of inmates if the Parole Board makes certain specific findings on January 1, 1984, would affect those inmates presently in the custody of the South Carolina Department of Corrections. We are of the opinion that it would apply to all inmates who are members of the specified classes who are presently in the custody of the Department of Corrections.

In the 1981 Parole and Community Corrections Act, 1981 Act No. 100 (1981) [67] 333), provided in Section 9 that [Section 24-21-610](#) was amended to read as follows in its pertinent part:

In all cases cognizable under this chapter the Board may, upon ten days written notice to the solicitor and judge who participated in the trial of any prisoner, parole such prisoner convicted of a felony and imprisoned in the state penitentiary, in any jail or upon the public works of any county:

- (1) Who, if sentenced for not more than thirty years, shall have served at least one third of the term;
- (2) Who, if sentenced to life imprisonment or imprisonment for any period in excess of thirty years, shall have served at least ten years; or
- (3) Who, if he is a first offender and is sentenced for an indeterminate term shall have served the minimum for which he was sentenced.

Provided, that if after January 1, 1984, the Board shall find that the statewide case classification system provided for in Chapter 23 of this Title has been implemented, that an intensive supervision program for parolees who require more than average supervision has been implemented, that a system for the periodic review of all parole cases in order to assess the adequacy of supervisory controls and of parolee participation in rehabilitative programs has been implemented, and that a system of contracted rehabilitative services for parolees is being furnished by public and private agencies, then in all cases cognizable under this chapter the Board may, upon ten days' written notice to the solicitor and judge who participated in the trial of any prisoner, to the victim or victims, if any, of such felony, and to the sheriff of the county where the prisoner resides or will reside, parole such prisoner convicted of a felony and imprisoned in the state penitentiary, in any jail or upon the public works of any county:

(1) Who, if sentenced for the crime of murder, armed robbery, criminal sexual conduct, assault and battery with intent to kill or kidnapping, shall have served at least one third of the term; provided, that for any other crime the prisoner shall have served at least one fourth of the term;

*2 (2) Who, if sentenced to life imprisonment or imprisonment for any period in excess of forty years, shall have served at least ten years; or

(3) Who, if he is a first offender and is sentenced for an indeterminate term shall have served the minimum for which he was sentenced.

Provided, further, that the provisions of this section shall not affect the parole eligibility provisions for murder and armed robbery . . .

The question then concerns whether the new parole eligibility provision applies to only those sentenced or received in the Department of Corrections after June 15, 1981, (the date of the Governor's approval), January 1, 1984, (the certification date by the Parole Board) or whether it applies to all inmates in prison on the date of the certification regardless of their date of admission to the Department of Corrections.

The question whether a statute operates retrospectively, or prospectively only, is one of legislative intent. Statutes are to be construed as having only prospective operation, unless the purpose to give them retrospective effect is expressly declared, or necessarily implied from the language used. [Citizen Bank v. Heyward](#), 135 S.C. 190, 133 S.E. 709 (1925). [Hyder v. Jones](#), 271 S.C. 85, 245 S.E.2d 123 (1978). [Boyd v. Boyd](#), 277 S.C. 416, 289 S.E.2d 153 (1982). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. [Caughman v. Columbia Y.M.C.A.](#), 212 S.C. 337, 47 S.E.2d 788 (1948). The first rule of construction in interpretation of statutes is that of intention on the part of the legislature and where terms of the statute are clear and unambiguous, there is no room for construction. [Jones v. S. C. State Highway Department](#), 147 S.C. 132, 146 S.E.2d 166 (1966).

With that legal background, the instant statute must be reviewed. In the amended [Section 24-21-610](#), the phrase 'in all cases cognizable under this chapter' is found in the older section and the new proviso. This phrase therefore applies to all potential parolees in the Department of Corrections since they are a 'cognizable case' under the chapter whether they would be eligible after one-third or one-fourth of their service of imprisonment. The interpretation is clear and unambiguous.

This interpretation also supports the legislative intent as expressed in the act's findings to assist in the relief of the immediate overcrowded condition of our state prison system. To render another interpretation would delay any impact on the present condition of the prison for at least five years. Such an interpretation is not supportable in the present legislation's clear purpose to the contrary.

It is the opinion of this Office that if the Parole Board on January 1, 1984, makes the appropriate statutory findings, then all inmates in the Department of Corrections would be subject to the new minimum eligibility requirements as established in the proviso to [Section 24-21-610](#), [CODE OF LAWS](#) (1976).

*3 If you have any further questions, please feel free to contact me.
Sincerely

Donald J. Zelenka
Assistant Attorney General

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