

LAW OFFICES

JAN 21 2016

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON  
SUMMERS & OTT, LLC

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0143-AP

Grievance No. ECI 0980-10

ORDER **RECEIVED**

FEB 17 2016

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). On May 21, 2007, Appellant entered a Step 1 Grievance with the Department objecting to the Department's payment, disbursement, and retention of wages for work done by the Appellant in the Department's Private Sector Prison Industries Program (Program or PSPIP). The Department responded on December 1, 2011, finding the grievance untimely filed and denying Appellant's claims in their entirety. On December 5, 2011, Appellant entered a Step 2 Grievance reiterating his arguments. In a final decision signed February 9, 2012, the Department again found the grievance untimely filed and denied Appellant's claims in their entirety. On March 7, 2012, the Appellant filed an appeal with this Court. Subsequently, the issues before the Court on appeal were bifurcated to allow the parties to address the issue of timeliness before reaching the substantive issues of the case. On January 30, 2014, the Court issued an order applying the doctrine of equitable tolling and ruling that Appellant's grievance was timely filed. The Court further ordered the parties to brief the merits of the case, upon which the Court now rules.

BACKGROUND

From June 1997 to November 2004, the Appellant participated in PSPIP at Evans Correctional Institution. Appellant performed work for Insilco Global Technologies/ESCOD (ESCOD), which participated in the Program as a private industry sponsor. For the first 320 hours of his labor, the Department paid Appellant a "training wage" of \$0.25 per hour for the first 160 hours, and \$0.75 for the remaining 160 hours. Upon completion of the 320 "training hours," the

**FILED**

JAN 20 2016

SC ADMIN LAW COURT

Department paid Appellant \$5.25 per hour for regular hours and \$7.86 per hour for overtime. From the gross wages the Department paid Appellant, FICA and federal and state tax deductions were made, leaving Appellant's "net pay," which was deposited in the "PIE Trust Fund Account" from the "Prison Industries Operating Account." Subsequent to 1999,<sup>1</sup> once the net pay was in the PIE Trust Fund Account, the Department made the following additional deductions: 20% of gross pay for victims' compensation -- 25% of gross pay for SCDC room and board (to the State General Fund). Ten percent of gross pay stayed in the account, maintained by the State Treasurer's office, as "escrowed wages" for the benefit of Appellant. The remaining balance of Appellant's pay was placed in his "Cooper" account for his personal use. The Department invoiced ESCOD \$7.17 per regular hour and \$10.86 per overtime hour of inmate labor. For a regular hour, \$5.25 was defined in the contract between ESCOD and the Department as inmate wages, \$0.40 as Social Security, and \$0.20 as Workers' Compensation, while \$1.32 was placed in the Department's "Surplus Fund Account." The Department referred to this difference as "overhead." In addition to sourcing inmate labor for ESCOD, the Department provided 25,000 square feet of workspace in Evans' industry building. A charge of \$1.00 per month for occupying this space was specified in the contract.

In 2001, Appellant and two other inmates (Plaintiffs) filed a class action law suit in the Richland County Court of Common Pleas.<sup>2</sup> Plaintiffs alleged, among other things, that the Department violated South Carolina Code Sections 24-3-310 through -430 in failing to pay inmates a prevailing wage for work performed. The class action also alleged that the Department improperly diverted a portion of the inmates' wages to its Surplus Fund Account. In 2002, The Department filed a motion to dismiss pursuant to Rule 12, SCRCPP, which was denied.

In 2004, the South Carolina Supreme Court issued opinions in two cases dealing with similar issues of inmate wages. See Adkins v. S.C. Dept. of Corrs., 360 S.C. 413, 602 S.E.2d 51

---

<sup>1</sup> The Record is not clear on the distribution of Appellant's wages prior to the 1999 amendment to Section 24-3-40, which governs wage distribution.

<sup>2</sup> In the class action, Appellant and the other Plaintiff were representatives of all prisoners who participated in the Program at Evans Correctional Institute. The suit also included a "Victim Beneficiary Subclass" which represented all crime victims awarded funds from the South Carolina Victims Compensation Fund and all victims receiving restitution paid by prisoners working in the Program. The suit included a "Dependent Beneficiary Subclass" which represented all dependents of prisoners entitled to support payments from funds received through the Program.

(2004); Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 602 S.E.2d 56 (2004). The Department renewed its motion for summary judgment based upon those decisions. The motion was granted, and Plaintiffs appealed. The South Carolina Supreme Court heard the appeal.

In Torrence v. South Carolina Department of Corrections, 373 S.C. 586, 646 S.E.2d 866 (2007), the South Carolina Supreme Court held that the Plaintiffs did not have a private right of action against the Department and thus could not bring suit before the Circuit Court. However, the Court held that all members of the class action could file internal grievances with the Department to seek any monies owed. Id. at 595. Following the Court's decision, Appellant began the grievance process, which led to this appeal.

#### ISSUES ON APPEAL

1. Did the Department improperly fail to pay Appellant the prevailing wage during training?
2. Did the Department improperly fail to pay Appellant the prevailing wage after training?
3. Did the Department improperly deny Appellant access to wages escrowed for his benefit?
4. Did the Department improperly deny Appellant a fair interest rate on escrowed wages?
5. Is Appellant entitled to interest on improperly withheld wages?

#### STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker, 360 S.C. at 424, 602 S.E.2d at 58 (citation omitted). The statutory mandate that inmates be paid the prevailing wage creates a property interest that may not be denied without due process of law. Id. (citation omitted). Thus, when the Department denies an inmate, dependent, victim, or other interested party property to which he or she is entitled by law, the matter is reviewable by the ALC via the Department's internal grievance procedure. See Torrence, 373 S.C. at 594, 646 S.E.2d at 869-70.

When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the Court's review in appellate cases is limited to

the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id. Substantial evidence is not a mere scintilla, but evidence "which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency. Friends of Earth v. Pub. Serv. Commn. of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 911 (2010) (internal quotations and citation omitted). An agency's construction of a statute that it administers will be accorded the most respectful consideration and will not be overruled absent compelling reasons. S.C. Energy Users Comm. v. S.C. Elec. & Gas, 410 S.C. 348, 353-54, 764 S.E.2d 913, 915 (2014) (citations omitted); see also Kiawah Dev. Partners, II v. S.C. Dept. of Health & Envtl. Control, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014).

## DISCUSSION

### Applicable Law

State and federal laws are applicable to the Program operated by the Department. South Carolina's PSPIP is authorized by the federal Bureau of Justice Assistance (BJA) as part of the Prison Industries Enhancement Certification Program (PIECP), under Title 18, Section 1761(c) of the United States Code. Subsection (a) of Section 1761, sometimes referred to as the Ashurst-Sumners Act, enacted in 1935, governs the transportation and importation of items made by prisoners. See 18 U.S.C. § 1761(a) (2012). Such items may not be transported in interstate commerce unless an exception applies. Id. Subsection (c) creates an exception for BJA-administered programs. See 18 U.S.C. § 1761(c) (2012). The BJA issued its final PIECP guideline

for programs such as the Department's in 1999. 64 Fed. Reg. 17000-14 (Apr. 7, 1999) (hereinafter "Guideline").

The federal statute requires that inmates in BJA-administered programs "receive[] wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work [is] performed." 18 U.S.C. § 1761(c)(2) (2012). From these wages, deductions of up to 80% may be made for taxes, room and board, family support, and victim compensation. Id. The PIECP Guideline refers to this rate of pay as the "prevailing wage" and states that the prevailing wage must be obtained from the state agency that determines wage rates. Guideline at 17010. The Guideline states that this agency is usually the "Department of Economic Security." In South Carolina, this agency would have been the Employment Security Commission (ESC) at the times relevant to this case, but would now be the Department of Employment and Workforce (DEW). Further, the Guideline states that the prevailing wage must be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers and that no other cost variables may be taken into consideration. Id. at 17009-10. Additionally, the Guideline states that the prevailing wage cannot be less than the federal minimum wage, but that payment of the minimum wage does not achieve compliance with the law unless the comparable private sector industry wage is indeed the federal minimum wage. Id. at 17010.

The Department's BJA-authorized program operates under South Carolina statutes enacted to comply with the federal law. In Section 24-3-315 of the South Carolina Code, it is stated that the Director of the Department "must determine . . . that the rates of pay . . . are not less than those paid . . . for work of similar nature in the locality in which the work is performed." S.C. Code Ann. § 24-3-315 (2007). Further, Section 24-3-430 requires that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." S.C. Code Ann. § 24-3-430 (2007). Although these statutes were amended during the time period at question in this case, the amendments do not affect the disposition of the case.

However, the state statute governing the distribution of inmate wages has been substantively changed. Prior to Act 68 of 1999, Section 24-3-40 required only that 5% of gross wages go to victim assistance programs, while the amount distributed for room and board to the Department and the amounts distributed to the inmate, the inmate's dependents, and victim(s) of

the crime was left in the discretion of the Department. S.C. Code Ann. § 24-3-40 (Westlaw through 1998). No mention was made of escrowing any portion of inmate wages. See id. Act 68 created a more specific distribution system that governed the remaining time at issue in this case. An additional amendment made in 2000 does not affect this case. In addition to provisions for restitution, victim compensation, room and board, family support, and personal use, the amended statute directs that the Department “shall deduct . . . from the gross wages of the prisoner: . . . [t]en percent must be held in an interest bearing escrow account for the benefit of the prisoner.” S.C. Code Ann. § 24-3-40(A)(5) (Westlaw through 2001). The statute further directed that “The Department of Corrections shall return a prisoner’s wages held in escrow pursuant to subsection (A) as follows: . . . A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the person or entities of his choice.” S.C. Code Ann. § 24-3-40(B)(2) (Westlaw through 2001).

#### **Payment of Training Wages**

Appellant contends that he must be paid the prevailing wage required by law for his labor performed during the training period. The Court agrees.

The South Carolina Supreme Court has held “there is simply nothing in the statutory scheme authorizing the DOC to pay [Appellant] a training wage less than the prevailing wage.” Wicker, 360 S.C. at 425, 602 S.E.2d at 58. Thus, it is beyond argument that SCDC must pay Appellant the difference between the “training wages” and the prevailing wage. Furthermore, the statutory mandate of comparable pay and conditions means that inmates are entitled to time-and-a-half overtime pay in situations non-inmate workers would receive such overtime pay. S.C. Dept. of Corrs. v. Cartrette, 387 S.C. 640, 646, 694 S.E.2d 18, 21 (Ct. App. 2010); see also Guideline at 170000-01.

The Department’s decision to pay Appellant less than the prevailing wage for regular hours and time-and-a-half the prevailing wage for overtime hours during the first 320 hours of his labor is erroneous as a matter of law.

#### **Payment of Post-Training Wages**

Appellant also contends that he was not paid the prevailing wage required by law for each hour of labor after the training period. As stated above, there is no construction of the law under

which the Department could pay Appellant less than the prevailing wage. The question then becomes, what is the “prevailing wage” that must be paid for all hours worked in both the training period and thereafter? The Department makes a number of arguments regarding the definition of prevailing wage.<sup>3</sup>

### Prevailing Wage

First, the Department argues that “comparable wages” and “prevailing wage” are different concepts and that the requirement to pay a comparable wage does not require the Department to pay the prevailing wage. The term “comparable wages” is used in Section 24-3-410 of the South Carolina Code. This section is similar to the Ashurst-Sumners Act, in that it bans the sale of inmate-manufactured goods, with certain exceptions. The exception applicable to the PSPIP provides that the “inmate workers participate voluntarily, receive comparable wages, and the work does not displace employed workers.” S.C. Code Ann. § 24-3-410(B)(7) (2007). The Department cites a Circuit Court order in another case as support for the theory that Section -410, and not Section -430, governs the wage standard applicable in this case. Not only is this Circuit Court order not binding, the argument for which it is cited contradicts the statements of the higher courts in this state. This Court declines to further address the argument that only Section -410 applies, noting that the South Carolina Supreme Court has already stated that the program at issue in this case operated under Section 24-3-430. See Torrence, 373 S.C. at 590, 646 S.E.2d at 867.

Second, the Department argues that the “prevailing wage” is defined by its contract with ESCOD. The fact that SCDC and ESCOD agreed between themselves in their contract that \$5.25 was the prevailing wage does nothing to establish that \$5.25 meets the requirements of Sections -315 and -430. Even the contract acknowledges the need to comply with state and federal law with

---

<sup>3</sup> The parties also argue vociferously about whether it is proper to use the terms “employee” or “hire” with respect to Appellant’s labor and his relationship with the PIECP. The Court declines to address in detail the parties’ arguments concerning Appellant’s status as an “employee,” since they are not necessary for the disposition of this case. It is true that Appellant is not classified as an “employee” of the State. S.C. Code Ann. § 24-3-430(F) (2007). He is not an “employee” of either the state or the private industry sponsor for purposes of the Payment of Wages Act. Williams v. S.C. Dept. of Corrs., 372 S.C. 255, 641 S.E.2d 885 (2007). Nor is he an “employee” for purposes of unemployment benefits. S.C. Code Ann. § 24-3-430(G) (2007). Yet, it is also true that for some other purposes Appellant has the same rights and responsibilities afforded to employees. He is required to pay state and federal income taxes and Social Security taxes. S.C. Code Ann. § 24-3-40(A)(6) (Supp. 2015). He is entitled to worker’s compensation benefits for on-the-job injuries. 18 U.S.C. § 1761(c)(3) (2012). None of these rights and duties (or lack thereof) directly bear on the disposition of this case.

the statement, "The prevailing wage rate for inmate labor is to be established annually by the S.C. Employment Security Commission. Upon receipt of the annual wage rate, SCDC will notify the Contractor in writing and adjust its charge accordingly." The Department's many citations to contract construction principles are inapposite to the main issue in this case, which is not about the Department's interaction or agreement with ESCOD, but whether the Department's own actions complied with the law.

Third, the Department argues that so long as the wage paid exceeds the federal minimum wage it is a lawful wage. SCDC argues that nothing in the statutes establishes a specific rate as the prevailing wage with respect to the wages an inmate must be paid. The final agency decision states: "BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects . . . cannot be set below the federal minimum wage. Except for the period of time it paid you a 'training wage,' SCDC paid you at least the federal minimum wage for your labor." However, the Department neglected to note in this statement that the Guideline's language in question also provides: "Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage." Guideline at 170010. The federal minimum wage is the *lowest possible* acceptable wage to pay inmates, because it is legally impossible for the prevailing wage to be any lower. The minimum wage would only satisfy the prevailing wage standard in all instances if all non-inmate workers were paid only the minimum wage. However, workers in this state earn different rates of pay according to their skillset and the type job in which they work. The Guideline cited by the Department also states that the federal law "requires that the PIECP wage amount be set *exclusively* in relation to the amount of pay received by similarly situated non-inmate workers." Guideline at 17009-10 (emphasis added). The Department cites no evidence that the minimum wage was the prevailing wage for workers in jobs similar to the one performed by the Appellant. The law clearly states that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." S.C. Code Ann. § 24-3-420 (2007).

Finally, the Department argues that the \$5.25 regular hourly rate conformed to the wage data collected and published by the ESC for the type of work in question. While the Court agrees

that verification of wage rates by the ESC is the method of determining the prevailing wage that the federal Guideline and state statutes contemplate, the Court does not agree that the \$5.25 regular hourly rate conforms to the ESC data in the record.

Appellant has asked this Court to determine the prevailing wage based on the record in this case. In so doing, the Court reaches an issue not yet addressed by South Carolina courts. While it has been decided that the Department may not pay less than the prevailing wage during training, no inmate has successfully raised the issue of how the prevailing wage is calculated.

### **Calculating the Prevailing Wage**

In its argument that \$5.25 constitutes a permissible wage, the Department seems to misapprehend the policy of the laws governing this private-sector program. The Department argues in its brief that “Appellant’s claim that the hourly rate of pay for his prison industries labor should have been identical to the hourly rate at which ESCOD paid its true employees is wholly without merit.” While, it is true that the law does not require “identical” rates of pay to those paid by the same employer for similar work, there are strong policy reasons why inmates working in the private sector must be paid the prevailing wage of that sector. The policy behind the passage of the Ashurst-Sumners Act was to prevent inmate labor from posing a threat to the employment of non-inmate workers. See Guideline at 17000-01. The PIECP is an *exception* to a *complete ban* on the commercial trade of products created with inmate labor. See 18 U.S.C. § 1761 (2012). As an exception, the criteria of the program are designed to achieve certain goals that maintain the overall policy of the Act—primarily, the protection of private sector jobs. Inmates must be paid the prevailing wage so that inmate labor does not create a cheaper alternative to non-inmate labor. See Cartrette, 387 S.C. at 647, 694 S.E.2d at 22 (Failure to pay inmates overtime “would create an impermissible and unfair advantage for inmate labor over private labor.”); Adkins, 360 S.C. at 418, 602 S.E.2d at 55 (“Given that the overall purpose of the prevailing wage statute is to prevent unfair competition, and to aid society and the public in general, we cannot conclude that the statutes in question were enacted for the special benefit of Inmates.”).

South Carolina law requires that an inmate’s wages cannot be less than those “for work of similar nature in the locality in which the work is performed.” S.C. Code Ann. § 24-3-315 (2007). Section 24-3-430 requires that “[n]o inmate participating in the program may earn less than the

prevailing wage for work of similar nature in the private sector.” S.C. Code Ann. § 24-3-430 (2007). In applying clear and unambiguous statutes, “there is no room for statutory construction and a court must apply the statute according to its literal meaning.” State v. Gordon, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015) (internal quotations and citation omitted). “Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” Id. The goal is “to ascertain and effectuate the intention of the legislature.” Id.

The Merriam-Webster Dictionary defines “prevail” as “to be frequent: predominate.” Merriam-Webster, [www.merriam-webster.com/prevail](http://www.merriam-webster.com/prevail) (Dec. 14, 2015). Predominate is defined as “to hold advantage in numbers or quantity.” Id. at [www.merriam-webster.com/predominate](http://www.merriam-webster.com/predominate). The affidavit in the record of Rebecca Eleazer of the ESC supports the conclusion that the “average” wage in South Carolina for a given occupational category would be the ordinary interpretation of the statutory phrase prevailing wage. The Court therefore concludes that the “prevailing wage” equals the mean average wage for an occupation.

The PIECP Guideline requires that the prevailing wage must be obtained from the state agency that determines wage rates. Guideline at 17010. In South Carolina, this agency would have been the Employment Security Commission (ESC) at the times relevant to this case, but would now be the Department of Employment and Workforce (DEW). Further, the Guideline states that the prevailing wage must be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers and that no other cost variables may be taken into consideration. Id. at 17009–10. In referring to the ESC data in the record, the Court concludes that “locality” means the state of South Carolina. Further, the Court concludes that the data necessary to determine the mean average wage for “work of a similar nature” as contemplated by the state statutes and federal guidelines may be found by referring to the appropriate Occupational Employment Statistics (OES) or OCC code used by ESC/DEW. The record simply does not support a finding that the mean average wage for an assembler is as low as the \$5.25 paid Appellant. For example, in 1999, Ted Gladden of the Employment Security Commission informed the Department by letter that the mean average wage in 1997 for electronic assemblers was \$8.82. In 2000, Gladden informed the Department that the mean average wage in 1998–1999 for

electronic assemblers was \$9.92. While this evidence demonstrates that the data necessary to calculate the mean average wage is available from DEW, the evidence in the record is insufficient to calculate the wage for all of the relevant years.

There is no evidence whatsoever in the record to support the Department's argument that its wage payment was in conformity with ESC data. To pay Appellant less than the prevailing wage is an error of law.<sup>4</sup> By failing to pay the correct wage, the Department subverts the purpose of the laws enacted by Congress and the General Assembly and harms not only inmates, but the victims and family members who receive disbursements from the inmates' gross wages and the public at large.

Appellant must be paid the mean average South Carolina wage of an electronic assembler, including overtime, for the years he worked as a harness assembler for ESCOD. The Department must obtain the data to determine this wage from the Department of Employment and Workforce. **Specifically, the Department must pay Appellant the mean average wage reflected by OEC Code 93114 for the years 1997 through 1999 and the mean average wage reflected by that code or its counterpart for the years data is not contained in the record.**

#### **Access to Escrowed Wages**

Appellant next contends that the Department incorrectly denies him access to the escrowed portion of his wages. The Court agrees in part.

The parties contest the meaning of Section 24-3-40(B)(2), which provides that, "A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." S.C. Code Ann. § 24-3-40(B)(2) (Supp. 2015). The parties disagree on when Appellant's escrowed wages may be distributed to persons or entities of the inmate's choosing—i.e. whether they may be distributed only after the inmate's death. While there is nothing in the statute explicitly stating that the

---

<sup>4</sup> The Court acknowledges the footnote statement of the South Carolina Supreme Court, that "if appellants prove true their allegation that the DOC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the lower rate, the DOC would be in violation of the plain language of the statute." *Torrence*, 373 S.C. at 594n.4, 646 S.E.2d at 870n.4 (citing S.C. Code § 24-3-40(A)) (emphasis in original)). Upon review, this Court concludes that Section 24-3-40 does not bar the Department from invoicing ESCOD for services provided in addition to inmate labor, such as the use of workspace. Here, the Department did not remove any of the money intended to constitute wages prior to disbursing the percentages. Only money intended for other purposes was separated from the wages.

distribution of the funds to persons or entities chosen by the inmate can occur only after the inmate's death, the Department's interpretation of an ambiguous statute that it administers is entitled to deference unless there is a compelling reason to differ. Kiawah, 411 S.C. at 34, 766 S.E.2d at 717. Therefore, the Court turns to the rules of statutory construction to determine the intent of the legislature.

In South Carolina, the cardinal rule of statutory interpretation requires a court to ascertain the intent of the legislature. Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013) (citing Gilstrap v. S.C. Budget & Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992)). The determination of legislative intent is a matter of law. Id. (citing CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). In so doing, the Court must give a reasonable and practical construction to the statute that is consistent with the purpose and policy expressed in the statute. Id. (citing Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011)). All other rules of statutory construction are subservient to the rule that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. S.C. Prop. & Cas. Ins. Guar. Assn. v. Brock, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (2014) (citing McClanahan v. Richland Cnty. Council, 350 SC 433, 438, 567 S.E.2d 240, 242 (2002)). If the statutory language gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the statute itself. State v. Hudson, 336 S.C. 237, 247, 519 S.E.2d 577, 582 (Ct. App. 1999) (citing State v. Baucom, 334 S.C. 371, 513 S.E.2d 112 (Ct. App. 1999), rev'd). Ambiguity should be resolved in favor of a just, equitable, and beneficial operation of the law. Id. (citing City of Sumter Police Dept. v. One (1) 1992 Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct. App. 1998)).

Appellant argues that, as an inmate sentenced to life in prison, he should have immediate personal access to the escrowed funds. This argument is based upon his reading of Subsection (A)(5), which states that the funds are to be escrowed "for the benefit of the inmate." S.C. Code Ann. § 24-3-40(B) (Supp. 2015). Appellant argues that an inmate sentenced to life imprisonment will never receive any benefit from the escrowed funds unless he is allowed immediate personal access to those funds. On the other hand, the Department argues that an inmate sentenced to life

in prison cannot have the escrowed funds distributed on his behalf prior to the inmate's death. The Court must conclude that neither interpretation urged by the parties provides a full and fair reading of the statutory scheme, because either reading renders some language of the statute ineffectual. "In determining the meaning of a statute, it is the duty of this Court to give force and effect to all parts of the statute, if possible." State ex rel. McCleod v. Nessler, 273 S.C. 371, 373, 256 S.E.2d 419, 420 (1979) (citing Bradford v. Byrnes, 221 S.C. 255, 70 S.E.2d 228 (1952)). A statutory construction should seek to give effect to every word of a statute, rather than adopting an interpretation that renders a portion meaningless. Hinton v. S.C. Dept. of Prob., Parole & Pardon Servs., 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct. App. 2004) (citing McClenaghan v. McClenaghan, 20 S.C. Eq. (1 Strob. Eq.) 295 (1847)).

On the one hand, the meaning urged by Appellant ignores the language of Subsection (B)(2), which states, "A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages **included in his estate or distributed to the persons or entities of his choice.**" S.C. Code Ann. § 24-3-40(B)(2) (Supp. 2015) (emphasis added). This subsection specifically provides for the distribution of the escrowed wages of a prisoner serving a life sentence, and immediate personal access to the funds is not an allowed option. On the other hand, SCDC's interpretation ignores the language of Subsection (A)(5), which provides that "Ten percent must be held in an interest bearing escrow account **for the benefit of the prisoner.**" S.C. Code Ann. § 24-3-40(A)(5) (Supp. 2015) (emphasis added). The Department's interpretation that the escrowed funds may not be distributed to a person or entity of the inmate's choosing during the inmate's lifetime ignores the fact that the funds are to be for the benefit of the prisoner, not the benefit of the prisoner's heirs. Therefore, the Court concludes that a construction of the statute that gives full effect to both Subsections (B)(2) and (A)(5) requires reading Subsection (B)(2) to allow a prisoner serving a life sentence without opportunity for parole the option of having the escrowed funds distributed to the persons or entities of his choice during his lifetime.

The legislative history surrounding the enactment of the statute provides a compelling reason to reach this conclusion. The statute in question was enacted by Section 2 of 1999 Act Number 68. The changes to Section 25-3-40 were originally proposed in 1999 House Bill 3216, which included the language, "included in his estate upon death." After review by committee,

amended H3216 read, "included in his estate or distributed to the person or entities of his choice." This language was then included in 1999 Senate Bill 384, which became Act 68. Clearly, if the legislature had intended for the escrowed money to be distributed only "upon death," it would have enacted that proposed language rather than amending it. Therefore, Appellant must be allowed the opportunity to designate persons or entities to receive an immediate distribution of funds held in escrow pursuant to Section 24-3-40(A)(5).<sup>5</sup>

#### **Interest on Escrowed Wages**

Appellant next argues that SCDC has breached its fiduciary duty under the statute to hold the escrowed wages in an interest bearing account. See generally S.C. Code Ann. § 24-3-40(A)(5) (Supp. 2015). Appellant argues that because the funds are held in a commercial checking account and earn interest at a low rate of return, the Department has breached its fiduciary duty with respect to those funds by not paying a "fair interest rate." The undisputed evidence reflects that the escrowed funds are held in a commercial checking account with an accounting kept for the prisoner's escrowed funds and interest accrued on the account. The State Treasurer's Office determines the applicable interest rate and disperses the interest. While the interest rate in some years is low, there is no finding by SCDC as to what a proper, or fair, rate of interest should have been for the years in question, and nothing in the record from which such a finding could be made. An appellate court will not consider any fact which does not appear in the Record on Appeal. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339, 611 S.E.2d 485, 488 (2005). The appealing party has the burden of providing a sufficient record. Here, Appellant has failed to provide a record upon which a finding that the interest rate was insufficient could be made by the Department or reviewed by this Court. Id. The Department's decision stating that the escrowed funds are held in an interest bearing account for the benefit of the inmate is supported by the substantial evidence in the record.

---

<sup>5</sup> Appellant also argues that SCDC's application of Subsection (B)(2) operates as a bill of attainder, an *ex post facto* law, and violates his constitutional right to equal protection. None of these issues were raised in the grievance before the agency, and therefore they may not be taken up by this Court. See Home Med. Sys., Inc. v. S.C. Dept. of Revenue, 382 S.C. 556, 562-63, 677 S.E.2d 582, 586 (2009).

### Interest on Judgment

Lastly, Appellant has pleaded and argued for pre- and post-judgment interest. The Court has determined that such interest is not appropriate due to the nature of this case. As held by the South Carolina Supreme Court, the statutes governing this case do not give rise to a private cause of action or establish civil liability, because they were not enacted for the benefit of the inmates, but rather for the benefit of the public. Adkins, 360 S.C. at 417-119, 602 S.E.2d at 54-55. This reasoning was applied to the parties in this case by the South Carolina Supreme Court. See Torrence, 373 S.C. at 593, 646 S.E.2d at 869. Appellant is before the ALC to protest the failure of the Department to comply with the law, not to pursue a private right of action. Id. Thus, this Order does not constitute a civil judgment in Appellant's favor as contemplated by Section 34-31-20, but rather a directive to the Department to comply with the law. Therefore, Appellant is not entitled to interest.

### ORDER

**IT IS THEREFORE ORDERED** that the Department's Final Decision is **REVERSED**.

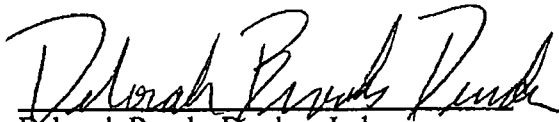
**IT IS FURTHER ORDERED** that this matter is **REMANDED** to the Department to determine the prevailing wage, as defined by the Court above, for all hours of regular and overtime labor performed by Appellant for ESCOD. The determination of the prevailing wage shall be made no later than **April 1, 2016**.

**IT IS FURTHER ORDERED** that the Department disburse, in accordance with Section 24-3-40, the difference between the amounts previously disbursed and the prevailing wage. This disbursement should be done immediately upon determination of the prevailing wage, but not later than **July 1, 2016**.

**IT IS FURTHER ORDERED** that the Department allow Appellant to designate persons or entities to receive an immediate distribution of the escrowed wages in accordance with this Order.

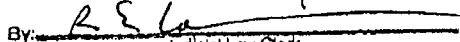
**AND IT IS SO ORDERED.**

January 20, 2016  
Columbia, South Carolina

  
Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

CERTIFICATE OF SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 20<sup>th</sup> day of January 2016

By:   
Judicial Law Clerk

15

LAW OFFICES

JAN 21 2016

MALONE, THOMPSON  
SUMMERS & OTT, LLC