



HENRY McMASTER
ATTORNEY GENERAL

October 14, 2010

The Honorable David L. Thomas
Senator, District No. 8
PO Box 142
Columbia, SC 29202

Dear Senator Thomas:

We received your letter requesting an opinion of this Office concerning the legal age of a child. You asked our office to opine on “the age at which a child can legally leave home and the responsibility of a parent or guardian to support the child up to the age of eighteen if the child leaves home at seventeen.”

As a way of background, you explain that there are instances where local law enforcement officers have told juveniles that they may leave home at 17 while telling the parents that they must support the juvenile until age 18. You also provided a hypothetical situation as an example: “Johnny who just turned seventeen declares to his parents that he is no longer under their control. The mother, who is an attorney, references S.C. Code § 63-5-20, which defines parental obligation to support. Johnny says that he is glad mom pointed that out, because he will expect checks for support to be sent to his new address.”

This opinion will address prior opinions of this Office, relevant statutes and caselaw to determine the age at which a child can legally leave home and the responsibility of the parent or guardian to provide support to the child.

Law/Analysis

In the request letter, you suggested that S.C. Code §§ 63-5-20 and 63-19-20(1) are controlling code sections. Title 63, Chapter 19 is the Juvenile Justice Code. S.C. Code § 63-19-20(1) defines “Child” or “juvenile” as “a person less than seventeen years of age. ‘Child’ or ‘juvenile’ does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years

or more. . . .” S.C. Code § 63-19-20(1). S.C. Code § 63-5-20 explains that a parent must support his or her child. The relevant portion reads as follows:

- (A) Any able-bodied person capable of earning a livelihood who shall, without just cause or excuse, abandon or fail to provide reasonable support to his or her spouse or to his or her **minor unmarried legitimate or illegitimate child** dependent upon him or her shall be deemed guilty of a misdemeanor and upon conviction shall be imprisoned for a term of not exceeding one year or be fined not less than three hundred dollars nor more than one thousand five hundred dollars, or both, in the discretion of the circuit court. . . .

S.C. Code § 63-5-20(A) (emphasis added). The plain and ordinary language of the statute indicates that a parent must support his or her child so long as the child is a minor or until the child gets married. The child is a minor until he or she reaches the age of majority which is eighteen years old. See, S.C. Code § 15-1-320(a) (“All references to minors in the law of this State shall after February 6, 1975, be deemed to mean persons under the age of eighteen years except in laws relating to the sale of alcoholic beverages. . . .”).

S.C. Code § 63-5-20 is a controlling code section; however, it must be read in conjunction with S.C. Code § 63-5-50. S.C. Code § 63-5-50 explains that there is parental immunity in cases of incorrigibility of minors who are seventeen years old. The statute reads as follows:

A parent, guardian, or other person responsible for the care and support of a child may not be charged with unlawful neglect of a child, cruelty to a child, **failure to provide reasonable support of a child**, or a similar offense based on the exclusion from the home of a seventeen-year-old child where there is a demonstrable record that the child is incorrigible (beyond the control of parents).

S.C. Code § 63-5-50 (emphasis added). This code section provides an exception to S.C. Code § 63-5-20(A). If a seventeen-year-old child is found to be incorrigible, then parents are not responsible for supporting the child.

The South Carolina Court of Appeals explained in Purdy v. Purdy that “[g]enerally, under South Carolina law, a parent’s obligation to pay child support extends until the child reaches majority, becomes self-supporting, or marries, then ends by operation of law. See S.C. Code Ann. § 20-7-420(17) (Supp.2002)¹ (granting family court jurisdiction ‘[t]o make all orders for support run

¹ S.C. Code § 63-3-530 was formerly cited as S.C. Code § 20-7-420. S.C. Code § 63-3-530 lists the areas over which family court has exclusive jurisdiction. S.C. Code § 63-3-530(17) explains (continued...)

until further order of the court, except that orders for child support run **until the child is eighteen** years of age or until the **child is married or becomes self-supporting, as determined by the court**, whichever occurs first....'). 'Emancipation of a minor child is effected primarily by agreement of the parent, although acts of the child are to be considered.' Timmerman v. Brown, 268 S.C. 303, 305, 233 S.E.2d 106, 107 (1977). 'Whether a child has been emancipated depends on the facts and circumstances of each case.' Id." Purdy, 353 S.C. 400, 578 S.E.2d 30 (2003) (emphasis added).

In an opinion of this Office dated September 15, 2000, we addressed the liability of parents for the actions of their seventeen-year-olds. However, the analysis is very applicable to the question before us. We explained as follows:

The parents' liability for the actions of their seventeen-year-old child is a fact specific issue. One very important question for parental liability is whether the child is emancipated, or released from the parents' control. If the **emancipation of the child** is complete, it "**severs the parental relationship so far as legal rights and liabilities are concerned.**" Parker v. Parker, 230 S.C. 28, 94 S.E.2d 12 (1956). However, **the determination of emancipation depends on the particular circumstances of each case**, and ultimately, would be a question of fact for a jury to decide. See, Id. In Parker, the South Carolina Supreme Court upheld a jury determination of emancipation even though the minor lived in his parent's home. The case turned largely on upon parental supervision and authority. The testimony showed that the minor was gainfully employed, owned his own automobile, was a member of the national guard, and listed his aged father as a dependent on his income tax return. See, Id. In another case, Timmerman v. Brown, 268 S.C. 303, 233 S.E.2d 106 (1977), a minor left the home of her father with his consent. She remained away from home for a period of months without any contact with or supervision from her father when she incurred certain medical expenses. The Court held that the father's voluntary renunciation of his parental rights and the

¹(...continued)

that the Family Court has jurisdiction "to make all orders for support run until further order of the court, except that orders for **child support run until the child is eighteen years of age** or until the **child is married or becomes self-supporting, as determined by the court**, whichever occurs first; or without further order, past the age of eighteen years if the child is enrolled and still attending high school, **not to exceed high school graduation or the end of the school year after the child reaches nineteen years of age, whichever is later**; or in accordance with a preexisting agreement or order to provide for child support past the age of eighteen years; or in the discretion of the court, to provide for child support past age eighteen where there are physical or mental disabilities of the child or other exceptional circumstances that warrant the continuation of child support beyond age eighteen for as long as the physical or mental disabilities or exceptional circumstances continue." S.C. Code § 63-3-530(17) (Emphasis added).

daughter's subsequent conduct were such that her emancipation was completely effected. The father, therefore, was found not to be responsible for the child's medical expenses.

Op. S.C. Atty. Gen., September 15, 2000 (emphasis added). The caselaw mentioned in the quote above highlights the fact that emancipation of a child during minority is a case-by-case determination, focusing on parental supervision and authority and the parent's voluntary renunciation of parental rights.

The South Carolina Supreme Court further explained in Parker v. Parker, 230 S.C. 28, 94 S.E.2d 12 (1956) that "emancipation is effected by operation of law when the child attains majority. Emancipation during minority results not from any act of the child alone, but primarily from agreement of the parent, which may be either express or implied. It may be either partial or complete. . . . Emancipation of a minor child is never presumed, and the burden of proof is upon him who alleges it. (citations omitted)." Parker, 230 S.C. 28, 31.

Conclusion

It is the opinion of this Office that a parent or guardian is generally required to support his or her minor child, meaning any child under the age of eighteen. S.C. Code § 63-5-20(A). However, if a minor child gets married or becomes self-supporting, as determined by the court, then parents or guardians are not required to continue support. See, S.C. Code §§ 63-3-530(17) and 63-5-20(A). Additionally, if the court finds the child to be incorrigible, then parents or guardians are not required to continue supporting the child. S.C. Code § 63-5-50. Finally, if a child is declared emancipated, then parents or guardians are not required to continue support. See, Timmerman, 268 S.C. 303; Parker, 230 S.C. 28; Purdy, 353 S.C. 400.

The laws relating to seventeen-year-old minors may cause confusion because these minors are no longer children in practicality, but not yet a legal adult. The legislature and the common law have provided protections for parents when a minor is no longer under the parents' control. However, one must remember that emancipation is never presumed and must be evaluated on a case-by-case basis.

This Office is not a fact-finding entity; "investigations and determinations of fact are beyond the scope of this opinion and are better resolved by a court." Ops. S.C. Atty. Gen., September 14, 2006; April 6, 2006. It is unlikely that the facts provided in the hypothetical above are sufficient for a court to make a determination on support. On one hand, if a court found that the minor moved out for several months without contact or supervision by the parents, was employed, had transportation, appeared to be self-supporting, and the parents voluntarily renounced their parental rights, it is the opinion of this Office that a court would likely find that the minor was emancipated. See, Timmerman, 268 S.C. 303; Parker, 230 S.C. 28. Parents are not required to provide support to an emancipated or self-supporting child. On the other hand, if the court found that the minor simply moved out without any indication that he could support himself or that the parents agreed to the

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emancipation, it is the opinion of this Office that a court would likely find that his parents are still required to support him until age eighteen. See, Purdy, 353 S.C. 400.

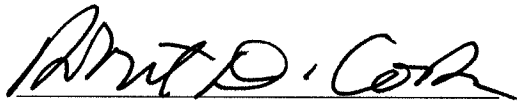
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



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