

6558 Linn



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 21, 1998

Karen A. Walto, Chairperson
Board of Juvenile Parole
Santee Building, Suite 103
100 Executive Center
Columbia, South Carolina 29210

Re: Informal Opinion

Dear Ms. Walto:

You note that "on several occasions it has been requested by certain state governmental entities, agencies and departments that the [Juvenile] Parole Board provide certain information pertaining to juveniles from our agency's records." You reference S.C. Code Ann. Secs. 20-7-8505 and 20-7-8510. Indicating that "[i]t is certainly our desire to maintain strict compliance with the confidentiality requirements of the referenced code section," you, nevertheless, are "unclear with regard to the limitations which are complied from records provided to us by the Department of Juvenile Justice." Thus, you seek an opinion concerning §§'s 20-7-8505 and -8510.

Law / Analysis

S.C. Code Ann. Sec. 20-7-8505 provides in pertinent part as follows:

[r]ecords and information of the department [of Juvenile Justice] shall be confidential as provided in Section 20-7-8510; provided, however, that where necessary and appropriate to ensure the provision and coordination of services and assistance to a juvenile under the custody or supervision of the department, the director must establish policies by which the department may transmit such information and records to

Request Letter

another department or agency of state or local government, a school district, or a private institution or facility licensed by the State as a child-serving organization, where such is required for admission or enrollment of the juvenile into a program of services, treatment or education.

Section 20-7-8510 further states that

- (A) The court shall make and keep records of all cases brought before it and shall devise and cause to be printed forms for social and legal records and other papers as may be required. The official juvenile records of the courts and the Department of Juvenile Justice are open to inspection only by consent of the judge to persons having a legitimate interest but always must be available to the legal counsel of the juvenile. Except as provided in subsection (B), all information obtained and social records prepared in the discharge of official duty by an employee of the court or Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly to anyone, other than the judge or others entitled under this article to receive this information, unless otherwise ordered by the judge. However, these records are open to inspection without the consent of the judge where the records are necessary to defend against an action initiated by a juvenile.
- (B) The Department of Juvenile Justice, if requested, shall provide the victim of a crime with the name and other basic descriptive information about the juvenile justice system, the status and disposition of the delinquency action including hearing dates, times and locations, and services available to victims of juvenile crime. The name, identity, or picture of a child under the jurisdiction of the court, pursuant to this chapter, must not be provided to or made public by a newspaper or radio or television station except as authorized by order of the court or unless the juvenile has been bound over to a court which would have trial jurisdiction of the

offense if committed by an adult or the juvenile has been adjudicated delinquent in family court for:

- (1) a violent crime as defined in Section 16-1-60;
- (2) grand larceny of a motor vehicle;
- (3) a crime in which a weapon was used;
- (4) distribution or trafficking in unlawful drugs as defined in Article 3, Chapter 53 of Title 44.

The role of the Juvenile Parole Board has been summarized by one treatise writer as follows:

[t]he Juvenile Parole Board is charged with reviewing the progress of juvenile offenders committed to the custody of DJJ and making the decision to release or revoke release. The parole board has the authority to issue temporary and final discharges or releases to those children in its custody along with conditions for their care once they have left the institution. The parole board may order restitution as a condition of institutional release.

21 S.C. Juris. § 113, pp. 99-100. Section 20-7-8305(B) provides that

[i]n the determination of the type of discharges or conditional releases granted, the parole board shall consider the interests of the person involved and the interests of society and shall employ the services of and consult with the personnel of the Reception and Evaluation Center. The parole board may from time to time modify the conditions of discharges or conditional releases previously granted.

Furthermore, § 20-7-8010 states that "[f]rom the time of the lawful reception of a child into custody by the department [of Juvenile Justice] and during the period of custody, the department shall provide for, either solely or **in cooperation with other agencies**, the care, custody and control of the child" (emphasis added).

In addition, § 20-7-8315(A) charges the Department of Juvenile Justice "with the responsibility of making aftercare investigations to determine suitable placement for children considered for conditional release from the correctional schools. The department shall also have the responsibility of supervising the aftercare program, making revocation investigations, and submitting findings to the parole board."

Thus, the question here is whether the Juvenile Parole Board may release the records of a juvenile **to other agencies**? Put another way, do the same standards govern the Juvenile Parole in releasing juvenile records to other agencies as control DJJ in providing such records to the Juvenile Parole Board? It is clear that the statutes in question [§§ 20-7-8505 and -8510] literally address the provision of records to other agencies by the Department of Juvenile Justice rather than by the Juvenile Parole Board. Section 20-7-8510 makes the official juvenile records of the courts and DJJ open to inspection "only by consent of the judge to persons having a legitimate interest" [except that such records are always available to the legal counsel of the juvenile]. Such provision further states that juvenile records, except where such information from such records are being provided to victims, "are confidential and must not be disclosed directly or indirectly to anyone, other than the judge or others entitled under this article to receive this information, unless otherwise ordered by the judge." Again, such latter limitation is expressly placed upon an employee of the court or DJJ. In § 20-7-8505, mention is similarly made only of juvenile records held by DJJ; such Section provides that "[r]ecords and information of **the department** pertaining to juveniles shall be confidential as provided in Section 20-7-8510 [except] ... where necessary and appropriate to ensure the provision and coordination of services and assistance to a juvenile under the custody or supervision of the department" This provision requires that "the director [of DJJ] must establish policies by which the department may transmit such information and records to another department or agency of state or local government" None of these statutory provisions make reference to the records of a juvenile where such records are in the custody of the Juvenile Parole Board.

A number of principles of statutory construction are relevant here. First and foremost, is the fundamental tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed therein. Jones v. S.C. State Highway Dept., 247 S.C. 132, 146 S.E.2d 166 (1966). Words used in an enactment should be given their plain and ordinary meaning. Smith v. Eagle Const. Co., 282 S.C. 140, 318 S.E.2d 8 (1984). Moreover, it is well recognized that the enumeration of certain matters in a statute excludes others. Pa. Natl. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546,

320 S.E.2d 458 (S.C. App. 1984). Statutes in pari materia should be construed together in order to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

Several alternative readings are available in this instance. These statutes could be read literally in one of two ways. First, the statutes could be interpreted based upon the fact that they **only govern DJJ and the Family Court** and that, once juvenile records are properly turned over to the Juvenile Parole Board, there is no further restriction upon such records. This reading is particularly appealing inasmuch as the Legislature did not attempt to make such records continue to be confidential once they were turned over to another as authorized in the statute. For example, no restriction is placed upon use of such records by a victim upon the transfer of confidential information to the victim. See, § 20-7-8505(B). Alternatively, the statutes could be read in pari materia to the effect that juvenile records are absolutely confidential, unless released by an order of the Family Court, and the only exception to such an order is release by DJJ to other agencies "where necessary and appropriate to ensure the provision and coordination of services and assistance to a juvenile under the custody or supervision of the department" In other words, a literal interpretation along these lines would lead to the conclusion that the Juvenile Parole Board is not authorized to release juvenile records to other agencies without express Family Court approval. The problem with this construction is the harsh burden such restriction would place upon the Juvenile Parole Board in carrying out its duties to determine whether a juvenile should be discharged.

While there is ambiguity in the referenced statutory provisions, it is my opinion that the most sensible way to construe these provisions is that the General Assembly intended to place the same limitations upon the release of the juvenile records by the Juvenile Parole Board that are imposed upon DJJ. It makes common sense for the very same provisions concerning release of juvenile records which govern DJJ to also encompass the Juvenile Parole Board.

A recent opinion of this Office, dated November 14, 1996 is instructive in this regard. That Opinion referenced Op. Atty. Gen., Op. No. 84-126 (October 29, 1984) which recognized that the Juvenile Parole Board "acts as the paroling authority to determine the release of children who have been committed by Family Court to correctional facilities of the South Carolina Department of Youth Services [now Department of Juvenile Justice]." There, we emphasized that it is the Juvenile Parole Board rather than the Department of Mental Health or the Department of Juvenile Justice, which is authorized by law to discharge or conditionally release a juvenile. In this regard, we distinguished between physical and legal custody and concluded that legal custody of a juvenile is the Juvenile Parole Board until the Board discharges or conditionally discharges the juvenile. We commented as follows:

[i]n summary neither DMH nor DJJ possesses the authority to discharge a juvenile committed to DJJ from DJJ's legal custody or to agree to such discharge. Such authority is, by statute, expressly reserved to the Juvenile Parole Board. Section 20-7-7815 in no way alters this authority, but merely authorizes DJJ to transfer physical custody of a juvenile determined to be mentally ill or retarded to another institution for treatment. ...

See also, Golden v. State Bd. of Juvenile Placement and Aftercare, 266 S.C. 427, 223 S.E.2d 777 (1976) [referencing present § 20-7-8305 which authorizes the Board "to review the records and progress of children committed to the custody of the Department of Juvenile Justice for the purpose of deciding the release or revocation of release of these children."]

In other words, the very same policy considerations governing the provision of juvenile records by DJJ **to other agencies** as part of the treatment, rehabilitation and physical custody of juveniles would govern the Juvenile Parole Board in deciding whether to discharge, conditionally release or revoke such conditional release of a juvenile. Certainly, the Juvenile Parole Board would need input from other state agencies in carrying out its duties. See Op. Atty. Gen., June 2, 1978 ["each action taken by the Board [must] be in the best interest of the child and society. In addition to the authority to grant releases, the Board also has the authority to place conditions and restrictions on the juvenile offender's release under the caveat that each child is placed in a proper environment and receives appropriate rehabilitative services."] Clearly, the Board would have great difficulty carrying out these functions if it were unable to provide a juvenile's records to another state agency to determine what conditions to place upon the juvenile's release. Such an obstacle would make the Board's duties virtually impossible to carry out. This may be why the Legislature did not expressly mandate that the agency which properly receives a juvenile's records from DJJ (such as Juvenile Parole Board) must then itself keep such records confidential. This also probably explains why the Legislature did not see fit to restrict the Juvenile Parole Board in § 20-7-8305 when it specifically authorized the Board to "review the records and progress of children committed to the custody of the Department of Juvenile Justice for the purpose of deciding the release or revocation of release of these children." Our Supreme Court has cautioned against an overly literal interpretation of a statute where such may not be consistent with legislative intent. In Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court recognized that

Ms. Walto
Page 7
September 21, 1998

[i]t is a familiar canon of construction that a thing which is in the intention of the makers of a statute is as much within the statute as if it were within the letter. It is an old and well-established rule that words ought to be subservient to the intent, and not the intent to the words.

Id. at 368-369. Thus, it is my opinion that the preferable reading of the statute is that the Juvenile Parole Board may release juvenile records to other state agencies. A good standard for such release is the same one which governs DJJ, i.e. that such release is "... necessary and appropriate to ensure the provision and coordination of services and assistance to a juvenile" This reading strikes a balance between requiring on one hand a Family Court to approve on a case-by-case basis further release by the agency to which DJJ has provided juvenile records and on the other, there being a total lack of standards to govern the release of records by the Juvenile Parole Board. Of course, this conclusion only relates to the release of records to other agencies, as release of records to victims is dealt with in other provisions of the statutes in question.

I must also caution that the foregoing statutes are not clear and definitive as to your question. Legislative clarification would certainly be desirable to clarify the Juvenile Parole Board's authority in this area. However, in the meantime, I am of the opinion that the Juvenile Parole Board may release juvenile records to other agencies in carrying out its parole and discharge functions, as discussed above.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an