

The State of South Carolina



Office of the Attorney General

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May 4, 1988

Robert A. Wilbur, Chief of Police
City of Columbia
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Dear Chief Wilbur:

In a letter to this Office you requested an opinion regarding the photographing of juveniles by your department. You indicated that your department has been photographing juveniles for law enforcement use only.

A prior opinion of this Office dated August 15, 1978 referenced former Section 14-21-30 of the Code (now codified as Section 20-7-780) in concluding that although a literal interpretation of the statute did not require a court order authorizing the photographing of a juvenile, it was the recommendation of this Office that such an order be obtained before photographing a juvenile in a criminal matter. The opinion cited the general intention of the General Assembly to protect a juvenile from unnecessary public exposure and to make juvenile records privileged information. See: Section 20-7-600(d) of the Code ((p)eace officers' records of children shall be kept separate from records of adults and shall not be open to public inspection, and shall be open to inspection only by such governmental agencies as authorized by the judge.)

Since the opinion was written, the referenced statutory provision, again, now codified as Section 20-7-780, has been amended to read:

... (t)he name, identity, or picture of any child under the jurisdiction of the court, pursuant to this chapter, must not be made public by any newspaper, radio, or television station except as authorized by order of the court nor shall the fingerprints of any child be taken without any order from the judge; provided, that the Department of

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Youth Services may fingerprint and photograph a juvenile upon his commitment to a juvenile correctional institution; provided, further, these fingerprints and photographs shall remain confidential information....

Such provision is explicit in requiring that a court order be obtained before taking the fingerprints of a child.^{1/} However, as noted, DYS is given the authority to fingerprint and photograph a child upon the child's commitment to DYS.

In your letter requesting this opinion you included a memorandum which referenced conversations with several individuals, including members of solicitors' staffs and a family court judge. The memorandum concluded that there was nothing to prohibit your department from photographing juveniles charged with offenses

... so long as this is done solely for ... (your) ... Department's internal records, that they are maintained in a confidential manner, that they are not made public in any fashion, particularly to the media, and that they are not made available to other law enforcement agencies.

^{1/} A prior opinion of this Office dated February 3, 1982 referenced that the State Supreme Court in State ex rel. The Times and Democrat, etc. 276 S.C. 26, 274 S.E.2d 910 (1981) held that the portion of former Section 14-21-30 which prohibited the publication of the name or picture of a juvenile by the media was unconstitutional. The opinion noted, however, that

... this decision did not reach the issue of whether a prohibition of disclosure would be improper. Regarding that, the U.S. Supreme Court has held that "there is no reason why, consistently with due process, a state cannot continue, if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles." Re Gault, 387 U.S. 1, 25 (1967). Thus, except to the extent that the statute violated the First Amendment rights of the media, § 14-21-30 is otherwise constitutional.

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Referencing the above, it may be concluded that by statute, a court order is not absolutely required in order to photograph a juvenile charged with a criminal offense. This would especially appear to be the rule insofar as the photographing is done strictly as a part of booking procedures. However, to avoid any doubt, a court order authorizing such photographing is the better practice and, therefore, advisable. It would appear, moreover, that due to the strenuous requirements providing confidentiality of juvenile records, such as those expressed in Section 20-7-600(d) noted above, if any photographs of juveniles are to be utilized for any purposes other than routine booking, such as a photographic line-up, a court order authorizing such publication must be obtained.

If there is anything further, please advise.

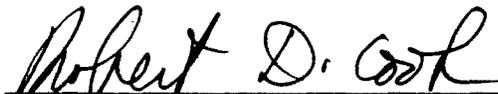
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:



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