

1984 S.C. Op. Atty. Gen. 266 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-114, 1984 WL 159921

Office of the Attorney General

State of South Carolina

Opinion No. 84-114

September 21, 1984

\*1 The Honorable Bernard R. Fielding

Associate Judge

Probate Court

Charleston County Office Building, Room 301

Post Office Box 417

Charleston, South Carolina 29402

Dear Judge Fielding:

In your letter of July 24, 1984, you inquire whether the definition of 'court' defined in [Section 43-29-10\(9\), South Carolina Code of Laws](#) (1976), as amended, as 'family court or other court exercising such jurisdiction,' includes the probate court.

As you are aware, [Sections 43-29-10, et seq.](#), are referred to as Protective Services for Developmentally Disabled and Senile Persons. This law was enacted by Act 58, 1974 Acts and Joint Resolutions of South Carolina, to establish an effective system of providing protective services for those who are developmentally disabled and senile from abuse, neglect and exploitation, to make it unlawful to abuse, neglect or exploit such an individual, and to require the reporting of such instances of abuse or neglect. Since the original enactment there have been only minor revisions in the Act, none of which have given clarification to the phrase in question.<sup>1</sup> By Act 70, 1979 Acts and Joint Resolutions of South Carolina, legislation similar to that for developmentally disabled and senile persons was enacted to protect client-patients from abuse and neglect. Act 70 is directed primarily at making the abuse or neglect of a client-patient a criminal act and does not include a provision for protective services which requires court involvement. More recently by Act 438 of the 1984 Acts and Joint Resolutions of South Carolina, the legislature enacted a procedure whereby law enforcement can provide protective custody for persons accorded protection by either the Protective Services for Developmentally Disabled and Senile Persons Act or the Client-Patient Protective Services Act. While this new law requires court involvement, the act refers to the court only as a 'court of competent jurisdiction,' and provides no clarification for the phrase in question.

Therefore, the meaning of the phrase 'other court exercising such jurisdiction' remains unclear and subject to interpretation. Upon first glance it may be read to include courts having similar subject matter jurisdiction as that dealt with under the Protective Services for Developmentally Disabled and Senile Persons Act. This would include, for example, a court with jurisdiction for commitment of persons suffering from mental retardation or mental illness. It may be argued that the placement of a developmentally disabled and senile person may include the placement of one who is mentally retarded or one who is suffering from a mental illness. Clearly the probate court under Section 14-23-1150(e) has jurisdiction to conduct proceedings for involuntary commitment of persons suffering these conditions. However, the persons protected and provided services under [Section 43-29-10, et seq.](#) extend beyond these limited categories.

\*2 Another interpretation is based on a reading of the phrase in the context of the law as it existed at the time the statute was written. At the time of the enactment of Act 58 of 1974, there were other courts exercising jurisdiction similar to the family court. There was no uniform judicial system and there existed throughout the state juvenile and domestic relations courts, children's courts and county and circuit courts that were exercising the same jurisdiction as the juvenile and domestic relations courts. It was not until the enactment of Act 690, 1976 Acts and Joint Resolutions of South Carolina (the Judicial Reform Act) that the family court was given exclusive jurisdiction over certain matters. In light of the state of the judiciary at the time of its enactment, it is

reasonable to assume that the General Assembly meant to reference those courts which were exercising concurrent jurisdiction with the family court prior to the Judicial Reform Act rather than courts of similar subject matter jurisdiction.

The rules of statutory construction state that the language of a statute must be construed in light of intended purpose of the legislature at the time the act was passed. [McMillen Feed Mills, Inc. of S.C. v. Mayer](#), 265 S.C. 500, 220 S.E. 2d 221 (1975). In light of the condition of the judiciary at the time of the enactment of Act 58 of 1974, it is our opinion that the legislature intended to refer to the then existent courts that were exercising jurisdiction concurrent with the family court. Accepting this view it must necessarily follow that the phrase in question was impliedly repealed by Act 690 of 1976, the Judicial Reform Act, and is now obsolete. Generally repeal by implication is not favored, however in a situation such as this where the intention to abrogate the phrase is apparent by fair and necessary implication implied repeal may be found. [State v. Gurney](#), 2 S.C. 59 (1871). Our conclusion then is that the court with jurisdiction over protective services for developmentally disabled and senile persons is the family court.

Please let me know if you have any further questions regarding this matter.

Sincerely,

B. J. Willoughby  
Assistant Attorney General

#### Footnotes

- [Section 43–29–30, South Carolina Code of Laws](#), as amended, contains the phrase ‘family court or other court exercising jurisdiction.’ This section was amended in other respects but this particular phrase was reenacted in Act 594 of 1976. It should be noted that the reenactment became law May 25, 1976, prior to the passage of the Judicial Reform Act, Act 90 of 1976, which became law on June 30, 1976.

1984 S.C. Op. Atty. Gen. 266 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-114, 1984 WL 159921