

1980 S.C. Op. Atty. Gen. 47 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-21, 1980 WL 81905

Office of the Attorney General

State of South Carolina

Opinion No. 80-21

FEBRUARY 11, 1980

***1 SUBJECT Juvenile delinquents, identity information, not public information; Juveniles, identity information, not public information; Courts, Family, juveniles, identity information, not public information, procedure Public information, juveniles identity information, not public information, procedure; Television and radio, juveniles identity information, not public information; Name's, juveniles, identity information, not public information; Photographs, juveniles, identity information, not public information;**

(1) Contempt sanctions of publication of the name or picture of a juvenile who is the subject of a delinquency proceeding in the Family Court, without written approval of a Family Court Judge.

(2) Confidentiality of records and proceedings in the Family Courts of South Carolina.

To: T. Dewey Wise

Senator

Chairman, Joint Legislative Committee on Children

QUESTIONS:

1. What effect, if any, do the First and Fourteenth Amendments to the United States Constitution have upon the provisions of [S.C. Code, § 14-21-30 \(1976\)](#), which would impose contempt sanctions upon publication by news media of the name or picture of a juvenile who is the subject of a delinquency proceeding in the Family Court?

2. To what extent may the State maintain confidentiality of the juvenile records and proceedings in the Family Courts consistent with the First and Fourteenth Amendments to the United States Constitution?

STATUTES AND CASES:

[S.C. Code, §§ 14-21-30, 14-21-610, 14-21-650](#), [Smith v. Daily Mail Publishing Co.](#), 443 U.S. 97, 61 L.Ed.2d 399, 99 S.Ct. 2667 (1979); [Landmark Communications, Inc. v. Commonwealth of Virginia](#), 435 U.S. 829, 56 L.Ed.2d 1, 98 S.Ct. 1535 (1978); [Oklahoma Publishing Co. v. District Court](#), 430 U.S. 308, 51 L.Ed.2d 355, 97 S.Ct. 1045 (1977); [Nebraska Press Association v. Stuart](#), 427 U.S. 539, 49 L.Ed.2d 683, 96 S.Ct. 2791 (1976); [Cox Broadcasting Corp v. Cohn](#), 420 U.S. 469, 43 L.Ed.2d 328, 95 S.Ct. 1029 (1975).

DISCUSSION:

1. You have directed to this Office an inquiry as to the constitutionality of [S.C. Code § 14-21-30 \(1976\)](#), as it applies to publication of the names and photographs of juveniles alleged to be delinquent in the Family Court. You also wish to know to what extent may the State provide for confidentiality of these records, consistent with the First and Fourteenth Amendments to the United States Constitution.

[Section 14-21-30](#) provides, in pertinent part, that the official records of the Family Court

shall be open to inspection only by consent of the [Family Court] judge to persons having a legitimate interest therein. All information obtained and social records prepared in the discharge of official duty by an employee of the court shall be privileged and shall not be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive such information, unless and until otherwise ordered by the judge. The name or picture of any child under the jurisdiction of the court shall not be made public by any newspaper, radio or T.V. Station, except as authorized by order of the court, nor shall the fingerprints of any child be taken without an order from the judge. (emphasis supplied).

*2 The violation of this section would be contempt, subjecting an offender to imprisonment not to exceed one year or to a fine not to exceed \$1,500.00, or both. [South Carolina Code, § 14-21-650 \(1976\)](#). See 1975-1976 Op. Atty. Gen., No. 4541, page 409.

The obvious intent of [§ 14-21-30](#) is to protect juveniles from adverse publicity, and to maintain the secrecy of the Family Court system in South Carolina. See [S.C. Code, § 14-21-610 \(1976\)](#). This desire for confidentiality arises out of a concern for the welfare of the child, to conceal the errors of his or her youth in order to promote the child's prospects for adjustment in society and acceptance by the public. Publication of the identity of a delinquent juvenile may hamper his employment opportunities for the future, thereby hampering the rehabilitative purposes of the Family Court system. However, it appears that these interests may not override certain protections guaranteed the news media under the First and Fourteenth Amendments to the United States Constitution.

In a case coming from West Virginia, [Smith v. Daily Mail Publishing Co.](#), 443 U.S. 97, 61 L.Ed.2d 399, 99 S.Ct. 2667 (1979), Chief Justice Burger, writing for a seven to one majority of the U.S. Supreme Court delivered an opinion holding that a State's interest in the anonymity of a juvenile offender is not sufficient justification for punishing the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper. In [Smith](#), newspaper reporters ascertained the name of a juvenile charged with murder through interviews with various witnesses, the police, and an assistant prosecuting attorney present at the scene of the crime. The State of West Virginia then prosecuted two newspapers for publishing this information under a statute which made it a crime for any newspaper to publish the name of any juvenile offender without a written order of the Court. The U.S. Supreme Court ruled that a statute which imposes penalties on non-parties for the publication of the identity of a juvenile cannot 'punish the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper.' [Id.](#), 61 L.Ed.2d at 406. The Supreme Court also cited [§ 14-21-30 of the S.C. Code](#) as being substantially identical to the West Virginia statute. [Id.](#), 61 L.Ed.2d at 406, n.2. Therefore, it is the opinion of this office that the sanctions of [§§ 14-21-30 and 14-21-650](#) may not be imposed upon news media for the truthful publication of a juvenile offender's name or photograph when such information has been lawfully obtained.

2. It should be noted, however, that [Smith](#) merely extends to the publication of information which has been lawfully obtained. This would include information received through witnesses to the event, or by the routine monitoring of a police band radio frequency. [Smith v. Daily Mail Publishing Co.](#), *supra*. One can also lawfully retrieve information which the State has placed into the 'public domain.' See [Oklahoma Publishing Co. v. District Court](#), 430 U.S. 308, 51 L.Ed.2d 355, 97 S.Ct. 1045 (1977) (picture and name of juvenile which has been revealed by a juvenile court); [Nebraska Press Association v. Stuart](#), 427 U.S. 539, 49 L.Ed.2d 683, 96 S.Ct. 2791 (1976) (information revealed during public trials); [Cox Broadcasting Corp. v. Cohn](#), 420 U.S. 469, 43 L.Ed.2d 328, 95 S.Ct. 1029 (1975) (rape victim's name which appeared on an indictment as a public record). Conversely, these constitutional protections would not extend to information which has been illegally or improperly obtained through a breach of confidentiality, and those who knowingly publish such data may be punished by law.

*3 The State may insure confidentiality in juvenile court proceedings by adopting a number of safeguards covering the information which it has in its possession. It is proper to adopt careful internal procedures to prevent the untimely release of information by law enforcement officers, prosecutors, or the Family Court staff. The State may provide that a breach of confidentiality by Family Court members or staff would be contempt of court. It could require court witnesses and the Family Court members and staff to take on oath of secrecy, the violation of which would be treated as contempt. The foregoing sanctions have been cited by the United States Supreme Court, with approval, in [Landmark Communications, Inc. v. Commonwealth](#),

[435 U.S. 829, 841, n. 12, 56 L.Ed.2d 1, 12, n. 12, 98 S.Ct. 1535 \(1978\)](#). It is the opinion of this office that the State may sanction a person for publishing information which he knowingly obtained through a breach of confidentiality requirements.

Also, it may be possible to adopt methods whereby the court and news media would cooperate in handling the publication of identifying information. See [Smith v. Daily Mail Publishing Co., supra, 61 L.Ed.2d at 406, N.3.](#)

CONCLUSION:

The State may not constitutionally impose sanctions upon news media for the truthful publication of an alleged juvenile delinquent's name or picture which has been lawfully obtained. The State may, however, adopt careful internal procedures to prevent the unauthorized disclosure of identifying information concerning a juvenile who has come under the jurisdiction of the Family Court. The State may then impose sanctions upon those who publish privileged information which they have improperly or illegally obtained through such a breach of confidentiality.

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